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**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. 44
September 30, 2019 Access Charge Filing

**REPLY OF IOWA NETWORK SERVICES D/B/A
AUREON NETWORK SERVICES TO THE PETITION TO
REJECT OR TO SUSPEND AND INVESTIGATE FILED BY AT&T CORP.**

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Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”), pursuant to Section 1.773(b) of the Commission’s rules,¹ hereby submits its Reply to the Petition to Reject or to Suspend and Investigate (“Petition”) filed by AT&T Corp. (“AT&T”). As further detailed below, the Petition should be denied.

I. INTRODUCTION AND SUMMARY

In the November 2017 *Referral Order*,² the Commission ruled for the first time that Aureon was a competitive local exchange carrier (“CLEC”) subject to the FCC’s non-dominant CLEC rate benchmark rules in Section 61.26.³ Aureon disagrees that a dominant carrier regulated under Section 61.38 (e.g., Aureon),⁴ can also be regulated as a non-dominant CLEC. If Aureon is a CLEC as the FCC deems it to be, Aureon is permitted to charge the CLEC

¹ 47 C.F.R. § 1.773(b).

² *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677, 9690, ¶ 25 (2017) (“*Referral Order*”).

³ 47 C.F.R. § 61.26.

⁴ *Id.* at § 61.38.

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benchmark rate without filing any cost studies because a CLEC's access rates are "conclusively presumed to be just and reasonable" if the rates are at or below the benchmark.⁵

In the *First Rate Order*, the FCC determined that the CLEC benchmark rate for Aureon is \$0.005634.⁶ Aureon's September 30, 2019, revised proposed per-minute centralized equal access ("CEA") switched transport rate of \$0.00411⁷ is *less* than the CLEC benchmark rate of \$0.005634 calculated by the Commission, and therefore, conclusively deemed just and reasonable. Moreover, Aureon's proposed rate is also below the updated CLEC benchmark rate of \$0.005543 calculated below in Section II.C. using Aureon's updated minutes-of-use ("MOUs") data. For this reason alone, the FCC should deny AT&T's Petition if the FCC decides to continue to regulate Aureon as a CLEC. No other CEA providers, which are also presumably CLECs, are required to file cost studies. Rather, they are permitted to file rates that are at or less than the applicable benchmark rate, and therefore their rates are conclusively deemed just and reasonable, and therefore, deemed lawful. There are no valid reasons for treating Aureon differently than any other CEA provider.

In the *Second Rate Order*, the Commission required Aureon to file a revised interstate switched transport rate. The FCC also ordered Aureon to file revised cost support which complied with the FCC's cost allocation and affiliate transaction rules,⁸ even though

⁵ *Access Charge Reform, et al.*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9938, ¶ 40 (2001).

⁶ *Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, 33 FCC Rcd. 7517, 7532, ¶ 35 & 7535, ¶ 43 (2018) ("*First Rate Order*").

⁷ Aureon Transmittal No. 44 (Sept. 30, 2019).

⁸ *Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, 34 FCC Rcd. 1510, 1523, ¶ 36 (2019) ("*Second Rate Order*").

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Sections 32.27 and 64.901 of the FCC’s rules apply only to incumbent local exchange carriers (“ILECs”).⁹ Specifically, the FCC directed Aureon to, among other things:

1. include complete cost support and explanatory materials;
2. provide a comprehensive and well-defined database of third-party sales for DS-3 transport service (including the customer, detailed service description including identification of the rate elements that comprise the service, service dates, number of circuits, mileage, and per-circuit rate), and to provide an explanation regarding how this information should inform the calculation of fair market value in evaluating the Filed Lease Expense; and
3. apply a reasonable methodology to convert its inventory of Ethernet circuits to physical rings so that ring-miles can be allocated to the Ethernet circuits (and, thus, to nonregulated activity).¹⁰

The *Second Rate Order* also required Aureon to include justification for the allocation of cable and wire facilities (“CWF”) between centralized equal access (“CEA”) service and other services, (i.e., between regulated and nonregulated activities) based on Part 64 allocation principles.¹¹ Additionally, Section 61.38 of the Commission’s rules requires Aureon to utilize a 12-month historic period and a 12-month test period for its cost study.¹² As Aureon explained in its September 2019 Description and Justification (“D&J”), Aureon’s revised proposed CEA rate complies with the *Second Rate Order* and Section 61.38 of the Commission’s rules.¹³

⁹ *In re Implementation of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 17539, 17550 ¶¶ 205, 107 & nn.57 & 58.

¹⁰ *Id.* at 1514-15, ¶ 13, 1517, ¶ 18, & 1523, ¶ 35.

¹¹ *Id.* at 1521-23, ¶¶ 32-35.

¹² 47 C.F.R. § 61.38.

¹³ *See generally* Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 44, Description and Justification – Cost Support Material (Sept. 30, 2019) (“Sept. 2019 D&J”).

