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

Federal Communications Commission  
Office of the Secretary

In the Matter of

**IOWA NETWORK SERVICES, INC.  
D/B/A AUREON NETWORK SERVICES  
Tariff F.C.C. No. 1, Transmittal No. 36**

**Transmittal No. 36  
February 22, 2018 Access Charge  
Tariff Filings**

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

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Dated: February 26, 2018

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Pursuant to Section 204(a)(1) of the Communications Act ("Act"), 47 U.S.C. § 204(a)(1), and Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, AT&T Services, Inc., on behalf of its affiliates ("AT&T") petitions the Commission to reject, or to suspend and investigate, the above-captioned revised tariff filed by Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon") on February 22, 2018, under Transmittal No. 36 ("Proposed Tariff").<sup>1</sup>

**INTRODUCTION**

In its Order in *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a/ Aureon Network Servs.*, 2017 WL 5237210 (F.C.C. rel. Nov. 8, 2017) ("*Liability Order*"), the Commission declared Aureon's tariff void *ab initio* due to Aureon's failure to comply with the rate cap and rate parity rules established under the Commission's *USF/ICC Transformation Order*,<sup>2</sup> and directed Aureon

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<sup>1</sup> A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. See, e.g., *Am. Broad. Cos. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI Telecomms Corp. v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. See *AT&T (Transmittal No. 148)*, 101 F.C.C.2d 144 (1985); *ITT (Transmittal No. 2191)*, 73 F.C.C.2d 709, 716, n.5 (1979) (citing *AT&T (Wide Area Telecomms. Serv.)*, 46 F.C.C.2d 81, 86 (1974)).

<sup>2</sup> *Connect America Fund et al.*, 26 FCC Rcd. 17663 (2011) ("*USF/ICC Transformation Order*"), *pets. for review denied*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

to file a new tariff to comply with those rules. The Commission further noted that “AT&T has raised a number of significant questions about Aureon’s [centralized equal access (“CEA”) ratemaking] practices and rates that deserve further exploration,” including its “treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate.” *Liability Order* ¶ 30.

Aureon’s Proposed Tariff and its new rate for CEA service of \$0.00576 per minute (“Proposed Rate”) raise the same fundamental issues that the Commission has already determined “deserve further exploration.” *Id.* In its tariff filing, Aureon does not even acknowledge the Commission’s conclusions regarding Aureon’s ratemaking practices and rates, and there is no meaningful discussion of Aureon’s “treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate.” *Id.*<sup>3</sup> The Commission therefore should, at a minimum, suspend Aureon’s Proposed Tariff and investigate the “significant questions” that the Commission has found “deserve further exploration.” *Id.*

Further, in the *Liability Order*, the Commission found that Aureon was a Competitive Local Exchange Carrier (“CLEC”) for purposes of its transitional access rules, *see id.* ¶ 25; 47 C.F.R. § 51.903(a), and, as such, Aureon was obligated “beginning on July 1, 2013 ... to reduce

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<sup>3</sup> As explained below and in the accompanying declaration of Daniel P. Rhinehart (“Rhinehart Rate Decl.”), Aureon still appears to be allocating excessive amounts of its Cable and Wire Facility (“CWF”) costs to its Access Division (which account for approximately 85% of the Access Division’s revenue requirement), thereby greatly inflating its CEA rate. Aureon also does not provide any documentation or other cost support for the lease amounts charged to its Access Division, nor does it offer any explanation as to how those amounts compare to the costs allocated to the transport services of its other non-regulated affiliates. In addition, Aureon does not provide adequate support for a number of the other cost calculations set forth in its February 22 Tariff Filing, and it continues to ignore the issue of bypass traffic, thereby significantly understating the minutes of use used that should have been used in calculating its Proposed Rate.

its ...interstate rates to those of the competing ILEC ....” See *id.* ¶¶ 9, 23; 47 C.F.R. § 51.911(c). However, Aureon’s February 22 Tariff Filing barely addresses the CLEC benchmark requirement. Aureon’s counsel asserts in his transmittal letter (at 2) that Aureon’s Proposed Rate “is below both the CLEC transitional default rate of \$0.00819 and the CLEC rate benchmark set at the rates for the competing ILECs in NECA’s Tariff F.C.C. No. 5.”<sup>4</sup> But nowhere in its Tariff Filing does Aureon justify the use of either of those rates as the applicable CLEC benchmark rate,<sup>5</sup> or provide a calculation of the CLEC benchmark rate using the NECA tariff rates.

As explained below, under the Commission’s rules, as of July 1, 2013, the applicable CLEC benchmark rate for Aureon’s CEA service was a rate based on the rates for comparable service of Qwest Corporation, d/b/a CenturyLink (“CenturyLink”) (which is the successor to Northwestern Bell Telephone Company (“Northwestern Bell”)). 47 C.F.R. § 51.911(c); 47 C.F.R. § 61.26. The comparable service is either a tandem service or a direct connection service. In either event, the CenturyLink benchmark rate for Aureon’s CEA service is well-below Aureon’s Proposed Rate of \$0.00576 per minute. Because Aureon’s Proposed Rate does not comply with the Commission’s rate cap regulations, it is unlawful. Accordingly, Aureon’s Proposed Tariff should either be rejected outright, or suspended and investigated.

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<sup>4</sup> See Aureon Tariff Filing Transmittal No. 36, “Introduction, Overview and Rate Development” (filed Feb. 22, 2018) (“2018 Tariff Filing”).

<sup>5</sup> The fact that Aureon’s Proposed Rate is below the so-called “CLEC transitional default rate of \$0.00819” is no longer relevant, and it ceased to be so on July 1, 2013. See 47 C.F.R. § 51.911(c) (requiring CLECs, beginning July 1, 2013, to reduce their interstate rates to those of the competing ILEC); *Liability Order* ¶¶ 9, 23.

## BACKGROUND

On June 8, 2017, pursuant to an order of referral issued by the United States District Court for the District of New Jersey, AT&T filed a Formal Complaint against Aureon, captioned *AT&T Corp. v. Iowa Network Services, Inc.*, Proceeding No. 17-56, File No. EB-17-MD-001. In its Complaint, AT&T alleged that Aureon had violated Sections 201(b) and 203 of the Act in multiple ways. Among other things, AT&T asserted that Aureon's invoices to AT&T were improper because (i) Aureon's tariffed rates exceeded the Commission's prescribed rate caps (and were thus void) and (ii) various of Aureon's rate-making practices appeared to be improper, including its unlawful inclusion of allegedly "Uncollectible Revenues" in the revenue requirement of its Access Division, its failure to adequately document the basis for its allocation of network costs to its Access Division, and its inaccurate and unreliable traffic forecasting. *See, e.g.,* AT&T Complaint ¶¶ 118-33.

The basis for AT&T's claim that Aureon had violated the Commission's rate cap and rate parity regulations was fully set forth in AT&T's Complaint and accompanying Legal Analysis. *See id.* ¶¶ 86-101; AT&T Legal Analysis at 28-38. In addition, AT&T presented extensive evidence demonstrating that Aureon had engaged in unlawful rate manipulation in setting its CEA rate. *See* AT&T Complaint ¶¶ 118-133; AT&T Legal Analysis at 48-63. Further, based on discovery produced by Aureon after the initial pleadings, AT&T further refined this showing in its Final Brief (submitted on August 21, 2017), where it documented the nature and extent of Aureon's rate manipulation practices and estimated (based on the available information) the impact of those practices on Aureon's past CEA rates. *See* AT&T Final Reply Brief at 3-9; Supplemental Declaration of Daniel P. Rhinehart ("Rhinehart Supp. Decl.") ¶¶ 3-44. As discussed in greater detail below and in the Rate Declaration by Mr. Rhinehart attached to this Petition, that evidence showed that, if properly calculated, Aureon's previous CEA rates would

have been significantly lower. That same evidence also demonstrates that Aureon's Proposed Rate is excessive.

In the *Liability Order*, the Commission agreed with AT&T's position that Aureon had failed to comply with the Commission's rate cap and rate parity regulations, concluding that "Aureon [had] violated Sections 201(b) and 203 of the Act by raising its interstate access rates and by not reducing its intrastate access rates in contravention of the Commission's rate cap and rate parity rules, respectively." *Liability Order* ¶ 23.<sup>6</sup> The Commission further found that as a result of those rate violations, Aureon's tariff was "unlawful when filed and *void ab initio*" as of July 1, 2013 (*id.* ¶ 29) and indicated that it would "determine in the damages phase of th[e] proceeding what Aureon's rates should have been and whether refunds to AT&T are warranted." *Id.* ¶ 1.

The Commission further found that "Aureon is subject to Section 61.38 of the Commission's rules," and noted that "AT&T ha[d] raised a number of significant questions about Aureon's CEA practices and rates that deserve further exploration." *See id.* ¶ 30. The Commission further observed that these practices "include Aureon's treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.* In reaching that conclusion, the Commission necessarily relied on the extensive documentation presented in AT&T's pleadings and in the declarations presented by Mr. Rhinehart (the public versions of which are attached as Exhibits B, C, and D to Mr. Rhinehart's Rate Declaration). That documentation, including the cost support material produced by Aureon in discovery (much of which was marked by Aureon as either

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<sup>6</sup> In so ruling, the Commission rejected all of Aureon's arguments that it was not subject to the Commission's rate cap and rate parity rules. *See Liability Order* ¶¶ 25-29.

“Confidential” or “Highly Confidential”) is of obvious relevance to the matters at issue in this proceeding.<sup>7</sup>

The *Liability Order* thus strongly supports AT&T’s Petition to either reject, or suspend and investigate, Aureon’s Proposed Tariff. Having again failed to comply with the Commission’s rate cap regulations and having continued to employ, without further explanation, the same rate practices that the Commission acknowledged “raised a number of significant questions ... that deserve further exploration,” *id.* ¶ 30, Aureon’s Revised Tariff must, at a minimum, be suspended and investigated.

### ARGUMENT

#### I. AUREON’S PROPOSED RATE DOES NOT COMPLY WITH THE COMMISSION’S RATE CAP REGULATIONS, INCLUDING SECTION 51.911(c).

In the *Liability Order*, the Commission found that Aureon was a local exchange carrier providing access services—in fact, “Aureon ... conceded as much.” *Liability Order* ¶ 25. Consequently, Aureon’s switched access services were subject to the Commission’s transitional access rules, including its rate cap and rate parity regulations. *See id.*; *USF/ICC Transformation Order* ¶¶ 800-01; 47 C.F.R. § 51.901 *et seq.* Further, because Aureon denied that it was an incumbent LEC, the Commission concluded that Aureon was a CLEC for purposes of those rules. *See Liability Order* ¶ 25; 47 C.F.R. § 51.903(a) (defining CLEC under the transition rules).

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<sup>7</sup> Because this rate proceeding is directly related to AT&T’s Complaint case, the material marked as “Confidential” and “Highly Confidential” in the Complaint case should also be available for use in this proceeding. However, out of an abundance of caution, the specific contents of the material marked as either “Confidential” or “Highly Confidential” has not been discussed or disclosed in AT&T’s Petition or in Mr. Rhinehart’s Rate Declaration. For this same reason, the public version of Mr. Rhinehart’s prior declarations are attached as exhibits to Mr. Rhinehart’s Rate Declaration.

as “any” LEC that is not an incumbent LEC). Aureon is thus bound by Section 51.911 of the Commission’s rules, which applies to CLECs. 47 C.F.R. § 51.911.

Aureon’s Tariff Filing does not comply with that Commission regulation. Aureon’s proposed CEA rate of \$0.00576 per minute is well in excess of the applicable CLEC benchmark rate. Section 51.911(c) of the Commission’s transitional access pricing rules expressly requires that, “[b]eginning July 1, 2013,” the interstate and intrastate rates of any CLEC “shall be no higher than the ... rates charged by the competing incumbent local exchange carrier in accordance with the same procedures specified in Section 61.26 ....” 47 C.F.R. § 51.911(c). Section 51.911(c) further makes clear that the “competing ILEC” is defined using the “same procedures specified in Section 61.26,” which in turn provides that the “competing ILEC” is the incumbent LEC “that would provide interstate exchange access services, in whole or in part, to the extent those services are not provided by the CLEC.” 47 C.F.R. § 61.26(a)(2).

