

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**IOWA NETWORK SERVICES, INC.
D/B/A AUREON NETWORK SERVICES
Tariff F.C.C. No. 1, Transmittal No. 36**

**Transmittal No. 36
February 22, 2018 Access Charge
Tariff Filings**

**PETITION OF AT&T SERVICES, INC. TO REJECT OR TO SUSPEND AND
INVESTIGATE IOWA NETWORK SERVICES, INC. TARIFF FILING**

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Dated: February 26, 2018

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| BACKGROUND | 4 |
| ARGUMENT | 6 |
| I. AUREON’S PROPOSED RATE DOES NOT COMPLY WITH THE COMMISSION’S RATE CAP REGULATIONS, INCLUDING SECTION 51.911(c). | 6 |
| II. AUREON’S PROPOSED RATE DOES NOT COMPLY WITH SECTION 61.38 OF THE COMMISSION’S RULES, IS THE PRODUCT OF UNLAWFUL RATE MANIPULATIONS, AND IS EXCESSIVE. | 10 |
| CONCLUSION..... | 15 |

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Pursuant to Section 204(a)(1) of the Communications Act (“Act”), 47 U.S.C. § 204(a)(1), and Section 1.773 of the Commission’s rules, 47 C.F.R. § 1.773, AT&T Services, Inc., on behalf of its affiliates (“AT&T”) petitions the Commission to reject, or to suspend and investigate, the above-captioned revised tariff filed by Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”) on February 22, 2018, under Transmittal No. 36 (“Proposed Tariff”).¹

INTRODUCTION

In its Order in *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a/ Aureon Network Servs.*, 2017 WL 5237210 (F.C.C. rel. Nov. 8, 2017) (“*Liability Order*”), the Commission declared Aureon’s tariff void *ab initio* due to Aureon’s failure to comply with the rate cap and rate parity rules established under the Commission’s *USF/ICC Transformation Order*,² and directed Aureon

¹ A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g., Am. Broad. Cos. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI Telecomms Corp. v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T (Transmittal No. 148)*, 101 F.C.C.2d 144 (1985); *ITT (Transmittal No. 2191)*, 73 F.C.C.2d 709, 716, n.5 (1979) (citing *AT&T (Wide Area Telecomms. Serv.)*, 46 F.C.C.2d 81, 86 (1974)).

² *Connect America Fund et al.*, 26 FCC Rcd. 17663 (2011) (“*USF/ICC Transformation Order*”), *pets. for review denied*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

to file a new tariff to comply with those rules. The Commission further noted that “AT&T has raised a number of significant questions about Aureon’s [centralized equal access (“CEA”) ratemaking] practices and rates that deserve further exploration,” including its “treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate.” *Liability Order* ¶ 30.

Aureon’s Proposed Tariff and its new rate for CEA service of \$0.00576 per minute (“Proposed Rate”) raise the same fundamental issues that the Commission has already determined “deserve further exploration.” *Id.* In its tariff filing, Aureon does not even acknowledge the Commission’s conclusions regarding Aureon’s ratemaking practices and rates, and there is no meaningful discussion of Aureon’s “treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate.” *Id.*³ The Commission therefore should, at a minimum, suspend Aureon’s Proposed Tariff and investigate the “significant questions” that the Commission has found “deserve further exploration.” *Id.*

Further, in the *Liability Order*, the Commission found that Aureon was a Competitive Local Exchange Carrier (“CLEC”) for purposes of its transitional access rules, *see id.* ¶ 25; 47 C.F.R. § 51.903(a), and, as such, Aureon was obligated “beginning on July 1, 2013 ... to reduce

³ As explained below and in the accompanying declaration of Daniel P. Rhinehart (“Rhinehart Rate Decl.”), Aureon still appears to be allocating excessive amounts of its Cable and Wire Facility (“CWF”) costs to its Access Division (which account for approximately 85% of the Access Division’s revenue requirement), thereby greatly inflating its CEA rate. Aureon also does not provide any documentation or other cost support for the lease amounts charged to its Access Division, nor does it offer any explanation as to how those amounts compare to the costs allocated to the transport services of its other non-regulated affiliates. In addition, Aureon does not provide adequate support for a number of the other cost calculations set forth in its February 22 Tariff Filing, and it continues to ignore the issue of bypass traffic, thereby significantly understating the minutes of use used that should have been used in calculating its Proposed Rate.

its ...interstate rates to those of the competing ILEC” *See id.* ¶¶ 9, 23; 47 C.F.R. § 51.911(c). However, Aureon’s February 22 Tariff Filing barely addresses the CLEC benchmark requirement. Aureon’s counsel asserts in his transmittal letter (at 2) that Aureon’s Proposed Rate “is below both the CLEC transitional default rate of \$0.00819 and the CLEC rate benchmark set at the rates for the competing ILECs in NECA’s Tariff F.C.C. No. 5.”⁴ But nowhere in its Tariff Filing does Aureon justify the use of either of those rates as the applicable CLEC benchmark rate,⁵ or provide a calculation of the CLEC benchmark rate using the NECA tariff rates.

As explained below, under the Commission’s rules, as of July 1, 2013, the applicable CLEC benchmark rate for Aureon’s CEA service was a rate based on the rates for comparable service of Qwest Corporation, d/b/a CenturyLink (“CenturyLink”) (which is the successor to Northwestern Bell Telephone Company (“Northwestern Bell”)). 47 C.F.R. § 51.911(c); 47 C.F.R. § 61.26. The comparable service is either a tandem service or a direct connection service. In either event, the CenturyLink benchmark rate for Aureon’s CEA service is well-below Aureon’s Proposed Rate of \$0.00576 per minute. Because Aureon’s Proposed Rate does not comply with the Commission’s rate cap regulations, it is unlawful. Accordingly, Aureon’s Proposed Tariff should either be rejected outright, or suspended and investigated.

⁴ *See* Aureon Tariff Filing Transmittal No. 36, “Introduction, Overview and Rate Development” (filed Feb. 22, 2018) (“2018 Tariff Filing”).

⁵ The fact that Aureon’s Proposed Rate is below the so-called “CLEC transitional default rate of \$0.00819” is no longer relevant, and it ceased to be so on July 1, 2013. *See* 47 C.F.R. § 51.911(c) (requiring CLECs, beginning July 1, 2013, to reduce their interstate rates to those of the competing ILEC); *Liability Order* ¶¶ 9, 23.

BACKGROUND

On June 8, 2017, pursuant to an order of referral issued by the United States District Court for the District of New Jersey, AT&T filed a Formal Complaint against Aureon, captioned *AT&T Corp. v. Iowa Network Services, Inc.*, Proceeding No. 17-56, File No. EB-17-MD-001. In its Complaint, AT&T alleged that Aureon had violated Sections 201(b) and 203 of the Act in multiple ways. Among other things, AT&T asserted that Aureon's invoices to AT&T were improper because (i) Aureon's tariffed rates exceeded the Commission's prescribed rate caps (and were thus void) and (ii) various of Aureon's rate-making practices appeared to be improper, including its unlawful inclusion of allegedly "Uncollectible Revenues" in the revenue requirement of its Access Division, its failure to adequately document the basis for its allocation of network costs to its Access Division, and its inaccurate and unreliable traffic forecasting. *See, e.g.*, AT&T Complaint ¶¶ 118-33.

The basis for AT&T's claim that Aureon had violated the Commission's rate cap and rate parity regulations was fully set forth in AT&T's Complaint and accompanying Legal Analysis. *See id.* ¶¶ 86-101; AT&T Legal Analysis at 28-38. In addition, AT&T presented extensive evidence demonstrating that Aureon had engaged in unlawful rate manipulation in setting its CEA rate. *See* AT&T Complaint ¶¶ 118-133; AT&T Legal Analysis at 48-63. Further, based on discovery produced by Aureon after the initial pleadings, AT&T further refined this showing in its Final Brief (submitted on August 21, 2017), where it documented the nature and extent of Aureon's rate manipulation practices and estimated (based on the available information) the impact of those practices on Aureon's past CEA rates. *See* AT&T Final Reply Brief at 3-9; Supplemental Declaration of Daniel P. Rhinehart ("Rhinehart Supp. Decl.") ¶¶ 3-44. As discussed in greater detail below and in the Rate Declaration by Mr. Rhinehart attached to this Petition, that evidence showed that, if properly calculated, Aureon's previous CEA rates would

have been significantly lower. That same evidence also demonstrates that Aureon's Proposed Rate is excessive.

In the *Liability Order*, the Commission agreed with AT&T's position that Aureon had failed to comply with the Commission's rate cap and rate parity regulations, concluding that "Aureon [had] violated Sections 201(b) and 203 of the Act by raising its interstate access rates and by not reducing its intrastate access rates in contravention of the Commission's rate cap and rate parity rules, respectively." *Liability Order* ¶ 23.⁶ The Commission further found that as a result of those rate violations, Aureon's tariff was "unlawful when filed and *void ab initio*" as of July 1, 2013 (*id.* ¶ 29) and indicated that it would "determine in the damages phase of th[e] proceeding what Aureon's rates should have been and whether refunds to AT&T are warranted." *Id.* ¶ 1.

The Commission further found that "Aureon is subject to Section 61.38 of the Commission's rules," and noted that "AT&T ha[d] raised a number of significant questions about Aureon's CEA practices and rates that deserve further exploration." *See id.* ¶ 30. The Commission further observed that these practices "include Aureon's treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.* In reaching that conclusion, the Commission necessarily relied on the extensive documentation presented in AT&T's pleadings and in the declarations presented by Mr. Rhinehart (the public versions of which are attached as Exhibits B, C, and D to Mr. Rhinehart's Rate Declaration). That documentation, including the cost support material produced by Aureon in discovery (much of which was marked by Aureon as either

⁶ In so ruling, the Commission rejected all of Aureon's arguments that it was not subject to the Commission's rate cap and rate parity rules. *See Liability Order* ¶¶ 25-29.

“Confidential” or “Highly Confidential”) is of obvious relevance to the matters at issue in this proceeding.⁷

The *Liability Order* thus strongly supports AT&T’s Petition to either reject, or suspend and investigate, Aureon’s Proposed Tariff. Having again failed to comply with the Commission’s rate cap regulations and having continued to employ, without further explanation, the same rate practices that the Commission acknowledged “raised a number of significant questions ... that deserve further exploration,” *id.* ¶ 30, Aureon’s Revised Tariff must, at a minimum, be suspended and investigated.

ARGUMENT

I. AUREON’S PROPOSED RATE DOES NOT COMPLY WITH THE COMMISSION’S RATE CAP REGULATIONS, INCLUDING SECTION 51.911(c).

In the *Liability Order*, the Commission found that Aureon was a local exchange carrier providing access services—in fact, “Aureon ... conceded as much.” *Liability Order* ¶ 25. Consequently, Aureon’s switched access services were subject to the Commission’s transitional access rules, including its rate cap and rate parity regulations. *See id.*; *USF/ICC Transformation Order* ¶¶ 800-01; 47 C.F.R. § 51.901 *et seq.* Further, because Aureon denied that it was an incumbent LEC, the Commission concluded that Aureon was a CLEC for purposes of those rules. *See Liability Order* ¶ 25; 47 C.F.R. § 51.903(a) (defining CLEC under the transition rules

⁷ Because this rate proceeding is directly related to AT&T’s Complaint case, the material marked as “Confidential” and “Highly Confidential” in the Complaint case should also be available for use in this proceeding. However, out of an abundance of caution, the specific contents of the material marked as either “Confidential” or “Highly Confidential” has not been discussed or disclosed in AT&T’s Petition or in Mr. Rhinehart’s Rate Declaration. For this same reason, the public version of Mr. Rhinehart’s prior declarations are attached as exhibits to Mr. Rhinehart’s Rate Declaration.

as “any” LEC that is not an incumbent LEC). Aureon is thus bound by Section 51.911 of the Commission’s rules, which applies to CLECs. 47 C.F.R. § 51.911.

Aureon’s Tariff Filing does not comply with that Commission regulation. Aureon’s proposed CEA rate of \$0.00576 per minute is well in excess of the applicable CLEC benchmark rate. Section 51.911(c) of the Commission’s transitional access pricing rules expressly requires that, “[b]eginning July 1, 2013,” the interstate and intrastate rates of any CLEC “shall be no higher than the ... rates charged by the competing incumbent local exchange carrier in accordance with the same procedures specified in Section 61.26” 47 C.F.R. § 51.911(c). Section 51.911(c) further makes clear that the “competing ILEC” is defined using the “same procedures specified in Section 61.26,” which in turn provides that the “competing ILEC” is the incumbent LEC “that would provide interstate exchange access services, in whole or in part, to the extent those services are not provided by the CLEC.” 47 C.F.R. § 61.26(a)(2).

The ILEC in Iowa that has the network capability to compete with Aureon’s CEA service is CenturyLink. *See* Rhinehart Rate Decl. ¶¶ 12-13. In fact, CenturyLink is the only carrier in Iowa that has a network that is comparable to Aureon’s network in terms of size, complexity, and the volumes of traffic transported. *Id.* ¶ 13. That CenturyLink is the competing ILEC against which Aureon’s rates must be benchmarked also draws support from the fact that construction of Aureon’s network was initially authorized by the Commission for the express purpose of providing an alternative to the network of CenturyLink’s predecessor, Northwestern Bell. *See In re the Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶¶ 12, 16 (1988) (noting Northwestern Bell’s offer to “install new equal access adjunct devices at its access tandem

switches” and serve as an “adjunct arrangement” for the CEA network).⁸ Use of CenturyLink’s rates as the benchmark for Aureon’s rates is also consistent with and supported by the fact that the vast majority of the traffic transported on Aureon’s CEA network is access stimulation traffic, which is also benchmarked to CenturyLink’s rates. *See* Rhinehart Rate Decl. ¶ 12; *see also* AT&T Complaint ¶¶ 39-40; Declaration of Jack Habiak (“Habiak Decl.”) ¶ 16.

As explained by Mr. Rhinehart in his Rate Declaration, the Century Link rate for service comparable to the CEA service provided by Aureon is no greater than about \$0.00312 per minute (assuming that the comparable service is provided on a tandem switching and transport basis). *See* Rhinehart Rate Decl. ¶ 14. This rate was calculated based on CenturyLink’s tandem switching and transport rates and the average transport mileage associated with delivering Aureon’s CEA traffic over CenturyLink’s network. *Id.* If, on the other hand, the comparable CenturyLink service is determined to be a direct connection service (which would be justified given the massive volumes at issue), the rate would be even lower. *See id.* ¶ 12 n.4; *see also* Habiak Decl. ¶¶ 23-28.

In its Tariff Filing, Aureon does not discuss the basis for its claim that the CLEC benchmark rate should be calculated using NECA’s tariff rates, nor does it identify a specific benchmark rate based on the NECA rates. However, in its Petition for Reconsideration of the *Liability Order*, Aureon argued that the applicable CLEC benchmark should be based on the tandem switching and transport rates that the subtending LECs on its CEA network would charge (which Aureon asserted are the tandem switching and transport rates found in the NECA tariff) and claimed—without presenting an actual rate calculation—that that rate would have been

⁸ *See also* *AT&T Corp. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, ¶ 25 (2015) (for an intermediate carrier operating in Michigan, the competing ILEC was Ameritech Michigan), *aff’d in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004-05 (D.C. Cir. 2016).

higher than the rate set forth in its now voided tariff (i.e., \$0.00896 per minute). *See* Aureon Pet. for Reconsideration at 22-25 (filed Dec. 8, 2017).⁹

As explained by Mr. Rhinehart, Aureon's NECA-based rate is not an appropriate or lawful CLEC benchmark rate. *See* Rhinehart Rate Decl. ¶¶ 8, 12. The Commission's rules require that Aureon's rates be benchmarked to the rates of the ILEC that has the capability and in fact competes with Aureon in the provision of that service. *See* 47 C.F.R. § 51.911(c). But Aureon's CEA network bears no resemblance to the networks of the LECs to which Aureon delivers CEA traffic in terms of size, complexity, or the volumes of traffic transported. *See* Rhinehart Rate Decl. ¶¶ 8, 12. In fact, few if any of Aureon's subtending LECs have tandem switches, and none have extensive transport networks. *Id.* As such, these LECs are not capable of providing services that are competitive alternatives to Aureon's CEA service. *Id.* By contrast, CenturyLink's network is comparable to Aureon's CEA network and the transport services CenturyLink offers compete with the services offered by Aureon. *Id.* Consequently, the CenturyLink rate, not a rate purportedly derived from the NECA tariff, must be used as the benchmark rate for Aureon's CEA service under the Commission's rules. *Id.*

As demonstrated by Mr. Rhinehart, substantial evidence exists showing that the applicable CenturyLink rate is significantly below Aureon's Proposed Rate of \$0.00576 per minute. *Id.* ¶¶ 14-15. Accordingly, Aureon's Proposed Rate does not comply with the Commission's rate cap regulations and the Commission therefore should either reject outright Aureon's Proposed Tariff, or, at a minimum, suspend it and investigate whether Aureon's

⁹ In its Opposition to Aureon's Petition for Reconsideration, AT&T specifically responded to and rebutted Aureon's claims that the CLEC benchmark rate should be based on the NECA tariff rates. *See* Opposition of AT&T Corp. to Aureon Petition for Reconsideration at 20-23 (filed Dec. 18, 2017).

Proposed Rate complies with the Commission's rate cap regulations. *See Am. Broad. Cos.*, 663 F.2d at 138; *MCI Telecomms. Corp. v. AT&T*, 94 F.C.C.2d at 340-41. In no event, given the substantial evidence presented by AT&T, should the Commission permit Aureon's Proposed Rate to go into effect unchallenged.

II. AUREON'S PROPOSED RATE DOES NOT COMPLY WITH SECTION 61.38 OF THE COMMISSION'S RULES, IS THE PRODUCT OF UNLAWFUL RATE MANIPULATIONS, AND IS EXCESSIVE.

As previously noted, the Commission in its *Liability Order* not only found that Aureon had violated the Commission's rate cap and rate parity regulations, but also concluded that "AT&T ha[d] raised a number of significant questions about Aureon's CEA practices and rates that deserve further exploration." *See Liability Order* ¶ 30. The Commission further observed that these practices "include Aureon's treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.*

In its Complaint case, AT&T presented extensive evidence showing that Aureon's CEA rates were the product of unlawful and manipulative practices that had significantly inflated Aureon's past CEA rates dating as far as 2006. *See AT&T Complaint* ¶¶ 118-133; AT&T Legal Analysis at 48-63; AT&T Reply Brief at 38-58; AT&T Final Brief at 3-9. As summarized in Mr. Rhinehart's Rate Declaration (Rhinehart Rate Decl. ¶¶ 3-5, 16-22) and described in greater detail in the three Rhinehart Declarations that AT&T filed in support of its Complaint (public versions of which are attached to Mr. Rhinehart's Rate Declaration as Exhibits B, C, and D), those practices included:

- (a) Aureon's unlawful inclusion of allegedly "Uncollectible Revenues" in its revenue requirement, notwithstanding the fact that those amounts had not been properly billed and Aureon was still actively seeking to collect them (*see Rhinehart Rate Decl.* ¶¶ 3-4, 16);

- (b) its utter failure to disclose the basis by which the network costs allocated to its Access Division were computed (*see id.* ¶¶ 3-5, 16);
- (c) its inability to explain the basis for, and derivation of, the lease rates charged to the Access Division (*see id.* ¶¶ 4-5, 16);
- (d) its use of an inappropriate methodology in allocating CWF fiber costs to its CEA service, thereby greatly inflating the Access Division's revenue requirement (*see id.* ¶¶ 5, 16); and
- (e) its inaccurate and unreliable traffic forecasts (*see id.* ¶ 16).

