

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

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

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: April 19, 2018

Released: April 19, 2018

Direct Case Due for Aureon by: May 3, 2018

Oppositions to Direct Case Due by: May 10, 2018

Rebuttal due by: May 17, 2018

I. INTRODUCTION

1. In this Order, pursuant to our authority in sections 204 and 205 of the Communications Act of 1934, as amended (Act),¹ we designate issues for investigation regarding the lawfulness of the Iowa Network Access Division d/b/a Aureon (Aureon) tariff revisions that were filed with the Commission on February 22, 2018, and were advanced for a day,² suspended for a day and became effective on March 1, 2018.³ Specifically, we designate the following issues for investigation: (1) the appropriate benchmark rate for Aureon's interstate switched transport service; (2) the cost and demand data needed to support Aureon's revised rate of \$0.00576 per minute-of-use (MOU) pursuant to section 61.38 of the Commission's rules;⁴ and (3) whether supporting cost information should be considered once the Commission determines the appropriate benchmark rate. We also, on our own motion, waive Aureon's annual access tariff filing requirement, pursuant to section 69.3(f)(1) of our rules, through July 1, 2019.

¹ 47 U.S.C. §§ 204, 205.

² When a tariff is advanced for a day, the effective date listed in the tariff is moved to one day earlier so that the suspension of the tariff can occur on that day, thereby allowing the tariff to become effective on the original effective date.

³ See Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36 (Feb. 22, 2018) (Transmittal No. 36) (available via the Commission's Electronic Tariff Filing System); Letter from James U. Troup, Counsel for Iowa Network Services, Inc. (INS), to Marlene H. Dortch, Secretary, FCC, Transmittal No. 36 (filed Feb. 22, 2018) (Transmittal Letter) (available via the Commission's Electronic Tariff Filing System) (referencing *AT&T Corp. v. Iowa Network Services, Inc., d/b/a Aureon Network Services*, Memorandum Opinion and Order, 32 FCC Rcd 9677 (2017), *pet. for recon. pending (Aureon Order)*); Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36; WC Docket No. 18-60, Order, DA 18-199 (WCB/Pricing Feb. 28, 2018) (*Aureon Tariff Suspension Order*).

⁴ 47 CFR § 61.38 (specifying the supporting information necessary for tariff filings made by dominant carriers).

II. BACKGROUND

A. Procedural History

2. In the *Aureon Order*, the Commission concluded that Aureon violated sections 201(b) and 203 of the Act in multiple respects. First, the Commission concluded for the purposes of the rate cap and rate parity requirements the Commission adopted in the *USF/ICC Transformation Order*, Aureon is properly classified as a competitive local exchange carrier (LEC).⁵ Second, the Commission concluded that, as a competitive LEC, Aureon violated section 51.911(a) of the Commission's rules by increasing its interstate switched transport rate in June 2013 to \$0.00896 per minute of use (MOU), which exceeded the rate that was in effect on December 29, 2011 – \$0.00819 per MOU.⁶ Further, the Commission held that Aureon violated section 51.911(b) of the Commission's rules by not lowering its intrastate switched access rates halfway to the level of its interstate rates on or before July 1, 2012 (and still had not as of the date of the *Aureon Order*).⁷ The Commission also concluded that Aureon is subject to the obligation of section 51.911(c) not to tariff a rate that exceeded that of the competing incumbent LEC, leaving for later consideration what such rate might be.⁸ In requiring Aureon to file complying tariff revisions within 60 days (January 8, 2018), the Commission also held that Aureon must continue to comply with section 61.38 and supply “supporting material,” such as all necessary cost studies.⁹ This filing deadline was subsequently extended to February 22, 2018.¹⁰

3. Aureon filed Transmittal No. 36 on February 22, 2018, to become effective on March 1, 2018.¹¹ The transmittal changed the company's interstate switched transport rate¹² to \$0.00576 per MOU. Aureon asserts that the revision complies with the applicable rate benchmark.¹³ Aureon also asserts that its included cost study supports the \$0.00576 per MOU rate and complies with section 61.38 of the Commission's rules and produces a projected return of 10.625 percent on interstate investments for the twelve-month period ending February 28, 2019.¹⁴

⁵ *Aureon Order*, 32 FCC Rcd at 9689-90, para. 25.

⁶ *Id.* at 9689, para. 24; 47 CFR § 51.911(a).

⁷ *Aureon Order*, 32 FCC Rcd at 9689, para. 24; 47 CFR § 51.911(b); *see also infra* Section III.A. Because Aureon's intrastate rates are not included in its interstate tariff, they are not pertinent to this Order.

⁸ *Aureon Order*, 32 FCC Rcd at 9689, para. 24; 47 CFR § 51.911(c).

⁹ *Aureon Order*, 32 FCC Rcd at 9695, para. 35; 47 CFR § 61.38 (requiring carriers to support their initial and revised tariffed rates with, among other things, a cost of service study for the most-recent 12-month period and a study projecting costs for a representative 12-month period).

¹⁰ 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).

¹¹ Transmittal Letter at 1.

