

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

In the Matter of)	
)	
)	
Updating the Intercarrier)	WC Docket No. 18-155
Compensation Regime to)	
Eliminate Access Arbitrage)	

**COMMENTS OF IOWA NETWORK SERVICES, INC.
D/B/A AUREON NETWORK SERVICES**

James U. Troup
FLETCHER, HEALD & HILDRETH
1300 17th Street North, 11th Floor
Arlington, VA 22209
Tel: (703) 812-0400
Fax: (703) 812-0486
Email: troup@fhhlaw.com

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

Date: July 19, 2018

TABLE OF CONTENTS

Table of Contents	i
Summary	ii
I. Introduction.....	1
II. Unlike a New Rule Directly Prohibiting Arbitrage, the Proposals to Change Inter-carrier Compensation or Require Direct Connections will Permit Arbitrage to Persist, Contrary to the Objective of this Proceeding.....	4
A. The Direct Connection Proposal.....	4
B. The Compensation Alteration Proposal.....	5
C. A New Rule Directly Prohibiting Arbitrage.....	8
III. Departing from the CEA Mandatory Use Policy in Aureon’s Section 214 Authorization is Unwarranted, Contrary to the Public Interest, and will not Help Achieve the Commission’s Goals.....	9
IV. If New Rules Adopted in this Proceeding Cause a Steep Decline in the Volume of Traffic on the CEA Network, the Commission Should Permit a Cost-Based CEA Tariff Rate Above the \$0.00819 Rate Cap, in Order to Keep the CEA Network Financially Viable.....	14
A. New Rules that Cause Significant Traffic Loss on the CEA Network without Allowing a Countervailing Increase in the Cost-Based CEA Tariff Rate will Force the Shut-Down of the CEA Network, Which is Critical to the Migration to IP Broadband Services in Rural Iowa.....	17
V. Given the Lack of Options for Transit Services in Many Rural Areas, the Commission Should Require Cost-Based Rates for Transit Services and Ensure that Smaller Carriers and Consumers are not Subject to Unwarranted Costs to Transit Calls.....	19
VI. Conclusion.....	21

SUMMARY

The FCC can abolish wasteful arbitrage without disturbing the Commission's policies for CEA service that have been successful in fostering competition in rural Iowa and making broadband and advanced features and functionalities available to hundreds of thousands of rural consumers. With precision and clear determination, the Commission should decide that arbitrage is an unjust and unreasonable practice, and by Commission rule, is prohibited. The Commission's indirect approaches, which have so far focused upon financial incentives and modifications to intercarrier compensation, have not stopped access stimulation. For similar reasons, the proposed rules in the NPRM will also fail to solve the problem. It is time for the Commission to take direct action, and adopt a rule that outlaws access stimulation once and for all.

The new rules proposed in the NPRM irredeemably conflict with the NPRM's objective because those proposals allow such arbitrage to spread and persist indefinitely. The proposal to move the payment responsibility for terminating switched access service from IXC's to LEC's modifies who pays for transporting access stimulation traffic, but does not stop such arbitrage. Such a modification to intercarrier compensation does nothing to stop current arbitrageurs, such as HD Tandem, from continuing to share transport revenue with its affiliate access stimulator, Free Conference Corp. Furthermore, exempting IXC's from paying for tandem-switching and transport creates incentives for IXC's to engage in arbitrage.

Similarly, the proposal to require direct connections does not eliminate arbitrage, but instead merely changes the route and the source of revenue for arbitrage from tandem-switched transport to direct-trunked transport (plus transit facilities). As the Commission's proposals force more traffic over transit service, the Commission should ensure that the rates for transit service are cost-based and avoid imposing unwarranted costs on consumers, particularly in rural areas where major carriers, such as CenturyLink, are the only providers of transit service.

As the Commission implements the new rules proposed by Aureon, which will eliminate all arbitrage traffic, the Commission should safeguard the CEA network's benefits to the public by ensuring that all traffic bound for CEA network subtending LEC's is transported over the CEA network. Furthermore, should the Commission adopt new rules in this proceeding causing a steep loss in the volume of traffic on the CEA network, the Commission should permit a cost-based CEA tariff rate above the \$0.00819 rate cap, if necessary to keep the CEA network financially viable. Through a combination of policies that completely eliminate arbitrage and support the future viability of CEA service, the Commission can best serve the public interest.

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

In the Matter of)	
)	
)	
Updating the Intercarrier)	WC Docket No. 18-155
Compensation Regime to)	
Eliminate Access Arbitrage)	

**COMMENTS OF IOWA NETWORK SERVICES, INC.
D/B/A AUREON NETWORK SERVICES**

Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”) hereby files its initial comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking¹ issued in the above-captioned proceeding.

I. Introduction.

As the Commission is aware, Aureon is a provider of centralized equal access (“CEA”) service in Iowa. CEA service is a unique service established by the FCC² that enables small interexchange carriers (“IXCs”) to compete with large, entrenched IXCs, such as AT&T, in rural areas. CEA service levels the competitive playing field by providing a centralized tandem switch for connecting calls between IXCs, on one hand, and rural local exchange carriers (“LECs”), on the other, at an affordable rate made possible by concentrating the rural traffic of

¹ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, WC Docket No. 18-155, FCC 18-68, 83 Fed. Reg. 30628-01 (rel. June 5, 2018) (“NPRM”).