On September 30, 2019, Aureon filed a *revised* tariff which addressed issues raised by Commission staff since Aureon’s April 29, 2019 tariff filing.¹⁴ In its September 30th filing, Aureon proposed to raise its CEA rate from \$0.00296/min. to \$0.00411/min.¹⁵ For the reasons set forth below, Aureon has complied with the FCC’s *Second Rate Order*, and its proposed rate is fully supported and is just and reasonable. Accordingly, AT&T’s arguments that Aureon’s tariff rate should be rejected or suspended and investigated are without merit, and therefore, AT&T’s Petition should be denied.

II. ARGUMENT

A. Aureon’s Proposed Revised CEA Tariff Rate Complies with the FCC’s *Second Rate Order* and Section 61.38 of the Commission’s Rules

1. Aureon Uses Valid Methodologies to Determine the Lease Rate between Aureon’s Divisions

Aureon’s usage of DS-3 leases to determine the lease rate between Aureon’s Network and Access Divisions was proper. In its Petition, however, AT&T contends that Aureon should have instead relied upon “a wholesale price based on an analysis of all of Aureon’s nonregulated sales of fiber transport’ in determining the fair market value of its Filed Lease Expense.¹⁶ Furthermore, AT&T asserts that Aureon’s fair market value analysis is flawed because Aureon’s DS-3 database is incomplete, and its circuit and traffic forecasts are inaccurate. AT&T’s arguments are without merit.

¹⁴ See generally Aureon Ex Parte Letter, WC Docket No. 18-60 (July 22, 2019) (“Aureon July 22nd Ex Parte”); Aureon Ex Parte Letter, WC Docket No. 18-60 (Sept. 13, 2019) (“Aureon Sept. 13th Ex Parte”).

¹⁵ Aureon Transmittal No. 44 (Sept. 30, 2019).

¹⁶ Petition at 18.

a. The *Second Rate Order* Required Aureon to Submit Detailed Information Regarding its DS-3 Circuit Inventory, and to Use that Information for Fair Market Valuation Purposes.

AT&T claims that Aureon must utilize the nonregulated fiber transport wholesale price in determining the fair market value of its Filed Lease Expense, and by not doing so, Aureon's analysis is fundamental flawed because it "focuses exclusively" on its Approaches A and B valuations of its DS-3 sales.¹⁷ AT&T makes this assertion despite the fact that the Commission explicitly stated in the *Second Rate Order* that the sales and pricing of unregulated DS-3 transport services would be useful for determining a "baseline" for the fair market rate for regulated CEA transport service.¹⁸

In the *Second Rate Order*, the FCC determined that Aureon's Filed Lease Expense was an affiliate transaction in which a nonregulated division (i.e., Aureon's Network Division) is providing a service leasing facilities to a regulated division (i.e., Aureon's Access Division) – although the two divisions are part of a single entity that is a dominant carrier.¹⁹ Section 32.27 of the Commission's rules requires ILECs to evaluate a lease to an ILEC's affiliate against a ceiling determined by the lower of fair market value of the lease or the fully-distributed costs of the facilities.²⁰ Although Aureon disagrees that Rule 32.27, which applies to only ILECs, can apply to a non-ILEC like Aureon, Aureon's September 2019 D&J and supporting data clearly demonstrate that Aureon's Filed Lease Expense is equal to the lesser of: (1) the estimated

¹⁷ *Id.* at 18-19 & 20-23.

¹⁸ *Second Rate Order*, 34 FCC Rcd. at 1515-16, ¶ 16.

¹⁹ *Id.* at 1513, ¶ 9.

²⁰ 47 C.F.R. § 32.27.

baseline for the lease’s market value (based upon the prices for Aureon’s nonregulated DS-3 transport service); and (2) the fully-distributed costs of the facilities.²¹

The Commission further stated in the *Second Rate Order* that the fair market value of Aureon’s Filed Lease Expense might need to be adjusted upwards to account for the superior features of CEA transport service.²² Consistent with the FCC’s order, Aureon compiled a list of customers that currently purchase DS-3 circuits from Aureon, along with the rates paid and the mileage of each DS-3 circuit.²³ Aureon had never developed such a database until ordered to do so by the FCC.²⁴ In effect, by asserting that Aureon must utilize wholesale prices to determine the fair market value of its Filed Lease Expense, AT&T is moving the goalposts by demanding that Aureon include a new parameter that was never required by the *Second Rate Order*.

AT&T also asserts that Aureon should have used OC-level circuits in its fair market value analysis, given that its CEA network runs on a high-capacity OC-48 basis.²⁵ This is yet again another attempt by AT&T to draw comparisons to a service that is not comparable to CEA service. The circuit inventory and associated allocation of costs performed by Aureon used DS-3 circuits as a primary allocation metric in allocating costs between CEA and non-CEA service. The first level of allocation was based on actual fiber rings, after which DS-3 circuit counts were used to allocate joint and common rings. DS-1 circuits were used to allocate joint and common DS-3 circuits. *See* Tab “CCT Inventory and Allocations”. Furthermore, in the comparison of cost vs. market price, the costs assigned to CEA service (which is determined using a

²¹ Sept. 2019 D&J at 3.