¹² We note that Aureon revised its “switched transport service rate” in Transmittal No. 36. The “switched transport service” at issue in the proceeding and described in Transmittal No. 36 includes tandem switching as well as transport service.

¹³ Transmittal Letter at 2. The rate for switched transport service is Aureon's sole tariffed rate based on minutes of use. *See* Iowa Network Access Division Tariff F.C.C. No. 1 § 6.8.1(A). *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, Transmittal No. 36, WC Docket No. 18-60 at 5 (filed Feb. 28, 2018) (comparing Aureon's rate to the lowest rate band in NECA Tariff F.C.C. No. 5) (Aureon Reply).

¹⁴ Transmittal No. 36 Description & Justification (Transmittal No. 36 D&J) at 1.

4. AT&T and Sprint filed petitions asking the Commission to reject, or alternatively suspend and investigate, Aureon's Transmittal No. 36.¹⁵ Both AT&T and Sprint argue that Aureon should have benchmarked to CenturyLink's rates and that Aureon's revised switched transport therefore contravenes the Commission's rules.¹⁶ AT&T further alleges that the revenue requirement on which Aureon's cost support is based improperly includes certain purportedly uncollectible revenue, unsupported network "lease" rates paid to another operating division, and an improperly-large allocation of cable and wire facilities costs.¹⁷ In addition, AT&T alleges that Aureon computed its revised rate based on "inaccurate and unreliable" traffic forecasts that understate demand and therefore inflate the revised rate.¹⁸

5. In response, Aureon argues that the pertinent benchmark should be the interstate switched transport rate in the National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5 (NECA Tariff) and that Aureon's rate is below the relevant rate in the NECA Tariff.¹⁹ Aureon also argues that its revised rate is comparable to the CenturyLink rate, albeit using different assumptions than those used by AT&T.²⁰ Aureon further rebuts AT&T's cost support claims and argues that it provided sufficient cost support for its revised rate.²¹

6. Considering the arguments and evidence presented in the petitions, the Bureau concluded that substantial questions of lawfulness exist regarding Aureon's revised switched transport rate that require further investigation. Therefore, pursuant to section 204 of the Act, the Bureau advanced the effective date for one day to February 28, 2018, and then suspended the rate for one day, allowing the rate to become effective on March 1, 2018, imposed an accounting order, and instituted an investigation into the lawfulness of Aureon's switched transport rate.²²

B. CEA Providers

7. Aureon is a centralized equal access (CEA) provider, a specialized type of intermediate carrier authorized by the Commission in the late 1980s to implement long distance equal access obligations (permitting end users to use 1+ dialing to reach the interexchange carrier (IXC) of their choice) and to aggregate traffic for connection between rural incumbent LECs and other networks, particularly those of IXCs.²³ In the order authorizing Aureon, the Commission permitted Aureon to require IXCs to connect to LECs that subtend Aureon indirectly through Aureon's tandem switch rather

¹⁵ See Petition of AT&T to Reject or to Suspend and Investigate Iowa Network Services Inc. Tariff Filing, Transmittal No. 36, WC Docket No. 18-60 (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, WC Docket No. 18-60 (filed Feb. 26, 2018) (Sprint Petition).

¹⁶ AT&T and Sprint consider CenturyLink to be the competing incumbent LEC in the relevant geographic area. See AT&T Petition at 6-10; Sprint Petition at 2.

¹⁷ AT&T Petition at 10-13.

¹⁸ *Id.* at 13-14.

¹⁹ Aureon Reply at 3-9.

²⁰ *Id.* at 9-10.

²¹ *Id.* at 10-17.

²² *Aureon Tariff Suspension Order* at para. 5 (citing 47 U.S.C. § 204). In response to the *Aureon Tariff Suspension Order*, Aureon submitted Transmittal No. 37 to suspend the revisions made in its Transmittal No. 36. See Letter from James U. Troup, Counsel for Iowa Network Services, Inc., to Marlene H. Dortch, Secretary, FCC, Transmittal No. 37 (filed Mar. 1, 2018) (Transmittal No. 37) (available via the Commission's Electronic Tariff Filing System).

²³ See, e.g., *Application of Iowa Network Access Div.*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468, 1468, paras. 1-5 (CCB 1988) (*Aureon Section 214 Order*).

than indirectly through another intermediate carrier or directly to the subtending LEC.²⁴ Since its inception, Aureon has been regulated as a dominant carrier subject to the tariff filing requirements of section 61.38 of the Commission's rules.²⁵

C. Commission Authority and Duty to Investigate Tariffs and Prescribe Rates

8. Under section 201(b) of the Act, a common carrier may not charge unjust or unreasonable rates for its services.²⁶ Pursuant to section 204 of the Act, if a tariff filing has been suspended, the burden of proof is on the tariffing carrier to show that the new or revised charge is just and reasonable.²⁷ Pursuant to section 204(a)(1) of the Act, Aureon's provision of the information requested in this Order is necessary to determine whether Aureon's revised switched transport rate is just and reasonable.²⁸ At the conclusion of an investigation under section 204, the Commission may, pursuant to section 205, determine and prescribe what will be the just and reasonable charge or the maximum and/or minimum, charge or charges going forward.²⁹

