

**PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION**

SIDLEY

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

JBENDERNAGEL@SIDLEY.COM
+1 202 736 8136

September 27, 2018

By ECFS and ETFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1, WC Docket No. 18-60, Transmittal No. 38 (Sept. 24, 2018 Revised Tariff Filing)***

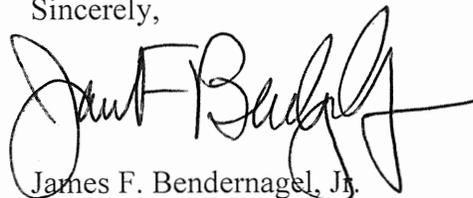
Dear Ms. Dortch:

AT&T Services, Inc. (“AT&T”) submits for filing the **Public Version** of its Petition to Reject or to Suspend and Investigate the proposed tariff in Transmittal No. 38 filed on September 24, 2018 by Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”). Consistent with the Commission’s rules and the March 26, 2018 Protective Order entered by the Commission Staff, AT&T has redacted all “Confidential Information” from the **Public Version**, which it is filing by ECFS and ETFS.

AT&T is also filing by hand with the Secretary’s office four hard copies of the **Confidential Version** of this submission. In addition, copies of all versions of the submission are being served electronically and by facsimile on Aureon’s counsel. Two copies are also being provided to Joseph Price at the Wireline Competition Bureau.

Please contact me if you have any questions regarding this matter.

Sincerely,



James F. Bendernagel, Jr.

SIDLEY

Marlene H. Dortch
September 27, 2018
Page 2

Enclosures

Joseph Price, FCC
Pam Arluk, FCC
Joel Rabinovitz, FCC
James U. Troup, Counsel for Aureon
Tony S. Lee, Counsel for Aureon
Steven A. Fredley, Counsel for Sprint
Amy E. Richardson, Counsel for Sprint
Keith C. Buell, Counsel for Sprint
Curtis L. Groves, Counsel for Verizon

**PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION**

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

In the Matter of

**Iowa Network Access Division
Tariff F.C.C. No. 1**

WC Docket No. 18-60

**Transmittal No. 38
September 24, 2018 Access Charge
Tariff Filings**

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

Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

Christi Shewman
Gary L. Phillips
David L. Lawson
AT&T SERVICES, INC
1120 20th St., NW
Suite 1100
Washington, DC 20036
(202) 457-3090
(202) 463-8066 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
jbbendernagel@sidley.com
mhunseder@sidley.com
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Counsel for AT&T Services, Inc.

Dated: September 27, 2018

TABLE OF CONTENTS

I.	AUREON’S FAIR MARKET VALUE ANALYSIS FAILS TO ADDRESS THE CONCERNS RAISED BY THE COMMISSION IN THE <i>RATE ORDER</i> AND APPEARS TO VIOLATE THE COMMISSION’S RULES	6
A.	The SDN And MIEAC Tariff Rates Are Not Accurate Comparators For Purposes Of A Fair Market Value Analysis	7
B.	The Fair Market Value For Aureon’s CEA Service Is The Cost Of Network Capacity To Transport Traffic From Des Moines To Its POIs	9
C.	Aureon’s Fair Market Value Study is Devoid of Any Analysis or Justification, and Fails to Respond to the Commission’s Directives	11
II.	SIGNIFICANT ISSUES REMAIN WITH RESPECT TO AUREON’S CALCULATION OF ITS COST OF SERVICE RATE AND ITS FULLY DISTRIBUTED COST STUDY	12
A.	The Commission Previously Identified Serious Issues With Aureon’s Fully Distributed Cost Study	12
B.	Aureon’s Fully Distributed Cost Study Appears To Suffer From Many Of The Same Defects As Its Prior Tariff Submissions.	14

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

In the Matter of

**Iowa Network Access Division
Tariff F.C.C. No. 1**

WC Docket No. 18-60

**Transmittal No. 38
September 24, 2018 Access Charge
Tariff Filings**

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

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 September 24, 2018, under Transmittal No. 38 (“Proposed Tariff”).¹