² *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission’s Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468, 1471 ¶¶ 20-21 (1988) (“*FCC 214 Order*”), *aff’d on recon.*, 4 FCC Rcd 2201 (1989) (“*FCC 214 Recon. Order*”) (holding that CEA service serves the public interest, convenience and necessity); *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 681 (Iowa 1991) (distinguishing CEA service from other services and upholding the approval of Aureon’s CEA network).

all IXC's, both large and small. The service thus eliminates the need for each individual IXC to build its own expensive infrastructure to connect calls to and from rural LEC's. CEA service is not directly provided to individual consumers or end users, and CEA service does not receive Universal Service Funds ("USF") or Connect America Fund ("CAF") support.

Prior to Aureon's creation, long distance consumers in rural Iowa were forced to route their calls through AT&T (for interLATA calls) and Northwestern Bell Telephone Company ("NWB," now CenturyLink) (for intraLATA calls) because only AT&T and NWB had their own networks connecting their customers' calls to each rural LEC in Iowa.³ Only AT&T offered interLATA long distance service,⁴ and only NWB offered intraLATA long distance service⁵ due to their monopoly over long distance facilities serving rural Iowa exchanges. Small rural communities in Iowa have low population densities, and it was simply too expensive for small IXC's to build their own facilities to each rural LEC end office due to the high cost of construction and the insufficient return on investment in low-population communities. As a result, AT&T was the default monopoly provider of interLATA long distance service in rural Iowa.

Aureon was created to foster competition with AT&T. On February 29, 1988, the Commission granted a section 214 authorization to Aureon to build a fiber optic network to provide CEA service. The Commission found that the CEA network will "serve the public interest, convenience and necessity" by creating competition with AT&T in small rural communities, which is an important Commission goal.⁶ Aureon's network thus brought long

³ *FCC 214 Order* at 1471 ¶ 19.

⁴ *Id.* at 1468 ¶ 3.

⁵ *Nw. Bell*, 477 N.W.2d at 681.

⁶ *FCC 214 Order*, 3 FCC Rcd at 1468 ¶ 4, 1471 ¶¶ 21, 23.

distance competition to rural Iowa and made it economical for AT&T's smaller IXC competitors to provide service to rural Iowa by aggregating traffic for hundreds of rural LECs at Aureon's tandem switch in Des Moines and by centralizing the availability of expensive features and advanced functionalities.

Absent Aureon's CEA service, AT&T's smaller competitors would have to build or lease facilities to each of the rural LEC end offices connected to Aureon's network (otherwise known as "subtending LECs"). In the Commission's words, this would be "an expensive task."⁷ Aureon's CEA service connects the IXCs' facilities – at a single location in Des Moines⁸ – to 200 subtending LECs' networks, thereby enabling the IXCs' end users located in these LECs' service areas to dial 1 plus the area code to complete on an equal access basis their long distance telephone calls using the long distance carriers of their choice. CEA service also enables IXCs to connect at a single location in order to terminate their end users' calls to all the service areas of 200 subtending LECs. As the Commission anticipated, Aureon's network thus "speed[s] the availability of high quality varied competitive services to small towns and rural areas."⁹ CEA service has succeeded in making it attractive for fifteen IXCs to use the CEA network to originate traffic, and for seventeen IXCs to use Aureon's network to terminate traffic. Without Aureon's CEA service, a competitive choice of long distance carriers may never have developed in rural areas of Iowa.

It is important to note, however, that while competition was the initial primary driver for the creation of CEA service, subscribers in rural areas have gained so much more from Aureon's

⁷ *Id.* at 1468 ¶ 3.

⁸ CEA service also provides IXCs with the convenience of interconnecting with the CEA network at other locations specified in the CEA tariffs.

⁹ *Id.* at 1468 ¶ 4 and 1474 ¶ 38.

network than just a choice of competitive long distance carriers. Aureon's CEA service and ancillary offerings have made advanced communications services available in rural Iowa communities by concentrating voice, broadband, and video feeds and back office operations at a central location for distribution to disparate rural locations. Absent Aureon's network, hundreds of small towns and rural areas of Iowa would struggle to receive the same modern service offerings and technologies that are available in urban areas.

II. Unlike a New Rule Directly Prohibiting Arbitrage, the Proposals to Change Intercarrier Compensation or Require Direct Connections will Permit Arbitrage to Persist, Contrary to the Objective of this Proceeding.

The goal of this proceeding is “to stop economically wasteful arbitrage activity and the damage it causes to telecommunications markets.”¹⁰ The title of the NPRM is likewise “to eliminate access arbitrage.” However, the revised Part 51 rules proposed in the NPRM would not accomplish this goal.¹¹ “Congress established a presumption...against changes in current policy that are not justified.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983). Instead, the Commission should adopt the obvious alternative that will achieve the objectives of this proceeding: a new rule directly prohibiting arbitrage. *Id.* at 51.