III. ISSUES DESIGNATED FOR INVESTIGATION

A. The Appropriate Benchmark Rate for Aureon's Interstate Switched Transport Service

9. Aureon is a competitive LEC for purposes of the Commission's intercarrier compensation rules.³⁰ Section 51.911(c) of the rules sets forth the competitive LEC benchmark obligation, and specifies that:

[b]eginning July 1, 2013, notwithstanding any other provision of the Commission's rules, all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26 of this chapter.³¹

The term "competing incumbent LEC" is defined in section 61.26(a)(2) to be the "incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."³² Aureon is a CEA provider, which does not serve end users, and as such the procedure for its benchmarking obligation is contained in section 61.26(f) of the Commission's rules. Section 61.26(f) requires that "[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end

²⁴ *Aureon Section 214 Order*, 3 FCC Rcd at 1472-73, paras. 28-33.

²⁵ 47 CFR § 61.38. *See, e.g., Aureon Section 214 Order*, 3 FCC Rcd at 1469, para. 10; *Aureon Order*, 32 FCC Rcd at 9692, para. 30.

²⁶ 47 U.S.C. § 201(b).

²⁷ *Id.* § 204(a)(1).

²⁸ *Id.*

²⁹ *Id.* § 205(a).

³⁰ *Aureon Order*, 32 FCC Rcd at 9689, para. 25 ("For purposes of the *USF/ICC Transformation Order* and the attendant rules, Aureon is a CLEC." (footnote omitted)). The Commission also found that as a dominant carrier, "Aureon must comply with Section 61.38 [of the Commission's rules] and supply 'supporting . . . material' justifying its rates." *Id.* at 9690, para. 26 (footnote omitted).

³¹ 47 CFR § 51.911(c).

³² *Id.* § 61.26(a)(2).

user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services”³³ The first issue we designate for investigation under sections 204 and 205 of the Act is whether the revised rate for interstate switched transport service in Aureon’s Transmittal No. 36 is benchmarked to the correct competing incumbent LEC, and whether the Aureon rate is accurately benchmarked to the rate(s) for the appropriate service(s) of that competing incumbent LEC.

10. Aureon asserts that it should benchmark its switched transport service rate to the rates in the NECA Tariff because it is a rural competitive LEC under section 61.26(a)(6) and thus qualifies for the rural exemption in section 61.26(e), which would allow Aureon to benchmark to the NECA rate.³⁴ A “rural competitive LEC” is defined as “a CLEC that does not serve (*i.e.*, terminate traffic to or originate traffic from) any end users located within either: (i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (ii) An urbanized area, as defined by the Census Bureau.”³⁵

11. Aureon explains that in its view, because it “does not serve any end users, it is by definition a rural CLEC” and thereby permitted to charge the NECA tariffed rate pursuant to the rural exemption.³⁶ In its Direct Case, we require Aureon to provide support to justify this assertion. Conversely, the rule implicitly assumes that the rural competitive LEC serves some end users in order to qualify for the rural exemption. Indeed, the Commission has explained that the rural exemption is a narrow exception intended to encourage competition for end users in rural areas, which implies that the rural competitive LEC is a competitive LEC serving end users, rather than an intermediate carrier, such as Aureon.³⁷ Accordingly, Aureon should explain how it qualifies for the rural exemption when it does not provide service to end users. Aureon should explain how the definition of “serve” in section 61.26(a)(6) applies to Aureon when it does not terminate traffic to or originate traffic from any end users at all. Aureon should also explain what the consequences would be if the Commission found that Aureon indirectly serves all of the end users of the LECs that subtend Aureon’s tandem. Would Aureon qualify for the rural competitive LEC exemption? We direct Aureon to certify whether any of the end users of the LECs that subtend Aureon’s tandem are located within either: (i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (ii) An urbanized area, as defined by the Census Bureau?

12. Likewise, Aureon must identify the non-rural incumbent LEC(s) with whom it is competing that entitles it to the rural exemption because the exemption only applies to “to those CLECs

³³ 47 CFR § 61.26(f). *See AT&T Services Inc. and AT&T Corp. v. Great Lakes Comnet, Inc. and Westphalia Telephone Company*, 30 FCC Rcd 2586, 2594, para. 25 (2015) (*AT&T v. Great Lakes*), *aff’d in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004-05 (D.C. Cir. 2016) (*Great Lakes v. FCC*) (where the Commission found that an intermediate carrier, Great Lakes Comnet, violated section 61.26(f) when its tariff contained rates benchmarked to the incorrect “competing incumbent LEC”).

³⁴ In recognition of the substantially higher loop costs incurred by competitive LECs in rural areas, competitive LECs qualifying for the rural exemption are permitted to tariff rates up to the NECA tariff rate, assuming the highest rate band for local switching. *See Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9951-53, paras. 65-73 (2001) (*CLEC Access Reform Order*); 47 CFR § 61.26(e).

³⁵ 47 CFR § 61.26(a)(6).

³⁶ Aureon Reply at 5.

