

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
July 1, 2004) WCB/Pricing Docket No. 04-18
Annual Access Charge Tariff Filings)

REPLY OF MINNESOTA INDEPENDENT EQUAL ACCESS CORPORATION

Minnesota Independent Equal Access Corporation (“MIEAC”), by its attorneys, hereby replies to the Petition of AT&T Corp. filed June 28, 2004, requesting that the Commission suspend and investigate MIEAC Tariff No. 1, Transmittal No. 18. Procedurally, AT&T’s request is untimely because the rates AT&T challenges went into effect on February 26, 2004. Moreover, AT&T’s arguments supporting suspension and investigation of the MIEAC tariff are without merit, and the Petition, therefore, must be denied.¹

Background

As required by the Commission, MIEAC, a Section 61.38 carrier, filed its Tariff Review Plan (“TRP”) on June 24, 2004.² Accompanying the TRP was Transmittal No. 18, a cover letter explaining that MIEAC was not proposing any rate changes because, as shown in the TRP, the

¹ As AT&T acknowledges, rejection of a tariff is warranted only where it is *prima facie* unlawful. *See* AT&T Petition, at 1 n. 2. Moreover, suspension and investigation of a tariff are justified only where the petitioner demonstrates that the tariff raises substantial issues of unlawfulness and that “immediate and serious harm is likely to result” from its adoption. *AT&T Communications Revisions to Tariff FCC Nos., 260, 266, 267, 268, 270, 273, 274, Establishment of Rates and Regulations Applicable to ACCUNET Packet Service*, 56 RR 2d 1503, at ¶ 18 (1984); *see also* 47 C.F.R. § 1.773; *ITT World Communications Inc.*, 73 FCC 2d 709, at ¶ 26 (1979); *AT&T and Revisions of the Wide Area Telecommunications Service*, 46 FCC 2d 81, at ¶¶ 10-12 (1974). As shown herein, AT&T has not demonstrated substantial issues of unlawfulness or that serious harm is likely to result from adoption of the MIEAC tariff.

² *See In the Matter of July 1, 2004 Access Charge Tariff Filings*, DA 04-1049 (April 19, 2004); *Tariff Review Plans, In the Matter of July 1, 2004 Access Charge Tariff Filings*, DA 04-1048 (April 19, 2004).

current rates are expected to meet the company's revenue requirement for the covered period. As a result, MIEAC proposed no changes to its tariff at the time of the TRP filing.

Nonetheless, on June 28, 2004, AT&T filed a Petition to suspend and investigate Transmittal No. 18. *See* Petition of AT&T Corp., WCB./Pricing 04-18 (June 28, 2004) ("Petition"). AT&T argues that Transmittal No. 18 should be suspended and investigated for three primary reasons. First, according to AT&T, MIEAC has understated its demand projections, resulting in higher access rates. *See* Petition, at 2-3. Specifically, AT&T disputes MIEAC's projected annual demand of 289 million minutes of use. AT&T argues that MIEAC has not presented any evidence that increasing use of wireless services, Voice over Internet Protocol ("VoIP"), e-mail and Instant Messaging will significantly reduce demand for MIEAC access services.

Second, AT&T argues that MIEAC has not explained why there are different rates for originating and terminating access services. *See* Petition, at 4. AT&T avers there is no justification for this disparity because both originating and terminating services use identical facilities to provide identical functions. AT&T recommends that MIEAC's restructure "its originating tandem switching and transport rates so that they mirror and are equal to their respective terminating rates." *Id.* AT&T also suggests that MIEAC has not included all of the revenue that it generates from its tariffed services, including signaling and 800 wireless services. *See id.* at 4 n. 10.

Third, AT&T argues that MIEAC has overstated its revenue requirement by \$862,876 and applied an incorrect rate of return. *See* Petition, at 4-5. Specifically, AT&T states that MIEAC's filed Part 36 and Part 69 cost study results for 2004-2005 show a revenue requirement of \$4,903,331 for tandem switching and transport, while the revenue requirement used to

develop the rates is \$5,766,314. Finally, AT&T states that MIEAC applied an incorrect rate of return of 11.5 percent instead of 11.25 percent in the calculation of the revenue requirement.