INTRODUCTION

In the *Rate Order*,² the Commission found that significant issues continued to exist as to the reasonableness of Aureon’s revised tariff rate for centralized equal access (“CEA”) service that it filed on February 22, 2018. To address those issues, the Commission directed Aureon to file a revised tariff, along with revised cost support, no later than 60 days from the release date of its

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 Memorandum Opinion and Order, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, 2018 WL 3641034 (rel. July 31, 2018) (“*Rate Order*”).

order. *Rate Order*, ¶ 122. The Commission also directed Aureon to address a number of specific issues and to provide additional documentation. *See id.* ¶¶ 62, 72, 78-79, 89-91, 123. In particular, the Commission made clear that Aureon’s revised tariff filing should include all relevant data for all circuit types included in its study, including an explanation of the regulated or non-regulated services provided over each circuit and a circuit inventory matching such explanation. *Id.* ¶ 90, n.283.

On September 24, 2018, Aureon filed a revised tariff rate of \$0.00296 per minute (“/min.”), which is roughly half of the \$0.00576/min. rate that Aureon proposed in its February 22, 2018 tariff filing. Aureon also provided supporting documentation, including a revised allocation of Central Office Equipment (“COE”) and Cable & Wire Facilities (“C&WF”) costs, a new and somewhat more detailed circuit inventory, and what purports to be a fair market value analysis supporting its New Filed Lease Expense.³ Further, the New Filed Lease Expense differs dramatically from Aureon’s prior Filed Lease Expense—[[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

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

Due to the size of Aureon’s submission, AT&T has not had a full opportunity to review and analyze the reasonableness of Aureon’s revised tariff rate or the completeness of the supporting documentation. Nevertheless, it is evident from even an initial review that Aureon’s

³ In support of its Proposed Tariff, Aureon filed three separate excel files, including: (1) a file entitled “PUBLIC VERSION JSI INS 2018 FCC Filing” (hereinafter, “Public Workpaper”); (2) **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED] **END
CONFIDENTIAL]]**

**PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION**

fair market value analysis is deficient in several respects and that serious questions persist with regard to the manner in which Aureon has calculated its cost of service rate. While these questions relate predominantly to Aureon's calculation and efforts to justify its New Filed Lease Expense, changes also have been made in the estimation of other costs (primarily switching and accumulated depreciation) which require additional scrutiny. There are also unexplained differences between the circuit information that Aureon presented in connection with its past tariff filings and the information on which it now relies that need to be investigated. In addition, there are aspects of Aureon's filing that continue to be a "black box," most notably the source of the Filed Lease Expense. Aureon's submission also fails to address many of the specific matters raised by the Commission in the *Rate Order* and there are problems with Aureon's fully distributed cost calculations.

In sum, Aureon's Proposed Tariff filing continues to raise questions about Aureon's CEA ratemaking practices and rates that deserve further exploration. Accordingly, the Commission should either reject outright or, at a minimum, suspend Aureon's revised tariff and set for investigation the issue of whether Aureon's revised rate complies with the Commission's regulations, its *Rate Order*, and is just and reasonable.

BACKGROUND

In its *Rate Order*, the Commission rejected Aureon's February 2018 revised tariff rate and it directed Aureon to re-file its tariff and address specific deficiencies that the Commission had identified in its *Rate Order*. *Id.* ¶¶ 52, 62, 78-79, 89-91. Those deficiencies principally relate to the Filed Lease Expense that Aureon's non-regulated Network Division had charged its Access Division for use of Aureon's fiber network. *Id.* In its Direct Case, Aureon had failed to explain the specific basis on which the Filed Lease Expense used in computing its most recent CEA rate was based and instead sought to justify that expense by relying on the Commission's affiliate

transaction rules and by asserting that the expense was less than the fully distributed costs associated with the operation of its fiber network. *See, e.g.*, Aureon Direct Case at 34 (“The nonregulated enterprise remains free to charge its affiliated carrier whatever price it wants, including a price in excess of the recording value prescribed by the affiliate transaction rules.”); *id.* at 56 (attempting to justify its “alternative scenario”). However, as the Commission found, Aureon’s submission did not comply with the Commission’s affiliate transaction rules, which require that the Filed Lease Expense be lower than both the fair market value of the leased network facilities and the fully distributed costs of those same facilities. *Rate Order*, ¶¶ 52, 123.