³⁷ *See Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9126 para. 37 (2004) (“[t]he exemption was designed as a narrow exception to the otherwise mark-based rule that ties competitive LEC rates to those of their incumbent competitors in the access market . . . [t]he purpose of the exemption was to encourage competitive entry in truly rural markets”).

that are competing with *price-cap ILECs* that do not qualify as ‘rural telephone companies’ under the Act’s definition.”³⁸ Aureon should provide the NECA rate that it believes it would benchmark to if the rural exemption were to apply, and explain how it determined that benchmark rate. In addition, Aureon should address whether that NECA rate is higher than Aureon’s rate of \$0.00819 on December 29, 2011 (the 2011 rate cap), and, if so, why Aureon’s rate in effect on December 29, 2011 should not act as an absolute cap under section 51.911(a)(2).³⁹

13. Alternatively, even if the rural exemption does not apply, Aureon says that it should benchmark to the NECA rate because the appropriate “competing incumbent LEC” in this case should be the incumbent LECs that subtend Aureon’s tandem and those incumbent LECs “nearly all” participate in the NECA tariff.⁴⁰ Accordingly, in its Direct Case, we direct Aureon to provide support to justify this assertion. How is this assertion consistent with the definition of competing incumbent LEC in the Commission’s rules? How is this assertion consistent with Aureon’s suggestion that it is entitled to the rural exemption, which requires the competing incumbent LEC to be a non-rural carrier? Aureon should also address whether the benchmark requires Aureon to establish distinct benchmark rates for each competing incumbent LEC.

14. How many of Aureon’s subtending LECs participate in the NECA tariff and in which NECA rates do they participate? Aureon should also address how a subtending incumbent LEC that partners with Aureon to provide access services to IXC’s for the origination and termination of traffic is considered to be competing with Aureon as that term was intended and defined in the Commission’s rules. Further, we direct Aureon to explain how serving subtending LECs engaged in access stimulation affects Aureon’s ability to benchmark to the NECA rate, to the extent that the tariffing status of Aureon’s subtending LECs is relevant.

15. In their petitions to reject or to suspend Aureon’s tariff filing, both AT&T and Sprint assert that CenturyLink is the competing incumbent LEC to which Aureon should benchmark its rate.⁴¹ We direct Aureon to explain its basis for rejecting this assertion. Would CenturyLink provide, in whole or in part, the interstate exchange access services at issue here to the extent those services were not provided by Aureon? Are there other incumbent LECs, apart from the LECs that subtend Aureon, that would provide, in whole or in part, the interstate exchange access services here to the extent those services were not provided by Aureon?

16. Aureon also claims that even if it should benchmark its rates to those of CenturyLink, the rate it filed (\$0.00576 per MOU) is “comparable” to (but higher than) the CenturyLink rate (\$0.005526 per MOU).⁴² We direct Aureon to provide information in its Direct Case to substantiate this claim. First, we direct Aureon to explain how its “comparable,” revised rate complies with the requirement that a competing LEC’s rate “shall be no higher than” the rate to which it is benchmarking. According to Aureon, AT&T calculated a lower benchmark rate of \$0.00312 using 20 average miles of transport rather

³⁸ *CLEC Access Reform Order*, 16 FCC Rcd at 9955, para. 79 (emphasis added) (footnote omitted).

³⁹ See 47 CFR § 61.26(a)(2); *Aureon Order*, 32 FCC Rcd at 9688-89, paras. 23-24 (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17933, para. 800 (2011) (*USF/ICC Transformation Order*)).

⁴⁰ Aureon Reply at 6-7.

⁴¹ AT&T Petition at 7-8; Sprint Petition at 2. In its Petition, AT&T argues that given the “massive volumes” of traffic being sent over Aureon’s network the comparable CenturyLink service to which Aureon should benchmark its rates is direct connection service, not tandem switching and transport services. AT&T Petition at 8. We decline to set this issue for investigation given that under the Act, Aureon is not required to provide direct connection because it can fulfill its interconnection obligation either directly or indirectly. 47 U.S.C. § 251(a).

⁴² Aureon Reply at 10. These rate calculations include Tandem Switched Transport (fixed per MOU), Tandem Switched Transport (assuming 100 average miles of transport), Tandem Switching and Multiplexing. *Id.*

than the 100 average miles that Aureon claims it actually provides.⁴³ To the extent that the rate difference is due to alleged transport miles,⁴⁴ we direct Aureon to explain how it determined the points of interconnection (POIs) relevant to the mileage calculations, as well as the actual mileage calculations used to determine its revised rate. We further direct Aureon to describe and explain its mileage calculations in detail and specifically to justify its claim that 100 miles is the average length of transport that Aureon provides.⁴⁵ We direct Aureon to include details about its network necessary to support its assumptions and calculations as well as a description of how Aureon translated CenturyLink's per-mile rate into a non-distance sensitive rate that it then used in its calculations. To the extent that Aureon believes that the switched transport rates of incumbent LECs, other than CenturyLink, serving the territory in which Aureon's POIs with subtending LECs are located are relevant to its calculation, we direct Aureon to provide the basis for its belief and pertinent data.