The ILEC in Iowa that has the network capability to compete with Aureon’s CEA service is CenturyLink. *See Rhinehart Rate Decl.* ¶¶ 12-13. In fact, CenturyLink is the only carrier in Iowa that has a network that is comparable to Aureon’s network in terms of size, complexity, and the volumes of traffic transported. *Id.* ¶ 13. That CenturyLink is the competing ILEC against which Aureon’s rates must be benchmarked also draws support from the fact that construction of Aureon’s network was initially authorized by the Commission for the express purpose of providing an alternative to the network of CenturyLink’s predecessor, Northwestern Bell. *See In re the Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶¶ 12, 16 (1988) (noting Northwestern Bell’s offer to “install new equal access adjunct devices at its access tandem

switches” and serve as an “adjunct arrangement” for the CEA network).<sup>8</sup> Use of CenturyLink’s rates as the benchmark for Aureon’s rates is also consistent with and supported by the fact that the vast majority of the traffic transported on Aureon’s CEA network is access stimulation traffic, which is also benchmarked to CenturyLink’s rates. *See* Rhinehart Rate Decl. ¶ 12; *see also* AT&T Complaint ¶¶ 39-40; Declaration of Jack Habiak (“Habiak Decl.”) ¶ 16.

As explained by Mr. Rhinehart in his Rate Declaration, the Century Link rate for service comparable to the CEA service provided by Aureon is no greater than about \$0.00312 per minute (assuming that the comparable service is provided on a tandem switching and transport basis). *See* Rhinehart Rate Decl. ¶ 14. This rate was calculated based on CenturyLink’s tandem switching and transport rates and the average transport mileage associated with delivering Aureon’s CEA traffic over CenturyLink’s network. *Id.* If, on the other hand, the comparable CenturyLink service is determined to be a direct connection service (which would be justified given the massive volumes at issue), the rate would be even lower. *See id.* ¶ 12 n.4; *see also* Habiak Decl. ¶¶ 23-28.

In its Tariff Filing, Aureon does not discuss the basis for its claim that the CLEC benchmark rate should be calculated using NECA’s tariff rates, nor does it identify a specific benchmark rate based on the NECA rates. However, in its Petition for Reconsideration of the *Liability Order*, Aureon argued that the applicable CLEC benchmark should be based on the tandem switching and transport rates that the subtending LECs on its CEA network would charge (which Aureon asserted are the tandem switching and transport rates found in the NECA tariff) and claimed—without presenting an actual rate calculation—that that rate would have been

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<sup>8</sup> *See also* *AT&T Corp. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, ¶ 25 (2015) (for an intermediate carrier operating in Michigan, the competing ILEC was Ameritech Michigan), *aff’d in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004-05 (D.C. Cir. 2016).

higher than the rate set forth in its now voided tariff (i.e., \$0.00896 per minute). *See Aureon Pet. for Reconsideration at 22-25 (filed Dec. 8, 2017).*<sup>9</sup>

As explained by Mr. Rhinehart, Aureon's NECA-based rate is not an appropriate or lawful CLEC benchmark rate. *See Rhinehart Rate Decl. ¶¶ 8, 12.* The Commission's rules require that Aureon's rates be benchmarked to the rates of the ILEC that has the capability and in fact competes with Aureon in the provision of that service. *See 47 C.F.R. § 51.911(c).* But Aureon's CEA network bears no resemblance to the networks of the LECs to which Aureon delivers CEA traffic in terms of size, complexity, or the volumes of traffic transported. *See Rhinehart Rate Decl. ¶¶ 8, 12.* In fact, few if any of Aureon's subtending LECs have tandem switches, and none have extensive transport networks. *Id.* As such, these LECs are not capable of providing services that are competitive alternatives to Aureon's CEA service. *Id.* By contrast, CenturyLink's network is comparable to Aureon's CEA network and the transport services CenturyLink offers compete with the services offered by Aureon. *Id.* Consequently, the CenturyLink rate, not a rate purportedly derived from the NECA tariff, must be used as the benchmark rate for Aureon's CEA service under the Commission's rules. *Id.*

As demonstrated by Mr. Rhinehart, substantial evidence exists showing that the applicable CenturyLink rate is significantly below Aureon's Proposed Rate of \$0.00576 per minute. *Id. ¶¶ 14-15.* Accordingly, Aureon's Proposed Rate does not comply with the Commission's rate cap regulations and the Commission therefore should either reject outright Aureon's Proposed Tariff, or, at a minimum, suspend it and investigate whether Aureon's

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<sup>9</sup> In its Opposition to Aureon's Petition for Reconsideration, AT&T specifically responded to and rebutted Aureon's claims that the CLEC benchmark rate should be based on the NECA tariff rates. *See Opposition of AT&T Corp. to Aureon Petition for Reconsideration at 20-23 (filed Dec. 18, 2017).*

Proposed Rate complies with the Commission's rate cap regulations. *See Am. Broad. Cos.*, 663 F.2d at 138; *MCI Telecomms. Corp. v. AT&T*, 94 F.C.C.2d at 340-41. In no event, given the substantial evidence presented by AT&T, should the Commission permit Aureon's Proposed Rate to go into effect unchallenged.

**II. AUREON'S PROPOSED RATE DOES NOT COMPLY WITH SECTION 61.38 OF THE COMMISSION'S RULES, IS THE PRODUCT OF UNLAWFUL RATE MANIPULATIONS, AND IS EXCESSIVE.**

As previously noted, the Commission in its *Liability Order* not only found that Aureon had violated the Commission's rate cap and rate parity regulations, but also concluded that "AT&T ha[d] raised a number of significant questions about Aureon's CEA practices and rates that deserve further exploration." *See Liability Order* ¶ 30. The Commission further observed that these practices "include Aureon's treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.*

In its Complaint case, AT&T presented extensive evidence showing that Aureon's CEA rates were the product of unlawful and manipulative practices that had significantly inflated Aureon's past CEA rates dating as far as 2006. *See AT&T Complaint* ¶¶ 118-133; AT&T Legal Analysis at 48-63; AT&T Reply Brief at 38-58; AT&T Final Brief at 3-9. As summarized in Mr. Rhinehart's Rate Declaration (Rhinehart Rate Decl. ¶¶ 3-5, 16-22) and described in greater detail in the three Rhinehart Declarations that AT&T filed in support of its Complaint (public versions of which are attached to Mr. Rhinehart's Rate Declaration as Exhibits B, C, and D), those practices included:

- (a) Aureon's unlawful inclusion of allegedly "Uncollectible Revenues" in its revenue requirement, notwithstanding the fact that those amounts had not been properly billed and Aureon was still actively seeking to collect them (*see Rhinehart Rate Decl.* ¶¶ 3-4, 16);

- (b) its utter failure to disclose the basis by which the network costs allocated to its Access Division were computed (*see id.* ¶¶ 3-5, 16);
- (c) its inability to explain the basis for, and derivation of, the lease rates charged to the Access Division (*see id.* ¶¶ 4-5, 16);
- (d) its use of an inappropriate methodology in allocating CWF fiber costs to its CEA service, thereby greatly inflating the Access Division's revenue requirement (*see id.* ¶¶ 5, 16); and
- (e) its inaccurate and unreliable traffic forecasts (*see id.* ¶ 16).

The evidence further showed that in calculating its rates, Aureon had ignored the fact that a number of carriers were bypassing its CEA network, thereby further inflating its tariff rates. *See* AT&T Final Brief at 9-15.

AT&T also presented evidence documenting the impact of certain of Aureon's unlawful rate practices on the level of Aureon's CEA rates. In his Supplemental Declaration, for example, Mr. Rhinehart demonstrated that Aureon's rate manipulations had grossly inflated Aureon's CEA rates for every year since at least 2006. *See* Rhinehart Rate Decl. ¶ 17; *see also* Rhinehart Supp. Decl. ¶¶ 16-32. Additionally, based on the evidence regarding bypass set forth in AT&T's Final Brief, Mr. Rhinehart concluded that if Aureon had properly accounted for bypass traffic in its past rate calculations, the levels of its CEA rates during the period 2010 to 2017 would have been even lower. *See* Rhinehart Rate Decl. ¶ 17.

As further explained in Mr. Rhinehart's Rate Declaration, Aureon's Proposed Rate appears to be the product of many of the same manipulative rate practices that he identified in his prior declarations. *Id.* ¶¶ 9, 18-22. To start, Aureon's claim in its Tariff Filing that it has lowered its CEA rate by 36% (2018 Tariff Filing at 1) is highly misleading. That decline is

almost entirely the result of Aureon's decision not to include any so-called "Uncollectible Revenues" in the Access Division's 2018 revenue requirement (on the pretext that Aureon "does not anticipate material uncollectable access revenues in the projected test period" (*see* 2018 Tariff Filing at 2)) and certain changes likely mandated by the new tax laws. *See* Rhinehart Rate Decl. ¶ 18. Indeed, if those same changes were to be made to its prior year revenue requirement for 2017 (*see* Schedules 6-8 of its 2018 Tariff Filing), there would be very little difference between the Proposed Rate and the restated rate for 2017. *See* Rhinehart Rate Decl. ¶ 18.

But even more significantly, the rate calculations underlying its Proposed Rate are still very much of a "Black Box." *See id.* ¶ 19. As Mr. Rhinehart explains in his Rate Declaration, no documentation or other cost support material is provided in Aureon's Tariff Filing for the \$13.4 million "CWF Facility Lease" cost amount set forth on Schedule 5, page 3, line 68a of Aureon's 2018 Tariff Filing, nor has any explanation been provided as to why that lease cost amount declined by about \$5 million between 2017 and Aureon's 2018 test period. *See id.* (comparing Schedule 5, page 3, line 68a (\$13,430,525) of Aureon's 2018 Tariff Filing to Schedule 8, page 3, line 68a (\$18, 452,058)). In addition, the CWF expense line items on Schedule 5 of Aureon's 2018 Tariff Filing (lines 68, 68a, and 68b) do not add up: the amounts allocated to the Access Division and Other do not equal the Total Company amount, and the CWF Facility Lease amount and the CWF Other Expenses amount likewise do not equal the Total Company amount. *Id.* By contrast, those line items add up on Schedule 8 relating to 2017. *Id.*; *see also* 2018 Tariff Filing, Schedule 8, lines 68, 68a, and 68b.

Further, the level of the network costs allocated to the Access Division (about \$13.4 million), *see* 2018 Tariff Filing, Schedule 5, page 3, line 68, is excessive. *See* Rhinehart Rate Decl. ¶ 20. This cost item accounts for approximately 85% of the Access Division's total

revenue requirement and is about three times greater than the network costs allocated to Aureon's other divisions (\$4.9 million). *See id.* Further, the fact that the total amount and percentage of network costs allocated to the Access Division in Aureon's 2018 Tariff Filing is similar to the amounts and percentages allocated to the Access Division in Aureon's past Tariff Filings (*see* Table C to Rhinehart's Initial Declaration) strongly supports the conclusion that Aureon is still not properly allocating its network costs (*i.e.*, its CWF facility costs) between its CEA service and the services of Aureon's other non-regulated affiliates. *See* Rhinehart Rate Decl. ¶ 20.