As regards the fair market value issue, the Commission rejected as inadequate Aureon’s unsupported assertion that it could not estimate the fair market value of the network facilities leased to the Access Division, and directed Aureon to either make such a showing or to seek a waiver. *Rate Order*, ¶ 62. The Commission further directed Aureon to respond to AT&T’s assertions that **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** *Id.*

With respect to the fully distributed cost issue, the Commission identified numerous deficiencies in Aureon’s submission (most notably Aureon’s use of an inappropriate method of allocating C&WF costs), and ordered Aureon to submit a new fully distributed cost analysis that:

- utilizes separate allocators for COE and C&WF costs (*id.* ¶ 72);
- includes calculations based on forecasted data (including circuit forecasts) for each of the calendar years 2018, 2019, and 2020, and select for Aureon’s 2018 test year the lowest allocator for each cost type from the calculations relating to 2018, 2019, and 2010 (*id.* ¶ 78);⁴

⁴ The Commission further noted that if Aureon projects **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]** it must explain why. It must also explain the reason for **[[BEGIN CONFIDENTIAL]]** [REDACTED]

- explains the **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**
- takes a more nuanced approach to determining the proper C&WF allocator, including:
 - a full elaboration of the rationale for Aureon’s approach, along with complete data (including, as relevant, circuit inventories);
 - a response to AT&T’s claims regarding the manner in which a wholesale customer, such as the Access Division, would actually lease circuits as well as the relevance of Aureon’s nonregulated DS-3 circuit pricing as it compares to any DS-3 circuit pricing that could be derived from Aureon’s C&WF allocation methodology (*id.* ¶ 89);
- provides cost support for the allocation of C&WF costs between DS-1 circuits and circuits of higher capacity and between regulated and nonregulated services, which should include:
 - all relevant data for all circuit types in the study, including an explanation of the regulated and nonregulated services provided over those circuits and a circuit inventory matching that explanation;
 - amend its fully distributed cost study to include a spreadsheet showing the calculation of separate COE transmission and C&WF cost allocations and employing separate COE transmission and C&WF allocation factors rather than a blended factor (*id.* ¶ 90); and
- uses a projected balance of regulated and nonregulated usage of its DS-1 circuits for 2018, 2019, and 2010 (*id.* ¶ 91).

As explained below, serious questions continue to exist as to whether Aureon’s September 24, 2018 Proposed Tariff complies with the Commission’s directives, and those questions must be investigated further.

[[END CONFIDENTIAL]] (*id.* ¶ 79).

ARGUMENT

I. AUREON’S FAIR MARKET VALUE ANALYSIS FAILS TO ADDRESS THE CONCERNS RAISED BY THE COMMISSION IN THE *RATE ORDER* AND APPEARS TO VIOLATE THE COMMISSION’S RULES

The Commission’s affiliate transaction rules provide that “[w]hen services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded.” 47 C.F.R. § 32.27(c)(2). A carrier cannot simply assert, as Aureon did in its prior tariff filing, “that it cannot determine a fair market value for the transaction.” *Rate Order*, ¶ 58. Rather, a carrier must either “[1] demonstrate compliance with this requirement or [2] seek a waiver.” *Id.* ¶ 62. Aureon has not sought a waiver. Instead, Aureon has prepared a “market estimate” using tariffed rates from South Dakota Network (“SDN”) and Minnesota Independent Equal Access Corp. (“MIEAC”).

As demonstrated below, Aureon’s limited submission on this issue is problematic in a number of respects. To begin, the SDN and MIEAC tariff rates are not “market” rates for the transport capacity that is at issue in this proceeding. Rather, they are retail access rates for two different CEA services – one a tandem switching service (the SDN rate); the other a tandem transport rate (the MIEAC rate). As AT&T demonstrated in the prior tariff investigation proceeding (and as further discussed below), there is extensive evidence that Aureon has leased fiber capacity to various entities (including a number of CLECs engaged in access stimulation) at rates significantly lower than the “market estimate” rates Aureon now puts forth. Moreover, Aureon’s submission is devoid of any analysis or justification, and fails to respond to the Commission’s specific directives regarding this issue. Accordingly, the Commission should suspend and investigate Aureon’s Proposed Tariff submission for these reasons alone.