B. Sufficiency of Aureon's Supporting Information

1. Re-Filing of Cost Support in Native Electronic Format

17. The second issue we designate for investigation under sections 204 and 205 of the Act is the sufficiency of the cost support material filed with Aureon's Transmittal No. 36. As an initial matter, we direct Aureon to file all cost support for Transmittal No. 36, as filed on February 22, 2018, as a single spreadsheet.⁴⁶ We similarly direct Aureon to file Annexes 1, 2, and 3 to Exhibit B to Aureon's Reply (Declaration of Brian Sullivan) as a single spreadsheet.⁴⁷ Further, we direct Aureon to highlight (with color) each cell in this spreadsheet that relates to facilities identified as leased facilities.⁴⁸ To the extent that Aureon seeks to make any corrections to such previous filings, it shall highlight these cells and provide a written explanation for each correction with spreadsheet tab and cell references.

2. Selection of Authorized Rate-of-Return

18. We direct Aureon to provide further information regarding derivation of the rate-of-return it selected in Transmittal No. 36. The Commission has prescribed 10.75 percent as the authorized rate-of-return for tariff year 2017-18 (July 1, 2017 through June 30, 2018), which will decrease by 25 basis points per tariff year until reaching 9.75 percent beginning July 1, 2021.⁴⁹ Aureon explains that it selected 10.625 percent as "a composite" of the 2017-18 and 2018-19 tariff years based on the average of the authorized rate-of-return in effect by month for calendar year 2018.⁵⁰ At the same time, however, Aureon indicated that it intends to comply with section 69.3(f)(1) of the Commission's rules, which

⁴³ *Id.* at 9-10.

⁴⁴ *Id.* at 9-10.

⁴⁵ *Id.* at 9. We further direct Aureon to submit the supporting documentation for and provide a description of the calculations used to develop this average. This documentation should include, for example, the specific transport lengths used to calculate the 100-mile average and should demonstrate why the transport lengths selected are representative of Aureon's network and the calls carried on it. If any of the demand-related data requested in this section overlaps that requested in Section III.C below, Aureon need only submit the data once with the inclusion of information identifying how the responsive data apply to both requests.

⁴⁶ We describe our requirements for the filing of spreadsheets below in Section V.B.

⁴⁷ We acknowledge that some of the information in this second requested spreadsheet may be duplicative of the first requested spreadsheet.

⁴⁸ If multiple spreadsheet cells are dependent on a reference or formula basis on spreadsheet cells satisfying this request, Aureon need only indicate the initial predicate spreadsheet cell(s).

⁴⁹ *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3212, para. 326 (2016).

⁵⁰ Transmittal No. 36 D&J at n.4.

requires carriers subject to section 61.38 to submit an access tariff filing with an effective date of July 1, 2018 unless otherwise directed by the Commission.⁵¹

19. In light of our decision below to grant Aureon a waiver of section 69.3(f)(1) through July 1, 2019,⁵² we direct Aureon in its Direct Case to confirm whether it intends to avail itself of such waiver and for what period of time. We also provide Aureon the opportunity in its Direct Case to revise its cost support to reflect a rate-of-return other than the 10.625 percent used in Transmittal No. 36. Regardless of whether Aureon intends to avail itself of the waiver, the period for which it intends to avail itself of the waiver (if any), and the rate-of-return that it selects, we direct Aureon to provide in its Direct Case detailed support for the rate-of-return that it selects (whether 10.625 percent or otherwise) considering the reduction of the maximum authorized rate-of-return to 10.50 percent on July 1, 2018.⁵³

3. Calculation of Cable and Wire Facilities Lease Rate

20. We direct Aureon to file more-detailed information in its Direct Case regarding how its cable and wire facilities expense, central office equipment expense, and all other expenses that may be based on facilities identified as leased were determined with respect both to the underlying nature of the costs that are being recovered by the lessor (described by Aureon as the “Network Division”⁵⁴) and the method by which costs are assigned to the lease rate. Aureon’s methodology appears to be presented in Annex 3 to Exhibit B to Aureon’s Reply (Annex 3).⁵⁵ To the extent that Aureon considers our understanding of the general nature of Annex 3 or the methodology described therein to be incorrect or has any additional workpapers supporting its methodology, we direct Aureon to provide a narrative in its Direct Case offering its own explanation accompanied by all necessary documentation in a single spreadsheet.

21. *Nature of Costs Represented by Lease.* In Annex 3, Aureon provides its support for the development of the lease rate. This methodology appears to begin with an allocation of two separate revenue requirements based on the general nature of the facilities to which they pertain. These revenue requirements appear to be a form of total company revenue requirements, relating both to facilities used for operations by the “Access Division” (to provide CEA service) and the Network Division.⁵⁶ We direct Aureon to provide further support and explanation for this step.

22. Next, we direct Aureon to provide any correction to the heading immediately preceding the presentation of the two revenue requirements. We further direct Aureon to explain and justify how it selected the particular period of time described by the corrected text.

23. Further, we direct Aureon to provide a spreadsheet demonstrating how each of the two revenue requirements were calculated.⁵⁷ We direct Aureon to include the following separately with regard to each revenue requirement:⁵⁸

⁵¹ *Id.* at 3; 47 CFR §§ 61.38, 69.3(f)(1).