A. The Direct Connection Proposal.

The Commission should reject proposals that do not have a “rationale connection” to the objectives of this proceeding. *Id.* at 56. Rather than “stop” or “eliminate” economically wasteful arbitrage activity, proposed rule 51.914(a)(2)¹² would encourage the continuation of high call

¹⁰ NPRM ¶ 36.

¹¹ *Id.* at App. A.

¹² *Id.*

volume services by permitting access stimulation traffic to be sent over a different route (direct-trunked transport rather than tandem switched transport). A new rule clearly stating that traffic stimulation is unlawful avoids the network construction costs required for direct connections under proposed rule 51.914(a)(2); substantial and unnecessary costs which will ultimately be borne by consumers. In addition, as the Commission recognized, “the investment made by an IXC to extend its network to directly interconnect” could be stranded. NPRM ¶ 18. If investment is made in direct connections in order to carry arbitrage traffic, and the Commission in the future adopts a policy that eliminates such arbitrage, then there will no longer be any access stimulation traffic to route over the direct connections, resulting in waste and stranded investment.

B. The Compensation Alteration Proposal.

Proposed rules 51.914(a)(1) and 51.914(d) ¹³ would also not achieve the objectives of this proceeding. Those proposed rules create financial incentives for new forms of arbitrage by shifting the payment responsibility for transporting and switching the stimulated traffic from the IXC to the terminating LEC. Those proposed rules would require LECs to pay for all terminating transport and switching, including terminating CEA service. This proposal modifies who pays for transporting access stimulation traffic, but does not stop access stimulation.

If IXCs pay nothing, then IXCs will have an incentive to stimulate traffic volume through revenue sharing with high call volume service providers, such as providers of chat lines and “free” conferencing calling services. For example, AT&T provides wholesale long distance transport and transit services for other IXCs. Rules 51.914(a)(1) and 51.914(d), as proposed in the NPRM, would create an incentive for AT&T to engage in arbitrage with high call volume

¹³ *Id.*

service providers and terminating LECs in order to stimulate traffic volume and thereby increase the revenue it receives from other IXC's for wholesale transport and transit services. Because, in this example, there is a revenue sharing agreement between AT&T and the terminating LEC, the NPRM's proposed rules would exempt AT&T from paying for terminating access service. The smaller IXC's that depend upon AT&T's transit service to complete their customers' calls would be the victim of this arbitrage, while AT&T, the terminating LECs, and the high call volume service provider would share the additional revenue resulting from the arbitrage. Price cap regulated LECs and commercial mobile radio service ("CMRS") providers would also be allowed to engage in arbitrage under the proposed rules. In contrast, a new rule rendering traffic stimulation unlawful prevents wasteful arbitrage from moving to different parts of the network.

Some of the major participants in current arbitrage schemes will be allowed to continue such arbitrage under the rules proposed in the NPRM. Regardless of who pays for terminating access service, HD Tandem and its affiliate, Free Conferencing Corp., can still engage in access stimulation. Unless the Commission adopts a rule prohibiting access stimulation, it is questionable whether a terminating LEC could refuse a request from Free Conferencing Corp. for local service in order to connect a "free" conference bridge to the LEC's network, even though the terminating LEC does not have a revenue sharing agreement. The money from transport that HD Tandem receives due to the stimulated traffic (whether paid by IXC's or terminating LECs) could then be shared with its affiliate, Free Conferencing Corp., without sharing any of that revenue with the terminating LEC.

Proposed rules 51.914(a)(1) and 51.914(d) are also unreasonable as they would modify Aureon's Section 214 certificate and upend the regulatory regime for CEA service contrary to the public interest and without furthering any government objective. Those proposed rules

would require LECs, rather than IXC, to pay for CEA service, even though CEA service was designed to benefit IXCs. The CEA network was constructed to foster competition with AT&T and Northwestern Bell Telephone Company (now CenturyLink) in rural Iowa by concentrating long distance traffic at a single location in order to make it economical for smaller IXCs to connect to hundreds of rural local exchanges. *FCC 214 Order*, 3 FCC Rcd. at 1468 ¶ 3 (“The [Iowa Network Access Division] INAD proposal is presented as a solution to the problem of how to achieve competition in long distance services in small rural communities”). IXCs competing with the incumbents (AT&T and CenturyLink) have benefitted from the CEA network by avoiding the costs of constructing or leasing facilities in order to connect with hundreds of rural exchanges throughout Iowa. There is no rational basis for charging LECs for CEA service that is provided to and for the benefit of IXCs.

Proposed rules 51.914(a)(1) and 51.914(d) are off-target, as there is no connection between the rates for CEA service and the Commission’s goal in this proceeding to eliminate access stimulation. How Aureon is compensated for CEA service does not affect access stimulation, as Section 61.38 of the Commission’s rules already requires the CEA tariff rate to decrease as traffic volume increases. Moreover, most access stimulation traffic in Iowa is not even routed over the CEA network, but instead is transported to conference bridges and other high call volume operations in Iowa by arbitrage networks, like the one operated by HD Tandem. Changing who pays for CEA service (from IXCs to LECs) does not achieve the Commission’s goal of eliminating wasteful arbitrage, but as described above, allows new arbitrage schemes by IXCs to fester. Therefore, the Commission should continue to require IXCs to pay for CEA service, consistent with Aureon’s Section 214 authorization, which concluded that CEA intercarrier compensation “will serve the public convenience and necessity.” *Id.* at 1471 ¶ 23

(“INAD’s plan, of course, will generate additional costs, but on the whole we find it will serve the public convenience and necessity”).