A. The SDN And MIEAC Tariff Rates Are Not Accurate Comparators For Purposes Of A Fair Market Value Analysis

To demonstrate compliance with the fair market value requirement, the Commission noted in the *Rate Order* that carriers could justify a variety of approaches, “depending on the type of transaction” at issue. *Rate Order*, ¶ 58. This could include “appraisals, catalogs listing similar items, competitive bids, replacement cost of an asset, and net realizable value of an asset.” *Id.* (quoting *Implementation of The Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539, ¶ 154 (1996) (“*Accounting Safeguards Order*”). Here, the “type of transaction” is not the purchase of CEA service, but rather the purchase of network capacity needed to transport traffic within Iowa.

The fair market value analysis in Aureon’s Proposed Tariff fails to consider the market price for this type of service. Instead, Aureon compares its own Filed Lease Expense (\$4,904,646) against the “market estimate for service,” which is an average of the calculated expense for the same traffic volume on SDN’s and MIEAC’s networks (\$14,755,045).⁵ Aureon derived this figure by averaging: (1) the “current rate for [CEA] service” on SDN’s network of \$0.006001/min., and (2) a “unitary rate” for originating and terminating transport on MIEAC’s network of \$0.005350/min. On this basis, Aureon concludes that its Filed Lease Expense is nearly \$10 million less than the average expense to carry the traffic volumes on SDN’s and MIEAC’s networks, and as a consequence, is less than the fair market value for CEA service.

There appear to be several problems with this approach. *First*, Aureon has misstated SDN’s rate, which is actually \$0.004871/min., rather than \$0.00601/min. *See* SDN Tariff F.C.C. No. 1, 9th Revised Page 134. *Second*, SDN’s and MIEAC’s rates are not for comparable services.

⁵ *See* Public Workpaper, “Network Lease – Cost Market Comp” Tab, Lines 143-165.

SDN's rate of \$0.004871/min is for *tandem switching*, and not for tandem switching and transport. Similarly, MIEAC's "unitary rate" rate of \$0.005350 is only a *transport* rate. By contrast, Aureon provides both a tandem switching *and* transport service. *Third*, SDN's and MIEAC's rates are retail rates, rather than wholesale rates. As AT&T more fully demonstrates below, Aureon's service must be priced on a wholesale basis, and Aureon fails to provide a response to this issue, despite the Commission's directive to do so in the *Rate Order*.

Fourth, the SDN and MIEAC rates are not proper points of comparison because unlike Aureon they do not *mandate* service under their tariff and instead are willing to provide deeply discounted contractual rates to wholesale customers for traffic associated with access stimulation;⁶ the actual rates that these carriers are billing and collecting for such traffic must be considered in any so-called "market estimate," yet Aureon simply ignores this information. *Fifth*, Aureon's "unitary rate" for service under MIEAC's tariff is fundamentally flawed, because it assumes that traffic will be split evenly between terminating and originating traffic. However, [[BEGIN

CONFIDENTIAL]]

[[END CONFIDENTIAL]] And the MIEAC rate for terminating transport is \$0.000800/min., which would result in a fair market value of \$2,079,823—an amount which is nearly *sixty percent less* than Aureon's New Filed Lease Expense.

⁶ See, e.g., Petition for Expedited Declaratory Ruling of South Dakota Network, WC Docket No. 18-41, at 1 (filed Feb. 7, 2018) (explaining that SDN has a contract with an IXC entered into for the purpose of terminating large volumes of traffic bound to a CLEC engaged in access stimulation). See also *In re Connect Am. Fund*, 26 FCC Rcd. 17663, ¶ 812 & n.1524 (2011) ("the framework we adopt today encourages carriers to enter into contracts in lieu of the tariffing framework"); 47 C.F.R. § 51.905(a) ("Notwithstanding any other provision of the Commission's rules, telecommunications carriers may agree to rates different from the default rates.").

