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REDACTED – FOR PUBLIC INSPECTION

May 10, 2018

<u>VIA ELECTRONIC MAIL</u>

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Joseph Price
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-A133
Washington, D.C. 20554
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Re: ***In re Iowa Network Access Division Tariff F.C.C. No. 1***
WC Docket No. 18-60; Transmittal No. 36

Dear Ms. Dortch,

On behalf of Sprint Communications Company L.P., please find attached for filing in the above-referenced proceeding a copy of the Confidential version of Sprint's Opposition to the Direct Case of Iowa Network Access Division d/b/a Aureon Network Services. Pursuant to the terms of the Protective Order in this matter, Sprint has designated certain information as Confidential. A redacted version of this filing is being filed via ECPFS. Also attached is an additional copy of Sprint's confidential filing, which it requests be date-stamped.

Pursuant to 47 C.F.R. §§ 0.457 and 0.459 and the Protective Order, Sprint requests confidential treatment of the confidential information contained in Sprint's Opposition. In support of this request, Sprint states as follows:

1. Identification of the Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)).

Pursuant to the Protective Order, Sprint seeks confidential treatment of information that is designated as Confidential as indicated on the enclosed filing. The Confidential Information relates to Sprint's proprietary carrier information that is not generally available to the public. Information that is Confidential is marked with the "Confidential" information designation.

2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2)).

The Confidential Information is being provided in opposition to Aureon's Direct Case, which was submitted in response to the Commission's *Order Designating Issues for Investigation*. The Commission has issued a Protective Order preventing the public disclosure of this information.

3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3)).

The information for which Sprint requests confidential treatment is plainly commercial because it "pertain[s] or relat[es] to or deal[s] with commerce."[1] It includes confidential carrier proprietary information regarding Sprint's traffic.

4. Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4)).

Services provided by Sprint are subject to competition. The information for which Sprint requests confidential treatment is proprietary carrier information regarding Sprint's usage and volumes that could be used by competitors to Sprint's disadvantage.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5)).

Disclosure of the information could reveal market share information. Revelation of such information would result in substantial competitive hard to Sprint.

6. Identification of Any Measures Taken by the Submitting Party to Prevent Unauthorized Disclosure (Section 0.459(b)(6)).

Sprint has treated the Confidential Information as confidential, and has not generally disclosed that information publicly.

7. Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7)).

Sprint has not made the Confidential Information available to the public or third parties.

8. Justification of the Period During Which the Submitting Party Asserts that Material Should Not be Available for Public Disclosure (Section 0.459(b)(8)).

Sprint's Confidential Information should never be disclosed to the public. Sprint is voluntarily sharing this information in aid of the Commission's review and investigation of

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[1] *Am. Airlines, Inc. v. Nat'l Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978).

the lawfulness of Aureon's tariff filing. Accordingly, there is no need for the Commission to publicly disclose any confidential information submitted as part of this proceeding.

For the reasons described above, Sprint requests that the Confidential Information submitted in Sprint's Opposition be afforded confidential treatment, and not be made available to the public.

Respectfully submitted,

/s/ Amy E. Richardson
Amy Richardson
Timothy Simeone
Steven Fredley

cc: James U. Troup, Counsel for Aureon Network Services
Tony S. Lee, Counsel for Aureon Network Services
Michael J. Hunseder, Counsel for AT&T
James F. Bendernagel, Counsel for AT&T

REDACTED – FOR PUBLIC INSPECTION

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

In the Matter of **Iowa Network Access Division** **d/b/a Aureon** **FCC Tariff No. 1**	**WC Docket No. 18-60** **Transmittal No. 36**

SPRINT COMMUNICATIONS COMPANY L.P.'s
OPPOSITION TO THE DIRECT CASE OF IOWA NETWORK
ACCESS DIVISION D/B/A AUREON NETWORK SERVICES

Sprint Communications Company L.P. ("Sprint") provides the following comments on the direct case of Iowa Network Access Division d/b/a Aureon Network Services ("Aureon"). Sprint respectfully requests that the Commission either reject the tariff filed by Aureon on February 22, 20l8, under Transmittal No. 36 ("Proposed Tariff") and file a new tariff or, alternatively, require Aureon to revise the tariff rates to comply with the Commission's applicable benchmarking, parity, and cost-basis rules.