Aureon's cost support materials also raise a number of other issues. For example, there is a significant difference between Aureon's estimated Net Telephone Plant Investment for its 2018 test period (a negative investment of \$954,705) as compared to the Net Telephone Plant Investment reported for 2016 (a positive investment of \$3,864,827) and 2017 (a positive investment of \$4,350,207), which is largely unexplained. *See id.* ¶ 21 (comparing 2018 Tariff Filing at 4, Schedule 5, page 2, line 56 to 2018 Tariff Filing at 4, Schedule 8, page 2, line 56). Likewise, there is a significant difference between Aureon's traffic projection for its 2018 test period (about 2.6 billion minutes) as compared to its actual traffic volumes in 2016 (about 2.8 billion minutes) and in 2017 (about 3 billion minutes). *See id.*; *see also* 2018 Tariff Filing at 2. Aureon attempts to justify this significant difference based on an alleged drop in CEA traffic in the fourth quarter of 2017. *See* Rhinehart Rate Decl. ¶ 21. However, Aureon does not provide any explanation as to causes of that decline in traffic; nor does it explain why that decline is expected to continue in 2018, or present any documentation supporting that assumption. Given those deficiencies, the inaccuracy and unreliability of Aureon's past traffic projections (*see* Rhinehart Reply Decl. ¶¶ 44-50), and the fact that Aureon does not appear to have made any

adjustment in its rate calculations to take into account bypass traffic (or the fact that its own unregulated services may be being used to facilitate that practice), Aureon's traffic projections require further investigation. *See Rhinehart Rate Decl.* ¶ 21.

In sum, Aureon's Proposed Rate appears to be the product of most of the same manipulative rate practices that the Commission found raise "significant questions" that "deserve further exploration." *See Liability Order* ¶ 30. Accordingly, if the Commission does not reject Aureon's Proposed Tariff outright as it should, it must, at a minimum, suspend Aureon's Proposed Tariff and investigate whether its Proposed Rate is just and reasonable under Section 201(b). In no event, given the substantial evidence presented by AT&T both in its Petition and during the Complaint case, should the Commission permit Aureon's Proposed Rate to go into effect without further scrutiny.

## CONCLUSION

For the reasons stated above, the Commission should reject the Proposed Tariff or, in the alternative, suspend the Proposed Tariff and investigate Aureon's Proposed Rate.

Respectfully submitted,

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**IOWA NETWORK SERVICES, INC.  
D/B/A AUREON NETWORK SERVICES  
Tariff F.C.C. No. 1 Transmittal No. 36**

**Transmittal No. 36  
February 22, 2018 Access Charge  
Tariff Filings**

**DECLARATION OF DANIEL P. RHINEHART IN SUPPORT OF PETITION OF AT&T  
SERVICES, INC. TO REJECT, OR TO SUSPEND AND INVESTIGATE, IOWA  
NETWORK SERVICES, INC. TARIFF FILING**

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC and state formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is attached as Exhibit A to this declaration.

2. As a result of my experience, I am very familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis. I am also very familiar with the tariff filings made by Iowa Network Services, Inc. d/b/a Aureon

Network Services ("Aureon"), having reviewed Aureon's bi-annual tariff filings and supporting documentation and submitted three separate declarations in support of the Complaint case (*AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, Proceeding No. 17-56, File No. EB-17-MD-001) filed by AT&T in June 2017. Public versions of those declarations are attached as Exhibits B ("Initial Declaration"), C ("Reply Declaration"), and D ("Supplemental Declaration") to this declaration.<sup>1</sup>

3. In those declarations, I identified and discussed a number of serious questions regarding the reasonableness of Aureon's rates for Centralized Equal Access ("CEA") service. More specifically, in my Initial Declaration, I noted that the levels of network costs allocated to Aureon's CEA service appeared to be excessive; that an increasing percentage of the costs of Cable & Wire Facilities ("CWF") were likely being improperly allocated to Aureon's CEA service, raising concerns as to rate manipulation and the cross-subsidization of Aureon's other service offerings; and that since 2010, Aureon had unlawfully inflated the Access Division's revenue requirement by including large amounts of allegedly "Uncollectible Revenues" -- even though (i) those amounts remained the subject of ongoing litigation contesting whether those revenues had been "properly billed" and (ii) Aureon was still actively seeking to collect them. See Initial Declaration of Daniel P. Rhinehart ("Rhinehart Initial Decl.") ¶¶ 4, 11, 38-43. As I

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<sup>1</sup> The public versions of my prior declarations are attached as exhibits because a great deal of the Aureon cost support material on which I relied was designated by Aureon as either "Confidential" or "Highly Confidential." As explained in AT&T's Petition, the Commission undoubtedly relied on this information in concluding that Aureon's rate practices "deserve further exploration," and this information is clearly relevant to the matters at issue in this proceeding. See AT&T Petition at 5-6, n.4. Nevertheless, out of an abundance of caution, I have not discussed or disclosed in my Rate Declaration the specific contents of material marked as either "Confidential" or "Highly Confidential."

further explained, the rate impact of this practice was between \$0.00074 and \$0.00659 per minute. *Id.* ¶¶ 41-42, Table J.

4. In my Reply Declaration, I concluded—after reviewing Aureon’s answering submission, including the declaration provided by Aureon’s Senior Vice President of Finance, Jeff Schill—that Aureon had failed to respond adequately to the concerns raised in my Initial Declaration, and that Aureon had still not produced sufficient documentation supporting the reasonableness of its CEA rates. *See* Reply Declaration of Daniel P. Rhinehart ¶¶ 4, 6-58 (“Rhinehart Reply Dec.”). For example, Aureon had not provided any credible information demonstrating the basis or reasonableness of the lease costs charged to the Access Division for using Aureon’s network (*id.* ¶¶ 4, 24-25, 35-39); had not explained the method used to allocate network costs to the Access Division (*id.* ¶¶ 4, 21-30); and had not justified its inclusion of “Uncollectible Revenues” in the Access Division’s revenue requirement. *Id.* ¶¶ 4, 52-57.

5. In my Supplemental Declaration, I opined—after observing the deposition of Mr. Schill, and after reviewing the additional cost support material that Commission Staff had ordered Aureon to produce—that serious questions still remained regarding the derivation and reasonableness of both the lease rates purportedly charged to the Access Division and the network costs allocated to the Access Division. *See* Supplemental Declaration of Daniel P. Rhinehart ¶¶ 4-38 (“Rhinehart Supp. Decl.”). Notwithstanding Aureon’s production of additional cost support material, Aureon’s calculations remained a proverbial “Black Box.” *See* AT&T Final Br. at 3. Aureon not only had failed to provide support for the derivation of its lease costs (*see id.* at 4) but the new evidence produced in discovery raised serious questions regarding Aureon’s method of allocating CWF fiber costs. *Id.* at 5. Further, as documented in

AT&T's Final Brief, Aureon had failed to account for the massive volumes of traffic that were bypassing its CEA network, thereby further inflating its CEA rates. *See id.* at 9-15.

6. In its Order resolving the liability phase of AT&T's Complaint case, *AT&T Corp. v. Iowa Network Services, Inc. d/b/a/ Aureon Network Services*, 2017 WL 5237210 (F.C.C. rel. Nov. 8, 2017) ("*Liability Order*"), the Commission not only declared Aureon's current tariff void *ab initio* based on Aureon's failure to comply with the Commission's rate cap and rate parity rules (*Liability Order* ¶ 29), it also noted that "AT&T ha[d] raised a number of significant questions about Aureon's CEA practices and rates that deserve further exploration," including its "treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.* ¶ 30. The Commission further directed Aureon to file a new tariff to comply with its rate cap and rate parity rules, and to address the significant issues that I had identified in my previous declarations.

7. On February 22, 2018, Aureon filed a revised tariff with the Commission proposing a new rate for CEA service of \$0.00576 per minute ("Proposed Rate"). *See* Aureon Tariff Filing Transmittal No. 36, "Introduction, Overview and Rate Development" ("2018 Tariff Filing"), at 1 (filed Feb. 22, 2018). Although counsel for Aureon asserts in the Tariff Filing's transmittal letter (at 2) that Aureon's Proposed Rate "is below both the CLEC transitional default rate of \$0.00819 and the CLEC rate benchmark set at the rates for the competing ILECs in NECA's Tariff F.C.C. No. 5," nowhere in the Tariff Filing does Aureon justify the use of either of those rates as the applicable CLEC benchmark rate, nor does it set forth a calculation of the CLEC benchmark rate using the NECA tariff rates. Further, nowhere in the Tariff Filing does Aureon either acknowledge or address the "significant questions" regarding Aureon's ratemaking practices that the Commission expressly found "deserve further exploration." *See*

*Liability Order* ¶ 30. There is no meaningful discussion of Aureon's "treatment of network investment, its cost allocations, and the role of lease costs involving the regulated entity and a competitive services affiliate." *Id.*

8. Based on that review, it is my opinion that substantial issues exist as to whether Aureon has complied with the Commission's rate cap regulations.<sup>2</sup> As explained in greater detail below, the NECA rates are not the appropriate rates to use in setting the CLEC benchmark rate. Aureon's CEA network bears no resemblance to the networks of the LECs to which it delivers CEA traffic in terms of size, complexity, or the volumes of traffic transported. By contrast, CenturyLink's network is much more comparable to Aureon's network, and as such, CenturyLink's rates are the appropriate rates for use in setting the CLEC benchmark rate for Aureon's CEA rate. Further, my calculations show that CenturyLink rates are significantly lower than Aureon's Proposed Rate. Consequently, Aureon's Proposed Rate does not comply with the Commission's rate cap regulations and its Proposed Tariff therefore should be rejected outright or, at a minimum, suspended and its Proposed Rate should be investigated.

9. Substantial questions also exist regarding Aureon's costs of service calculations under Section 61.38. Based on my review of the cost support material provided in connection with Aureon's Tariff Filing, it is clear that Aureon has used many of the same rate manipulation practices that I identified in my prior declarations and that the Commission found "significant questions ... that deserve further exploration." *Liability Order* ¶ 30. For example, the level of

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<sup>2</sup> In preparing this additional declaration ("Rhinehart Rate Declaration"), I have reviewed both the Commission's *Liability Order* and Aureon's February 22, 2018 Tariff Filing as well as the supporting materials provided in connection with that filing. I have also reviewed Aureon's Petition for Reconsideration of the *Liability Order* (filed on December 8, 2017) as well as the Commission's prior decisions regarding calculation of the CLEC benchmark rate under Section 61.26.

Aureon's Proposed Rate (\$0.00576 per minute) strongly suggests that Aureon is still allocating excessive amounts of CWF costs to its Access Division, thereby inflating its Proposed Rate. Further, Aureon does not provide any documentation or other cost support for the lease amounts charged to its Access Division, nor does it offer any explanation as to how those amounts were calculated compared to the costs allocated to the transport services of its non-regulated affiliates. In addition, Aureon does not provide adequate support for a number of the other cost calculations set forth in its Tariff Filing, and it continues to ignore the issue of bypass traffic, thereby grossly understating the minutes of use that should have been used in calculating its Proposed Rate.<sup>3</sup>

Each of these points is discussed in greater detail below.

**Aureon's Proposed Rate Does Not Comply With The Commission's Rate Cap Regulations Including Section 51.911(c).**

10. In the *Liability Order*, the Commission found that Aureon was a competitive Local Exchange Carrier ("CLEC") subject to the Commission's rate cap and rate parity regulations and that those rates applied to Aureon's CEA service. *See Liability Order* ¶ 29. Those regulations expressly required that "beginning July 1, 2013" Aureon's CEA rates (both intrastate and interstate) be "no higher than the ... rates charged by the competing incumbent local exchange carrier in accordance with the same procedures specified in [Section] 61.26." *See* 47 C.F.R. § 51.911(c).

11. In its Petition for Reconsideration, Aureon took the position that the CLEC benchmark rate should be based on the tandem switching and transport rates that the subtending

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<sup>3</sup> Because Aureon's Tariff Filing was made on February 22, 2018, and the Commission's rules require that petitions to reject or suspend and investigate be filed within three calendar days, I therefore have only had a limited opportunity to review the underlying cost support material. Nevertheless, it is apparent from that material that there are significant problems with Aureon's Tariff Filing. It is also likely that with further discovery and analysis, additional issues will be identified.