²² *Second Rate Order*, 34 FCC Rcd. at 1515-16, ¶ 16.

²³ Sept. 2019 D&J at 4.

²⁴ *Id.*

²⁵ Petition at 20.

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combination of ring/DS-3/DS-1 allocations) is divided by the number of CEA DS-3 circuits to determine the cost per DS-3 circuit. *See* Tab Network Lease-Cost Market Comparison, Row 13. This cost is then compared with the DS-3 market-derived price to determine the allowable amounts included in the revenue requirement as required by Section 32.27. If the market prices for (hypothetical) OCN level circuits were substituted or utilized in this comparison, a comparable cost comparison would have to be developed as well. As CEA service is not delivered in OCN increments, it is not feasible to perform that comparison. In order to properly make an “apples-to-apples” comparison, DS-3 circuit counts must be utilized.

Optical carrier circuits have fundamentally different characteristics than the DS-3 circuits used to provide CEA transport service, and they are also different than the unregulated DS-3 circuits that are leased to third parties. As discussed in the September D&J and below in Section II.A.3, Aureon was able to make appropriate downward and upward adjustments in the price of the unchannelized leased DS-3 circuits to make them comparable to channelized DS-3 circuits used for CEA service. However, those were relatively minor adjustments as they merely involved removing extra components from the leased DS-3 circuits, and then adding in the necessary channelization costs, i.e., MUXes or ports, that would be included for channelized DS-3 circuits used for CEA transport service. In contrast, making leased OC-N circuits comparable to the DS-3 circuits used for CEA transport service is a much more difficult undertaking, and would require a large number of adjustments and assumptions to be able to even attempt such a task. This would introduce a large number of variances and assumptions that would necessarily invalidate any attempt to draw comparisons between the lease price for an OC-N circuit, and the lease price for a DS-3 circuit, because each adjustment adds more and more uncertainty, and it is not even clear if all of the required adjustments could even be

properly captured. Attempting to determine the fair market value of a DS-3 circuit using the lease for an OC-N circuit would be akin to using a large, multi-million dollar estate mansion as a comparable to determine the fair market value of a modest three bedroom house.

Aureon demonstrated in its September 2019 cost support material that its baseline for determining the fair market value of the CEA transport service based on unregulated DS-3 circuit rates was valid. The baseline was determined by applying: (1) the average mileage of those circuits (95.51 miles); (2) the total annual revenue derived from those circuits (\$172,041.62); (3) the average amount billed per mile (\$15.21); and (4) the average revenue per circuit (\$1,421.93).²⁶ Aureon then calculated the baseline for the estimated fair market value for CEA transport service using two different methodologies: (1) “Approach A” –the average monthly rate for unregulated DS-3 circuits (\$1,421.93); and (2) “Approach B” –the average per-mile cost for unregulated DS-3 circuits (\$15.21).²⁷ Using those approaches, the methodology for Approach A results in a lower lease cost, and that is the amount used as the basis for Aureon’s fair market valuation. It is important to note that Aureon updated its average weighted mileage for the CEA network to calculate the composite benchmark rate for Aureon. *See* Section II.C. below. Aureon has updated its Approach B calculations using the updated average weighted mileage of 100.498. The Approach B result is still higher than the Approach A amount, and therefore, the CEA rate is not affected by the small change in the updated average weighted mileage.

Aureon’s supplemental analysis of the leases contained in its DS-3 database confirms that the Approach A and Approach B methodologies are conservative because they result in a *lower*

²⁶ Sept. 2019 D&J at 8.

²⁷ *Id.* at 9.

baseline fair market value for the intracompany lease than if the supplemental analysis were used.²⁸ Accordingly, this confirms that the methodologies used by Aureon are reasonable because a higher intracompany lease charge would have resulted if Aureon relied upon its averages in the supplemental analysis.²⁹

b. Aureon’s DS-3 Circuit Database is Complete

AT&T erroneously contends that Aureon’s DS-3 database is incomplete. Again, as in its past petitions, AT&T asserts that **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]** DS-3 circuits were omitted from Aureon’s database – despite their inclusion in Aureon’s overall circuit inventory.³⁰ As Aureon has previously explained, certain DS-3 circuits have been omitted from the database since they are not *physical* circuits.³¹ Rather, the “missing” DS-3 circuits demonstrate a distinction between “billed” and “unbilled” circuits.³²

For example, **[[BEGIN CONFIDENTIAL]]**

at 8.

