

**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 |) | |
| Tariff F.C.C. No. 1 |) | Transmittal No. 36 |
| |) | |

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 2018

Released: July 31, 2018

By the Commission:

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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 conclude the investigation into the lawfulness of Iowa Network Access Division's d/b/a Aureon (Aureon) interstate switched transport rate contained in Transmittal No. 36 of Tariff F.C.C. No. 1. Based on the record before us, we find that, as a competitive local exchange carrier (LEC), Aureon's switched transport rate must comply with our transitional switched access service rate rules, which impose both a rate cap for all LECs² and a benchmarking obligation on Aureon, as a competitive LEC.³ As a dominant carrier, Aureon must also comply with our rules governing the development of cost-based rates.⁴ As a result, Aureon's tariffed switched transport rate cannot exceed the lower of: (i) Aureon's rate cap, (ii) its competitive LEC benchmark, or (iii) its cost-based rate.

2. Specifically, we find that Aureon's switched transport rate in Transmittal No. 36 of Tariff F.C.C. No. 1 of \$0.00576 is lower than its rate cap of \$0.00819, but it is not lower than the applicable competitive LEC benchmark rate of \$0.005634. We also find that Aureon's cost-based analysis was insufficient to justify its tariffed rate for interstate switched transport services. We therefore direct Aureon to recalculate its interstate switched transport rate consistent with this Order. We further direct Aureon to amend its Tariff F.C.C. No. 1 to reflect the lower of the competitive LEC benchmark rate or the corrected cost-based rate.

II. BACKGROUND

3. Aureon is a centralized equal access (CEA) provider that was created to aggregate traffic for connection between rural incumbent LECs in Iowa and other networks, and to implement long distance equal access obligations (permitting end users to use 1+ dialing to reach the interexchange carrier (IXC) of their choice).⁵ In the order authorizing Aureon to provide CEA service, the Commission permitted Aureon to require IXCs to connect to LECs that use Aureon's connections (subtending LECs) through Aureon's tandem switch, rather than through another intermediate carrier or directly to the LECs served by Aureon.⁶ Aureon currently delivers traffic to 206 subtending LECs through several points of interconnection (POIs) across the state.⁷

¹ 47 U.S.C. §§ 204, 205.

² *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17932-34, paras. 798, 800-01 ("We also take measures today to start reforming other elements as well by capping all interstate switched access rates in effect as of the effective date of the rules, including originating access and all transport rates."), 17934, para. 801 ("Thus, at the outset of the transition, all interstate switched access and reciprocal compensation rates will be capped at rates in effect as of the effective date of the rules. We cap these rates as of the effective date of the rules.") (*USF/ICC Transformation Order*), *aff'd*, FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

³ 47 CFR § 51.911(c).

⁴ *Id.* § 61.38; *see generally* 47 CFR Parts 32, 36, 64, 65, 69.

⁵ There are currently three CEA providers: Aureon (*Application of Iowa Network Access Div.*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (CCB 1988) (*Aureon Section 214 Order*)); South Dakota Network (SDN) (*Application of SDCEA, Inc.*, Memorandum Opinion, Order and Certificate, 5 FCC Rcd 6978 (CCB 1990); and Minnesota Independent Equal Access Corp. (MIEAC) (*Application of Minnesota Independent Equal Access Corp.*, Memorandum Opinion, Order and Certificate, File No. W-P-C-6400 (rel. Aug. 22, 1990); *Minnesota Independent Equal Access Corp.*, Docket P-3007/NA-89-76, 1991 WL 501782 (Minn. PUC, Jan. 10, 1991)).

⁶ *Aureon Section 214 Order*, 3 FCC Rcd at 1472-73, paras. 28-33. Aureon's tariff is captioned "Centralized Equal Access Service" and represents that it contains the "regulations, rates and charges applicable to the provision of Switched Access Services and other miscellaneous services . . . provided by [Aureon] . . . to customers." Aureon Tariff F.C.C. No. 1, Title Page, § 1.1, Second Revised Page 16. In its Direct case and reply, Aureon refers to the services it provides as "CEA services"; however, its tariff does not define CEA services and the tariffed rate is for

(continued....)

4. Since its inception, Aureon has been regulated as a dominant carrier subject to the cost-based tariff filing requirements of section 61.38 of the Commission's rules.⁸ The Commission's regulatory regime for switched access charges differs for dominant carriers and non-dominant carriers, incumbent LECs and competitive LECs.⁹ Historically, rate-of-return carriers have set their tariffed interstate switched access rates at a level designed to provide carriers an opportunity to recover their operating costs plus an authorized rate of return on the regulated rate base (plant in service minus accumulated depreciation).¹⁰ Under section 61.38, any tariff changes must include, among other things, the basis for the ratemaking employed and economic information to support the change, including specific cost information and cost projections.¹¹ Aureon files its own tariff (Tariff F.C.C. No. 1, the subject of this investigation) pursuant to section 61.38.

A. Restrictions on Competitive LEC Switched Access Rates

5. In the *USF/ICC Transformation Order*, the Commission adopted bill-and-keep as the default methodology for all intercarrier compensation (ICC) charges, capped all terminating ICC rates, and established a transition path requiring scheduled reductions to ICC charges.¹² In adopting these changes, the Commission reasoned that by ultimately removing the implicit subsidies paid by carriers to competing carriers to complete calls, carriers would bill their own customers and keep the resulting revenue.¹³ Under the new rules, all terminating ICC rates were capped effective December 29, 2011 and specific terminating access charge rates were then reduced according to a set transition schedule.¹⁴ Pursuant to the *USF/ICC Transformation Order*, Aureon's interstate switched transport rate was capped at \$0.00819.¹⁵

6. The transition rules also required LECs to adjust, over a period of years, many of their terminating switched access charges, effective on July 1 of each of those years, with the ultimate goal of

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"switched transport." We therefore use the term switched transport services to refer to the services that Aureon has tariffed and the term "switched transport rate" to refer to Aureon's tariffed rate for those services.

⁷ See Letter to Marlene H. Dortch, Secretary, FCC, from James U. Troup and Tony S. Lee, Counsel for Aureon, at 1-2 (May 25, 2018) (Aureon MOU Data). According to Aureon it has 16 points of interconnection in Iowa, only some of which are currently in use. See Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 at 27, 29 (May 3, 2018) (Aureon Direct Case or Direct Case); Aureon MOU Data.

⁸ 47 CFR § 61.38; see, e.g., *Aureon Section 214 Order*, 3 FCC Rcd at 1469, para. 10; *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9692, para. 30 (2017), *pet. for recon. pending* (*Aureon Order*).

⁹ Compare 47 CFR §§ 61.19-61.26, with 61.31-61.59. See also *All Am. Tel. Co., Inc. v. FCC*, 867 F.3d 81, 84 (D.C. Cir. 2017) ("When it comes to determining the amount of that access charge, however, not all local carriers are the same . . . federal law divides local carriers into 'incumbent local exchange carriers' and 'competitive local exchange carriers.'").

¹⁰ *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3215, para. 337 (2016).

¹¹ 47 CFR § 61.38(b).

¹² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, para. 740; 17932, para. 798; 17934, para. 801; 18026-28, paras. 970-71; see also 47 CFR § 51.713.

¹³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17669, para. 9.

¹⁴ *Id.* at 17934-36, para. 801, Figure 9; 47 CFR §§ 51.905(b)-(h), 51.907(b)-(i); 51.911(b)-(c).

¹⁵ Aureon Direct Case at 4. Throughout its filings, Aureon refers to its rate cap as its "default transitional rate." See, e.g., Aureon Direct Case at 4, 5, 8.

transitioning to a bill-and-keep regime.¹⁶ In the following years, carriers were required to reduce terminating end office (and in some cases tandem switching and transport) rates to bill-and-keep.¹⁷ In an effort to eliminate disparate regulatory treatment between different classes of carriers, the Commission found that application of the ICC reforms would generally apply to competitive LECs via the “CLEC benchmark rule.”¹⁸ This obligation, adopted in its initial form in 2001, provides that a competitive LEC may not tariff interstate access charges above those of the competing incumbent LEC for similar services.¹⁹

7. For purposes of the *USF/ICC Transformation Order* and its implementing rules, Aureon is a competitive LEC.²⁰ As a CEA provider, Aureon does not serve end users, and as such the procedure for implementing its benchmarking obligation is contained in subpart (f) of section 61.26 of our rules.²¹ Under this subpart, “[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end 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”²² Therefore, Aureon’s switched transport rate cannot exceed that of the incumbent LEC to which it must benchmark.

8. In the interest of encouraging competition in rural areas, the Commission created a narrow exemption to the generally-applicable benchmark rule for competitive carriers serving rural end users (rural competitive LECs).²³ The applicable benchmark for rural competitive LECs is a standardized rural incumbent LEC rate—the rate listed in the National Exchange Carrier Association, Inc. (NECA) Tariff F.C.C. No. 5 (NECA Tariff),²⁴ assuming the highest rate band when the competitive LEC is competing against an incumbent LEC that is not a rural telephone company as defined by section 3(44) of the Act.²⁵ The Commission created the “rural exemption” based on the presumed cost characteristics of the service territories and the relative ability of carriers to recover such costs.²⁶ A non-rural incumbent LEC has the ability to average its costs over a territory that includes locations in lower-cost urban areas while a carrier only serving rural areas lacks these lower-cost service opportunities.²⁷

¹⁶ See 47 CFR §§ 51.907, 51.909.

¹⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801 and Fig. 9.

¹⁸ *Id.* at 17937, para. 807.

¹⁹ See 47 CFR § 61.26; *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 (2001) (*Seventh Report and Order*).

²⁰ *Aureon Order*, 32 FCC Rcd at 9689, para. 25.

²¹ 47 CFR § 61.26(f).

²² *Id.*

²³ *Id.* § 61.26(e).

²⁴ Rate-of-return incumbent LECs are permitted to participate in the NECA Tariff for most pertinently, traffic-sensitive services. See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17992, para. 6 (2007).

²⁵ 47 CFR §§ 61.26(e), 61.26(a)(4). See 47 U.S.C. § 153(44).

²⁶ *Seventh Report and Order*, 16 FCC Rcd at 9950-53, paras. 65-73.

²⁷ *Id.* at 9949-51, paras. 64-67.

B. Procedural History

9. On June 8, 2017, AT&T Corp. (AT&T) filed a formal complaint against Aureon pursuant to section 208 of the Act.²⁸ AT&T claimed, among other things, that Aureon violated the Commission's rules by raising its tariffed interstate switched transport rate above the applicable cap in 2013.²⁹

10. On November 8, 2017, the Commission issued the *Aureon Order*, partially granting AT&T's complaint.³⁰ Among other things, the Commission concluded that Aureon is a competitive LEC,³¹ and that as a competitive LEC, Aureon violated the Commission's rate cap requirement 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).³² The Commission also concluded that Aureon is subject to the benchmark rules, but it did not reach the question of whether Aureon's rates violated the benchmark rules, because it lacked an adequate record on which to determine the appropriate benchmark.³³ The Commission directed Aureon to file tariff revisions consistent with the *Aureon Order* and to include all necessary cost studies and support as required by section 61.38 of the Commission's rules.³⁴

11. On February 22, 2018, Aureon filed revisions to its interstate access Tariff F.C.C. No. 1, which it asserted "complied with" the *Aureon Order*.³⁵ In its tariff revisions, Aureon reduced its switched transport rate to \$0.00576 per MOU.³⁶ AT&T and Sprint filed petitions asking the Commission to reject, or alternatively suspend and investigate, Aureon's proposed revised rate on the basis that Aureon's filed rate should be consistent with the Commission's benchmark and cost-basis rules.³⁷ Aureon filed a reply to the petitions challenging its rate revisions, requesting the petitions be denied.³⁸ Acting on delegated authority, the Wireline Competition Bureau (the Bureau) concluded that substantial questions of

²⁸ *Aureon Order*, 32 FCC Rcd at 9684, para. 16.

²⁹ *Id.* at 9688, para. 23.

³⁰ *Id.* at 9677, para. 1. AT&T elected to have the Commission determine damages in a separate phase of the proceeding. *Id.* at 9694, para. 35; see 47 CFR § 1.722(d).

³¹ *Aureon Order*, 32 FCC Rcd at 9689-90, para. 25 (limiting its conclusion for the purposes of the rate cap and rate parity requirements the Commission adopted in the *USF/ICC Transformation Order*).

³² *Id.* at 9689, para. 24.

³³ *Id.*

³⁴ *Id.* at 9695, para. 35; 47 CFR § 61.38; Letter from Lisa B. Griffin, Deputy Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, to James F. Bendoragel, 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) (extending the filing deadline to February 22, 2018).

³⁵ Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36 (Feb. 22, 2018) (available via the Commission's Electronic Tariff Filing System) (Aureon Transmittal No. 36); Letter from James U. Troup, Counsel for Iowa Network Access, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 36 (filed Feb. 22, 2018); see also *Aureon Order*, 32 FCC Rcd at 9677.

³⁶ Aureon Transmittal No. 36 (proposed revision to § 6.8.1(A)).

³⁷ 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).

³⁸ 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 to Petitions).

lawfulness existed with the revised switched transport rate Aureon filed,³⁹ and 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.⁴⁰ The Bureau also adopted a Protective Order in connection with the investigation on March 26, 2018.⁴¹

12. On April 19, 2018, the Bureau released an order designating issues for investigation regarding the lawfulness of the Aureon tariff revisions.⁴² The Bureau designated three sets of 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 [MOU] pursuant to section 61.38 of the Commission's rules; and (3) whether supporting cost information should be considered once the Commission determines the appropriate benchmark rate.⁴³

13. Aureon filed its Direct Case on May 3, 2018, providing supporting responses and data.⁴⁴ Aureon contends it is not required to comply with our benchmark rules. Instead, in its Direct Case, Aureon argues that our rules support it charging the default transitional rate (rate cap) of \$0.00819, or in the alternative, a rate supported by its cost showing.⁴⁵ Aureon also argues that it is permitted "to charge a cost-supported tariff rate above the CLEC rate benchmark if the tariff rate has been calculated in compliance with the Commission's accounting regulations and the rate of return authorized by the Commission."⁴⁶

14. AT&T and Sprint filed oppositions to Aureon's Direct Case on May 10, 2018.⁴⁷ In their oppositions, each challenge Aureon's interpretation of our rules and AT&T challenges the sufficiency of Aureon's cost support.⁴⁸ AT&T and Sprint argue that "CenturyLink is the lawful benchmark for

³⁹ The "switched transport service" at issue in this proceeding and described in Transmittal No. 36 includes tandem switching as well as transport service. See Aureon Transmittal No. 36.

⁴⁰ 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*). 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).

⁴¹ *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).

⁴² *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Order Designating Issues for Investigation, DA 18-395 (WCB Apr. 19, 2018) (*Designation Order*).

⁴³ *Id.* at para. 1. The Bureau also waived Aureon's annual access tariff filing requirement, pursuant to section 69.3(f)(1) of our rules, through July 1, 2019. *Id.*

⁴⁴ See generally Aureon Direct Case.

⁴⁵ *Id.* at 3-10.

⁴⁶ *Id.* at 65.

⁴⁷ AT&T Services, Inc.'s Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 (May 10, 2018) (AT&T Opposition); Sprint Communications Comp. L.P.'s Opposition to the Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 (May 10, 2018) (Sprint Opposition).

⁴⁸ Sprint merely reserved the right to object to Aureon's cost support, which Sprint never did. See Sprint Opposition at 16.

Aureon's tandem switching and transport rates.”⁴⁹ AT&T asserts the “Commission’s transitional access service pricing rules relevant to this case are unambiguous, [which] clearly provide that, as of July 1, 2013, the applicable benchmark rate for CLECs ‘shall be no higher than’ the rates ‘charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26 of this chapter.”⁵⁰ AT&T disagrees with Aureon that application of the Commission’s benchmark rules and cost of service rules allow Aureon to charge a rate that is the higher of either the benchmark or Aureon’s cost-supported rate.⁵¹ Sprint also asks the Commission to require Aureon to revise its tariffed rates to comply with the Commission’s applicable benchmarking and cost-basis rules.⁵²

15. On May 17, 2018, Aureon filed a rebuttal addressing issues raised by parties opposing its Direct Case.⁵³ In its rebuttal, Aureon emphasizes that its “CEA service is a unique service,” and takes issue with how AT&T and Sprint suggest applying our benchmark and cost-basis rules.⁵⁴ Aureon later supplemented MOU data it provided as part of its Direct Case, with mileage averages weighted by MOUs.⁵⁵

16. Other filings in this proceeding include a letter from Inteliquent and a reply by South Dakota Network, LLC (SDN).⁵⁶ Inteliquent takes no explicit position, but instead alleges that as an intermediate carrier it has “insight into possible demand for use of Aureon’s CEA network” and Inteliquent projects that it “could be delivering up to 250 million minutes per month to Aureon in the coming months.”⁵⁷ SDN opposes AT&T and Sprint’s arguments regarding the benchmark, arguing that CEA providers are unique in providing equal access capabilities to their subtending LECs and that no other incumbent LEC, including Qwest Corporation d/b/a CenturyLink QC (CenturyLink), offers or could offer those capabilities.⁵⁸

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

17. Section 201(b) of the Act makes it unlawful for a common carrier to charge unjust or unreasonable rates for its services.⁵⁹ 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

⁴⁹ Sprint Opposition at 2; *see also* AT&T Opposition at 22-28.

⁵⁰ AT&T Opposition at 84 (quoting 47 CFR § 51.911(c)).

⁵¹ *Id.* at 85.

⁵² Sprint Opposition at 1. Sprint also argues that Aureon’s tariff must comply with the rate parity rules. *Id.* at 3; 47 CFR § 51.911(b). We agree, but the issue of Aureon’s compliance with the rate parity rule is not squarely part of this investigation.

⁵³ Rebuttal of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 (May 17, 2018) (Aureon Rebuttal).

⁵⁴ *Id.* at 2, 12, 21-23.

⁵⁵ Aureon MOU Data *passim*.

⁵⁶ *See* Letter from Matthew S. DelNero, Counsel for Onvoy, LLC d/b/a Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60, Transmittal No. 36 (filed May 10, 2018) (Inteliquent *Ex Parte*). Rebuttal Comments of South Dakota Network, LLC, WC Docket No. 18-60, Transmittal No. 36 (filed May 17, 2018) (SDN Rebuttal Comments).

⁵⁷ Inteliquent *Ex Parte* at 1.

⁵⁸ SDN Rebuttal Comments at 2-3. SDN also filed a letter describing differences between SDN and Aureon. *See* Letter from Benjamin H. Dickens, Jr, Counsel for SDN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60, Transmittal No. 36 (filed July 23, 2018) (SDN July 23 *Ex Parte*).

⁵⁹ 47 U.S.C. § 201(b).

reasonable.⁶⁰ At the conclusion of an investigation conducted pursuant to section 204 of the Act, the Commission may, pursuant to section 205 of the Act, “determine and prescribe what will be the just and reasonable charge” or the maximum and/or minimum, charge or charges going forward.⁶¹

III. THE APPROPRIATE BENCHMARK RATE FOR AUREON’S INTERSTATE SWITCHED TRANSPORT SERVICE

18. The first set of issues the Bureau designated for investigation revolve around the appropriate benchmark rate for Aureon’s interstate switched transport service.⁶² In determining the appropriate benchmark rate, we must consider whether the rate 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.⁶³ We conclude that CenturyLink is the competing incumbent LEC for purposes of the competitive LEC benchmark obligation, and CenturyLink’s interstate tandem-switched transport service is the appropriate service to which Aureon’s interstate switched transport rate should be benchmarked. In reaching this decision, we reject Aureon’s argument that it qualifies for the rural exemption in our rules which would permit it to benchmark its switched transport service rate to the comparable rates in the NECA Tariff.⁶⁴

19. *Waiver Request.* At the outset, we deny Aureon’s request that, in the alternative, we waive Aureon’s obligation to comply with the competitive LEC benchmark rules.⁶⁵ Generally, our rules may be waived for good cause shown.⁶⁶ We may exercise our discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁶⁷ Waiver of our rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶⁸

20. We do not find good cause to grant Aureon’s waiver request and do not find a waiver to be in the public interest. Aureon has provided no evidence of special circumstances to warrant grant of a waiver. Its bare assertions that the benchmark obligation is “incompatible with rate of return, cost based regulation and the rate ceiling” and that a waiver would be in the public interest are insufficient and unpersuasive.⁶⁹ Aureon claims that a waiver is necessary to preserve a “cost-efficient and financially-sustainable CEA network” but provides no financial or other analysis to support this claim.⁷⁰ There is no

⁶⁰ *Id.* § 204(a)(1).