LECs on its CEA network charge, which Aureon asserts are based on the tandem switching and transport rates set forth in the National Exchange Carriers Association ("NECA") tariff. *See* Aureon Petition for Reconsideration at 22-25. Aureon further claims that its Proposed Rate is below "the CLEC rate benchmark set at the rates for the competing ILECs in NECA's Tariff F.C.C. No. 5." *See* Aureon Tariff Transmittal Letter at 2 (dated Feb. 22, 2018).

12. Aureon's position is not soundly based. The NECA rates are not a good proxy for the CLEC benchmark rate. As noted above, Aureon's CEA network bears no resemblance to the networks of the LECs to which it delivers CEA traffic in terms of size, complexity, or the volumes of traffic transported. In fact, it is my understanding that few if any of Aureon's subtending LECs have tandem switches, and none have extensive tandem networks. It is my further understanding that the vast majority of the traffic transported on Aureon's network is access stimulation traffic that is not benchmarked to NECA's rates, but to CenturyLink's rates. Further, a NECA-based CLEC benchmark rate would be well above Aureon's Proposed Rate and thus would not place any meaningful competitive constraint on Aureon's CEA rates.

13. By contrast, CenturyLink's rates are the appropriate rates for use in setting the CLEC benchmark rate. CenturyLink's network is the only network in Iowa that is comparable to Aureon's network in terms of size, complexity and the volumes of traffic transported. In fact, construction of Aureon's network was initially authorized by the Commission for the express purpose of providing an alternative to the network of CenturyLink's predecessor, Northwestern Bell Telephone Company. As such, CenturyLink's service is the service against which Aureon would compete and is thus the best benchmark for Aureon's CEA rates.

14. Assuming that CenturyLink's tandem switching and transport rates (and the associated transport mileages on CenturyLink's tandem network) are found to be the appropriate rates for setting the CLEC benchmark rate, the resulting rate would be \$0.00312 per minute.<sup>4</sup> This rate was calculated using Century Link's tandem switching and transport rates and the average transport mileage associated with delivering Aureon's CEA traffic over CenturyLink's tandem network. CenturyLink's tariff indicates that its current rates for tandem switching and transport are as follows: tandem switching (\$0.002252 per minute); tandem switched transport -- fixed (\$0.000240 per minute); tandem switched transport -- per mile (\$0.000030 per minute); and common transport multiplexing (\$0.000036 per minute).<sup>5</sup> Further, it is my understanding based on an analysis of the mileage that would be associated with transporting AT&T's traffic over Century Link's network, that the average mileage per minute would be about 20 miles.

15. In sum, a composite rate based on CenturyLink's rates, not NECA's rate, is the appropriate benchmark rate for use in determining whether Aureon has complied with the Commission's rate cap regulations. As shown above, that rate is significantly below Aureon's Proposed Rate of \$0.00576 per minute. Accordingly, the Commission should either reject Aureon's Proposed Tariff outright, or suspend it and investigate whether Aureon's Proposed Rate complies with the Commission's rate cap regulations.

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<sup>4</sup> As detailed in AT&T's Complaint and in Mr. Habiak's Declaration, this rate would be even lower if the applicable CLEC benchmark were to be based on a direct connection service. See AT&T Complaint ¶¶ 76-80; Habiak Decl. ¶¶ 23-28.

<sup>5</sup> See CenturyLink FCC Tariff No. 11, Section 6.8.1.c.1.

**Aureon's Proposed CEA Rate Does Not Comply With The Commission's Rules, Is the Product of Unlawful Rate Manipulations, and Is Excessive.**

16. As previously noted, I identified in AT&T's Complaint case a number of significant issues which indicated that Aureon's CEA rates were the product of unlawful rate manipulation practices. Those practices included:

- (a) Aureon's unlawful inclusion of allegedly "Uncollectible Revenues" in the Access Division's revenue requirement, notwithstanding the fact that those revenues had not been properly billed and Aureon was still actively seeking to collect them (*see* Rhinehart Initial Decl. ¶¶ 4, 38-44; Rhinehart Reply Decl. ¶¶ 52-57);
- (b) its failure to disclose the basis by which the network costs allocated to its Access Division had been calculated (*see* Rhinehart Initial Decl. ¶¶ 4, 14-27; Rhinehart Reply Decl. ¶¶ 21-39; Rhinehart Supp. Decl. ¶¶ 4-38);
- (c) its inability to explain the basis for and derivation of the lease rates charged to the Access Division (*see* Rhinehart Initial Decl. ¶¶ 20-27; Rhinehart Reply Decl. ¶¶ 21-30, 36-39; Rhinehart Supp. Decl. ¶¶ 4-15);
- (d) its use of an inappropriate method of allocating CWF costs to its CEA service, thereby greatly inflating the Access Division's revenue requirement and its CEA rates (*see* Rhinehart Initial Decl. ¶¶ 24-27; Rhinehart Reply Decl. ¶¶ 31-37; Rhinehart Supp. Decl. ¶¶ 16-32); and
- (e) its inaccurate and unreliable traffic forecasts (*see* Rhinehart Initial Decl. ¶¶ 34-37; Rhinehart Reply Decl. ¶¶ 44-51).

The evidence presented in AT&T's Complaint case further showed that in calculating its rates Aureon had not properly accounted for the fact that a number of carriers were bypassing its CEA network. *See* AT&T Final Brief at 9-15.

17. I also presented evidence documenting the impact of these practices on Aureon's CEA rates. In my Supplemental Declaration, for example, I demonstrated that Aureon's rate manipulations had grossly inflated its CEA rates for every year since at least since 2010. *See* Rhinehart Supp. Decl. ¶¶ 16-32. Additionally, based on the evidence regarding bypass set forth in AT&T's Final Brief, I estimate that if Aureon had properly accounted for bypass traffic in its past rate calculations, the levels of its CEA rates during the period 2010 to 2017 would have been even lower.

18. Based on my review of Aureon's Tariff Filing, Aureon's Proposed Rate of \$0.00576 per minute appears to be the product of many of the same manipulative rate practices that I identified in my prior declarations. To start, Aureon's claim in its Tariff Filing that it has lowered its CEA rate by 36% (2018 Tariff Filing at 1) is highly misleading. That decline is largely the result of Aureon's decision not to include any so-called "Uncollectible Revenues" in the Access Division's 2018 revenue requirement (on the pretext that Aureon "does not anticipate material uncollectable access revenues in the projected test period" (*see* 2018 Tariff Filing at 2)) and certain changes likely mandated by the new tax laws. Indeed, if those same changes were to be made to its prior year revenue requirement for 2017 (*see* Schedules 6-8 of its 2018 Tariff Filing), there would be little difference between the Proposed Rate and the restated rate for 2017.

19. But even more significantly, the rate calculations underlying its Proposed Rate are still very much of a "Black Box." No documentation or other cost support material is provided

for the \$13.4 million “CWF Facility Lease” cost amount set forth on Schedule 5, page 3, line 68a of Aureon’s 2018 Tariff Filing, nor is any explanation provided as to why that lease cost amount declined by about \$5 million between 2017 and Aureon’s 2018 test period. *Compare* Schedule 5, page 3, line 68a (\$13,430,525) of Aureon’s 2018 Tariff Filing to Schedule 8, page 3, line 68a (\$18,452,058). In addition, the CWF expense line items on Schedule 5 of Aureon’s 2018 Tariff Filing (lines 68, 68a, and 68b) do not add up: the amounts allocated to the Access Division and Other do not equal the Total Company amount, and the CWF Facility Lease amount and the CWF Other Expenses amount likewise do not equal the Total Company amount. By contrast, those line items add up on Schedule 8 relating to 2017. *See* 2018 Tariff Filing, Schedule 8, lines 68, 68a, and 68b.

20. Further, the level of the network costs allocated to the Access Division (about \$13.4 million), *see* Schedule 5, page 3, line 68, appears to be excessive. This cost item accounts for approximately 85% of the Access Division’s total revenue requirement and is about three times greater than the network costs allocated to Aureon’s other divisions (\$4.9 million). Further, the fact that the total amount and percentage of network costs allocated to the Access Division in Aureon’s 2018 Tariff Filing is similar to the amounts and percentages allocated to the Access Division in Aureon’s past Tariff Filings (*see* Table C to my Initial Declaration) strongly supports the conclusion that Aureon is still improperly allocating its network costs (i.e., its CWF facility costs) between its CEA service and the services of Aureon’s other non-regulated affiliates.

21. Aureon’s cost support materials raise a number of other issues. For example, there is a significant difference between Aureon’s estimated Net Telephone Plant Investment for its 2018 test period (a negative investment of \$954,705) and the Net Telephone Plant Investment

for 2016 (a positive investment of \$3,864,827) and 2017 (a positive investment of \$4,350,207, which is largely unexplained. *Compare* 2018 Tariff Filing at 4 and Schedule 5, page 2, line 56 to 2018 Tariff Filing at 4 and Schedule 8, page 2, line 56. Likewise, there is a significant difference between Aureon's traffic projection for its 2018 test period (about 2.6 billion minutes) and its actual traffic volumes in 2016 (about 2.8 billion minutes) and 2017 (about 3 billion minutes). *See* 2018 Tariff Filing at 2. Aureon attempts to justify this difference based on an alleged drop in CEA traffic in the fourth quarter of 2017. *Id.* However, Aureon does not provide any explanation as to causes of that decline in traffic, nor does it explain why that decline is expected to continue in 2018 or present any documentation supporting that assumption. Given those deficiencies, the inaccuracy and unreliability of Aureon's past traffic projections (*see* Rhinehart Reply Decl. ¶¶ 44-51) and the fact that Aureon does not appear to have made any adjustment in its rate calculations to take into account bypass traffic, Aureon's traffic projections require further investigation.

22. In sum, Aureon's Proposed Rate appears to be the product of many of the same manipulative rate practices that the Commission found raise "significant questions" that "deserve further exploration." *See Liability Order* ¶ 30. Accordingly, the Commission should, at a minimum, suspend Aureon's Proposed Tariff and investigate whether its Proposed Rate is just and reasonable under Section 201(b).

**CERTIFICATION**

I declare under penalty of perjury that foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Daniel P. Rhinehart", written over a horizontal line.

Daniel P. Rhinehart

Dated: February 26, 2018

## **Exhibit A**

**DANIEL RHINEHART**

208 S. Akard St. ♦ Dallas, Texas 75202

214-782-7110 ♦ [rhinehart@att.com](mailto:rhinehart@att.com)

Proficient in performing and directing performance of cost analysis, regulatory functions and regulatory litigation.

- Financial and product cost analyst with expertise in fundamentals of accounting, auditing, embedded and incremental costs, cost allocations, margin analysis, capital costs, and depreciation.
- Regulatory manager experienced in interpreting statutes and regulations; and drafting, advocating, and ensuring compliance with agency regulations.
- Litigation support manager skilled in discovery, developing and delivering cost and policy testimony, preparing work papers and post-hearing briefs.

**PROFESSIONAL EXPERIENCE**

**AT&T Services Inc. and Predecessors**

**Director – Regulatory, National Regulatory Organization**

**2015 - Present**

Director providing pole attachment rate development, cost analysis and regulatory advocacy supporting company strategic initiatives.

**Director – Financial Analysis, ATTCost/Capital Planning Division**

**2012 - 2015**

Director providing product cost analysis support and regulatory advocacy supporting company strategic initiatives.

**Lead Financial Analyst, Finance Costing Division**

**2006 - 2012**

Senior analyst and regulatory advocate supporting company negotiations, arbitrations and regulatory policy.

**Senior Specialist, Global Access Management**

**2005 - 2006**

Senior analyst and regulatory advocate supporting company negotiations, arbitrations and regulatory policy.

**Professional, Law and Government Affairs, National Cost Team**

**2001 - 2004**

Senior cost analyst and national regulatory advocate auditing supplier costs and clearly presenting company positions to regulators.