⁵² *See infra* Section IV.

⁵³ For example, if Aureon bases its selection on an average maximum authorized rate-of-return by month that its newly-tariffed rate will be effective, it should provide detail for its calculation of such average.

⁵⁴ Aureon Reply at 11-12.

⁵⁵ *Id.*, Exh. B, Annex 3.

⁵⁶ *See id.* at 11-12 (explaining the role of the Access Division relative to the Network Division).

⁵⁷ We expect that this will require reference to the financial records of other divisions of Aureon.

⁵⁸ We expect the revenue requirement calculations based on these subtotals that we direct Aureon to provide below should be equal to the amounts shown for each of the two types of revenue requirements shown in Annex 3 and direct Aureon to demonstrate that this expectation has been met. If these two separate revenue requirement sums differ, Aureon should provide an explanation.

- a separate identification of each type of asset, such as, but not limited to, poles, copper and fiber cable, conduit, switching equipment, circuit equipment, land, building, general-purpose computers, and any other type of support equipment;
- a total of each of the following capital costs, for each type of specified asset: (a) gross investment, (b) accumulated depreciation, and (c) net investment;
- a total of each of the following recurring capital costs, specified separately: (a) return on net investment (or rate base), (b) depreciation expense, (c) federal income tax expense, and (d) state income tax expense;
- a separate total of each type of expense other than return on net investment, depreciation, or income taxes such as, but not limited to maintenance and repair, network operations, selling, general, administrative and any other overhead, and taxes other than income taxes;
- if return on investment is included in this amount, the percentage rate-of-return used to calculate the dollar amount of that return, the total of any adjustments made to the net investment on which the return is calculated such as, but not limited to, deferred taxes, and the amount of any working capital included in net investment; and
- if income taxes are included in this amount: (a) the amount of interest expense and separately other fixed charges subtracted from return on investment before calculating such taxes, (b) federal and state income tax rates used to calculate tax expense, and (c) adjustments to such taxes such as, but not limited to, amortization of investment tax credits.

For each type of cost data provided, we direct Aureon to provide documentation and detail regarding how the reported amounts were developed, such as the source, data, all accounting methods and rules, cost allocations, and all assumptions. We further direct Aureon to submit all such information in spreadsheets.

24. *Allocation of Cost to Aureon.* We seek further information regarding the method by which Aureon allocates what appear to be total company revenue requirements to Aureon. The first type of additional information we require concerns assumptions regarding the use of DS-1s. The methodology in Annex 3 appears to assume that **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION].

Further, the methodology used in Annex 3 also appears to assume that **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION].** We direct Aureon to confirm that it is making these assumptions, confirm that these assumptions are accurate, and provide the basis for such confirmation. To the extent that either assumption is inaccurate, we direct Aureon to explain why this is not taken into account in Annex 3 and the likely effect on the revenue requirement(s) **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION].

25. We also direct Aureon to provide documentation for each of the entries in the column labeled “Circuit Cost” under the “Central Office Equipment” heading. We direct Aureon to provide the underlying documentation and detail regarding how the entries were developed, such as the source and vintage of data, all accounting methods and rules, cost allocations, and all assumptions. We further direct Aureon to submit such information in spreadsheets.

26. We also we direct Aureon to explain the entries in the columns labeled “Avg Miles Per Cct” and “Circuit Miles” under the heading “Cable and Wire Facilities.” Some of these entries, **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]?

27. Finally, we direct Aureon to explain whether its \$13,430,525 “CWF Facility Lease” expense⁵⁹ ultimately developed from the calculations in Annex 3 includes any expense related to spare capacity in the network “assigned to the Network Division”⁶⁰ and, if so, how much.⁶¹ If Aureon asserts that such lease expense does not include the cost of any spare capacity on the lessor’s network, Aureon should explain how such cost is excluded. If Aureon acknowledges that such lease expense does include cost relating to spare capacity on the lessor’s network, Aureon should demonstrate that it “is not shifting the cost of spare capacity in the high capacity underlying fiber system from” competitive services provided by the Network Division to Aureon customers.⁶² We direct Aureon to provide any numerical support for its response in spreadsheets.

4. Aureon’s Alternative to its Lease Rate Calculation

28. We direct Aureon to file further information regarding the alternative calculations of its revenue requirement.⁶³ In particular, we direct Aureon to explain in detail and document completely (including providing the source, data, all accounting methods and rules, and assumptions) the development of each Part 64, 36, and 69 cost allocation and the cost projections for these facilities reflected in these revenue requirement calculations. We direct Aureon to provide such information in spreadsheets.