⁶¹ *Id.* § 205(a).

⁶² *Designation Order* at paras. 9-16.

⁶³ 47 CFR § 51.911(c).

⁶⁴ See Aureon Direct Case at 13-16 (arguing that it qualifies for the rural exemption codified in our rules at 47 CFR § 61.26(e)); Aureon Rebuttal at 6-10.

⁶⁵ See Aureon Direct Case at 9, 67; Aureon Rebuttal at 74-75; Surreply of Iowa Network Services, Inc. d/b/a Aureon Network Services to AT&T Services, Inc.’s Surrebuttal at 42-44 (filed July 16, 2018) (Aureon Surreply).

⁶⁶ 47 CFR § 1.3.

⁶⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶⁸ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d at 1166.

⁶⁹ Aureon Direct Case at 9; see also Aureon Rebuttal at 75.

⁷⁰ Aureon Rebuttal at 75. In its surreply, Aureon further states that a waiver is necessary because “compliance with both the FCC’s cost-study requirements and AT&T’s calculated CLEC rate benchmark would render Aureon’s CEA service economically unviable, and therefore, unconstitutional.” Aureon Surreply at 43. Because we do not accept AT&T’s calculated CLEC rate benchmark and because we require Aureon to recalculate its rates under the cost of

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discussion or even mention of the waiver standard. An applicant for waiver “faces a high hurdle even at the starting gate.”⁷¹ Aureon’s unsupported waiver request plainly fails to meet this demanding standard and is therefore denied.⁷²

A. Aureon Must Benchmark its Interstate Switched Transport Service Rate to CenturyLink’s Tandem-Switched Transport Service Rates

21. Upon review of the record, we agree with AT&T and Sprint that CenturyLink is the incumbent LEC to which Aureon must benchmark its rate for the tandem switching and transport portion of switched access services it provides, pursuant to sections 51.911(c) and 61.26 of our rules.⁷³ As a CEA provider, Aureon does not serve end users; therefore, the procedure for implementing its benchmarking obligation is contained in section 61.26(f) of the Commission’s rules.⁷⁴ Under section 61.26(f), “[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end 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”⁷⁵

22. In the *Aureon Order*, the Commission left to the damages phase of the proceeding the question of the correct competing incumbent LEC to which Aureon should benchmark its rates.⁷⁶ Our rules define the competing incumbent LEC to which the competitive LEC should benchmark its rates as “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

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service rules, Aureon’s concerns regarding its ability to charge a just and reasonable rate are premature. *See infra* section III.C.

⁷¹ *WAIT Radio v. FCC*, 418 F.2d at 1157.

⁷² We also decline Aureon’s suggestion that we revisit, in the context of this tariff investigation, the Commission’s earlier decision that Aureon is a competitive LEC for purposes of the rules adopted in the *USF/ICC Transformation Order*. *See* Aureon Direct Case at 8-9; Aureon Surreply at 3-4. The Commission will consider that issue, among others, in connection with Aureon’s pending Petition for Reconsideration of the *Aureon Order*. *See* Aureon Petition for Reconsideration, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001 (filed Dec. 8, 2017). Our task in this proceeding is to investigate the rate Aureon filed in its tariff and determine whether that rate is lawful under the applicable statutory and regulatory requirements, consistent with existing Commission precedent. For this same reason, we decline to address other challenges to the Commission’s findings in the *Aureon Order*, including the application of both the CLEC benchmark and the requirements of Section 61.38 to Aureon, a contention that the *Aureon Order* imposes dual dominant/nondominant rate regulation to a single service, and claims that the Commission’s findings in the *Aureon Order* resulted in a rule change without proper administrative procedures. *See* Aureon Surreply at 2-10. In addition, Aureon argues that the Commission failed to “forbear from the statutory requirements for dominant carrier tariffs, which is a prerequisite to voiding *ab initio* a tariff.” Aureon Surreply at 10. All of these arguments involve findings made in the *Aureon Order* and thus, are beyond the scope of this tariff investigation. We do, however, address the relationship between the applicable CLEC benchmark rates under section 61.26 and the requirements of section 61.38. *See infra* section V.

⁷³ 47 CFR §§ 51.911(c), 61.26; *Aureon Order*, 32 FCC Rcd at 9689, para. 24. *See also* AT&T Opposition at 23-25, Sprint Opposition at 10-12.

⁷⁴ *Designation Order* at para. 9.

⁷⁵ 47 CFR § 61.26(f). *See AT&T Services Inc. and AT&T Corp. v. Great Lakes Comnet, Inc. and Westphalia Tel. Comp.*, Memorandum Opinion and Order, 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*) (affirming the Commission’s finding that an intermediate carrier, Great Lakes Comnet, violated section 61.26(f) when its tariff contained rates benchmarked to the incorrect “competing incumbent LEC”).

⁷⁶ *Aureon Order*, 32 FCC Rcd at 9689, para. 24.

CLEC.”⁷⁷ Having considered the submissions in this investigation, we find benchmarking to CenturyLink is most consistent with the requirements of our rules.

23. We conclude that CenturyLink is the incumbent LEC that would provide the tandem switched transport services that Aureon provides, if Aureon did not provide them. We agree with AT&T and Sprint that only CenturyLink has the network in Iowa currently capable of providing the same tandem switched transport services that Aureon provides.⁷⁸ CenturyLink operates tandem switches in the same localities as Aureon’s currently-active points of interconnection with subtending LECs,⁷⁹ tandem switches to which AT&T already connects, and presumably other IXC’s, as well.⁸⁰ Because Aureon’s subtending LECs previously connected to IXCs through CenturyLink’s predecessor in the same general locations, it seems reasonable to assume that such connections could be reestablished if necessary.⁸¹ We have not been presented with evidence that any other carrier in Iowa is capable of providing connections to IXCs at these locations.⁸²

24. We reject Aureon’s argument that the only applicable competing incumbent LECs would be the incumbent LECs that subtend Aureon’s network, because those carriers would “in the hypothetical scenario contemplated by the definition, provide the switched access service to their end offices to the extent that such switched access service was not provided by Aureon.”⁸³ As Aureon essentially concedes, its subtending LECs do not currently have the facilities or capabilities to provide the switching and transport services provided by Aureon.⁸⁴ Indeed, the subtending LECs’ inability to provide the portion of the access services that Aureon provides is the reason they subtend Aureon’s network, and therefore they would not provide those services in the event those services were not provided by Aureon.

25. We also reject Aureon’s contention that the incumbent LECs that subtend its network are the competing incumbent LECs to which Aureon should benchmark “because they provide local service to the end user exchanges for which Aureon provisions CEA service.”⁸⁵ Aureon and its subtending LECs each provide a portion of the access service needed to originate or terminate a call from or to an end user customer of one of the subtending LECs. The definition of competing incumbent LEC, however, does not require the provision of service to end users. Section 61.26(a)(2) of our rules requires that the competing incumbent LEC “would provide interstate exchange access services, *in whole or in part*, to the

⁷⁷ 47 CFR § 61.26(a)(2).

⁷⁸ See AT&T Opposition at 23-24 (stating that IXCs could exchange traffic with Aureon’s subtending LECs via the CenturyLink network); Sprint Opposition at 10-12 (explaining that CenturyLink is the only company with the facilities in Iowa to provide these services).

⁷⁹ Compare CenturyLink, Current Tandem List, <http://www.centurylink.com/iconn/> (last visited June 27, 2018) with Aureon MOU Data.

⁸⁰ AT&T Opposition, Decl. of John W. Habiak at 4-5 (AT&T Habiak Decl.).

⁸¹ See *id.* at 5.

⁸² To the contrary, Sprint observes that no carrier other than CenturyLink is capable of performing such functions. Sprint Opposition at 11.

⁸³ Aureon Direct Case at 23-24; see also *id.* at 25-26 (arguing that Aureon’s subtending LECs would have provided the equal access and transport service themselves or upgraded their facilities to provide these services).

⁸⁴ See *id.* at 1 (“Aureon’s network provides switching and transport service to IXCs, connecting them to facilities of small, rural LECs that subtend Aureon’s CEA network . . . Without the CEA network, many subtending LECs would be forced to bear burdensome network and facility construction costs, if they could even afford them at all . . .”). See also Sprint Opposition at 11 (stating that few if any subtending LECs have tandem switches and none have an extensive transport network).

⁸⁵ Aureon Direct Case at 19; see also Aureon Rebuttal at 29.

extent those services were not provided by the CLEC.”⁸⁶ Aureon claims that CenturyLink cannot be the competing incumbent LEC for applying the benchmark obligation because it is not the incumbent LEC “for the service areas where the end users of Aureon’s subtending LECs reside.”⁸⁷ But the question to be answered is whether CenturyLink would provide the portion of the access that Aureon provides if Aureon did not provide it, not the portion provided by Aureon’s subtending LECs.⁸⁸

26. Both AT&T and Aureon argue that the Commission’s Order in *AT&T v. Great Lakes* and reviewing decision of the D.C. Circuit in *Great Lakes v. FCC* support their respective positions regarding the competing incumbent LEC(s) to which Aureon should benchmark.⁸⁹ In *AT&T v. Great Lakes*, the Commission resolved a complaint in which a tariff filed by a competitive LEC operating as an intermediate provider with no end users (Great Lakes) was challenged by AT&T as containing unlawful rates.⁹⁰ The Commission found, among other things, that AT&T Michigan was the competing incumbent LEC and that Great Lakes was therefore required to benchmark its rates to those of AT&T Michigan.⁹¹ The D.C. Circuit affirmed the Commission’s finding that AT&T Michigan was the competing incumbent LEC to which Great Lakes should benchmark.⁹² As an initial matter, *AT&T v. Great Lakes* was limited to adjudicating the narrow dispute at issue in that proceeding. For that reason, the specific analysis and holdings there are not directly applicable here. We do find instructive, however, the D.C. Circuit decision finding that the “relevant question” was which incumbent LEC would have performed the role played by Great Lakes “had Great Lakes not inserted itself into the traffic path.”⁹³ In this case, if Aureon were not available to provide tariffed tandem switched transport services in the areas of Iowa where Aureon’s subtending LECs connect to Aureon, only CenturyLink would provide such services. Aureon’s subtending LECs do not provide tandem switched transport services, and Aureon’s argument that absent Aureon’s services, the subtending LECs would somehow provide these access services to their end offices is purely speculative.⁹⁴ Thus, even if we construe *AT&T v. Great Lakes* as relevant precedent, our holding here that CenturyLink is the competing incumbent LEC to which Aureon must benchmark is consistent with that precedent.

27. Both Aureon and SDN argue that CenturyLink cannot be the competing incumbent LEC because, even though it provides tandem switching and transport, it does not provide centralized equal

⁸⁶ 47 CFR § 61.26(a)(2) (emphasis added); see also AT&T Surrebuttal at 8. Nothing in our rules requires that the competing incumbent LEC have existing connections with any other entity, only that the competing incumbent LEC would provide access services to the extent those services were not provided by the competitive LEC. See AT&T Surrebuttal at 13.

⁸⁷ Aureon Direct Case at 25.

⁸⁸ Aureon asserts that CenturyLink cannot be the competing incumbent LEC under section 61.26(f) of our rules because it does not offer “the same access services” as Aureon, which the rule requires. Aureon Rebuttal at 18. Even if Aureon has accurately described current differences between its service and the service CenturyLink offers, that does not prove that CenturyLink would not provide that portion of the access service Aureon provides if Aureon no longer did so, as is required by our rule. Equally irrelevant is Aureon’s explanation of the difference between its network and the network of CenturyLink’s predecessor at the time Aureon was created in 1988. *Id.* at 21-24. See also AT&T Surrebuttal at 8-9.

⁸⁹ See, e.g., Aureon Rebuttal at 26-27, AT&T Surrebuttal at 14-15; Aureon Surreply at 57-59.

⁹⁰ *AT&T v. Great Lakes*, 30 FCC Rcd. at 2586, 2594, paras. 2, 25.

⁹¹ *Id.* at 2594, para. 25.

⁹² *Great Lakes v. FCC*, 823 F.3rd at 1004-05.

⁹³ *Id.* at 1005.

⁹⁴ See *supra* para. 24.

access service.⁹⁵ We cannot determine from the record whether Aureon's subtending LECs still use or require the equal access functionality Aureon makes available. The Commission granted forbearance from equal access obligations in 2015 to all LECs; however, the Commission required incumbent LECs to maintain equal access for existing customers presubscribed to a stand-alone long-distance provider as of December 28, 2015.⁹⁶ Given the prevalence of bundled and mobile services, and the virtual non-existence of stand-alone long-distance service, it is difficult to imagine a significant demand for equal access capability.⁹⁷ Regardless, CenturyLink or its predecessors did provide equal access capability to its customers when it was required, and may still provide it to customers grandfathered by the Commission; thus, it has or had the technical capability to offer that functionality were Aureon not providing it, to the extent still necessary, and the Aureon subtending LECs do not.⁹⁸

28. We also reject Aureon's contention that CenturyLink's network does not offer the same functionality as Aureon and thus, CenturyLink's access services cannot serve as the benchmark.⁹⁹ Specifically, Aureon argues that its "integrated" network is unique in that it allows IXC's to connect to a single point of interconnection and that CenturyLink's network does not provide this same connectivity.¹⁰⁰ According to Aureon, because of these differences, CenturyLink does not provide the same access services and thus, such services cannot be used as the benchmark.¹⁰¹ We disagree. The fundamental tariffed access services at issue here are tandem switching and transport services. Those services are offered by both Aureon and CenturyLink in the relevant parts of Iowa. The fact that Aureon offers IXC's a more centralized point of interconnection does not alter the nature of the tandem switching and transport services offered by both providers. Indeed, competitive LECs' networks and the specific technologies they use may be different than those provided by incumbent LECs, but such differences do not necessarily preclude the ability to benchmark access services.

⁹⁵ SDN Rebuttal Comments at 2 (arguing that "CenturyLink does not provide equal access functionality as part of its tandem switching service, which is a critical component of CEA switching service . . ."). SDN observes that "[a]rguably, no carrier, with respect to switching, provides 'the same access service' as a CEA provider . . ." *Id.* at 3. See also Letter from Benjamin H. Dickens, Jr., Counsel for South Dakota Network, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60: Iowa Network Access Division Tariff FCC No. 1, WC Docket No. 18-155: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage (filed July 16, 2018) (SDN *Ex Parte*); SDN July 23 *Ex Parte* at 3. Aureon makes the same argument. Aureon Rebuttal at 29-30; Aureon Surreply at 49-54. SDN and Aureon thus seem to be arguing that the competitive LEC benchmark obligation cannot apply to CEA providers because there is no "competing ILEC" pursuant to section 61.26(b). However, the Commission already determined in the *Aureon Order* that the benchmark obligation does apply to Aureon and reconsideration of this conclusion is outside the scope of this proceeding.

⁹⁶ *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, 31 FCC Rcd 6157, 6188-89, para. 54 (2015).

⁹⁷ With respect to its own subtending LECs, SDN alleges that "equal access functionality is still necessary as approximately three quarters of its originating traffic is sent to interexchange carriers." SDN *Ex Parte* at 1. However, as the majority of traffic handled by Aureon is terminating, SDN's continuing provision of equal access is not relevant to how Aureon's traffic is handled.

⁹⁸ We recently adopted an order terminating the remaining obligation of incumbent LECs to maintain equal access for existing customers presubscribed to a stand-alone long-distance provider as of December 28, 2015. *Nationwide Number Portability, et al.*, WC Docket No. 17-244, Report and Order, paras. 14-16 (rel. July 13, 2018), making Aureon's concern even less compelling.

⁹⁹ See Aureon Rebuttal at 18-25; Aureon Surreply at 49-55.

¹⁰⁰ Aureon Surreply at 51-52.

¹⁰¹ See Aureon Surreply at 50-52 (citing 47 CFR § 61.26(f)).

29. Aureon's argument that CenturyLink cannot be the competing incumbent LEC for purposes of the benchmarking obligation because it does not meet the statutory definition of "incumbent local exchange carrier" is also unavailing.¹⁰² As Aureon recognizes, section 251(h) of the Act provides:

[f]or purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that – (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).¹⁰³

Aureon claims that under this section of the Act: "the competing ILEC must be a [National Exchange Carrier Association] member ILEC providing the end user 'telephone exchange service' in the area where the CLEC provides interstate exchange access."¹⁰⁴ Aureon argues that "CenturyLink cannot be the competing ILEC as defined because CenturyLink is not a NECA member and does not provide local service to end users in the exchanges of the CEA subtending ILECs."¹⁰⁵

30. CenturyLink, or its predecessors, meets the first prong of the statutory definition of incumbent local exchange carrier because it is the LEC that historically provided telephone exchange service in the areas where Aureon is actively providing its exchange access service. Today, CenturyLink provides such service doing business as CenturyLink QC pursuant to its Tariff F.C.C. No. 11.¹⁰⁶ As Aureon itself recognizes, of its 16 points of interconnection, only **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** are active and they are all located in areas also served by CenturyLink.¹⁰⁷ As AT&T notes, CenturyLink has tandem switches "in or near the municipalities where Aureon's active POIs are located."¹⁰⁸ CenturyLink also meets the second prong of the statutory definition, because—contrary to Aureon's assertions—CenturyLink *is* a member of NECA.¹⁰⁹ Contrary to Aureon's assertions, CenturyLink need not "provide local service to end users in

¹⁰² Aureon Direct Case at 19; Aureon Surreply at 45.

¹⁰³ 47 U.S.C. § 251(h).

¹⁰⁴ Aureon Direct Case at 19; *see also* Aureon Rebuttal at 17-18.

¹⁰⁵ Aureon Direct Case at 19; *see also* Aureon Surreply at 45-47.

¹⁰⁶ CenturyLink Operating Companies Tariff F.C.C. No. 11, 1st Revised Title Page 1 (identifying Qwest Corporation d/b/a CenturyLink QC as providing interstate access services in the state of Iowa, among others). Aureon also argues that CenturyLink cannot be the competing incumbent LEC because it "cannot provide interLATA transport services under its tariff, which authorizes these services only within CenturyLink's LATA." Aureon Rebuttal at 27, Exh. H (containing CenturyLink Operating Companies Tariff F.C.C. No. 11 § 6.1 (1st Revised Page 6-1)). If Aureon did not offer the portion of the tandem switching and transport services it now provides, CenturyLink has the network facilities to offer such services and could remove the LATA restriction from its tariff, if necessary, as it is not otherwise legally prohibited from offering interLATA services.

¹⁰⁷ Aureon Direct Case at 27, n.95. In the Aureon MOU Data filing, Aureon revised the number of active POIs from eight to **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**. Aureon MOU Data at 1.

¹⁰⁸ AT&T Habiak Decl. at para. 9 (concluding that "the LECs that subtend the Aureon network would likely be able to move their connecting facilities from Aureon's network to CenturyLink's network efficiently").