C. A New Rule Directly Prohibiting Arbitrage.

The Commission asked commenters to provide “any other proposed actions and rule additions or modifications we should consider.”¹⁴ As an alternative to proposed rule 51.914, the NPRM proposes that the Commission “find that access stimulation itself is unjust and unreasonable.”¹⁵ Aureon recommends that the Commission adopt new rules implementing this alternative proposal, as it provides a solution that directly addresses traffic stimulation arbitrage, without the costs and fallibility associated with less targeted proposed rule 51.914. Specifically, Aureon recommends that the Commission adopt the following new rules:

§ 51.903 Definitions.

(k) High Call Volume Service means a high call volume operation, including but not limited to, chat lines, adult entertainment calls, and conference calls marketed as “free,” where the party calling the High Call Volume Service is not charged a fee by the High Call Volume Service provider that fully recovers the costs of terminating tandem switching and terminating switched transport for the High Call Volume Service calls.

§ 51.914 Prohibition Against Traffic Stimulation.

- (a) Notwithstanding any other provision of the Commission’s rules, carriers shall not originate, transport, switch, or terminate calls for a High Call Volume Service. Monthly traffic volume of more than 100,000 minutes-of-use terminating to a single telephone number shall establish a rebuttable presumption that a High Call Volume Service is using that telephone number.

The proposed definition of “high call volume service” recognizes that traffic stimulation arbitrage depends upon callers paying little to nothing to call the high call volume service. The

¹⁴ NPRM ¶ 37.

¹⁵ Id. ¶ 27.

new rule that Aureon proposes strikes at the heart of the problem; eliminating arbitrage while avoiding the unwarranted costs to the industry and consumers associated with either (1) permitting traffic stimulation to continue over direct-trunked transport routes or (2) inciting new arbitrage schemes by relieving IXCs of any payment responsibility for tandem switching and transport.

III. Departing from the CEA Mandatory Use Policy in Aureon’s Section 214 Authorization is Unwarranted, Contrary to the Public Interest, and will not Help Achieve the Commission’s Goals.

The NPRM seeks comments on whether to require direct connections for access stimulation traffic and “end the ‘mandatory use’ policy applicable to some CEA providers.”¹⁶ The Commission also requested comments on CenturyLink’s proposal that would require direct connections and end the CEA mandatory use policy for all terminating traffic (both non-access stimulation traffic and access stimulation traffic).¹⁷ Such changes to the Commission’s CEA policies are uncalled-for, unjustifiable, and contrary to the public interest.

A critical aspect of the Commission’s Section 214 authorization for Aureon’s CEA network is the requirement that all IXCs, including CenturyLink, route their terminating traffic to the subtending LECs over the CEA network, which ensures that the tariff rate for CEA service remains affordable for CenturyLink’s smaller competitors.¹⁸ When the CEA network was initially proposed, CenturyLink’s predecessor, Northwestern Bell Telephone Company (“NWB”), sharply opposed construction of the CEA network. NWB (now CenturyLink) did not need the CEA network, and would incur additional costs to route its traffic over the CEA

¹⁶ *Id.* ¶ 16.

¹⁷ *Id.* ¶ 23.

¹⁸ As traffic volume decreases, the CEA per minute rate increases; and as traffic volume increases, the CEA per minute rate decreases.

network, because it already had transport facilities connected to the networks of the independent ILECs in Iowa. The Commission, however, found that Aureon's CEA network would not be economically viable if it carried only the traffic of new market entrants and required NWB (now CenturyLink) to route its terminating traffic over the CEA network to the facilities of the LECs that chose to connect to the CEA network. The Commission concluded:

All toll traffic, both inter- and intra-state, is to transit the Des Moines switch for ticketing and billing...In reaching its decision, the Bureau determined that INAD's [Aureon's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service.'"¹⁹

The Commission made Aureon's section 214 authorization conditional upon the adoption by the Iowa Utilities Board ("IUB") of a similar mandatory terminating use requirement for intrastate traffic.²⁰

After extensive hearings, the IUB likewise ordered CenturyLink (formerly NWB) to route its intrastate terminating traffic over the CEA network to ensure an affordable CEA rate for CenturyLink's smaller competitors. In the IUB's Final Decision and Order approving the establishment of the CEA network, the IUB made the following findings of fact:

It is reasonable that the participating telephone companies [i.e., the subtending LECs] be allowed to route their toll traffic as they choose, in this case pursuant to the participation agreement, both before an originating call has been delivered by INS [Aureon] and after a terminating call has been delivered to INS²¹

The IUB further ruled that "[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that all

¹⁹ *FCC 214 Recon. Order*, 4 FCC Rcd at 2201 ¶¶ 2, 3.