Aureon acknowledges that it is a CLEC and as such must comply with the Commission's rate cap and rate parity rules, but nonetheless argues that the Commission should decline to apply those rules, including by waiver if necessary. But Aureon's arguments have already been made and rejected by the Commission in the AT&T-Aureon enforcement matter:

- The Commission has rejected Aureon's argument that the rate cap and rate parity rules "must give way" to Section 61.38, explaining that the two sets of rules are intended to *complement* each other.

- Aureon's status as a CEA does not change its status as a CLEC, and the Commission has also rejected Aureon's claim that it is entitled to the rural exemption because it has no end users. In fact, intermediate carriers are *excluded* from the rural exemption.

- There is no public policy justification for Aureon's waiver request—and, in fact, granting a waiver would provide a strong disincentive for Aureon and other similarly situated carriers to embrace and employ internet protocol technology throughout their networks.

Given that Aureon's rates must be benchmarked, CenturyLink is the lawful benchmark for Aureon's tandem switching and transport rates. That is because CenturyLink is the "competing LEC" that would provide the services at issue if they were not provided by Aureon:

- CenturyLink is the relevant competitor because only it has the network capability across Iowa to provide these services.
- Although Aureon argues that the subtending LECs are the "competing" LECs because they provide local service to the end users for which Aureon provisions CEA service, that is irrelevant—the question is who would provide the *services* if they were not provided by Aureon, and the answer is CenturyLink.

Because CenturyLink is the ILEC that Aureon is competing against, Aureon should benchmark its rates to CenturyLink tandem-switched transport service rates. To the extent that Aureon desires a bundled rate, it should include several services that CenturyLink bills as separate rate elements. Part III, below, sets forth Sprint's current understanding of how that rate should be set. Notably, however, the mileage-related data provided by Aureon—much of which Sprint is seeing now for the first time—is inadequate to perform this calculation, and Sprint therefore asks the Commission to require Aureon to provide the data that would be necessary for a more precise calculation. In the alternative, Sprint requests that the Commission adopt the average mileage calculation because Aureon failed to provide the necessary information.

ARGUMENT

I. AUREON IS A COMPETITIVE LOCAL EXCHANGE CARRIER SUBJECT TO THE COMMISSION'S REQUIREMENTS, INCLUDING BENCHMARKING.

A. Aureon's Role Providing CEA Service Does Not Change its Status as a Competitive Local Exchange Carrier.

In 2011, the Commission enacted a series of reforms to the intercarrier compensation regime to facilitate the transition to Internet Protocol-based networks and curtail wasteful

arbitrage.[1] These reforms include a "measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed regulatory landscape."[2] In particular, the Commission capped "all interstate switched access rates in effect as of the effective date of the rules, including originating access and all transport rates."[3] The Commission also addressed the disparity between interstate and intrastate rates by requiring that the rates be brought "to parity within two steps, by July 2013."[4] Pursuant to 47 C.F.R. § 51.911, a "Competitive LEC" must (1) cap its intrastate rates that were in effect on December 29, 2011; (2) begin on July 3, 2012, to move those intrastate rates halfway to the level of its capped interstate rates; and (3) begin on July 1, 2013, to reduce its intrastate and interstate rates to those of competing ILECs, which by July 1, 2013, would have intrastate and interstate rates that were equal or in parity with each other.[5] The Commission determined in *AT&T Corp. v. Iowa Network Services., Inc. d/b/a Aureon Network Services*, that Aureon is a CLEC, and "[a]s a CLEC, Aureon must comply with the rate cap and rate parity rules."[6]

Aureon, as it must, acknowledges that it is subject to these rules. Yet, it argues in its Direct Case that "[t]he Commission should find that the CLEC rate benchmark is incompatible with the rate of return regulation and the default transitional rate applicable to calculating Aureon's tariff rates, and if necessary, waive the application of Sections 51.911(c) and 61.26 of

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[1] *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("*USF/ICC Transformation Order*").

[2] *Id.* ¶ 1.

[3] *Id.* ¶ 800; *see also* 47 C.F.R. § 51.905(b) (capping interstate "tariff rates [at] no higher than the default transitional rate").

[4] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17676-77 ¶ 35.

[5] 47 C.F.R. § 51.911(a)-(c).

[6] *AT&T Corp. v. Iowa Network Services, Inc., d/b/a Aureon Network Services*, Memorandum Opinion and Order, 32 FCC Rcd. 9677, 9689-90 ¶¶ 25-26 (2017) ("*Liability Order*").

the Commission's rules to CEA service."[7] Aureon made these same arguments in the AT&T-Aureon enforcement matter.[8] The Commission rejected those arguments, and should do so again here.