**District Manager, State Government Affairs**

**1995 - 2001**

Senior regional regulatory advocate and cost analyst responsible for developing and implementing company policy in five states.

**Manager, State Government Affairs, Exchange Carrier Cost Analysis**

**1985 - 1995**

Cost analyst and regulatory advocate responsible for developing regulatory policy toward local telephone companies in California.

**Supervisor**

**1984 - 1985**

Separations and Settlements analyst for company regulated costs.

**EDUCATION**

MBA, St. Mary's College, Moraga, CA, with honors.

BS – Education, University of Nevada – Reno, Math Major, with High Distinction

**PROFESSIONAL DEVELOPMENT**

The Brookings Institution–Understanding Federal Government Operations

University of Southern California–Middle Management Program in Telecommunications

**PREVIOUS TESTIMONY OF DANIEL P. RHINEHART**

<b>Date Filed</b>	<b>State</b>	<b>Proceeding Number</b>	<b>Subjects Addressed</b>
6/17 7/17 8/17	FCC	17-56 EB-17-MD-001	Iowa Network Services Centralized Equal Access Rates
3/17	Kentucky	2016-00370 2016-00371	Pole Attachment Rates
11/16 1/17	Illinois	16-0378	Illinois USF – IITA/AT&T Stipulation
12/15 4/16	South Dakota	1:14-cv-01018	Northern Valley Communications v. AT&T Corp. – Traffic Pumping
10/15	Arkansas	150019-R	Pole Attachment Rates, terms and conditions. [Panel testimony sponsoring Joint Parties Comments]
6/15	California	Truckee Donner PUD	Pole Attachment Rates
3/14	Maine	2013-00340	FairPoint Maine USF Request – Revenue, Rate Base, Rate of Return, Expenses, FLEC Model.
10/13	Nevada	13-060007	Rio Virgin Telephone Rate Case – Access Rates and Cost Allocations
2/13	Alaska	U-12-120 et al	Switched Access Demand
12/12 2/13	Oklahoma	PUD 201200040	Oklahoma High Cost Fund
7/12	Georgia	35068	Rate Cases for [UAF Year 16] Track 2 Applicants – Public Service Telephone.
1/12	Oklahoma	PUD 201000211 PUD 201100145	Settlement Agreement related to state High Cost Fund and State Universal Service Fund
11/11	Nebraska	FC-1332, FC-1335	OrbitCom Access Service Rates
10/11	Iowa	FCU-2011-0002	Aventure Communications Cost of High Volume Access (HVAS) Traffic
8/11	Georgia	32235	Ringgold - Track 2 UAF Revenue Requirement
8/11	Georgia	32235	Public Service - Track 2 UAF Revenue Requirement
8/11	Georgia	32235	Chickamauga - Track 2 UAF Revenue Requirement
3/11 5/11	Georgia	32235	Universal Access Fund cost of capital and caps on UAF distributions.
7/10 3/11	Texas	PUC Docket No. 36633 SOAH No.473-09-5470	Pole attachment rates, cost of capital.
12/09	Alaska	U-09-081, U-09-082, U-09-083, U-09-084, U-09-085, U-09-086, U-09-087, U-09-088 [Unconsolidated]	Switched access revenue requirements for various companies. Addressed variously non-regulated cost assignments, depreciation expense, corporate operations expenses, and other disallowances.
6/09 8/09	Iowa	TF-2009-0030	Switched Access cost study for Kalona Cooperative Telephone Company
2/09	Alaska	U-08-081	Switched Access Demand for pooled access rates

## Exhibit A

Date Filed	State	Proceeding Number	Subjects Addressed
12/08	Alaska	U-08-084, U-08-086, U-08-087, U-08-088, U-08-089, U-08-090, U-08-112, U-08-113 [Unconsolidated]	Switched access revenue requirements for various companies. Included variously, depreciation expense, corporate operations expense, and cost of capital.
11/08	Nebraska	Application C-3745/ NUSF-60.02/PI-138	Switched Access Rates and Cost of Capital
2/08 3/08	Oklahoma	Cause No. PUD 200700370	Medicine Park Tel. Co. request for Oklahoma USF Support
6/07 7/07	Iowa	Docket RPU-07-1	South Slope Coop – Separations Cost Study and CCL Rate
4/07 10/07	Texas	Docket 33545	McLeodUSA Access Cost Model – Cost of Capital, Asset Lives, Factors, Common Costs, Rate Development
3/07	Oklahoma	Cause No. PUD 200600374	Medicine Park Tel. Co. separations study supporting request for High Cost Funds
6/05 7/05	Missouri	Case No. TT-2002-129	AT&T Instate Connection Fee
5/05	Missouri	Case No. TO-2005-0336	UNE Policy Issues (dedicated transport, combinations/commingling, EELs, ILEC obligations, etc.), UNE Rider, Pricing
3/05 4/05	Texas	Docket 28821	UNE Policy (dedicated transport, combinations and commingling, EELs, ILEC obligations, etc.)
2/05 3/05	Kansas	Docket 05-AT&T-366-ARB	Call Flows, UNE Policy Issues
1/05 2/05 3/05	Oklahoma	Cause No. PUD 200400493	Interim contract pricing terms (1/05), call flows and permanent pricing (2/05), UNE Issues and pricing (3/05)
3/04	Oklahoma	Cause No. PUD 200300646	Track I Triennial Review Impairment Analysis (Sponsored with Robert Flappan)
12/03 1/04	Texas	Docket No. 28600	Asset Lives, Capital Cost Factors, Annual Cost Factors, Shared and Common Costs
5/03 6/03	Illinois	Docket No. 03-0329	Reciprocal compensation, 8YY compensation, space license
11/02 2/03	Texas	Docket 25834	Depreciation, Annual Cost Factors, Investment Factors, Inflation and Productivity, Common Costs
10/01	Missouri	Case No. TO-2001-438	Depreciation, Cost Factors, Labor Rates, Common Costs
4/01	Missouri	Case No. TO-2001-455	AT&T Interconnection Agreement Arbitration – Intellectual Property, Stand-alone Services Resale, Audit Rights, UNE Costs
2/01	Kansas	Docket 99-GIMT-326-GIT	Universal Service Fund Portability (Sponsored at hearing by R. Flappan)
12/00	Oklahoma	Cause No. PUD 2000000587	Intellectual Property, Reciprocal Compensation for ISP-bound traffic, Vertical Services Resale, Access to OSS and CPNI, OSS Audit, Definitions

## Exhibit A

Date Filed	State	Proceeding Number	Subjects Addressed
8/00	Kansas	Docket 00-GIMT-1054-GIT	Reciprocal Compensation for ISP-bound traffic
6/00	Texas	PUC Docket 22315	Intellectual Property and Access to Operational Support Systems
5/00	Texas	PUC Docket 21425 SOAH No. 473-99-2071	Resale obligations under FTA for vertical features, Local Plus and LDMTS service offers
3/00	Texas	Docket 21982	SWBT Cost Study for Internet-Bound Traffic
1/00	FCC	Docket 00-4	SWBT Long Distance Entry in Texas, Glue Charges and Intellectual Property
1/00	Kansas	Docket 97-SCCC-149-GIT	Resale Discount Levels
1/00	Missouri	Docket TT-2000-258	Local Plus Resale Issues
12/99	Texas	Docket 20047	GTE Directory Assistance Listing Information Service
11/99	Kansas	Docket 99-GIMT-326-GIT	Kansas Universal Service Fund Issues (Sharing of USF Support)
10/99	Texas	Docket 21392	SWBT Switched Access Optional Payment Plan
10/99	Texas	Project 18515	Texas USF Further Implementation Issues
6/99 7/99	Texas	Project 18515 Project 18516	Texas USF Implementation Issues
4/99 5/99	Kansas	Docket 99-GIMT-326-GIT	Kansas Universal Service Fund Issues
4/99 5/99 6/99	Missouri	Case No. TO-98-329	Missouri Universal Service Fund Issues
12/98	Texas	Project 16251	Right-to-Use Adder costs
10/98	Texas	Project 18516	Texas Universal Service Fund Issues for Small LECs
9/98	Missouri	Docket TO-98-115	Arbitration Cost Studies of SWBT (Sponsored at hearing by D. Crombie)
6/98 7/98 8/98	Kansas	Docket 97-SCCC-149-GIT	Generic Cost Docket for SWBT. Depreciation, cost factors, fill factors.
4/98	Texas	Docket 16251	Non-cost basis of certain Arbitration rates for SWBT – TX
1/98	Oklahoma	Cause No. PUD 970000442	Permanent Rates for SWBT Services
1/98	Oklahoma	Cause No. PUD 970000213	Permanent Rates for SWBT Unbundled Network Elements
8/97	Texas	Docket No. 16226	Restatement of SWBT Arbitration Cost Studies
3/97	Kansas	Docket 97 SCCC 149-GIT	Generic Cost Proceeding for SWBT
1/97	Arkansas	Docket No. 96-395-U	Arbitration Cost Studies of SWBT – AR
1/97	Kansas	Docket 97-AT&T-290-ARB	Arbitration Cost Studies of SWBT – KS
10/96	Texas	Docket 16300	Arbitration Cost Studies of GTE – TX
10/96	Missouri	Case No. TO-97-63	Arbitration Cost Studies of GTE – MO
10/96	Oklahoma	Cause 960000242	Arbitration Cost Studies of GTE – OK
10/96	Missouri	Case No. TO-97-40	Arbitration Cost Studies of SWBT – MO
9/96	Oklahoma	Cause No. PUD 960000218	Arbitration Cost Studies of SWBT – OK
9/96	Texas	Docket 16226	Arbitration Cost Studies of SWBT – TX

## Exhibit A

Date Filed	State	Proceeding Number	Subjects Addressed
6/96 7/96	Kansas	190,492-U	Universal Service Fund, Alternative Regulation, Imputation
1/96	Texas	Docket 14659	Costs of SWBT and GTE loop facilities
1/96	Texas	Docket 14658	Resale of SWBT and GTE services under PURA
9/95	California	A.95-02-011 A.95-05-018	Uniform System of Accounts Rewrite rate adjustments
6/95	Missouri	Case TR-95-241	SWBT Local Plus service offering
8/94 2/95	California	A.93-12-005 I.94-02-020	Citizens Utilities General Rate Case, Access Pricing, Price Cap, IntraLATA Equal Access, Imputation
4/93	California	A.92-05-002 A.92-05-004 I.87-11-033	First Price Cap Review, productivity factors, sharing
6/92	California	I.87-11-033	Centrex and PBX trunk Pricing
10/91	California	I.87-11-033	Competitive entry issues
1/91	California	A.85-01-034	High Cost Funding
10/90	California	I.87-11-033	Expansion of Local Calling Areas, Touch Tone

## **Exhibit B**

**PUBLIC VERSION**

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

**In the Matter of  
AT&T CORP.  
One AT&T Way  
Bedminster, NJ 07921  
(202) 457-3090**

***Complainant,***

**v.**

**IOWA NETWORK SERVICES, INC.  
d/b/a Aureon Network Services  
7760 Office Plaza Drive South  
West Des Moines, IA 50266  
(515) 830-0110**

***Defendant.***

**Proceeding Number 17-56  
File No. EB-17-MD-001**

**DECLARATION OF DANIEL P. RHINEHART**

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is included as Exhibit 82 to the Formal Complaint.