²⁹ *Id.*

³⁰ Petition at 19. *See also* Petition of AT&T Services, Inc. to Reject or to Suspend and Investigate Iowa Network Services, Inc. Tariff Filing at 21, WC Docket No. 18-60 (May 6, 2019) (“AT&T May 2019 Petition”).

³¹ Aureon May 2019 Reply at 15.

³² *Id.*

³³ Petition at 26.

[[END CONFIDENTIAL]]

Aureon's DS-3 database is solely based on *physical, billed* circuits in order to provide accurate data for its fair market value analysis. By compiling a database with only such DS-3 circuits, Aureon has provided both a complete and accurate database on which to base its fair market valuation analysis.

c. Aureon's Circuit Forecasts are Appropriate

AT&T claims that Aureon's circuit forecasts are problematic.³⁴ AT&T is again rehashing arguments it previously made and to which Aureon has responded.³⁵ As Aureon stated in its reply to AT&T's Petition to Reject or to Suspend and Investigate Aureon's April 2019 revised tariff filing:

The vast majority if not all of the increases in circuit counts for CEA service, are a result of changes and improvements in circuit counting processes and procedures, or, as was the case in prior years, were the product of the need to reconfigure the network either temporarily (i.e., POI moves) or other network management needs, and not, as asserted by AT&T, an effort to maximize allocations or otherwise increase revenue requirements.³⁶

In other words, circuit forecasts are not necessarily based on traffic volumes as AT&T contends.³⁷ Rather, circuit forecasts necessarily depend upon the number of circuits that IXC's

³⁴ Petition at 28.

³⁵ See, e.g., AT&T May 2019 Petition at 29-30; Aureon May 2019 Reply at 29.

³⁶ Aureon May 2019 Reply at 29.

³⁷ See Petition at 28-29.

decide to order and maintain for CEA service. Aureon’s circuit forecasts are “very conservative in nature” as a result of the “regulatory [], technological [], and financial uncertanit[ies]” which Aureon currently faces.³⁸ Moreover, the Commission did not take issue with Aureon’s circuit forecasts in the *Second Rate Order*, and Aureon has determined that they are appropriate.

d. Aureon’s Traffic Forecasts are Accurate

AT&T erroneously claims that Aureon’s traffic forecasts are inaccurate because Aureon failed to investigate whether the recent decline in traffic volume was [[BEGIN
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AT&T completely disregards the Commission’s conclusion in the *First Rate Order* that Aureon’s traffic forecasts were reasonably accurate, and Aureon’s current forecasts are consistent with the methodology previously used. As noted in the September 2019 D&J, it is extremely difficult for Aureon to forecast future traffic in light of the precipitous drop in traffic

³⁸ Aureon May 2019 Reply at 29.

³⁹ Petition at 42-43.

⁴⁰ *First Rate Order*, 33 FCC Rcd. at 7553, ¶ 92.

⁴¹ *Id.* at 7559-61, ¶ 105.

⁴² *Id.*

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volumes since the beginning of 2018.⁴³ Aureon used a statistical model, i.e., a linearly weighted average model (“LWA”), to validate the methodology used for Aureon’s traffic projections.

AT&T falsely contends that trends over time do not have any “predictive capability” with respect to future traffic volume due to regulatory changes.⁴⁴ In doing so, AT&T completely fails to address Aureon’s LWA percent change in traffic volume in validating its traffic forecasts.

An LWA calculation is a method of determining the average value of an item being evaluated over a given period of time by giving a heavier weight to more recent data.⁴⁵ As demonstrated by Aureon in the Sept. 2019 D&J, the LWA calculation is a better methodology for capturing recent traffic changes than simple averaging – such as the unusually steep traffic declines experienced by Aureon since January 2018.⁴⁶ Therefore, because Aureon’s traffic forecasts are fully validated by the LWA methodology, it is reasonable to conclude that the decrease in traffic volume **[[BEGIN CONFIDENTIAL]]**

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Finally, AT&T contends that Aureon must “evaluate or take into account” the potential impact of the FCC’s September 2019 *Access Arbitrage Order* on its traffic forecast, while conceding in the very next sentence that “it is not at all clear at this time” what the impact of the decision will be upon Aureon.⁴⁷ It is impossible for Aureon take into account the future impact of the *Access Arbitrage Order* when making its traffic projections, and AT&T itself concedes

⁴³ Sept. 2019 D&J at 14.

⁴⁴ Petition at 44, n.184.

⁴⁵ Sept. 2019 D&J at 14.

⁴⁶ *Id.* at 15 & 17.

⁴⁷ Petition at 43-44. *See also Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, FCC 19-94 (rel. Sept. 27, 2019).

that no one knows what the impact of that order will be. In effect, AT&T is crafting insurmountable and unnecessary procedural hurdles for Aureon to overcome just to deflect from the reality that the decrease in traffic volume was a direct result of [[BEGIN

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e. Aureon’s Methodology for COE and CWF Cost Allocation is Valid

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⁴⁸ Petition at 10.