¹⁰⁹ *See* NECA Members, https://www.neca.org/NECA_Members.aspx (last visited July 18, 2018) (CenturyLink QC continues to be listed under the name by which it was formerly known, Qwest Corporation). *See also* 47 CFR § 69.601 *et seq.* (this section of the Commission's rules established NECA and section 69.602(a)(1) explains that the

(continued....)

the exchanges of the CEA subtending ILECs” pursuant to the definition of competing incumbent LEC in section 61.26(a)(2). What is required by that definition is that CenturyLink “would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by” Aureon. CenturyLink does or reasonably would provide the tandem switching and transport service if Aureon did not.¹¹⁰ Therefore, we find CenturyLink is the competing incumbent LEC for purposes of applying the section 51.911(c) competitive LEC benchmark obligation to Aureon.

B. Aureon Does Not Qualify for the Rural Exemption

31. Aureon argues that it qualifies for the rural exemption in section 61.26(e) of our rules, which would permit it to benchmark its switched transport service rate to the comparable rates in the NECA Tariff.¹¹¹ We disagree. The goal of the rural exemption was to encourage competition in the provision of local exchange service in rural areas.¹¹² Aureon does not provide a competitive option to end users in rural areas, and as such it complies with neither the spirit nor the letter of the rules.

32. To qualify for the rural exemption, a competitive LEC must be a rural competitive LEC competing with a non-rural incumbent LEC.¹¹³ Section 61.26(a)(6) of our rules defines a “rural competitive LEC” 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.”¹¹⁴ Thus, the definition is focused on service to end users in rural areas. Aureon is not eligible for the rural exemption because it does not serve any end users in any area.¹¹⁵

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first subset of members consists “of the telephone companies owned and operated by the seven Regional Bell Operating Companies (RBOCs).” CenturyLink is a “successor or assign” of an RBOC as required by the definition in section 251(h) of the Act.

¹¹⁰ Sprint Opposition at 11 (“As a practical matter, if Aureon were to cease operations, the rural LECs that currently subtend Aureon would have to find another tandem transport service provider. . . . CenturyLink has more tandem switches across Iowa than Aureon and is clearly in a position to compete with Aureon. . . . Because CenturyLink has the only network comparable to Aureon’s, it would provide the services here in Aureon’s absence. It is therefore the ‘competing [LEC]’ for benchmark purposes.”) (footnote omitted).

¹¹¹ Aureon Direct Case at 10-14; *see also* Aureon Reply to Petitions at 5.

¹¹² *See Seventh Report and Order*, 16 FCC Rcd at 9950, para. 65.

¹¹³ *See* 47 CFR § 61.26(e). In the *Designation Order*, Aureon was directed to explain how it qualifies for this narrow exemption, particularly when it does not serve end users. *Designation Order* at para. 11 (citing Aureon Reply to Petitions at 5).

¹¹⁴ 47 CFR § 61.26(a)(6).

¹¹⁵ *See* Aureon Direct Case at 13-18; *see also* Aureon Rebuttal at 6-7. Additionally, the rural exemption only applies to “a rural CLEC competing with a non-rural ILEC.” 47 CFR § 61.26(e). The *Designation Order* required Aureon to “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 those CLECs that are competing with *price-cap ILECs* that do not qualify as ‘rural telephone companies’ under the Act’s definition.” *Designation Order* at para. 12 (citing *Seventh Report and Order*, 16 FCC Rcd at 9955, para. 79 (emphasis added) (footnote omitted)). Aureon responds that, for purposes of the rural exemption, CenturyLink is the non-rural ILEC with which it competes. Aureon Direct Case at 19-20. Because we find that Aureon is not eligible for the rural exemption on other grounds, we need not reach the issue of whether it is competing with a non-rural incumbent LEC.

33. As the Commission has previously found, “the rural exemption does not apply to carriers that serve no end users whatsoever.”¹¹⁶ Intermediate carriers serving no end users can carry calls on their networks that originate or terminate in urban areas, and those calls can originate or terminate anywhere in the country. Under the interpretation advanced by Aureon, all intermediate carriers that serve no end users would meet the definition of a rural competitive LEC, irrespective of where they operate. A finding that all intermediate carriers are rural competitive LECs cannot be squared with the clear intent of the Commission to identify and provide different treatment to competitive LECs that serve only rural end users.¹¹⁷ The Commission has categorized the rural exemption as a “narrow exception” intended to encourage competition for end users in rural areas.¹¹⁸ And it created this narrow exception out of a concern that competitive LECs serving rural end users incurred “much higher costs, particularly loop costs” compared to urban providers.¹¹⁹ For these reasons, intermediate carriers that do not serve end users cannot be considered rural competitive LECs and are ineligible for the rural exemption. Because CEA providers such as Aureon do not serve any end users, we find that they cannot fit the eligibility criteria contemplated when the rural exemption was adopted.¹²⁰

34. Even if we stretched the applicability of the rural exemption to consider end users that are “indirectly” served by an intermediate provider, Aureon would not qualify for the exemption because at least some of the end users ultimately served by Aureon’s subtending LECs are in urban areas as defined in section 61.26(a)(6). The *Designation Order* sought this information from Aureon¹²¹ and its Direct Case confirms that end users in urban areas are served by the access services jointly provided by Aureon and its subtending LECs.¹²²

¹¹⁶ *AT&T v. Great Lakes*, 30 FCC Rcd at 2594, para. 27 n.96. Although that Commission finding was remanded by the United States Court of Appeals for the District of Columbia Circuit on procedural grounds, the Court did not address the merits of this conclusion. See *Great Lakes v. FCC*, 823 F.3d at 1004.

¹¹⁷ *Seventh Report and Order*, 16 FCC Rcd at 9950, para. 76 (in which the Commission found that “if any portion of a CLEC’s access traffic originates from or terminates to end users located within either of these two types of [urban] areas, the carrier will be ineligible for the rural exemption to our benchmark rule” because it will not meet the definition of a rural competitive LEC).

¹¹⁸ 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 market-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”) (*Eighth Report and Order*).

¹¹⁹ *Seventh Report and Order*, 16 FCC Rcd at 9950, para. 66. The *Eighth Report and Order* affirmed this policy rationale explaining that the rural exemption “was intended to prevent rural competitive LECs with high loop costs” from being tied to low access charge rates. *Eighth Report and Order*, 19 FCC Rcd at 9125-26, para. 35. Notably, because loops connect to end users, the only LECs with loop costs are those that directly serve end users.

¹²⁰ We note that the Commission specifically adopted a rule for the benchmarking of intermediate carriers’ rates in section 61.26(f) and the rural exemption in section 61.26(e) does not modify the specific intermediate carrier requirements of section 61.26(f) as it does the other subsections 61.26(b)-(d). 47 CFR §§ 61.26(b)-(f). See also AT&T Opposition at 36-38. Because the rural exemption in section 61.26(e) of our rules does not apply to Aureon, we do not address Aureon’s claim that “there is nothing in the rural exemption or in the intermediate carrier provision [61.26] (f) that provides that subsection (f) trumps subsection (e), and AT&T is wrong to argue otherwise.” Aureon Rebuttal at 10. That claim is not relevant to our determination here.

¹²¹ *Designation Order* at para. 11.

¹²² Aureon Direct Case at 17-18 (stating that, if the Commission concludes “that Aureon indirectly serves all of the end users of the subtending LECs, it likely will follow that Aureon would not meet the definition of rural CLEC in order to qualify for the rural exemption . . . [because its] subtending LECs serve end users located in those [urban] areas.” (footnote omitted)).

C. Aureon's Composite Benchmark Rate

35. Using the CenturyLink tariffed rates, we calculate that the composite rate to which Aureon should benchmark is \$0.005634. The CenturyLink rates and rate elements we use in this calculation are from CenturyLink Operating Companies Tariff F.C.C. No. 11 and are the rates applicable to CenturyLink interstate tandem-switched access service in Iowa.¹²³ All parties participating in this proceeding, including Aureon, agree that if CenturyLink is the correct competing incumbent LEC, these rates and rate elements should be used in determining the composite rate to which Aureon should benchmark.¹²⁴

36. Traditionally, tariffed tandem-switched transport service, the general equivalent of the service Aureon provides, is comprised of three separate rate elements: (1) tandem switching (per-MOU); (2) transport mileage (per-MOU-per-mile);¹²⁵ and (3) transport termination (per-MOU).¹²⁶ CenturyLink tariffs tandem-switched transport service in a similar manner, consisting of four rate elements: (1) Tandem Switching Transport Fixed per MOU; (2) Tandem Switching Transport per mile; (3) Tandem Switching; and (4) Multiplexing.¹²⁷ When Aureon first tariffed its CEA service, however, Aureon used a rate structure with a single rate element on a per-MOU basis,¹²⁸ and it has continued to do so. This is consistent with the Commission's orders pertaining to the CLEC benchmark, which permit competitive LECs flexibility in establishing their rate structures.¹²⁹ The Commission established that "[t]he only requirement is that the aggregate charge for these [competitive LEC] services, however described in their tariffs, cannot exceed our benchmark."¹³⁰

37. Because the competing incumbent LEC to which Aureon must benchmark—CenturyLink—has a different rate structure than Aureon, we must translate CenturyLink's multi-element rate into a single per-MOU rate to which Aureon must benchmark. Although CenturyLink's tandem switching, tandem transport, and multiplexing rate elements are already determined on a per-MOU basis, CenturyLink's tandem transport charge also contains a mileage-based component, which requires us to determine over how many miles, on average, Aureon's CEA service transports traffic between Aureon's tandem switch and the POIs at which Aureon connects with its subtending LECs. Thus, we must determine a reasonable estimate of the average distance that must be applied to the distance-sensitive CenturyLink rate element in that calculation.

¹²³ CenturyLink Operating Companies Tariff F.C.C. No. 11, § 6.8.1(c)(1), 5th Revised Page 6-318, 2nd Revised Page 6-318-1.

¹²⁴ See Aureon Direct Case at 30; AT&T Habiak Decl. at 6, para. 14; Sprint Opposition at 14.

¹²⁵ Mileage-based rate elements are calculated using the shortest distance between two points, regardless of the actual route followed—a distance known as airline distance. See, e.g., 47 CFR § 69.111(d)(2).

¹²⁶ See *id.* § 69.111.

¹²⁷ CenturyLink Operating Companies Tariff F.C.C. No. 11, § 6.8.1(c)(1), 5th Revised page 6-318, 2nd Revised page 6-318.1.

¹²⁸ See *Iowa Network Access Division* Tariff F.C.C. No. 1, Transmittal Nos. 1, 6, and 10, Order, 4 FCC Rcd 3947, 3948 (CCB 1989) (denying petitions to reject or suspend Aureon's initial tariff for CEA service, including a challenge that its non-distance sensitive rate structure violated the Commission's rules).

¹²⁹ *Seventh Report and Order*, 16 FCC Rcd at 9945, para. 54 ("[b]y moving CLEC tariffs to the 'rate of the competing ILEC' we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service"); *id.* at 9946, para. 55 ("our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure").

¹³⁰ *Id.* at 9946, para. 54 (determining that "by moving CLEC access tariffs to the competing ILEC rate, we intend to permit CLECs to receive revenues equivalent to those the ILECs receive from IXCs, whether they are expressed as per-minute or flat-rate charges"); see also AT&T Opposition at 21.

38. To determine average miles, we must first decide whether the rate should be based on miles for which a typical IXC connecting to CenturyLink for tandem-switched transport service would pay CenturyLink or on the miles for which such an IXC would pay Aureon if it interconnected with Aureon's actual network. In its Direct Case, Aureon uses 104 average miles for the distance-sensitive transport component.¹³¹ Aureon maintains **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** active POIs.¹³² Aureon calculated that the average distance for all 36 possible connections between Aureon's active POIs is 118 miles, and the average distance between Aureon's POI in Des Moines (its primary POI) and its other active POIs is 104 miles.¹³³

39. The oppositions to Aureon's Direct Case offer alternative calculations for determining the average transport mileage for use in establishing a composite benchmark rate. AT&T argues that the average transport mileage that should be used to compute the distance-based portion of CenturyLink's rates is 22 miles.¹³⁴ AT&T calculates this average using Telcordia's LERG Routing Guide data to determine the distances between CenturyLink's tandem switches and the local exchanges of each of Aureon's subtending LECs.¹³⁵ It then weights the use of those connections based on the volumes of traffic AT&T transported to each subtending LEC for the period January 2015 to March 2018.¹³⁶ Likewise, Sprint calculates a weighted average distance of transport based on mileage Aureon bills Sprint for intrastate tandem transport service.¹³⁷ Sprint notes that "[f]rom January 2014 through November 2017, the average distance of transport (total intrastate minutes divided by intrastate total miles) that was billed to Sprint by Aureon was just under twenty-one (20.99) miles."¹³⁸ These data from AT&T and Sprint, calculated by AT&T using CenturyLink network facilities and by Sprint using Aureon network facilities would suggest a similarity in average miles regardless which network is used, and when properly weighted based on actual call volumes.

¹³¹ Aureon Direct Case at 30.

¹³² See Aureon MOU Data at 1.

¹³³ Aureon Direct Case at 29. According to Aureon, in its tariff support, Aureon uses 100 miles as the average transport length. In its Direct Case, Aureon explains that it "used the lower [104], conservative average in choosing 100 miles (a round number to simplify the analysis)." *Id.* Aureon also repeats claims it made in its reply to oppositions to its tariff filing that even if it should benchmark its rate to those of CenturyLink, the rate it filed (\$0.00576 per MOU) is "comparable" to the CenturyLink rate it calculated (\$0.005648 using the average mileage of 104). Aureon Direct Case at 30-31. The competitive LEC benchmark obligation requires that Aureon's tariffed rate "shall be no higher than" the CenturyLink rate, not that it be "comparable." See 47 CFR § 51.911(c).

¹³⁴ AT&T Opposition at 27.

¹³⁵ *Id.*

¹³⁶ *Id.* As AT&T notes, this calculation assumes a worst-case scenario that all traffic is being delivered to the end offices of the Aureon subtending LECs. AT&T Habiak Decl. at 8, paras. 21-22 ("However, the worst-case scenario would be if CenturyLink were required to transport the traffic from its tandem switch all the way to the subtending LEC's end office. Assuming that worst-case scenario, I have estimated that, on an aggregate basis, the maximum composite rate that CenturyLink would charge if it was required to deliver all of the CEA traffic to the subtending LECs' end offices would be \$0.003188 per-minute. Therefore, \$0.003188 per minute is a conservative benchmark rate for Aureon.").

¹³⁷ Sprint Opposition at 14-15. Sprint used intrastate call volumes in its analysis and does not explain why it didn't use interstate volumes. We note, however, that the portion of access service Aureon provides, the physical connection between its tandem and the POI with its subtending LECs, is the same—and is the same distance—whether a call is interstate or intrastate. For this reason, Aureon's challenge to Sprint's use of intrastate data (Aureon Rebuttal at 33-35) and the fact that Aureon's intrastate tariff has a separate, distance-based transport charge, are inapposite.

¹³⁸ Sprint Opposition at 14-15.

40. On May 25, 2018, Aureon filed additional information on total originating and terminating MOUs for 2016 and 2017 for each of the active POIs on its network.¹³⁹ Based on this information, Aureon calculates that: the average weighted miles of transport provided by Aureon in 2017 is 103.519 miles.¹⁴⁰ Aureon highlights that the data in the Aureon MOU Data filing are [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].¹⁴¹ Aureon does not provide an estimate of [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. It would be reasonable to assume, however, that the volume of such traffic is *de minimis* because the number of times an IXC will [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] will be insignificant in comparison to the millions of calls carried on Aureon's network.

41. We find that Aureon's calculation in its Direct Case of the distance-based transport component of CenturyLink's rates using a simple numerical average of the distances between Aureon POIs (or taking the 104-mile average and rounding it to 100 as Aureon did in its tariff filing) is insufficient to support its composite benchmark rate calculation because it does not reflect any weighting for the volume of calls carried on its network or the actual routes that those calls travel.¹⁴² If Aureon were to charge for its service using the traditional separate rate elements, as does CenturyLink, it would base its charges on the actual mileage of calls that it originates and terminates. Thus, any composite rate must reflect a reasonably accurate estimation of the mileage component using a weighted rather than simple average.¹⁴³

42. We are also not persuaded that we should use the alternative weighted average mileage calculations offered by AT&T and Sprint, because they do not reflect the traffic volumes and call routing on Aureon's network.¹⁴⁴ AT&T contends that the mileage used in the composite calculation should reflect the mileage between CenturyLink's tandem switches and the local exchanges of the subtending LECs.¹⁴⁵ We disagree. If Aureon had adopted a more traditional rate structure, such as that of CenturyLink, it would assess a separate transport mileage rate that would reflect the actual miles of transport provided. The Commission has never required that the mileage component of competitive LEC

¹³⁹ See Aureon MOU Data.

¹⁴⁰ *Id.* at 2 (citing Excel spreadsheet 4). This result is very similar to the simple average results Aureon submitted in its Direct Case. See Direct Case at 29 (calculating averages at 118 and 104).

¹⁴¹ Aureon MOU Data at 2 (explaining that [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]).

¹⁴² Aureon Direct Case at 29.

¹⁴³ For example, if 90 percent of the calls on Aureon's network travel 49 miles (the distance between Aureon's POIs in Grinnell and Des Moines) and 10 percent travel 104 miles (the distance between Aureon's POIs in Cedar Rapids and Des Moines), the average length of transport would be only 54.5 miles. These distances are contained in Table C, page 29, of Aureon's Direct Case.

¹⁴⁴ AT&T Opposition at 25-28; AT&T Surrebuttal at 17-19; Sprint Opposition at 14-15. Aureon also claims that Sprint's and AT&T's mileage calculations cannot be used because they "do not factor in the plight of the smaller IXCs." Aureon Rebuttal at 33, 35. In calculating a benchmark rate, the competitive LEC benchmark obligation in our rules does not consider the possible types and sizes of IXCs that might use the competitive LEC's service. The characteristics of potential customers for access services are not relevant to a calculation of a benchmark based on how Aureon's network is being used today. See also AT&T Surrebuttal at 20-21.

¹⁴⁵ AT&T Opposition at 25-28.

transport rates reflect something other than the actual network used, which is what AT&T would have us do here. Further, the Commission has never precluded a competitive LEC from billing for services (or, in this case, mileage) that it actually provides, at least in the absence of evidence of arbitrage or other abuse of our rules.¹⁴⁶ Sprint selected a 20-mile average based on the average transport mileage billed to Sprint by Aureon but admits that its traffic may not mirror all connecting carriers' traffic.¹⁴⁷ Indeed, the Aureon Rebuttal confirms that Sprint's mileage calculation is not representative of the network transport miles provided to other carriers.¹⁴⁸

43. Instead, we find that the weighted average mileage for 2017 of 103.519 calculated by Aureon and submitted in the Aureon MOU Data filing is based on the most recent demand data and provides the best estimate of the actual mileage of traffic traversing Aureon's network. Therefore, the weighted average mileage of 103.519 should be used to calculate the composite benchmark rate to be used by Aureon, as described in Table 1 below.

TABLE 1

Aureon Benchmark Composite Rate

| | | | |
|-------------------------------|------------|-----------------|-------------------|
| Tandem-Switched Transport | | | |
| fixed per MOU ¹⁴⁹ | \$0.000240 | | \$0.000240 |
| per mile | \$0.000030 | x 103.519 miles | \$0.003106 |
| Tandem Switching | \$0.002252 | | \$0.002252 |
| Common Transport Multiplexing | \$0.000036 | | \$0.000036 |
| Total per MOU | | | \$0.005634 |

We find that this calculation of a benchmark rate of \$0.005634 is reasonable and complies with our rules. Based on this composite rate, Aureon's tariffed rate of \$0.00576 exceeds this benchmark and violates our CLEC benchmark rule.¹⁵⁰

44. Finally, we address AT&T's contention that, if Aureon's rate structure included a mileage-sensitive transport component, IXCs would hand their traffic off to Aureon at the POI closest to the terminating subtending LEC to minimize their transport charges.¹⁵¹ AT&T alleges that under such

¹⁴⁶ For example, the Commission considered and rejected an argument that a competitive LEC should be prohibited from charging for tandem switching that it provides when an incumbent LEC is already assessing a tandem switching charge for the same traffic. *Eighth Report and Order*, 19 FCC Rcd at 9112, para. 13.