The evidence further showed that in calculating its rates, Aureon had ignored the fact that a number of carriers were bypassing its CEA network, thereby further inflating its tariff rates. *See* AT&T Final Brief at 9-15.

AT&T also presented evidence documenting the impact of certain of Aureon's unlawful rate practices on the level of Aureon's CEA rates. In his Supplemental Declaration, for example, Mr. Rhinehart demonstrated that Aureon's rate manipulations had grossly inflated Aureon's CEA rates for every year since at least 2006. *See* Rhinehart Rate Decl. ¶ 17; *see also* Rhinehart Supp. Decl. ¶¶ 16-32. Additionally, based on the evidence regarding bypass set forth in AT&T's Final Brief, Mr. Rhinehart concluded that if Aureon had properly accounted for bypass traffic in its past rate calculations, the levels of its CEA rates during the period 2010 to 2017 would have been even lower. *See* Rhinehart Rate Decl. ¶ 17.

As further explained in Mr. Rhinehart's Rate Declaration, Aureon's Proposed Rate appears to be the product of many of the same manipulative rate practices that he identified in his prior declarations. *Id.* ¶¶ 9, 18-22. To start, Aureon's claim in its Tariff Filing that it has lowered its CEA rate by 36% (2018 Tariff Filing at 1) is highly misleading. That decline is

almost entirely the result of Aureon’s decision not to include any so-called “Uncollectible Revenues” in the Access Division’s 2018 revenue requirement (on the pretext that Aureon “does not anticipate material uncollectable access revenues in the projected test period” (*see* 2018 Tariff Filing at 2)) and certain changes likely mandated by the new tax laws. *See* Rhinehart Rate Decl. ¶ 18. Indeed, if those same changes were to be made to its prior year revenue requirement for 2017 (*see* Schedules 6-8 of its 2018 Tariff Filing), there would be very little difference between the Proposed Rate and the restated rate for 2017. *See* Rhinehart Rate Decl. ¶ 18.

But even more significantly, the rate calculations underlying its Proposed Rate are still very much of a “Black Box.” *See id.* ¶ 19. As Mr. Rhinehart explains in his Rate Declaration, no documentation or other cost support material is provided in Aureon’s Tariff Filing for the \$13.4 million “CWF Facility Lease” cost amount set forth on Schedule 5, page 3, line 68a of Aureon’s 2018 Tariff Filing, nor has any explanation been provided as to why that lease cost amount declined by about \$5 million between 2017 and Aureon’s 2018 test period. *See id.* (comparing Schedule 5, page 3, line 68a (\$13,430,525) of Aureon’s 2018 Tariff Filing to Schedule 8, page 3, line 68a (\$18,452,058)). In addition, the CWF expense line items on Schedule 5 of Aureon’s 2018 Tariff Filing (lines 68, 68a, and 68b) do not add up: the amounts allocated to the Access Division and Other do not equal the Total Company amount, and the CWF Facility Lease amount and the CWF Other Expenses amount likewise do not equal the Total Company amount. *Id.* By contrast, those line items add up on Schedule 8 relating to 2017. *Id.*; *see also* 2018 Tariff Filing, Schedule 8, lines 68, 68a, and 68b.

Further, the level of the network costs allocated to the Access Division (about \$13.4 million), *see* 2018 Tariff Filing, Schedule 5, page 3, line 68, is excessive. *See* Rhinehart Rate Decl. ¶ 20. This cost item accounts for approximately 85% of the Access Division’s total

revenue requirement and is about three times greater than the network costs allocated to Aureon's other divisions (\$4.9 million). *See id.* Further, the fact that the total amount and percentage of network costs allocated to the Access Division in Aureon's 2018 Tariff Filing is similar to the amounts and percentages allocated to the Access Division in Aureon's past Tariff Filings (*see* Table C to Rhinehart's Initial Declaration) strongly supports the conclusion that Aureon is still not properly allocating its network costs (*i.e.*, its CWF facility costs) between its CEA service and the services of Aureon's other non-regulated affiliates. *See* Rhinehart Rate Decl. ¶ 20.

Aureon's cost support materials also raise a number of other issues. For example, there is a significant difference between Aureon's estimated Net Telephone Plant Investment for its 2018 test period (a negative investment of \$954,705) as compared to the Net Telephone Plant Investment reported for 2016 (a positive investment of \$3,864,827) and 2017 (a positive investment of \$4,350,207), which is largely unexplained. *See id.* ¶ 21 (comparing 2018 Tariff Filing at 4, Schedule 5, page 2, line 56 to 2018 Tariff Filing at 4, Schedule 8, page 2, line 56). Likewise, there is a significant difference between Aureon's traffic projection for its 2018 test period (about 2.6 billion minutes) as compared to its actual traffic volumes in 2016 (about 2.8 billion minutes) and in 2017 (about 3 billion minutes). *See id.*; *see also* 2018 Tariff Filing at 2. Aureon attempts to justify this significant difference based on an alleged drop in CEA traffic in the fourth quarter of 2017. *See* Rhinehart Rate Decl. ¶ 21. However, Aureon does not provide any explanation as to causes of that decline in traffic; nor does it explain why that decline is expected to continue in 2018, or present any documentation supporting that assumption. Given those deficiencies, the inaccuracy and unreliability of Aureon's past traffic projections (*see* Rhinehart Reply Decl. ¶¶ 44-50), and the fact that Aureon does not appear to have made any

adjustment in its rate calculations to take into account bypass traffic (or the fact that its own unregulated services may be being used to facilitate that practice), Aureon's traffic projections require further investigation. *See Rhinehart Rate Decl.* ¶ 21.

In sum, Aureon's Proposed Rate appears to be the product of most of the same manipulative rate practices that the Commission found raise "significant questions" that "deserve further exploration." *See Liability Order* ¶ 30. Accordingly, if the Commission does not reject Aureon's Proposed Tariff outright as it should, it must, at a minimum, suspend Aureon's Proposed Tariff and investigate whether its Proposed Rate is just and reasonable under Section 201(b). In no event, given the substantial evidence presented by AT&T both in its Petition and during the Complaint case, should the Commission permit Aureon's Proposed Rate to go into effect without further scrutiny.

CONCLUSION

For the reasons stated above, the Commission should reject the Proposed Tariff or, in the alternative, suspend the Proposed Tariff and investigate Aureon's Proposed Rate.

Respectfully submitted,

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**DECLARATION OF DANIEL P. RHINEHART IN SUPPORT OF PETITION OF AT&T
SERVICES, INC. TO REJECT, OR TO SUSPEND AND INVESTIGATE, IOWA
NETWORK SERVICES, INC. TARIFF FILING**

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC and state formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is attached as Exhibit A to this declaration.

2. As a result of my experience, I am very familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis. I am also very familiar with the tariff filings made by Iowa Network Services, Inc. d/b/a Aureon

Network Services (“Aureon”), having reviewed Aureon’s bi-annual tariff filings and supporting documentation and submitted three separate declarations in support of the Complaint case (*AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, Proceeding No. 17-56, File No. EB-17-MD-001) filed by AT&T in June 2017. Public versions of those declarations are attached as Exhibits B (“Initial Declaration”), C (“Reply Declaration”), and D (“Supplemental Declaration”) to this declaration.¹

3. In those declarations, I identified and discussed a number of serious questions regarding the reasonableness of Aureon’s rates for Centralized Equal Access (“CEA”) service. More specifically, in my Initial Declaration, I noted that the levels of network costs allocated to Aureon’s CEA service appeared to be excessive; that an increasing percentage of the costs of Cable & Wire Facilities (“CWF”) were likely being improperly allocated to Aureon’s CEA service, raising concerns as to rate manipulation and the cross-subsidization of Aureon’s other service offerings; and that since 2010, Aureon had unlawfully inflated the Access Division’s revenue requirement by including large amounts of allegedly “Uncollectible Revenues” -- even though (i) those amounts remained the subject of ongoing litigation contesting whether those revenues had been “properly billed” and (ii) Aureon was still actively seeking to collect them. *See* Initial Declaration of Daniel P. Rhinehart (“Rhinehart Initial Decl.”) ¶¶ 4, 11, 38-43. As I

¹ The public versions of my prior declarations are attached as exhibits because a great deal of the Aureon cost support material on which I relied was designated by Aureon as either “Confidential” or “Highly Confidential.” As explained in AT&T’s Petition, the Commission undoubtedly relied on this information in concluding that Aureon’s rate practices “deserve further exploration,” and this information is clearly relevant to the matters at issue in this proceeding. *See* AT&T Petition at 5-6, n.4. Nevertheless, out of an abundance of caution, I have not discussed or disclosed in my Rate Declaration the specific contents of material marked as either “Confidential” or “Highly Confidential.”

further explained, the rate impact of this practice was between \$0.00074 and \$0.00659 per minute. *Id.* ¶¶ 41-42, Table J.

4. In my Reply Declaration, I concluded—after reviewing Aureon’s answering submission, including the declaration provided by Aureon’s Senior Vice President of Finance, Jeff Schill—that Aureon had failed to respond adequately to the concerns raised in my Initial Declaration, and that Aureon had still not produced sufficient documentation supporting the reasonableness of its CEA rates. *See* Reply Declaration of Daniel P. Rhinehart ¶¶ 4, 6-58 (“Rhinehart Reply Dec.”). For example, Aureon had not provided any credible information demonstrating the basis or reasonableness of the lease costs charged to the Access Division for using Aureon’s network (*id.* ¶¶ 4, 24-25, 35-39); had not explained the method used to allocate network costs to the Access Division (*id.* ¶¶ 4, 21-30); and had not justified its inclusion of “Uncollectible Revenues” in the Access Division’s revenue requirement. *Id.* ¶¶ 4, 52-57.

5. In my Supplemental Declaration, I opined—after observing the deposition of Mr. Schill, and after reviewing the additional cost support material that Commission Staff had ordered Aureon to produce—that serious questions still remained regarding the derivation and reasonableness of both the lease rates purportedly charged to the Access Division and the network costs allocated to the Access Division. *See* Supplemental Declaration of Daniel P. Rhinehart ¶¶ 4-38 (“Rhinehart Supp. Decl.”). Notwithstanding Aureon’s production of additional cost support material, Aureon’s calculations remained a proverbial “Black Box.” *See* AT&T Final Br. at 3. Aureon not only had failed to provide support for the derivation of its lease costs (*see id.* at 4) but the new evidence produced in discovery raised serious questions regarding Aureon’s method of allocating CWF fiber costs. *Id.* at 5. Further, as documented in

AT&T's Final Brief, Aureon had failed to account for the massive volumes of traffic that were bypassing its CEA network, thereby further inflating its CEA rates. *See id.* at 9-15.

6. In its Order resolving the liability phase of AT&T's Complaint case, *AT&T Corp. v. Iowa Network Services, Inc. d/b/a/ Aureon Network Services*, 2017 WL 5237210 (F.C.C. rel. Nov. 8, 2017) ("*Liability Order*"), the Commission not only declared Aureon's current tariff void *ab initio* based on Aureon's failure to comply with the Commission's rate cap and rate parity rules (*Liability Order* ¶ 29), it also noted that "AT&T ha[d] raised a number of significant questions about Aureon's CEA practices and rates that deserve further exploration," including its "treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.* ¶ 30. The Commission further directed Aureon to file a new tariff to comply with its rate cap and rate parity rules, and to address the significant issues that I had identified in my previous declarations.

7. On February 22, 2018, Aureon filed a revised tariff with the Commission proposing a new rate for CEA service of \$0.00576 per minute ("Proposed Rate"). *See* Aureon Tariff Filing Transmittal No. 36, "Introduction, Overview and Rate Development" ("2018 Tariff Filing"), at 1 (filed Feb. 22, 2018). Although counsel for Aureon asserts in the Tariff Filing's transmittal letter (at 2) that Aureon's Proposed Rate "is below both the CLEC transitional default rate of \$0.00819 and the CLEC rate benchmark set at the rates for the competing ILECs in NECA's Tariff F.C.C. No. 5," nowhere in the Tariff Filing does Aureon justify the use of either of those rates as the applicable CLEC benchmark rate, nor does it set forth a calculation of the CLEC benchmark rate using the NECA tariff rates. Further, nowhere in the Tariff Filing does Aureon either acknowledge or address the "significant questions" regarding Aureon's ratemaking practices that the Commission expressly found "deserve further exploration." *See*

Liability Order ¶ 30. There is no meaningful discussion of Aureon’s “treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate.” *Id.*

8. Based on that review, it is my opinion that substantial issues exist as to whether Aureon has complied with the Commission’s rate cap regulations.² As explained in greater detail below, the NECA rates are not the appropriate rates to use in setting the CLEC benchmark rate. Aureon’s CEA network bears no resemblance to the networks of the LECs to which it delivers CEA traffic in terms of size, complexity, or the volumes of traffic transported. By contrast, CenturyLink’s network is much more comparable to Aureon’s network, and as such, CenturyLink’s rates are the appropriate rates for use in setting the CLEC benchmark rate for Aureon’s CEA rate. Further, my calculations show that CenturyLink rates are significantly lower than Aureon’s Proposed Rate. Consequently, Aureon’s Proposed Rate does not comply with the Commission’s rate cap regulations and its Proposed Tariff therefore should be rejected outright or, at a minimum, suspended and its Proposed Rate should be investigated.

9. Substantial questions also exist regarding Aureon’s costs of service calculations under Section 61.38. Based on my review of the cost support material provided in connection with Aureon’s Tariff Filing, it is clear that Aureon has used many of the same rate manipulation practices that I identified in my prior declarations and that the Commission found “significant questions ... that deserve further exploration.” *Liability Order* ¶ 30. For example, the level of

² In preparing this additional declaration (“Rhinehart Rate Declaration”), I have reviewed both the Commission’s *Liability Order* and Aureon’s February 22, 2018 Tariff Filing as well as the supporting materials provided in connection with that filing. I have also reviewed Aureon’s Petition for Reconsideration of the *Liability Order* (filed on December 8, 2017) as well as the Commission’s prior decisions regarding calculation of the CLEC benchmark rate under Section 61.26.

Aureon's Proposed Rate (\$0.00576 per minute) strongly suggests that Aureon is still allocating excessive amounts of CWF costs to its Access Division, thereby inflating its Proposed Rate. Further, Aureon does not provide any documentation or other cost support for the lease amounts charged to its Access Division, nor does it offer any explanation as to how those amounts were calculated compared to the costs allocated to the transport services of its non-regulated affiliates. In addition, Aureon does not provide adequate support for a number of the other cost calculations set forth in its Tariff Filing, and it continues to ignore the issue of bypass traffic, thereby grossly understating the minutes of use that should have been used in calculating its Proposed Rate.³ Each of these points is discussed in greater detail below.

Aureon's Proposed Rate Does Not Comply With The Commission's Rate Cap Regulations Including Section 51.911(c).

10. In the *Liability Order*, the Commission found that Aureon was a competitive Local Exchange Carrier ("CLEC") subject to the Commission's rate cap and rate parity regulations and that those rates applied to Aureon's CEA service. *See Liability Order* ¶ 29. Those regulations expressly required that "beginning July 1, 2013" Aureon's CEA rates (both intrastate and interstate) be "no higher than the ... rates charged by the competing incumbent local exchange carrier in accordance with the same procedures specified in [Section] 61.26." *See* 47 C.F.R. § 51.911(c).

11. In its Petition for Reconsideration, Aureon took the position that the CLEC benchmark rate should be based on the tandem switching and transport rates that the subtending

³ Because Aureon's Tariff Filing was made on February 22, 2018, and the Commission's rules require that petitions to reject or suspend and investigate be filed within three calendar days, I therefore have only had a limited opportunity to review the underlying cost support material. Nevertheless, it is apparent from that material that there are significant problems with Aureon's Tariff Filing. It is also likely that with further discovery and analysis, additional issues will be identified.

LECs on its CEA network charge, which Aureon asserts are based on the tandem switching and transport rates set forth in the National Exchange Carriers Association (“NECA”) tariff. *See* Aureon Petition for Reconsideration at 22-25. Aureon further claims that its Proposed Rate is below “the CLEC rate benchmark set at the rates for the competing ILECs in NECA’s Tariff F.C.C. No. 5.” *See* Aureon Tariff Transmittal Letter at 2 (dated Feb. 22, 2018).

12. Aureon’s position is not soundly based. The NECA rates are not a good proxy for the CLEC benchmark rate. As noted above, Aureon’s CEA network bears no resemblance to the networks of the LECs to which it delivers CEA traffic in terms of size, complexity, or the volumes of traffic transported. In fact, it is my understanding that few if any of Aureon’s subtending LECs have tandem switches, and none have extensive tandem networks. It is my further understanding that the vast majority of the traffic transported on Aureon’s network is access stimulation traffic that is not benchmarked to NECA’s rates, but to CenturyLink’s rates. Further, a NECA-based CLEC benchmark rate would be well above Aureon’s Proposed Rate and thus would not place any meaningful competitive constraint on Aureon’s CEA rates.

13. By contrast, CenturyLink’s rates are the appropriate rates for use in setting the CLEC benchmark rate. CenturyLink’s network is the only network in Iowa that is comparable to Aureon’s network in terms of size, complexity and the volumes of traffic transported. In fact, construction of Aureon’s network was initially authorized by the Commission for the express purpose of providing an alternative to the network of CenturyLink’s predecessor, Northwestern Bell Telephone Company. As such, CenturyLink’s service is the service against which Aureon would compete and is thus the best benchmark for Aureon’s CEA rates.

14. Assuming that CenturyLink's tandem switching and transport rates (and the associated transport mileages on CenturyLink's tandem network) are found to be the appropriate rates for setting the CLEC benchmark rate, the resulting rate would be \$0.00312 per minute.⁴ This rate was calculated using Century Link's tandem switching and transport rates and the average transport mileage associated with delivering Aureon's CEA traffic over CenturyLink's tandem network. CenturyLink's tariff indicates that its current rates for tandem switching and transport are as follows: tandem switching (\$0.002252 per minute); tandem switched transport -- fixed (\$0.000240 per minute); tandem switched transport -- per mile (\$0.000030 per minute); and common transport multiplexing (\$0.000036 per minute).⁵ Further, it is my understanding based on an analysis of the mileage that would be associated with transporting AT&T's traffic over Century Link's network, that the average mileage per minute would be about 20 miles.

15. In sum, a composite rate based on CenturyLink's rates, not NECA's rate, is the appropriate benchmark rate for use in determining whether Aureon has complied with the Commission's rate cap regulations. As shown above, that rate is significantly below Aureon's Proposed Rate of \$0.00576 per minute. Accordingly, the Commission should either reject Aureon's Proposed Tariff outright, or suspend it and investigate whether Aureon's Proposed Rate complies with the Commission's rate cap regulations.

⁴ As detailed in AT&T's Complaint and in Mr. Habiak's Declaration, this rate would be even lower if the applicable CLEC benchmark were to be based on a direct connection service. *See* AT&T Complaint ¶¶ 76-80; Habiak Decl. ¶¶ 23-28.

⁵ *See* CenturyLink FCC Tariff No. 11, Section 6.8.1.c.1.

Aureon's Proposed CEA Rate Does Not Comply With The Commission's Rules, Is the Product of Unlawful Rate Manipulations, and Is Excessive.