As an initial matter, there is no public policy justification for Aureon's waiver request. Granting a waiver would not advance the Commission's goal of ensuring the industry's transition to all internet protocol networks. Indeed, granting a waiver to Aureon would have the opposite effect. As the FCC recognized in the CAF Order, imposition of inflated rates provides a strong disincentive for Aureon and its LEC owners (and others similarly situated) to embrace and employ internet protocol technology throughout their networks.[9] More importantly, the Commission has already addressed the merits underlying Aureon's waiver request and has rejected their validity.

Aureon re-argues that because it is "required by Section 61.38 of the Commission's rules to file cost studies to calculate its rates, there is no purpose in applying the CLEC benchmark to CEA service."[10] This is a re-packaged version of its earlier claim that the "rate cap and rate parity rules 'must give way' to Section 61.38, because the two sets of rules are inconsistent."[11] The Commission "disagree[d]," explaining that the two sets of rules "complement each other."[12]

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[7] Direct Case at 8.

[8] *See Liability Order*, 32 FCC Rcd. at 9691-92 ¶ 28 ("Aureon further maintains that the rate cap and rate parity rules do not apply to it, because it does not directly serve end users . . . .").

[9] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17669 ¶ 6, 17676 ¶ 34.

[10] Direct Case at 8-9.

[11] *Liability Order*, 32 FCC Rcd. at 9690 ¶ 26

[12] *Id.*

While Aureon must provide pursuant to Section 61.38 supporting material to justify its rates, it is also "subject to additional obligations."[13] The Commission stated:

> As a CLEC, Aureon must comply with the rate cap and rate parity rules, which apply "[n]otwithstanding any other provision of the Commission's rules." Under those rules, regardless of how a CLEC calculates its rates (e.g., via a non-dominant carrier's benchmarking or the procedures of Section 61.38), *the rates may not exceed the specified cap*. Stated differently, Aureon must comply with the 61.38 rules to support its rates at or below the cap and therefore Section 61.38 is not superfluous. *But if the rate it calculates exceed the rate caps, as they did in Aureon's June 2013 tariff file, Aureon must lower them*.[14]

The Commission's goal in adopting the rate cap and rate parity requirements was to move carriers toward collecting their costs from their own customers instead of other carriers.[15] As a result, the cost basis for rates *above* the applicable cap is immaterial. The cost basis is material only if the rate is *below* the cap. Accordingly, Aureon cannot simply charge whatever rate it believes it can justify under the requirements of Section 61.38. Its rates cannot exceed the caps and, as explained below,[16] the rate Aureon has proposed does just that.

Aureon's argument that the CLEC rate benchmarks should not apply to CEA providers because that rate "assumes that Aureon competes with an incumbent local exchange carrier ('ILEC') and that Aureon serves end users in that ILEC's service area,"[17] is equally unavailing. Aureon's status as a CEA provider does not excuse it from complying with the Commission's rate cap and rate parity rules. Indeed, the Commission specifically noted in the *Liability Order* that "nothing in the *USF/ICC Transformation Order* suggests that the Commission intended to

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[13] *Id.*

[14] *Id.* (emphasis added).

[15] *USF/ICC Transformation Order*, 26 FCC Rcd at 17904 ¶ 737; 47 CFR § 51.713.

[16] *See infra* Part III; *see also* 47 C.F.R. § 61.26(f).

[17] Direct Case at 9.

exclude CEA providers from its scope."[18] Moreover, the Commission concluded "that there is 'no "longstanding [Commission] policy of not imposing rate caps on carriers that do not serve end users."'"[19] The Commission, therefore, made clear that Aureon "must comply with existing rules during the transition to 'bill and keep.'"[20] The rate Aureon has proposed, however, fails to do that. Imposing the obligation to benchmark and to comply with rate caps is entirely consistent with the *Eighth Report and Order*—there, the FCC found "as competitive LECs and CMRS providers concede, an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise this monopoly power."[21] The Commission then established the rule requiring a CLEC that does not serve end users to benchmark its rates to the competing ILEC.[22]

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[18] *Liability Order*, 32 FCC Rcd. at 9691 ¶ 28.

[19] *Id.* ¶ 28.