¹⁴⁷ Sprint Opposition at 14-15.

¹⁴⁸ Aureon Rebuttal at 34.

¹⁴⁹ Sprint contends that only half of this rate element should be used in determining the benchmark rate. Sprint Opposition at 14 n.50. Sprint claims "[b]ecause these routes are meet point routes, meaning Aureon owns one end of the transport distance and the [subtending LEC] owns the other end, Aureon would only have equipment on one end of the transport distance. As a result, Aureon is entitled to only one-half of the rate." The CenturyLink tariff provides (§§ 2.4.7.C- 2.4.7.D, 2nd Revised Page 2-70) that for this rate element, 100 percent of the charge will be used to determine the billing percentage based on the agreement of the carriers. There is nothing in the record about any agreements Aureon might have with its subtending LECs or the billing percentages that might have been agreed to in such agreements, nor would there be as Aureon's tariff does not contain this separate rate element. Therefore, we conservatively include 100 percent of this rate element in the calculation of the benchmark rate.

¹⁵⁰ 47 CFR § 51.911(c). We note that SDN raises concerns regarding how the CLEC benchmark requirement might be applied to it. SDN July 23 *Ex Parte* at 4. Any concerns SDN might have in this regard are not relevant to our investigation of Aureon's tariff and thus we do not address them.

¹⁵¹ See AT&T Surrebuttal at 20.

circumstances, Aureon would charge about one mile of transport.¹⁵² According to AT&T, while Aureon is free to use a composite rate under the Commission's rules, Aureon may not use a composite rate as a device to charge more than what it could charge if it mirrored the individual CenturyLink rate elements.¹⁵³

45. AT&T's argument appears to assume that, if Aureon changed its rate structure to include a mileage-sensitive transport charge, Aureon would retain its current policy of permitting IXCs to interconnect at any POI that is economically feasible to reach and would calculate mileage based on the airline miles between the entry and exit point on Aureon's network. The assumptions underlying the AT&T argument do not reflect the facts presented in this investigation. We must evaluate the appropriate mileage based on the facts in the record considering Aureon's existing rate structure. Aureon's rate structure is not at issue in this investigation and therefore, we find AT&T's arguments on this issue to be misplaced.¹⁵⁴

IV. SUFFICIENCY OF AUREON'S SUPPORTING INFORMATION

46. The second set of issues the Bureau designated for investigation revolve around the sufficiency of the cost support material filed with Aureon's Transmittal No. 36. As a dominant carrier subject to rate-of-return regulation, Aureon must supply supporting material demonstrating its rates are cost supported.¹⁵⁵ Our rules establish a process for a dominant carrier to calculate its rate by allocating a revenue requirement across distinct services (or rate elements) and dividing it by projected demand for such services (or rate elements).¹⁵⁶ The revenue requirement is calculated by multiplying capital investments (plant in service minus accumulated depreciation) by an authorized rate of return and adding to that certain allowable operating expenses, including taxes.¹⁵⁷ In the case of Aureon, the demand projection process is simplified because Aureon only provides one service/rate element in its interstate tariff—(tandem) switched transport service.¹⁵⁸ The *Designation Order* identified questions relating to

¹⁵² *Id.* The basis for AT&T's assertion that Aureon would charge for "about 1 mile" of transport, under these circumstances, is not clear.

¹⁵³ *Id.*

¹⁵⁴ AT&T's attempt to bolster its position by citing a filing the Commission made in the Paetec litigation is unpersuasive. *See* AT&T Surrebuttal at 20 (citing Brief for Amicus Curiae FCC, Paetec Commc'ns v. MCI Commc'ns, Nos. 11-2268 & 11-1204, 2012 WL 992658, at *20 (3d Cir. Mar. 14, 2012) for the proposition that "the rate structure a CLEC chooses for its tariff has no bearing on the maximum rate level"). In that case, the Commission argued that it was appropriate to reject Paetec's use of a composite rate that included charges for tandem switching when Paetec did not in fact provide tandem switching. *Id.* The point in that instance was that a carrier cannot charge for a service it does not provide by making that charge part of a composite rate. In this case, Aureon is only charging for services it actually provides via a composite rate.

¹⁵⁵ *Aureon Order*, 32 FCC Rcd at 9690, para. 26.

¹⁵⁶ *See* 47 CFR Part 69, Subparts C, D (apportionment of investment and expense). *See, e.g., id.* §§ 69.106, 69.111 (computation of rates based on demand). The interstate revenue requirement is derived from account data recorded pursuant to Part 32 that has been processed consistent with the Part 64 rules to remove non-regulated services and Part 36 to separate costs between state and federal jurisdictions.

¹⁵⁷ *Id.* §§ 69.2(c), (o), (ff).

¹⁵⁸ *See* Iowa Network Access Division Tariff F.C.C. No. 1, § 6.8.1(A), 12th Revised Page 145. Aureon's tariff includes various non-recurring charges relating to its CEA service which amount to \$1,000 of expected revenue (less than 0.008% of its revenue requirement) that it subtracts from its revenue requirement immediately prior to dividing the remaining revenue requirement by projected demand to arrive at the per-MOU CEA rate. *See* Aureon Transmittal No. 36, Description & Justification at 1 (Aureon Transmittal No. 36 D&J); Aureon Transmittal No. 36, Attach. 1 at "Sect 2 -Rate Development" tab (cell G26). Thus, for purposes of the overwhelming majority of Aureon's rate development process, such charges are irrelevant. No party objected to this approach (or the amount used) nor did the Bureau designate it for investigation.

three aspects of this process: (1) Aureon's selected authorized rate of return; (2) the appropriate level of a network lease expense (an affiliate transaction); and (3) the projected demand by which the revenue requirement is divided to produce a per-MOU rate.¹⁵⁹ Based on the record before us, we determine that: (1) Aureon's 10.50 percent rate of return complies with our rules; (2) Aureon did not provide adequate information supporting the inclusion of all of its lease expense in its cost calculation and therefore must file, within 60 calendar days, the additional information requested below; and (3) Aureon's demand data, both historical and projected, is reasonable and as such supports its revenue requirement and its rate of return.

A. Aureon's Authorized Rate of Return Complies with Commission Rules

47. There is no dispute that Aureon's current 10.50 percent rate of return through July 1, 2019 complies with our rules which allow a maximum authorized rate of return, currently set at 10.75 percent for tariff year 2017-18, which decreased by 25 basis points for tariff year 2018-19 (commencing July 3, 2018).¹⁶⁰

48. In Transmittal No. 36, Aureon selected a 10.625 percent rate of return, which, as described by Aureon, was "a composite" of the authorized rates of return for the 2017-18 and 2018-19 tariff years.¹⁶¹ For a variety of reasons, such as avoiding potentially overlapping tariff investigations which would lead to an unnecessary use of time and resources by the Commission, Aureon, and any interested parties, the Bureau *sua sponte* granted Aureon a waiver of section 69.3(f)(1) of our rules, which would have required Aureon to submit an access tariff filing for the biennial period July 1, 2018 through June 30, 2020 with an effective date of July 3, 2018.¹⁶² Because acceptance of such waiver could produce a new basis on which Aureon may calculate its authorized rate of return due to a different effective period for the proposed rate, the Bureau directed Aureon to confirm whether it intended to avail itself of the waiver and for what period of time, and provided Aureon the opportunity to update its selection and provide any necessary support.¹⁶³ Aureon did so in its Direct Case, electing to use 10.50 percent and stating that it intends to avail itself of the waiver through June 30, 2019.¹⁶⁴ Aureon updated its previously-filed cost support to reflect this change.¹⁶⁵

B. Aureon Provides Insufficient Support for its Lease Rate

49. Iowa Network Services, Inc. consists of two pertinent divisions—an "Access Division," the regulated entity that provides CEA service and a "Network Division," which, among other things, owns the facilities used by the Access Division in providing CEA service.¹⁶⁶ Because the Access Division does not, itself, own the network facilities, it leases them from the Network Division.¹⁶⁷ Many

¹⁵⁹ See *Designation Order* at paras. 7-11.

¹⁶⁰ 47 CFR § 65.1(a); *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).

¹⁶¹ Aureon Transmittal No. 36 D&J at n.4.

¹⁶² *Designation Order* at paras. 33-35.

¹⁶³ *Id.* at para. 18.

¹⁶⁴ Aureon Direct Case at 32, Exh. D, Decl. of Brian Sullivan, Attach. 1 (Aureon Sullivan Decl.).

¹⁶⁵ *Id.* Attachs. 1-3.

¹⁶⁶ Aureon Reply to Petitions at 11-12.

¹⁶⁷ *Id.*

of the same general facilities leased by the Access Division are also used by the Network Division, either directly or indirectly, to provide nonregulated services.¹⁶⁸

50. Because the lease is an affiliate transaction, it is subject to our affiliate transaction rules, which are intended to protect ratepayers of regulated telecommunications services from bearing the costs and risks associated with a carrier's nonregulated activities.¹⁶⁹ The affiliate transaction rules discourage misallocation of costs between regulated and nonregulated activities by requiring carriers to follow appropriate valuation techniques in recording the transfer of assets and the provision of services between regulated entities and their nonregulated affiliates.¹⁷⁰ Such rules are necessary to counteract the incentive for a nonregulated entity to overcharge a regulated affiliate. Otherwise, a nonregulated affiliate may sell goods and services to the regulated carrier at artificially inflated prices. On the combined entity's income statement, the carrier's expense will be offset by the nonregulated affiliate's revenue. The inflated costs charged to the regulated entity, however, become part of the regulated entity's revenue requirement, which results in the regulated entity charging higher rates for providing regulated services than it would be entitled to if the costs were not inflated. As a result, ratepayers subsidize the cost of the non-regulated services, and the combined entity will increase its revenue.¹⁷¹

51. The Bureau designated for investigation the manner by which Aureon determined a jurisdictionally interstate network lease expense of \$12,626,315 (Filed Lease Expense), which represents roughly 84 percent of Aureon's total \$14,963,685 interstate revenue requirement.¹⁷² As determined by Aureon, this Filed Lease Expense relates almost entirely, either directly or indirectly, to two types of facilities owned by the Network Division. The first type of facility is a subset of central office equipment (COE) used for transmission. This is the equipment used to format signals for transmission on cable and wire facilities such as multiplexers and demultiplexers and the facilities that "light" fiber optic cable.¹⁷³ The second type of facility primarily driving Aureon's Filed Lease Expense is cable and wire facilities (C&WF), which consist of the cables and wires used for distribution, as well as the poles, ducts, and conduit that such cables and wires occupy.¹⁷⁴

52. Aureon's submissions were insufficient to demonstrate that Aureon's Filed Lease Expense comply with our affiliate transactions rules. More specifically: (1) Aureon has failed to demonstrate that its Filed Lease Expense is lower than the fair market value of the facilities being leased; and (2) Aureon has not demonstrated that its Filed Lease Expense is lower than the fully distributed cost of the facilities being leased. On the latter point, (a) Aureon has not produced a formal calculation of the fully distributed cost; (b) Aureon's COE and C&WF allocators do not comply with section 64.901(b)(4) of our rules; (c) Aureon used an inappropriate method of allocating cable and wire facilities expense

¹⁶⁸ See, e.g., Aureon Sullivan Decl. at Attach. 3.

¹⁶⁹ 47 CFR § 32.27 (affiliate transaction rules); *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers Phase 2, et al.*, Report and Order, 16 FCC Rcd 19911, 19946, para. 85 (2001) (*2000 Biennial Review Order*).

¹⁷⁰ *2000 Biennial Review Order*, 16 FCC Rcd at 19946, para. 85.

¹⁷¹ See *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, Report and Order, 2 FCC Rcd 1298, 1311, n.203 (1987) (*Joint Cost Order*); *New York Tel. Co., New England Tel. and Tel. Co.*, 5 FCC Rcd 866, para. 4 (1990).

¹⁷² *Designation Order* at paras. 20-28. See Aureon Transmittal No. 36 D&J at 4 (amount of lease expense).

¹⁷³ See 47 CFR § 32.2230. The Access Division also leases COE switching equipment, although the cost of equipment plays a relatively small role in deriving Aureon's Filed Lease Expense.

¹⁷⁴ See 47 CFR § 32.2410.

(treating circuits provisioned as DS1s on a basis equivalent to DS3s in calculating its C&WF allocator),¹⁷⁵ and (d) Aureon did not properly adjust its allocators to account for CEA and nonregulated traffic sharing the use of the same circuits. We require Aureon to correct and refile its cost support regarding these matters and also to provide further explanation regarding other related matters.

1. Background

53. In the *Designation Order* the Bureau directed Aureon to explain how it determined the cable and wire facilities expense, central office equipment expense, and all other expenses that may be based on facilities identified as leased with respect both to the underlying nature of the costs that are being recovered by the Network Division and the method by which costs are assigned to the lease rate.¹⁷⁶

54. Most of the Bureau's requests for information in the *Designation Order* regarding Aureon's cost support focused on a spreadsheet filed by Aureon (filed in non-native format) that represented Aureon's methodology for calculating the Filed Lease Expense.¹⁷⁷ At the Bureau's request, in its Direct Case Aureon updated this methodology to include certain supporting data and presented it in native electronic format.¹⁷⁸ Aureon again updated this methodology in its Rebuttal to include certain additional calculations.¹⁷⁹ The Lease Expense Methodology applies a set of calculations to two critical financial inputs (Filed Lease Expense Financial Inputs).¹⁸⁰ The Bureau sought supporting information for the Filed Lease Expense Financial Inputs,¹⁸¹ information that Aureon never provided.

55. Rather than responding to the Bureau's request for information regarding the Filed Lease Expense Financial Inputs, Aureon argues that so long as the Filed Lease Expense complies with the Commission's affiliate transaction rules, the supporting information for the Filed Lease Expense Financial Inputs should be irrelevant.¹⁸² Aureon asserts that what it terms an alternative rate calculation demonstrates such compliance.¹⁸³

2. Application of the Affiliate Transaction Rules

56. Because Aureon's lease is an affiliate transaction in which a nonregulated entity is providing a service to a regulated entity, our rules require us to evaluate the facilities lease expense against a ceiling determined by the lower of fair market value of the lease or the fully distributed costs of the facilities.¹⁸⁴ Carriers are allowed to "record the transaction at an amount equal to or less than the

¹⁷⁵ The parties refer to DS1s/DS3s and T-1s/T-3s indiscriminately. For the sake of consistency, we use the terms DS1 and DS3 throughout this order.

¹⁷⁶ *Designation Order* at paras. 20-28, referring to Aureon Reply to Petitions, Exh. B, Decl. of Brian Sullivan, Annex 3 (Aureon Sullivan Reply to Petition Decl.).

¹⁷⁷ *Id.*

¹⁷⁸ Aureon Sullivan Decl., Attach. 3.

¹⁷⁹ Aureon Rebuttal, Exh. F, Supp. Decl. of Brian Sullivan, Attach. 6 (Aureon Sullivan Supp. Decl.). We refer to this methodology as Aureon's Lease Expense Methodology.

¹⁸⁰ Aureon Sullivan Reply to Petition Decl., Annex 3 (amounts labelled "INS IX REVENUE REQUIREMENT FOR THE YEAR 2013 -2009" – "NETWORK TRANSMISSION" and "NETWORK FACILITY"); Aureon Sullivan Decl., Attach. 3, "Summary" tab (cells E7-E8).

¹⁸¹ *Designation Order* at paras. 20-28.

¹⁸² Aureon Direct Case at 43-44.

¹⁸³ *Id.* at 43-44.

¹⁸⁴ See 47 CFR § 32.27(c)(2) ("[w]hen services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded.").

ceiling”¹⁸⁵ Given the discretion provided to carriers through establishing a ceiling against which affiliate transactions are compared, rather than a prescribed transfer price, we agree with Aureon that the manner in which Aureon arrived at its Filed Lease Expense, however derived, is irrelevant so long as the Filed Lease Expense is below the ceiling prescribed by our affiliate transaction rules.¹⁸⁶ Thus, we disagree with AT&T’s assertion that Aureon must provide support for the particular Filed Lease Expense that it selected,¹⁸⁷ so long as Aureon had *some* basis for arriving at such figure and it complies with our affiliate transaction rules.

57. In determining Aureon’s compliance with our affiliate transaction rules, we must compare amounts that have not yet been separated between the interstate and intrastate jurisdictions. Although Aureon uses the same network to provide switched transport service for jurisdictionally interstate and intrastate calls, Aureon’s rate that is the subject of this investigation solely applies to interstate traffic. The Commission’s Part 36 jurisdictional separations rules establish a process for separating jurisdictionally interstate and jurisdictionally intrastate costs so that an interstate revenue requirement can be computed that forms the basis for a rate-of-return carrier’s rate.¹⁸⁸ This process, however, occurs after application of the Commission’s Part 32 accounting rules, which include the affiliate transaction rules that govern our inquiry into Aureon’s lease expense.¹⁸⁹ Thus, for purposes of our analysis of Aureon’s lease expense, we must examine Aureon’s non-jurisdictionalized lease expense, which is \$13,430,525.¹⁹⁰

58. In determining the fair market value of the lease, Aureon must consider the type of transaction at issue. As the Commission has explained that, depending on the type of transaction, a carrier might use “appraisals, catalogs listing similar items, competitive bids, replacement cost of an asset, and net realizable value of an asset” to determine the fair market value of an affiliate transaction.¹⁹¹ The rules, do not, however, allow a carrier to simply assert that it cannot determine a fair market value for the transaction. Further, “[w]hen situations arise involving transactions that are not easily valued by independent means,” the Commission “require[s] carriers to maintain records sufficient to support their value determination.”¹⁹²

59. In determining the fully distributed cost of the facilities subject to the lease, Aureon must directly assign costs either to regulated or nonregulated activities to the maximum extent possible.¹⁹³ Thus costs incurred for assets and labor used exclusively for regulated or nonregulated activities are directly assigned or charged to regulated or nonregulated activities in the books of account.

¹⁸⁵ *Id.*

¹⁸⁶ The Commission deliberately created such discretion in the *2000 Biennial Review Order*. See *2000 Biennial Review Order*, 16 FCC Rcd at 19948-49, paras. 91-92.

¹⁸⁷ AT&T Surrebuttal at 54.

¹⁸⁸ 47 CFR Part 36.

¹⁸⁹ *Id.* Part 32; § 32.27.

¹⁹⁰ Aureon Transmittal No. 36 at Attach. 1, “Section 4 – Part 36-TYCOS” tab (cell F109). Aureon’s jurisdictional allocators are not the subject of this investigation.

¹⁹¹ *Implementation of The Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539, 17610, para. 154 (1996) (*Accounting Safeguards Order*).

¹⁹² *Id.* The Commission has further specified that “the valuation method chosen by the carrier must succeed in capturing the available supporting information regarding the transaction and must utilize generally accepted techniques and principles regarding the particular type of transaction at issue” and that “carriers remain obligated under section 220(c) to justify their accounting entries.” *Id.*

¹⁹³ *Joint Cost Order*, 2 FCC Rcd at 1299, para. 2; 47 CFR § 64.901(b)(2).