16. As previously noted, I identified in AT&T's Complaint case a number of significant issues which indicated that Aureon's CEA rates were the product of unlawful rate manipulation practices. Those practices included:

- (a) Aureon's unlawful inclusion of allegedly "Uncollectible Revenues" in the Access Division's revenue requirement, notwithstanding the fact that those revenues had not been properly billed and Aureon was still actively seeking to collect them (*see* Rhinehart Initial Decl. ¶¶ 4, 38-44; Rhinehart Reply Decl. ¶¶ 52-57);
- (b) its failure to disclose the basis by which the network costs allocated to its Access Division had been calculated (*see* Rhinehart Initial Decl. ¶¶ 4, 14-27; Rhinehart Reply Decl. ¶¶ 21-39; Rhinehart Supp. Decl. ¶¶ 4-38);
- (c) its inability to explain the basis for and derivation of the lease rates charged to the Access Division (*see* Rhinehart Initial Decl. ¶¶ 20-27; Rhinehart Reply Decl. ¶¶ 21-30, 36-39; Rhinehart Supp. Decl. ¶¶ 4-15);
- (d) its use of an inappropriate method of allocating CWF costs to its CEA service, thereby greatly inflating the Access Division's revenue requirement and its CEA rates (*see* Rhinehart Initial Decl. ¶¶ 24-27; Rhinehart Reply Decl. ¶¶ 31-37; Rhinehart Supp. Decl. ¶¶ 16-32); and
- (e) its inaccurate and unreliable traffic forecasts (*see* Rhinehart Initial Decl. ¶¶ 34-37; Rhinehart Reply Decl. ¶¶ 44-51).

The evidence presented in AT&T's Complaint case further showed that in calculating its rates Aureon had not properly accounted for the fact that a number of carriers were bypassing its CEA network. *See* AT&T Final Brief at 9-15.

17. I also presented evidence documenting the impact of these practices on Aureon's CEA rates. In my Supplemental Declaration, for example, I demonstrated that Aureon's rate manipulations had grossly inflated its CEA rates for every year since at least since 2010. *See* Rhinehart Supp. Decl. ¶¶ 16-32. Additionally, based on the evidence regarding bypass set forth in AT&T's Final Brief, I estimate that if Aureon had properly accounted for bypass traffic in its past rate calculations, the levels of its CEA rates during the period 2010 to 2017 would have been even lower.

18. Based on my review of Aureon's Tariff Filing, Aureon's Proposed Rate of \$0.00576 per minute appears to be the product of many of the same manipulative rate practices that I identified in my prior declarations. To start, Aureon's claim in its Tariff Filing that it has lowered its CEA rate by 36% (2018 Tariff Filing at 1) is highly misleading. That decline is largely the result of Aureon's decision not to include any so-called "Uncollectible Revenues" in the Access Division's 2018 revenue requirement (on the pretext that Aureon "does not anticipate material uncollectable access revenues in the projected test period" (*see* 2018 Tariff Filing at 2)) and certain changes likely mandated by the new tax laws. Indeed, if those same changes were to be made to its prior year revenue requirement for 2017 (*see* Schedules 6-8 of its 2018 Tariff Filing), there would be little difference between the Proposed Rate and the restated rate for 2017.

19. But even more significantly, the rate calculations underlying its Proposed Rate are still very much of a "Black Box." No documentation or other cost support material is provided

for the \$13.4 million “CWF Facility Lease” cost amount set forth on Schedule 5, page 3, line 68a of Aureon’s 2018 Tariff Filing, nor is any explanation provided as to why that lease cost amount declined by about \$5 million between 2017 and Aureon’s 2018 test period. *Compare* Schedule 5, page 3, line 68a (\$13,430,525) of Aureon’s 2018 Tariff Filing *to* Schedule 8, page 3, line 68a (\$18,452,058). In addition, the CWF expense line items on Schedule 5 of Aureon’s 2018 Tariff Filing (lines 68, 68a, and 68b) do not add up: the amounts allocated to the Access Division and Other do not equal the Total Company amount, and the CWF Facility Lease amount and the CWF Other Expenses amount likewise do not equal the Total Company amount. By contrast, those line items add up on Schedule 8 relating to 2017. *See* 2018 Tariff Filing, Schedule 8, lines 68, 68a, and 68b.

20. Further, the level of the network costs allocated to the Access Division (about \$13.4 million), *see* Schedule 5, page 3, line 68, appears to be excessive. This cost item accounts for approximately 85% of the Access Division’s total revenue requirement and is about three times greater than the network costs allocated to Aureon’s other divisions (\$4.9 million). Further, the fact that the total amount and percentage of network costs allocated to the Access Division in Aureon’s 2018 Tariff Filing is similar to the amounts and percentages allocated to the Access Division in Aureon’s past Tariff Filings (*see* Table C to my Initial Declaration) strongly supports the conclusion that Aureon is still improperly allocating its network costs (i.e., its CWF facility costs) between its CEA service and the services of Aureon’s other non-regulated affiliates.

21. Aureon’s cost support materials raise a number of other issues. For example, there is a significant difference between Aureon’s estimated Net Telephone Plant Investment for its 2018 test period (a negative investment of \$954,705) and the Net Telephone Plant Investment

for 2016 (a positive investment of \$3,864,827) and 2017 (a positive investment of \$4,350,207, which is largely unexplained. *Compare* 2018 Tariff Filing at 4 and Schedule 5, page 2, line 56 to 2018 Tariff Filing at 4 and Schedule 8, page 2, line 56. Likewise, there is a significant difference between Aureon’s traffic projection for its 2018 test period (about 2.6 billion minutes) and its actual traffic volumes in 2016 (about 2.8 billion minutes) and 2017 (about 3 billion minutes). *See* 2018 Tariff Filing at 2. Aureon attempts to justify this difference based on an alleged drop in CEA traffic in the fourth quarter of 2017. *Id.* However, Aureon does not provide any explanation as to causes of that decline in traffic, nor does it explain why that decline is expected to continue in 2018 or present any documentation supporting that assumption. Given those deficiencies, the inaccuracy and unreliability of Aureon’s past traffic projections (*see* Rhinehart Reply Decl. ¶¶ 44-51) and the fact that Aureon does not appear to have made any adjustment in its rate calculations to take into account bypass traffic, Aureon’s traffic projections require further investigation.

22. In sum, Aureon’s Proposed Rate appears to be the product of many of the same manipulative rate practices that the Commission found raise “significant questions” that “deserve further exploration.” *See Liability Order* ¶ 30. Accordingly, the Commission should, at a minimum, suspend Aureon’s Proposed Tariff and investigate whether its Proposed Rate is just and reasonable under Section 201(b).

CERTIFICATION

I declare under penalty of perjury that foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Daniel P. Rhinehart", written over a horizontal line.

Daniel P. Rhinehart

Dated: February 26, 2018

Exhibit A

DANIEL RHINEHART

208 S. Akard St. ♦ Dallas, Texas 75202

214-782-7110 ♦ rhinehart@att.com

Proficient in performing and directing performance of cost analysis, regulatory functions and regulatory litigation.

- Financial and product cost analyst with expertise in fundamentals of accounting, auditing, embedded and incremental costs, cost allocations, margin analysis, capital costs, and depreciation.
- Regulatory manager experienced in interpreting statutes and regulations; and drafting, advocating, and ensuring compliance with agency regulations.
- Litigation support manager skilled in discovery, developing and delivering cost and policy testimony, preparing work papers and post-hearing briefs.

PROFESSIONAL EXPERIENCE

AT&T Services Inc. and Predecessors

Director – Regulatory, National Regulatory Organization

2015 - Present

Director providing pole attachment rate development, cost analysis and regulatory advocacy supporting company strategic initiatives.

Director – Financial Analysis, ATTCost/Capital Planning Division

2012 - 2015

Director providing product cost analysis support and regulatory advocacy supporting company strategic initiatives.

Lead Financial Analyst, Finance Costing Division

2006 - 2012

Senior analyst and regulatory advocate supporting company negotiations, arbitrations and regulatory policy.

Senior Specialist, Global Access Management

2005 - 2006

Senior analyst and regulatory advocate supporting company negotiations, arbitrations and regulatory policy.

Professional, Law and Government Affairs, National Cost Team

2001 - 2004

Senior cost analyst and national regulatory advocate auditing supplier costs and clearly presenting company positions to regulators.

District Manager, State Government Affairs

1995 - 2001

Senior regional regulatory advocate and cost analyst responsible for developing and implementing company policy in five states.

Manager, State Government Affairs, Exchange Carrier Cost Analysis

1985 - 1995

Cost analyst and regulatory advocate responsible for developing regulatory policy toward local telephone companies in California.

Supervisor

1984 - 1985

Separations and Settlements analyst for company regulated costs.

EDUCATION

MBA, St. Mary's College, Moraga, CA, with honors.

BS – Education, University of Nevada – Reno, Math Major, with High Distinction

PROFESSIONAL DEVELOPMENT

The Brookings Institution–Understanding Federal Government Operations

University of Southern California–Middle Management Program in Telecommunications

PREVIOUS TESTIMONY OF DANIEL P. RHINEHART

| Date Filed | State | Proceeding Number | Subjects Addressed |
|----------------------|--------------|---|---|
| 6/17 7/17 8/17 | FCC | 17-56 EB-17-MD-001 | Iowa Network Services Centralized Equal Access Rates |
| 3/17 | Kentucky | 2016-00370 2016-00371 | Pole Attachment Rates |
| 11/16 1/17 | Illinois | 16-0378 | Illinois USF – IITA/AT&T Stipulation |
| 12/15 4/16 | South Dakota | 1:14-cv-01018 | Northern Valley Communications v. AT&T Corp. – Traffic Pumping |
| 10/15 | Arkansas | 150019-R | Pole Attachment Rates, terms and conditions. [Panel testimony sponsoring Joint Parties Comments] |
| 6/15 | California | Truckee Donner PUD | Pole Attachment Rates |
| 3/14 | Maine | 2013-00340 | FairPoint Maine USF Request – Revenue, Rate Base, Rate of Return, Expenses, FLEC Model. |
| 10/13 | Nevada | 13-060007 | Rio Virgin Telephone Rate Case – Access Rates and Cost Allocations |
| 2/13 | Alaska | U-12-120 et al | Switched Access Demand |
| 12/12 2/13 | Oklahoma | PUD 201200040 | Oklahoma High Cost Fund |
| 7/12 | Georgia | 35068 | Rate Cases for [UAF Year 16] Track 2 Applicants – Public Service Telephone. |
| 1/12 | Oklahoma | PUD 201000211 PUD 201100145 | Settlement Agreement related to state High Cost Fund and State Universal Service Fund |
| 11/11 | Nebraska | FC-1332, FC-1335 | OrbitCom Access Service Rates |
| 10/11 | Iowa | FCU-2011-0002 | Aventure Communications Cost of High Volume Access (HVAS) Traffic |
| 8/11 | Georgia | 32235 | Ringgold - Track 2 UAF Revenue Requirement |
| 8/11 | Georgia | 32235 | Public Service - Track 2 UAF Revenue Requirement |
| 8/11 | Georgia | 32235 | Chickamauga - Track 2 UAF Revenue Requirement |
| 3/11 5/11 | Georgia | 32235 | Universal Access Fund cost of capital and caps on UAF distributions. |
| 7/10 3/11 | Texas | PUC Docket No. 36633 SOAH No.473-09-5470 | Pole attachment rates, cost of capital. |
| 12/09 | Alaska | U-09-081, U-09-082, U-09-083, U-09-084, U-09-085, U-09-086, U-09-087, U-09-088 [Unconsolidated] | Switched access revenue requirements for various companies. Addressed variously non-regulated cost assignments, depreciation expense, corporate operations expenses, and other disallowances. |
| 6/09 8/09 | Iowa | TF-2009-0030 | Switched Access cost study for Kalona Cooperative Telephone Company |
| 2/09 | Alaska | U-08-081 | Switched Access Demand for pooled access rates |

| Date Filed | State | Proceeding Number | Subjects Addressed |
|----------------------|--------------|---|--|
| 12/08 | Alaska | U-08-084, U-08-086, U-08-087, U-08-088, U-08-089, U-08-090, U-08-112, U-08-113 [Unconsolidated] | Switched access revenue requirements for various companies. Included variously, depreciation expense, corporate operations expense, and cost of capital. |
| 11/08 | Nebraska | Application C-3745/ NUSF-60.02/PI-138 | Switched Access Rates and Cost of Capital |
| 2/08 3/08 | Oklahoma | Cause No. PUD 200700370 | Medicine Park Tel. Co. request for Oklahoma USF Support |
| 6/07 7/07 | Iowa | Docket RPU-07-1 | South Slope Coop – Separations Cost Study and CCL Rate |
| 4/07 10/07 | Texas | Docket 33545 | McLeodUSA Access Cost Model – Cost of Capital, Asset Lives, Factors, Common Costs, Rate Development |
| 3/07 | Oklahoma | Cause No. PUD 200600374 | Medicine Park Tel. Co. separations study supporting request for High Cost Funds |
| 6/05 7/05 | Missouri | Case No. TT-2002-129 | AT&T Instate Connection Fee |
| 5/05 | Missouri | Case No. TO-2005-0336 | UNE Policy Issues (dedicated transport, combinations/commingling, EELs, ILEC obligations, etc.), UNE Rider, Pricing |
| 3/05 4/05 | Texas | Docket 28821 | UNE Policy (dedicated transport, combinations and commingling, EELs, ILEC obligations, etc.) |
| 2/05 3/05 | Kansas | Docket 05-AT&T-366-ARB | Call Flows, UNE Policy Issues |
| 1/05 2/05 3/05 | Oklahoma | Cause No. PUD 200400493 | Interim contract pricing terms (1/05), call flows and permanent pricing (2/05), UNE Issues and pricing (3/05) |
| 3/04 | Oklahoma | Cause No. PUD 200300646 | Track I Triennial Review Impairment Analysis (Sponsored with Robert Flappan) |
| 12/03 1/04 | Texas | Docket No. 28600 | Asset Lives, Capital Cost Factors, Annual Cost Factors, Shared and Common Costs |
| 5/03 6/03 | Illinois | Docket No. 03-0329 | Reciprocal compensation, 8YY compensation, space license |
| 11/02 2/03 | Texas | Docket 25834 | Depreciation, Annual Cost Factors, Investment Factors, Inflation and Productivity, Common Costs |
| 10/01 | Missouri | Case No. TO-2001-438 | Depreciation, Cost Factors, Labor Rates, Common Costs |
| 4/01 | Missouri | Case No. TO-2001-455 | AT&T Interconnection Agreement Arbitration – Intellectual Property, Stand-alone Services Resale, Audit Rights, UNE Costs |
| 2/01 | Kansas | Docket 99-GIMT-326-GIT | Universal Service Fund Portability (Sponsored at hearing by R. Flappan) |
| 12/00 | Oklahoma | Cause No. PUD 2000000587 | Intellectual Property, Reciprocal Compensation for ISP-bound traffic, Vertical Services Resale, Access to OSS and CPNI, OSS Audit, Definitions |

| Date Filed | State | Proceeding Number | Subjects Addressed |
|----------------------|----------|--|---|
| 8/00 | Kansas | Docket 00-GIMT-1054-GIT | Reciprocal Compensation for ISP-bound traffic |
| 6/00 | Texas | PUC Docket 22315 | Intellectual Property and Access to Operational Support Systems |
| 5/00 | Texas | PUC Docket 21425 SOAH No. 473-99-2071 | Resale obligations under FTA for vertical features, Local Plus and LDMTS service offers |
| 3/00 | Texas | Docket 21982 | SWBT Cost Study for Internet-Bound Traffic |
| 1/00 | FCC | Docket 00-4 | SWBT Long Distance Entry in Texas, Glue Charges and Intellectual Property |
| 1/00 | Kansas | Docket 97-SCCC-149-GIT | Resale Discount Levels |
| 1/00 | Missouri | Docket TT-2000-258 | Local Plus Resale Issues |
| 12/99 | Texas | Docket 20047 | GTE Directory Assistance Listing Information Service |
| 11/99 | Kansas | Docket 99-GIMT-326-GIT | Kansas Universal Service Fund Issues (Sharing of USF Support) |
| 10/99 | Texas | Docket 21392 | SWBT Switched Access Optional Payment Plan |
| 10/99 | Texas | Project 18515 | Texas USF Further Implementation Issues |
| 6/99 7/99 | Texas | Project 18515 Project 18516 | Texas USF Implementation Issues |
| 4/99 5/99 | Kansas | Docket 99-GIMT-326-GIT | Kansas Universal Service Fund Issues |
| 4/99 5/99 6/99 | Missouri | Case No. TO-98-329 | Missouri Universal Service Fund Issues |
| 12/98 | Texas | Project 16251 | Right-to-Use Adder costs |
| 10/98 | Texas | Project 18516 | Texas Universal Service Fund Issues for Small LECs |
| 9/98 | Missouri | Docket TO-98-115 | Arbitration Cost Studies of SWBT (Sponsored at hearing by D. Crombie) |
| 6/98 7/98 8/98 | Kansas | Docket 97-SCCC-149-GIT | Generic Cost Docket for SWBT. Depreciation, cost factors, fill factors. |
| 4/98 | Texas | Docket 16251 | Non-cost basis of certain Arbitration rates for SWBT – TX |
| 1/98 | Oklahoma | Cause No. PUD 970000442 | Permanent Rates for SWBT Services |
| 1/98 | Oklahoma | Cause No. PUD 970000213 | Permanent Rates for SWBT Unbundled Network Elements |
| 8/97 | Texas | Docket No. 16226 | Restatement of SWBT Arbitration Cost Studies |
| 3/97 | Kansas | Docket 97 SCCC 149-GIT | Generic Cost Proceeding for SWBT |
| 1/97 | Arkansas | Docket No. 96-395-U | Arbitration Cost Studies of SWBT – AR |
| 1/97 | Kansas | Docket 97-AT&T-290-ARB | Arbitration Cost Studies of SWBT – KS |
| 10/96 | Texas | Docket 16300 | Arbitration Cost Studies of GTE – TX |
| 10/96 | Missouri | Case No. TO-97-63 | Arbitration Cost Studies of GTE – MO |
| 10/96 | Oklahoma | Cause 960000242 | Arbitration Cost Studies of GTE – OK |
| 10/96 | Missouri | Case No. TO-97-40 | Arbitration Cost Studies of SWBT – MO |
| 9/96 | Oklahoma | Cause No. PUD 960000218 | Arbitration Cost Studies of SWBT – OK |
| 9/96 | Texas | Docket 16226 | Arbitration Cost Studies of SWBT – TX |

| Date Filed | State | Proceeding Number | Subjects Addressed |
|-------------------|--------------|---|---|
| 6/96 7/96 | Kansas | 190,492-U | Universal Service Fund, Alternative Regulation, Imputation |
| 1/96 | Texas | Docket 14659 | Costs of SWBT and GTE loop facilities |
| 1/96 | Texas | Docket 14658 | Resale of SWBT and GTE services under PURA |
| 9/95 | California | A.95-02-011 A.95-05-018 | Uniform System of Accounts Rewrite rate adjustments |
| 6/95 | Missouri | Case TR-95-241 | SWBT Local Plus service offering |
| 8/94 2/95 | California | A.93-12-005 I.94-02-020 | Citizens Utilities General Rate Case, Access Pricing, Price Cap, IntraLATA Equal Access, Imputation |
| 4/93 | California | A.92-05-002 A.92-05-004 I.87-11-033 | First Price Cap Review, productivity factors, sharing |
| 6/92 | California | I.87-11-033 | Centrex and PBX trunk Pricing |
| 10/91 | California | I.87-11-033 | Competitive entry issues |
| 1/91 | California | A.85-01-034 | High Cost Funding |
| 10/90 | California | I.87-11-033 | Expansion of Local Calling Areas, Touch Tone |

Exhibit B

PUBLIC VERSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090**

Complainant,

v.