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2. As a result of my experience, I am very familiar with the manner in which rates are calculated by Local Exchange Carriers (“LECs”) that are regulated on a rate of return basis. In addition, I have reviewed the bi-annual tariff filings made by Iowa Network Services, Inc. d/b/a Aureon Network Services (“INS”)<sup>1</sup> as well as various documents that have been produced in discovery in this case or in other proceedings relating to access stimulation. I have also reviewed the various Commission decisions approving Centralized Equal Access (“CEA”) service in Indiana, Iowa, South Dakota and Minnesota<sup>2</sup> as well as other Commission decisions relating to access stimulation.<sup>3</sup> In addition, I have reviewed INS’s recent tariff filings, which

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<sup>1</sup> See Ex. 15, INS Introduction, Overview and Rate Development, July 1, 2004 FCC Annual Access Charge Tariff Filing (dated June 24, 2004) (“INS 2004 Tariff Filing”); Ex. 16, INS Introduction, Overview and Rate Development, July 3, 2006 FCC Annual Access Charge Tariff Filing (dated June 26, 2006) (“INS 2006 Tariff Filing”); Ex. 17, INS Introduction, Overview and Rate Development, July 1, 2008 FCC Annual Access Charge Filing (dated June 24, 2008) (“INS 2008 Tariff Filing”); Ex. 18, INS Introduction, Overview and Rate Development, July 1, 2010 FCC Annual Access Charge Filing (dated June 16, 2010) (“INS 2010 Tariff Filing”); Ex. 19, INS Introduction, Overview and Rate Development, July 3, 2012 FCC Annual Access Charge Filing (dated June 26, 2012) (“INS 2012 Tariff Filing”); Ex. 20, INS Introduction, Overview and Rate Development, July 2, 2013 FCC Annual Access Charge Filing (dated June 17, 2013) (“INS 2013 Tariff Filing”); Ex. 21, INS Introduction, Overview and Rate Development, July 1, 2014 FCC Annual Access Charge Filing (dated June 16, 2014) (“INS 2014 Tariff Filing”); and Ex. 22, INS Introduction, Overview and Rate Development, July 1, 2016 FCC Annual Access Charge Filing (dated June 16, 2016) (“INS 2016 Tariff Filing”).

<sup>2</sup> *In re Application of Ind. Switch Access Div.*, File No. W-P-C-5671, 1986 WL 291436, ¶¶ 2, 23 (F.C.C. Apr. 10, 1986) (“*Indiana Switch CCB Order*”); *In re Application of Ind. Switch Access Div.*, 1 FCC Rcd. 634, ¶ 5 (1986) (“*Indiana Switch Review Order*”) (collectively, the “*Indiana Switch Orders*”); *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 3 (1988) (“*INS Order*”); *In re Application of SDCEA, Inc.*, 5 FCC Rcd. 6978, ¶ 17 (1990) (“*SDCEA Order*”); Ex. 12, Memorandum Opinion, Order and Certificate, *In re the Application of Minn. Indep. Equal Access Corp.*, File No. W-P-C-6400 (F.C.C. rel. Aug. 22, 1990) (“*MIEAC Order*”).

<sup>3</sup> See *In re Connect America Fund*, 26 FCC Rcd. 17763 (2011) (“*Connect America Order*”); *In re Access Charge Reform*, 16 FCC Rcd. 9923 (2001) (“*CLEC Access Order*”); *In re Access Charge Reform*, 19 FCC Rcd. 9108 (2004); *Qwest Commc’ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 22 FCC Rcd. 17973 (2007) (“*Farmers I*”); *Qwest Commc’ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, 24 FCC Rcd. 14801 (2009) (“*Farmers II*”).

## PUBLIC VERSION

initially proposed to offer a new contract tariff service specifically targeted at access stimulation traffic<sup>4</sup> but then withdrew that proposal and replaced it with a “volume discount” proposal.<sup>5</sup>

3. Based on my analysis to date, serious questions exist regarding the reasonableness of INS’s rates for CEA service. As explained in greater detail below, INS’s current rate for CEA service is \$0.00896 per minute, which is only a few tenths of a cent lower than INS’s initial rate for CEA service (\$0.0117 per minute), which became effective in 1989. Moreover, INS’s current rate is approximately 44 percent higher than it was in mid-2013 (\$0.00623 per minute). Suffice it to say, these trends are not consistent with the general industry trends for access charges, which have declined precipitously since 1989.

4. To date, INS has not produced all of the cost information supporting its CEA rate calculations. Consequently, my evaluation of the reasons that INS’s rates have not declined consistent with the industry trends for access charges is ongoing. Based on my review to date, however, I have the following observations:

*First*, the level of the network costs allocated to INS’s Access Division appears to be excessive. INS’s Access Division does not own any of the transmission

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<sup>4</sup> See Ex. 46, Iowa Network Services, Inc. dba Aureon Network Services, Iowa Network Access Division, Tariff F.C.C. No 1, (Transmittal No. 33) (Description and Justification and Cost Support Material) (filed April 14, 2017) (“Contract Tariff Support”) and Proposed Revised Tariff Pages (filed April 14, 2017) (“Revised Tariff Pages”) (collectively, “INS April 2017 Revised Tariff Filing”).

<sup>5</sup> See Ex. 47, Iowa Network Access Division, Application No. 8 (dated May 16, 2017) with attachments (“INS May 2017 Revised Tariff Filing,” together with the tariff filings identified in *supra* notes 1 and 4, collectively referred to herein as the “Tariff Filings” or “INS’s Tariff Filings”) (seeking permission to (i) withdraw the tariff pages submitted under Transmittal No. 33 and (ii) file revised tariff pages proposing to offer a “volume discount”).

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facilities or equipment that it uses in connection with its CEA service. Instead, it leases those facilities and equipment at rates that appear to exceed the rates at which INS leases such facilities and equipment to other entities, thereby inflating INS's CEA rates and raising concerns regarding the cross-subsidization of INS's other services.

*Second*, in recent years an increasing percentage of the costs of INS's Cable & Wire Facilities have been allocated to INS's Access Division. In 2017, for example, 74.1 percent of those costs were assigned to the Access Division whereas in 2006, the Access Division was only assigned 45.3 percent of those costs.

*Third*, questions exist as to the reasonableness of INS's calculation of the lease costs allocated to the Access Division. As explained in greater detail below, there are **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

**[[END HIGHLY CONFIDENTIAL]]** INS provides absolutely no support for the derivation of these costs. Further, additional concerns arise when the dramatic increase in INS's investment in Cable & Wire facilities since 2010 is contrasted with the significant decline in switched access minutes of use transported on INS's network.

*Fourth*, in recent years an increasing percentage of the Access Division's revenue requirement has been allocated to interstate traffic as opposed to intrastate traffic.

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This development stands in stark contrast to the assumption underlying the Commission's initial approval of INS's application to provide CEA service; namely, that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls." *See INS Order* ¶ 32.

*Fifth*, concerns also exist as to the five-year traffic forecasts that INS has used in developing its rates for CEA service. Those forecasts vary widely from year to year and have proven to be very inaccurate when compared to INS's actual demand. Additionally, INS's recent forecasts showing declining demand stand in stark contrast to AT&T's actual traffic on INS's network, which has steadily grown.

*Sixth*, since 2010, INS has included in its revenue requirement large "Uncollectible Revenues" even though those amounts remain the subject of litigation contesting whether they were "properly billed" and INS is still actively seeking to collect them. The inclusion of those amounts in the Access Division's revenue requirement had a potential rate impact of between .073 and .659 cents per minute.

5. Each of these concerns is discussed in greater detail below.<sup>6</sup>

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<sup>6</sup> The first, second, and third concerns regarding network costs apply with equal force to INS's recent Tariff Filings, first offering a new contract tariff service (*see* Ex. 46, INS April 2017 Revised Tariff Filing) and then seeking to replace that offering with a new "volume discount" service. *See* Ex. 47, INS May 2017 Revised Tariff Filing.

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### The Overall Level of INS's CEA Rates.

6. INS's application to provide CEA service in Iowa was approved in 1988, and INS filed its original tariff for that service in early 1989. As initially filed, the rate that INS proposed to charge for CEA service was \$0.0161 per minute. *See In re Iowa Access Division Tariff FCC No.1*, 4 FCC Rcd. 3947, ¶ 9 (C.C.B. Apr. 28, 1989) ("INS Rate Order"). A number of parties, including AT&T and Northwestern Bell Company ("NWB"), challenged INS's proposed rate on a number of grounds, including that it was not adequately supported. *Id.* ¶¶ 2-7. Rather than litigate those issues, INS revised its tariff filing and lowered its rate to \$0.0117 per minute. *Id.* ¶ 9.

7. Since 1989, INS's CEA rate has remained at roughly the same level. The following table (Table A) sets forth INS's rates for CEA service for the period 2003 to 2017.<sup>7</sup>

	<u>INS's CEA Rate</u>
2003	\$0.01045 per minute
2004	\$0.01045 per minute/\$0.01031 per minute
2005	\$0.01031 per minute
2006	\$0.01031 per minute/\$0.00855 per minute
2007	\$0.00855 per minute
2008	\$0.00855 per minute/\$0.00819 per minute
2009	\$0.00819 per minute

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<sup>7</sup> These rates are reported in the INS Tariff Filings that are publicly available on the FCC's website. *See* Exs. 15-22. Rate information for periods prior to 2003 is not available on the FCC's website.

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2010	\$0.00819 per minute
2011	\$0.00819 per minute
2012	\$0.00819 per minute/\$0.00623 per minute
2013	\$0.00623 per minute/\$0.00896 per minute
2014	\$0.00896 per minute
2015	\$0.00896 per minute
2016	\$0.00896 per minute
2017	\$0.00896 per minute

As can be seen from Table A, INS's current CEA rate (\$0.00896 per minute) is about three tenths of a cent lower than the rate for that service in 1989 (\$0.0117 per minute), and is approximately 44 percent higher than the rate in mid-2013 (\$0.00623 per minute).

8. The fact that INS's current CEA rate has not declined more significantly during the past 27 years is surprising given the overall trend in the industry with regard to access charges. In a 2010 report entitled "Trends in Telephone Service," the Commission reported that the national average traffic sensitive interstate switched access charge per minute went from \$0.030 (in April 1989) to \$0.0064 (in 2010)<sup>8</sup> – a decline of almost 79%. During that same period, INS's CEA rate only declined by about 23 percent. Moreover, the situation has gotten worse since 2011. The national average charge per minute for access has continued to decline as the Commission's 2011 transitional rules have begun to take effect.<sup>9</sup> By contrast, INS raised its

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<sup>8</sup> See Ex. 57, FCC, *Trends in Telephone Service*, Table 1.2 (W.C.B. Sept. 2010), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>9</sup> *Connect America Order* ¶¶ 739, 798–808 (providing that local switching rates would be eliminated by mid-2017); see also 47 C.F.R., Subpart J of Part 51.

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CEA rate from its 2011 capped level of \$0.00819 per minute to its current level of \$0.0896 per minute.

9. The high level of INS's current CEA rate is particularly difficult to understand given the fact that INS's investment in the switching equipment needed to provide equal access and in related general support facilities has largely been depreciated and recovered in INS's prior rates.<sup>10</sup> In addition, during the period 2005 to 2011, the volume of interstate access minutes transported over INS's network grew from about 954 million minutes per year to over 3.8 billion minutes per year. *See* Exs. 16 and 19, INS Tariff Filings for 2006 and 2012. All else held constant, these two factors working in combination should have resulted in a significant decline in INS's CEA rates.<sup>11</sup> But that did not occur. In 2005, INS's rate was \$0.01031 per minute. *See* Ex. 16, INS 2006 Tariff Filing, at 3. As previously noted, INS's current rate is \$0.00896 per minute – a decline of only slightly more than one tenth of a cent.

10. INS's CEA rates also do not appear to reflect any cost efficiency gains resulting from advances in transmission technology. In its Tariff Filings, INS has reported that it has made significant investments in its fiber network.<sup>12</sup> Those investments, however, do not appear

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<sup>10</sup> *See* Ex. 22, INS 2016 Tariff Filing, Section 5, Schedule S-2 (indicating that the \$37 million in Total Plant in Service allocated to INS's Access Division has been largely depreciated with accumulated depreciation and amortization totaling \$34 million).