60. Costs that cannot be directly assigned must be grouped into homogeneous cost categories and allocated in accordance with direct or indirect measures of cost causation.¹⁹⁴ Section 64.901(b)(3) provides a hierarchy of methods for allocating such homogenous groups in the following order (earlier methods to be performed whenever possible in lieu of later methods): (i) “allocated based upon direct analysis of the origin of the cost[s] themselves;”¹⁹⁵ (ii) “allocated based upon an indirect, cost-causative linkage to another cost category (or group of cost categories) for which a direct assignment or allocation is available;”¹⁹⁶ and, finally, (iii) “allocated based upon a general allocator computed by using the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities.”¹⁹⁷ Section 64.901(b)(4) provides for relative use assignment of COE and C&WF, which we find to be an explicit method for implementing section 64.901(b)(3)(i), and is to be considered allocation/attribution for purposes of the further cost allocations described in sections 64.901(b)(3)(ii) and (iii).¹⁹⁸

3. Aureon Fails to Demonstrate that its Filed Lease Expense is at or Below Fair Market Value

61. Aureon has violated section 32.27(c)(2) of our rules by failing to demonstrate that its Filed Lease Expense is at or below the fair market value of the leased facilities. Instead, Aureon argues that “[t]here is no method to determine the fair market value for the lease rate as the Network Division does not provide service to third parties to access the more than 2,700 mile CEA fiber network,” and further that “there are no lease rates for comparable networks available, assuming that such information could even be obtained from other carriers for nonregulated services in the first instance.”¹⁹⁹

62. Although we are sympathetic to Aureon’s difficulty in determining a fair market value, we observe that “[a]lthough the Commission’s rules do not prescribe a specific method for determining fair market value, they do require a[n affected carrier] to make a good faith estimate, not merely a good faith *attempt* at making an estimate.”²⁰⁰ Aureon has not made such a good faith estimate nor even a good faith attempt at making an estimate—this alone is fatal to its case. We therefore require Aureon when it files the information requested herein either to demonstrate compliance with this requirement or to seek waiver of the same. In so doing, we require Aureon to fully address the relevance and accuracy of AT&T’s assertions that [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].²⁰¹

¹⁹⁴ *Joint Cost Order*, 2 FCC Rcd at 1299, para. 2; 47 CFR § 64.901(b)(3).

¹⁹⁵ 47 CFR § 64.901(b)(3)(i).

¹⁹⁶ *Id.* § 64.901(b)(3)(ii).

¹⁹⁷ *Id.* § 64.901(b)(3)(iii).

¹⁹⁸ *Id.* § 64.901(b)(4).

¹⁹⁹ Aureon Direct Case at 34.

²⁰⁰ *Verizon Telephone Companies, Inc.*, Apparent Liability for Forfeiture, 18 FCC Rcd 18796, 18801, para. 10 (2003) (emphasis in original) (citations omitted). Although the quoted text makes reference to Bell Operating Companies, a term relevant to the proceeding, the Commission had already established that this aspect of its affiliate transaction rules applies to all companies subject to the affiliate transaction rules, regardless of whether they are Bell Operating Companies. See *Accounting Safeguards Order*, 11 FCC Rcd at 17610, para. 153.

²⁰¹ See AT&T Opposition at 66-67; AT&T Surrebuttal at 38.

4. Aureon Has Not Demonstrated that Its Filed Lease Expense is at or Below Fully Distributed Cost

63. Aureon must also demonstrate that its Filed Lease Expense is at or below the fully distributed cost for the leased facilities. In light of the significance of Aureon's lease expense to its proposed rate, as well as Aureon's failure to provide support for the Filed Lease Expense Financial Inputs used to derive the actual Filed Lease Expense that Aureon uses in its tariffed rate development, Aureon must demonstrate its fully distributed cost. Such a demonstration would include, among other things, underlying accounting entries, use of distinct regulated versus nonregulated allocators for different homogenous types of cost, data supporting Aureon's development of allocators, and a final calculation of fully distributed cost—all integrated into a single fully-functional spreadsheet with formulas and links to all referenced data to facilitate Commission review. Although Aureon relies heavily on its claim that its Filed Lease Expense is below the fully distributed cost for related facilities, Aureon has not demonstrated its fully distributed cost.

a. Generally

64. Rather than provide a complete and detailed calculation of fully distributed cost, Aureon has, provided two separate calculations, neither of which standing on their own (or taken together), produce a complete calculation of Aureon's fully distributed cost. Aureon's first calculation is what Aureon describes as an "Alternative Scenario" cost allocation model used to determine the revenue requirement for the Access Division if there was no lease and Aureon's assets and costs were assigned to that division in accordance with the Commission's rules and on a fully distributed basis (Alternate Scenario).²⁰² Because the total revenue requirement under the Alternative Scenario is higher than that used to calculate Aureon's proposed rate, Aureon argues that the fully distributed cost of the facilities is higher than Aureon's Filed Lease Expense.²⁰³ Aureon's Alternate Scenario, however, does not isolate the relevant fully distributed cost.

65. In contrast, Aureon's Direct Case included a second calculation—an "Additional Cost Justification Methodology" (Summary Calculation) that purports to calculate the fully distributed cost that appears to assert a non-jurisdictionalized fully distributed cost of \$18,651,592 (which would be compared to the non-jurisdictionalized Filed Lease Expense of \$13,430,525).²⁰⁴ This calculation references data from Aureon's initial tariff filing, as supplemented in Aureon's Direct Case²⁰⁵ (some of which also formed the basis of Aureon's Alternate Scenario as originally presented and updated),²⁰⁶ but contains no electronic links integrating it with underlying calculations and data. Further, when updating its Alternate Scenario in its Rebuttal to use separate allocators for two of its most important common

²⁰² Aureon Sullivan Decl. at 5, para. 10. Aureon updated its alternative rate calculation in its Direct Case to include a 10.50 percent rate of return. Aureon Sullivan Decl., Attach. 2. Aureon updated its alternative rate calculation again in its Rebuttal to include a change in methodology suggested by AT&T. Aureon Sullivan Supp. Decl., Attach. 5.

²⁰³ Aureon Reply to Petitions at 14.

²⁰⁴ Aureon Rebuttal at 37-38, referencing Aureon Sullivan Decl., Attach. 4 (cell F20).

²⁰⁵ At the direction of the Bureau, Aureon's Direct Case included a re-filing of the cost support that Aureon filed in Transmission No. 36, which updated not only to use 10.50% as the authorized rate of return (as discussed above), but also presented the spreadsheets in native electronic format and included an additional spreadsheet tab ("Nov 2017 Financials"), which appears to be accounting entries to which the spreadsheet tab ("Sect PYCOS and TYCOS Financials") is linked (a tab that appears, in all pertinent respects, to be the same as the "Sect 9 PYCOS and TYCOS Inputs" tab in Aureon Transmission No. 36. Compare Aureon Sullivan Decl., Attach. 1 with Transmission No. 36 at Attach. 1.

²⁰⁶ Compare, e.g., Aureon Sullivan Decl., Attach. 1, "Nov 2017 Financials" tab with *id.* at Attach. 2, "Nov 2017 Financials" tab.

costs (COE transmission and C&WF) rather than a weighted average, Aureon did not also update its Summary Calculation—an update that would require substantial revisions given the calculation’s summary form. Even if Aureon had integrated its Summary Calculation with underlying data, including the updates made to the Alternate Scenario, such an improvement would not remedy the more fundamental defects with the COE transmission and C&WF allocators, as well as other defects in Aureon’s calculations discussed below. When Aureon refiles, we require Aureon to present a formal and explicit calculation of the fully distributed cost for the leased facilities integrated with underlying data, some of which is provided in the Alternate Scenario, as well as Aureon’s Lease Expense Methodology.

66. For purposes of our discussion of the fully distributed cost of the facilities that Aureon leases, we will treat Aureon’s Alternate Scenario, as updated, as its fully distributed cost study.²⁰⁷ In accordance with section 64.901(b)(2), Aureon’s fully distributed cost study directly assigns costs recorded in accounting entries²⁰⁸ to regulated or nonregulated activities in multiple instances. For example, **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION].²⁰⁹ Aureon allocates certain other costs through allocators developed by direct analysis of the origin of the cost, pursuant to section 64.901(b)(3)(i) and in partial compliance with section 64.901(b)(4), which provides a particular procedure under section 64.901(b)(3)(i) with respect to certain costs.²¹⁰ Next, pursuant to section 64.901(b)(3)(ii), Aureon applies its allocation of these directly-analyzed costs to common costs causally-related to such directly-analyzed costs.²¹¹ Finally, as described in section 64.901(b)(3)(iii), Aureon allocates its other common costs, such as **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**, based on general allocators computed using ratios of other expenses already attributed to regulated and nonregulated activities.²¹²

67. Aureon’s fully distributed cost study suffers from certain flaws that must be corrected (to produce a valid fully distributed cost) before we can determine whether Aureon’s Filed Lease Expense is less than the fully distributed cost of the leased facilities as required by our rules.²¹³ We discuss below such flaws, as well as other matters of controversy in this investigation.

²⁰⁷ We do this because the Alternate Scenario appears to contain the general detailed components of a fully distributed cost study, absent the final necessary calculations to arrive at an isolated fully distributed cost, was discussed more frequently than the Summary Calculation in the record, and was subject to updating.

²⁰⁸ Aureon Sullivan Decl., Attach. 2 “Nov 2017 Financials” tab (accounting entries); Aureon Sullivan Supp. Decl., Attach. 5 at “Nov 2017 Financials” tab (accounting entries). Such spreadsheet tabs are identical to the “Nov 2017 Financials” tab in Aureon’s Direct Case (Aureon Sullivan Decl., Attach. 1).

²⁰⁹ Aureon Sullivan Decl., Attach. 2 “Part 64-TYCOS” tab (row 72). Although Aureon’s spreadsheet refers to its allocation of COE and C&WF as “direct” in its spreadsheet, its actual methodology appears to use section 64.901(b)(3)(i)—direct attribution. TYCOS refers to tariff year cost of service, while PYCOS refers to prior year cost of service.

²¹⁰ 47 CFR §§ 64.901(b)(3)(i), (4). The process presented in Aureon’s Lease Expense Methodology serves as an example of such direct attribution. We discuss the portion of section 64.901(b)(4) with which Aureon does not fully comply below.

²¹¹ *Id.* § 64.901(b)(3)(ii). Aureon allocates “CWF Other Expenses,” for example, using this method. Aureon Sullivan Decl., Attach. 2, “Part 64-TYCOS” tab (rows 113, 162); Aureon Sullivan Supp. Decl., Attach. 5 “Part 64-TYCOS” tab (rows 113, 162).

²¹² 47 CFR § 64.901(b)(3)(iii). Aureon allocates general and administrative expense using this method. *See* Aureon Sullivan Decl., Attach. 2, “Part 64-TYCOS” tab (rows 122, 179); Aureon Sullivan Supp. Decl., Attach. 5, “Part 64-TYCOS” tab (rows 122, 179).

²¹³ To the extent that Aureon’s fully distributed cost (once properly calculated and presented) exceeds the Filed Lease Expense, however, we need not consider AT&T’s observations that the fully distributed cost computation not (continued....)

b. Categorization of Common Costs

68. Section 64.901(b)(3) of our rules requires common costs to be placed into homogenous groups prior to being allocated. Aureon's fully distributed cost study computes allocators for several separate groups of common costs, including COE transmission, C&WF, COE switching, COE (total),²¹⁴ and corporate operations expense.²¹⁵ Given the shared use of the Network Division's network, it would not seem possible to directly assign any particular costs relating to any of these cost categories, nor has any party asserted that it is or should be. Thus, because such costs cannot be allocated directly, they are common costs, as described in section 64.901(b)(3) of our rules.²¹⁶

69. The sole apparent dispute in the record regarding Aureon's method of grouping common costs concerns the single group of C&WF. AT&T observes that based on Aureon's past tariff filings, Aureon's total company C&WF investment as of 2018 is roughly 265 percent of what it was in 2010 ((\$71,064,962 compared to \$26,818,101),²¹⁷ arguing that such an increase is difficult to reconcile with declining demand for CEA service, which, by implication (under AT&T's reasoning), should not have required significant investment.²¹⁸ If such investment were not made for CEA service, AT&T appears to argue, it must have been made for nonregulated services.²¹⁹ We interpret the allegation to be that a certain portion of Aureon's C&WF expense that should not be allocated in the same manner as the remainder—some amount of the investments made since 2010, which AT&T appears to believe were made exclusively for nonregulated purposes.²²⁰

70. Aureon responds to AT&T's allegations regarding its more recent C&WF investments by noting that it **[BEGIN CONFIDENTIAL INFORMATION]**

(Continued from previous page)

form the basis for the particular lease expense that Aureon selected, the amount by which the Filed Lease Expense falls below the fully distributed cost, or the fact that certain financial figures forming the basis for the Filed Lease Expense remain unsupported, to be reasons to reject Aureon's fully distributed cost calculation. *See* AT&T Opposition at 69-72; AT&T Surrebuttal at 27-28. We also need not reach any issues raised by AT&T pertaining to fluctuations in Aureon's COE transmission expense, as allocated in the current and past versions of Annex 3. *See* AT&T Opposition at 53; AT&T Surrebuttal at 27-28.

²¹⁴ *See* Aureon Sullivan Decl., Attach. 2, "Part 64-TYCOS" tab (rows 158-79); Aureon Sullivan Supp. Decl., Attach. 5, "Part 64-TYCOS" tab (rows 158-79).

²¹⁵ *Id.* Aureon's fully distributed cost study, as presented in its Direct Case, uses a blended average of its COE and C&WF allocation factors. *See* Aureon Sullivan Decl., Attach. 2, "Part 64-TYCOS" tab (rows 163, 166).

²¹⁶ 47 CFR § 64.901(b)(3). No party disputes, nor do we have any reason to question, Aureon's choice to directly assign the costs that it directly assigned in its fully distributed cost study.

²¹⁷ AT&T Opposition at 67.

²¹⁸ *Id.* at 68.

²¹⁹ *Id.*

²²⁰ To the extent that such investment cannot be directly assigned, it is appropriate to apply section 64.903(b)(3). 47 CFR § 64.901(b)(3).

²²¹ Aureon Rebuttal at 51.

²²² *Id.* at 51-52.

[END CONFIDENTIAL
INFORMATION].”²²³

71. Based on the information before us, we conclude that it is reasonable to allocate the whole of Aureon’s C&WF costs as a homogenous group under sections 64.901(b)(3) and (4). Although such investments may not have been exclusively for CEA service, based on Aureon’s representations, we have no reason to believe that Aureon’s C&WF investment since 2010 should be allocated on a different basis than its prior investment. [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

72. AT&T also takes issue with how the COE transmission and C&WF allocators are implemented in Aureon’s fully distributed cost study once calculated.²²⁶ Although Aureon’s fully distributed cost study has entries for distinct COE transmission and C&WF allocation factors and these allocators are separately applied (allocated COE transmission cost calculation spreadsheet cells reference the COE transmission allocator and allocated C&WF cost spreadsheet cells reference the C&WF allocator), the fully distributed cost study in Aureon’s Direct Case uses a weighted average of the COE transmission and C&WF allocators calculated in Aureon’s Lease Expense Methodology (64 percent) for both allocator entries. Because “the assumptions used to calculate accumulated depreciation and depreciation expense for these two classes undoubtedly differ,” AT&T argues, “this approach will necessarily produce inaccurate results.”²²⁷ Aureon responds that its approach best replicates certain adjustments made in Aureon’s Lease Expense Methodology after the separate allocators are calculated,²²⁸ but nevertheless presents in its Rebuttal a revised fully distributed cost study that applies the separate COE transmission and C&WF allocators calculated in Aureon’s Lease Expense Methodology.²²⁹ We agree with AT&T that Aureon’s fully distributed cost study should, in fact, use the separate COE transmission and C&WF allocators rather than a weighted average for the reason given by AT&T. We direct Aureon to do so.

c. Allocation of Common Costs

73. Aureon’s development of its factors for allocating COE transmission and C&WF are the most controversial aspect of Aureon’s common cost allocation in its fully distributed cost study. No party argues, nor, based on our examination of Aureon’s fully distributed cost study, do we have any reason to conclude, that Aureon’s other common cost allocators are unreasonable.

²²³ *Id.* at 52. *See also* Aureon Surreply at 30.

²²⁴ *See* AT&T Surrebuttal at 28-29.

²²⁵ [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

²²⁶ AT&T Opposition at 70-71.

²²⁷ Aureon Sullivan Decl., Attach. 2, “Part 64-TYCOS” tab (rows 163, 166, 172); Aureon Sullivan Supp. Decl., Attach. 5, “Part 64-TYCOS” tab (rows 163, 166, 172).

²²⁸ Aureon Rebuttal at 39.

²²⁹ Aureon Sullivan Decl., Attachs. 5, 6 (revised Lease Expense Methodology).

74. Aureon's fully distributed cost study relies on Aureon's Lease Expense Methodology, as updated, to allocate COE transmission and C&WF between regulated and nonregulated activities.²³⁰ The resulting separate COE transmission and C&WF allocators in the Lease Expense Methodology are not dependent on the absolute or relative levels of costs to be allocated.²³¹ Aureon's general method of calculating its COE transmission and C&WF allocators appears to be consistent with the direction in 64.901(b)(3)(i) of our rules which provides for costs to be "allocated based upon direct analysis of the origin of the costs themselves."²³² The Commission has elaborated on this requirement by providing the following example: "[I]f motor vehicle investment is apportioned between regulated and nonregulated based on analysis of the usage of those motor vehicles, the costs are directly attributed."²³³ Aureon is employing this method by basing its allocation on a measure of circuit usage.

75. Aureon's COE transmission and C&WF allocation factors for its fully distributed cost study are provided in Aureon's Lease Expense Methodology.²³⁴ Both factors are based on an examination of transmission equipment and circuits that Aureon represents comprises the Network Division's network ranging in capacity from DS1 to **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**.²³⁵ According to Aureon, "CEA Service is . . . provisioned on a DS-1 circuit level,"²³⁶ and, thus, its allocations are based on a determination of the cost of the COE transmission- and C&WF-related costs of DS1 circuits relative to all circuits within the Network Division's network.²³⁷

76. To compute the COE transmission allocation factor, Aureon determines a total cost of the COE transmission related to each type of circuit by using the product of its per unit equipment costs (based on vendor prices and a loading factor for labor),²³⁸ to which no party has objected²³⁹ and we have no reason to question, and its circuit termination counts (two per circuit) based on circuit counts (the

²³⁰ See Aureon Sullivan Decl., Attach. 2, "Part 64-TYCOS" tab (rows 163, 166, 172), updated by Aureon Sullivan Supp. Decl., Attach. 5, Attach. 6 (revised Lease Expense Methodology). Although the electronic file delineating Aureon's Lease Expense Methodology uses as inputs the two financial amounts for which Aureon never provided support (Aureon Sullivan Decl., Attach. 3, "Summary" tab (cells E7-E8); Aureon Sullivan Supp. Decl., Attach. 5, "Summary" tab (cells E7-E8)), such methodology produces the same COE transmission and C&WF allocators regardless of the levels of the unsupported financial figures.

²³¹ As we discuss below, however, the relative amounts are relevant to the extent that Aureon initially computed a weighted average for use in its fully distributed cost study, which we explain below is not appropriate.

²³² 47 CFR § 64.901(b)(3)(i). The next steps in the hierarchy of common cost allocation methods in section 64.901(b)(3) entail assigning such costs based on already-determined allocators from other cost categories, a process to which no party appears to argue Aureon should resort.

²³³ *Implementation of Further Cost Allocation Uniformity*, Order Inviting Comments, DA 92-1404, 7 FCC Rcd 6688, 6689, para. 9 (CCB 1992) (*Uniform CAM Notice*). In contrast, the Commission has explained that the "[i]ndirect attribution occurs when common costs are allocated between regulated and nonregulated activities based on indirect measures of cost-causation. For example, if investment in garage work equipment is apportioned between regulated and nonregulated activities in proportion to the overall apportionment of motor vehicle investment, the costs are indirectly attributed." *Id.*

²³⁴ Compare Aureon Sullivan Decl., Attach. 2, "Part 64-TYCOS" tab (rows 163, 166, 172); Lease Expense Methodology; Aureon Sullivan Supp. Decl., Attach. 5 "Part 64-TYCOS" tab (rows 163, 166, 172), Attach. 6.

²³⁵ Lease Expense Methodology.

²³⁶ Aureon Rebuttal at 36, n.134. See also Aureon Direct Case at 36.