B. The Fair Market Value For Aureon’s CEA Service Is The Cost Of Network Capacity To Transport Traffic From Des Moines To Its POIs

Aureon’s fair market value for CEA service should not be determined by comparing Aureon’s New Filed Lease Expense against the SDN and MIEAC rates for disparate services. Instead, the more accurate comparison is the cost to purchase the network capacity needed to transport traffic between the Access Division’s tandem switch in Des Moines and the seven POIs at which traffic is delivered to the subtending LECs.⁷ Here, the evidence shows that such capacity clearly exists on Aureon’s fiber network and that it is leasing such capacity to third parties.

Indeed, AT&T has presented extensive evidence showing that Aureon has leased such capacity to the traffic pumping CLECs that are responsible for most of Aureon’s CEA traffic. More specifically, as AT&T explained in the Complaint case, during the period 2011 to 2017,

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

CONFIDENTIAL]] This capacity was on the same routes used to transport CEA traffic to those same CLECs.

The evidence further shows that the rates for that capacity were much lower than the leased rates Aureon charges for capacity on those same routes to its Access Division. In the Complaint case, Aureon presented evidence indicating that in 2014 the lease cost associated with transporting CEA traffic [[BEGIN CONFIDENTIAL]] [REDACTED]
[REDACTED]
[REDACTED]

⁷ This issue is distinct form the mileage issue relating to the calculation of the CLEC benchmark. The CLEC benchmark issue relates to the market rate for the service that competes against Aureon’s service, whereas this issue pertains to the market rate for the transport facilities that the Access Division would purchase in order to offer CEA service.

[REDACTED]

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

The evidence further shows that during the period 2011 to 2017, Aureon leased **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

This evidence strongly suggests that the rates that Aureon was charging the Access Division for capacity between Des Moines and Spencer were well in excess of the fair market value of the capacity being provided. In fact, Aureon may actually be *required* to charge the Access Division the same price for this capacity **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

⁸ The Commission’s affiliate transaction rules require carriers to use a “prevailing price valuation” for services provided to an affiliate where “greater than 25 percent of the total quantity” of the service is sold by the nonregulated affiliate “to third parties.” 47 C.F.R. § 32.27(d). Indeed, the Commission has explained that “if no tariff exists [for the service] and a carrier transfers or sells a service to its regulated affiliate that it also provides to third parties, the carrier must record the transaction at the prevailing company price. Non-tariffed services that are sold or transferred by an affiliate to its regulated carrier and are also sold to third parties at a generally available price, must also be recorded by the carrier at that price.” *Accounting Safeguards Order*, 11 FCC Rcd. 17539, ¶ 127 (1996).

II. SIGNIFICANT ISSUES REMAIN WITH RESPECT TO AUREON'S CALCULATION OF ITS COST OF SERVICE RATE AND ITS FULLY DISTRIBUTED COST STUDY

The Commission should also reject or suspend Aureon's revised tariff because it does not comply with the Commission's affiliate transaction rules and because Aureon has not fully responded to the specific directives set forth in the *Rate Order* to provide certain information in support of its revised cost of service rate. In addition, Aureon has not adequately explained the differences that exist between the information on which Aureon now relies and the types of information that Aureon has previously submitted in support of its tariffed CEA rates. Further, given the volume and complexity of the data submitted by Aureon in support of its Proposed Tariff, both the Commission Staff and the parties need more time to fully analyze and assess that information.

A. The Commission Previously Identified Serious Issues With Aureon's Fully Distributed Cost Study

In prior submissions supporting its CEA rates, Aureon has claimed that **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** In both this proceeding and in the prior Complaint case, AT&T and its cost expert, Daniel P. Rhinehart, relied on that circuit data in demonstrating that Aureon's allocation of the C&WF costs assigned to its CEA service were grossly overstated. AT&T Opp. at 58-68; Rhinehart Supp. Decl., ¶¶ 22-24; Rhinehart Supp. Rate Decl., ¶¶ 26-29. More specifically, AT&T showed that Aureon's allocation of C&WF costs, if properly computed, and the resulting CEA rates would be significantly lower. For 2018, the C&WF costs allocated to CEA service would have been reduced from **[[BEGIN**

CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]] See AT&T Opp. at 63. Relying on data submitted in connection with Aureon’s earlier tariff submissions, Mr. Rhinehart calculated similar reductions. See Rhinehart Rate Declaration, ¶¶ 30-31 [[BEGIN CONFIDENTIAL]]

[REDACTED] [[END CONFIDENTIAL]]

In the *Rate Order*, the Commission rejected Aureon’s approach to allocating C&WF costs, concluding that “the circuit method does not produce a reasonable allocation of the network’s costs to regulated activities.” *Rate Order*, ¶ 87. In so ruling, the Commission found that the multiplexing and demultiplexing associated with DS-1 circuits is “performed by facilities subject to the COE transmission allocator – that is, for purposes of C&WF facilities, a DS3 circuit carrying 28 regulated DS1 circuits is indistinguishable from a DS3 that does not carry individual DS1 circuits.” *Id.*

While the Commission rejected Aureon’s methodology, it did not accept AT&T’s suggested allocation approach, noting that Aureon had argued that “AT&T’s method of converting DS1s to DS3 equivalents may be ... too simplistic because it is too divorced from Aureon’s actual network.” *Id.* ¶ 87. Ignoring the fact that “AT&T’s method of converting DS1s to DS3 equivalents” was based on the circuit inventories that Aureon had itself presented in support of its previously filed CEA rates (*see* Rhinehart Supp. Rate Decl., ¶¶ 32-35; Rhinehart Second Supp. Rate Decl., ¶¶ 3-4, 12-15), the Commission directed Aureon to provide “a more nuanced approach to determining the C&WF allocator,” to “elaborate fully on its rationale and to provide complete data, including, as relevant, circuit inventories to support its recalculated cost-based rates.” *Id.* ¶ 89. The Commission further specified that such inventories should:

include unique inquiries for all circuits used to calculate the C&WF allocator (including circuits being used for nonregulated purposes, including any DS1s)

noting whether such circuit is being used for regulated purposes, nonregulated purposes or both. To the extent that Aureon relies on any other characteristics of such circuits in proposing its method of allocating C&WF costs, it should include such characteristic(s) in its circuit inventory.

Id. n.283

B. Aureon’s Fully Distributed Cost Study Appears To Suffer From Many Of The Same Defects As Its Prior Tariff Submissions.

In its Proposed Tariff submission, Aureon has completely revised its cost of service analysis. **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

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

None of these changes are fully or satisfactorily explained in the supporting material that Aureon has filed. In addition, serious questions exist regarding Aureon’s revised fully distributed costs study. For these additional reasons, Aureon’s Proposed Tariff should either be rejected outright, or suspended for further investigation.

Focusing first on the changes relating to Aureon’s Filed Lease Expense, Aureon has completely revised the methodology it used for allocating COE and C&WF costs to its Access Division and, in that connection, has produced hundreds of pages of workpapers that purportedly show the basis for its new allocation approach. The sheer volume of this supporting material, coupled with the drastic changes in the level of the network costs allocated to Aureon’s Access Division and its CEA service, necessitate that, at a minimum, the Commission suspend Aureon’s tariff so that this material can be fully reviewed and analyzed. Moreover, even an initial review of this material raises numerous questions that need to be addressed and answered.

To start, it does not appear that Aureon has included in its workpapers a schedule showing the relationship between the circuit inventory underlying its current network cost allocations and

the circuit inventories used in connection with its prior rate filings. Further, there appear to be a number of unexplained differences between the data included in Aureon's current circuit inventory and the data that was included in the circuit inventory underlying its February 2018 tariff filing.

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Aureon's tariff should be suspended to permit these differences to be more closely examined.

Aureon's tariff should also be suspended to permit a more thorough examination of Aureon's new allocation methodology. In its prior methodology, Aureon [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] That no longer appears to be the case in Aureon's new allocation methodology. [[BEGIN CONFIDENTIAL]]

¹⁰ Compare, e.g., Annex 3 [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

¹¹ Compare, e.g., Annex 3 [[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

¹² See Annex 3 and AT&T Exs. 6-11 (containing circuit cost data for 2006-2015).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Another problem with Aureon's new allocation methodology relates to the fact that

[[BEGIN CONFIDENTIAL]] [REDACTED]

¹³ **[[BEGIN CONFIDENTIAL]]** [REDACTED]

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

¹⁴ *See* **[[BEGIN CONFIDENTIAL]]** [REDACTED]

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

¹⁵ *See* **[[BEGIN CONFIDENTIAL]]** [REDACTED] **[[END CONFIDENTIAL]]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** At a minimum, this issue needs to be further investigated.

Significant questions also exist regarding Aureon’s circuit forecasts for 2018, 2019 and 2020. In the *Rate Order*, the Commission directed Aureon to include circuit forecasts for each of the calendar years 2018, 2019, and 2020, and to select for Aureon’s 2018 test year the lowest allocator for each cost type from the calculations relating to 2018, 2019, and 2010. *Rate Order*, ¶ 78. Aureon does not appear to have done that; instead, it **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. **[[END**

CONFIDENTIAL]]

Additionally, Aureon does not address the reasons for the **[[BEGIN CONFIDENTIAL]]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END**

CONFIDENTIAL]] See AT&T Opp. at 51-52.

Aureon also does not respond to a number of other questions raised by the Commission in the *Rate Order*, **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

This apparent discrepancy needs to be addressed and explained. Aureon also should be directed to discuss the relevance and accuracy of AT&T's claims regarding the manner in which a wholesale customer, such as the Access Division, would actually lease circuits for use in connection with Aureon's CEA service. See *Rate Order*, ¶ 89.

Further, the source of the Filed Lease Expense that Aureon uses in developing its CEA rate continues to be a mystery. At no point in its workpapers does Aureon explain how the total lease expenses for COE (\$3,139,573)¹⁷ and C&WF (\$17,861,701)¹⁸ were calculated, nor does it identify

¹⁶ **[[BEGIN CONFIDENTIAL]]** [REDACTED]

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

¹⁷ See Public Workpaper, "Network Lease – Cost Market Comp" Tab, Line 6

¹⁸ *Id.*, Line 7.

what network costs are included in those two amounts.¹⁹ **[[BEGIN CONFIDENTIAL]]** [REDACTED]

[REDACTED] **[[END CONFIDENTIAL]]** Instead, Aureon simply applies its newly minted allocators for COE (16%) and for C&WF (25%) to the purported lease expenses for those two categories and then compares the resulting Filed Lease Expense to what it asserts is the fully distributed cost of Aureon’s network facilities. *See* Public Workpaper, “Network Lease – Cost Market Comp” Tab, Lines 4-34. There are a number of problems with this approach. Putting to one side the fact that the COE and C&WF lease expenses are unsupported,²⁰ it is unclear whether the total lease expense calculation and the fully distributed cost calculation are based on the same set of network facilities. Additionally, to the extent that both calculations purport to include all network costs, there has been no showing that the use of allocators based on a subset of Aureon’s total network circuits produces meaningful results.

Turning to Aureon’s estimates of the other costs included in its revenue requirement, Aureon should be directed to address the reasons those costs have changed since its February 2018 tariff filing. More specifically, Aureon should be required to explain and justify its apparent capital expenditure in 2018 of about \$4.4 million to add another tandem switch for use in connection with

¹⁹ Those two accounts appear to have been derived from the “Central Office Expense” and “Cable and Wire Facilities Expense” line items in the “Sect PYCOS and TYCOS Financials” Tab of the Public Workpaper (see column F, lines 56 and 57), which is curious because the “Central Office Expense” line item is not a lease expense and the “Cable and Wire Facilities Expense” line item is a combination of the “Facility Lease” and certain other C&WF expenses.

²⁰ Not only are the COE and C&WF lease expenses unsupported, they appear to conflict with the \$15,057,998 lease expense reported in line 58, column H of the “Sect PYCOS and TYCOS Financials” Tab of the Public Workpaper. It should further be noted that the referenced “Updated Study” relating to the \$15,057,998 lease expense (*see id.* line 58, columns J & K) does not appear to have been produced.

**PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION**

its CEA service.²¹ As Aureon’s own cost study shows, the demand for CEA service is declining. *See* Transmittal No. 38, Description & Justification, at 4. Given that trend, how can this expenditure be justified? Further, a preliminary review of Aureon’s workpapers suggests that Aureon’s calculation of the accumulated depreciation reserves for the “COE Circuit” and Cable and Wire Facilities” accounts set forth in column H, lines 31 and 32 of the “Sect PYCOS and TYCOS Financials” Tab of the Public Workpaper are incorrectly calculated. Instead of adding the test year depreciation amounts set forth in column H, lines 73 and 74, Aureon instead added the lower unadjusted prior year amounts set forth in column G, lines 73 and 74, thereby understating the depreciation reserve and ultimately inflating the Access Division’s revenue requirement.

Finally, significant issues continue to exist with respect to Aureon’s fully distributed cost calculation. *See* Public Workpaper, “Network Lease – Cost Market Comp” Tab, Lines 40 to 127. As previously noted, it has not been demonstrated that the COE and C&WF allocation factors developed for use in allocating the COE and C&WF lease expenses are appropriate for use with respect to the COE and C&WF costs included in Aureon’s fully distributed cost study. For that to be true, Aureon would have to show that all network circuits were included in the analysis set forth its 2018 Circuit Inventory. However, as discussed above, substantial questions exist as to whether all network circuits were included in that analysis. There also appear to be errors in Aureon’s fully distributed cost calculations. For example, the total revenue requirement for COE Transmission (line 62, column) H appears to be overstated by about \$800,000 as Aureon should have directly assigned the known amount of COE Transmission maintenance expense of \$709,082 to the fully distributed costs instead of \$1,404,365 which represents an allocated portion of the combined total of COE Switching and COE Transmission maintenance expense. Additionally, the income tax

²¹ *See* Public Workpaper, “Sect PYCOS and TYCOS Financials” Tab, Column K, Line 13.

**PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION**

amounts are overstated because taxable income is not reduced by deductible interest. Likewise, the total revenue requirement for Cable and Wire Facilities appears to be inflated by over \$200,000 also because of the failure to recognize deductible interest in the income tax calculation.

In sum, significant issues continue to exist with Aureon's new cost of service rate calculations and its fully distributed cost study that call into question the justness and reasonableness of its revised CEA rate.

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,

/s/ Michael J. Hunseder
Michael J. Hunseder

Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

Christi Shewman
Gary L. Phillips
David L. Lawson
AT&T SERVICES, INC.
1120 20th St., NW
Suite 1100
Washington, DC 20036
(202) 457- 3090
(202) 463-8066 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Counsel for AT&T Services, Inc.

Dated: September 27, 2018

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2018, I caused a copy of the foregoing Petition, as well as all accompanying materials, to be served as indicated below to the following:

Via Hand Delivery:

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Via Facsimile and E-mail:

James U. Troup
Tony S. Lee
Fletcher, Heald & Hildreth
1300 North 17th Street
Suite 1100
Arlington, VA 22209
troup@fhhlaw.com
lee@fhhlaw.com

Via E-mail:

Kris Monteith
Joseph Price
Joel Rabinovitz
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Kris.Monteith@fcc.gov
Joseph.Price@fcc.gov
Joel.Rabinovitz@fcc.gov

Pamela Arluk
Division Chief
Pricing Policy Division
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Pamela.Arluk@fcc.gov

Best Copy & Printing, Inc.
445 12th Street SW
Washington, DC 20554
fcc@bcpiweb.com

Keith C. Buell
Director, Government Affairs
Sprint Communications Company L.P.
900 Seventh Street NW, Suite 700
Washington, D.C. 20001
Keith.Buell@sprint.com

Steven A. Fredley
Amy E. Richardson
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W., 8th Floor
Washington, D.C. 20036
SFredley@hwglaw.com
arichardson@hwglaw.com

**PUBLIC VERSION
REDACTED - FOR PUBLIC INSPECTION**

Curtis L. Groves
Associate General Counsel
Federal Regulatory and Legal Affairs
Verizon
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
curtis.groves@verizon.com

Respectfully submitted,

/s/ Spencer Driscoll
Spencer Driscoll