⁴⁹ Sept. 2019 D&J at 9.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See* Aureon Sept. 13th Ex Parte at 3-6.

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⁵³ Petition at 10.

⁵⁴ *Id.* at 6-7.

⁵⁵ Petition at 10.

⁵⁶ *See id.* at n.39 (citing first Aureon Ex Parte Letter at 9, WC Docket No. 18-60 (Aug. 20, 2019); and then citing *id.* at 12).

⁵⁷ Petition at 31.

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Section 2.1.5 of Aureon’s tariff states, in relevant part, that CEA service “includes Iowa Network’s communication facilities up to the point of interconnection as defined in 2.6 following, which denotes the demarcation point or network interface . . . and will be provided by Iowa Network to such point of interconnection.”⁵⁸ Section 2.6 defines the “Point of Interconnection”, or POI, as the demarcation point or network interface, on an Iowa Network premises at which Iowa Network’s responsibility for the provision of Centralized Equal Access Service ends.”⁵⁹ Section 6.1.3 of Aureon’s tariff contains a network diagram identifying the demarcation points on the CEA network, and shows the call path covered by Aureon’s tariff. Specifically, the diagram shows that service between the POI where IXC’s like AT&T connect to Aureon’s network, and the locations where the subtending LECs connect, is “provided under INS Access Division Tariffs” even if the LECs connect with the CEA network at a non-POI location.⁶⁰ Indeed, consistent with Aureon’s tariff, the FCC ruled in the *Alpine* decision that where the subtending LECs’ responsibility ends and where CEA service begins “is the point at which the Iowa LECs connect with INS.”⁶¹

Moreover, AT&T falsely contends that Aureon’s usage of *ring* miles as opposed to *route* (*sheath*) miles causes Aureon to overstate the allocation of CWF costs to its CEA service.⁶² Again, in its Petition, AT&T is rehashing an argument that it has previously made to which Aureon has fully responded. As Aureon previously stated in its May 2019 Reply:

Aureon’s allocation methodology fully captures the relative use of the [CWF] in question, and there is no need or requirement to

⁵⁸ Iowa Network Access Division Tariff F.C.C. No. 1, Section 2.1.5, Original Page 22.

⁵⁹ Iowa Network Access Division Tariff F.C.C. No. 1, Section 2.1.5, 1st Revised Page 62.

⁶⁰ Iowa Network Access Division Tariff F.C.C. No. 1, Section 6.1.3, 1st Revised Page 94.

⁶¹ *AT&T v. Alpine Communications, LLC*, 27 FCC Rcd. 11511 ¶ 26 (2012).

⁶² Petition at 29.

contemplate alternative methods of allocation, especially those that would impose additional cost burdens on Aureon. Even if Aureon were to use sheath miles rather than ring miles, Aureon does not have the information to even determine the sheath miles associated with each ring. That determination would require a detailed study of its [CWF], and Aureon has never before undertaken this type of study . . . and the FCC declined to require Aureon do so in the *Second Rate Order*.⁶³

Although AT&T claims that Aureon *should* be capable of using the *route/sheath* mileage methodology,⁶⁴ that approach is not only impractical and burdensome, the Commission has never required Aureon to use that methodology.

Additionally, as Aureon has explained, its usage of the ring miles methodology for CWF cost allocation has *increased* the allocation of costs to nonregulated, non-CEA services from 33% to 50%.⁶⁵ This, in combination with Aureon's updates to its overall circuit inventory, has *increased* the overall allocation of CWF to non-CEA from 75% to 87% (or, in other words, CWF's allocation to CEA service has *decreased* from 25% to 13%).⁶⁶ It is telling that AT&T does not contend that Aureon has over-allocated its COE and CWF costs to its CEA service due to Aureon's use of its *ring* mileage methodology rather than AT&T's preferred methodology of using a *route/sheath* mileage methodology.

2. Inclusion of Aureon's Switch Investment is Appropriate

Aureon's revised rate includes a portion of the \$1.38 million in new central office switching investment permitted to be included in the test period, which is necessary for Aureon to continue to be able to provide CEA service to rural areas in Iowa. Aureon's switches were

⁶³ Aureon May 2019 Reply at 25.

⁶⁴ Petition at 30.

⁶⁵ Sept. 2019 D&J at 22.

⁶⁶ *Id.*

originally manufactured in 1988 and 1989, and they are difficult and expensive to manage and maintain due to their vintage. Aureon’s switch was “manufacturer discontinued” in 2016, resulting in limited technical support and no new hardware being available. Given that Aureon’s central office equipment is nearly three decades old, the technology is outdated, making it prudent and necessary for Aureon to replace its switches before catastrophic failure results in widespread outages to more than 300,00 rural Iowa residents. AT&T does not dispute this.

a. Aureon’s Switch Investment Costs Meet the FCC’s “Used and Useful” Standard, and Therefore, Those Amounts are Appropriately Included in Aureon’s Revenue Requirement.

