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

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

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

James U. Troup
Tony S. Lee
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

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SUMMARY

Many parties have filed comments in response to the FCC's NPRM proposing to eliminate access arbitrage. However, Iowa Network Services, Inc. d/b/a Aureon Network Services' ("Aureon") proposed new rule is the only one that actually achieves the Commission's goals. Most commenters either support the Commission's proposal to allow interexhange carriers ("IXCs") to directly connect with access stimulating local exchange carriers ("LECs") or to require those LECs to be financially responsible for the cost to transport calls from the IXCs to the LECs. Others support a move to a bill-and-keep system for all calls. Neither the direct connection/LEC-must-pay nor the bill-and-keep proposals will solve the access arbitrage problem.

As an initial matter, the FCC must ensure that CEA service is preserved. Aureon's network has brought long distance competition to rural Iowa, and made it economical for AT&T's smaller IXC competitors to provide service to rural areas by concentrating traffic for hundreds of rural local exchange carriers at Aureon's tandem in Des Moines, Iowa, and by centralizing the availability of expensive features and advanced functionalities. Without Aureon's network, hundreds of small towns and rural areas of Iowa would not receive the same modern service offerings and technologies that are available in urban areas. Furthermore, requiring use of Aureon's CEA network through strict enforcement of the CEA mandatory use policy prevents arbitrage as the CEA tariff rate decreases with increases in traffic volume, thereby eliminating any excess revenue that could be shared with access stimulators.

Direct connections that bypass Aureon's CEA network will not solve the access stimulation problem because requiring direct connections for access stimulation traffic will permit such traffic to continue while imposing significant costs upon the industry. Furthermore, traffic stimulators can shift traffic easily, and IXCs may find it impossible to avoid high access charges because the stimulators could simply move their activities to a different area where the IXCs do not have direct connections. The LEC-must-pay option will also not eliminate access arbitrage. If IXCs are exempt from paying for access service, they will engage in arbitrage by charging other carriers with respect to wholesale IXC transport and transit services. Commenters report that AT&T is already engaging in this type of arbitrage activity.

The bill-and-keep proposal would cause significant market disruptions because if the FCC were to adopt bill-and-keep for all traffic, this would literally leave no source of revenues for Aureon to operate, let alone maintain or upgrade, the CEA network. This would inevitably lead to the shutdown of the CEA network, and as discussed above and in Aureon's comments, disconnect hundreds of rural Iowa communities, and hundreds of thousands of customers, because the CEA network is the only way for many subtending LECs to route calls to the PSTN.

The only viable way for the FCC to end the access arbitrage problem is to enforce the CEA mandatory use policy for all traffic bound for subtending LECs to ensure that the CEA rate is low enough to make traffic pumping unprofitable, adopt Aureon's new rule to eliminate access arbitrage, regulate the rates for transit service, wholesale interexchange transport, and intermediate carrier transport, and ensure that those rates are cost-based.

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D/B/A AUREON NETWORK SERVICES

Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon") hereby files its reply in response to comments submitted regarding the Federal Communications Commission's ("FCC" or Commission") Notice of Proposed Rulemaking[1] issued in the above-referenced proceeding.

I. INTRODUCTION

The purpose of the FCC's NPRM is ostensibly to "eliminate access arbitrage." However, almost none of the comments filed in this proceeding actually proposes to do that. Rather, most commenters' proposals merely move the access arbitrage problem to a different part of the network, and shift costs to other parties. The few proposals that purport to eliminate access arbitrage do so through bill-and-keep proposals that will cause significant harm to consumers, as well as providers of telecommunications services that are critical to the operation of the public switched telephone network ("PSTN"), and that are crucial to the transition to an all-IP-based network. Bill-and-keep proposals do not take into account CEA providers, such as Aureon, that do not have any end users from which they can obtain revenues in order to provide service to interexchange carriers ("IXCs") and their long distance customers. Bill-and-keep proposals also

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

do not account for services that other carriers provide, such as transport and transit service, that are not billed to end users, but rather, to other carriers that use those services.

The Commission must take decisive action to stamp out traffic stimulation activities, rather than adopt rules that will merely allow arbitrageurs to exploit loopholes to continue their illicit activities. The public interest is not advanced if competitive choice for consumers is reduced, or if the only carriers that can continue to operate under the rules adopted by the Commission are large carriers, such as CenturyLink and AT&T. Aureon's alternative new rule that directly prohibits arbitrage is the only proposal that will achieve the Commission's stated goal of eliminating access arbitrage, while also ensuring that customers can continue to receive the services they want without unnecessary market disruptions, and providers of critical and necessary services to customers and carriers alike are not harmed.

II. DISCUSSION

A. CEA Service is Critical for Rural Iowa Areas, and Must be Preserved.

As Aureon noted in its initial comments, Aureon's network has brought long distance competition to rural Iowa, and made it economical for AT&T's smaller IXC competitors to provide service to rural areas by concentrating traffic for hundreds of rural local exchange carriers ("LECs") at Aureon's tandem in Des Moines, Iowa, and by centralizing the availability of expensive features and advanced functionalities.[2] Without Aureon's network, hundreds of small towns and rural areas of Iowa would not receive the same modern service offerings and

[2] Aureon Comments at 2-3. Comtech Telecommunications, Inc. filed comments regarding South Dakota Network's ("SDN") charges for transporting 911 traffic to public safety answering points ("PSAPs") via the SDN CEA network. *See generally* Comtech Telecommunications Inc. Comments. The transport of 911 calls is not an issue with Aureon's CEA service because in Iowa, the LECs are responsible for transporting 911 calls to the appropriate PSAP.

technologies that are available in urban areas.[3] Indeed, hundreds of thousands of rural Iowans rely on Aureon's network not just for advanced services, such as broadband access and IPTV offerings, the Aureon's CEA network is literally the only way that hundreds of communities are able to connect to the public switched telephone network ("PSTN").[4] If the Commission were to adopt policies that made the operation of Aureon's CEA network economically unviable, thereby forcing the shutdown of CEA service, those communities would become "stranded islands," with residents only able to call other residents living in the local area, or nearby communities that happened to be connected through extended area service calling arrangements.

It its comments, the Iowa Communications Alliance ("ICA") recognized the critical importance of CEA service, and noted that "[i]n rural Iowa, the CEA network . . . provides efficient and cost-effective equal access to even the smallest communities, expanding consumer choice for long distance and advanced services, reducing equipment costs for RLECs [rural LECs], and eliminating the need for duplicative technologies in numerous rural exchanges."[5] The CEA network also "reduces costs for IXCs, wireless carriers. CLECs [competitive LECs], IPTV and broadband competitors . . . who would otherwise have little or no business case to compete for rural customers.[6] Aureon agrees with ICA's comments that CEA service is vital to rural Iowa not only for purposes of connectivity, but also for the productivity and advancement of rural areas because a "network revolution cannot occur in areas where there is no network."[7]

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[3] *Id* at 4.

[4] *Id.* at 21.

[5] ICA Comments at 2.

[6] *Id.* (citation omitted).

[7] *Id.* at 3.

Aureon also agrees with ICA's astute observation that because regulated CEA operations are funded solely by tandem switching and transport charges, CenturyLink's proposal to allow direct connection, and to bypass Aureon's CEA network, underscores the importance of intercarrier compensation in modernizing rural networks.[8] Aureon's network centralizes the availability of expensive features and advanced functionalities for LECs that subtend the CEA network, and 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.[9] Hundreds of small RLECs in Iowa simply do not have the capital and technical resources to invest in the equipment and other upgrades necessary to provide competing broadband providers with direct connections to their rural customers.[10] 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.[11]

ICA correctly notes that for Iowa's small RLECs, Aureon's network is critical to meeting the business challenges and technical requirements necessary to ensure reasonable financial and other terms for transport and interconnection in an all-IP world.[12] However, none of this would be possible if the FCC adopts rules that permit the bypass of Aureon's network, thereby

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[8] *Id.* at 4.

[9] Aureon Comments at 3, 4.

[10] *Id*. at 18.

[11] *Id.*

[12] ICA Comments at 4.

depriving Aureon of CEA revenues for its regulated operations, or moves to a system of full bill-and-keep as urged by some commenters.[13]

B. Use of the CEA Network Pursuant to the FCC's Mandatory CEA Use Policy Will Prevent Access Arbitrage.

As discussed in Aureon's comments, the FCC and the IUB approved tariffs for Aureon that required IXCs to route over the CEA network all traffic terminating to or originating from the subtending LECs' exchanges pursuant to a "mandatory use" policy.[14] AT&T asserts that there is no mandatory use requirement for CEA service,[15] but AT&T is wrong. As Aureon previously explained, when the FCC granted Section 214 authority to Aureon to provide CEA service, the Commission stated that "[w]e 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."[16] The mandatory use requirement was affirmed on appeal to the Iowa Supreme Court, 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."[17]

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[13] *See, e.g.,* Sprint Comments at 1.

[14] Aureon Comments at 11.

[15] AT&T Comments at 8, n.18 & at 18.

[16] *Id.* at 11 (citing and quoting *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, 1472 ¶ 28 & 1473 ¶ 33 (1988)).

[17] *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 684 (Iowa 1991).

Requiring use of Aureon's CEA network through strict enforcement of the CEA mandatory use policy, rather than permitting bypass via direct connections, will prevent access arbitrage. ITTA states in its comments that allowing access stimulating LECs to unilaterally decide to accept direct connections will not eliminate access arbitrage, but will instead result in new loopholes in the Commission's rules.[18] However, ITTA's proposal to exempt IXCs from paying for CEA service, and instead, to require LECs to pay for tandem switching and transport, will just lead to new traffic stimulation schemes by IXCs.

ITTA acknowledges that LECs, not just IXCs, are forced to pay unnecessary charges as a consequence of traffic stimulation and arbitrage.[19] Shifting intercarrier compensation responsibilities from IXCs to LECs merely changes who pays for the access arbitrage, and does nothing to prevent IXCs from engaging in wasteful traffic stimulation, and as further discussed below in Section II.C, does not prevent HD Tandem (the largest access arbitrageur in the country) from sharing its transport revenue with its affiliate, Free Conferencing Corp. ITTA notes that seven years after the adoption of the 2011 *USF/ICC Transformation Order*,[20] the FCC's rules have not prevented access stimulation from flourishing.[21] and Aureon agrees with ITTA that this underscores the need for an unambiguous rule that directly targets and plainly prohibits traffic stimulation and arbitrage, though pursuant to a new rule to definitively prohibit access stimulation traffic as proposed by Aureon, rather than through direct connections and cost shifting.

[18] ITTA Comments at 3.

[19] *Id.* at 2, n.6.

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

[21] ITTA Comments at 5, n.18.

Routing all traffic, including traffic generated through access stimulation, over Aureon's CEA network will assist in eliminating arbitrage activities. Arbitrageurs use Aureon's CEA rate as a benchmark for access rates that can be charged by intermediate providers involved in access stimulation, such as HD Tandem. Requiring all traffic to be routed over the CEA network would drive down the CEA rate to the point where access arbitrage would not be profitable. Traffic that is properly routed over the CEA network pursuant to the CEA mandatory use policy prevents arbitrage as the CEA tariff rate decreases with increases in traffic volume, thereby eliminating any excess revenue that could be shared with access stimulators.

T-Mobile suggests that a CEA provider can share revenue with terminating LECs if the terminating LECs own shares in the CEA service provider.[22] This suggestion is false. Because Aureon's CEA tariff rate declines with increases in traffic volume, and because Aureon's rate is regulated so that Aureon's earnings cannot exceed the FCC's maximum authorized rate of return, there are no profits from CEA (after paying for the costs of maintaining and upgrading the CEA network) available to share with Aureon's shareholders. To the contrary, Aureon has been forced to rely on revenue from non-regulated services to support the continued operation of the CEA network.

C. Proposals to Change the Intercarrier Compensation Regime Will Not Eliminate Access Stimulation Activities.

1. Direct Connections Will Not Solve the Arbitrage Problem.

In the NPRM, the Commission proposes that IXCs sending traffic to LECs involved with a high call volume service be permitted to directly connect with those LECs. However, direct connections that bypass Aureon's CEA network will not solve the access stimulation problem.

[22] T-Mobile Comments at 12.

In its comments, CenturyLink admits that requiring direct connections for access stimulation traffic will permit access stimulation traffic to continue while imposing unwarranted, significant network implementation costs upon the industry. Specifically, the requirement for LECs "to accept direct connections or choose to be financially responsible for intermediate carrier services . . . leaves the financial burden on the IXC to deliver these large volumes of traffic to access stimulators as long as the access stimulator allows the IXC to establish a direct connection."[23]

CenturyLink further acknowledged that because traffic stimulators can shift traffic easily, an IXC may find it impossible to avoid high access charges because the stimulators could simply move their activities to a different area where the IXC does not have direct connections.[24] Direct connections would also result in stranded costs for both LECs and IXCs due to the ability of the access stimulators (e.g., conference call platform or chat line) to move traffic elsewhere. Any prohibition against an access-stimulating LEC from ending its election for direct connections would be pointless due to the high call volume services' ability to quickly shift operations to other areas.[25]

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[23] CenturyLink Comments at 2.

[24] *Id.* at 3.

[25] *See* NPRM ¶ 18 ("To ensure that the investment made by an IXC to extend its network to directly interconnect with an access-stimulating LEC is not stranded, should an access-stimulating LEC be prohibited from ending its election of direct connections once made? Should such a prohibition be permanent or for a specified period of time?). *See also* CenturyLink Comments at 7 ("[I]n situations involving access stimulation, these normal course economic incentives are distorted by the fact that traffic volumes are being artificially inflated by the access-stimulating LEC. Accordingly, the economic choice faced by the IXC would be a consequence of the LEC's traffic stimulation activities, not natural traffic volumes. In such a circumstance, a rule that requires the IXC to bear the burden to get traffic to the traffic-simulating LEC, even if it can choose how, merely gives the IXC a choice of which wasteful way it wishes to spend resources.").

It is important to note that CenturyLink's proposal regarding direct connections goes far beyond just access stimulation traffic, and urges the Commission to abolish what CenturyLink terms "forced indirect interconnection."[26] Although CenturyLink argues that "forced indirect interconnection [is] an access arbitrage practice occurring outside of the access stimulation context", CenturyLink's suggestion that all such arrangements are arbitrage practices is clearly false.[27] CEA service is not an arbitrage practice, and the creation of CEA service was approved by both the FCC and the Iowa Utilities Board ("IUB").[28] CenturyLink's proposal to require direct connections for all non-access stimulation traffic is just a blatant attempt to eliminate the CEA mandatory use policy,[29] and turn the clock back 30 years so CenturyLink can remove its traffic from the CEA network.

As discussed in Aureon's initial comments, the FCC and the IUB both determined that the financial viability of the CEA network would be undermined unless CenturyLink (then, Northwestern Bell) was required to route its terminating traffic over the CEA network to ensure an affordable CEA rate for CenturyLink's smaller competitors.[30] Exempting IXCs from paying for terminating access service as CenturyLink proposes would create incentives for IXCs to engage in traffic stimulation because they would be able to charge other carriers for transporting access-stimulated traffic, and they have no incentive for the Commission to prohibit such traffic

[26] CenturyLink Comments at 9-13.

[27] *Id.* at 9.

[28] Aureon Comments at 10-12.

[29] *See id.* at 11-13

[30] *Id.* at 10.

when IXCs (and CenturyLink, through its transit network)[31] can be paid by other carriers for transporting or transiting high volume traffic. Furthermore, CenturyLink supports a new rule that would require LECs to pay for CEA service (for both access stimulation and non-access stimulation traffic). CEA service is not provided for the benefit of LECs, as equal access and traffic concentration are benefits of CEA service provided to IXCs, and therefore, IXCs should pay for CEA service.

Other comments urging the FCC to allow direct connections are similarly unavailing, and would not eliminate access arbitrage. Aureon agrees with AT&T's comment that allowing direct connections "will not be effective in curtailing access stimulation – indeed, it would make the current situation even worse because, among other things, access-stimulating LECs would be able to entirely avoid the impact of the Commission's proposal by locating the point of interconnection where a direct connection is either unavailable or exorbitantly expensive, and create a "whack-a-mole" situation through the relocation of the traffic stimulation activities.[32]

Similarly, T-Mobile also correctly objects to CenturyLink's proposal to require direct connections. T-Mobile accurately observes that a direct connection requirement would lead to new forms of arbitrage, and Aureon agrees with T-Mobile's comment that harmful arbitrage should be directly addressed on an individual basis through existing rules (and augmented by Aureon's proposed new rule to directly prohibit access stimulation), rather than intercarrier

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[31] ITTA notes in its comments that while the NPRM focuses on unnecessary access charges imposed on IXCs, there are instances where LECs may also be subject to similar charges. ITTA Comments at 2, n.6.

[32] AT&T Comments at 12-14. Although AT&T states that direct connections will not solve the arbitrage problem, AT&T asks the FCC to allow AT&T to establish direct connections in order to remove both originating and terminating non-access stimulation traffic from the CEA network. *Id*. at 23-24.

compensation reforms, which will only shift the arbitrage rather than end it.[33] Allowing direct connections would most certainly enable arbitrage to continue unless the FCC takes decisive action to prohibit access stimulation as an unjust and unreasonable practice. Aureon's proposed rule prohibiting traffic stimulation would directly achieve the Commission's goals in this rulemaking proceeding.

It is telling that the largest perpetrator of access stimulation traffic in the nation, HD Tandem (along with its affiliate, Free Conferencing Corp. or Freeconferencecall.com), advocates for direct connections, which in and of itself demonstrates that direct connections will not achieve the FCC's goal of eliminating access arbitrage. Rather, direct connections, especially in the form promoted by HD Tandem, will allow access arbitrage to spread and increase. In its comments, HD Tandem either misunderstands the direct connection proposal, or advocates for an expansion of the scope of the direct connection obligation – neither of which will eliminate access arbitrage. What HD Tandem refers to as "direct connections" is the transport that HD Tandem provides between an IXC and an access-stimulating LEC.[34] This is not a true direct connection between an IXC and a LEC, and will allow access arbitrage to persist through arrangements between intermediate access providers and access-stimulating LECs for the intermediate provider to transport access stimulation traffic carried by IXCs. In those situations, the intermediate carrier could charge high rates for wholesale interexchange transport, transit services, or other intermediate carrier transport services.[35] Notwithstanding that direct

[33] T-Mobile Comments at 20; *see also* NCTA Comments (stating that direct connections could allow for "gaming and continuing arbitrage opportunities", and that the FCC should ensure that the direct connection "option does not turn into another opportunity for arbitrage.").

[34] *See, e.g.,* HD Tandem Comments at 14 ("HD Tandem has asked for and received direct connects from 14 different LECs that host High Volume applications.")

[35] As discussed in Aureon's Comments, the new rules proposed in the NPRM could increase traffic routed over wholesale interexchange transport facilities, transit services, or other

connections will not solve the access arbitrage problem in the first instance, including intermediate carriers such as HD Tandem within the definition of "direct connection" would enable HD Tandem and Free Conference Corp to expand their access simulation activities and further their arbitrage schemes.

HD Tandem further urges the Commission to require reciprocity for the exchange of traffic.[36] By its own admission, no originating carriers have connected with HD Tandem.[37] According to HD Tandem, the "missing key element" for HD Tandem to connect to access-stimulating LECs and carry high volume traffic for both originating and terminating traffic is the requirement for reciprocity. Currently, HD Tandem's connections only permit it to support access arbitrage for terminating traffic. If the FCC grants HD Tandem's request for "reciprocity" for originating traffic that would connect to HD Tandem's points of interconnection, the FCC would merely be extending HD Tandem's access arbitrage to originating traffic. Reciprocity would enable HD Tandem to play both sides of the access stimulation game, which would further exacerbate the access arbitrage problem.

HD Tandem also admits that it has helped IXCs violate the CEA mandatory use policy for traffic routed to "LECs hosting high volume applications behind Centralized Equal Access (CEA) switches".[38] As a result of this unlawful bypass activity, billions of minutes of traffic have been removed from the CEA network. Had HD Tandem not violated the CEA mandatory

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intermediate carrier transport networks. Aureon Comments at 19-20. To prevent the major carriers, such as CenturyLink and AT&T, from reaping windfall profits from the new rules, the Commission should regulate the rates for transit service, wholesale interexchange transport, and intermediate carrier transport, and ensure that those rates are cost-based. *Id.*

[36] HD Tandem Comments at 12-13.

[37] *Id.* at 12.

[38] *Id*. at 2.

use policy, Aureon's CEA rate would have been reduced significantly because, as explained in Aureon's comments, as traffic volumes increase, the CEA rate decreases, and vice versa.[39] It is clear that HD Tandem, and not CEA service, has facilitated access arbitrage in Iowa because it is not possible for Aureon to enter into revenue sharing agreements due to the inverse relationship between traffic volume and Aureon's CEA rate. HD Tandem's description of the many years that the FCC has tried without success to adopt rules reducing the incentives for access arbitrage highlights the need for an FCC rule that prohibits all access arbitrage, rather than rely upon incentive-based rules that attempt to address the problem only indirectly.

Peerless Network, Inc. ("Peerless") contends that the Commission's proposed rules should only be applied to LECs that subtend a CEA network because applying the proposed rule beyond CEA networks would likely result in IXCs engaging in self-help and increase litigation.[40] However, applying the Commission's proposed rule to CEA networks and CEA subtending LECs will also lead to an increase in self-help and litigation. Aureon is already the victim of self-help by IXCs that have short-paid Aureon's invoices for more than a decade, forcing Aureon to incur substantial costs in litigation to obtain compensation. Further, Peerless does not seek to outlaw arbitrage. Rather, Peerless merely asks the Commission to adopt CenturyLink's direct connection proposal, which will permit arbitrage to continue over direct-trunked transport rather than tandem-switched transport. The Commission should no longer burden the nation's network and consumers with wasteful arbitrage, whether it be over direct connections or IXC transit service, but instead should adopt the new rule proposed by Aureon prohibiting all such arbitrage. The solution to arbitrage is not direct connections, which just provides another route for access-

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[39] Aureon Comments at 12.

[40] Peerless Comments at 11.

stimulated traffic. The solution is to stop traffic stimulation at its source through the new Commission rule proposed by Aureon prohibiting traffic stimulation as an unjust and unreasonable practice.

2. Shifting Costs From IXCs to LECs Will Only Serve to Increase Arbitrage.

If access-stimulating LECs do not accept direct connections from either the IXC or an intermediate access provider of the IXC's choice, the FCC proposes to require access-stimulating LECs to bear the financial responsibility for the delivery of terminating traffic to their end office.[41] This option will also not eliminate access arbitrage. If IXCs are exempt from paying for access service, they will engage in arbitrage whether under a bill-and-keep or a LEC-must-pay regime. Such an outcome is not mere speculation, and the initial comments of 01 Communications demonstrate how AT&T has engaged in arbitrage with respect to wholesale IXC transport and transit services when AT&T does not have to pay for access service.

As described by 01 Communications, AT&T Mobility and 01 Communications had previously exchanged traffic directly through a bill-and-keep arrangement.[42] In 2016, AT&T Mobility unilaterally disconnected existing direct connections, forcing 01 Communication to route interMTA traffic through AT&T Mobility's long distance affiliate, AT&T IXC.[43] 01 Communications incurred significant, unnecessary transit and tandem access charges, and AT&T as a whole reaped a windfall through the arbitrage strategy involving AT&T Mobility and AT&T IXC.[44] This is the type of arbitrage scheme that can be expected under the LEC-must-pay option

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[41] NPRM at 5.

[42] 01 Communications Comments at 5.

[43] *Id.*

[44] *Id.*

because IXCs and intermediate carriers would not be required to pay for access, but they can charge other carriers for transit and tandem access service to route traffic to LECs. AT&T's IXC arbitrage scheme supports Aureon's proposal in its initial comments for the Commission to regulate the rates for such IXC transport and transit services to prevent excessive charges for such services that will ultimately be borne by consumers.[45]

Similarly, comments filed by self-described access stimulators (the "CLEC Access Stimulators")[46] support Aureon's comments that the NPRM's proposals will result in an increase in access stimulation by AT&T in order to increase revenues that AT&T receives from other IXCs from AT&T's wholesale IXC transport service or transit service. As the CLEC Access Stimulators point out, the FCC does not address the issue of wholesale traffic, and "whether an IXC can demand a direct connection in order to market the route to carriers on a wholesale basis."[47] Aureon agrees with the CLEC Access Stimulators that the NPRM's proposals will

[45] Aureon Comments at 19-21.

[46] The CLEC Access Stimulators are comprised of BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communications Corporation, Northern Valley Communications, LLC, and Louisa Communications. *See* Competitive Local Exchange Carriers Comments at 1 ("These comments are filed on behalf of [CLECs] that participate in access stimulation . . . ."). Another access stimulator, Wide Voice LLC ("Wide Voice"), filed comments urging the Commission to "break[] the CEA monopoly" by allowing direct connections, and benchmarking the rates of CEA subtending LECs to non-rural, price cap LECs. *See generally* Wide Voice Comments. Wide Voice's comments are obviously intended to further arbitrage activities, rather than stop them. Wide Voice applied for a certificate of public convenience and necessity to operate as a CLEC in Iowa to engage in access simulation, and the IUB denied Wide Voice's application as a result of "objections raised by CenturyLink identify[ing] significant questions regarding Wide Voice's intent to provide local exchange service in Iowa and the reasonableness of Wide Voice's proposed access rates." *In re: Wide Voice, LLC*, Order Denying Application and Rejecting Proposed Tariff, Without Prejudice To Refiling, and Denying Petition for Intervention as Moot, Docket Nos. TCU-2016-0006, TF-2016-0291 at 3 (rel. July 11, 2016) (available at https://efs.iowa.gov/cs/groups/external/documents/docket/mdax/njaw/~edisp/1600203.pdf (last viewed Aug. 1, 2018)).

[47] Competitive Local Exchange Carriers Comments at 59.

result in an increase in access stimulation by AT&T and other large carriers in order to increase revenues, which supports Aureon's comments that the FCC should adopt Aureon's proposed new rule to eliminate access stimulation, rather than adopting "rules that result in certain IXCs, like AT&T and Inteliquent, being the only carriers allowed to profit from access stimulation."[48]

Aureon does <u>not</u> support the CLEC Access Stimulators' comments urging the Commission to adopt rules that will permit access arbitrage to continue, and it is ironic that their comments support Aureon's comments regarding the need to eliminate all arbitrage paths. The CLEC Access Stimulators' comments regarding historic pricing trends of long distance service show that the FCC needs to regulate transit service and wholesale IXC transport service to avoid unwarranted costs from being passed on to consumers. Those comments include the expert report of Oliver Grawe, Ph.D., evaluating the FCC's conclusion in the 2011 *USF/ICC Transformation Order* that intercarrier compensation reforms adopted in the 2011 order would "'bring numerous and significant benefits to consumers' including 'cost savings to consumers.'"[49] Dr. Grawe's analysis demonstrated that the FCC's prediction that lower termination fees would lead to lower rates did not occur, and in fact, AT&T flat-rate long distance rates continued to increase from 2012 to 2018.[50]

The data presented by Dr. Grawe is consistent with Aureon's initial comments that the FCC must regulate transit service and wholesale IXC transport rates to avoid unwarranted costs from being passed on to consumers. The 2011 intercarrier reforms did not reduce rates for consumers, and access stimulation activities only serve to increase costs for long distance

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[48] *Id.*

[49] Competitive Local Exchange Carriers Comments, Expert Report of Oliver Grawe at 4 ("Grawe Report") (citing *USF/ICC Transformation Order*, 26 FCC Rcd. 17663, ¶ 654).

[50] Grawe Report at 9 & Exh. 2.

carriers that are passed onto subscribers. The CLEC Access Stimulators further note that AT&T earned $8.2 million in revenue from wholesale IXC transport of access stimulation traffic, and a profit of $30 million on all forms of long distance services associated with arbitrage traffic over a recent three year period.[51] Adopting a LEC-must-pay rule will only serve to foster, not eliminate, access arbitrage, by enabling large IXCs to profit from traffic stimulation.

The CLEC Access Stimulating LECs also note that 80% of the access stimulation traffic to rural Iowa bypasses the CEA network.[52] The routing of calls over the CEA network is not the cause of the arbitrage problem; rather, it is the economic incentive resulting from access arbitrage that drives the arbitrageurs to continue to generate and carry this illicit traffic. As discussed above and in Aureon's initial comments, Aureon cannot profit from access stimulation because its CEA rate decreases as traffic volume increases, and vice versa, and Aureon also does not have any revenue sharing agreements.

Shifting payment responsibilities will not stop access arbitrage, and Aureon agrees with Inteliquent's observation that shifting the payment responsibility for access service from IXCs to terminating LECs would only increase arbitrage because such a rule would remove the incentive for IXCs to ferret out and stop routing arbitrage traffic.[53] Furthermore, cost shifting would result in IXCs providing wholesale transport for larger volumes of harmful traffic, which, as discussed above, is already occurring in a related context where AT&T IXC does not need to pay the terminating wireless carrier, AT&T Mobility, for access. Even if the FCC were to require LECs to pay for CEA service, such a change in intercarrier compensation would not prevent HD

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[51] Competitive Local Exchange Carrier Comments at 22-23.

[52] *Id.* 32.

[53] Inteliquent Comments at 12.

Tandem from sharing transport revenues with its affiliate Free Conferencing Corp, or at a minimum, causing HD Tandem to reap illicit profits from the access stimulation activities of its affiliate as they are part of the same corporate family.

Aureon also agrees with Inteliquent's comments that "access stimulation and call blocking have come together in a new method of arbitrage in which high-volume calling platforms and/or their LEC partners resort to intentionally rejecting the very traffic that they have stimulated" in order to cause that traffic to be sent to an intermediate carrier owned by the calling platform.[54] Aureon has experienced this very sort of arbitrage, whereby calls routed by Aureon to a LEC are blocked, but when calls are routed to the LEC through HD Tandem, those calls miraculously complete. It is unlawful for access stimulators to block calls and prevent them from being completed over the CEA network, yet this is the mechanism used to carry out access arbitrage. The most effective way to prevent such arbitrage call blocking is to adopt the new rule proposed by Aureon that would directly prohibit traffic stimulation.

With respect to lnteliquent's proposal to limit transport mileage to 10 miles to address "mileage pumping" issues,[55] Aureon has no objection to limiting the distance-sensitive transport rates charged by access-stimulating LECs to 10 miles. However, the Commission should not apply a 10 mile limitation on Aureon's non-distance sensitive transport rate because mileage pumping is impossible for a transport rate that does not vary with mileage.[56] The benefits of

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[54] *Id*. at 3.

[55] *Id.* at 5-6.

[56] The FCC recently decided that it would be reasonable if Aureon were to charge a composite rate using over 100 miles of transport to calculate Aureon's non-distance sensitive CEA rate. *In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 36, FCC 18-105 at 19 (rel. July 31, 2018).

rural traffic concentration are only made possible because Aureon transports calls on a non-distance sensitive basis to a single point of interconnection for IXCs.

D. Proposals for all Intercarrier Compensation to go to Bill-and-Keep Will Cause Significant Market Disruptions, and Harm Consumers.

As the Commission is aware, as a CEA provider, Aureon does not have any end user customers, and Aureon obtains all of its revenues for CEA service from the IXCs that use and benefit from that service. Some commenters, including Sprint Corporation ("Sprint"), recommend that the Commission move to a system of "full bill-and-keep" to address the access arbitrage problem.[57] Sprint is one of the worst abusers of the self-help, non-payment remedy, and Aureon has been engaged in litigation with Sprint for nearly a decade for Sprint's non-payment of Aureon's CEA invoices. The bill-and-keep proposal would cause significant market disruptions. If the FCC were to adopt bill-and-keep for all traffic, this would literally leave no source of revenues for Aureon to operate, let alone maintain or upgrade, the CEA network. This would inevitably lead to the shutdown of the CEA network, and as discussed above and in Aureon's comments, disconnect hundreds of rural Iowa communities, and hundreds of thousands of customers, because the CEA network is the <u>only</u> way for many subtending LECs to route calls to the PSTN. CenturyLink acknowledges that bill-and-keep proposals would leave intermediate network providers stranded without compensation for their services.[58]

Verizon opposes CenturyLink's proposal to require direct connections for non-access stimulation traffic because "the associated implementation[] costs and burdens substantially outweigh [the] benefit."[59] However, Verizon's proposal for bill-and-keep or other changes to

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[57] *See generally* Sprint Comments.

[58] CenturyLink Comments at 8.

[59] Verizon Comments at 7.

intercarrier compensation will not eliminate arbitrage by IXCs who will have an incentive to artificially stimulate traffic. As discussed above, if IXCs no longer have to pay access charges, they can still generate arbitrage revenue from wholesale transport and other interexchange services that are not currently rate regulated. Aureon's proposed rule to prohibit such wasteful IXC traffic stimulation will prevent such arbitrage. To ensure that IXCs cannot engage in access arbitrage, in addition to adopting Aureon's proposed rule, the Commission should also regulate the rates for transit service, wholesale interexchange transport, and intermediate carrier transport, and ensure that those rates are cost-based.[60]

Verizon discusses two factors upon which transport arbitrage schemes rely: (1) CLEC transport rates that are above incremental cost; and (2) structuring of the call flow to restrict IXCs' ability to avoid transport charges.[61] However, Verizon fails to mention the most important arbitrage factor: the failure of the high call volume service provider to charge parties calling the high call volume service fees that fully recover the costs of switching, transporting, and terminating the high call volume service calls. If callers using the high call volume service were required to pay a fee that covered all the costs associated with completing the call, the call would never be placed in the first instance, and traffic stimulation by high call volume services would end. Aureon's initial comments incorporate this essential factor in its proposed rule that would prohibit traffic stimulation.[62]

[60] *See* Aureon Comments at 19-21.

[61] Verizon Comments at 3.

[62] Aureon Comments at 8 (defining "High Call Volume Service" as one that is marketed as "free").

E. AT&T Seeks to Use this Proceeding to Relitigate CEA Policies the Commission Established to Foster Competition in Rural Areas.

AT&T attempts to use this proceeding to relitigate the Commission's CEA policies when a change in CEA policies is unnecessary to eliminate access arbitrage. Aureon's proposed rule directly prohibiting traffic stimulation will achieve the Commission's goals in this proceeding. Changing the Commission's CEA policies will harm rural consumers, reduce competition in rural Iowa, and give AT&T a windfall without achieving the elimination of access arbitrage.

As discussed above, AT&T's comments contend that there is no Commission CEA mandatory use policy.[63] Yet at the same time, AT&T asks the Commission to eliminate the CEA service designation[64] and require CEA providers to provide direct-trunked transport despite the exemption in Section 69.112 for CEA networks.[65] AT&T also argues that the FCC should adopt new access stimulation rules stating that Aureon is a CLEC subject to CLEC rate regulations even though Aureon is a dominant carrier that is required to calculate its rates on the basis of cost studies in compliance with section 61.38.[66] It would be pointless to address those issues here when they are already being considered in other proceedings.[67]

The FCC has never adopted a rule requiring dual dominant carrier/non-dominant carrier rate regulation for the same service, and it should not do so now when considering a new rule (as

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[63] AT&T Comments at 8, n.18 & at 18.

[64] *Id.* at 4.

[65] *Id.* at 11, n.25.

[66] *Id.* at 18.

[67] *See AT&T Corp. v. Iowa Network Services, Inc.*, Order on Reconsideration, Proceeding Number 17-56, Bureau ID Number EB-l7-MD-001, FCC 18-166 (rel. Aug. 1, 2017); *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677 (2017) ("*Liability Order*"); *In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 36, FCC 18-105 (rel. July 31, 2018).

Aureon has proposed) eliminating all arbitrage. The FCC acknowledged the reasonableness of its CEA policies in the *Liability Order* by confirming that Aureon's CEA tariff applied to all traffic, regardless of whether such traffic was the result of access stimulation,[68] and that the traffic agreements Aureon has in place with the subtending LECs to effectuate the mandatory use policy are valid and not intended to facilitate access stimulation.[69] The NPRM specifically acknowledged that a mandatory use policy is applicable to Aureon's CEA service.[70] Those policies require AT&T (as the incumbent IXC with tremendous market power in Iowa) to route its traffic over the CEA network's common trunks in order to foster competition in rural Iowa by keeping the CEA tariff rate affordable for AT&T's smaller competitors and to make advanced telecommunications services available in rural Iowa.

AT&T alleges that the Commission should do away with this CEA policy if Aureon's primary business plan is to handle access stimulation arbitrage, even though there is no such business plan. Aureon's proposed rule that would eliminate such arbitrage demonstrates that handling such arbitrage traffic is not Aureon's primary business plan. Aureon opposes and urges the Commission to reject AT&T's comments supporting the end of the CEA mandatory use policy. After access stimulation traffic has been eliminated, there will remain a need for AT&T to continue to route AT&T's non-access stimulation traffic over the CEA network in order to

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[68] *Liability Order*, 32 FCC Rcd. at 9685, ¶ 17.

[69] *Id.* at 9694-95, ¶ 33 ("AT&T can identify no change in Aureon's practices indicating that its traffic agreements are intended to facilitate access stimulation beyond noting that certain CLECs and their FCP partners now engage in access stimulation. . . . Aureon's handling of the traffic destined for access stimulating CLECs is consistent with its Section 214 authorization and the Tariff.") (citations omitted).

[70] NPRM at 7, ¶ 16 ("Historically, this mandatory use policy has permitted the CEA providers in Iowa and South Dakota to require IXCs to connect to LECs that subtend the CEA provider indirectly through the CEA provider's tandem switch rather than indirectly through another intermediate access provider or directly to the subtending LEC.").

keep the CEA network financially viable, and also to keep the CEA per-minute tariff rate affordable for AT&T's smaller competitors. As discussed in Aureon's comments, a critical aspect of the Commission and the IUB's decisions authorizing Aureon's CEA network was the requirement that all IXCs, including AT&T, route their traffic to the subtending LECs over the CEA network in order for the CEA network to remain operational.[71] Hundreds of thousands of rural consumers would be adversely impacted if the CEA network is forced to shut down because AT&T removes non-arbitrage traffic from the CEA network.

Furthermore, on one hand, AT&T agrees that requiring direct connections will not eliminate access arbitrage, but will "make the current situation even worse."[72] However, on the other hand, AT&T asks the FCC to allow AT&T to establish direct connections in order to remove both originating and terminating non-access stimulation traffic from the CEA network.[73] AT&T's proposals to modify intercarrier compensation through bill-and-keep or by exempting IXCs from paying for CEA service, and instead require LECs to pay for CEA service, will not eliminate arbitrage, but instead lead to new traffic stimulation schemes by IXCs as described above. In fact, to facilitate such traffic stimulation by IXCs AT&T's comments asks the FCC to exempt IXCs that transport wholesale traffic for IXCs from the definition of "intermediate access provider."[74]

There is no good reason for AT&T to request such an exemption except to be able to engage in arbitrage by charging other carriers unregulated transit or wholesale rates as one of the few remaining carriers that can charge to transport access-stimulated traffic from other carriers.

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[71] Aureon Comments at 11-12.

[72] AT&T Comments at 12.

[73] *Id.* at 24.

[74] *Id.* at 11.

For the reasons set forth in Aureon's initial comments, the Commission should regulate the rates that AT&T can charge for transit service or IXC wholesale transport in order to prevent windfall profits for AT&T, which will ultimately result in higher costs for consumers.

F. The Access Stimulating LECs' Request for the FCC to Investigate CEA Practices is Unnecessary and Unwarranted.

The CLEC Access Stimulators are part of the arbitrage problem, and they admit that even though they are connected to the CEA network, that they also have connections with intermediate carriers other than Aureon to terminate most of their access stimulation traffic.[75] As discussed above in Section II.B, enforcement of the CEA mandatory use policy will stop access arbitrage by making traffic stimulation uneconomical. Although it is clear that all traffic to LECs that subtend Aureon's tandem switch must be routed through the CEA network, the CLEC Access Stimulators contend that the Commission must clarify, among other things, whether CEA providers are required to include all minutes in the cost study from which their tariff rate is derived, or whether CEA providers can enter into off-tariff contracts. Those issues are beyond the scope of the NPRM, and the FCC has already addressed those issues in any event in other proceedings.[76]

The CLEC Access Stimulators ask the FCC to commence an investigation into the business practices of CEA service providers.[77] Such an investigation is unwarranted as the FCC can, and has, conducted investigations into CEA service in contexts outside the instant NPRM

[75] Competitive Local Exchange Carrier Comments at 57.

[76] *See Liability Order*, 32 FCC Rcd. at 9685, ¶ 17 (rejecting AT&T's argument that Aureon's tariff does not apply to access stimulation traffic); *id.* at 9683, ¶ 12 (Aureon filed a tariff revision to offer a high-volume contract tariff service, but was ultimately required by the FCC to withdraw that service because Aureon could not offer service pursuant to a contract).

[77] Competitive Local Exchange Carrier Comments at 71.

proceeding In fact, the FCC has investigated Aureon's business practices through the investigation of Aureon's most recent tariff filing,[78] and the traffic and cost data for Aureon requested in Exhibit D to the CLEC Access Simulators' comments have already been filed with the Commission as part of the Aureon tariff investigation. No special, additional inquiry of CEA service is needed, especially if the FCC adopts Aureon's proposed rule directly prohibiting access stimulation.

III. CONCLUSION

Aureon's comments advancing a new rule to eliminate access arbitrage is the only proposal that fully addresses the traffic stimulation problem without causing massive disruptions to the telecommunications market or harming consumers. Proposals for direct connections or shifting costs to LECs will not solve the access arbitrage problem because traffic pumping and arbitrage activities will simply move to a different part of the network. Bill-and-keep will also not eliminate access arbitrage because, like the LEC-must-pay scenario, IXCs that are no longer required to pay for access service can engage in arbitrage by charging other carriers unregulated rates to transport and transit access stimulated traffic.

The solution to access arbitrage is to (1) enforce the CEA mandatory use policy for all traffic bound for subtending LECs to ensure that the CEA rate is low enough to make traffic pumping unprofitable, (2) adopt Aureon's new rule to eliminate access arbitrage, and (3) regulate the rates for transit service, wholesale interexchange transport, and intermediate carrier transport, and ensure that those rates are cost-based. The combination of those three strategies will finally

[78] *See In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 36, FCC 18-105 (rel. July 31, 2018).

cure the access arbitrage problem that has long plagued the industry, and end traffic pumping activities once and for all.

Respectfully submitted,

/s/ James U. Troup

James U. Troup
Tony S. Lee
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

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