**IOWA NETWORK SERVICES, INC.
d/b/a Aureon Network Services
7760 Office Plaza Drive South
West Des Moines, IA 50266
(515) 830-0110**

Defendant.

**Proceeding Number 17-56
File No. EB-17-MD-001**

DECLARATION OF DANIEL P. RHINEHART

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is included as Exhibit 82 to the Formal Complaint.

2. As a result of my experience, I am very familiar with the manner in which rates are calculated by Local Exchange Carriers (“LECs”) that are regulated on a rate of return basis. In addition, I have reviewed the bi-annual tariff filings made by Iowa Network Services, Inc. d/b/a Aureon Network Services (“INS”)¹ as well as various documents that have been produced in discovery in this case or in other proceedings relating to access stimulation. I have also reviewed the various Commission decisions approving Centralized Equal Access (“CEA”) service in Indiana, Iowa, South Dakota and Minnesota² as well as other Commission decisions relating to access stimulation.³ In addition, I have reviewed INS’s recent tariff filings, which

¹ See Ex. 15, INS Introduction, Overview and Rate Development, July 1, 2004 FCC Annual Access Charge Tariff Filing (dated June 24, 2004) (“INS 2004 Tariff Filing”); Ex. 16, INS Introduction, Overview and Rate Development, July 3, 2006 FCC Annual Access Charge Tariff Filing (dated June 26, 2006) (“INS 2006 Tariff Filing”); Ex. 17, INS Introduction, Overview and Rate Development, July 1, 2008 FCC Annual Access Charge Filing (dated June 24, 2008) (“INS 2008 Tariff Filing”); Ex. 18, INS Introduction, Overview and Rate Development, July 1, 2010 FCC Annual Access Charge Filing (dated June 16, 2010) (“INS 2010 Tariff Filing”); Ex. 19, INS Introduction, Overview and Rate Development, July 3, 2012 FCC Annual Access Charge Filing (dated June 26, 2012) (“INS 2012 Tariff Filing”); Ex. 20, INS Introduction, Overview and Rate Development, July 2, 2013 FCC Annual Access Charge Filing (dated June 17, 2013) (“INS 2013 Tariff Filing”); Ex. 21, INS Introduction, Overview and Rate Development, July 1, 2014 FCC Annual Access Charge Filing (dated June 16, 2014) (“INS 2014 Tariff Filing”); and Ex. 22, INS Introduction, Overview and Rate Development, July 1, 2016 FCC Annual Access Charge Filing (dated June 16, 2016) (“INS 2016 Tariff Filing”).

² *In re Application of Ind. Switch Access Div.*, File No. W-P-C-5671, 1986 WL 291436, ¶¶ 2, 23 (F.C.C. Apr. 10, 1986) (“*Indiana Switch CCB Order*”); *In re Application of Ind. Switch Access Div.*, 1 FCC Rcd. 634, ¶ 5 (1986) (“*Indiana Switch Review Order*”) (collectively, the “*Indiana Switch Orders*”); *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 3 (1988) (“*INS Order*”); *In re Application of SDCEA, Inc.*, 5 FCC Rcd. 6978, ¶ 17 (1990) (“*SDCEA Order*”); Ex. 12, Memorandum Opinion, Order and Certificate, *In re the Application of Minn. Indep. Equal Access Corp.*, File No. W-P-C-6400 (F.C.C. rel. Aug. 22, 1990) (“*MIEAC Order*”).

³ See *In re Connect America Fund*, 26 FCC Rcd. 17763 (2011) (“*Connect America Order*”); *In re Access Charge Reform*, 16 FCC Rcd. 9923 (2001) (“*CLEC Access Order*”); *In re Access Charge Reform*, 19 FCC Rcd. 9108 (2004); *Qwest Commc’ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 22 FCC Rcd. 17973 (2007) (“*Farmers I*”); *Qwest Commc’ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 24 FCC Rcd. 14801 (2009) (“*Farmers II*”).

initially proposed to offer a new contract tariff service specifically targeted at access stimulation traffic⁴ but then withdrew that proposal and replaced it with a “volume discount” proposal.⁵

3. Based on my analysis to date, serious questions exist regarding the reasonableness of INS’s rates for CEA service. As explained in greater detail below, INS’s current rate for CEA service is \$0.00896 per minute, which is only a few tenths of a cent lower than INS’s initial rate for CEA service (\$0.0117 per minute), which became effective in 1989. Moreover, INS’s current rate is approximately 44 percent higher than it was in mid-2013 (\$0.00623 per minute). Suffice it to say, these trends are not consistent with the general industry trends for access charges, which have declined precipitously since 1989.

4. To date, INS has not produced all of the cost information supporting its CEA rate calculations. Consequently, my evaluation of the reasons that INS’s rates have not declined consistent with the industry trends for access charges is ongoing. Based on my review to date, however, I have the following observations:

First, the level of the network costs allocated to INS’s Access Division appears to be excessive. INS’s Access Division does not own any of the transmission

⁴ See Ex. 46, Iowa Network Services, Inc. dba Aureon Network Services, Iowa Network Access Division, Tariff F.C.C. No 1, (Transmittal No. 33) (Description and Justification and Cost Support Material) (filed April 14, 2017) (“Contract Tariff Support”) and Proposed Revised Tariff Pages (filed April 14, 2017) (“Revised Tariff Pages”) (collectively, “INS April 2017 Revised Tariff Filing”).

⁵ See Ex. 47, Iowa Network Access Division, Application No. 8 (dated May 16, 2017) with attachments (“INS May 2017 Revised Tariff Filing,” together with the tariff filings identified in *supra* notes 1 and 4, collectively referred to herein as the “Tariff Filings” or “INS’s Tariff Filings”) (seeking permission to (i) withdraw the tariff pages submitted under Transmittal No. 33 and (ii) file revised tariff pages proposing to offer a “volume discount”).

PUBLIC VERSION

facilities or equipment that it uses in connection with its CEA service. Instead, it leases those facilities and equipment at rates that appear to exceed the rates at which INS leases such facilities and equipment to other entities, thereby inflating INS's CEA rates and raising concerns regarding the cross-subsidization of INS's other services.

Second, in recent years an increasing percentage of the costs of INS's Cable & Wire Facilities have been allocated to INS's Access Division. In 2017, for example, 74.1 percent of those costs were assigned to the Access Division whereas in 2006, the Access Division was only assigned 45.3 percent of those costs.

Third, questions exist as to the reasonableness of INS's calculation of the lease costs allocated to the Access Division. As explained in greater detail below, there are **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[[END HIGHLY CONFIDENTIAL]] INS provides absolutely no support for the derivation of these costs. Further, additional concerns arise when the dramatic increase in INS's investment in Cable & Wire facilities since 2010 is contrasted with the significant decline in switched access minutes of use transported on INS's network.

Fourth, in recent years an increasing percentage of the Access Division's revenue requirement has been allocated to interstate traffic as opposed to intrastate traffic.

PUBLIC VERSION

This development stands in stark contrast to the assumption underlying the Commission's initial approval of INS's application to provide CEA service; namely, that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls." *See INS Order* ¶ 32.

Fifth, concerns also exist as to the five-year traffic forecasts that INS has used in developing its rates for CEA service. Those forecasts vary widely from year to year and have proven to be very inaccurate when compared to INS's actual demand. Additionally, INS's recent forecasts showing declining demand stand in stark contrast to AT&T's actual traffic on INS's network, which has steadily grown.

Sixth, since 2010, INS has included in its revenue requirement large "Uncollectible Revenues" even though those amounts remain the subject of litigation contesting whether they were "properly billed" and INS is still actively seeking to collect them. The inclusion of those amounts in the Access Division's revenue requirement had a potential rate impact of between .073 and .659 cents per minute.

5. Each of these concerns is discussed in greater detail below.⁶

⁶ The first, second, and third concerns regarding network costs apply with equal force to INS's recent Tariff Filings, first offering a new contract tariff service (*see* Ex. 46, INS April 2017 Revised Tariff Filing) and then seeking to replace that offering with a new "volume discount" service. *See* Ex. 47, INS May 2017 Revised Tariff Filing.

The Overall Level of INS's CEA Rates.

6. INS's application to provide CEA service in Iowa was approved in 1988, and INS filed its original tariff for that service in early 1989. As initially filed, the rate that INS proposed to charge for CEA service was \$0.0161 per minute. *See In re Iowa Access Division Tariff FCC No.1*, 4 FCC Rcd. 3947, ¶ 9 (C.C.B. Apr. 28, 1989) (“*INS Rate Order*”). A number of parties, including AT&T and Northwestern Bell Company (“NWB”), challenged INS's proposed rate on a number of grounds, including that it was not adequately supported. *Id.* ¶¶ 2–7. Rather than litigate those issues, INS revised its tariff filing and lowered its rate to \$0.0117 per minute. *Id.* ¶ 9.

7. Since 1989, INS's CEA rate has remained at roughly the same level. The following table (Table A) sets forth INS's rates for CEA service for the period 2003 to 2017.⁷

| | <u>INS's CEA Rate</u> |
|------|---|
| 2003 | \$0.01045 per minute |
| 2004 | \$0.01045 per minute/\$0.01031 per minute |
| 2005 | \$0.01031 per minute |
| 2006 | \$0.01031 per minute/\$0.00855 per minute |
| 2007 | \$0.00855 per minute |
| 2008 | \$0.00855 per minute/\$0.00819 per minute |
| 2009 | \$0.00819 per minute |

⁷ These rates are reported in the INS Tariff Filings that are publicly available on the FCC's website. *See* Exs. 15–22. Rate information for periods prior to 2003 is not available on the FCC's website.

PUBLIC VERSION

| | |
|------|---|
| 2010 | \$0.00819 per minute |
| 2011 | \$0.00819 per minute |
| 2012 | \$0.00819 per minute/\$0.00623 per minute |
| 2013 | \$0.00623 per minute/\$0.00896 per minute |
| 2014 | \$0.00896 per minute |
| 2015 | \$0.00896 per minute |
| 2016 | \$0.00896 per minute |
| 2017 | \$0.00896 per minute |

As can be seen from Table A, INS's current CEA rate (\$0.00896 per minute) is about three tenths of a cent lower than the rate for that service in 1989 (\$0.0117 per minute), and is approximately 44 percent higher than the rate in mid-2013 (\$0.00623 per minute).

8. The fact that INS's current CEA rate has not declined more significantly during the past 27 years is surprising given the overall trend in the industry with regard to access charges. In a 2010 report entitled "Trends in Telephone Service," the Commission reported that the national average traffic sensitive interstate switched access charge per minute went from \$0.030 (in April 1989) to \$0.0064 (in 2010)⁸ – a decline of almost 79%. During that same period, INS's CEA rate only declined by about 23 percent. Moreover, the situation has gotten worse since 2011. The national average charge per minute for access has continued to decline as the Commission's 2011 transitional rules have begun to take effect.⁹ By contrast, INS raised its

⁸ See Ex. 57, FCC, *Trends in Telephone Service*, Table 1.2 (W.C.B. Sept. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁹ *Connect America Order* ¶¶ 739, 798–808 (providing that local switching rates would be eliminated by mid-2017); see also 47 C.F.R., Subpart J of Part 51.

CEA rate from its 2011 capped level of \$0.00819 per minute to its current level of \$0.0896 per minute.

9. The high level of INS's current CEA rate is particularly difficult to understand given the fact that INS's investment in the switching equipment needed to provide equal access and in related general support facilities has largely been depreciated and recovered in INS's prior rates.¹⁰ In addition, during the period 2005 to 2011, the volume of interstate access minutes transported over INS's network grew from about 954 million minutes per year to over 3.8 billion minutes per year. *See* Exs. 16 and 19, INS Tariff Filings for 2006 and 2012. All else held constant, these two factors working in combination should have resulted in a significant decline in INS's CEA rates.¹¹ But that did not occur. In 2005, INS's rate was \$0.01031 per minute. *See* Ex. 16, INS 2006 Tariff Filing, at 3. As previously noted, INS's current rate is \$0.00896 per minute – a decline of only slightly more than one tenth of a cent.

10. INS's CEA rates also do not appear to reflect any cost efficiency gains resulting from advances in transmission technology. In its Tariff Filings, INS has reported that it has made significant investments in its fiber network.¹² Those investments, however, do not appear

¹⁰ *See* Ex. 22, INS 2016 Tariff Filing, Section 5, Schedule S-2 (indicating that the \$37 million in Total Plant in Service allocated to INS's Access Division has been largely depreciated with accumulated depreciation and amortization totaling \$34 million).

¹¹ *See also Farmers I* ¶ 24 (crediting testimony demonstrating that an access stimulation LEC's "costs did not rise by nearly the same proportion as its access revenues"); Ex. 67, Declaration of Peter D. Copeland, *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, File No. EB-07- MD-001, ¶¶ 5–14 (dated May 1, 2007) ("Copeland Decl.") (making the same point).

¹² *See* Ex. 18, INS 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity Approximately \$20 million has been expended since 2006 and an additional \$4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics

to have resulted in lower CEA rates. Indeed, in its 2016 Tariff Filing, INS asserted that its projected revenue requirement would support a rate of \$0.01332 per minute,¹³ which is almost two tenths of a cent higher than INS's interstate CEA rate in 1989 (i.e., \$0.0117 per minute). A rate at that level is not consistent with the rate that one would expect given INS's recent "upgrades" to its network. *See* Ex. 67, Copeland Decl. ¶¶ 11–14.

11. That INS's rates for CEA service are excessive is also clear from INS's recent Tariff Filings. As discussed in greater detail below, INS's inclusion of "Uncollectible Revenues" in the revenue requirement supporting its 2016 Tariff Filing had the potential effect of inflating INS's CEA rate by as much as \$0.00659 per minute. *See infra*, Table J. Indeed, if those Uncollectible Revenues were removed from the underlying revenue requirement, the resulting rate generated by INS revenue analysis would decline from \$0.01332 per minute to \$0.00673 per minute, which is more than two tenths of a cent less than INS's current CEA rate (\$0.00896 per minute).

12. INS's even more recent Tariff Filings proposing to offer a new rate of \$0.00649 per minute for high volume (access stimulation) traffic also demonstrate that INS's current CEA rate is excessive. *See* Ex. 46, INS April 2017 Revised Tariff Filing; Ex. 47, INS May 2017

Approximately \$9.6 million has been expended since 2009 and an additional \$11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics Approximately \$20.3 million has been expended since 2010 and an additional \$22.5 million is planned for 2013." (internal footnote omitted)).

¹³ *See* Ex. 22, INS 2016 Tariff Filing, at 5; *see also* Ex. 21, INS 2014 Tariff Filing, at 4 (projecting a rate of \$0.01297 per minute).

Revised Tariff Filing.¹⁴ The cost support material presented in connection with INS's April 2017 Tariff Filing purports to show that a rate of \$0.00604 per minute would be sufficient to support INS's projected revenue requirement, which does not include any Uncollectible Revenues. *See* Ex. 46, INS's April 2017 Tariff Filing, Contract Tariff Support at 2, 5, Section 2 (Schedule A), and Section 3 (Schedule S-1, Line 15). That rate (\$0.00604 per minute) is almost three tenths of a cent less than INS's current rate (\$0.00896 per minute). Moreover, when the minimum traffic volumes associated with INS's May 2017 "volume discount" proposal (a minimum of 25 million minutes per month/300 million minutes per year) are applied to the revenue requirement submitted in support of the proposed rate of \$0.00649 per minute, the resulting rate would be \$0.003624 per minute, which is more than five tenths of a cent lower than INS's current rate (\$0.00896 per minute).¹⁵

¹⁴ As initially proposed, this service was to be offered on a contract tariff basis. *See* Ex.46, INS April 2017 Revised Tariff Filing. However, on May 16, 2017, INS filed an application with the Commission seeking permission to withdraw its proposed contract tariff service, and to instead offer a volume discount to customers (i) with a minimum monthly usage of "at least 25 million interstate interlata terminating minutes-of-use and 80% or greater utilization of each trunk group" and (ii) that agreed to sign a separate service agreement. *See* Ex. 47, INS May 2017 Revised Tariff Filing, Second Revised Tariff Page 137, Section 6.7.3. In its May 2017 Tariff Filing, INS does not provide any specific details as to the terms of the "separate service agreement," nor does it indicate whether those terms are the same or similar to the additional terms that were applicable to the proposed contract tariff service it has now withdrawn. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support at 1; *see also* AT&T Formal Complaint ¶ 74 (discussing the terms applicable to INS's proposed contract tariff service).

¹⁵ In submitting its May 2017 Tariff Filing, INS did not modify or present a new rate analysis in support of the proposed rate of \$0.00649 per minute. In its April 2017 Tariff Filing, the projected revenue requirement presented in support of the \$0.00649 rate was \$1,087,200. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support at 2, 3, and Section 2 (Schedule A). When that revenue requirement (\$1,087,200) is divided by the minimum annual throughput required to qualify for the \$0.00649 "volume discount" rate (300 million minutes), the resulting rate is \$0.003624 per minute. Moreover, the surplus over the base revenue requirement generated by imposition of the \$0.00649 per minute rate is \$859,800 per year.

13. Finally, the evidence shows that over the past 15 years, INS has dramatically lowered the rates that it charges for some of its non-CEA services. For example, in the **[[BEGIN 3P CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[[END 3P CONFIDENTIAL]]** Additionally, **[[BEGIN CONFIDENTIAL]]**
[REDACTED]
[REDACTED]
[REDACTED] **[[END CONFIDENTIAL]]**¹⁸

INS's Handling of Network Investment Costs.

14. As previously noted, INS has reported in its Tariff Filings that it made significant investments in its fiber network.¹⁹ None of that investment, however, has been recorded on the books of INS's Access Division. Instead, as is clear from INS's Tariff Filings, all investment in

¹⁶ See Ex. 68, Deposition of Thomas Lovell, *Alpine Commc'ns, LLC v. AT&T Corp.*, No. 2:08-cv-01042, at 56:9–58:9 (N.D. Iowa) (taken Oct. 29, 2009).

¹⁷ See Ex. 23, **[[BEGIN CONFIDENTIAL]]** [REDACTED]
[REDACTED]
[REDACTED] **[[END CONFIDENTIAL]]**

¹⁸ See Ex. 15, INS 2004 Tariff Filing at 2 (noting that the agreements “remove[d] interstate traffic from the network and replace[d] it with interconnection traffic to be billed in accordance with interconnection agreements”).

¹⁹ See *supra* note 13.

Central Office Transmission Equipment (Account 2230) and Cable & Wire Facilities (Account 2410) has been recorded on the books of INS's other divisions.²⁰ As a consequence, the Access Division does not earn a rate of return on INS's investment in its network. Rather, INS's Access Division appears to lease fiber capacity from INS's Network Division at a rate and rate of return that is not disclosed in INS's tariff filings, or in the support data that INS has produced as part of the informal discovery process.²¹

15. As can be seen from the following table (Table B), network costs constitute a significant percentage of the Access Division's overall revenue requirement:

| | <u>Rev. Req. Less Uncollectibles</u> ²² | <u>Network Costs</u> ²³ | <u>Percentage</u> |
|------|--|------------------------------------|-------------------|
| 2004 | \$21,063,949 | \$12,777,678 | 60.7% |
| 2006 | \$27,790,646 | \$17,693,096 | 63.7% |

²⁰ See Exs. 15–22, INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016 Tariff Filings, Section 5, Schedule S-2, Lines 3 and 4 (Central Office Transmission Equipment and Cable & Wire Facilities).