To determine whether an investment is “used and useful”, the FCC considers (1) the need to compensate the utility’s owners for the use of their property in providing public service; (2) the equitable principle that ratepayers, in this case, the interexchange carriers that use CEA service, should not be forced to pay a return except on investments that can be shown to benefit them; and whether a carrier’s investment was prudent, and whether the benefit from the investment will be realized in a reasonable period of time.⁶⁷ In this case, all three “used and useful” factors are met, warranting inclusion of a portion of the \$ 1.38 million investment in Aureon’s revenue requirement.

First, it is appropriate to compensate Aureon for the new switch investment because the equipment will be used to provide CEA service within a reasonable future period. As discussed

⁶⁷ *American Telephone and Telegraph Company, the Associated Bell System Companies, Charges for Interstate Telephone Service, AT&T Transmittal Nos. 10989, 11027, 11657, Phase II Final Decision and Order*, 64 FCC 1, 38, ¶ 111-113. The benefit to the long distance carriers that use CEA service does not have to be immediate, and can include, for example, a portion of equipment that is serving as a reserve for future use. *See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers*, FCC 86-52, 1986 WL 291617, ¶ 41 (1985), *remanded on other grounds, MCI Telecom. Corp. v. FCC*, 842 F. 2d 1296 (D.C. Cir. 1988).

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above, Aureon's current switch equipment is old and outdated, and the installation of new equipment is absolutely critical to Aureon's ongoing operations to provide CEA service to IXCs so that rural customers in Iowa will continue to receive long distance service from a selection of competitive providers. The process of selecting a new switch location began in April 2015, and was the result of a risk assessment of Aureon's current switch locations. In August 2017, Aureon finalized development of site requirements for the new switch location. In November 2017, Aureon identified a building for its new switch, and Aureon made an initial offer in January 2018. The offer was accepted in February 2018, and the parties closed on the purchase of the site in August 2018. The process to build out the switch site has begun, and is expected to be completed by the end of Q4 2019.

The expected purchase date of the switching equipment has not been set, but it is projected to be purchased in Q4 of 2019. Aureon received an updated quote on July 10, 2019 from its vendor for a replacement switch, which was previously provided to FCC staff in Aureon's July 22, 2019 ex parte filing. The current expected installation date of the switching equipment is the end of Q1 2020 or the beginning of Q2 2020. The switch is expected to be ready to provide service in Q2 2020. A pro-rated amount of depreciation expense and switching investment is included in this revenue requirement based on this estimate of ready for service installation. The pro-rated amount of depreciation and switch investment cost is 25%, which represents one quarter (i.e., three months) of service in the TYCOS period. Additional details and documentation regarding the switch replacement project were provided to the Commission

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on December 12, 2018, in the FCC’s second tariff investigation proceeding,⁶⁸ and in Aureon’s July 22, 2019 ex parte letter.⁶⁹

Second, equitable principals dictate that IXC’s should pay for the use of the new switch because they will all benefit from CEA service provided through the new equipment. CEA service was created to solve the problem of how to achieve competition with AT&T in small rural communities. Aureon’s CEA network makes it economical for AT&T’s smaller competitors to provide service to rural Iowa by aggregating traffic for 200 rural LECs at Aureon’s tandem switch in Des Moines, and centralizing the provisioning of expensive features and advanced functionalities. AT&T’s smaller competitors “would find it an expensive task to provide their own facilities” to each of the rural LEC end offices subtending Aureon’s tandems.⁷⁰

Third, Aureon’s equipment investment is prudent, and the benefit from the investment will be realized in a reasonable period of time. There is currently no replacement equipment available for Aureon’s 1980’s vintage switch, and the failure of a critical out-of-production component could result in the disconnection of more than 300,000 Iowa residents from the public switched telephone network outside of their local rural communities. Thus it is prudent for Aureon to replace its obsolete switching equipment, and Aureon has engaged in a switch replacement project, which will culminate in the installation and operation of the replacement switch in new facilities.

⁶⁸ See Aureon Rebuttal, Exhibit A, Supp. Decl. of Pat Vaughan, WC Docket No. 18-60 (filed Dec. 12, 2018).

⁶⁹ Letter from James Troup, Counsel for Aureon, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-60 (filed July 22, 2019).

⁷⁰ *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission’s rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1468 ¶ 3 (1988).

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However, the old switch will need to be kept operational simultaneously for a limited period of time to migrate all subtending LECs to the new switch. During the migration of the 200 subtending LECs to the new switch, which is expected to take two or more years, both the old and the new switching environments will be used. The reason both the new and legacy switches need to be kept operational during the migration is that the subtending LECs cannot all be flash-cut to the new switch at once. The old switch connections for each subtending LEC need to be moved from the old to the new switch, the new connections need to be validated, and all switching functions must be confirmed to be operational. Only then can the migrating LEC be permanently disconnected from the legacy switching environment. Until all 200 subtending LECs have been moved to the new switch, the legacy switch must continue in operation to avoid loss of service to the IXC's end user customers.