²⁰ *FCC 214 Order*, 3 FCC Rcd. at 1474 ¶ 39.

²¹ *Nw. Bell Tel. Co.*, FCU-90-6, 1991 WL 517007, slip op. at 3 (IUB May 10, 1991) (quoting the IUB's Final Decision and Order; *See In re Iowa Network Access Division, Final Decision and Order*, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, *28-29) (IUB Oct. 18, 1988).

terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for all such terminating traffic.”²²

The FCC and the IUB subsequently approved tariffs for Aureon that required IXC's to route over the CEA network all traffic terminating to or originating from the subtending LECs' exchanges, and they allowed Aureon to apply its CEA tariff rates to that traffic. The Commission has referred to this as the “mandatory use” requirement. *FCC 214 Order*, 3 FCC Rcd at 1472 ¶ 28; see also *id.* at 1473 ¶ 33 (“We do not believe that the mandatory termination requirement for interstate traffic is unreasonable...Given the expected benefits of the network...the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable”). The mandatory use requirement was affirmed on appeal to the Iowa Supreme Court,²³ which held that it was “eminently reasonable” for the IUB to determine that “unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only.” The Court reasoned that “[s]uch a result would frustrate one of the main goals of the INS [Aureon] system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition”.²⁴ The CEA mandatory use policy has greatly benefitted long distance competition in hundreds of small towns and rural areas because greater traffic volume lowers the CEA tariff rate paid by all IXC's, both large and small (*i.e.*, Aureon has more traffic over which to recoup its costs).

²² *In re Iowa Network Access Division, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention*, Docket No. RPU-88-2, slip op. at 5, (1988 Iowa PUC Lexis 1) (IUB Dec. 7, 1988) (“*IUB Order*”).

²³ *Nw. Bell*, 477 N.W.2d at 684.

²⁴ *Id.*

In reaching those decisions, the Commission and the IUB determined that the construction of an extensive CEA fiber optic network would create competition in small towns and rural areas of Iowa, and for that CEA network to be financially viable, all IXC's, including CenturyLink (formerly NWB) and AT&T, would need to route their traffic to the subtending LECs over the CEA network. Such an arrangement ensures that the rates for CEA service are reasonable for all IXC's regardless of size, and it fosters competition in the long distance market in rural areas of Iowa. As a result of the Commission's CEA policies, the CEA network has succeeded in making it attractive for fifteen IXC's to originate traffic from the subtending LECs' rural exchanges, and for seventeen IXC's to terminate traffic to those rural exchanges,

If a large carrier, such as CenturyLink, were permitted to bypass the CEA network, the costs for other carriers to serve rural areas would significantly increase because Aureon's CEA rate is inversely related to the amount of traffic carried – *i.e.*, as traffic volumes increase, the CEA rate decreases, and vice versa. Should the Commission abandon its CEA policy and allow CenturyLink to remove its traffic from the CEA network, CenturyLink would be given an unfair competitive advantage over other long distance carriers that continue to rely upon the CEA network to serve rural Iowa, as the loss in traffic volume puts upward pressure on the CEA tariff rate. Consequently, CenturyLink's proposal to remove all terminating traffic from the CEA network would roll back the clock 30 years; eventually allowing CenturyLink to reassert the monopoly power once controlled by its predecessor, NWB, over intraLATA long distance service in many small Iowa towns and rural areas, which is the precise scenario that CEA was created to remedy in the first instance.

The CEA mandatory use policy also helps reduce access traffic stimulation. Traffic that is routed over the CEA network provides no revenue to share with high call volume service

providers. It is not possible for Aureon to enter into such revenue sharing because as traffic volume increases, Section 61.38 causes Aureon's CEA tariff rate to decrease. However, when IXC's violate the Commission's CEA policies by routing traffic to intermediate carriers like HD Tandem, rather than over the CEA network, they allow HD Tandem to engage in arbitrage and share the transport revenue with its affiliate high call volume service provider, Free Conference Corp.

Ending the CEA mandatory use policy is contrary to the public interest and does not achieve the goal of this proceeding. There is a continuing need to maintain the Commission's CEA policies because, as the Commission recently observed, "there are a limited number of interexchange carriers in parts of Alaska and Iowa."²⁵ There is also a continuing need to ensure that access to broadband and other advanced telecommunications services remain affordable in rural Iowa. According to a study this year by United Ways of Iowa, "nearly 40 percent of Iowans can't afford the basics."²⁶ Allowing the major IXC's (CenturyLink and AT&T) to remove their terminating traffic from the CEA network would undermine the financial viability of the CEA network and seriously harm competition and the availability of modern information services in rural Iowa. At the same time, such a drastic policy change would escalate, rather than eliminate, arbitrage over routes other than the CEA network, such as CenturyLink's transit network, HD Tandem's revenue sharing transport, and direct-trunked transport.

²⁵ *In the Matter of Nationwide Number Portability*, Report and Order, WC Docket Nos. 17-244 and 13-97, FCC 18-95, slip op. at ¶ 16 (rel. July 13, 2018).

²⁶ Kevin Hardy, *Nearly 40 Percent of Iowan Can't Afford the Basic – and the Problem is only Getting Worse*, Des Moines Register, June 26, 2018.