C. Sufficiency of Demand Support

29. AT&T has raised two general issues concerning the demand forecast used by Aureon to develop its revised switched transport rate: the adequacy and the relevance of historical data for purposes of determining an appropriate trend, and the accuracy of predicted demand, considering how previously-submitted projections compared to actual MOU for prior time periods.⁶⁴ To justify the demand forecast reflected in its revised rate, Aureon must demonstrate that this forecast is based on accurate and reliable data and that a credible forecasting method was used. The rate filed, and the demand data on which it is based, specifically must comply with the *Aureon Order*, as well as all necessary cost studies and support as required by section 61.38 of the Commission’s rules.⁶⁵

30. In its Reply, Aureon states that when it “performed its traffic projections, it utilized actual data from January 2017 through December 2017 . . . [and] then conducted a forecast analysis consistent with an Excel trend analysis to extrapolate future CEA traffic, which projected 2018 traffic volumes

⁵⁹ Aureon Reply at 13.

⁶⁰ See *id.* at 11-12.

⁶¹ For example, to the extent that the lease expense is derived using an allocation of “total company” cost without first removing the cost of spare capacity, the lease expense would seem to include a certain amount of spare capacity cost.

⁶² *Aureon Section 214 Order*, 3 FCC Rcd at 1472, para. 26. This data is also necessary for the Commission to determine if the leased facilities, as well as other Aureon costs and expenses, are “used and useful” as required for inclusion in Aureon’s revenue requirement. The “used and useful” standard provides the foundation for Commission decisions evaluating whether particular investments can be included in a carrier’s revenue requirement. Property is considered “used and useful” for regulatory ratemaking if it is “necessary to the efficient conduct of a utility’s business, presently or within a reasonable future period.” *American Tel. and Tel. Co.*, Phase II Final Decision and Order, 64 FCC 2d 1, at 38, para. 111 (1977) (*AT&T Phase II Order*); see also *Sandwich Isles Communications Inc. Petition for Declaratory Ruling*, Declaratory Ruling, 25 FCC Rcd 13647, 13651-52, paras. 12-13 (WCB 2010).

⁶³ See Aureon Reply, Exh. B, Annex 2.

⁶⁴ AT&T Petition, Attach. B (Decl. of Daniel P. Rhinehart) at 5, para. 4.

⁶⁵ 47 CFR § 61.38; see also *Aureon Order*, 32 FCC Rcd at 9690, para. 26.

based on actual 2017 traffic data.”⁶⁶ We have been unable to replicate the Excel trend analysis based on the data provided by Aureon, and Aureon has not justified use of a single year of historical data to forecast demand. We, therefore, direct Aureon to provide actual, historic interstate and intrastate monthly traffic volumes separately, expressed as MOUs, for the time period beginning (and including) January 2015 to the most recent month for which such actual demand data are available. We also direct Aureon to provide such information in spreadsheets.

31. Aureon questions the usefulness of deriving a forward-looking just and reasonable rate with only historical data because “[t]raffic volumes on the CEA network are currently decreasing.”⁶⁷ AT&T states, on the other hand, that “[Aureon’s] recent forecasts showing declining demand stand in stark contrast to AT&T’s actual traffic on [Aureon’s] network, which has steadily grown.”⁶⁸ We, therefore, direct Aureon to provide an explanation of why it believes traffic volumes are declining as well as the monthly MOU traffic forecasts submitted as part of its 2010, 2012, 2013, 2014, and 2016 annual filings. We also direct Aureon to submit the actual, historical monthly interstate MOU traffic for the applicable tariff periods, i.e., the months during which these forecasts were reflected in the then-applicable switched transport rates. We direct Aureon to provide such information in a single spreadsheet. A comparison of past demand forecasts with actual demand for the applicable tariff periods will help us determine the accuracy of Aureon’s past forecasts. Monthly data that has been provided previously by Aureon, in whole or part in this proceeding, as well as any newly-provided data, should be submitted again along with the other data we now require in spreadsheets. Aureon may submit data, in addition to the required data, to justify its demand forecast.

D. Relationship Between Benchmark Rate and Cost Support

32. We also direct Aureon to address whether supporting cost information should be considered once the Commission identifies the competing incumbent LEC to which Aureon must benchmark. If so, how would requiring cost support impact the benchmark rate? If the cost support confirms a rate lower than the benchmark rate, would the applicable rate be the cost supported rate instead of the benchmark rate? Would there be any situation where the cost support could justify a rate higher than the applicable benchmark rate?

IV. SUA SPONTE WAIVER

33. Aureon is required pursuant to section 69.3(f)(1) to submit an access tariff filing for the biennial period July 1, 2018 through June 30, 2020 with an effective date of July 1, 2018.⁶⁹ Recognizing that Aureon’s upcoming tariff filing deadline will be just prior to the deadline for conclusion of this investigation (and a mere two months after Aureon files its Direct Case),⁷⁰ we waive on our own motion section 69.3(f)(1) of the Commission’s rules with respect to Aureon through July 1, 2019.

34. Generally, the Commission’s rules may be waived for “good cause shown.”⁷¹ The Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant a deviation from the

⁶⁶ Aureon Reply at 15 (citing AT&T Petition, Attach. B at 5, para. 8); Aureon Reply, Exh. C (Decl. of Jeff Schill) at 2, para. 3.

⁶⁷ *Id.* at 16.

⁶⁸ AT&T Petition, Attach. B at 5, para. 4.; *see also id.* at Attach. B at 25, para. 36 (stating that “[b]ecause INS’s CEA rates are derived by dividing its projected revenue requirement by its traffic forecast for the applicable test period, an underestimation of the projected demand necessarily results in a higher rate”).