The FCC has previously found that it is appropriate for a carrier to include the cost of spare capacity in the rate base if it provides customers with greater assurance of continuity of service in the event of a malfunction of on-line equipment.⁷¹ Because the new switch will be operational within a reasonable time period, and it will provide spare, redundant capacity during the legacy switch transition period, it is appropriate for Aureon to include the cost of the new central office equipment facilities in its rate base.

Thus, it is clear that Aureon meets all three of the “used and useful” components warranting inclusion of the switch investment in its cost study.

⁷¹ See *Communications Satellite Corporation, Investigation Into Charges, Practices, Classifications, Rates, and Regulations*, Decision, 57 FCC 2d 1101 ¶ 93 (1975) (“*Comsat*”).

b. Aureon Pro-Rated the Amount of its Switch Investment Cost in its Rate Base, and the Resulting Impact of the Switch Cost on the Proposed CEA Rate is Negligible.

AT&T avers that Aureon continues to include a “sizeable proposed switching investment in its rate base.”⁷² That statement is highly misleading as Aureon pro-rated the amount of its switch investment in its rate base in accordance with the FCC’s *ARMIS Order*.⁷³ The new switch investment does not have a significant impact on Aureon’s CEA rate development because only three months of depreciation were included in the cost study. If the switch investment were removed from the cost study, the resulting CEA rate would be \$0.00407 per minute, which is a difference of \$0.00004 per minute, or less than 1%.

3. Aureon Justified its Upward Adjustments to the Unregulated DS-3 Lease Rates

AT&T claims that Aureon has not presented any documentary evidence justifying any upward variance in the unregulated DS-3 lease rates.⁷⁴ Aureon made no upward adjustments in the unregulated DS-3 lease rates to account for the more robust features of CEA. However, Aureon did make necessary downward and upward adjustments to make the unregulated DS-3 rates comparable to the channelized DS-3s used to provide CEA transport service. In the September 2019 D&J, Aureon explained that CEA service is provided using channelized DS-3 circuits, whereas unregulated DS-3 circuit leases are provided using unchannelized circuits.⁷⁵ In order to make the unregulated unchannelized DS-3s comparable to regulated channelized CEA

⁷² Petition at 3.

⁷³ *In re Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, Order, 5 FCC Rcd 4718 (1990) (“*ARMIS Order*”).

⁷⁴ Petition at 21-22.

⁷⁵ Sept. 2019 D&J at 5.

circuits, MUXes or ports must be added to the unregulated DS-3 circuits. Aureon first made a downward adjustment to remove all rate elements from the unregulated DS-3 lease rates so that they would be equivalent to “bare transport” leases. Next, Aureon made an appropriate upward adjustment to add in MUX/port costs to make the unregulated DS-3 circuit leases equivalent to channelized DS-3 circuits used for CEA service as channelized DS-3 circuits have a MUX/port at each end of the circuits.⁷⁶ Accordingly, Aureon provided sufficient documentary evidence that the overall upward adjustment in the unregulated DS-3 rates was warranted.⁷⁷

B. AT&T’s Request that the FCC Reject Aureon’s Special Permission Filing and to Prescribe a Rate for a Historic Period Should be Denied.

AT&T argues that Aureon’s tariff filing should be rejected, or suspended and investigated because Aureon has allegedly filed a “new tariff” rather than a “revised tariff” as required by the *Second Rate Order*. As directed by the FCC, Aureon revised its tariff rate “[c]onsistent with our rules” and with “complete cost support and explanatory material.”⁷⁸ Aureon did not file a new rate or a new service that had not previously been offered in Aureon’s tariffs. Aureon is a dominant carrier subject to Section 61.38 of the FCC rules.⁷⁹ For dominant carrier tariff changes, that section states, in relevant part:

(b) Explanation and data supporting either changes or new tariff offerings.

* * *

(1) For a tariff change the issuing carrier must submit the following, including complete explanations for the basis for the estimates.

(i) A cost of service study for all elements for the most recent 12 month period;

⁷⁶ *Id.* at 5-6.

⁷⁷ *Id.*

⁷⁸ *Second Rate Order* ¶ 13.

⁷⁹ 47 C.F.R. § 61.38.

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- (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. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in (b)(1)(ii) above.⁸⁰

As ordered by the FCC,⁸¹ Aureon filed revised rates with a proposed effective date of October 15, 2019 utilizing “a cost of service study for all elements for the most recent 12 month period”.

Moreover, Aureon filed a procedural request for special permission to file a revised rate, and to withdraw a rate that had not yet been in effect for 30 days. This was necessary because the proposed rate Aureon submitted on April 29, 2019, which Aureon later deferred, never went into effect. The FCC granted Aureon's request for special permission, and as a result, there is nothing for the FCC to reject as Aureon's request has already been granted.