<sup>11</sup> *See also Farmers I* ¶ 24 (crediting testimony demonstrating that an access stimulation LEC's "costs did not rise by nearly the same proportion as its access revenues"); Ex. 67, Declaration of Peter D. Copeland, *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, File No. EB-07- MD-001, ¶¶ 5–14 (dated May 1, 2007) ("Copeland Decl.") (making the same point).

<sup>12</sup> *See* Ex. 18, INS 2010 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity . . . . Approximately \$20 million has been expended since 2006 and an additional \$4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . .

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to have resulted in lower CEA rates. Indeed, in its 2016 Tariff Filing, INS asserted that its projected revenue requirement would support a rate of \$0.01332 per minute,<sup>13</sup> which is almost two tenths of a cent higher than INS's interstate CEA rate in 1989 (i.e., \$0.0117 per minute). A rate at that level is not consistent with the rate that one would expect given INS's recent "upgrades" to its network. *See* Ex. 67, Copeland Decl. ¶¶ 11–14.

11. That INS's rates for CEA service are excessive is also clear from INS's recent Tariff Filings. As discussed in greater detail below, INS's inclusion of "Uncollectible Revenues" in the revenue requirement supporting its 2016 Tariff Filing had the potential effect of inflating INS's CEA rate by as much as \$0.00659 per minute. *See infra*, Table J. Indeed, if those Uncollectible Revenues were removed from the underlying revenue requirement, the resulting rate generated by INS revenue analysis would decline from \$0.01332 per minute to \$0.00673 per minute, which is more than two tenths of a cent less than INS's current CEA rate (\$0.00896 per minute).

12. INS's even more recent Tariff Filings proposing to offer a new rate of \$0.00649 per minute for high volume (access stimulation) traffic also demonstrate that INS's current CEA rate is excessive. *See* Ex. 46, INS April 2017 Revised Tariff Filing; Ex. 47, INS May 2017

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Approximately \$9.6 million has been expended since 2009 and an additional \$11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately \$20.3 million has been expended since 2010 and an additional \$22.5 million is planned for 2013." (internal footnote omitted)).

<sup>13</sup> *See* Ex. 22, INS 2016 Tariff Filing, at 5; *see also* Ex. 21, INS 2014 Tariff Filing, at 4 (projecting a rate of \$0.01297 per minute).

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Revised Tariff Filing.<sup>14</sup> The cost support material presented in connection with INS's April 2017 Tariff Filing purports to show that a rate of \$0.00604 per minute would be sufficient to support INS's projected revenue requirement, which does not include any Uncollectible Revenues. *See* Ex. 46, INS's April 2017 Tariff Filing, Contract Tariff Support at 2, 5, Section 2 (Schedule A), and Section 3 (Schedule S-1, Line 15). That rate (\$0.00604 per minute) is almost three tenths of a cent less than INS's current rate (\$0.00896 per minute). Moreover, when the minimum traffic volumes associated with INS's May 2017 "volume discount" proposal (a minimum of 25 million minutes per month/300 million minutes per year) are applied to the revenue requirement submitted in support of the proposed rate of \$0.00649 per minute, the resulting rate would be \$0.003624 per minute, which is more than five tenths of a cent lower than INS's current rate (\$0.00896 per minute).<sup>15</sup>

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<sup>14</sup> As initially proposed, this service was to be offered on a contract tariff basis. *See* Ex. 46, INS April 2017 Revised Tariff Filing. However, on May 16, 2017, INS filed an application with the Commission seeking permission to withdraw its proposed contract tariff service, and to instead offer a volume discount to customers (i) with a minimum monthly usage of "at least 25 million interstate interlata terminating minutes-of-use and 80% or greater utilization of each trunk group" and (ii) that agreed to sign a separate service agreement. *See* Ex. 47, INS May 2017 Revised Tariff Filing, Second Revised Tariff Page 137, Section 6.7.3. In its May 2017 Tariff Filing, INS does not provide any specific details as to the terms of the "separate service agreement," nor does it indicate whether those terms are the same or similar to the additional terms that were applicable to the proposed contract tariff service it has now withdrawn. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support at 1; *see also* AT&T Formal Complaint ¶ 74 (discussing the terms applicable to INS's proposed contract tariff service).

<sup>15</sup> In submitting its May 2017 Tariff Filing, INS did not modify or present a new rate analysis in support of the proposed rate of \$0.00649 per minute. In its April 2017 Tariff Filing, the projected revenue requirement presented in support of the \$0.00649 rate was \$1,087,200. *See* Ex. 46, INS April 2017 Revised Tariff Filing, Contract Tariff Support at 2, 3, and Section 2 (Schedule A). When that revenue requirement (\$1,087,200) is divided by the minimum annual throughput required to qualify for the \$0.00649 "volume discount" rate (300 million minutes), the resulting rate is \$0.003624 per minute. Moreover, the surplus over the base revenue requirement generated by imposition of the \$0.00649 per minute rate is \$859,800 per year.

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13. Finally, the evidence shows that over the past 15 years, INS has dramatically lowered the rates that it charges for some of its non-CEA services. For example, in the [[BEGIN 3P CONFIDENTIAL]] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END 3P CONFIDENTIAL]] Additionally, [[BEGIN CONFIDENTIAL]]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END CONFIDENTIAL]]<sup>18</sup>

**INS's Handling of Network Investment Costs.**

14. As previously noted, INS has reported in its Tariff Filings that it made significant investments in its fiber network.<sup>19</sup> None of that investment, however, has been recorded on the books of INS's Access Division. Instead, as is clear from INS's Tariff Filings, all investment in

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<sup>16</sup> See Ex. 68, Deposition of Thomas Lovell, *Alpine Commc'ns, LLC v. AT&T Corp.*, No. 2:08-cv-01042, at 56:9–58:9 (N.D. Iowa) (taken Oct. 29, 2009).

<sup>17</sup> See Ex. 23, [[BEGIN CONFIDENTIAL]] [REDACTED]

[REDACTED] [[END CONFIDENTIAL]]

<sup>18</sup> See Ex. 15, INS 2004 Tariff Filing at 2 (noting that the agreements “remove[d] interstate traffic from the network and replace[d] it with interconnection traffic to be billed in accordance with interconnection agreements”).

<sup>19</sup> See *supra* note 13.

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Central Office Transmission Equipment (Account 2230) and Cable & Wire Facilities (Account 2410) has been recorded on the books of INS's other divisions.<sup>20</sup> As a consequence, the Access Division does not earn a rate of return on INS's investment in its network. Rather, INS's Access Division appears to lease fiber capacity from INS's Network Division at a rate and rate of return that is not disclosed in INS's tariff filings, or in the support data that INS has produced as part of the informal discovery process.<sup>21</sup>

15. As can be seen from the following table (Table B), network costs constitute a significant percentage of the Access Division's overall revenue requirement:

	<u>Rev. Req. Less Uncollectibles</u> <sup>22</sup>	<u>Network Costs</u> <sup>23</sup>	<u>Percentage</u>
2004	\$21,063,949	\$12,777,678	60.7%
2006	\$27,790,646	\$17,693,096	63.7%

<sup>20</sup> See Exs. 15–22, INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016 Tariff Filings, Section 5, Schedule S-2, Lines 3 and 4 (Central Office Transmission Equipment and Cable & Wire Facilities).

<sup>21</sup> From the documents that INS has produced in response to informal discovery, **[[BEGIN HIGHLY CONFIDENTIAL]]**

**[[END HIGHLY CONFIDENTIAL]]**.

<sup>22</sup> The data for the Access Division's "Revenue Requirement less Uncollectibles" was derived from Section 5, Part 64 Separations, Schedule S-1, Lines 15 and 19, of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, 2016, and April 2017 Tariff Filings. See Exs. 15–22 & 46. The "uncollectible revenues" subtracted from the Revenue Requirement for each year are as follows: \$271,799 (2004); \$284,299 (2006); \$3,369,633 (2008); \$3,120,000 (2010); \$2,690,638 (2012); \$4,320,000 (2013); \$3,992,932 (2014); \$16,816,800 (2016); and \$18,642,577 (Apr. 2017). *Id.*

<sup>23</sup> The Access Division's Network Costs are sourced from Section 5, Part 64 Separations, Schedule S-8, Line 4 (Cable & Wire Facilities) of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, 2016, and April 2017 Tariff Filings. See Exs. 15–22 & 46.

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2008	\$28,275,864	\$16,968,588	60%
2010	\$31,522,883	\$17,882,154	56.7%
2012	\$21,512,296	\$9,754,800	45.3%
2013	\$26,219,366	\$13,843,200	52.8%
2014	\$27,829,176	\$18,248,747	65.6%
2016	\$18,794,588	\$12,840,050	68.3%
2017	\$19,441,960	\$14,675,151	75.5%

Notwithstanding the magnitude of these costs, INS's Tariff Filings do not provide any information regarding the derivation of the lease costs that INS's Access Division pays to INS's Network Division for Cable & Wire Facilities.

16. In the initial INS tariff proceeding held in 1989, NWB asserted that the Access Division was paying all of the costs to construct and maintain INS's network, including a rate of return of over 30 percent. *See INS Rate Order* ¶ 6. Obviously, such a rate of return would be excessive. More recent deposition testimony suggests that **[[BEGIN HIGHLY**

**CONFIDENTIAL]]** [REDACTED]

[REDACTED]

[REDACTED]

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

17. In the discovery materials that INS has recently produced in this case, there is evidence that **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

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<sup>24</sup> See Ex. 69, Deposition of Dennis Creveling, *Alpine Commc'ns, LLC v. AT&T Corp.*, No. 08-01042, at 28:3-29:6 (N.D. Iowa) (taken Feb. 10, 2010) ("Creveling Dep.").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [[END

**HIGHLY CONFIDENTIAL]]** Obviously, to the extent that the rate that INS pays to lease circuits on INS's network is inflated, its CEA rate will also be inflated.

**INS's Allocation of Costs for Network Facilities.**

18. Another area of concern relates to INS's allocation of the costs associated with the Access Division's use of INS's fiber network. The following table (Table C) sets forth data from INS's Tariff Filings showing the allocation of costs for Cable & Wire Facilities between INS's Access Division and its other divisions.<sup>28</sup>

<sup>25</sup> See, e.g., **[[BEGIN CONFIDENTIAL]]** [REDACTED]

**[[END CONFIDENTIAL]]**

<sup>26</sup> See, e.g., **[[BEGIN CONFIDENTIAL]]** [REDACTED]

**[[END CONFIDENTIAL]]**

<sup>27</sup> **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

**[[END HIGHLY CONFIDENTIAL]]**

<sup>28</sup> The source of the Total Company and Access Division costs is the back-up to INS's 2004 to April 2017 Tariff Filings, Section 5, Part 64 Separations, Schedule S-8, Line 4 (Cable & Wire Facilities). See Exs. 15-22 & 46.

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	<u>Total Company</u>	<u>Access Division</u>	<u>Percent Allocated</u>
2004	\$26,868,987	\$12,777,678	47.6%
2006	\$39,072,861	\$17,693,096	45.3%
2008	\$35,307,201	\$16,968,588	48.1%
2010	\$25,211,234	\$17,882,154	70.9%
2012	\$14,457,480	\$9,754,800	67.5%
2013	\$18,592,129	\$13,843,200	74.5%
2014	\$22,946,170	\$18,248,747	79.5%
2016	\$17,861,701	\$12,840,050	71.9%
2017	\$19,816,729	\$14,675,151	74.1%

19. As can be seen from this table, the Access Division's allocated share of the costs of the Cable & Wire Facilities went from about 45% to 48% (during 2004–2008) to above 70% (in 2013–2017). By contrast, between 2004 and 2016, the Cable & Wire Facilities costs allocated to INS's other divisions actually declined from about \$14 million in 2004 to about \$5 million in 2017.<sup>29</sup> No explanation is provided in INS's Tariff Filings for this change, nor is the manner in which these costs were allocated discussed in any detail. Obviously, to the extent that Cable & Wire Facility costs are being over allocated to INS's Access Division, INS's CEA rates would be overstated.