[20] *Id.* (internal quotations omitted). This conclusion was affirmed by the D.C. Circuit in *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998 (D.C. Cir. 2016). In doing so, the court described that the "issue here is not what Great Lakes may charge once the transition to bill-and-keep is complete in 2018, but rather whether Great Lakes was subject to the Commission's benchmark rule in the years prior to AT&T's 2014 complaint. The Commission reasonably concluded that it was." *Id.* at 1003-04.

[21] *Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, 9116-17 ¶ 17 (2004) ("*Eighth Report and Order*").

[22] *See id.* at 9168 ("If a CLEC provides some portion of the interstate switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services." (citing 47 C.F.R. 61.26(f))).

B. Aureon is Not a Rural CLEC.

Aureon argues that its tariff rate complies with the relevant rules here because, among other things, it is entitled to the rural exemption to the benchmarking rule in 47 C.F.R. § 61.26. That is wrong.

Aureon maintains that because it does not provide the loops that connect end users to the network, it "serves" *no* end users and so is entitled to the rural exemption.[23] Aureon indeed suggests that *all* intermediate carriers that do not serve end users are entitled to the rural exemption because they have no end users.[24]

But the Commission has already found just the opposite: *no* intermediate carrier is entitled to the rural exemption. The Commission's conclusion is based, first, on the text of the rural exemption in 47 C.F.R. § 61.26(e). That rule supersedes the *general* benchmarking rule, but *does not* supersede 47 C.F.R. § 61.26(f), the benchmarking rule *for intermediate carriers*. Based on this, the Commission confirmed in *Great Lakes Comnet* that "the rural exemption does not apply to carriers that serve no end users whatsoever."[25] Instead, the Commission held that, to qualify for the exemption, carriers "must serve rural end users, and only rural end users."[26] During oral argument in the *Great Lakes Comnet* appeal, the Commission emphasized that the text of Section 61.26(e), by not superseding Section 61.26(f), excluded intermediate carriers from the exemption. "The plain language of 61.26(e)," stated the Commission, "pointedly excludes (f)" from its purview, so that "intermediate carriers cannot qualify for the rural

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[23] *See, e.g.*, Direct Case at 13.

[24] *Id.*

[25] *AT&T Servs. Inc.*, Memorandum Opinion and Order, 30 FCC Rcd. 2586, 2594-95 ¶ 27 n.96 (2015) ("*Great Lakes Comnet*").

[26] *Id.*

exemption."[27] Although the D.C. Circuit vacated that point because it found the Commission did not clearly articulate this reasoning in its order, the court agreed the conclusion "may have merit" as a basis for rejecting the intermediate carrier's entitlement to the rural exemption.[28] The Commission's understanding of the rule in *Great Lakes Comnet* was correct, and it continues to apply here. Since Aureon is an intermediate carrier, it cannot benefit from the rural exemption.

Even if some intermediate carriers were entitled to the exemption, Aureon would not be one of them. The exemption only applies to parties who provide service exclusively for rural end users, and Aureon provides service for termination of traffic to a great many end users in urban areas.[29] Indeed, Aureon's tandem switch is located in Des Moines, clearly an urban area. Even setting *Great Lakes Comnet* aside, the Commission's orders and the related policy considerations contradict Aureon's suggestion that *all* intermediate carriers would be entitled to the rural exemption. The Commission created the rural exemption in its *Seventh Report and Order* because CLECs serving rural end users incurred "much higher costs, particularly loop costs" compared to urban providers.[30] The *Eighth Report and Order* reaffirmed this policy rationale: the rural exemption "was intended to prevent rural competitive LECs with high loop costs" from being tied to low access charge rates.[31] Intermediate carriers like Aureon, however, have no loop costs at all. Nor do they face other unusually high expenses to justify the massive rate increase permitted under the rural exemption. There is thus no basis for the conclusion that

[27] Oral Argument at 19:20-20:09, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998 (D.C. Cir. 2016), https://www.courtlistener.com/audio/15624/great-lakes-comnet-inc-v-fcc/.

[28] *Great Lakes Comnet*, 823 F.3d. at 1004.

[29] Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9954 ¶ 76 (2001) ("*Seventh Report and Order*").

[30] *Seventh Report and Order*, 16 FCC Rcd. at 9950 ¶ 66.

[31] *Eighth Report and Order*, 19 FCC Rcd. at 9125-26 ¶ 35.

all intermediate carriers that do not serve end users—much less Aureon—should be entitled to the exemption.