IV. If New Rules Adopted in this Proceeding Cause a Steep Decline in the Volume of Traffic on the CEA Network, the Commission Should Permit a Cost-Based CEA Tariff Rate Above the \$0.00819 Rate Cap, in Order to Keep the CEA Network Financially Viable.

Should the Commission adopt new rules in this proceeding that cause a significant volume of traffic to be removed from the CEA network, the Commission should allow Aureon to increase the per minute CEA tariff rate above the \$0.00819 per minute rate cap,²⁷ if necessary to keep the CEA network financially viable. A higher per minute rate would be needed to recover the fixed costs of providing CEA service if there are fewer minutes-of-use to recover those costs. CEA service is not provided to end users from whom Aureon could offset the cost recovery shortfall through an increase in end user charges. CEA service also does not receive money from either the Connect America Fund or the Universal Service Fund that could lessen the shortfall in cost recovery if the Commission adopts new rules removing traffic from the CEA network. Given the absence of any other cost recovery mechanism, capping the CEA tariff rate while severely reducing CEA traffic volume would seriously threaten the financial viability of the CEA network and put in jeopardy the greater consumer choice of long distance services and advanced technologies that CEA has made available in rural Iowa.

If Aureon is unable to charge a cost-supported CEA rate that will enable the company to maintain its operations, let alone upgrade its aging infrastructure and continue its core mission of bringing a competitive choice of long distance carriers and advanced telecommunications services to rural customers in Iowa, the adverse impact on those customers resulting from the discontinuance of CEA service would be severe, and for many communities, catastrophic. The discontinuance of CEA service by Aureon would negatively impact more than 300,000 rural

²⁷ *In the Matter of AT&T Corp. v. Iowa Network Services, Inc.*, 32 FCC Rcd. 9677, 9689 ¶ 24 (rel. Nov. 8, 2017) (adopting a default transitional for CEA service of \$0.00819 per minute).

customers in Iowa. Specifically, 180,000 customers would suffer the complete loss of long distance/toll calling service, and an additional 120,000 would also be negatively impacted by the loss of the CEA network. Approximately 460 out of 600 rural communities would be completely isolated from the rest of the nation because without CEA service, no IXC's would be able to reach those communities even through CenturyLink's network. Another 140 communities in Iowa similarly would be isolated from the national public switched telephone network, and residents living in those areas would only be able to place local calls to other nearby communities through extended area service arrangements.

In the NPRM, "[t]he Commission made clear that its rules to address access arbitrage would result in interstate access rates 'consistent with section 201(b) of the Act,'" which requires just and reasonable tariff rates.²⁸ Accordingly, if the Commission adopts new rules removing a significant volume of traffic from the CEA network, the Commission should allow Aureon to charge IXC's a cost-supported CEA tariff rate that is just and reasonable, as defined by the "end result standard."²⁹ That legal standard prescribes a cost-supported rate that is "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital," provide sufficient "revenue not only for operating expenses but also for the capital costs of the business," and include revenue for "service on the debt and dividends on the stock."³⁰ A rate is not just and reasonable unless the rate "may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests,

²⁸ NPRM ¶ 36.

²⁹ *Jersey Cent. Power & Light Co. v. Fed. Energy Reg. Comm'n*, 810 F.2d 1168, 1177-78 (D.C. Cir. 1987).

³⁰ *Id.* at 1176.

both existing and foreseeable.”³¹ “A basic principle used to ensure that rates are ‘just and reasonable’ is that rates are determined on the basis of cost,”³² and “‘the true cost characteristics of telephone company plant.’”³³ Rates also should “provide carriers with a fair opportunity to achieve their regulated rates of return over the long-term.”³⁴ Therefore, in accordance with these legal principles, the new rules adopted in this proceeding should ensure that the CEA tariff rate remains just and reasonable, even if that requires a rate higher than the \$0.00819 rate cap for CEA service.

The Commission should provide Aureon with the ability to operate the CEA network not only in a sustainable manner to avoid disenfranchising significant portions of rural Iowa that rely on the CEA network to connect to the national public switched telephone network, but also to earn sufficient revenues to continue to expand and improve its network and services so that rural areas will not fall victim to a digital and technology divide. Permitting increases to the CEA tariff rate to compensate for traffic volume decreases caused by new rules adopted in this proceeding will promote and protect the public interest by ensuring that rural consumers have access to affordable advanced telecommunications services through the preservation of a cost-efficient and financially-sustainable CEA network.

³¹ *Id.* at 1177.

³² *MCI Telecomm. Corp. v. FCC*, 675 F.2d 408, 410 (D.C. Cir. 1982) (quoting 47 U.S.C. § 201(b)).

³³ *Nat’l Ass’n of Reg. Util. Comm’rs v. FCC*, 737 F.2d 1095, 1147 (D.C. Cir. 1984) (quoting *MTS and WATS Market Structure*, 93 F.C.C.2d 241, 251 (1983)).

³⁴ *Virgin Islands Tel. Corp.*, 989 F.2d 1231, 1234 (D.C. Cir. 1993). *See also AT&T v. FCC*, 836 F.2d 1386, 1389-90 (D.C. Cir. 1988) (“The rate of return the Commission prescribes must be sufficient to cover the cost of capital the carrier must raise to do business”).

A. New Rules that Cause Significant Traffic Loss on the CEA Network without Allowing a Countervailing Increase in the Cost-Based CEA Tariff Rate will Force the Shut-Down of the CEA Network, Which is Critical to the Migration to IP Broadband Services in Rural Iowa.

The NPRM requests comments on whether the Commission’s proposals will “affect incentives for carriers to migrate their services to IP.”³⁵ New Commission rules that substantially reduce the traffic on the CEA network will adversely impact the migration to IP in rural Iowa if Aureon is not permitted to increase its CEA tariff rate above the \$0.00819 rate cap. CEA service has enabled rural consumers to reap the benefits of ever-changing technological advances by concentrating traffic, and making modern telecommunications services more affordable to provide in rural areas.

The Commission providently decided that the CEA network would “speed the availability of high quality varied competitive services to small towns and rural areas.”³⁶ Similarly, the IUB determined that:

the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services. . . . A network such as the one to be provided by [Aureon] provides the means to assure timely access to information services in rural Iowa. Without such timely access, the development in rural areas could be impeded.³⁷

The Iowa Supreme Court affirmed these findings, holding that “[t]he network will also offer ‘modern information systems’ to the PTC’s, another feature formerly unavailable because of the

³⁵ NPRM ¶ 20.

³⁶ *FCC 214 Order* at 1468 ¶ 4 and 1474 ¶ 38.

³⁷ *Iowa Network Access Division*, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at *16-17 (IUB Dec. 7, 1988).

thinness of the market in any single independent, local telephone company prior to the [Aureon] collectivization.”³⁸

Aureon’s fiber network is critical and necessary to ensure that rural customers continue to have access to broadband, high definition video, and other advanced services that their urban counterparts take for granted. There are hundreds of small, rural LECs in Iowa, and they simply do not have the capital and technical resources to invest in all of the expensive equipment and other upgrades necessary to provide competing broadband providers with direct connections to their rural customers. Furthermore, the availability of advanced voice, video, and broadband Internet services in rural communities depends upon making those rural areas more attractive for smaller broadband providers to serve because the large carriers are uninterested in providing a comprehensive array of services in small towns due to the high costs and poor return on investment in such rural locations. Indeed, large legacy carriers, such as AT&T, have stated that there is no business case for serving rural areas because the costs to provide service in rural areas far exceed the revenues received from rural subscribers.³⁹ Aureon’s network will enable smaller IP carriers to connect at a single location to provide advanced services to the rural customers located in the hundreds of LEC exchanges subtending Aureon’s CEA tandem.

³⁸ *Nw. Bell*, 477 N.W.2d at 681.

³⁹ *See, e.g.*, Transcript of Oral Argument at 24, *AT&T, Inc. v. FCC*, No. 15-1038 (D.C. Cir. Oct. 26, 2017) (FCC stated that “the carriers were looking to be relieved nationwide of this obligation to serve where there’s no support.”); Brief of Petitioner AT&T Inc. at 29, *AT&T v. FCC*, Case No. 15-1038 (D.C. Cir. June 15, 2015) (“AT&T submitted evidence showing that the cost of providing such service is substantial: using the FCC’s own data, AT&T showed it would cost its affiliates between \$1.08 and \$1.8 billion per year to provide standalone voice service throughout their ETC service territories — or up to ten times what those carriers receive in total in frozen support.”); Joint Brief of Petitioners and Intervenors AT&T, CenturyLink, and U.S. Telecom at 57, *AT&T v. FCC*, Case No. 15-1038 (D.C. Cir. Jul. 12, 2016) (“the cost to AT&T of providing service in ‘extremely’ high-cost areas, where no support is yet available, is \$360 million/year, of which less than 10% is recovered in revenue”).

Without the aggregation of CEA traffic by Aureon's network, smaller providers of advanced services trying to compete with AT&T in rural Iowa will find it uneconomical to build new infrastructure to each of the rural LECs' service areas. Aureon defrays many of those costs by providing a central point to concentrate functionalities, and provides economies of scale that make it cost-effective to serve remote locations that competitive broadband providers would not otherwise be able to serve. For example, Aureon's fiber network is used to distribute video programming to rural areas, and Aureon aggregates video content at a central headend before distributing content to broadband providers that provide digital video or IPTV service to rural customers. Similarly, Aureon's high-capacity fiber network is used to concentrate broadband Internet traffic so that data traffic can be concentrated at one location for efficient routing to other Internet backbone providers. By centralizing traffic, Aureon makes it economical for multiple, competitive broadband providers to make their advanced services available to the customers in the service areas of the 200 LECs connected to the CEA network, and promotes investment in broadband services in rural areas so that rural customers do not fall victims of the "digital divide." Therefore, ensuring that Aureon's network remains financially and technically viable to transport IP traffic (by permitting Aureon to charge IXCs a just and reasonable, cost-supported CEA tariff rate above the rate cap) is vital to the migration to an all IP network in rural Iowa.

