

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

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| In the Matter of |) | WC Docket No. 18-60 |
| |) | |
| Iowa Network Access Division |) | Transmittal No. 36 |
| Tariff F.C.C. No. 1 |) | |
| |) | |

ORDER

Adopted: February 28, 2018**Released: February 28, 2018**

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On February 22, 2018, Iowa Network Access Division d/b/a Aureon (“Aureon”) filed Transmittal No. 36, proposing tariff revisions to Aureon’s interstate access Tariff F.C.C. No. 1, which it asserts are “in compliance with the FCC’s November 8, 2017 Memorandum Opinion and Order in *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, FCC 17-148, Proceeding No. 17-56, Bureau ID Number EB-17-MD-001.”¹ The proposed revisions are scheduled to become effective on March 1, 2018.² Because we conclude that substantial questions of lawfulness exist regarding how Aureon revised the switched transport rate contained in its proposed tariff revisions, we suspend the revisions for one day and set for investigation the question of whether Aureon complied with the *Aureon Enforcement Order* in revising its switched transport rate.

II. BACKGROUND

2. In the *Aureon Enforcement Order*, the Commission concluded that Aureon 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.³ The Commission found that as of December 29, 2011, Aureon’s interstate switched access rates should not have exceeded \$0.00819 per minute, and concluded that Aureon’s 2013 tariff filing raising the interstate rates above that level (as well as its subsequent tariff filings containing rates above \$0.00819 per minute) consequently was unlawful when filed and *void ab initio*.⁴ The Commission also held that Aureon must continue to comply with section 61.38 to support its rates at or below the cap.⁵ Accordingly, the Commission ordered Aureon to file a revised interstate tariff with rates that comply with the *Aureon*

¹ Iowa Network Access Division Tariff F.C.C. No. 1. See Letter from James U. Troup, Counsel for Iowa Network Access, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 36 (filed February 22, 2018) (Transmittal Letter). See also *AT&T Corp. v. Iowa Network Services, Inc., d/b/a Aureon Network Services*, Memorandum Opinion and Order, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001, FCC 17-148, 32 FCC Rcd 9677 (2017) (*Aureon Enforcement Order*).

² See Transmittal Letter at 2.

³ *Aureon Enforcement Order*, 32 FCC Rcd at 9688, para. 23. See 47 U.S.C. §§ 201(b), 203; 47 CFR §§ 51.905(b), 51.911(a)-(c).

⁴ *Aureon Enforcement Order*, 32 FCC Rcd at 9692, para. 29.

⁵ *Id.* at 9690, para. 26.

Enforcement Order, as well as all necessary cost studies and support as required by section 61.38 of the Commission's rules.⁶ The Commission provided sixty (60) days for Aureon to file the tariff revisions, which required the revisions to be filed by January 8, 2018.⁷ The deadline was subsequently extended to February 22, 2018.⁸

3. Aureon filed the above-referenced proposed transmittal on February 22, 2018, to become effective on March 1, 2018.⁹ To address the *Aureon Enforcement Order*'s direction on interstate switched access rates, Aureon reduced its switched transport rate to \$.00576 per minute of use.¹⁰ Aureon asserts that this rate "represents a reduction of \$.0032 or -36%."¹¹ On February 26, 2018, AT&T and Sprint filed petitions asking the Commission to reject, or alternatively suspend and investigate, the proposed Aureon transmittal.¹² Aureon filed a consolidated reply to the petitions on February 28, 2018, requesting that they be denied.¹³

III. DISCUSSION

4. We find that there are substantial questions regarding the lawfulness of Aureon's tariff revisions that require further investigation. The petitions cite a number of concerns about the methodology Aureon utilized in calculating its revised rate and raise questions about whether the revisions comply with the *Aureon Enforcement Order*. For example, AT&T challenges the adequacy of the cost support submitted by Aureon under section 61.38, claiming that Aureon manipulated its rate by failing to correctly account for "Uncollectible Revenues," using an improper methodology for allocating various costs, and applying inaccurate traffic projections.¹⁴ Both AT&T and Sprint also assert that Aureon's rate should be benchmarked against the CenturyLink rate.¹⁵ In response, Aureon argues that the rate it employed was reasonable because it complies with the Commission's rules and is adequately supported by both traffic and cost studies.¹⁶ Aureon also asserts that the appropriate benchmark rate is the NECA rate rather than the CenturyLink rate.¹⁷

5. In light of the arguments and evidence presented in the petitions, we conclude that substantial questions of lawfulness exist regarding Aureon's switched transport rate tariff revisions that require further investigation, and we suspend those tariff revisions for one day, impose an accounting

⁶ *Id.* at 9694, para. 35.

⁷ *Id.*

⁸ Letter from Lisa B. Griffin, Deputy Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, to James F. Bendernagel, Jr., Counsel for AT&T, and James U. Troup, Counsel for Aureon, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001 (Jan. 10, 2018).

⁹ See Transmittal Letter at 1.

¹⁰ See Aureon Tariff F.C.C. No. 1 at Section 6.8.1(A).

¹¹ See Transmittal, Introduction, Overview and Rate Development at 1.

¹² See Petition of AT&T to Reject or to Suspend and Investigate Iowa Network Services Inc. Tariff Filing, Transmittal No. 36 (filed Feb. 26, 2018) (AT&T Petition); Petition of Sprint to Reject or to Suspend and Investigate Iowa Network Access Division d/b/a Aureon Tariff, Transmittal No. 36 (filed Feb. 26, 2018) (Sprint Petition).

¹³ See Consolidated Reply of Iowa Network Services, Inc. d/b/a Aureon Network Services to the Petitions to Reject or to Suspend and Investigate Filed by AT&T Corp. and Sprint (filed Feb. 28, 2018) (Aureon Reply).

¹⁴ AT&T Petition at 11-14.

¹⁵ See AT&T Petition at 3,7-10; Sprint Petition at 2.

¹⁶ See Aureon Reply at 10-17.

¹⁷ *Id.* at 3-9.

order, and initiate an investigation into the lawfulness of the switched transport rate.¹⁸ We will identify the specific issues that are the subject of the investigation in an upcoming designation order and may include, but not be limited to, the issues identified in this Order. We may also, by order, identify discrete issues that do not warrant further investigation.

IV. *EX PARTE* REQUIREMENTS

6. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁹ Persons making *ex parte* presentations must file in WC Docket No. 18-60 a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

V. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291, the effective date of the switched transport rate of Iowa Network Access Division d/b/a Aureon Tariff F.C.C. No. 1 contained in Transmittal No. 36 IS advanced for one day to February 28, 2018, and then SUSPENDED for one day until March 1, 2018, and an investigation IS INSTITUTED.

8. IT IS FURTHER ORDERED that Iowa Network Access Division d/b/a Aureon SHALL FILE a supplement within five business days from the release date of this order reflecting the suspension. Iowa Network Access Division d/b/a Aureon should cite the “DA” number on the instant order as the authority for the filing.

9. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291, Iowa Network Access Division d/b/a Aureon SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the switched access rates that are subject to this investigation.

¹⁸ 47 U.S.C. § 204.

¹⁹ 47 C.F.R. §§ 1.1200 et seq.

10. IT IS FURTHER ORDERED that the Petitions of AT&T and Sprint to Reject or Suspend and Investigate the proposed tariff revisions contained in Iowa Network Access Division d/b/a Aureon Transmittal No. 36 are GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk
Chief, Pricing Policy Division