Discussion

I. MIEAC'S USAGE ESTIMATES ARE REASONABLE

MIEAC's estimated annual usage of 289 million minutes is based on its own traffic trends, broader trending across the telecommunications industry, and a new business model that is being rolled out by Onvoy, MIEAC's parent company. Specifically, as Onvoy noted in its TRP, historical demand for long distance service is shifting from traditional wireline carriers to wireless carriers offering bundled packages of local and long distance minutes and to VoIP networks that either bypass traditional switched circuit networks or use local services or features other than access services. *See* TRP, Description and Justification, at p. 7. Both the Commission³ and AT&T⁴ have acknowledged the validity of these trends. Minutes of use per

³ *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 03-150, at ¶ 102 (2003) ("There is much evidence ... that consumers are substituting wireless service for traditional wireline communications."); *Schools and Libraries Universal Service Support Mechanism*, 17 FCC Rcd 11521, at ¶ 16 (2002) ("[M]igration of traditional long distance services to new technologies, bundled wireless service packages, and price competition due to Bell entry into the long distance marketplace" are responsible for diminishing Universal Service Fund revenue base.); "Changes Needed In Universal Service Fund, Lawmakers Say," Congress Daily AM, 2003 WL 60130441 (2003) ("Commissioner Kathleen Abernathy said the demand for -- and revenue from -- traditional long-distance services has been declining for years as a result of e-mail, wireless services and voice over Internet protocol services.").

⁴ *See* Petition of AT&T for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (October 18, 2002); Press Release, AT&T Corp., AT&T Announces Fourth-Quarter and Full-Year 2003 Earnings: Board of Directors Authorizes the Repurchase of up to \$3 Billion of Debt (Jan. 22, 2004) (reporting a recent "consolidated revenue decline of 12.8 percent ... primarily due to continued declines in long distance (LD) voice revenue, partially offset by the continued success of AT&T Consumer's bundled local and LD offering"), available at <http://www.att.com/news/item/0,1847,12777,00.html>; *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With*

access line have decreased at a rate of 15 percent in the months between June 2003 and May 2004. MIEAC expects that this shift will not only continue, but continue to grow.

Another factor that will reduce MIEAC's originating access minutes of use is that Onvoy, the parent company of MIEAC, is currently restructuring its retail/wholesale long distance product offerings both at the insistence of its current customer base as well as in response to shifting market conditions. *See* Attachment A. Onvoy anticipates selling less retail long distance through its agent programs and selling more long distance through wholesale agreements with local carriers. Under these wholesale agreements, the local carrier, in its role as an interexchange carrier, will connect directly to the facilities-based long distance provider and avoid the tandem services of centralized equal access. MIEAC conservatively estimates as much as a 25 percent shift in traffic. When combined with losses expected from wireless, VoIP and other technologies, the decrease is expected to be as much as 40 percent during the next two years.

II. MIEAC'S ORIGINATING AND TERMINATING RATES ARE LAWFUL

Earlier this year, MIEAC restructured its access service rates to meet the increasingly competitive market for terminating access. Specifically, on February 11, 2004, MIEAC filed a tariff revision that separated transport and switching rates for both originating and terminating traffic.⁵ That filing included cost support information and a summary and justification.⁶ The total originating access rate was unchanged, and there was an effective rate reduction for

Respect to Commercial Mobile Services, 17 FCC Rcd 12985, 13018 (2002) ("AT&T itself attributed the decline in its long distance calling volumes and revenues in part to wireless substitution.") (citation omitted).

⁵ *See* Minnesota Independent Equal Access Corporation, Revised Tariff FCC No. 1, Transmittal No. 16 (February 11, 2004).