²³⁷ Aureon Rebuttal at 40 ("the use of DS-1s to allocate COE and CWF is appropriate"). See also *id.* at 36-40.

²³⁸ Such prices are not necessarily book cost and do not include a measure of depreciation.

²³⁹ See, e.g., AT&T Opposition at 51.

counts are subject to controversy). Aureon's COE transmission allocation factor of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] percent is the ratio of the Network Division's total DS1 costs using this method to all circuit costs using this method.²⁴⁰ Total DS1 costs serve as the numerator because, according to Aureon, CEA service is provisioned on a DS1 basis.²⁴¹

77. Aureon uses a somewhat different methodology for calculating its C&WF allocation factor. While still generally based on circuits, rather than merely totaling circuits for each type of circuit as the units for its calculation, Aureon totals circuit-miles,²⁴² presumably because such costs are distance-sensitive. Aureon then divides the number of total DS1 circuit-miles by the total number of circuit-miles in the Network Division's network to arrive at a C&WF allocation factor of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] percent.²⁴³

78. *Aureon's Failure to Comply with Section 64.901(b)(4) of Our Rules.* Regardless of Aureon's method of computing COE transmission and C&WF allocators based on any particular vintage of data, we observe that Aureon has failed to comply with section 64.901(b)(4) of our rules, which requires that total COE (both COE transmission and COE switching) and C&WF be allocated based on the "the relative regulated and nonregulated usage of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed."²⁴⁴ Aureon has only computed allocators using projections for, presumably, calendar year 2018. It has not, however, computed projected allocators for calendar years 2019 and 2020, as required by section 64.901(b)(4). When Aureon submits its required filing in 60 days as explained further below, it must include calculations based on forecasted data (including circuit forecasts) for each of calendar years 2018, 2019, and 2020, and select for 2018 (Aureon's test year) for each of its pertinent allocators based on the lowest allocator (to regulated activity) among 2018, 2019, and 2020 for each type of cost.

79. We note that Aureon's compliance with our requirement that it provide projected allocators not only for 2018, but also 2019 and 2020 is important for us to resolve the dispute in the record regarding the reasonableness of Aureon's use of [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] If the number of DS1s (in the case of the COE transmission allocator) and DS1 circuit-miles (in the case of the C&WF allocator) are overstated, AT&T argues, so, too, will be the allocators and, thus, the allocated cost to the regulated Access Division.²⁴⁶ [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] we need not reach them until we determine whether a controversy remains after Aureon has filed its calculations of allocators for 2019 and 2020. To the extent that Aureon does not

²⁴⁰ Aureon Sullivan Supp. Decl., Attach. 6, "Summary" tab (cell H7).

²⁴¹ Aureon Direct Case at 36.

²⁴² Aureon Sullivan Decl., Attach. 3 (Lease Expense Methodology) "Summary" (cells F31-F42).

²⁴³ *Id.* (cell G31).

²⁴⁴ 47 CFR § 64.901(b)(4).

²⁴⁵ *Id.* at 51-52, 54-55.

²⁴⁶ *Id.* at 55.

²⁴⁷ Aureon Rebuttal at 43-44; Aureon Surreply at 21-22.

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. In recalculating its COE transmission and C&WF allocators to comply with section 64.901(b)(4), we also direct Aureon to explain why none of its projected allocators account for [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. We note that Aureon's Lease Expense Methodology [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION], but does not include them in the allocator calculations, despite the inclusion of such circuits in previous years.²⁴⁸

80. *Aureon's Use of the Circuit Method of Allocating C&WF is Unreasonable.* In addition to questioning the validity of Aureon's circuit data, AT&T also objects to Aureon treating each DS1 as an individual circuit rather than expressing the DS1s as equivalent DS3 facilities for purposes of calculating the C&WF allocator. According to AT&T, Aureon's approach improperly inflates the circuit-miles (and thus the cost) assigned to the Access Division due to the larger quantity of DS1 circuits.²⁴⁹ Because circuit-miles drives Aureon's allocation of cost to the Access Division, AT&T argues that such inflation of DS1 circuit miles inflates the C&WF allocator.²⁵⁰

81. As AT&T observes, Aureon acknowledges that all traffic on Aureon's fiber network, including CEA traffic, is transported on a DS3 facility basis (28 times the capacity of a DS1) or higher, and references an apparent admission by Aureon that substantially all traffic on its backbone network must be multiplexed to a DS3 level for transport over Aureon's network.²⁵¹ AT&T, referring to NECA guidelines, claims that because Aureon's fiber rings appear to be engineered for "systems" operating at DS3 levels and above, Aureon should have treated its CEA traffic as using DS3 facilities for purposes of quantifying circuits to be allocated between operations.²⁵² "It makes no sense," AT&T argues, that "the fiber cost (*i.e.*, C&WF costs) associated with transporting CEA traffic on Aureon's network should be allocated differently than *all other traffic* transported on that same basis."²⁵³

82. AT&T also claims that a wholesale customer such as Aureon would never lease the quantity of DS1 circuits that the Access Division leases.²⁵⁴ Instead, according to AT&T, the Access Division would lease at least some quantity of DS3s, because DS3 channel mileage is traditionally priced at a multiple far lower than 27 or 28 times DS1 channel mileage.²⁵⁵

83. In light of its arguments, AT&T analyzes Aureon's circuit data on a network "node" by "node" basis—that is, the manner in which Aureon reported its circuit counts for purpose of supporting Aureon's Lease Expense Methodology—and appears to divide the number of DS1s by 28, rounding up to the nearest whole number, to arrive at DS3 equivalents.²⁵⁶ This revision, according to AT&T, results in

²⁴⁸ Compare Aureon Sullivan Decl., Attach. 3, "Summary" tab (rows 22, 39) with, e.g., AT&T Opposition at Exh. 6, "Summary" tab (rows 22, 39), Exh. 7, "Summary" tab (rows 22, 39).

²⁴⁹ AT&T Surrebuttal, Decl. of Carl Albright, Jr. at 5-6 (AT&T Albright Surrebuttal Decl.), paras. 9-10. See also AT&T Opposition at 58-65.

²⁵⁰ AT&T Opposition at 59-60.

²⁵¹ *Id.* at 58 (citing Aureon Direct Case, Exh. A, Decl. of Frank Hilton at 7-8, paras. 14-15).

²⁵² *Id.* at 59.

²⁵³ *Id.* at 64 (emphasis in original).

²⁵⁴ AT&T Surrebuttal at 34-35.

²⁵⁵ See, e.g., *id.* at 35.

²⁵⁶ AT&T Opposition at 61-63. AT&T argues that it had adequate data to perform such calculations because they were based on calculations already performed by Aureon. See AT&T Surrebuttal at 36.

the C&WF allocator to CEA service being reduced from [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION], which would produce a dramatic reduction in Aureon's authorized rate under section 61.38.²⁵⁷ Aureon and AT&T's positions can be contrasted as follows, using Aureon's data:

TABLE 2

Proposed Methods of Calculated C&WF Allocator

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

(as opposed to Aureon's Summary Calculation ("abbreviated method") calculation of \$18,651,592).²⁶²

84. In its rebuttal, Aureon repeats that "all of the circuits for CEA service are, in fact, DS-1 circuits and not DS-3 or T3s."²⁶³ It acknowledges, however, that its DS1 circuits are "assigned to DS-3s to transport calls over the CEA fiber network," explaining that "[m]uch of the SONET ring transport

²⁵⁷ *Id.* at 63.

²⁵⁸ Aureon Lease Expense Methodology.

²⁵⁹ AT&T Opposition at 62 (78 equivalent T-3 facilities, 39,542 equivalent T-3 facility circuit miles).

²⁶⁰ As discussed above, Aureon does not attribute any circuit miles to its OC-192 circuits.

²⁶¹ DS1 or equivalent T-3 facility circuit miles divided by all circuit miles.

²⁶² AT&T Surrebuttal at 46 (Table 12).

²⁶³ Aureon Rebuttal at 44 (footnote omitted).

equipment in [its] fiber network is only equipped with DS-3 level ports, and thus, it is necessary for Aureon to assign DS-1 circuits to a DS-3 circuit for transport.²⁶⁴ According to Aureon, at the end of transport, “those DS-3s are taken down to the DS-1 level to deliver traffic to the switches of the LECs subtending Aureon’s network.”²⁶⁵ Aureon adds that “[e]quipment is needed to consolidate the DS-1 circuits to DS-3s for transport, and additional equipment is needed to reduce the DS-3s back down to DS-1 circuits.”²⁶⁶

85. Aureon explains that counting DS1s transported on DS3s as distinct circuits and allocating cost by circuit count, regardless of capacity, is the “circuit” or “path” method of allocating cost between services described in NECA Reporting Guideline 4.19 (NRG 4.19).²⁶⁷ Although Aureon admits that NRG 4.19 also describes the “system” method of allocating cost between services,²⁶⁸ which “allocates cost based on the “utilization of the electronics on the fiber such as DS3s and DS1s,”²⁶⁹ the process endorsed by AT&T,²⁷⁰ Aureon claims that NRG 4.19 supports a conclusion that the circuit method (also known as the path method) is more appropriate for allocating the network costs associated with channelized circuits, which consist of voice trunks used by the Access Division.²⁷¹ Aureon argues that this is because channelized voice circuits, such as Aureon’s DS1 circuits, “maintain their integrity even when they are consolidated into [DS3s].”²⁷²

86. The “system” method of allocating circuit cost, Aureon argues, is not appropriate for Aureon’s network.²⁷³ Aureon explains that the system method is “specifically designed for use by network segment,” that is, “carriers price out a segment of the network, and then allocate the cost of that network segment by the systems operating over that network segment.”²⁷⁴ This approach, according to Aureon, “might be appropriate if Aureon simply transported access traffic to a single terminating LEC,” but is not appropriate for Aureon’s network because Aureon, in fact, must “hand[] off individual DS-1s at each subtending LEC’s point of interconnection with the CEA network.” Aureon further argues that even if the system method were appropriate, AT&T’s implementation is overly simplistic, at least as presented, and does not sufficiently analyze the lengths and uses of particular circuits, thus failing to properly allocate circuit mileage.²⁷⁵

87. Based on careful consideration of the record and facts in this investigation, we agree with AT&T that the circuit method does not produce a reasonable allocation of the network’s costs to regulated

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ Letter to Marlene H. Dortch, Secretary, FCC, from James U. Troup, Counsel for Aureon, Attach. at 2 (June 1, 2018) (Aureon June 1, 2018 Ex Parte) (“the Path method is more appropriate for allocating the network costs associated with channelized circuits, i.e., circuits that consist of voice trunks used by the Access Division”). See also Aureon Rebuttal at 47 (referencing Aureon Exh. G (NRG 4.19)).

²⁶⁸ *Id.* at 48.

²⁶⁹ NRG 4.19 at 3.

²⁷⁰ AT&T Opposition at 59.

²⁷¹ Aureon Rebuttal at 47, referencing Aureon Rebuttal at Exh. G; Aureon June 1, 2018 Ex Parte, Attach. at 2.

²⁷² *Id.* at 47.

²⁷³ *Id.* at 45-49 (including heading at *id.* at 45).

²⁷⁴ *Id.* at 48.

²⁷⁵ *Id.* at 49.

activities.²⁷⁶ Aureon readily admits that for purposes of transport on its fiber rings, CEA DS1 circuits are configured to be part of larger DS3 circuits, with multiple DS1 circuits capable of being transported as part of the same DS3.²⁷⁷ Although it is, indeed, true that this process requires multiplexing and demultiplexing, potentially distinguishing such DS1 circuits, such functions are performed by facilities subject to the COE transmission allocator²⁷⁸—that is, for purposes of C&WF facilities, a DS3 circuit carrying 28 regulated DS1 circuits is indistinguishable from a DS3 circuit (whether regulated or nonregulated) configured as any other DS3 that does not carry individual DS1 circuits. Or to put it more bluntly, under certain circumstances, the 28 regulated DS1 circuits *are* a single DS3 circuit for C&WF allocation purposes.

88. Moreover, NECA’s guidance is not binding on our determination, nor should it be understood as an endorsement of the “circuit method” as compared to the “system method” of cost allocation. Further, NRG 4.19 does not explain the circumstances in which either method would be appropriate, but, we note, does state that as is generally the case, the cost allocation methodology should “produce reasonable results”²⁷⁹—which we do not believe to be the case regarding Aureon’s use of the circuit method. Nor does it specifically address shared C&WF along a fiber ring of an intermediate provider.²⁸⁰ This is particularly important given the significance of the resulting allocation factors.

89. Although we reject Aureon’s circuit method to determining the C&WF allocator, we also take issue with AT&T’s suggested approach. AT&T’s method of converting DS1s to DS3 equivalents may be, as argued by Aureon, too simplistic because it is too divorced from Aureon’s actual network. For example, it may be relevant that AT&T’s method does not take into consideration that individual DS1s comprising a pertinent DS3 for transport may have different origination and/or termination points and even multiple DS1s ultimately connecting a single subtending LEC with Aureon’s switch might be routed in different, diverse, manners. For these reasons, we find that Aureon must take a more nuanced approach to determining the C&WF allocator and recalculate its cost-based rate accordingly. We expect Aureon to elaborate fully on its rationale and provide complete data, including, as relevant, circuit inventories, to support its recalculated cost-based rate.²⁸¹ In so doing, we require Aureon to discuss the relevance and accuracy of AT&T’s claims regarding the manner in which a wholesale customer, such as the Access Division, would actually lease circuits for use such as Aureon’s network, as well as the relevance of Aureon’s nonregulated DS3 pricing as it compares to any DS3 pricing that could be derived from Aureon’s C&WF allocation methodology.²⁸²

²⁷⁶ We find Aureon’s observations regarding how a set of hypothetical direct connections from Des Moines to Aureon’s POIs with subtending LECs would be priced to be irrelevant to the reasonability of the circuit method of allocating C&WF cost because it does not reflect Aureon’s actual network, the cost of which is the subject of this investigation. See Aureon Surreply at 27-28.

²⁷⁷ *Id.* at 44. See also Aureon Direct Case at 45-47.

²⁷⁸ AT&T Albright Surrebuttal Decl. at 4-5, para. 8. This would be consistent with our separations rules regarding such equipment. See 47 CFR § 36.126(a)(5). See also, e.g., AT&T Opposition at 65 (“the costs associated with muxing and de-muxing at the nodes on Aureon’s network are captured by the allocation of COE costs, not CWF costs”).

²⁷⁹ NRG 4.19 at 2.

²⁸⁰ This shared facility ceases to be C&WF at the point where demultiplexing takes place when carrying traffic bound for subtending LECs and multiplexing takes place when carrying traffic bound for Aureon’s tandem switch.

²⁸¹ See Aureon Rebuttal at 49.

²⁸² See AT&T Opposition at 67-68; AT&T Surrebuttal at 38 (discussed above in the context of determining fair market value). [BEGIN CONFIDENTIAL INFORMATION]

90. We therefore require Aureon within 60 calendar days to refile cost support that includes further justification of the allocation of C&WF among DS1s, relative to DS3s (and circuits of higher capacity) between regulated and nonregulated activities. Such filing should include all relevant data for all circuit types included in the study, including an explanation of the regulated or nonregulated service provided over them and a circuit inventory matching such explanation.²⁸³ In addition, we direct Aureon to amend its fully distributed cost study to include a spreadsheet that shows the calculation of separate COE transmission and C&WF cost allocations and links to that analysis, and to employ separate COE transmission and C&WF factors throughout its study rather than using a blended factor.

91. *Aureon Fails to Properly Adjust Both the COE Transmission and C&WF Allocation Factors for CEA and Nonregulated Traffic Sharing the Use of the Same Circuit.* Aureon performs a final adjustment to its separate COE transmission and C&WF allocators to “remov[e the] costs associated with DS-0 circuits that are not used in providing CEA services, but are carried on common DS-1 trunks.”²⁸⁴ Aureon used November 2017 data to perform this approximately one percent adjustment in its Direct Case to calculate its Filed Lease Expense,²⁸⁵ and reproduced it as an adjustment to its separate COE transmission and C&WF factors in the fully distributed cost study in its Rebuttal.²⁸⁶ AT&T argues that given Aureon’s projected decline in demand (expected regulated use) following November 2017, Aureon should use more recent data.²⁸⁷ We agree with AT&T that because Aureon is using projected costs for 2018, it should be using a projected balance of regulated and nonregulated usage of its DS1 circuits for 2018, as well, rather than using historic data, and therefore require Aureon to do so. We note that, pursuant to section 64.901(b)(4), Aureon will have to make similar projections of relative regulated and nonregulated usage of its DS1 circuits for 2019 and 2020 in computing its pertinent allocators.

C. Aureon’s Demand Forecast is Reasonable

92. The third set of issues the Bureau designated for investigation revolve around Aureon’s demand forecast used to develop its revised switched transport rate. The Bureau required Aureon to demonstrate that its demand forecast is “based on accurate and reliable data and that a credible forecasting method was used.”²⁸⁸ To meet its burden, the Bureau directed Aureon to provide: (1) monthly traffic volume data for the period January 1, 2015 to the present to justify its forecast demand; and (2) a demonstration of demand using a credible forecasting method, considering issues in replicating Aureon’s initial demand forecast and how previously-submitted Aureon projections compared poorly to actual

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[END CONFIDENTIAL INFORMATION].

²⁸³ We expect such circuit inventory to include unique entries for all circuits used to calculate the C&WF allocator (including circuits being used for nonregulated purposes, including any DS1s) noting whether each such circuit is being used for regulated purposes, nonregulated purposes, or both. To the extent that Aureon relies on any other characteristic of such circuits in proposing its method of allocating C&WF, it should also include such characteristic(s) in its circuit inventory. At this time, we are stopping short of ordering Aureon to file a complete cost allocation manual pursuant to section 64.903(c).

²⁸⁴ Aureon Direct Case at 50.

²⁸⁵ *Id.* at 50.

²⁸⁶ Aureon Sullivan Supp. Decl., Attach. 6, “Summary” tab (cells F7-H9).

²⁸⁷ AT&T Opposition at 56-57.

²⁸⁸ *Designation Order* at para. 29 (“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.”).

MOU for prior time periods.²⁸⁹ As described below in Table 4, Aureon's projected demand for 2018 is 2,599,778,963 MOU, which represents a 12.75% decrease from its actual 2017 MOU. After careful review of the data, and of the analysis and arguments in the record, we find that Aureon's demand forecasts have historically been reasonably accurate, and its current demand forecast likewise appears to be reasonably accurate.

93. Assessing demand is an important part of reviewing a rate for reasonableness consistent with the rules requiring cost justification.²⁹⁰ Aureon's rate, as a carrier subject to section 61.38, is calculated by dividing the projected annual revenue requirement by projected annual demand (assuming one rate element).²⁹¹ If a carrier subject to section 61.38, such as Aureon, sets its projected demand too low as compared to actual demand, the rate will be too high, and the carrier will over-recover its revenue requirement (all else being the same). For example, if the projected annual revenue requirement is \$100 and projected annual demand is 20 units, the rate is \$5.00 per unit (\$100 divided by 20 units). If actual annual demand turns out to be 40 units, the carrier's actual annual revenues are \$200 (\$5.00 per unit times 40 units), and the carrier over-recovers its annual revenue requirement by \$100 (\$200-\$100). Thus, an accurate demand forecast is essential if the carrier is to recover as close to the prescribed rate of return as possible. Projected demand (like the projected revenue requirement) for a given rate period necessarily will reflect some amount of forecast error given future uncertainties. On average, however, if a forecasting technique is reasonably unbiased, over a long period of time, the frequency and the size of errors reflected in forecasts that are too high would be expected to be roughly the same as the frequency and the size of the errors reflected in the forecasts that are too low. To the extent that Aureon's prior forecasts on average over a long period of time have been reasonably accurate, we can be reasonably confident in the accuracy of the forecast reflected in the rate at issue in this proceeding. Thus, the past demand forecast and actual demand data sought in the *Designation Order*, and a comparison between past demand forecasts and actual demand should inform us as to the likely accuracy of Aureon's current forecast.