C. The Liability Order Affirmed That Aureon is Still Subject to Benchmarking.

Aureon also argues that, to the extent it is subject to any cap on its rates, the *Liability Order* set that cap at $0.00819, and no lower cap—including a benchmarking cap—should apply. That is also wrong.

Aureon asserts that "[t]he Liability Order . . . held that the $0.00819 default transitional rate applies 'notwithstanding' the CLEC rate benchmark," and concludes that "[t]he rate ceiling established by the $0.00819 default transitional rate would serve no purpose if the CLEC benchmark also acted as a rate ceiling."[32] Aureon argues that it is "irrational" to apply both the $0.00819 "rate ceiling" referenced in the *Liability Order* and the benchmarking rule, and so asserts that the benchmarking rule should not apply to it.[33]

The Commission has already rejected this argument. In the *Liability Order*, the Commission noted that, *at a minimum*, Aureon could not set a tariffed rate any higher than $0.00819, because that was Aureon's tariffed rate when the *CAF Order* capped rates in 2011.[34] Since Aureon had set its rate above that level in 2013, that higher rate was invalid. But the Commission still found that Aureon was subject to the benchmarking rule; the Commission just "d[id] not have an adequate record to determine the pertinent benchmark rate."[35] The Commission explained, however, that "[t]o the extent that Aureon's rates exceed this benchmark,

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[32] Direct Case at 8.

[33] *Id.*

[34] *Liability Order*, 32 FCC Rcd. at 9688-89 ¶¶ 23-24.

[35] *Id.*

however, the rates in Aureon's intrastate or interstate tariff would also be unlawful under Rule 51.911(c)."[36]

That conclusion is not irrational at all. The Commission made clear in the *Liability Order* that, regardless of how the benchmarking rule would apply, Aureon's tariffed rate was invalid. But it also made clear that, once more information was available about the application of the benchmarking rule—as is the case now—then that rule would apply as well. As discussed below, Aureon's new tariffed rate is below $0.00819, but still does not comply with the benchmarking rule. So that new rate, too, remains invalid.

II. UNDER SECTION 51.911(C), CENTURYLINK IS THE CORRECT BENCHMARK FOR AUREON'S RATES.

The Commission's rules require that Aureon's rates be benchmarked to the rates of the ILEC that competes with Aureon in the provision of the relevant services.[37] Here, the relevant service market is the tandem transmission market, and Aureon's competition in that market is CenturyLink. CenturyLink is therefore the lawful benchmark for Aureon's tandem switching and transport rates.

A. CenturyLink is the Right Benchmark because it is the Relevant Competitor.

Section 51.911(c) provides that the "competing incumbent local exchange carrier" for purposes of applying the rule must be determined under the "procedures specified in Section 61.26."[38] Section 61.26, in turn, expressly indicates that the "competing [LEC]" is the

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[36] *Id.*

[37] *See* 47 C.F.R. § 51.911(c) (Rates must be "no higher than the . . . rates charged by the *competing* incumbent local exchange carrier . . .") (emphasis added).

[38] 47 C.F.R. § 51.911(c).

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."[39]

As a practical matter, if Aureon were to cease operations, the rural ILECs that currently subtend Aureon would have to find another tandem transport service provider. It is beyond serious dispute that the only ILEC in Iowa with the network capability to provide that service is CenturyLink.[40] CenturyLink has more tandem switches across Iowa than Aureon and is clearly in position to compete with Aureon. And unlike CenturyLink, few if any of Aureon's subtending LECs have tandem switches, and none of those LECs have an extensive transport network. Because CenturyLink has the only network comparable to Aureon's, it would provide the services here in Aureon's absence. It is therefore the "competing [LEC]" for benchmark purposes.

Aureon appears to argue, however, that the subtending LECs are the "competing [LEC]" because, "by virtue of jointly owning Aureon," they in "fact provide the services to themselves."[41] This argument is legally and logically wrong. As a legal matter, as noted above, identifying the "competing LEC" turns on who "would provide interstate exchange access services" if those services were "not provided by the CLEC."[42] And who *owns* Aureon plainly has nothing to do with who would provide the services at issue here if it did not exist. Again, CenturyLink is the only company with the facilities to provide these services. In addition, as a logical matter, Aureon's claim is baffling—it simply makes no sense to maintain that *because*

[39] 47 C.F.R. § 61.26(a)(2).

[40] CenturyLink bills at its tariffed tandem transmission service rates.

[41] Direct Case at 26 n.86.

[42] 47 C.F.R. § 61.26(a)(2).

the subtending LECs own Aureon they must be their own competitor. To the contrary, one would assume that a company's owners do *not* compete with it, not that they do.

2. NECA Tariff No. 5 is not the Correct Benchmark.

Aureon argues that, if the rural exemption does not apply, then "NECA rates would be the benchmark for CEA service."[43] According to Aureon, "[t]he subtending LECs are the 'competing ILECs' . . . because they provide local service to the end users in the exchanges for which Aureon provisions CEA service."[44] Again, however, Aureon's argument flatly ignores the definition of "competing [LEC]" set forth above. That definition focuses on who would "provide the *services* if they were not provided by the CLEC[45]—the rule says nothing about the services provided to end users or who provides those services to the *end users*.

Aureon appears to recognize this problem, because it also maintains that the subtending LECs satisfy the definition of "competing [LEC]" in Section 61.26(a)(2) because they "would have upgraded their end offices to provide equal access if Aureon had never been formed."[46] But this argument is incorrect for multiple reasons. First, contrary to Aureon's view, Section 61.26(a)(2) does not ask about a "hypothetical scenario" where Aureon was never formed. Rather, it asks who "would," in fact, "provide interstate exchange access services" if not the CLEC. The answer to that question is *not* the subtending LECs, but CenturyLink. Indeed, as Aureon acknowledges, the subtending ILECs are *not* in the relevant market, and in fact *cannot* be without substantial investments in additional network components. Moreover, as AT&T

[43] Direct Case at 19.

[44] *Id.*

[45] 47 C.F.R. § 61.26(a)(2).

[46] Direct Case at 24.

pointed out in its *Petition to Reject INS's Tariff*,[47] the specific purpose for which the Commission approved Aureon's network was to compete with that of CenturyLink (then Northwestern Bell).[48] Plainly, then, putting aside "hypothetical scenarios" and focusing on reality, it is CenturyLink that actually *is* a competitor to Aureon—and the subtending LECs are *not*.

III. SETTING THE APPROPRIATE BENCHMARK RATE FROM THE RELEVANT CENTURYLINK TARIFFED SWITCHED TRANSPORT RATE ELEMENTS.

As stated above, CenturyLink is the ILEC that Aureon is competing against and accordingly, Aureon should benchmark its rates to CenturyLink tandem-switched transport service rates.[49] Aureon could calculate that benchmark simply utilizing the existing rate levels and rate structure that CenturyLink employs, but Aureon has demonstrated a desire to calculate one bundled benchmark rate. This bundled rate should include several services that CenturyLink bills as separate rate elements.

Aureon's blended benchmark rate should include the rate elements listed in the table below. Aureon should aggregate the individual rate elements in the same manner that those rate elements are billed by CenturyLink. The units column represents the number of times CenturyLink Iowa is allowed to assess a given rate as defined by the FCC's access rate structure rules in Part 69. For each access minute, CenturyLink would assess 1 tandem switching rate, .5

[47] Petition of AT&T Services, Inc. to Reject or Suspend and Investigate Iowa Network Services, Inc. Tariff Filing, *In re Iowa Network Services, Inc., D/B/A Aureon Network Services Tariff F.C.C. No. 1, Transmittal No. 36*, at 7-8 (Feb. 26, 2018) ("*AT&T Petition to Reject INS's Tariff*").

[48] *See Application of Iowa Network Access Div.*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, ¶¶ 12, 16 (1988).

[49] CenturyLink Operating Companies Tarff F.C.C. No. 11 – 5th Revised Page 6-318 and 2nd Revised Page 6-318.1. *See* Declaration of Amy Clouser, Attachment B.

tandem transmission – fixed rate[50], 1 common transport multiplexing and finally a distance of tandem transmission –transport per mile rates (20 mile weighted average distance). As discussed below, Aureon did not produce the data necessary to calculate the weighted average transport distance between its tandem and sub-tending LECs. Sprint has chosen 20 miles based on data it possesses and industry knowledge. Sprint estimates that .003008 is the correct benchmark rate for Aureon's tandem transport service under the relevant rules, provided the Commission does not determine Aureon's rate should be lower based on a cost analysis.