AT&T also argues that the rate for CEA service provided by Aureon can be prescribed at no higher than \$0.00164/min, and that the FCC should prescribe that rate for the period March 1, 2018 to the present. The FCC's *Referral Order*⁸² and *Rate Order Decisions*⁸³ are on appeal before the U.S. Court of Appeals. Any determination by the FCC of Aureon's rate for that period will be affected by the Court's decisions on the pending appeals. For example, it is likely, based on D.C. Circuit precedent, that the Court will rule that Aureon's 2013 deemed lawful rate

⁸⁰ 47 C.F.R. § 61.38(b)(1)(i)-(iii).

⁸¹ *Second Rate Order* ¶ 39 (“Aureon SHALL FILE REVISED rate(s) in its Tariff F.C.C. No. 1, as described in this Order.” (capitalization original)).

⁸² *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677 (2017).

⁸³ *Iowa Network Access Division Tariff* F.C.C. No.1, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 36, FCC 18-105, 33 FCC Rcd. 7517 (2018) (“*First Tariff Order*”); *Iowa Network Access Division Tariff* F.C.C. No. 1, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 38, FCC 19-14, 2019 WL 1010709 (rel. Feb. 28 2019) (“*Second Tariff Order*”) (collectively, “*Rate Order Decisions*”).

should not have been voided and that Aureon should not have been ordered to revise that lawful rate.

Regardless, contrary to AT&T's contention, the FCC cannot prescribe a historic rate for past periods. The FCC has terminated its investigation of Aureon's 2018 tariff rates.⁸⁴ The authority to prescribe carrier rates is set forth in Section 205 of the Communications Act, which states, in relevant part:

Whenever, after full opportunity for hearing. . . the Commission shall be of opinion that any charge . . . is or will be in violation of any provisions of [Chapter 5, Title 47], the Commission is authorized and empowered to determine and prescribe . . . the just and reasonable charge . . . *to be thereafter observed*. . .⁸⁵

"The relief authorized by § 205 is prospective only. Carriers subject to the Commission's authority under § 205 are merely required to charge appropriate rates in the future."⁸⁶ Section 205 does not permit the FCC to alter effective tariff rates retroactively.⁸⁷

Even if, *arguendo*, the FCC could prescribe a rate for a historic period, which it cannot, the data submitted by Aureon in support of its revised tariff rate to be effective October 15, 2019, is only applicable for the relevant test period. The FCC cannot prescribe a rate based on that information for the post-February 2018 time period.

⁸⁴ *First Tariff Order*, 33 FCC Rcd. 7517 ¶ 127; *Second Tariff Order*, WC Docket No. 18-60, FCC 19-14, 2019 WL 1010709 ¶ 40.

⁸⁵ 47 U.S.C. § 205(a) (emphasis added).

⁸⁶ *Ohio Bell Tel. Co. V. FCC*, 949 F.2d 864, 867 (6th Cir. 1991).

⁸⁷ See, *id.*

C. **Aureon’s Revised CEA Rate does not Exceed the CLEC Benchmark Rate.**

The proposed CEA rate of \$0.00411/minute does not exceed the CLEC benchmark rate of \$0.005634 set forth in the *First Tariff Order*,⁸⁸ nor does it exceed a recalculated benchmark rate using the FCC’s methodology in the *First Tariff Order*, which is \$0.005543. The calculation is set out below:

The mileage between Aureon’s POIs is set forth in the table below:

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

The MOUs for the first three quarters of 2019, and the last quarter of 2018, are as follows:

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

The table below shows the average weighted mileage for the Aureon CEA network by weighing the miles based on the MOUs for each POI-to-POI connection.

⁸⁸ *First Tariff Order* ¶ 43.

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]]

The calculations above show that the weighted average mileage for Aureon’s CEA network is 100.498 miles. Using the FCC’s “Benchmark Composite Rate” methodology in the *First Rate Order*,⁸⁹ the benchmark rate calculation for Aureon is as follows:

Aureon Benchmark Composite Rate

Tandem-Switched Transport			
fixed per MOU	\$0.000240		\$0.000240
per mile	\$0.000030	x 100.498 miles	\$0.003015
Tandem Switching	\$0.002252		\$0.002252
Common Transport Multiplexing	\$0.000036		\$0.000036
Total per MOU			\$0.005543

Aureon’s proposed rate of \$0.00411 is less than the benchmark composite rate of \$0.005543.

III. CONCLUSION

For the foregoing reasons, the FCC should deny AT&T’s Petition, and allow Aureon’s tariff to become effective without suspension or investigation.

⁸⁹ *First Rate Order* ¶ 43

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Respectfully submitted,

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Date: October 10, 2019

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CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, hereby certify that on this 10th day of October, 2019, copies of the foregoing Reply of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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