94. In its Direct Case, Aureon submitted additional data to support its demand calculations, as well as an explanation of its forecasting methods.²⁹² AT&T and Sprint challenge Aureon's demand submission as insufficient under section 61.38 of our rules. AT&T argues that "Aureon's current forecast is not reasonable or adequately supported,"²⁹³ and accuses Aureon of "rate manipulation," by failing to justify its rate allocation, and "us[ing] a highly inaccurate forecasting model, thereby greatly overstating the rate for CEA service."²⁹⁴ Sprint similarly takes issue with the means Aureon used to "provide the forecast minutes on each route so a weighted average billable mileage can be calculated."²⁹⁵

²⁸⁹ *Id.* at paras. 29-31; 47 CFR § 61.38; *see also Aureon Order*, 32 FCC Rcd at 9690, para. 26 (discussing Aureon's section 61.38, 47 CFR § 61.38, cost justification obligation).

²⁹⁰ *See, e.g., Annual 1985 Access Tariff Filings*, CC Docket No. 86-125, Phase I, Order Designating Issues for Investigation (CCB Apr. 4, 1986), 1986 WL 291566 at para. 40 ("The method we adopt, therefore, develops a specific estimate of test year MOU that we believe should be used in the development of [the LEC's] rate, rather than a range of reasonableness as was developed for analysis of LECs' cost forecasts, above.").

²⁹¹ *See* 47 CFR § 61.38. Monitoring periods reflect calendar years, while tariffs are filed for one- or two-year periods beginning July 1. *See, e.g., id.* §§ 69.3(a), 65.701.

²⁹² Aureon Direct Case at 57-60; Exh. B, Decl. of Jeff Schill (Aureon Schill Decl.).

²⁹³ AT&T Opposition at 6, 73.

²⁹⁴ *Id.* at 16; AT&T Surrebuttal at 40-44.

²⁹⁵ Sprint Opposition at 15.

In its rebuttal, Aureon disagrees with criticism of its demand calculations and provides further explanation of the means it used to arrive at its demand forecast.²⁹⁶

1. Aureon's Past Demand Forecasts are Reasonably Accurate

95. In the *Designation Order*, the Bureau directed Aureon to provide the monthly MOU traffic forecasts submitted as part of its 2010, 2012, 2013, 2014, and 2016 annual filings, and 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.²⁹⁷ The Bureau explained that a comparison of past demand forecasts with actual demand for the applicable tariff periods would help in determining the accuracy of Aureon's past forecasts.²⁹⁸ The Bureau also specified that Aureon could submit additional data to justify its demand forecast.²⁹⁹ Upon review of the record, and our own analysis of the data submitted, we find that on average, Aureon's demand forecasts have historically understated actual demand.³⁰⁰

96. Aureon submitted the required data, as well as some additional data, and provided a comparison of past interstate demand forecasts with actual interstate demand.³⁰¹ Aureon submits interstate demand data relative to its most recent eight tariff-year filings: annual filings in 2006, 2008, 2010, 2012, 2013, 2014, and 2016, and the 2018 filing. Aureon's analysis states that the difference between the projected and actual demand is an **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent over these periods, based on a weighted average calculation.³⁰² Aureon's calculation is suspect, however, for a number of reasons.

97. At the outset, for its 2006 tariff filing, Aureon does not supply the data on which this comparison is based, and we cannot confirm how it makes this comparison.³⁰³ Turning to the tariff filings in 2008, 2010, 2012, 2013, and 2014, Aureon compares projected demand for the year beginning July 1

²⁹⁶ See generally Aureon Rebuttal at 39-60; see also *id.* at 53 n.185 (discussing actual and projected demand estimates), 55-56 n.192 (discussing Inteliquent's submission, Inteliquent *Ex Parte* at 1).

²⁹⁷ *Designation Order* at para. 31.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See generally Aureon Rebuttal at 39-60; see also *id.* at 53 n.185 (discussing actual and projected demand estimates), 55-56 n.192 (discussing Inteliquent's submission, Inteliquent *Ex Parte* at 1).

³⁰¹ Aureon Direct Case at 57-61, Aureon Schill Decl., Attach. 2 ("Aureon 2010, 2012, 2013, 2014, and 2016 MOU Traffic Forecasts").

³⁰² *Id.* at 57-61, Attach. 2 ("Aureon 2010, 2012, 2013, 2014, and 2016 MOU Traffic Forecasts"), Aureon Schill Decl.; Aureon Rebuttal at 52-54. Aureon's analysis also purports to show that it **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. We believe the weighted average is more relevant for purposes of these comparisons than the simple average because customers are billed for each minute, and a forecast that under- or over-states demand by a given percentage should receive a relatively large (small) amount of emphasis when actual demand is relatively large (small).

³⁰³ *Id.*

and ending June 30, e.g., July 1, 2014 to June 30, 2015, to the actual demand for the immediately preceding calendar year, e.g., calendar-year 2014.³⁰⁴ For the tariff filing in 2016, Aureon compares projected demand for calendar-year 2017 to actual demand for calendar-year 2016.³⁰⁵ Aureon does not explain why the period for its demand projections in this filing does not match the period for its actual demand data, or why a comparison based on such mismatched timeframes would be as relevant as one based on periods that match.³⁰⁶ For tariff year 2018, Aureon compares the projected demand for calendar-year 2018, the projected demand reflected in the rate at issue in this proceeding, to a combination of the actual demand for the first four-months of calendar-year 2018, plus a forecast of demand for the remaining eight months of 2018—a forecast for these months that is unexplained and different from the forecast for those same months that is reflected in its rate. Aureon does not explain why a comparison of a forecast to a hybrid of actual and unexplained forecast data is relevant.³⁰⁷

98. In its opposition, AT&T also submits a comparison of Aureon's past interstate demand forecasts with actual interstate demand. AT&T submits data relative to eight of Aureon's tariff filings beginning with tariff-year 2004 and ending with tariff-year 2016.³⁰⁸ It compares the forecast reflected in the rate in effect for a tariff year, e.g., tariff-year 2014, during which rates took effect on July 1, 2014, and continued in effect until June 30, 2016, to the average of the actual calendar-year demand for the two-year period beginning six months prior to the effective date of the rate, e.g., January 1, 2014, and ending six months prior to the expiration of the rate, December 31, 2015.³⁰⁹ AT&T's analysis also is imprecise because the period for the demand projections and the period for the actual demand data on which it calculates average actual demand do not match, notwithstanding AT&T's use of an average.³¹⁰ AT&T's comparison shows the absolute differences between its concept of actual demand and projected demand for each tariff-year in its sample, but does not provide an overall average difference over these years. Had AT&T calculated a weighted average difference using its data, it would have found that on average Aureon understated demand in its forecasts by 7.04 percent over these periods.³¹¹

99. We think the better approach is to compare the demand forecasts reflected in the rates for the different rate periods to the actual demand that corresponds precisely to those rate periods.³¹² To do

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ Aureon Rebuttal at 52-54, Supp. Decl. of Jeff Schill, Attach. 2.1, "Monthly Projected Demand" (Aureon Schill Supp. Decl.).

³⁰⁸ AT&T Opposition at 72-74.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ AT&T's analysis also suggests that Aureon's forecasts understated demand six times with the largest understatement equal to 24.05 percent, and overstated demand twice with the largest overstatement equal to 6.61 percent, based on our calculation of these percentage differences. In contrast to Aureon, we use actual demand as the base for calculating percentage differences because actual demand is the target. We subtract the forecast from actual demand, divide this difference by actual demand (the base), and multiply by 100. Actual demand for a given tariff year in this calculation is the average of the actual demand for two years, as developed by AT&T as discussed above. The simple average of these under- and over-statements is 8.10 percent. Our weighted average is equal to the sum of the actual demand for all the years (for which a comparison to a demand forecast is possible) minus the sum of the forecasted demand for all the corresponding years, divided by the sum of the actual demand, multiplied by 100.

³¹² Rate-of-return carriers subject to our section 61.38 rules, 47 CFR § 61.38, such as Aureon, are required to make annual filings to revise rates for services subject to rate-of-return regulation every other year, in even-numbered years. 47 CFR § 69.3(f)(1). These carriers also may file rate revisions for these services between the even years as (continued....)

so, we compared the projected interstate annual demand reflected in Aureon's rates to the two-year average of the actual interstate annual demand for the expected rate period, with one exception.³¹³ Our analysis is limited to periods beginning with July 1, 2008 because the monthly actual demand data Aureon submits begin with January 2007, and actual monthly data are not available for the entire rate period that began July 1, 2016, with the expectation that the rate filed on that date would remain in effect until June 30, 2018. Thus, we compare for as many years as possible based on the data Aureon submitted in its Direct Case. We find that on average Aureon's forecasts **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** percent over these periods, based on a weighted average calculation.³¹⁴ Our findings are reflected in Table 2 below.

TABLE 3

[BEGIN CONFIDENTIAL INFORMATION]

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100. Taken together, our analysis, and those of Aureon and AT&T, lead us to find that

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well. See 47 CFR § 65.701 ("For both exchange and interexchange carriers subject to this part, interstate earnings shall be measured over a two-year period to determine compliance with the maximum allowable rate of return. The review periods shall commence on January 1 in odd-numbered years and shall end on December 31 in even-numbered years."). Thus, earnings are not measured relative to the "test year" used by a carrier to develop the demand and revenue requirement forecasts on which rates that produce these earnings are based. Nor are these earnings measured relative to any single one-year period.

³¹³ The one exception is that we compare the forecast reflected in the rate in effect for tariff-year 2013, to the actual demand for the then expected one-year rate period beginning July 1, 2013, and ending June 30, 2014. In this one case, after making a filing in tariff-year 2013, Aureon, as a carrier subject to section 61.38, was required to make an annual filing the following even-numbered tariff year, 2014. Thus, the expected rate period would have been one year in that instance. As compared to Aureon's and AT&T's analyses, both of which examine eight periods, our analysis examines five rate periods: July 1, 2008 to June 30, 2010; July 1, 2010 to June 30, 2012; July 1, 2012 to June 30, 2014; July 1, 2013 to June 30, 2014; and July 1, 2014 to June 30, 2016. These rate periods represent the tariff periods, in which the various rates were in effect. See 47 CFR §§ 61.38 69.3(f)(1).

³¹⁴ Schill Suppl. Decl., Attach. 2.1, "Monthly Projected Demand." Our analysis also suggests that Aureon's forecasts **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION]. We use actual demand as the base for calculating these percentage differences and calculate the simple average and weighted average percentage differences similar to how we did so above to supplement AT&T's analysis of Aureon's demand forecasts.

Aureon's demand forecasts have historically [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION] These three analyses also suggest that Aureon's forecasts understate demand with greater frequency than they overstate demand. Given the rather large year-over-year changes to demand that Aureon has experienced, as discussed below, we find the average difference between Aureon's projected and actual demand reasonable. Our analysis, on which the lowest understatement figure is based, reflects the most relevant comparison regarding time periods, while AT&T's analysis, on which the highest understatement figure is based, looks at Aureon's demand forecasts over a longer period of time.³¹⁵ Taken together, these analyses give us confidence that Aureon's demand forecasts have not, on average, historically or systematically, materially understated demand to such an extent that its past forecasts undermine the credibility of its current forecast.

2. Aureon's Current Demand Forecast is Reasonable

101. Having carefully reviewed the record, we accept Aureon's demand forecast of 2,599,778,963 MOU, a 12.75% decrease from its actual 2017 MOU, as reasonable for five reasons. First, although Aureon's past forecasts on average did have some downward bias, we conclude that the bias was relatively minor and does not discredit the forecast at issue in this proceeding. [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION] Fourth, Aureon's demand forecast is reasonably consistent with its actual demand for the first four months of its test year, and more importantly, for the first two months of its rate period. Fifth, it would be difficult for the Commission to make a more accurate forecast of demand than Aureon's forecast, given that Aureon's demand has been subject to significant upturns and downturns over time. We would be limited to the historical data in the record and a variety of imperfect forecasting techniques, and we have no substantial insight into the commercial reality of Aureon's business. For all these reasons, we find that Aureon's demand forecast is sufficiently supported.

102. In its Direct Case, Aureon submits the required historical data.³¹⁶ It does not, however, explain precisely how it developed its demand forecast. In its "Description and Justification," Aureon explains that the demand forecast was based on an extrapolation of the actual results from the fourth quarter of 2017.³¹⁷ It also explains that the actual demand had decreased during the later months of 2017, and these decreases were projected into the test year, calendar year 2018. Aureon's monthly actual demand in 2017, and the monthly projected demand for its test year are set forth below.³¹⁸

³¹⁵ See *supra* paras. 98-99.

³¹⁶ See Aureon Schill Decl., Attach. 2.

³¹⁷ Aureon Transmittal No. 36 at D&J at 4.

³¹⁸ *Id.* at Attach. 1, "Sect 2-Rate Development" tab.

TABLE 4

Aureon's 2017 Actual and 2018 Projected Demand

| Month | 2017 Actual MOU | 2018 Projected MOU | 2018 Month-to- Prior Month Change |
|-------------------------------|--------------------|-----------------------|---|
| January | 276,350,023 | 217,656,503 | -0.0860% |
| February | 241,792,374 | 217,470,112 | -0.0856% |
| March | 253,173,174 | 217,284,652 | -0.0853% |
| April | 219,145,294 | 217,100,120 | -0.0849% |
| May | 241,699,296 | 216,916,511 | -0.0846% |
| June | 257,595,328 | 216,733,820 | -0.0842% |
| July | 251,695,845 | 216,552,042 | -0.0839% |
| August | 287,109,880 | 216,371,173 | -0.0835% |
| September | 241,070,718 | 216,191,208 | -0.0832% |
| October | 253,307,156 | 216,012,143 | -0.0828% |
| November | 238,988,410 | 215,833,974 | -0.0825% |
| December | 217,843,831 | 215,656,695 | -0.0821% |
| Total | 2,979,771,329 | 2,599,778,953 | |
| Projected 2018 v. Actual 2017 | | | -12.75% |

103. Demand forecasts that rely on the historical relationship between demand and time and/or other explanatory variables (such as Aureon's forecast, which is based on fourth quarter 2017 data) generally should be based on more than three months of data, absent a strong reason to believe a longer period would not produce a more accurate forecast. Use of a relatively small number of observations is likely to limit the reliability of any forecast.³¹⁹ On the other hand, if there are significant market developments or other structural changes that are too recent to have been adequately reflected in a relatively large number of observations, then many of these observations likely would be stale and use of them would limit the reliability of any forecast.³²⁰ Aureon maintains that the trend reflected in the demand data for the last quarter of 2017 should be the basis for its test year forecast.³²¹ Aureon's forecast reflects an expected monthly decrease in demand of less than one-tenth of one percent starting with a 0.086 percent reduction from December 2017 to January 2018, the first month of Aureon's test year.³²² As Table 4 above shows, Aureon's actual demand decreased during the fourth quarter of 2017 from approximately 253 million MOU in October 2017, to approximately 239 million MOU in November 2017, to approximately 218 million MOU in December 2017.³²³

³¹⁹ Robert S. Pindyck & Daniel L. Rubinfeld, *Econometric Models and Economic Forecasts* ch. 6, 163 ("Other things being equal then, the larger the sample size and the greater the variance in X [the independent variable in a two-variable linear regression model], the smaller will be the error of forecast."), ch. 6, Appx. 6, 185 ("as T [the number of observations] becomes infinitely large the estimated parameter values approach the true parameter values exactly, so that the only source of forecast error is the additive error term.") (1976); *see also* William G. Cochran, *Sampling Techniques* (3rd ed. 1977), ch. 4, 72-89.

³²⁰ Pindyck & Rubinfeld, ch. 6, 161 ("A single-equation regression model can have significant t statistics and a high R² and still forecast very badly period after period. This might result from structural change (in the economy) occurring during the forecast period and not explained by the model.").

³²¹ Aureon Schill Decl., Attach. 1.

³²² We calculated these per month percentage decreases based on the forecast data displayed in the above table.

³²³ *See supra* para. 102, Table 4.

104. We examined the data to determine whether the fourth quarter and December are typically periods of relatively low demand due to seasonality or some other factor. The data presented in Table 4 below show that the fourth quarter and the month of December in both 2015 and 2016 [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

TABLE 5

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

105. Moreover, as Aureon points out, [BEGIN CONFIDENTIAL INFORMATION]

³²⁴ Aureon Schill Decl., Attach. 1 (Aureon Interstate and Intrastate MOUs (January 2015-April 2018)).

³²⁵ *Id.* at 59-61.

³²⁶ Aureon Schill Decl., Attach. 2 (Aureon 2010, 2012, 2013, 2014, and 2016 MOU Traffic Forecasts).

³²⁷ *Id.*

TABLE 6
[BEGIN CONFIDENTIAL INFORMATION]

| | | | |
|---|-------|-------|-------|
| - | _____ | _____ | _____ |
| - | _____ | _____ | _____ |

[END CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].³³⁰

³²⁸ See Aureon Reply to Petitions at 15-16; AT&T Opposition at 81-83; AT&T Surrebuttal at 42-43.

³²⁹ See Aureon Schill Decl., Attach. 2 (Aureon 2010, 2012, 2013, 2014, and 2016 MOU Traffic Forecasts).

³³⁰ In Aureon's surreply, to rebut AT&T's argument that Aureon's demand forecast is too low, Aureon provides actual demand data for May 2018 and June 2018, data that are more recent than the actual, historical demand data in Aureon's direct case. While Aureon does not provide separate data for interstate service in its surreply, data in its direct case show that interstate demand represented between **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] percent of total CEA demand between January 2015 and April 2018. The additional data in the surreply show that actual overall demand for Aureon's interstate and intrastate CEA service **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** from April 2018 to May 2018 and by **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** from May 2018 to June 2018 (based on our calculation of

(continued....)

TABLE 7

[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

109. Aureon argues that there is a large variance in the demand for its CEA service over time and this variance makes it difficult to project demand accurately into the future.³³¹ As Aureon explains demand for its CEA service has generally trended [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

Aureon argues that it is therefore difficult to develop an accurate demand forecast using a trend approach based on historical data.³³³

110. We agree with Aureon that it is difficult to make accurate demand forecasts based on historical data, regardless of the forecasting method when demand changes at significantly different rates and is subject to significant upturns and downturns over time.³³⁴ As Table 7 below shows, actual demand for Aureon's services [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].

(Continued from previous page) _____
these percentage differences). Moreover, the least amount of *interstate* demand Aureon projected for any month in 2018, 215,656,695 MOU in December 2018, is [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION]. See Aureon Surreply at 30-32, Exh. K (Supplemental Surreply Decl. of Jeff Schill); Aureon Direct Case, Attach. 1 ("Aureon Interstate and Intrastate MOUs (January 2015-April 2018)"), Exh. B (Decl. of Jeff Schill); Transmittal No. 36 at Attach. 1, "Sect 2-Rate Development" tab.

³³¹ Aureon Direct Case at 53 n.185, 60 ("The spreadsheet attached to the Schill Declaration as Attachment 2 demonstrates the difficulty in forecasting future MOUs.").

³³² *Id.* at 59, 61 ("Aureon has performed a linear modeling of the traffic over the period of time requested by the FCC, i.e., for the 2010, 2012, 2013, 2014, and 2016 annual filings, which demonstrates that the overall traffic is generally [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION].") (citing Schill Decl. at para. 9, Attach. 2)).

³³³ *Id.* at 59-61.

³³⁴ See Aureon Schill Decl. at para. 9 (citing Attach. 2).

³³⁵ Aureon Schill Supp. Decl., Attach. 2.1 ("Monthly Projected Demand").