V. Given the Lack of Options for Transit Services in Many Rural Areas, the Commission Should Require Cost-Based Rates for Transit Services and Ensure that Smaller Carriers and Consumers are not Subject to Unwarranted Costs to Transit Calls.

The NPRM proposes new rules that could increase the volume of traffic routed over wholesale interexchange transport facilities, transit services, or other intermediate carrier

transport networks.⁴⁰ To prevent the major carriers, such as CenturyLink and AT&T, from reaping windfall profits from new rules promulgated in this proceeding, the Commission should regulate the rates for transit service, wholesale interexchange transport, and intermediate carrier transport, and ensure that those rates are cost-based. There is a lack of competition for transit service in many rural areas. For example, CenturyLink is the only provider of transit service that reaches many areas of rural Iowa. Smaller carriers without nationwide networks will be severely disadvantaged if the major carriers are allowed to wield their market power and charge smaller carriers excessive rates for transit and other intermediate carrier services. Furthermore, consumers will be harmed by unchecked prices for transit service, as significant and unwarranted costs are passed on to the public.

AT&T has alleged that the Commission lacks legal authority to regulate the rates of intermediate carriers.⁴¹ However, Section 201(b) of the Communications Act (the “Act”) clearly authorizes the Commission to regulate the rates of transit and other intermediate carrier services in order to ensure that those rates are “just and reasonable.” Furthermore, section 251(g) authorizes the Commission to adopt new rules requiring cost-based rates for transit and other intermediate carrier services. Section 251(g) authorizes current “restrictions and obligations” to be “explicitly superseded by regulations prescribed by the Commission.” With respect to rates for intermediate carrier services, the courts have expressly held that Section 251(g) “leaves the door open for the promulgation of new rates” and “cost-based restrictions” for interexchange

⁴⁰ See e.g., NPRM ¶ 15 (“a third-party vendor may need to connect the two networks”); see also, Public Notice, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit*, DA 17-863, WC Docket No 10-90; CC Docket No. 01-92 (rel. Sept. 8, 2017) (“we seek comment on whether the Commission should adopt regulations governing the rates for transit service”).

⁴¹ AT&T Comments at 16, WC Docket No 10-90; CC Docket No. 01-92 (Oct. 26, 2017).

transit service. *SprintCom, Inc. v. Scott*, No. 13C06565, 2014 W.L. 6759714, slip op. at *4 (N.D. Ill. 2014) *quoting Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1073 (8th Cir. 1997). Pursuant to the Commission's authority under Sections 201 and 251(g), Aureon urges the Commission to adopt new cost-based rate regulations for transit and other intermediate carrier services in order to prevent excessive rates for those transport services that will ultimately be borne by consumers.

VI. Conclusion.

The objective of the NPRM is to adopt new rules eliminating arbitrage. That goal can be effectively achieved by adopting a new rule directly prohibiting arbitrage. In contrast, the new rules proposed in the NPRM irredeemably conflict with the NPRM's objective because those proposals allow such arbitrage to spread and persist indefinitely.

The proposal to move the payment responsibility for terminating switched access service from IXC to LEC modifies who pays for transporting access stimulation traffic, but does not stop access stimulation. Such a modification to intercarrier compensation does nothing to stop current arbitrageurs, such as HD Tandem, from continuing to share transport revenue with its affiliate access stimulator, Free Conference Corp. Furthermore, exempting IXCs from paying for tandem-switching and transport creates incentives for IXCs to engage in arbitrage.

Similarly, the proposal to require direct connections does not eliminate arbitrage, but instead merely changes the route and the source of revenue for arbitrage from tandem-switched transport to direct-trunked transport (plus transit facilities). Given the lack of competitive alternatives for transit service in many rural areas, the Commission should regulate the rates for transit service, ensure that those rates are cost-based, and avoid an inexcusable increase in costs for American consumers.

The most reasonable course of action that protects the public welfare is for the Commission to abolish arbitrage without dismantling the Commission's CEA policies. The Commission's current policies for CEA are critical to keeping many thousands of rural consumers connected to the public switched network and making competition, IP broadband, and advanced telecommunications services available in rural Iowa. As the Commission implements the new rules proposed by Aureon, which will eliminate all arbitrage traffic, the Commission should safeguard the CEA network's benefits to the public by ensuring that all traffic bound for CEA network subtending LECs is transported over the CEA network. Furthermore, should the Commission adopt new rules in this proceeding causing a steep loss in the volume of traffic on the CEA network, the Commission should permit a cost-based CEA tariff rate above the \$0.00819 rate cap, if necessary to keep the CEA network financially viable. The Commission can outlaw wasteful arbitrage and concurrently implement policies that will help maintain and enhance the CEA network in Iowa, which will accelerate the modernization of telecommunications and improve the lives of many thousands of rural consumers. Those goals are not mutually exclusive.

Respectfully submitted,

/s/ James U. Troup
James U. Troup
FLETCHER, HEALD & HILDRETH
1300 17th Street North, 11th Floor
Arlington, VA 22209
Tel: (703) 812-0400
Fax: (703) 812-0486
Email: troupe@fhhlaw.com

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

Date: July 19, 2018