²¹ From the documents that INS has produced in response to informal discovery, **[[BEGIN HIGHLY CONFIDENTIAL]]**

[[END HIGHLY CONFIDENTIAL]].

²² The data for the Access Division's "Revenue Requirement less Uncollectibles" was derived from Section 5, Part 64 Separations, Schedule S-1, Lines 15 and 19, of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, 2016, and April 2017 Tariff Filings. See Exs. 15–22 & 46. The "uncollectible revenues" subtracted from the Revenue Requirement for each year are as follows: \$271,799 (2004); \$284,299 (2006); \$3,369,633 (2008); \$3,120,000 (2010); \$2,690,638 (2012); \$4,320,000 (2013); \$3,992,932 (2014); \$16,816,800 (2016); and \$18,642,577 (Apr. 2017). *Id.*

²³ The Access Division's Network Costs are sourced from Section 5, Part 64 Separations, Schedule S-8, Line 4 (Cable & Wire Facilities) of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, 2016, and April 2017 Tariff Filings. See Exs. 15–22 & 46.

PUBLIC VERSION

| | | | |
|------|--------------|--------------|-------|
| 2008 | \$28,275,864 | \$16,968,588 | 60% |
| 2010 | \$31,522,883 | \$17,882,154 | 56.7% |
| 2012 | \$21,512,296 | \$9,754,800 | 45.3% |
| 2013 | \$26,219,366 | \$13,843,200 | 52.8% |
| 2014 | \$27,829,176 | \$18,248,747 | 65.6% |
| 2016 | \$18,794,588 | \$12,840,050 | 68.3% |
| 2017 | \$19,441,960 | \$14,675,151 | 75.5% |

Notwithstanding the magnitude of these costs, INS's Tariff Filings do not provide any information regarding the derivation of the lease costs that INS's Access Division pays to INS's Network Division for Cable & Wire Facilities.

16. In the initial INS tariff proceeding held in 1989, NWB asserted that the Access Division was paying all of the costs to construct and maintain INS's network, including a rate of return of over 30 percent. *See INS Rate Order* ¶ 6. Obviously, such a rate of return would be excessive. More recent deposition testimony suggests that [[BEGIN HIGHLY

CONFIDENTIAL]] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [[END HIGHLY CONFIDENTIAL]]

17. In the discovery materials that INS has recently produced in this case, there is evidence that [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

²⁴ See Ex. 69, Deposition of Dennis Creveling, *Alpine Commc'ns, LLC v. AT&T Corp.*, No. 08-01042, at 28:3–29:6 (N.D. Iowa) (taken Feb. 10, 2010) (“Creveling Dep.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

HIGHLY CONFIDENTIAL]] Obviously, to the extent that the rate that INS pays to lease circuits on INS's network is inflated, its CEA rate will also be inflated.

INS's Allocation of Costs for Network Facilities.

18. Another area of concern relates to INS's allocation of the costs associated with the Access Division's use of INS's fiber network. The following table (Table C) sets forth data from INS's Tariff Filings showing the allocation of costs for Cable & Wire Facilities between INS's Access Division and its other divisions.²⁸

²⁵ See, e.g., **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]]

²⁶ See, e.g., **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[[END CONFIDENTIAL]]

²⁷ **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[[END HIGHLY CONFIDENTIAL]]

²⁸ The source of the Total Company and Access Division costs is the back-up to INS's 2004 to April 2017 Tariff Filings, Section 5, Part 64 Separations, Schedule S-8, Line 4 (Cable & Wire Facilities). See Exs. 15–22 & 46.

PUBLIC VERSION

| | <u>Total Company</u> | <u>Access Division</u> | <u>Percent Allocated</u> |
|------|----------------------|------------------------|--------------------------|
| 2004 | \$26,868,987 | \$12,777,678 | 47.6% |
| 2006 | \$39,072,861 | \$17,693,096 | 45.3% |
| 2008 | \$35,307,201 | \$16,968,588 | 48.1% |
| 2010 | \$25,211,234 | \$17,882,154 | 70.9% |
| 2012 | \$14,457,480 | \$9,754,800 | 67.5% |
| 2013 | \$18,592,129 | \$13,843,200 | 74.5% |
| 2014 | \$22,946,170 | \$18,248,747 | 79.5% |
| 2016 | \$17,861,701 | \$12,840,050 | 71.9% |
| 2017 | \$19,816,729 | \$14,675,151 | 74.1% |

19. As can be seen from this table, the Access Division's allocated share of the costs of the Cable & Wire Facilities went from about 45% to 48% (during 2004–2008) to above 70% (in 2013–2017). By contrast, between 2004 and 2016, the Cable & Wire Facilities costs allocated to INS's other divisions actually declined from about \$14 million in 2004 to about \$5 million in 2017.²⁹ No explanation is provided in INS's Tariff Filings for this change, nor is the manner in which these costs were allocated discussed in any detail. Obviously, to the extent that Cable & Wire Facility costs are being over allocated to INS's Access Division, INS's CEA rates would be overstated.

²⁹ See Exs. 15–22 & 46, INS's Tariff Filings, Section 5, Part 64 Separations, Form S-8, Line 4 (Cable & Wire Facilities).

INS's Calculation of the Lease Costs to be Allocated to the Access Division.

20. An additional area of concern relates to INS's calculation of the lease costs to be allocated to the Access Division. As previously mentioned, no explanation is provided—in either INS's Tariff Filings or in the back-up support data produced as part of the informal discovery process—as to the basis for, or the methodology used in, calculating the lease costs allocated to the Access Division.

21. Presumably, the lease cost allocated to INS's Access Division is intended to recover the costs associated with the Access Division's use of INS's fiber network. However, a breakdown of the specific network costs included in the allocated lease costs has not been made available, nor has any explanation been provided as to why a lease cost approach has been used with respect to the Access Division's network costs but not with respect to any of its other costs, such as switching costs.³⁰ Further, a review of the cost information that has been produced raises serious questions as to the reasonableness of INS's allocation of network costs to the Access Division.

³⁰ The back-up material produced by INS indicates that **[[BEGIN HIGHLY CONFIDENTIAL]]**

[REDACTED]

[[END HIGHLY CONFIDENTIAL]] However, none of the back-up material that has been produced explains the methodology used to calculate the amount of the lease costs to be allocated and paid by the Access Division or any of INS's other divisions.

22. The following table (Table D) sets forth **[[BEGIN HIGHLY CONFIDENTIAL]]**

| | |
|------------|------------|
| [REDACTED] | |
| [REDACTED] | |
| | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

23. At a minimum, **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]** During this same period, INS's tariffed rate for CEA service first decreased by about 23 percent (2010 to 2012)

³¹ **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

and then increased by about 44 percent (2012 to 2013). Obviously, the extent to which the 2013 increase in CEA rates was caused by the allocation of costs to the Access Division that had been previously allocated to other INS divisions would raise concerns about cross-subsidization.³²

24. Another area of concern as to the efficacy of INS's lease cost calculations arises as a result of the dramatic increase in INS's investment in Cable & Wire Facilities (beginning in 2010). The following table (Table E) depicts the Total Company investment levels for Cable & Wire Facilities reported in INS's Tariff Filings from 2004 to 2017.³³

| | <u>Cable & Wire Investment (Total Co.)</u> |
|------|--|
| 2004 | \$21,331,701 |
| 2006 | \$21,721,264 |
| 2008 | \$23,377,974 |
| 2010 | \$26,818,101 |
| 2012 | \$43,102,372 |

³² As can be seen from INS's Tariff Filings, the 2013 increase in INS's CEA rate was at least partially the result of a \$4 million increase in lease costs. More specifically, the Access Division's projected revenue requirement went from \$24,202,934 (in 2012) to \$30,539,366 (in 2013), most of which appears to be the result of a \$4.1 million increase in Cable & Wire Facilities costs, *i.e.*, the lease costs that INS's Access Division pays to INS's Network Division. See Exs. 19 and 20, INS's 2012 and 2013 Tariff Filings, Section 5, Part 64 Separations, Schedule S-8, Line 4; see also **[[BEGIN HIGHLY CONFIDENTIAL]]**

**[[END
HIGHLY CONFIDENTIAL]]**

³³ The source of the Total Company investment in Cable & Wire Facilities is Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) of INS's 2004 to 2017 Tariff Filings. See Exs. 15–22 & 46.

| | |
|------|--------------|
| 2013 | \$57,085,004 |
| 2014 | \$59,282,926 |
| 2016 | \$74,866,654 |
| 2017 | \$68,284,259 |

25. As can be seen from Table E, INS's investment in Cable & Wire Facilities was relatively constant from 2004 to 2010 but then almost triples between 2010 and 2016. In its Tariff Filings, INS explained that this investment was being made to "upgrade its fiber routes and electronics."³⁴ That explanation, especially the planned expenditure of "an additional \$22.5 million ... for 2013" (*see* Ex. 20, INS 2013 Tariff Filing, at 2) is extremely difficult to justify given that demand for legitimate CEA service has steadily declined **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]**,³⁵ the Access Division's overall interstate throughput has declined significantly since 2011,³⁶ and in 2011, the

³⁴ *See* Ex. 18, INS 2010 Tariff Charge Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity Approximately \$20 million has been expended since 2006 and an additional \$4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics Approximately \$9.6 million has been expended since 2009 and an additional \$11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics Approximately \$20.3 million has been expended since 2010 and an additional \$22.5 million is planned for 2013.").

³⁵ *See* AT&T Complaint, Section I.B; *see also* **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]**.

³⁶ *See infra* Table H, showing that INS's annual throughput peaked in 2011 at about 3.8 billion minutes and thereafter has steadily declined. In the 2013, for example, the throughput was about 2.8 billion minutes – a decline of approximately a billion minutes in a two year period.

Commission found that access stimulation was a “wasteful arbitrage” practice and took steps to “curtail” it. *See Connect America Order* ¶¶ 648–49, 662–63.³⁷

26. That INS has over allocated its network costs to the Access Division also draws support when one considers the lease cost per minute of use (“mou”) allocated to INS’s Access Division. The following table (Table F) sets forth data relating to this metric.

| <u>Test Period</u> | <u>Projected Lease Cost</u> ³⁸ | <u>Projected Demand</u> ³⁹ | <u>Lease cost/mou</u> |
|--------------------|---|---------------------------------------|-----------------------|
| 7/1/04 to 6/30/05 | \$5,421,825 | 876,231,538 minutes | \$0.0062 |
| 7/1/06 to 6/30/07 | \$6,891,903 | 1,296,905,198 minutes | \$0.0053 |
| 7/1/08 to 6/30/09 | \$11,351,187 | 2,346,089,248 minutes | \$0.0048 |
| 7/1/10 to 6/30/11 | \$14,478,572 | 3,481,819,561 minutes | \$0.0042 |
| 7/1/12 to 6/30/13 | \$8,256,765 | 3,339,631,164 minutes | \$0.0025 |
| 7/1/13 to 6/30/14 | \$11,669,499 | 2,925,535,070 minutes | \$0.0040 |
| 7/1/14 to 6/30/15 | \$14,817,782 | 2,019,322,322 minutes | \$0.0073 |
| 7/1/16 to 6/30/17 | \$11,604,439 | 2,508,443,160 minutes | \$0.0046 |

³⁷ **[[BEGIN HIGHLY CONFIDENTIAL]]**

[[END HIGHLY CONFIDENTIAL]]

³⁸ The source of “Projected Lease Cost” is Section 3, Schedule A-8, Line 5, in AT&T’s Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

³⁹ The source of the “Projected Demand” is INS’s Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

27. As can be seen from Table F, the lease cost per mou allocated to the Access Division steadily declined until about 2013 and then almost doubled in 2014. Some of that increase was undoubtedly attributable to a decline in projected throughput. However, to the extent that INS's allocation of costs between its various operating divisions was based on projected demand for service, it is difficult to understand why the Access Division's projected lease costs also increased during this period. One explanation is that INS has over-allocated its network costs to the Access Division – a conclusion that also draws support from the fact that during this same period, the Access Division's Network Costs as a percentage of its revenue requirement less uncollectibles was also rapidly increasing. *See supra* Table C.⁴⁰

INS's Allocation of Costs Between Interstate and Intrastate Traffic.

28. Another area of concern relates to the allocation of the Access Division's projected revenue requirement between interstate and intrastate long distance traffic. In initially approving INS's application to provide CEA service in Iowa, the Commission specifically noted INS's assumption that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls" and cautioned that if that assumption changed materially, the Commission would need to review INS's proposal. *See INS Order* ¶ 32.

29. As can be seen from the following table (Table G), for periods prior to 2008 that assumption held true – the majority of the Access Division's revenue requirement was allocated

⁴⁰ Because INS has not provided any detail as to the basis for the calculation of the lease costs allocated to the Access Division, it is not possible to determine on the current record exactly how much of INS's recent fiber investment has been charged to the Access Division.

PUBLIC VERSION

to intrastate CEA service.⁴¹ In 2008, however, that situation changed dramatically. Since then, the vast bulk of the Access Division’s revenue requirement has been assigned to interstate CEA service. Indeed, in 2016, almost 94% of the Access Division’s revenue requirement was allocated to interstate traffic.

| <u>Year</u> | <u>Access Division</u> | <u>Interstate</u> | <u>Intrastate</u> | <u>Percentage Interstate</u> |
|-------------|------------------------|-------------------|-------------------|----------------------------------|
| 2004 | \$21,355,748 | \$9,065,913 | \$12,269,835 | 42.5% |
| 2006 | \$28,074,946 | \$11,092,328 | \$16,982,618 | 39.5% |
| 2008 | \$31,645,497 | \$19,270,037 | \$12,375,565 | 60.9% |
| 2010 | \$34,642,883 | \$28,671,480 | \$5,971,403 | 82.8% |
| 2012 | \$24,202,934 | \$20,839,116 | \$3,363,618 | 86.1% |
| 2013 | \$30,539,366 | \$26,254,447 | \$4,284,919 | 86.0% |
| 2014 | \$31,822,108 | \$26,211,200 | \$5,610,908 | 82.4% |
| 2016 | \$35,611,388 | \$33,428,538 | \$2,182,850 | 93.9% |

30. One possible explanation for this dramatic shift is that in 2008 INS adjusted the PIU factor used in its tariff filings to “more accurately classif[y] the jurisdiction of . . . call aggregator traffic.” *See* Ex. 17, INS 2008 Tariff Filing, at 1–2. As INS explained, this change resulted in the PIU factor for calls associated with call aggregation increasing from 48 percent to 78 percent. *Id.* at 3–4. In other words, an additional 30 percent of the call aggregation traffic was assigned to the interstate jurisdiction.

31. In making this change, INS did not bring to the Commission’s attention that a key assumption underlying the Commission’s initial approval of CEA service in Iowa had changed,

⁴¹ The Access Division’s Revenue Requirement data are sourced from Section 4, Schedule S-1, Line 19, of INS’s 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016 Tariff Filings. *See* Exs. 15–22.

nor did it point out that this change had had an enormous impact on cost allocation between the interstate and intrastate jurisdictions. As depicted in the table above, the “majority of [INS’s] network’s costs” are no longer being recovered from intrastate CEA service. *See INS Order* ¶ 32. Instead, most of the costs are now recovered from interstate traffic.

32. Further, there seems to be a disconnect between the 78 percent PIU factor that INS adopted in 2008 and the percentage of costs INS has allocated to interstate CEA service since 2008. As shown in Table G, the percentage of costs allocated to the interstate jurisdiction started out well below the 78 percent PIU factor in 2008 (60.9 percent) but now exceeds that factor by a wide margin (93.9 percent in 2016). Obviously, to the extent that these allocations were not properly made, INS’s CEA rates could be distorted. Moreover, the potential problems are exacerbated by the fact that INS does not appear to have adjusted its intrastate rates since the early 1990s. *See Habiak Decl.* ¶ 38.

33. Finally, to the extent that INS has understated the interstate PIU factor for access stimulation traffic, its interstate CEA rates could be inflated. In its 2008 Tariff Filing, for example, INS indicated that for its 2009 test period, it was projecting “1.6 billion terminating conference call minutes generated by call aggregators,” of which 78 percent were rated as interstate. *See Ex. 17, INS 2008 Tariff Filing*, at 3–4. If, in fact, a significantly larger percentage of those calls were interstate (say 98 percent), INS’s interstate CEA rate for that test period would necessarily be lower, assuming all other assumptions remained the same.

The Reliability of INS's Traffic Forecasts.

34. A further area of concern relates to the reliability of the traffic forecasts used by INS in developing its CEA rates. The following table (Table H) sets forth the test period traffic forecasts used by INS in its Tariff Filings from 2004 to 2017 and then compares those forecasts to a simple average of the actual demand reported by INS in its Tariff Filings for the two years encompassed by the applicable test period forecast.

| <u>Test Period</u> | <u>Projected Demand</u> ⁴² | <u>Actual Demand</u> ⁴³ | <u>Difference</u> |
|--------------------|---------------------------------------|------------------------------------|--------------------|
| 7/1/04 to 6/30/05 | 876,231,538 min. | 930,533,227 min. | 54,301,689 min. |
| 7/1/06 to 6/30/07 | 1,296,905,198 min. | 1,707,544,370 min. | 410,639,172 min. |
| 7/1/08 to 6/30/09 | 2,346,089,248 min. | 2,576,662,181 min. | 230,572,933 min. |
| 7/1/10 to 6/30/11 | 3,481,819,561 min. | 3,756,655,810 min. | 274,836,249 min. |
| 7/1/12 to 6/30/13 | 3,339,631,164 min. | 3,165,619,256 min. | (174,011,908) min. |
| 7/1/13 to 6/30/14 | 2,925,535,070 min. | 2,742,967,138 min. | (182,567,932) min. |
| 7/1/14 to 6/30/15 | 2,019,322,322 min. | 2,470,990,085 min. | 451,667,763 min. |
| 7/1/16 to 6/30/17 | 2,508,443,160 min. | na | na |

35. As can be seen from Table H, there was a lot of variation from year to year in INS's test period traffic forecasts. Table H also shows that INS's test period traffic forecasts were not

⁴² The source of the "Projected Demand" is INS's Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

⁴³ This figure is a simple average of the actual demand reported by INS in its Tariff Filings for the two year period encompassed within the test period. Thus, for example, the actual demand compared to Projected Demand for the test period 7/1/04 to 6/30/05 would be a simple average of the reported actual demand for 2004 and 2005.

very accurate when compared to actual demand. Indeed, for the test periods up to and including the 7/1/10 to 6/30/11 test period, INS consistently underestimated demand by an average of 240 million minutes per year. Further, for two test periods (7/1/06 to 6/30/07 and 7/1/14 to 6/30/15), INS underestimated the demand by at least 400 million minutes.

36. Because INS's CEA rates are derived by dividing its projected revenue requirement by its traffic forecast for the applicable test period, an underestimation of the projected demand necessarily results in a higher rate. Moreover, to the extent that the disparity is large enough, it can result in the carrier exceeding its allowed rate of return – a situation that has occurred with respect to INS's CEA service in a number of years.⁴⁴

37. Finally, INS's test period forecasts, particularly in the more recent periods (2012 to 2016), are not consistent with AT&T's billing data which shows that AT&T's INS volumes have steadily increased over that same period. *See* Habiak Decl. ¶ 54. Obviously, to the extent that INS's test period traffic forecasts are understated, INS rates would be inflated (all other factors remaining constant).

INS's Inclusion of "Uncollectible Revenues" in its Revenue Requirement.

38. An additional area of concern relates to INS's inclusion of "Uncollectible Revenues" in its projected revenue requirement. This practice appears to have started in connection with INS's 2010 Tariff Filing, wherein it noted that during 2007, it "began to

⁴⁴ *See* Ex. 16, INS 2006 Tariff Filing, at 1 (noting that in 2005, INS experienced a return of 27.89%); Ex. 17, 2008 Tariff Filing, at 1 (for the period 2005/2006, INS experienced a return of 38.63%); Ex. 20, INS 2013 Tariff Filing, at 1 (INS's regulated revenue resulted in a "return of 64.57% on its interstate investment").

experience an increase in its uncollectible revenues from an [IXC] as a result of billing disputes over the classification and quantification of interstate access minutes related to traffic terminated by the IXC to ILEC customer locations in Iowa.”⁴⁵ While the specific IXC is not identified, it is believed to be Sprint, which is involved in a lawsuit in Iowa federal district court where INS is seeking to collect unpaid tariff charges.⁴⁶ Rather than wait for that lawsuit to be resolved, INS appears to have simply included the amount of \$2,893,575 in its 2010 Tariff Filing, thereby inflating its revenue requirement as well as its rates.⁴⁷ Worse yet, by seeking to recover these amounts through its rates, INS effectively required its other CEA customers (including AT&T) to pay for service that it allegedly provided to Sprint.⁴⁸

39. The following table (Table I) identifies for each filing period since 2010, INS’s Total Revenue Requirement, INS’s Base Revenue Requirement (i.e., Total Revenue Requirement less Uncollectible Revenues), and the “Uncollectible Revenues” that INS has sought to recover through its CEA rates. Table I also includes, for each filing period, a calculation of Uncollectible Revenues as a percentage of the Base Revenue Requirement.

⁴⁵ See Ex. 18, INS 2010 Tariff Filing, at 2. While the work papers underlying INS’s 2008 Tariff Filing indicate that the Access Division’s overall revenue requirement included “Uncollectible Revenues” of \$3,369,633 (see Section 5, Part 64 Separations, Schedule S-1, Line 15), that amount was not allocated to the interstate jurisdiction for ratemaking purposes. See *id.*, Section 4, Part 36 Separations, Schedule S-1, Line 15.

⁴⁶ See, e.g., *Iowa Network Servs. v. Sprint Commc’ns Co.*, No. 4:10-CV-102 (S.D. Iowa).

⁴⁷ See Ex. 18, INS 2010 Tariff Filing, at 2.

⁴⁸ In its April 2017 Tariff Filing, INS did not allocate any “Uncollectible Revenues” to its new contract tariff service, thus exempting those customers from having to bear any of these alleged costs. See Ex. 46, INS’s April 2017 Tariff Filing, Contract Tariff Support, Section 3, Schedule A-1, Line 15.

PUBLIC VERSION

| | <u>Total Rev. Req.</u> | <u>Base Rev. Req.</u> | <u>Uncollectibles</u> | <u>% Uncollectibles</u> |
|------|------------------------|-----------------------|-----------------------|-------------------------|
| 2010 | \$28,671,481 | \$25,777,906 | \$2,893,575 | 11.2% |
| 2012 | \$20,839,117 | \$18,377,183 | \$2,461,934 | 13.4% |
| 2013 | \$26,254,447 | \$22,293,439 | \$3,961,008 | 17.8% |
| 2014 | \$26,211,200 | \$22,756,744 | \$3,454,456 | 15.2% |
| 2016 | \$33,428,538 | \$16,903,398 | \$16,525,230 | 97.8% |

40. As can be seen from Table I, since 2010, INS has included in its revenue requirement calculations almost \$30 million in so-called “Uncollectible Revenues.” For the filing periods 2010 through 2014, Uncollectible Revenues averaged about \$3.2 million per year and constituted between 11 percent and 18 percent of INS’s Base Revenue Requirement. In 2016, however, that percentage increased to 97.8 percent of the Base Revenue Requirement. In other words, almost half of INS’s 2016 Total Revenue Requirement consisted of Uncollectible Revenues.

41. The next table (Table J) sets forth an estimate of the potential rate impact of INS’s having included these amounts in its revenue requirement.

PUBLIC VERSION

| | <u>“Uncollectible Revenues”</u> ⁴⁹ | <u>Projected Traffic</u> ⁵⁰ | <u>Potential Rate Impact</u> ⁵¹ |
|------|---|--|--|
| 2010 | \$2,893,575 | 3,481,819,561 | \$0.00083 |
| 2012 | \$2,461,934 | 3,339,631,164 | \$0.00074 |
| 2013 | \$3,961,008 | 2,925,535,070 | \$0.00135 |
| 2014 | \$3,454,456 | 2,019,322,322 | \$0.00171 |
| 2016 | \$16,525,230 ⁵² | 2,508,443,160 | \$0.00659 |

42. As can be seen from Table J, over the period 2010 to 2016, the potential rate impact of INS’s having included Uncollectible Revenues in its revenue requirement was between 0.074 cents per minute and 0.659 cents per minute. Given that all of the so-called “Uncollectible Revenues” are the subject of litigation that disputes whether the underlying rates were “properly billed,” there was no justification for this rate treatment, which had the obvious impact of inflating rates.⁵³ Moreover, INS’s counsel has admitted in response to informal discovery that **[[BEGIN**

⁴⁹ The source of the “Uncollectible Revenues” is INS’s Tariff Filings for 2010, 2012, 2013, 2014, and 2016. *See* Exs. 18–22.

⁵⁰ The source of the “Projected Traffic” is INS’s Tariff Filings for 2010, 2012, 2013, 2014, and 2016. *See* Exs. 18–22.

⁵¹ The rate impact was estimated by dividing the “Uncollectible Revenues” by the projected traffic.

⁵² A portion of this amount appears to relate to the charges that are the subject of dispute in this proceeding. The fact that AT&T contends that these amounts were not “properly billed” and INS is still seeking to collect them via its lawsuit against AT&T raises the same issue as to whether these amounts can properly be included in INS’s revenue requirement as “Uncollectible Revenues” and recovered from INS’s current customers through its rates.

⁵³ *In re Annual 1988 Access Tariff Filings*, 3 FCC. Rcd. 1281, ¶ 245 (1987) (“Uncollectible revenues are included in interstate revenue requirements to reflect *properly billed* revenues which cannot be collected.” (emphasis added)); *In re Telecomms. Relay Serv., N. Am. Numbering*

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[[END CONFIDENTIAL]]

43. Finally, the inclusion of these “Uncollectible Revenues” in INS’s revenue requirement (together with INS’s voluntary retention of rates that are lower than the rates allegedly justified by its revenue requirement) fully explains the so-called negative rates of return that INS has reported in its recent Tariff Filings. To the extent that these “Uncollectible Revenues” are excluded from INS’s revenue requirement, these negative returns either disappear or are significantly reduced. Take, for example, INS’s 2016 Tariff Filing, in which INS reported a rate of return of -171.69% on a Total Revenue Requirement of \$33,407,808. *See* Ex. 22, 2016 Tariff Filing, at 2, 4–5. If the “Uncollectible Revenues” (\$16,525,230) are excluded from INS’s Total Revenue Requirement, the projected revenues of \$22,496,381 exceed the Base Revenue Requirement (\$16,903,308) by about \$5.6 million resulting in a positive return. It should further be noted that if the “Uncollectible Revenues” are excluded, the maximum rate that INS could charge for CEA service would be \$0.00673 per minute (i.e., \$0.01332 per minute minus \$0.00659 per minute), which is more than two tenths of a cent lower than INS’s current rate (\$0.00896 per minute).⁵⁵

Plan, 17 FCC. Rcd. 24952, ¶ 57 (2002) (noting that carriers cannot record universal service contributions as “uncollectibles” where those amounts cannot be properly billed to customers).

⁵⁴ *See* Ex. 59, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T), at 2 (dated Mar. 23, 2017).

⁵⁵ As previously noted, INS did not allocate any “Uncollectible Revenues” to its new contract tariff/volume discount service, thus exempting the customers of that service from having to bear any of these alleged costs. *See supra* note 49. This difference in ratemaking largely appears to account for the difference between INS’s current CEA rate (\$0.00896 per minute) and its proposed new contract/volume discount rate (\$0.00649 per minute). Indeed, when the impact of the inclusion of “Uncollectible Revenues” in its 2016 revenue requirement (\$0.00659 per

The Overall Reasonableness of INS's Rates for CEA Service.

44. Based on my analysis to date, serious issues exist regarding the reasonableness of INS's rates for CEA service. Notwithstanding the fact that access rates have declined precipitously since 1989, INS's CEA rates have remained relatively constant and, in recent years, have actually increased, which makes little sense. Further, no documentation has been provided explaining the methodology used in calculating the networks costs (*i.e.*, lease costs) that have been allocated to INS's Access Division, and the evidence that has been made available strongly suggests that INS's Access Division has been allocated a disproportionate share of those costs. In addition, questions exist regarding INS's allocation of costs between its interstate and intrastate traffic. Finally, there is no justification for INS's inclusion of the so-called "Uncollectible Revenues" in the revenue requirements used to generate its CEA rates. Those amounts are the subject of ongoing litigations wherein the issue of whether those amounts were "properly billed" is at issue. Moreover, **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END** [REDACTED] **CONFIDENTIAL]]** As such, those amounts should not have been included in the rate requirements used to generate INS's CEA rates.

minute) is subtracted from the rate INS claims is "supported" by its 2016 revenue requirement (\$0.01332 per minute), the resulting rate (\$0.00673 per minute) is nearly the same as its new proposed contract tariff rate of \$0.00649 per minute.

PUBLIC VERSION

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on
June 1, 2017.



Daniel P. Rhinehart

Exhibit C

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090**

Complainant,

v.

**IOWA NETWORK SERVICES, INC.
d/b/a Aureon Network Services
7760 Office Plaza Drive South
West Des Moines, IA 50266
(515) 830-0110**

Defendant.

**Proceeding Number 17-56
File No. EB-17-MD-001**

**REPLY DECLARATION OF
DANIEL P. RHINEHART**

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. (“AT&T”), and my job title is Directory-Regulatory. My responsibilities in that job as well as my prior experience are set forth in the initial declaration that I submitted in this proceeding on June 8, 2017.

2. In that earlier declaration, I described the work I had done reviewing INS’s CEA rates and the support for those rates, and I identified and explained my concerns regarding the reasonableness of INS’s CEA rates. As a result of that work, I noted that INS’s rates had remained relatively flat over the past 30 years and contrasted that situation to both (i) the trend for switched access rates more generally and (ii) the fact that INS had more aggressively lowered

PUBLIC VERSION

the rates it charges to other entities. I also expressed skepticism as to INS's apparent inability to lower its rates and discussed a number of specific issues pertaining to various aspects of INS's prior rate submissions, including its handling of the Access Division's network costs, its apparent inability to reliably and accurately forecast demand for its CEA service, and its inclusion of so-called "Uncollectible Revenues" in the Access Division's revenue requirement even though the amounts at issue were being challenged as not having been properly billed,

[[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED] **[[END HIGHLY CONFIDENTIAL]]** and INS was still seeking to collect them.

3. In this reply declaration,¹ I have been asked to comment on INS's answering submission, particularly the sections that address the matters discussed in my initial declaration. In that connection, I have reviewed the declaration of Jeff Schill as well as the sections of INS's Legal Analysis that discuss ratemaking generally (*see* Legal Analysis in Support of the Answer of INS, at 29–43 (filed Jun. 28, 2017) ("INS Legal Analysis")) and that respond to the specific issues raised in my initial declaration (*see id.* at 43–64).

4. As discussed in greater detail below, neither Mr. Schill nor INS has responded adequately to the specific concerns raised in my earlier declaration. With respect to the Access Division's network costs (which account for as much as 75 percent of its revenue requirement (*see* Rhinehart Decl. ¶ 15 Table B)), INS still has not produced the data needed to evaluate the reasonableness of the lease costs that the Access Division pays to use INS's network. In fact, Mr. Schill's discussion of the treatment of these costs appears to substantiate my concern that the network costs allocated to the Access Division are excessive. Likewise, INS has not justified its

¹ To distinguish between my initial declaration and this reply declaration, my initial declaration will be cited as "Rhinehart Decl.," whereas this declaration will be cited as "Rhinehart Reply Decl."

inclusion of “Uncollectible Revenues” in the Access Division’s revenue requirement, and its claim that it [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

HIGHLY CONFIDENTIAL]]

5. The remainder of my reply declaration is organized as follows. Part I sets forth a number of general observation that I have regarding various statements made by either Mr. Schill or INS about the Commission’s rate regulation regime. In Part II I respond to Mr. Schill’s comments regarding the specific concerns that I identified in my initial declaration.

I. General Observations Regarding the Commission’s Rate Regulation Regime

6. Before discussing Mr. Schill’s specific criticisms of my declaration, I would like to make a few general observations regarding Mr. Schill’s testimony as well as INS’s discussion in its Legal Analysis of the manner in which rates are regulated on a rate of return basis.

7. *First*, I am perplexed by Mr. Schill’s suggestion that I do not have the requisite expertise to address the reasonableness of INS’s rates. In making this point, Mr. Schill does not question the fact that I am familiar with the manner in which rates are calculated by Local Exchange Carriers (“LECs”) that are regulated on a rate of return basis. INS Answer to the Formal Complaint of AT&T Corp., Exhibit A, Declaration of Jeff Schill ¶ 4 (filed Jun. 28, 2017) (“Schill Decl.”). Instead, he argues that INS is a “dominant carrier,” and not a “Rate of Return Carrier” and implies that that distinction has some significance. *Id.* Putting to one side what INS’s proper classification is as a CEA provider, there is no question that INS submits its rates pursuant to the same rules that apply to “Rate of Return Carriers” and that the exact same type of

PUBLIC VERSION

analysis used in evaluating the rates of such carriers applies to INS's rates.² In fact, at various points in his declaration, Mr. Schill seeks to justify the reasonableness of INS's rates on the grounds that INS purportedly calculated its rates based on those rules. *See, e.g.*, INS Legal Analysis at 39.

8. *Second*, in its Legal Analysis INS discusses the "original form of ratesetting utilized by the FCC" (*see* INS Legal Analysis at 30), and seems to suggest that INS follows that approach to the letter. However, INS's method of calculating its rates is, in actuality, a variation of the way in which cost of capital analysis is generally done. That is because a major component of the Access Division's costs, i.e., its network costs, are not handled in the traditional manner. Because INS does not own its network facilities but rather leases them from an affiliate, those costs are handled entirely as an expense. As a consequence, no capital cost analysis is done as to the network cost component, which accounts for as much as 75 percent of the Access Division's overall revenue requirement. Further, there is no detail provided in INS's regulatory filings as to the derivation of those lease costs, nor was such material provided as part of the pre-filing discovery process.

9. *Third*, the fact that a carrier regulated on a rate of return basis follows the Commission's procedures in submitting its rates does not, as both Mr. Schill and INS assert repeatedly throughout their respective submissions (*see, e.g.*, Schill Decl. ¶¶ 14, 20; INS Legal Analysis at 15, 31, 51), mean that the resulting rates are reasonable. In addition to following the Commission's procedures, it is imperative that, among other things, the cost inputs used in

² *E.g.*, 47 C.F.R. § 61.38 (for a tariff change, the carrier should submit: "(i) A cost of service study for all elements for the most recent 12 month period; (ii) A study containing a projection of costs for a representative 12 month period; (iii) Estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the issuing carrier's other service classifications, and the carrier's overall traffic and revenues.").

PUBLIC VERSION

developing the rates be shown to be reasonable. Further, the normal way that the reasonableness of those cost inputs would be assessed is for the back-up support for those cost inputs to be provided. In the case of the lease costs that are embedded in INS's Cable & Wire expense account, however, no such data have been provided – not in INS's regulatory filings, not in the discovery material produced to date, and not as an exhibit to Mr. Schill's declaration. In fact, the lease costs are not separately broken out in INS's regulatory filings, but are rather lumped together with INS's other network expenses. It is a proverbial “black box” and thus not capable of being scrutinized based on the information that INS has elected to disclose.

10. *Fourth*, the fact that INS's rates did not generate revenues that exceeded INS's authorized rate of return does not, as INS contends (*see, e.g.*, INS Legal Analysis at 39) mean that its rates are reasonable. If, for example, the revenue requirement was inflated by the inclusion of inappropriate costs, that would render any such result meaningless. Likewise, the failure to properly project demand would also undermine any such conclusion. Further, these observations are equally applicable to a rate that purportedly generates a negative rate of return.

11. *Fifth*, the fact that INS's rate filings were prepared with the assistance of outside consultants (*see* INS Legal Analysis at 39) does not establish that the resulting rates are reasonable. Similarly, the fact that a regulatory agency may have reached certain conclusions in some earlier rate proceeding does not, as INS repeatedly seems to suggest, inoculate that carrier's rates from further scrutiny as to a particular issue in a later rate proceeding. Indeed, INS's apparent reliance on Commission statements made in INS's initial tariff proceeding almost 30 years ago regarding cross subsidization (*see, e.g.*, INS Legal Analysis at 41–42) is at odds with my understanding of the Commission's regulatory rate regime.

PUBLIC VERSION

12. *Sixth*, the fact that INS's CEA rate is a flat per minute rate that combines both switching and transport does not, as INS seems to suggest (*see* INS Legal Analysis at 39), mean that it is reasonable. Indeed, the mere structure of a rate says nothing about its reasonableness. To determine the reasonableness of a flat per-minute, combined rate, one must do the same type of rate reasonableness analysis that is done with respect to any other rate. Similarly, the fact that INS's rates are not subsidized by the Connect America Fund or the Universal Service Fund does not mean, as INS asserts (*see* INS Legal Analysis at 41), that its rates are reasonable. The lack of such funding is irrelevant to the rate reasonableness determination.

13. *Finally*, repeated assertions that its allocations "are compliant with the Commission's accounting rules," that its PIU factor is "based on the best available information that is has," and that its forecasting is based on a "good faith attempt," (*see* INS Legal Analysis at 51, 59), and so on are not a substitute for actual evidence demonstrating that the carrier's rates are reasonable. Yet throughout their respective submissions, both Mr. Schill and INS resort to such pronouncements, and such pronouncements alone, in responding to specific concerns that I raised as to INS's rates in my initial declaration. As I explain in greater detail below, those concerns remain unanswered.

II. Responses to INS's Criticisms Regarding the Specific Concerns Addressed in My Initial Declaration

14. In my initial declaration I raised seven specific concerns regarding INS's rates. In his declaration, Mr. Schill purports to address each of those concerns. Those concerns are also addressed in INS's Legal Analysis. However, the points raised in INS's Legal Analysis are nearly identical to the points raised in Mr. Schill's declaration. Consequently, my declaration focuses and cites to Mr. Schill's declaration.

A. The Overall Level of INS's CEA Rates

15. Neither Mr. Schill nor INS takes issue with my observation that INS's CEA rates have remained relatively constant over the past thirty years, nor do they dispute that switched access rates generally and the rates that INS charges for certain of its non-CEA services have decreased more dramatically. Instead, they take the position that that INS's CEA rates are, in essence, unique unto themselves; that data regarding other rates and rate trends is simply irrelevant. *See* Schill Decl. ¶¶ 5, 7–13; INS Legal Analysis at 43–47. That position, as well as Mr. Schill's other arguments regarding the level of INS's CEA rates, is groundless.

16. *First*, Mr. Schill's claim that "CEA service is not one that is comparable to access service that is provided by other carriers" (*see* Schill Decl. ¶ 5) is difficult to reconcile with INS's claim that it is just another form of switched access service. *See* INS Legal Analysis at 22 (discussing whether INS's tariff authorizes the billing of CEA rates for access stimulation traffic). Further, Mr. Schill overstates the potential impact on rates of differences between CEA service and other switch services. For example, the fact that CEA service is provided in rural areas may account for some of the differences in historic pricing trends, but it does not explain the huge differential that exists between the trend line for INS's CEA serve (a decline of about 23% in the period 1988 to 2010) and the trend line for switched access rates generally (a decline of about 80% over the same period).

17. *Second*, Mr. Schill's criticisms of my observations regarding the potential rate impacts of INS's explosive growth and the fact that INS's switching equipment is largely depreciated (*see* Schill Decl. ¶ 9) are not accurate. Indeed, Mr. Schill's assertion that depreciation expense is no longer a significant rate driver proves my point. Further, the tremendous growth in call volumes that INS has experienced (particularly during the period 2004

PUBLIC VERSION

to 2011) also supports the conclusion that INS's CEA rates should have declined more significantly than they have. Additionally, the fact that INS's call volumes have declined somewhat since 2011 does not explain why during the period 1998 to 2010 switched access rates declined by almost 80 percent but INS's rates only declined by 23 percent.

18. *Third*, Mr. Schill's response to my observation that INS's rates do not appear to have benefited from cost efficiency gains (*see id.* ¶ 10) is a *non-sequitur*. Rather than present evidence showing that such gains were actually realized and are reflected in INS's CEA rates, Mr. Schill instead assumes (without presenting any evidentiary support) that such gains were achieved but then asserts (again without any evidentiary support) that they were "offset by increases in access stimulation traffic volumes, and the need to augment facilities to handle that traffic." This claim not only is unsupported but does not make economic sense. Efficiency gains are generally not lost with the addition of capacity, especially when that capacity is being added to handle large volumes of traffic directed to a single location (or a handful of locations), which is generally the case with access stimulation traffic. In fact, in such circumstances, one would expect that the increased volumes would result in the realization of economies of scale.

19. *Fourth*, Mr. Schill's assertion that "the reductions in the [[BEGIN THIRD PARTY HIGHLY CONFIDENTIAL]] [REDACTED] [[END THIRD PARTY HIGHLY CONFIDENTIAL]] and the [[BEGIN CONFIDENTIAL]] [REDACTED] [[END CONFIDENTIAL]] do not have any bearing on whether [INS's] CEA service rates must be reduced" (*see id.* ¶ 12) is wholly unconvincing. To begin with, there is no question that such rate reductions occurred with respect to those services and that they were large. Further, it defies logic to contend that providing CEA service is **more costly** than providing small increments of capacity that are

PUBLIC VERSION

tailored to specific customer needs. Indeed, that cost proposition is completely at odds with the economic rationale relied on by the Commission in initially approving CEA service in 1988. Additionally, the claim that the Commission's *Alpine* decision dramatically changed the transport costs incurred by the Access Division is not only unsupported, it was disregarded by the Commission in *Alpine* because it could not be substantiated. *See AT&T v. Alpine Commc'ns*, 27 FCC Rcd. 11511, ¶ 48 (2012) ("The parties stipulated, however, that 'INS has not quantified any resulting actual reduction in the rates paid by IXCs.'").

20. *Finally*, Mr. Schill effectively concedes that INS's CEA rates are excessive in discussing the rate impact of INS's inclusion of "Uncollectible Revenues" in the Access Division's revenue requirement. *See* Schill Decl. ¶ 12. In that connection, he admits that the rate "would be \$0.00673 – a full half cent less than in 1989" (*id.* ¶ 10) and more than two tenths of a cent less than the current rate. Moreover, as I pointed out in my initial declaration that rate could be as low as \$0.003624 per minute. *See* Rhinehart Decl. ¶12.

B. INS's Handling of Network Investment Costs

21. Mr. Schill does not dispute that network costs constitute a significant percentage of the Access Division's overall revenue requirement. He also confirms that the Access Division leases its network facilities from another INS division, i.e., the IXC Division. *See* Schill Decl. ¶ 14. Mr. Schill further contends that the Access Division is "required by the FCC to lease capacity from the IXC Division" and claims that I alleged that "[INS]'s investments in its fiber network have not been accurately recorded in [INS's] books," citing to paragraph 14 of my initial declaration. *See id.* Neither of these allegations is accurate. Additionally, Mr. Schill's discussion of the lease costs that the Access Division pays to the IXC Division is deficient in multiple respects.

PUBLIC VERSION

22. *First*, at no point in my initial declaration did I assert that INS's investment in its fiber network was not accurately recorded on INS's books. Nowhere in the paragraph that Mr. Schill cites as support for that proposition (i.e., paragraph 14) do I say anything about the lawfulness or accuracy of INS's accounting practices. To the contrary, in that paragraph, I accurately reported that none of the investment in INS's fiber network is recorded on the Access Division's books, and I further reported accurately that "all investment in Central Office Transmission Equipment (Account 2230) and in Cable & Wire Facilities (Account 2410) has been recorded on the books of INS's other divisions" – which is exactly what INS's Tariff Filings disclose. *See* Rhinehart Decl. ¶ 14.

23. *Second*, Mr. Schill's assertion that the Access Division is "required by the FCC to lease capacity from the IXC Division" (*see* Schill Decl. ¶ 14) is not accurate. While it is true that the Commission's regulations require the Access Division to "have separate books of account" and prohibit joint ownership of "transmission or switching facilities," (*see In re Policy & Rules Concerning Rates for Competitive Common Carrier Servs. & Facilities Authorizations Therefor*, 98 F.C.C.2d 1191, ¶ 9 (1984) ("Fifth Report and Order")), they do not "require" the Access Division to lease such facilities from the IXC Division, and the Access Division does not lease its switching equipment from the IXC Division. Further, no such requirement is included in the Commission's 1988 decision (what Mr. Schill refers to as the FCC's 214 Order) approving INS's initial Section 214 application. That decision did approve INS's leasing of network transport capacity from the IXC Division (based on the facts and circumstances at the time of such approval) but it did not "require" that approach.

24. *Third*, contrary to Mr. Schill's claims, INS's Tariff Filings do not break out on a separate basis the lease costs that the Access Division pays to the IXC Division, nor do they

PUBLIC VERSION

report that the amounts in the Cable & Wire Facilities account are equal to the lease payments made by the Access Division to the IXC Division. In fact, there is no specific mention of lease costs or of the IXC Division in INS's Tariff Filings. That is not to say that such costs are not included in the Access Division's revenue requirement. I have no doubt that they are. My simple point is that they are not broken out separately but are rather bunched together with INS's other network costs. And, even more significantly, no documentation is provided as to the method by which the lease costs are calculated, nor is any information provided regarding the reasonableness of those costs as compared to alternatives. Further, Mr. Schill's assertion that the Commission's accounting rules do not require the tariff cost support to include lease rates (*see* Schill Decl. ¶ 16) is a bit disingenuous given (i) that those rules were developed based on the assumption that the regulated carrier would own its own transmission facilities and (ii) in this proceeding, the reasonableness of those lease costs, which account for as much as 75 percent of the Access Division revenue requirement, has now been challenged.

25. *Fourth*, Mr. Schill's claim that INS's network lease costs "are periodically tested for reasonableness based on an analysis of the costs derived from the IXC Division (*see id.*) is interesting but does not prove that INS's rates are, in fact, reasonable. The test results, if they had been made available, would clearly be relevant to such an assessment – but they have not been made available. They are not included (or even mentioned) in INS's Tariff Filings, they were not produced in connection with the pre-filing discovery process (even though that type of material was requested), and they are not attached as exhibits to Mr. Schill's declaration or INS's answering submission. Consequently, neither I nor AT&T has had an opportunity to review them.

PUBLIC VERSION

26. *Fifth*, Mr. Schill’s assertion that INS’s “tariff filings do disclose all the information necessary to calculate the lease rate paid to the IXC Division for fiber” (*see id.*) is problematic in multiple respects. To begin with, the metric that Mr. Schill claims can be derived (i.e., “dividing the transport costs by the reported minutes of use”) is not the metric that he uses in Table 1 to his declaration (i.e., equivalent cost per DSO mile), which I agree is the more relevant metric. Additionally, Mr. Schill’s embrace of a metric based on “minutes of use” (“mou”) in this part of his testimony is a little difficult to reconcile with his later criticism of the metric set forth in Table F of my presentation, which is a very similar metric (i.e., projected lease costs per projected demand or “lease cost/mou”). *See Rhinehart Decl.* ¶ 26. It should further be noted that the type of metric that Mr. Schill sets forth in Table 1, or for that matter any metric, is not, nor can it be, on a stand-alone basis, determinative of a cost’s reasonableness. In order to make that determination, the metric needs to be compared to other data (such as comparable data developed for other INS services that are offered on a competitive basis). Indeed, that was the purpose of the analysis in paragraphs 16 and 17 of my initial declaration in which I compared the “DS-3 route mile rate” that the Access Division is charged to the “DS-3 route mile rate” that

[[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[[END HIGHLY CONFIDENTIAL]] pays for transport capacity over the very route that the Access Division uses to transport the majority of the access stimulation traffic at issue in this case. As I explained, that comparison shows that the rate paid by the Access Division [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED] [[END HIGHLY CONFIDENTIAL]] *See id.* ¶ 17.

PUBLIC VERSION

27. *Sixth*, Mr. Schill's criticism of my calculation of the DS-3 route mile rate paid by the Access Division, i.e., **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** (*see* Schill Decl. ¶ 18) is supported only by bald claims of purportedly correct computations. The generic rule of thumb that I used to convert the DS-0 route mile rate that Mr. Creveling (INS's former CFO) had provided to an equivalent DS-3 route mile rate is a simple approach that is particularly useful in situations, like this one, where more detailed information is not available. (Much of the information set forth on Mr. Schill's Table 1 is not publicly available nor does his table document the sources of the included data). It should further be noted that even with access to the data included on Table 1, Mr. Schill still used a rule of thumb **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** Indeed, that rule of thumb is very similar to the rule of thumb that I used to convert the DS-0 rate that had been provided to a DS-1 value. Instead of **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** I used 24, which as discussed below produces a lower DS-3 route mile rate for the Access Division, **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]**

28. *Seventh*, Mr. Schill's criticism of the rule of thumb that I used in comparing the rate charged to the Access Division to the rates paid by GLCC does not change my bottom line conclusion that the lease rates charged to the Access Division are excessive. Indeed, the DS-3 route mile rate calculated by Mr. Schill **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** actually suggests that the gap between the

PUBLIC VERSION

rates charged to the Access division and the rates paid by **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** is even greater. Further, Mr. Schill's testimony that the "cost of the transmission equipment used to provision a DS-3 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** (*see* Schill Decl. ¶ 23) is difficult to reconcile with the fact that INS's records show that it has provided DS-3 circuits **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** Either Mr. Schill's cost calculation is wrong, or INS is selling those circuits to **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** at a significant loss. Additionally, to the extent that the Access Division is in effect paying **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** that strongly suggests that the amounts paid by the Access Division are significantly above market rates, and that INS's CEA service is subsidizing INS's other transport services.

29. *Finally*, Mr. Schill's claim that it is not reasonable to directly compare the rates that the Access Division pays for transport to the rate paid by GLLC for a single point to point connection (*see* Schill Decl. ¶ 18) might have some validity if we were simply discussing traditional CEA service where the traffic at issue was somewhat evenly disbursed across INS's entire 2700 mile fiber network. But that is not the situation that exists with respect to access stimulation traffic, the majority of which moves over a limited number of point to point connections. As INS's documents show, more than **[[BEGIN HIGHLY CONFIDENTIAL]]** **[[END HIGHLY CONFIDENTIAL]]** of the Access Division's traffic is access stimulation traffic (*see* AT&T Ex. 2, INS Worksheet (Aureon_02696-02708), at Aueron_02697-

98) and it is impossible to deny that there are not significant economies of scale in moving large volumes of traffic over a limited number of point to point connections. But none of those economies of scale, which are likely extensive, seem to be shared. Certainly, the alleged “volume discount” that INS recently offered in its tariff does not share any of those cost savings. In fact, the cost information filed in support of that rate shows that the lower rate results exclusively from INS’s decision not to include “Uncollectible Revenues” in the applicable revenue requirement. *See* Rhinehart Decl. ¶¶ 12, 38 n. 48, 43, note 55.

30. In sum, rather than demonstrating that the lease costs that the Access Division pays are reasonable, Mr. Schill’s declaration reinforces the conclusion that they are excessive.

C. INS’s Allocation of Costs for Network Facilities

31. Mr. Schill does not dispute that the Access Division’s allocated share of the costs of Cable & Wireless Facilities went from about 45% to 48% (during 2004-2008) to above 70% (in 2013-17) as shown on Table C to my initial declaration, nor does he deny that the Cable & Wire Facilities costs allocated to INS’s other divisions actually declined from about \$14 million in 2004 to about \$5 million in 2017. Instead, he categorically declares that such comparisons are meaningless because INS’s “cost allocations for the Access Division’s use of [INS]’s fiber network are compliant with the Commission’s accounting rules,” those cost allocations “are based on the actual use of facilities provided to the Access Division” and the lease rates for those facilities “are at or below the fully distributed cost of the network facilities provided.” *See* Schill Decl. ¶ 20. Mr. Schill further asserts that “[a]ny attempt to use generalized Access Division cost relationships from year to year to determine the reasonableness of one component of expense (e.g., charges for network costs) is improper, especially when the facilities being leased to the Access Division remain fairly constant from year to year.” *Id.* ¶ 20. He also presents a table that

PUBLIC VERSION

purports to show that network expense has remained fairly constant from year to year. *See id.* ¶ 26, Table 1.

32. As I have previously explained, this type of rhetoric is not a substitute for the submission of evidence that directly addresses the specific matters of concern that have been identified. Nowhere in his declaration does Mr. Schill specifically address and explain why the percentage of Cable & Wire Facilities costs allocated to the Access Division went from below 50% in 2008 to above 70% in 2013. Likewise, no explanation is provided as to why the amount of Cable and Wire Facilities cost allocated to INS's other divisions declined from about \$14 million to about \$5 million. And no explanation is provided as to why the Cable & Wire Facilities costs allocated to the Access Division went from almost \$18 million in 2010 to less than \$10 million in 2012 and then back up to almost \$14 million, which does not appear to comport with Mr. Schill's claim that the facilities being leased to the Access Division "remain fairly constant form year to year." *See id.* ¶ 20. Perhaps there are reasonable explanations for these changes. However, such explanations have not been provided, and Mr. Schill's reluctance to even address them suggests a different conclusion.

33. Mr. Schill's attachment of Table 1 to his declaration certainly does not shed any light on the answers to these questions. Indeed, Table 1 raises more questions than it provides answers. To begin, Table 1 does not indicate the sources of the data set forth on Table 1, and the data do not appear to match the data set forth in INS's Tariff Filings. Moreover, to the extent that some of the data are drawn from documents that INS produced during the pre-filing discovery process, bates numbers should have been provided. In addition, explanations as to whether the data in a column was derived or assumed should have been provided. And, given

PUBLIC VERSION

Mr. Schill's criticism of my failure to include in Table H percentages showing year to year variations (*see* Schill Decl. ¶ 39), his Table 1 should have included such percentages.³

34. Beyond that, an explanation should have been provided as to why the amounts set forth in the column entitled "Equivalent Cost Per DS-0 Mile" seem to be at odds with the estimate of that rate **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED] **[[END HIGHLY CONFIDENTIAL]]** that Mr. Creveling provided in his deposition in the *Alpine* case. Additionally, the levels of the Equivalent Cost Per DS-0 Mile rate set forth in Table 1 do not appear to be "fairly constant from year to year." *See* Schill Decl. ¶ 20. To the contrary, there is a fair amount of variation in the rate and that variation does not seem to match the corresponding changes in INS's CEA rates. For example, in 2013 INS's projected network costs increased from about \$10 million to about \$14 million, its projected traffic volumes declined by about 400 million minutes, and the CEA rate was increased by about 44% (from \$0.0623 per minute to \$0.00896 per minute). *See* Rhinehart Decl. ¶¶ 7 (CEA rate change), 18, Table C (network costs change), 34, Table H (volume change). Yet the Equivalent Cost Per DS-0 miles appears to have decreased from \$0.08523 to \$0.07364, a decline of about 14 percent. That does not make sense.

35. Finally, Mr. Schill's comment that "[it] is not apparent from Mr. Rhinehart's comments or observations that this analysis was performed" (*see id.* ¶ 20) is perplexing. The analysis that he apparently is referencing is "an analysis of the cost and use of the facilities being provided." *See id.* (prior sentence). However, to do an analysis beyond the analyses included in my initial declaration (which are based either on public data or that data that INS has produced), one would need access to additional information, particularly detailed information regarding the

³ Such percentages would have shown year to year variation as follows: an increase of about 16 percent (2010 to 2012), a decrease of about 14 percent (2012 to 2013), an increase of about 32 percent (2013 to 2014), and a decrease of 9 percent (2014 to 2016).

computation and reasonableness of the lease costs that are charged to the Access Division and how those lease costs compare to the rates that INS charges to its other customers, appropriately adjusted. But INS has not produced such material. Indeed, it does not appear to have provided all of the source data for Table 1, and it certainly has not produced the results of its purported periodic reasonableness testing of the leases costs charged to the Access Division. In short, INS has not demonstrated the reasonableness of the network costs that underlie its tariffed CEA rates.

D. INS's Calculation and Allocation of Lease Costs

36. In this section of my initial declaration, I presented three tables based on data derived from either INS's Tariff Filings or INS internal documents produced in discovery. Each of these tables set forth information relating to INS's network costs, and as I noted in my initial declaration, raised "serious questions as to the reasonableness of INS's allocation of network costs to the Access Division." *See* Rhinehart Decl. ¶ 21. Neither Mr. Schill in his declaration nor INS in its answering submission addresses or answers these questions. Instead, Mr. Schill takes issue with the relevance of each of the tables. His arguments in that regard are not soundly based.

37. In Table D, I compared lease cost forecasts produced by INS for 2010, 2012 and 2013, and expressed concern as to level of variation in those forecasts from year to year, particularly in light of the changes that INS had made in its CEA rates during the period 2010 to 2013. *See id.* ¶¶ 22–23. Rather than directly address those issues, however, Mr. Schill dismisses the comparisons set forth in Table D on the ground that that the lease cost forecasts included in Table D are not specific to the lease costs allocated to the Access Division but relate to the lease costs paid by all of INS's divisions. *See* Schill Decl. ¶ 27. Mr. Schill's criticism is unwarranted. Putting aside that these forecasts were produced by INS in response to AT&T's request for the

back-up support used by INS in preparing its 2010, 2012 and 2013 Tariff filings, Mr. Schill's concern is specifically addressed in note 32 of my declaration, where I pointed out that the year to year variation in the overall lease cost forecasts was consistent with the variation in the lease cost projections included in INS's Tariff Filings, particularly for 2012 and 2013. *See* Rhinehart Decl. ¶ 23, n.32. I also noted that a similar pattern could be seen in the Income Statement Summaries that INS had also produced in response to AT&T's requests for the back-up material. *See id.* Consequently, Mr. Schill's excuse for not specifically addressing the reasons for the changes in the forecasts and their relationship to the changes in INS's CEA rates is no excuse at all.

38. In discussing the trends reflected in the network investment data set forth in Table E, and the "lease cost/mou" data set forth in Table F, Mr. Schill adopts a similar approach. As Table E shows, INS's investment in Cable & Wire Facilities almost tripled between 2010 and 2016, which raises the question of whether the Access Division is being to ask to fund that massive new network investment, notwithstanding the fact that (i) its overall throughput is and has been in decline (during the period 2011 to 2016, demand dropped by more than a billion minutes), (ii) legitimate CEA service (what INS refers to in its work papers as "regular CEA service") has been in a steady year to year decline since at least 2008 (a decline that shows no signs of abating), and (iii) the FCC in 2011 found that access stimulation is a "wasteful arbitrage practice" that should be "curtailed." *See* Rhinehart Decl. ¶¶ 24–25, Table E. Table F, by contrast, uses the lease cost data and demand projections set forth in INS's Tariff Filings to develop the metric "lease cost/mou," which is a rough measure of the efficiency of the Access Division's CEA service. *See id.* ¶¶ 26–27, Table F. For the test periods prior to INS's 2013 Tariff Filing, the "lease cost/mou" metric declined at a rather steady pace. *See id.* ¶ 27.

Beginning in 2013, however, Table F shows that “lease cost/mou” skyrocketed, which as I explained could be the result of declining demand, an over-allocation of network costs, or both. *See id.* Rather than address that issue and the related issues raised by Table E, and present empirical data in support of his position, Mr. Schill instead simply dismisses the concerns without ever seriously addressing them.

39. In sum, the data that I presented in this section go to the heart of the issue of the reasonableness of INS’s CEA rates, and in my view, present some serious questions, that neither Mr. Schill nor INS has answered.

E. INS’s Allocation of Costs Between Interstate and Intrastate Traffic

40. Mr. Schill does not deny that the mix of interstate and intrastate traffic on INS’s CEA network has changed dramatically, nor does he take issue with the percentages set forth in Table G to my initial declaration which show that since 2010 more than 80 percent of the Access Division’s revenue requirement has been allocated to interstate CEA service, and that in 2016 about 94 percent of the Access Division’s revenue requirement was so allocated. *See Rhinehart Decl.* ¶ 29. Instead, Mr. Schill argues that INS was under no obligation to inform the Commission of this dramatic shift (*see Schill Decl.* ¶¶ 5 (“Rhinehart’s Fourth Observation”), 32), and he suggests that the change in the jurisdictional mix was due entirely to modifications in INS’s billing systems and improvements in its ability to monitor interstate traffic. *See id.* ¶¶ 33–35. He further contends that that INS “does not have any control over the jurisdiction of the traffic that is sent by IXC’s to the CEA network.” *See id.* ¶ 33; *see also id.* ¶ 5.

41. To begin with, Mr. Schill’s assertion that the dramatic shift in the jurisdictional mix of INS’s CEA traffic was “due to upgrades in [INS]’s equipment to better track the jurisdiction of the calls on the CEA network” (*id.* ¶ 33) is not consistent with the explanation that

PUBLIC VERSION

INS provided in its 2008 Tariff Filing where it attributed the change in its PIU factor to two factors: changes in its ability to monitor the traffic and the huge influx of access stimulation traffic that was predominately interstate in nature. *See* AT&T Ex. 17, INS 2008 Tariff Filing, at 1–2; *see also* Rhinehart Decl. ¶ 30. Given the magnitude of that influx (which appears from INS’s Tariff Filings to have begun in late 2005), it seems clear that that change, and not improvements in INS’s monitoring abilities, was the principal cause of the dramatic shift that is reflected in Table G to my initial declaration.

42. Further, Mr. Schill’s assertion that INS has no ability to control the jurisdiction of the traffic tendered to its network (*see* Schill Decl. ¶¶ 5, 34) is not accurate. In 2005, INS entered into a series of traffic agreements with Competitive Local Exchange Carriers (“CLECs”) that were not primarily engaged in the provision of Local Exchange Service, but instead were focused on building access stimulation businesses. *See* AT&T Complaint, Section I.D. As Mr. Habiak explains in his initial declaration, access to INS’s network was important to their success and by entering into the aforementioned traffic agreements, INS facilitated the rapid growth of access stimulation in Iowa. *See* Habiak Decl. ¶¶ 11-16; *see also* AT&T Complaint § I.D.

Indeed, **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[[END HIGHLY CONFIDENTIAL]] [REDACTED] INS has facilitated their ability to engage in mileage pumping – a practice that flourished in Iowa until the Commission’s *Alpine* decision was issued.

43. Finally, neither Mr. Schill nor INS responds, or even addresses, the specific potential rate manipulation issues that I identified in my initial declaration: the first involving the apparent disconnect between INS’s stated Percent Interstate Use (“PIU”) factor, and the second relating to INS’s apparent understatement of the PIU factor associated with the access

stimulation traffic on its network.⁴ *See* Rhinehart Decl. ¶¶ 32–33. As they do with respect to a number of the specific concerns that I have identified, they either ignore them entirely or dismiss them as “simply without merit.” *See, e.g.,* Schill Decl. ¶ 36. But, as I have previously noted, such rhetoric is not a substitute for evidence, and INS’s apparent reluctance to address the issues only serves to reinforce the conclusion that its rates are not reasonable.

F. Reliability of INS’s Traffic Forecasts

44. Neither Mr. Schill nor INS deny that there has been a lot of variation in INS’s test period forecasts, nor do they deny that those test period forecasts have been inaccurate. Instead, Mr. Schill asserts that “[f]orecasting traffic over a long time period is difficult, particularly when [INS] has no control over the traffic sent by other carriers over its network.” *See* Schill Decl. ¶ 37. He further claims that the variation in INS’s test period forecasts is “due to fluctuations in access stimulation traffic” (*see id.* ¶ 38) and contends that the INS’s traffic forecasts are “more accurate than Mr. Rhinehart suggests,” pointing to percentage difference calculations which in his view (at least with respect to this issue) are “more meaningful.” *See id.* ¶ 39. Mr. Schill also speculates, without offering any evidentiary support, that the inaccuracies in INS’s traffic forecasts is somehow the result of AT&T’s transporting, on a wholesale basis, the long distance traffic of other carriers (*see id.* ¶ 42) and attempts to deflect the fact that in certain years it has over earned its authorized rate of return by pointing to instances where it either projected negative rates of return or allegedly experienced such results. *See id.* ¶ 41. As explained below, I have issues with each of these points.

⁴ In its response to AT&T’s discovery requests, INS notes that the reference to 78% as it related to access stimulation traffic was a typo – the 78% factor was the factor applicable to all traffic. *See* INS Objections and Responses to Complainant’s First Set of Interrogatories, at 12. INS does not, however, indicate what the percentage applicable to the access stimulation traffic was, or otherwise address the specific concerns addressed in my initial declaration.

PUBLIC VERSION

45. *First*, Mr. Schill’s assertion that the test period forecasts have varied “due to fluctuations in access stimulation traffic” is, at best, an over-simplification. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END HIGHLY**

CONFIDENTIAL]] Further, Mr. Schill’s claim that INS has no control over the access stimulation traffic on its network (*see* Schill Decl. ¶ 37) rings somewhat hollow given that its traffic agreements with the access stimulating CLECs **[[BEGIN HIGHLY CONFIDENTIAL]]**

[REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]** *See* AT&T Complaint, Section I.D.

46. *Second*, Mr. Schill’s claim that on a percentage basis, INS’s test period forecasts “are actually more accurate than Mr. Rhinehart suggest[ed]” (*see* Schill Decl. ¶ 39) also rings hollow. At bottom, INS’s CEA rates are a function of its revenue requirement divided by its forecasted traffic. Consequently, it is important that the traffic forecasts are accurate. To the extent that the traffic forecast is underestimated, the resulting rates will be inflated (all other factors remaining constant) and vice versa.

PUBLIC VERSION

47. As I pointed out in my initial declaration, for two test periods, INS underestimated the demand by at least 400 million, and for the test periods up to and including the 7/1/10 to 6/30/11 test period, demand was underestimated by an average of 240 million minutes per year. *See* Rhinehart Decl. ¶ 35. In all of these instances, the underestimation worked in INS's favor, and INS made no effort to adjust its rates in advance of its bi-annual tariff filings regardless of the size of the miss. That approach stands in stark contrast to the approach that INS adopted in 2013. Having overestimated the demand for CEA service by less than 200 million minutes, it did not wait to adjust its rates until its next bi-annual tariff filing. It instead made an off-year filing in 2013 and increased its rates by 44 percent (from \$0.00623 per minute to \$0.00896 per minute).

48. The fact that INS believed that a five percent error in its traffic forecasts was sufficient to require an off-year tariff filing completely undermines Mr. Schill's claim that the percentage differences identified in his testimony support his position that I have overstated the significance of the forecasting inaccuracies discussed in my initial declaration. In this regard, it should also be noted that all of the percentage differences that Mr. Schill calculated for test periods in which the demand was underestimated exceeded the 5 percent threshold that prompted INS's 2013 Tariff Filing, and yet in no instance (even when the percentage difference was over 31 percent) did INS adjust its rates in advance of its bi-annual tariff filing. In his declaration, Mr. Schill simply ignores these issues.

49. *Third*, Mr. Schill adopts a similar approach to the issue of INS's over-earning of its authorized rate of return in certain years. Rather than address the years identified in my declaration where INS reported that it had over-earned its authorized rate of return, he ignores those years and instead focuses on the fact that in recent years, INS has projected negative rates

PUBLIC VERSION

of return in its Tariff Filings and alleges that in certain years it has under-earned its authorized rate of return. *See* Schill Decl. ¶ 41. However, as I pointed out in my initial declaration, and Mr. Schill effectively admits, those negative rates of return were principally the result of INS’s inclusion of “Uncollectible Revenues” in its revenue requirement. *See* Rhinehart Decl. ¶ 43. As discussed below and in my initial declaration, the inclusion of those “Uncollectible Revenues” was improper, and those amounts largely account for the negative returns identified in Mr. Schill’s declaration.

50. *Fourth*, Mr. Schill’s speculation that the inaccuracies in INS’s traffic forecast are “likely the result of AT&T acting as the intermediate carrier for other IXC’s” (*see* Schill Decl. ¶¶ 5, 42) is groundless. To begin, it is important to keep in mind that most large facilities-based carriers, like AT&T, provide intermediate carriage, and that as a consequence, the presence of wholesale traffic on a network’s like AT&T’s is not surprising. In fact, as noted in AT&T’s Complaint, INS is both an intermediate carrier and it offers wholesale services. *See* AT&T Complaint § I.B. What is not accurate, however, is the suggestion that the alleged disappearance of the traffic of some large IXC’s from INS’s network is attributable to AT&T and its wholesale business. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[[END

HIGHLY CONFIDENTIAL]]

51. *Finally*, Mr. Schill’s claim that AT&T’s wholesale business is the “only logical explanation” for the disappearance of traffic from INS’s network (*see* Schill Decl. ¶ 42) is simply wrong. Another “logical explanation,” and the explanation that is probably correct, is that these other carriers have found a way to bypass INS’s network by delivering the traffic directly to the access stimulating CLECs’ end office switches. Indeed, Mr. Schill acknowledges that INS recently learned that bypass is occurring. *See id.* ¶ 28. Rather than seek to blame AT&T for this practice and the alleged disappearance of traffic from its network, Mr. Schill and INS should instead investigate how this bypass is occurring and whether access stimulating CLECs are using either INS’s internet services or INS leased capacity to transport this traffic.

G. INS’s Inclusion of “Uncollectible Revenues” in its Revenue Requirement

52. Mr. Schill does not dispute that INS’s inclusion of its so-called “Uncollectible Revenues” in its revenue requirement has had the potential rate impacts set forth in Table J to my initial declaration, nor does either Mr. Schill or INS deny that the inclusion of those amounts effectively required INS’s other CEA customers (including AT&T prior to 2013) to pay higher rates for CEA service. *See* Schill Decl. ¶¶ 43–46; INS Legal Analysis at 61–63. He also admits that the amounts at issue relate to INS’s ongoing litigation disputes with AT&T and Sprint, and

[[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]] *See id.* Nevertheless, Mr. Schill insists that those amounts were properly included in INS’s revenue requirements. *See id.* I disagree with Mr. Schill’s position.

PUBLIC VERSION

53. *First*, Mr. Schill’s claim that the amounts at issue were “properly billed” (*see* Schill Decl. ¶ 45) ignores the fact that both Sprint and AT&T have withheld payment on the ground that the amounts at issue were **not** properly billed and litigation as to that issue is pending. Consequently, the issue of whether the amounts were properly billed has not been settled.

54. *Second*, the assertion by Mr. Schill and INS that the amounts at issue are “known direct cost[s]” (*see id.* ¶ 44; *see also* INS Legal Analysis at 61–62) is hard to reconcile with the fact that INS is **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[[END HIGHLY CONFIDENTIAL]] [REDACTED] **[[END HIGHLY CONFIDENTIAL]]** In my experience, an uncollectible revenue is considered a known direct costs because the carrier has concluded that collection is not likely and **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[[END HIGHLY CONFIDENTIAL]] [REDACTED] **[[END HIGHLY CONFIDENTIAL]]** Hence, they are not a known direct cost.

55. *Third*, Mr. Schill wholly ignores the issue of ratepayer fairness. As previously noted, he does not dispute that INS’s other CEA customers have been adversely affected by the inclusion of the amounts at issue in INS’s revenue requirement, nor does he explain why that is appropriate. Instead, he effectively ignores the issue and blames AT&T for exercising its right to contest INS’s improper billing of its CEA rates. *See id.* ¶ 46.

56. *Finally*, Mr. Schill wholly ignores the intergenerational billing issues created by INS’s inclusion in its revenue requirement of uncollected amounts that are still the subject of ongoing litigation. Presumably, if INS prevails in the litigations, it will reduce, in the future, its

PUBLIC VERSION

revenue requirement to reflect the recovery of those amounts. But the beneficiaries of that reduction will not be the same group of ratepayers that initially bore the burden of the earlier inclusion of the “Uncollectible Revenues” in the revenue requirement. Worse yet, what happens if INS does not prevail? At that juncture will INS similarly reduce its rates even though it has not recovered the amounts at issue? What happens if INS cannot afford to do so?

57. The rules requiring that uncollectible revenues be “properly billed” and “a direct known cost” are designed to protect against these types of problems. Further, it is to avoid these types of problems that carriers, in my experience, do not include uncollectible revenues in their revenue requirements until **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED] **[[END
HIGHLY CONFIDENTIAL]]**

III. Conclusion

58. Contrary to Mr. Schill’s claims, INS has not established that its CEA rates are reasonable, nor has it addressed and resolved the serious issues identified and documented in my initial declaration. In fact, INS’s answering submission not only fails to respond adequately to the matters that have been raised, it raises additional questions, particularly with respect to the lease costs that have been allocated to the Access Division. Not only has INS not produced the back-up showing how those rates are calculated, it has not made available the reasonableness testing that allegedly is prepared on periodic basis. Additionally, it has failed to identify the source data for the information set forth on Table 1 to Mr. Schill’s declaration.

PUBLIC VERSION

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on
July 5, 2017.



Daniel P. Rhinehart

Exhibit D

PUBLIC VERSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**In the Matter of
AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(202) 457-3090**

Complainant,

v.

**IOWA NETWORK SERVICES, INC.
d/b/a Aureon Network Services
7760 Office Plaza Drive South
West Des Moines, IA 50266
(515) 830-0110**

Defendant.

**Proceeding Number 17-56
File No. EB-17-MD-001**

**SUPPLEMENTAL DECLARATION OF
DANIEL P. RHINEHART**

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"), and my job title is Directory-Regulatory. My responsibilities in that job as well as my prior experience are set forth in the initial declaration that I submitted in this proceeding on June 8, 2017. I submitted a reply declaration in this proceeding on July 5, 2017.

2. In this supplemental declaration, I have been asked to review and comment on the various discovery that has been produced by INS since the filing of my reply declaration regarding the lease costs that are allocated to INS's Access Division and that are used in developing INS's tariffed CEA rate. In that connection, I have reviewed: (a) the cover letter from INS's counsel, dated August 7, 2017 (identifying the materials that INS produced on that

date in response to AT&T's First and Second Set of Interrogatories); (b) Exhibit 1 to that letter (which identifies the actual lease rates purportedly charged to the Access Division and discusses the various reasonableness testing allegedly done by INS with respect to those lease rates);¹ and (c) various of the documents produced in connection with that letter. In addition, I attended Mr. Schill's deposition and have reviewed both the transcript of that deposition and the exhibits that were discussed at that deposition.

3. Based on that review, I have the following comments regarding the derivation and reasonableness of both the lease rates purportedly charged to the Access Division and the network costs allocated to INS's Access Division. As explained in greater detail below,

[[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]
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[REDACTED] [[END HIGHLY CONFIDENTIAL]]

¹ The August 7 Letter and Exhibit 1 were marked as Exhibit 2 to Mr. Schill's deposition and are AT&T Ex. 86.

PUBLIC VERSION

A. The Derivation of the Lease Rates Purportedly Charged to The Access Division.

4. **[[BEGIN HIGHLY CONFIDENTIAL]]**

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[REDACTED]

- [REDACTED]

[REDACTED] [[END HIGHLY CONFIDENTIAL]]

- B. **The Inability to Reconcile the CWF Lease Rates Purportedly Charged to the Access Division with the Network Costs Reported in INS's Tariff Filings.**

- 9. [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

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CONFIDENTIAL]]

C. The Over-Allocation of CWF Fiber Costs to the Access Division

16. [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]

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CONFIDENTIAL]]

D. **Mr. Schill's Inability to Explain the Anomalies in the Cost Data Underlying INS's CEA Rates.**

33. [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED]

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[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

E. **The Unreliability of INS’s New “Reasonableness” Test**

39. **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]

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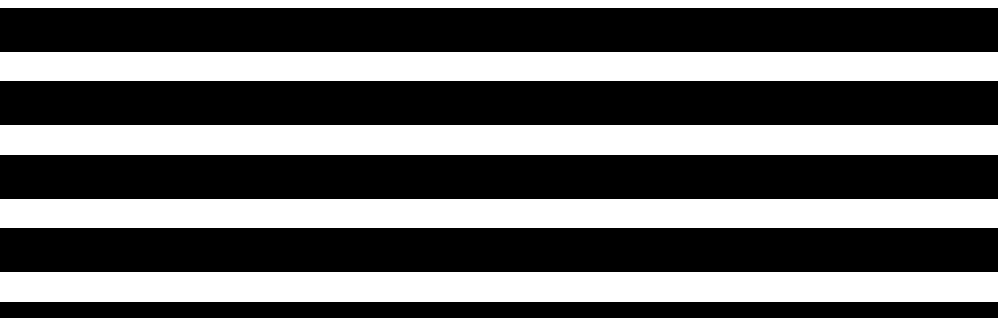
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PUBLIC VERSION

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on August 21, 2017.

A handwritten signature in black ink, reading "Daniel P. Rhinehart", is written over a horizontal line.

Daniel P. Rhinehart

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2018, I caused a copy of the foregoing Petition, as well as all accompanying materials, to be served as indicated below to the following:

Marlene H. Dortch
Office of the Secretary
Market Disputes and Resolution Division
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
By Electronic Mail and Hand-Delivery

Kris Monteith
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
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Pamela Arluk
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Respectfully submitted,

/s/ Morgan Lindsay
Morgan Lindsay