Estimated Fair Rate Benchmark for Aureon Based on CenturyLink's Iowa Rates

	CenturyLink-IA Interstate Rates	**Units**	**Weighted Average Yield**
Tandem Transmission – Fixed	$0.00024	0.5	$0.000120
Tandem Transmission - Per Mile	$0.00003	20	$0.000600
Tandem Switching	$0.00225	1	$0.002252
Common Transport Multiplexing	$0.000036	1	$0.000036
Aueron Interstate Tandem TransportService Rate			**$0.003008**
Aueron Filed Tariff Rate			$0.005760
Percentage Filed Rate is Overstated			91%

Sprint, as a customer of Aureon, is billed mileage by Aureon for intrastate tandem transport service. From January 2014 through November 2017, the average distance of transport (total intrastate minutes divided by intrastate total miles) that was billed to Sprint by Aureon was

[50] The tandem transmission fixed rate was designed to collect the fiber optic terminal equipment on both ends of a transport route. Because these routes are meet point routes, meaning Aureon owns one end of the transport distance and the RLEC owns the other end, Aureon would only have equipment on one end of the transport distance. As a result, Aureon is entitled to only one-half of the rate.

just under twenty-one (20.99) miles.[51] Although Sprint's traffic may not mirror of all connecting carrier's traffic, it is a reasonable representative of average transport mileage and far below the existing one hundred miles mileage in the current Aureon rate. Sprint shares this data not to suggest that the mileage billed to Sprint is the correct mileage, but instead to demonstrate the existing one hundred miles in the Aureon rate is not a reasonable weighted average mileage.[52]

Sprint utilized the information above to estimate a reasonable weighted average mileage because Aureon did not provide any of the data that would be necessary to determine the correct mileage. Instead, Aureon provided the average distance between its eight physical connection points in Iowa. This data is insufficient, and frankly not meaningful, for several reasons. The data does not: (i) provide the Parties the airline distance between its tandem and each subtending LEC end office; (ii) tell the percentage of the distance to be billed by Aureon and the corresponding percentage to be billed by the subtending LEC; or (iii) provide the forecast minutes on each route so a weighted average billable mileage can be calculated.

IV. SPRINT BELIEVES THAT AUREON'S PROPOSED RATE IS NOT TIED TO ITS COSTS AND LIKELY DOES NOT COMPLY WITH SECTION 61.38.

In the *Liability Order*, the Commission found that Aureon's 2013 tariff filing was unlawful when filed and *void ab initio*. Consequently, the Commission ordered Aureon to file a revised interstate tariff in compliance with the *Liability Order* and to "comply with section 61.38

[51] *See* Declaration of Amy Clouser, Attachment A.

[52] Sprint has operated as a CLEC. In its capacity as a CLEC, Sprint provided service in many locations across the country including in Iowa, where Aureon provides service. When Sprint created its rates, it created a bundled rate like Aureon. Sprint included an average mileage distance of ten miles in its blended rate. Sprint and its customers agreed that ten miles was the typical distance of transport in the industry between the tandem and end office. In the years that Sprint offered service in Iowa under its blended rate that included an average mileage of ten miles, no one challenged Sprint's rate.

to support its rates *at or below the cap*."[53] The Commission 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 service affiliate."[54] On February 22, 2018, Aureon filed its new interstate tariff. In response to petitions filed by Sprint and AT&T, the Commission suspended Aureon's tariff and initiated this proceeding because it "conclude[d] that substantial questions of lawfulness exist regarding how Aureon revised the switched transport rate contained in its proposed tariff revisions."[55] It therefore directed Aureon to respond to numerous questions and to provide data and other information justifying its proposed rate.

Unlike AT&T, which is very familiar with much of the data and other information purporting to justify Aureon's new rate by virtue of being a party to the enforcement proceeding, Sprint is seeing much of this information for the first time. Aureon's confidential information has been accessed only by those individuals who have filed protective order acknowledgments, *i.e.*, Sprint's in-house counsel and outside counsel.[56] As a result, Sprint's response, particularly as it relates to responding to Aureon's cost data, is necessarily limited. Accordingly, Sprint reserves the right to supplement its comments to the extent that additional information may properly be made available to its in-house experts.

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[53] *Iowa Network Access Division Tariff, F.C.C. No. 1, Transmittal No. 36*, Order, DA No. 18-199, WC Docket No. 18-60, ¶ 2 (rel. Feb. 28, 2018) (emphasis added) ("*Order*").

[54] *See Liability Order*, 32 FCC Rcd. at 9692 ¶ 30.

[55] Order ¶ 1.