⁶ *See* Minnesota Independent Equal Access Corporation, Revised Tariff FCC No. 1, Amended Transmittal No. 16 (February 13, 2004).

terminating access service. The purpose of the filing was to offer interexchange carriers more competitive rates for terminating services.⁷ MIEAC believes it is losing business to competing terminating access services provided by Qwest and to interexchange carriers that are installing their own termination facilities. No carrier petitioned to reject or suspend the new rate structure or reduction, and the tariff went into effect on February 26, 2004.⁸

As a procedural matter, if AT&T had an objection, it should have filed a petition at that time.⁹ AT&T's attempt to object now, four months later, is untimely and inappropriate.¹⁰ Moreover, as the Commission has stated, Section 61.38 confers no independent procedural or substantive rights on third parties seeking a ruling that the underlying tariff is unlawful.¹¹

Substantively as well, AT&T's arguments have no merit. AT&T wrongly suggests that MIEAC has not included all of the revenue that it generates from its tariffed services, including signaling and 800 wireless services. *See* Petition, at 4 n.10. Those revenues are plainly included in COS-1P, line 150, and AT&T must have simply missed them. AT&T also incorrectly states that MIEAC must charge the same rate for both originating and terminating access. *See* Petition, at 4. The Commission explicitly rejected such a requirement seven years ago in its access charge reform proceeding.¹² Moreover, because MIEAC has relatively little traffic under its terminating

⁷ The rates were based on the marginal cost of providing service.

⁸ *See* Minnesota Independent Equal Access Corporation, Revised Tariff FCC No. 1, Amended Transmittal No. 16 (February 13, 2004).

⁹ A representative from AT&T contacted MIEAC about the filing. Specifically, Al Knepper with AT&T's regulatory department in Denver spoke with Mary Buley, Regulatory and Interconnection Manager for Onvoy, and following that discussion, AT&T chose not to object to the filing.

¹⁰ *See* 47 C.F.R. §§ 1.773(a)(2), 69.3(b).

¹¹ *See, e.g., General Communication Inc. v. Alascom, Inc.*, 64 RR 2d 887, at ¶ 19 (1988).

¹² *See Access Charge Reform/PriceCap Performance Review for Local Exchange Carriers/Transport Rate Structure and Pricing/End User Common Line Charges*, 12 FCC Rcd 15982, at

rate, any rate rebalancing mandated by the Commission would simply lead to a rate increase for terminating access service, without much corresponding decrease in the rate for originating service.

III. MIEAC'S MINOR COMPUTATIONAL ERRORS HAVE NO IMPACT ON CURRENT ACCESS RATES

While AT&T is correct that MIEAC inadvertently misstated its revenue requirement and applied the incorrect rate of return, these minor computational errors are *de minimus* and are not grounds for a suspension or investigation of the tariff.¹³ As shown in Attachments A and B, when the correct revenue requirement (\$5,492,221) and rate of return are used, there is still no change to MIEAC's current access rates.

¶ 355 (1997) (“Access Charge Reform”); *see also Access Charge Reform*, 14 FCC Rcd 14221, at ¶¶ 181-182 (1999). In doing so, the Commission recognized that IXCs would have an incentive to enter the market to avoid paying terminating access charges of incumbent local exchange carriers, as appears to be the case here. *Access Charge Reform*, at ¶ 349.

¹³ *See supra* note 1.

Conclusion

For the reasons stated above, the Minnesota Independent Equal Access Corporation requests that the Commission reject the Petition of AT&T Corp.

Respectfully submitted,

**MINNESOTA INDEPENDENT EQUAL
ACCESS CORPORATION**

/s/

Glenn S. Richards

Tony Lin

Shaw Pittman LLP

2300 N Street, N.W.

Washington, D.C. 20037-1128

Telephone: (202) 663-8000

Dated: June 30, 2004

CERTIFICATION

I have reviewed the foregoing Reply of Minnesota Independent Equal Access Corporation, and the information therein is true, correct and complete to the best of my knowledge and belief.


Janice Aune
Chairman & CEO
June 30, 2004

CERTIFICATE OF SERVICE

I, Renee Williams, a Secretary in the law firm of Shaw Pittman LLP, hereby certify that on this 30th day of June, 2004, I caused a copy of the foregoing **‘REPLY OF MINNESOTA INDEPENDENT EQUAL ACCESS CORPORATION’** to be served via facsimile or email (*) upon the following:

David L. Lawson
Christopher T. Shenk
Sidley Austin Brown & Wood, LLP
1501 K St., N.W.
Washington, DC 20005

Leonard J. Cali
Lawrence J. Lafaro
Judy Sello
Mart Vaarsi
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921

Raj Kannan *
Judith Nitsche *
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

_____/s/
Renee Williams