TABLE 8
[BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

111. We do not incorporate into our analysis of the reasonableness of Aureon's demand forecast Inteliquent's claim that it could be delivering up to 250 million MOU per month to Aureon in the coming months because it is speculative and unsupported.³³⁶ Inteliquent's assertion is that it "could" be delivering the traffic; thus, this additional traffic is only a possibility. Inteliquent provides no information about its current traffic flows and the methodology used to reach this projection, nor does it specify a precise point in time when the carriage of this traffic on Aureon's network would begin.³³⁷ We also are skeptical of the volume of this traffic, 250 million MOU per month, which is 3 billion MOU per year. Three billion MOU is greater than the total MOU Aureon carried on its CEA network in 2017. Inteliquent's claim also begs the question: how much, if any, of the traffic from the source of the possible 250 million MOU per month is Aureon already carrying on its network, and how much would be totally new traffic or currently is carried by a carrier other than Aureon, and why?³³⁸

112. We also reject AT&T's argument that Aureon's forecasted demand should include "bypass" traffic—i.e., long distance traffic that bypasses, and is not carried on, Aureon's CEA network.³³⁹

³³⁶ See *id.* at 1.

³³⁷ See *id.*

³³⁸ We also note that Aureon claims that **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] Aureon Rebuttal at 56, n.192 (citations omitted). If we were to consider the speculative increase in demand presented by Inteliquent, our evaluation of Aureon's cost-based rate would also have to include any required increase in Aureon's cost to handle such speculative demand, the net effect of which may or may not reduce Aureon's permitted rate.

³³⁹ AT&T Opposition at 80 ("AT&T takes issue with the proposition that there currently is a CEA mandatory use policy, to the extent Aureon is taking that position, bypass traffic should be included in the demand forecast underlying its CEA rates."); see also AT&T Surrebuttal at 42-43. We recognize there are various issues surrounding Aureon's mandatory use provided in its section 214 order. See *Aureon Section 214 Order*, 3 FCC Rcd at 1473, para. 33. However, because this order is focused on the traffic on Aureon's network for the purposes of rate development, we do not address those issues in this order.

AT&T argues that because of “Aureon’s failure to enforce the alleged requirement to transport all traffic over its CEA network” Aureon’s demand forecast fails to take into account significant volumes of traffic from other IXC’s to Aureon’s subtending LECs that bypasses Aureon.³⁴⁰ Aureon contends that it did not, could not and should not include bypass traffic in its demand forecast. Aureon explains that bypass traffic is never routed to the CEA network, Aureon provides no access services for bypass traffic, and Aureon has no way of quantifying how much bypass traffic is delivered by other intermediate carriers to its subtending LECs.³⁴¹

113. We find that including bypass traffic in the demand forecast would be inconsistent with long-standing Commission policies concerning the ability to charge only for access services actually provided.³⁴² No party disputes that the “bypass traffic” to which AT&T refers to does not traverse Aureon’s CEA network. Including this traffic in the demand forecast would essentially require Aureon to treat this traffic as if it had provided access services, even though such traffic was never routed through Aureon’s CEA network. Even if Aureon was obligated to enforce the mandatory use policy (as AT&T suggests), the fact that such access services are not actually provided for this traffic means that Aureon cannot account for such traffic in its rate development. Thus, Aureon cannot include traffic that has bypassed its CEA network as part of its demand calculation.

V. RELATIONSHIP BETWEEN THE RATE CAP, THE BENCHMARK RATE, AND COST SUPPORT

114. Having found that Aureon must benchmark to the CenturyLink rate, and that it must provide more information to support its cost analysis, we now turn to Aureon’s obligations with respect to the competitive LEC benchmark rate, the cost-based rate, and the rate cap. Aureon does not dispute that the *USF/ICC Transformation Order* capped Aureon’s rate at its rate in effect on December 29, 2011.³⁴³ With respect to the competitive LEC benchmark and the cost-based rate, we recognize that CEA providers such as Aureon are uniquely situated under the existing rules due to their status as both competitive LECs and dominant carriers. Most competitive LECs’ access rates are presumptively reasonable if they are tariffed at or below the benchmark without regard to cost support because almost all competitive LECs are nondominant carriers.³⁴⁴ However, as dominant carriers, CEA providers are subject to multiple independent regulatory limitations when tariffing switched interstate access rates.

115. In the *Aureon Order*, the Commission determined that Aureon’s rate for interstate switched transport service is subject to both the competitive LEC obligations pursuant to section 51.911(c), which include the benchmarking requirement, and the dominant carrier cost support

³⁴⁰ See AT&T Opposition at 6, 79-80; AT&T Surrebuttal at 42-43.

³⁴¹ Aureon Rebuttal at 58-59.

³⁴² See *Eighth Report and Order*, 19 FCC Rcd at 9118-19, para. 21 (“our long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide . . . [and] [w]e believe that a similar policy should apply to competitive LECs”); see also *Bell Atlantic Tel. Comps., Transmittal No. 418, Revisions to Tariff F.C.C. No. 1*, Order, 6 FCC Rcd 4794, 4795, para. 9 (1991); *AT&T Corp. v. Bell Atlantic-Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556 (1998) (discussing charges for unused services).

³⁴³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17933, para. 801; see also *Aureon Order*, 32 FCC Rcd at 9689, para. 24; Aureon Direct Case at 5; Aureon Rebuttal at 64.

³⁴⁴ See *Seventh Report and Order*, 16 FCC Rcd at 9925, para. 3. Indeed, the only carriers that remain dominant in the provision of switched access are the CEA providers. See *Technology Transitions, USTelecom Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, at 8290, para. 19 n.43 (2016) (“In addition, non-dominant status does not extend to centralized equal access providers because such carriers do not provide service to end users.”).

requirements of section 61.38.³⁴⁵ The Commission explained that section 61.38 and the competitive LEC section 51.911 requirements “complement each other” and therefore Aureon must meet the requirements of each, independent of one another.³⁴⁶ The only remaining question is how the rates resulting from these rules should be applied to Aureon’s tariffed rate, with the limitation that such a rate can be no higher than the rate cap. In its Direct Case, Aureon attempts to relitigate many issues resolved by the Commission in the *Aureon Order*,³⁴⁷ and suggests that we permit it to set a rate no higher than the rate cap.³⁴⁸ We decline to reconsider the Commission’s determination in the *Aureon Order* that the benchmark and cost-based ratemaking requirements are complementary. Because these rules provide for independent calculations, and therefore limitations on the rate for Aureon’s switched transport service, we find that Aureon may only tariff a rate at the *lower of* the benchmark rate or cost-based rate. We also find that Aureon’s concerns regarding its ability to charge a just and reasonable cost-based rate are premature because our findings here require Aureon to recalculate its rates under the cost of service rules.³⁴⁹

116. Aureon’s arguments for interpreting our rules and the *Aureon Order* to allow it to charge a rate as high as the rate cap, despite the benchmark and cost-of-service requirements, are inconsistent with our rules and the *Aureon Order*.³⁵⁰ Aureon separately contends that, pursuant to the *Aureon Order*, the “FCC meant to imply here the relationship between cost studies and the \$0.00819 default transitional rate—not the CLEC rate benchmark.”³⁵¹ Although these arguments are not entirely clear, Aureon seems to suggest that, because the *Aureon Order* found that Aureon violated 51.905(b) of the rules, that subsection is the relevant one for purposes of comparing the rates permitted under sections 51.911 and 61.38. We reject these arguments.

117. Although the *Aureon Order* focused on whether Aureon violated the Commission’s rate cap and rate parity rules, it made clear that section 51.911(c) was equally applicable. There, the Commission found “it did not have an adequate record to determine the pertinent [Aureon] benchmark rate,” but “[t]o the extent that Aureon’s rates exceeded this benchmark” they would be unlawful.³⁵² Clearly, the Commission found that both the rate cap and the rate benchmarking obligation applied to Aureon’s tariffed rate.³⁵³ Thus, Aureon’s arguments that the relevant comparison should be to the “default transitional rate” are misguided and constitute yet another attempt to argue that the benchmark

³⁴⁵ *Aureon Order*, 32 FCC Rcd at 9690, para. 26; see also 47 CFR §§ 51.911(c), 61.26, 61.38.

³⁴⁶ *Id.* at 9690, para. 26. In its Direct Case, Aureon urges the Commission to find for the first time, and contrary to the *Aureon Order*, that application of the benchmark of section 51.911(c) is incompatible with cost of service rate regulation (and the initial rate cap established by 51.905(b)(1)). See Aureon Direct Case at 8, 65-67; Aureon Rebuttal at 71-75; see also AT&T Surrebuttal at 56-59. Because the Commission has already determined that Aureon is subject to all these regulatory provisions, this argument essentially seeks untimely reconsideration of the Commission’s findings in the *Aureon Order*.

³⁴⁷ See, e.g., *Aureon Order*, 32 FCC Rcd at 9690, para. 26 (“Aureon argues that the rate cap and rate parity rules ‘must give way’ to Section 61.38 because the two sets of rules are inconsistent.” (internal citations omitted)).

³⁴⁸ Aureon Direct Case at 64 (arguing the “Commission should only subject Aureon to the rate cap incentive regulation established by the \$0.00819 default transitional rate - without consideration of a CLEC rate benchmark or cost support”); see also Aureon Surreply at 34; 47 CFR § 51.905(b).

³⁴⁹ See Aureon Reply at 9, 62-65; Aureon Surreply at 57 (raising the concern, without support, that rates could be “so low as to put Aureon’s CEA service out of business, leaving the Iowa telecommunications market to AT&T and its allies”); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17997, para. 924.

³⁵⁰ See Aureon Direct Case at 61-64; Aureon Rebuttal at 61-65; Aureon Surreply at 33-34.

³⁵¹ Aureon Rebuttal at 61-63; 47 CFR § 51.905(b).

³⁵² *Aureon Order*, 32 FCC Rcd at 9689, para. 24 (citing 47 CFR §§ 51.911(b), (c)).

³⁵³ *Id.* at 9688-89, paras. 23-24.

should not apply to Aureon. As relevant here, all competitive (and incumbent) LEC interstate switched access service rates (including originating access and all transport rates) were capped by the *USF/ICC Transformation Order* at the rates in effect on December 29, 2011.³⁵⁴ For Aureon, this would be a rate of \$0.00819 per MOU for its CEA service. This cap served as a ceiling above which LEC charges could not be tariffed until competitive LECs (including Aureon) were required by section 51.911(c) of our rules to reduce those capped rates to the level of the competing incumbent LEC. Beginning July 1, 2013, Aureon's rate could be no higher than "the rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26 of this chapter."³⁵⁵ The cap adopted in 2011 thus served as a "default transitional rate" *only* until the rate reduction mandated by section 51.911(c) was implemented.³⁵⁶ The Commission's pricing rules relevant to this investigation are unambiguous.

118. We also reject Aureon's argument that its rate would be lawful if: (1) it can justify costs for a rate below the benchmark, in which case the higher benchmark rate would apply; or (2) it can justify costs for a rate above the benchmark, in which case Aureon asks the Commission to interpret the benchmarking requirement as a rate floor.³⁵⁷ Under this approach, Aureon "would still be required by Section 61.38 of the Commission's rules to perform cost studies to support a CEA tariff rate," but the cost study would only be relevant to the extent that rate is "above the CLEC benchmark."³⁵⁸ In structuring the benchmark mechanism, the Commission considered the importance of moving competitive LEC rates toward those of the market incumbents because those rates had already been subject to regulatory review.³⁵⁹ Aureon's "rate floor" approach would not move the rates of the competing LEC toward that of the incumbent as intended but rather permit it to charge higher rates for similar access services. As the Commission recognized at the time, "it is highly unusual for a competitor to enter a market at a rate dramatically above the price charged by the incumbent, absent a differentiated service offering."³⁶⁰

119. Further, Aureon's contention that the CLEC benchmark should act as a "rate floor" is plainly inconsistent with the intent of that provision. Section 51.911(c) of our rules is clear that Aureon's tariffed rate "shall be no higher than" the rate of the competing incumbent LEC. The benchmark is the ceiling for Aureon's tariffed rate, not the floor. Further, the CLEC benchmark mechanism acts as a rate cap, not a rate floor, regardless of a competitive LECs' costs and was adopted to constrain tariffed interstate switched access rates of competitive LECs. Indeed, any access rates above the benchmark are

³⁵⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17933, para. 801; 47 CFR § 51.905(b).

³⁵⁵ 47 CFR § 51.911(c). As a dominant carrier, however, if Aureon's costs would justify a lower rate, it would be required by section 61.38 of our rules to tariff that lower rate (*see supra* at section IV).

³⁵⁶ Aureon's assertion that "[a]s long as Aureon bills a CEA tariff rate that is equal to or less than the \$0.00819 default transitional rate, Aureon should not be required to reduce its rates further" is wrong and ignores the requirement to reduce its rates beginning July 1, 2013 in section 51.911(c) of our rules. Aureon Direct Case at 5; *see also* Aureon Rebuttal at 64 (stating "so long as Aureon's tariff rate is less than or equal to the default transitional rate of \$0.00819, Aureon should be treated like all other LECs that are not required to recalculate rates based on changes to revenue requirements."). We treat Aureon like all other competitive LECs to whom section 51.911(c) of our rules applies. *See* 47 CFR § 51.911(c) (requiring that beginning July 1, 2013, their rates shall be "no higher than" the rates of the competing incumbent LEC). We would also treat Aureon the same as any other dominant competitive LEC and would require the application of section 61.38 of our rules to justify any such carrier's tariffed rates to ensure that for services that have not yet transitioned to bill-and-keep, the tariffed rates are not supracompetitive.

³⁵⁷ Aureon Direct Case at 9-10; Aureon Surreply at 39-40.

³⁵⁸ Aureon Direct Case at 10.

³⁵⁹ *See Seventh Report and Order*, 16 FCC Rcd at 9940, para. 44.

³⁶⁰ *Id.* at 9937, para. 37.

mandatorily detariffed.³⁶¹ There is no precedent for allowing the CLEC benchmark to act as a rate floor and we find that treating it as such would be inconsistent with both the intent and actual language of section 61.26.³⁶² Accordingly, we cannot agree that the CLEC benchmark rule should act as a rate floor.

120. In the *USF/ICC Transformation Order*, the Commission determined that “[t]he comprehensive intercarrier compensation reforms we adopt supersede the preexisting access charge regime, bringing that traffic into the section 251(b)(5) reciprocal compensation framework subject to a transition to bill-and-keep.”³⁶³ That order, including the transition of access charges to an ultimate end state of bill-and-keep, determined that a bill-and-keep methodology and the transition of those rates to that end point are fully consistent with the Communications Act requirement in section 201 that rates be just and reasonable.

121. Aureon seems to contend that the reduced rates required by the Commission’s access reforms, including the rate transition required by the *USF/ICC Transformation Order* and applied to competitive LECs via the CLEC benchmark, would violate the Act if they resulted in rates lower than a cost-supported rate.³⁶⁴ Aureon states that the Commission must permit it to charge a cost-based tariff rate above the CLEC benchmark if that cost-based rate has been calculated in compliance with the applicable accounting and rate-of-return rules.³⁶⁵ According to Aureon, imposing a CLEC benchmark requiring it to charge less than the cost-based rate would result in an “unlawfully unjust and unreasonable rate.”³⁶⁶ To support this claim, Aureon cites several cases predating the *USF/ICC Transformation Order*. It claims that those cases stand for the proposition that the Commission’s approach to intercarrier compensation reform in the *USF/ICC Transformation Order* is wholly inconsistent with the statutory mandate.³⁶⁷ Whatever merits the pre-2011 cases cited by Aureon had, Aureon cannot now challenge nor collaterally attack the *USF/ICC Transformation Order*. In that order, the Commission determined that the transition of all access charges to a bill-and-keep methodology and the Commission-adopted rate transition plans are permitted under the Act.³⁶⁸ The *USF/ICC Transformation Order* was upheld by the Tenth Circuit.³⁶⁹ Thus, we cannot agree with Aureon’s position that application of the Commission’s rules would produce a rate that is not just and reasonable under the Act.

³⁶¹ See *Seventh Report and Order*, 16 FCC Rcd at 9924, para. 3 (explaining that the rules are necessary to “prevent use of the regulatory process to impose excessive access charges on IXC’s and their customers”).

³⁶² See 47 CFR § 61.26(b) (stating that “a CLEC shall not file a tariff for its interstate switched access services that prices those services above . . . the rate charged for such services by the competing ILEC”); *id.* § 61.26(f) (stating that “the rate for access services provided may not exceed the rate charged by the competing ILEC for the same access services . . .”).

³⁶³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17945, para. 828 (replacing the previous rate of return or price cap requirements for establishing rates for access services with rate caps, and defining schedules for the transition of certain terminating access services to bill-and-keep adopted pursuant to the Commission’s authority in section 251(b)(5) of the Act).

³⁶⁴ See Aureon Rebuttal at 69-70.

³⁶⁵ *Id.*

³⁶⁶ *Id.* at 69.

³⁶⁷ Aureon Rebuttal at 62-70 (citing, e.g., *Jersey Cent. Power & Light Co. v. Fed. Regulatory Energy Comm’n*, 810 F.2d 1168, 1176 (D.C. Cir. 1987); *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1240 (D.C. Cir. 1993); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944)); see also Aureon Direct Case at Section I.

³⁶⁸ See *supra* at n.2.

³⁶⁹ See *id.*

VI. PROCEDURAL MATTERS

122. As we explain above, we conclude that Aureon's interstate switched transport rate of \$0.00576 contained in Transmittal No. 36 of Tariff F.C.C. No. 1 is unlawful because: (1) it exceeds the allowable competitive LEC benchmark rate of \$0.005634; and (2) it is not cost-supported because Aureon has not demonstrated that its Filed Lease Expense complies with our affiliate transaction rules. Accordingly, we require Aureon to file a revised tariff along with revised cost support no later than sixty calendar days from the release date of this order. The revised tariff must include either the allowable competitive LEC benchmark rate of \$0.005634 or the revised cost-supported rate, whichever is lower. Aureon continues to be subject to the accounting order in this proceeding.

123. Specifically, as described above, Aureon must file full cost support demonstrating: (1) that its Filed Lease Expense is lower than the fair market value of the facilities being leased; and (2) that its Filed Lease Expense is lower than the fully distributed cost of the facilities being leased, specifically including: (a) a formal calculation of the fully distributed cost; (b) COE and C&WF allocators that comply with section 64.901(b)(4) of our rules; (c) an appropriate method of allocating cable and wire facilities expense (not treating circuits provisioned as DS1s on a basis equivalent to DS3s); and (d) a proper adjustment of its allocators to account for CEA and nonregulated traffic sharing the use of the same circuits. We also require Aureon to provide the further explanations requested herein.

124. All spreadsheets filed by Aureon must be filed in native fully-operational 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.

125. Given the complexities associated with implementation of the findings made in this Order, we direct the Wireline Competition Bureau to ensure that the Commission's findings are properly reflected in Aureon's revised Tariff F.C.C. No. 1. We further direct the Wireline Competition Bureau to determine any refunds that may be required once revised rates are effective.

VII. ORDERING CLAUSES

126. 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, Iowa Network Access Division d/b/a Aureon SHALL FILE REVISED rate(s) in its Tariff F.C.C. No. 1, as described in this Order, no later than sixty calendar days from the release date of this Order.

127. IT IS FURTHER ORDERED that the investigation initiated in WC Docket No. 18-60 IS TERMINATED and that the rates under investigation in this proceeding are unlawful and subject to potential refunds for overearnings.

128. IT IS FURTHER ORDERED that the rates found unlawful herein which are presently in effect shall continue in effect, pending further Commission Order, unless cancelled by a subsequent Aureon tariff revision.

129. IT IS FURTHER ORDERED that the waiver request on page nine of Aureon's Direct Case IS DENIED for the reasons described herein.

130. IT IS FURTHER ORDERED that the accounting order applicable to Iowa Network Access Division d/b/a Aureon, shall remain in effect until such time as the revised rates are effective.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary