Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of February 22, 2018 Access Charge Tariff Filing Iowa Network Services, Inc. d/b/a Aureon Network Services Tariff F.C.C. No. 1.	**WC Docket No. 18-60** **Transmittal No. 36**

RESPONSE OF IOWA NETWORK SERVICES D/B/A AUREON NETWORK SERVICES TO AT&T SERVICES, INC.'S IMPROPERLY FILED SURREPLY TO ITS MOTION TO AMEND PROTECTIVE ORDER

The self-styled "Supplemental Reply" filed by AT&T Services Inc. ("AT&T") on May 30, 2018 should be rejected because it was improperly filed and fails to provide any basis for modifying the Protective Order entered in this proceeding by the Federal Communications Commission ("FCC").

As a procedural matter, AT&T's submission is improper and should be disregarded because the filing was not authorized by the very rule that AT&T invoked to justify it. Rule 1.45, cited by AT&T, mandates that "pleadings in Commission proceedings shall be filed in accordance with the provisions of this section" and specifically permits only two filings following the filing of a motion – an "opposition," filed within "10 days" of the motion, and a "reply," filed within "5 days" of the opposition.[1] The provision governing replies further provides that "the response to all such matters shall be set forth in a single pleading."[2]

[1] 47 C.F.R. § 1.45.

[2] *Id.* § 1.45(c).

In accordance with Rule 1.45, Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon") filed its opposition to AT&T's April 23 motion on April 30, and AT&T replied on May 2, thus completing the three-document briefing cycle within the specified timeframes. AT&T's latest submission, however, constitutes an unauthorized fourth filing that:

(a) exceeds the Commission's specified three-document briefing cycle;

(b) violates the rule's requirement that AT&T's complete reply to Aureon's opposition "shall be set forth in a single pleading"; and

(c) was untimely filed fully thirty (30) days after Aureon's opposition.

Notably, AT&T did not even attempt to obtain the Commission's permission to file its supplemental brief before it submitted its additional pleading. AT&T's "Supplemental Reply" is thus an unauthorized, improper, and untimely submission. AT&T's latest filing should be rejected and its contents disregarded given AT&T's violation of the Commission's rules.

AT&T's submission is not only procedurally deficient; it is substantively meritless as well. To begin with, AT&T's claims that it needs one specific in-house employee who has routinely been involved in AT&T's competitive strategy to review Aureon's highly confidential and competitively sensitive materials in this investigation are grossly overblown. AT&T is part of a huge multibillion-dollar multinational enterprise with over a quarter of a million employees.[3] If it so chose, AT&T has more than ample resources to engage the top independent experts in the country to assist it in this tariff investigation without Aureon being forced to share information with someone from AT&T's inner circle whose professional mission is to increase AT&T's profits at the expense of AT&T's competitors. Moreover, AT&T already has submitted

[3] *See* AT&T Inc., 2017 Annual Report, at 14, at https://investors.att.com/~/media/Files/A/ATT-IR/financial-reports/annual-reports/2017/complete-2017-annual-report.pdf (last visited May 31, 2018).

voluminous responsive materials in this proceeding, including detailed analyses as well as materials in response to Commission staff requests made after AT&T submitted its opposition on May 10. These lengthy submissions show that AT&T has not been at a loss to present arguments and evidence that purport to support its position. AT&T simply has not demonstrated a need for Mr. Rhinehart or other non-lawyer AT&T business employees to gain access to the highly sensitive materials that Aureon is producing in this proceeding.

AT&T's more specific arguments are similarly meritless. AT&T first incorrectly asserts that the information that Aureon has produced is "much more limited than the information it produced in the complaint proceeding." AT&T Supp. Reply at 2-4. Contrary to AT&T's claim, Aureon already has produced different – and much more competitively sensitive – information in this investigation than it had previously. For example, Annex 3, which contains the non-regulated Network Division's lease amount and lease rate charged to the Access Division, is an exhibit that is unique to the tariff investigation proceeding. The detailed formulas, references, and calculations included with the native Excel file for Annex 3 has never before been made available to the Commission or AT&T. Furthermore, Commission staff directed Aureon to provide – which Aureon did –sensitive internal information regarding the minutes of use ("MOUs") for each point of interconnection ("POI") from its tandem switch in Des Moines. Aureon then performed – and submitted in this investigation – its own average weighted MOU analysis based on that information.[4]

In addition, in a May 31 meeting between Aureon and certain FCC personnel, FCC staff asked Aureon to provide its full circuit inventory regarding not only Aureon's regulated Centralized Equal Access ("CEA") operations but its non-regulated competitive operations as

[4] *See* Letter from J. Troup to M. Dortch providing requested MOU information (May 25, 2018).

well. This highly sensitive internal information would cause severe competitive harm to Aureon if it fell into the wrong hands, including the hands of Aureon's business rivals such as AT&T. Unlike the Enforcement Bureau proceeding where Aureon disclosed its highly confidential information to only one other party, AT&T, this tariff investigation involves multiple parties that would be allowed to review Aureon's highly confidential information, if AT&T's April 23 motion was granted. Moreover, the FCC's investigation is ongoing, and Aureon may be called upon to produce even more competitively sensitive information than the information produced thus far. The information submitted by Aureon can be easily used by AT&T and other competitors to design service offerings and marketing campaigns to target areas where such information shows that Aureon is most vulnerable, such as services that are the most expensive or least profitable for Aureon, or locations where competitors' efforts should be directed due to, for example, circuit availability or capacity issues.

AT&T also asserts that Aureon has not yet produced information related to third parties. Supp. Reply at 3-4. This claim also is untrue. For the first time, Aureon provided highly detailed MOU information in such a granular form that AT&T easily would be able to determine the traffic volumes of the other carriers with whom it completes simply by subtracting out its own traffic information and examining the remaining figures.[5] Furthermore, Sprint has submitted its own MOU information in this proceeding, which AT&T could use in combination with Aureon and AT&T's traffic data to build traffic and cost models to more effectively compete against AT&T's competitors.[6] Thus, even if AT&T's unauthorized surreply was considered on the merits, it adds nothing to AT&T's fatally deficient argument that its internal

[5] *Id.*

[6] *See,* Sprint Opposition, Attachment A (filed May 10, 2018).

business employees should be able to access Aureon's highly sensitive internal competitive information.

CONCLUSION

For the foregoing reasons, the FCC should refuse to consider AT&T's latest improper filing and deny AT&T's Motion.

Respectfully submitted,

/s/ James U. Troup
James U. Troup
Tony S. Lee
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, Suite 1100
Arlington, VA 22209
Tel: (703) 812-0400
Fax: (703) 812-0486
Email: troup@fhhlaw.com
lee@fhhlaw.com

Counsel for Iowa Network Services, Inc.
d/b/a Aureon Network Services

Date: June 4, 2018

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 4th day of June 2018, copies of the foregoing document were sent to the following:

Joseph Price
Pamela Arluk
Joel Rabinovitz
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via E-mail and Hand Delivery

Keith C. Buell
Director, Government Affairs
Sprint Communications Company L.P.
900 Seventh Street N.W
Suite 700
Washington, DC 20001
Keith.Buell@sprint.com
Via Email

James F. Bendernagel, Jr.
Michael J. Hunseder
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
Via Email

Curtis L. Groves
Associate General Counsel
Federal Regulatory and Legal Affairs
Verizon
1300 I Street, N.W., Suite 500 East
Washington, DC 20005
curtis.groves@verizon.com
Via Email

/s/ Monica Gibson-Moore
Monica Gibson-Moore