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<sup>29</sup> See Exs. 15–22 & 46, INS's Tariff Filings, Section 5, Part 64 Separations, Form S-8, Line 4 (Cable & Wire Facilities).

**INS's Calculation of the Lease Costs to be Allocated to the Access Division.**

20. An additional area of concern relates to INS's calculation of the lease costs to be allocated to the Access Division. As previously mentioned, no explanation is provided—in either INS's Tariff Filings or in the back-up support data produced as part of the informal discovery process—as to the basis for, or the methodology used in, calculating the lease costs allocated to the Access Division.

21. Presumably, the lease cost allocated to INS's Access Division is intended to recover the costs associated with the Access Division's use of INS's fiber network. However, a breakdown of the specific network costs included in the allocated lease costs has not been made available, nor has any explanation been provided as to why a lease cost approach has been used with respect to the Access Division's network costs but not with respect to any of its other costs, such as switching costs.<sup>30</sup> Further, a review of the cost information that has been produced raises serious questions as to the reasonableness of INS's allocation of network costs to the Access Division.

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<sup>30</sup> The back-up material produced by INS indicates that **[[BEGIN HIGHLY CONFIDENTIAL]]**

**[[END**

**HIGHLY CONFIDENTIAL]]** However, none of the back-up material that has been produced explains the methodology used to calculate the amount of the lease costs to be allocated and paid by the Access Division or any of INS's other divisions.

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22. The following table (Table D) sets forth **[[BEGIN HIGHLY CONFIDENTIAL]]**

[REDACTED]	
[REDACTED]	
	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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

23. At a minimum, **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

[REDACTED]  
**[[END HIGHLY CONFIDENTIAL]]** During this same period, INS's tariffed rate for CEA service first decreased by about 23 percent (2010 to 2012)

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<sup>31</sup> **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

**[[END HIGHLY CONFIDENTIAL]]**

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and then increased by about 44 percent (2012 to 2013). Obviously, the extent to which the 2013 increase in CEA rates was caused by the allocation of costs to the Access Division that had been previously allocated to other INS divisions would raise concerns about cross-subsidization.<sup>32</sup>

24. Another area of concern as to the efficacy of INS's lease cost calculations arises as a result of the dramatic increase in INS's investment in Cable & Wire Facilities (beginning in 2010). The following table (Table E) depicts the Total Company investment levels for Cable & Wire Facilities reported in INS's Tariff Filings from 2004 to 2017.<sup>33</sup>

	<u>Cable &amp; Wire Investment (Total Co.)</u>
2004	\$21,331,701
2006	\$21,721,264
2008	\$23,377,974
2010	\$26,818,101
2012	\$43,102,372

<sup>32</sup> As can be seen from INS's Tariff Filings, the 2013 increase in INS's CEA rate was at least partially the result of a \$4 million increase in lease costs. More specifically, the Access Division's projected revenue requirement went from \$24,202,934 (in 2012) to \$30,539,366 (in 2013), most of which appears to be the result of a \$4.1 million increase in Cable & Wire Facilities costs, *i.e.*, the lease costs that INS's Access Division pays to INS's Network Division. See Exs. 19 and 20, INS's 2012 and 2013 Tariff Filings, Section 5, Part 64 Separations, Schedule S-8, Line 4; see also **[[BEGIN HIGHLY CONFIDENTIAL]]** [REDACTED]

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

<sup>33</sup> The source of the Total Company investment in Cable & Wire Facilities is Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) of INS's 2004 to 2017 Tariff Filings. See Exs. 15-22 & 46.

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2013	\$57,085,004
2014	\$59,282,926
2016	\$74,866,654
2017	\$68,284,259

25. As can be seen from Table E, INS's investment in Cable & Wire Facilities was relatively constant from 2004 to 2010 but then almost triples between 2010 and 2016. In its Tariff Filings, INS explained that this investment was being made to "upgrade its fiber routes and electronics."<sup>34</sup> That explanation, especially the planned expenditure of "an additional \$22.5 million ... for 2013" (see Ex. 20, INS 2013 Tariff Filing, at 2) is extremely difficult to justify given that demand for legitimate CEA service has steadily declined [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED] [[END HIGHLY CONFIDENTIAL]],<sup>35</sup> the Access Division's overall interstate throughput has declined significantly since 2011,<sup>36</sup> and in 2011, the

<sup>34</sup> See Ex. 18, INS 2010 Tariff Charge Filing, at 2 ("INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity . . . . Approximately \$20 million has been expended since 2006 and an additional \$4.5 million is planned for 2010."); Ex. 19, INS 2012 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately \$9.6 million has been expended since 2009 and an additional \$11.3 million is planned for 2012."); Ex. 20, INS 2013 Tariff Filing at 2 ("INS has plans to upgrade its fiber routes and electronics . . . . Approximately \$20.3 million has been expended since 2010 and an additional \$22.5 million is planned for 2013.").

<sup>35</sup> See AT&T Complaint, Section I.B; see also [[BEGIN HIGHLY CONFIDENTIAL]] [REDACTED] [REDACTED] [[END HIGHLY CONFIDENTIAL]].

<sup>36</sup> See *infra* Table H, showing that INS's annual throughput peaked in 2011 at about 3.8 billion minutes and thereafter has steadily declined. In the 2013, for example, the throughput was about 2.8 billion minutes – a decline of approximately a billion minutes in a two year period.

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Commission found that access stimulation was a “wasteful arbitrage” practice and took steps to “curtail” it. *See Connect America Order* ¶¶ 648–49, 662–63.<sup>37</sup>

26. That INS has over allocated its network costs to the Access Division also draws support when one considers the lease cost per minute of use (“mou”) allocated to INS’s Access Division. The following table (Table F) sets forth data relating to this metric.

<u>Test Period</u>	<u>Projected Lease Cost</u> <sup>38</sup>	<u>Projected Demand</u> <sup>39</sup>	<u>Lease cost/mou</u>
7/1/04 to 6/30/05	\$5,421,825	876,231,538 minutes	\$0.0062
7/1/06 to 6/30/07	\$6,891,903	1,296,905,198 minutes	\$0.0053
7/1/08 to 6/30/09	\$11,351,187	2,346,089,248 minutes	\$0.0048
7/1/10 to 6/30/11	\$14,478,572	3,481,819,561 minutes	\$0.0042
7/1/12 to 6/30/13	\$8,256,765	3,339,631,164 minutes	\$0.0025
7/1/13 to 6/30/14	\$11,669,499	2,925,535,070 minutes	\$0.0040
7/1/14 to 6/30/15	\$14,817,782	2,019,322,322 minutes	\$0.0073
7/1/16 to 6/30/17	\$11,604,439	2,508,443,160 minutes	\$0.0046

<sup>37</sup> [[BEGIN HIGHLY CONFIDENTIAL]]

[[END  
HIGHLY CONFIDENTIAL]]

<sup>38</sup> The source of “Projected Lease Cost” is Section 3, Schedule A-8, Line 5, in AT&T’s Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

<sup>39</sup> The source of the “Projected Demand” is INS’s Tariff Filings for 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016. *See* Exs. 15–22.

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27. As can be seen from Table F, the lease cost per mou allocated to the Access Division steadily declined until about 2013 and then almost doubled in 2014. Some of that increase was undoubtedly attributable to a decline in projected throughput. However, to the extent that INS's allocation of costs between its various operating divisions was based on projected demand for service, it is difficult to understand why the Access Division's projected lease costs also increased during this period. One explanation is that INS has over-allocated its network costs to the Access Division – a conclusion that also draws support from the fact that during this same period, the Access Division's Network Costs as a percentage of its revenue requirement less uncollectibles was also rapidly increasing. *See supra* Table C.<sup>40</sup>

### **INS's Allocation of Costs Between Interstate and Intrastate Traffic.**

28. Another area of concern relates to the allocation of the Access Division's projected revenue requirement between interstate and intrastate long distance traffic. In initially approving INS's application to provide CEA service in Iowa, the Commission specifically noted INS's assumption that "the majority of the network's costs w[ould] be recovered from intraLATA toll calls" and cautioned that if that assumption changed materially, the Commission would need to review INS's proposal. *See INS Order* ¶ 32.

29. As can be seen from the following table (Table G), for periods prior to 2008 that assumption held true – the majority of the Access Division's revenue requirement was allocated

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<sup>40</sup> Because INS has not provided any detail as to the basis for the calculation of the lease costs allocated to the Access Division, it is not possible to determine on the current record exactly how much of INS's recent fiber investment has been charged to the Access Division.

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to intrastate CEA service.<sup>41</sup> In 2008, however, that situation changed dramatically. Since then, the vast bulk of the Access Division's revenue requirement has been assigned to interstate CEA service. Indeed, in 2016, almost 94% of the Access Division's revenue requirement was allocated to interstate traffic.

<u>Year</u>	<u>Access Division</u>	<u>Interstate</u>	<u>Intrastate</u>	<u>Percentage Interstate</u>
2004	\$21,355,748	\$9,065,913	\$12,269,835	42.5%
2006	\$28,074,946	\$11,092,328	\$16,982,618	39.5%
2008	\$31,645,497	\$19,270,037	\$12,375,565	60.9%
2010	\$34,642,883	\$28,671,480	\$5,971,403	82.8%
2012	\$24,202,934	\$20,839,116	\$3,363,618	86.1%
2013	\$30,539,366	\$26,254,447	\$4,284,919	86.0%
2014	\$31,822,108	\$26,211,200	\$5,610,908	82.4%
2016	\$35,611,388	\$33,428,538	\$2,182,850	93.9%

30. One possible explanation for this dramatic shift is that in 2008 INS adjusted the PIU factor used in its tariff filings to "more accurately classif[y] the jurisdiction of . . . call aggregator traffic." See Ex. 17, INS 2008 Tariff Filing, at 1–2. As INS explained, this change resulted in the PIU factor for calls associated with call aggregation increasing from 48 percent to 78 percent. *Id.* at 3–4. In other words, an additional 30 percent of the call aggregation traffic was assigned to the interstate jurisdiction.

31. In making this change, INS did not bring to the Commission's attention that a key assumption underlying the Commission's initial approval of CEA service in Iowa had changed,

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<sup>41</sup> The Access Division's Revenue Requirement data are sourced from Section 4, Schedule S-1, Line 19, of INS's 2004, 2006, 2008, 2010, 2012, 2013, 2014, and 2016 Tariff Filings. See Exs. 15–22.

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nor did it point out that this change had had an enormous impact on cost allocation between the interstate and intrastate jurisdictions. As depicted in the table above, the “majority of [INS’s] network’s costs” are no longer being recovered from intrastate CEA service. *See INS Order* ¶ 32. Instead, most of the costs are now recovered from interstate traffic.

32. Further, there seems to be a disconnect between the 78 percent PIU factor that INS adopted in 2008 and the percentage of costs INS has allocated to interstate CEA service since 2008. As shown in Table G, the percentage of costs allocated to the interstate jurisdiction started out well below the 78 percent PIU factor in 2008 (60.9 percent) but now exceeds that factor by a wide margin (93.9 percent in 2016). Obviously, to the extent that these allocations were not properly made, INS’s CEA rates could be distorted. Moreover, the potential problems are exacerbated by the fact that INS does not appear to have adjusted its intrastate rates since the early 1990s. *See Habiak Decl.* ¶ 38.

33. Finally, to the extent that INS has understated the interstate PIU factor for access stimulation traffic, its interstate CEA rates could be inflated. In its 2008 Tariff Filing, for example, INS indicated that for its 2009 test period, it was projecting “1.6 billion terminating conference call minutes generated by call aggregators,” of which 78 percent were rated as interstate. *See Ex. 17, INS 2008 Tariff Filing*, at 3–4. If, in fact, a significantly larger percentage of those calls were interstate (say 98 percent), INS’s interstate CEA rate for that test period would necessarily be lower, assuming all other assumptions remained the same.