[56] Sprint joined AT&T's motion to amend the protective order to allow Sprint employees with expertise in reviewing cost studies access to Aureon's confidential data. Aureon opposed that motion. The Commission has not ruled on the motion as of the date of this filing and therefore, only Sprint's in-house and outside counsel have had access to the confidential filing.

CONCLUSION

For the reasons stated above, Sprint respectfully requests that the Commission reject Aureon's proposed tariff or require Aureon to revise the tariff rates to comply with the Commission's applicable benchmarking and parity rules. To this end, Sprint requests that the Commission require Aureon to provide the data that would be necessary to the correct average mileage for its rates. Or alternatively that the Commission adopt a rate based on the average mileage given that Aureon failed to provide the required data for the mileage calculation.

Respectfully submitted,

/s/ Amy E. Richardson .
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Counsel for Sprint Communications Company L.P.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2018, I caused a copy of the foregoing Motion Joining AT&T's Motion to Amend Protective Order and for Expedited Ruling to be served via email on the following:

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Pamela Arluk
Joel Rabinovitz
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Federal Communications Commission
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Via E-mail and First Class Mail

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REDACTED – FOR PUBLIC INSPECTION

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

In the Matter of **Iowa Network Access Division** **d/b/a Aureon** **FCC Tariff No. 1**	**WC Docket No. 18-60** **Transmittal No. 36**

DECLARATION OF AMY CLOUSER

I, Amy Clouser, hereby declare as follows:

1. I am employed by Sprint United Management Company, a services affiliate of Sprint Communications Company L.P. and my job title is Access Verification Analyst III. I have been employed by Sprint since 1998 and have primarily worked in the Access Verification department. In that position, my responsibilities include the auditing and processing of invoices related to switched access charges billed to Sprint in its capacity as a long-distance carrier.
2. I reviewed the billing from Aureon to Sprint for the invoiced periods of January 2014 through November 2017 and calculated the average miles billed for intrastate switched transport to be 20.99 miles. *See* Attachment A.
3. I reviewed the tariff filings for both Aureon and CenturyLink (formerly Qwest) and, based upon the CenturyLink tariff rates and the transport miles stated above, have calculated the estimated fair rate benchmark for Aureon to be $0.003008 per minute of use. *See* Attachment B (CenturyLink Operating Companies Tarff F.C.C. No. 11 – 5th Revised Page 6-318 and 2nd Revised Page 6-318.1)

I certify under penalty of perjury that the foregoing is true and correct, executed this 10th day of May, 2018.

Amy Clouser

Amy Clouser

Attachment A

REDACTED – FOR PUBLIC INSPECTION

Attachment A

[BEGIN CONFIDENTIAL]

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[END CONFIDENTIAL]

Attachment B

6.8 RATES AND CHARGES
6.8.1 SWITCHED TRANSPORT (Cont'd)

C. Tandem-Switched Transport

1. Tandem Transmission Usage Rates

MILEAGE BANDS	RATE PER ACCESS MINUTE FIXED	PER MILE
-Originating		
0	–	–
Over 0 to 8	$0.000240	$0.000030
Over 8 to 25	0.000240	0.000030
Over 25 to 50	0.000240	0.000030
Over 50	0.000240	0.000030
-Terminating – Tandem 3rd Party		
0	–	–
Over 0 to 8	0.000240	0.000030
Over 8 to 25	0.000240	0.000030
Over 25 to 50	0.000240	0.000030
Over 50	0.000240	0.000030
-Terminating – Tandem End Office		
0	–	–
Over 0 to 8	0.000000 (R)	0.000000 (R)
Over 8 to 25	0.000000	0.000000
Over 25 to 50	0.000000	0.000000
Over 50	0.000000 (R)	0.000000 (R)

6.8 RATES AND CHARGES
6.8.1 SWITCHED TRANSPORT (Cont'd)

C. Tandem-Switched Transport (Cont'd)

1. Tandem Transmission Usage Rates (Cont'd)

	RATE PER ACCESS MINUTE
• Tandem Switching Charge	
- Originating	$0.002252
- Terminating – Tandem 3rd Party	0.002252
- Terminating – Tandem End Office	0.000700 (R)
• Common Transport Multiplexing	
- Originating	0.000036
- Terminating – Tandem 3rd Party	0.000036
- Terminating – Tandem End Office	0.000000 (R)

2. Tandem Trunk Rate

	MONTHLY RATE
• Access Tandem Trunk Port Charge, Per Trunk	$6.00