⁶⁹ 47 CFR §§ 61.38, 69.3(f)(1).

⁷⁰ *See id.* § 69.3(f)(1).

⁷¹ *Id.* § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

general rule; and (c) such deviation will serve the public interest.⁷² In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.⁷³

35. We find that strict compliance with section 69.3(f)(1) would not be in the public interest during the pendency of this investigation as it could, in this special circumstance, lead to overlapping tariff investigations, which would be an unnecessary use of time and resources by the Commission, Aureon, and any interested parties. Also, if Aureon were to make its required tariff filing effective July 1, 2018, the data on which it would rely would likely be at most four months fresher than what was filed in Transmittal No. 36 because the filing date would only be four months more recent.⁷⁴ We do not consider the value of a filing based on such data to outweigh the cost of requiring it. It is possible that Aureon will need to file a tariff revision in response to the outcome of this investigation (likely shortly thereafter)⁷⁵ and, if so, the Commission could require that its rate be based on updated data at that time. Thus, in light of the accounting requirement from the *Aureon Tariff Suspension Order* and Aureon's potential refund liability pursuant to section 204(a),⁷⁶ the public interest would be adequately protected without Aureon making an additional tariff filing while this investigation is pending. We note that Aureon is not barred from filing a tariff revision effective July 1, 2018 or any other time should it so choose.

V. PROCEDURAL MATTERS

A. Filing Schedules

36. This investigation is designated WC Docket No. 18-60. Iowa Network Access Division (d/b/a Aureon) is designated as a party to this investigation of the listed tariff filing.

37. Aureon shall file its direct case no later than **May 3, 2018**. The direct case must present Aureon's position with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than **May 10, 2018**, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Aureon may also file a "Rebuttal" to oppositions or comments no later than **May 17, 2018**.

- Electronic Filers: Direct cases and other pleadings may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

⁷² *Northeast Cellular*, 897 F.2d at 1166.

⁷³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁷⁴ See 47 CFR § 61.38(b)(1)(ii). The "representative period" typically selected by carriers is the period commencing on the proposed effective date of the tariff filing.

⁷⁵ We also note that the Commission is required to issue an order on Aureon's pending petition for reconsideration of the *Aureon Order* by June 12, 2018. Aureon's petition for reconsideration includes matters that affect its lawful rates not only on a retrospective basis, but also a prospective basis, such as whether and/or the manner in which the competitive LEC benchmark applies. See, e.g., Petition for Reconsideration, Iowa Network Services, Inc. d/b/a Aureon Network Services, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001 at 8-14 (filed Dec. 8, 2017). As a result, the Commission's order addressing the petition for reconsideration could require Aureon to revise its tariff based on superseding requirements shortly after Aureon would have made its filing pursuant section 69.3(f)(1).

⁷⁶ *Aureon Tariff Suspension Order* at 2-3; 47 U.S.C. § 204(a).

must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

38. There is a *Protective Order* in this proceeding.⁷⁷ Commenters should file any information they want afforded confidential treatment pursuant to the guidance and limitations in the *Protective Order*.

B. Requirements for the Filing of Spreadsheets

39. All spreadsheets filed by Aureon, as well as data rebutting spreadsheets filed by Aureon, must be filed in fully-operational spreadsheet in native Microsoft Excel electronic format. All spreadsheet cells that contain entries that are references to or calculations based on other spreadsheet cells must include the formula for such reference or calculation. This includes references and calculations based on entries in different worksheets within the same workbook file.

C. Ex Parte Requirements

40. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁸ Persons making *ex parte* presentations must file 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.

D. Paperwork Reduction Act

41. This Order designating issues for investigation does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002,

⁷⁷ *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Protective Order, DA 18-294 (WCB Mar. 26, 2018) (*Protective Order*).

⁷⁸ 47 CFR §§ 1.1200 et seq.

Public Law 107-198, *see* 47 U.S.C. § 3506(c)(4).

E. Contact Persons

42. For further information about this proceeding, please contact Edward Krachmer, FCC Wireline Competition Bureau, Pricing Policy Division, Room 5-A230, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-1525, Edward.Krachmer@fcc.gov or Richard Kwiatkowski, FCC Wireline Competition Bureau, Pricing Policy Division, Room 5-A460, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-1383, Richard.Kwiatkowski@fcc.gov.

VI. ORDERING CLAUSES

43. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201(b), 203(c), 204(a), 205 and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

44. IT IS FURTHER ORDERED that Iowa Network Access Division (d/b/a Aureon) IS a party to this proceeding.

45. IT IS FURTHER ORDERED that Iowa Network Access Division (d/b/a Aureon) SHALL INCLUDE, in its Direct Case, a response to each request for information that it is required to answer by this Order.

46. IT IS FURTHER ORDERED that Iowa Network Access Division (d/b/a Aureon) HAS BEEN GRANTED A WAIVER of section 69.3(f)(1) of the Commission's rules through July 1, 2019.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk
Chief, Pricing Policy Division
Wireline Competition Bureau