

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

In the Matter of)	
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)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
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_____)	

**REPLY COMMENTS OF IOWA NETWORK SERVICES, INC. D/B/A
AUREON NETWORK SERVICES TO REFRESH THE RECORD**

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
lee@fhhlaw.com

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

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SUMMARY

Aureon is a provider of centralized equal access (“CEA”) service in Iowa. CEA service is a unique service that enables small interexchange carriers (“IXCs”) to compete with large, entrenched IXCs, such as AT&T. Prior to Aureon’s creation, long distance consumers in rural Iowa did not have a choice of competitive long distance service. Rural LECs in Iowa could not offer their end users a competitive choice of long distance carriers due to the substantial expense of upgrading hundreds of rural end office switches with equal access capabilities, the disparate types of equipment used among the LECs, and the lack of a comparable network from a competing IXC for connecting end users’ calls. Furthermore, small rural communities in Iowa have low population densities, and it was simply too expensive for small IXCs 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. CEA service eliminates the need for each individual IXC to build its own expensive infrastructure to connect calls to and from rural LECs, and CEA service is not directly provided to individual consumers or end users.

The FCC has asked parties to refresh the record regarding proposed reforms to intercarrier compensation for tandem switching and transport charges, and transit services. The FCC needs to adopt rules that ensure that rural customers will be able to continue to receive the same quality and level of advanced communications services available in urban areas, while at the same time, eliminate arbitrage opportunities that are currently plaguing the industry. CEA service is the key to transitioning rural areas to an all IP network, and centralizing traffic and other services, and making it more economical for competitive broadband providers to extend their services to rural areas will bring new economic opportunities to rural areas that have generally suffered from population attrition over the last several decades. CEA service providers, such as Aureon, provide critical services that enable rural subscribers to enjoy the benefits of modern communications services, including a competitive choice of service providers, broadband services, and innovative video services

Aureon urges the Commission to adopt a two-fold approach to reform intercarrier compensation. First, the FCC should adopt rules to preserve the financial viability of CEA service so that multiple, competing broadband providers find it economically feasible and attractive to provide advanced, critical services in rural areas. The FCC has adopted a mandatory use policy for CEA service so that LECs choosing to connect to the CEA network are required to route all of their traffic over the CEA network. The FCC should enforce its existing mandatory use policy, which would make Aureon’s service less expensive, and reduce costs for all IXCs that use Aureon’s network 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. Enforcement of the mandatory use policy would also curtail, if not eliminate, arbitrage activities currently being perpetrated through CEA network bypass and revenue sharing arrangements among third party tandem providers, conference calling providers, and LECs.

Second, the FCC should prohibit revenue sharing or other arrangements that undermine the provision of legitimate communications services to the public. Specifically, in addition to enforcing its existing mandatory use policy for CEA service, the FCC should adopt rules that extend bill-and-keep to corporate affiliates engaged in access stimulation, and any arrangement

under which a terminating service provider receives compensation for traffic routed to the terminating provider. In addition, the Commission should also adopt rules to apply bill-and-keep to situations where a tandem operator and a party involved in a revenue sharing agreement are commonly controlled. Such actions will eliminate the financial incentive for parties that engage in arbitrage activities, and result in lower costs to all carriers that use Aureon's CEA service through reductions in the CEA rate.

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**REPLY COMMENTS OF IOWA NETWORK SERVICES, INC. D/B/A
AUREON NETWORK SERVICES TO REFRESH THE RECORD**

Pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) September 8, 2017 Public Notice¹ issued in the above-captioned proceeding, Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”) files its reply comments to refresh the record 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. CEA

¹ Public Notice, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit*, WC Docket No 10-90; CC Docket No. 01-92 (rel. Sept. 8, 2017).

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).

service levels the competitive playing field by providing a centralized tandem switch for connecting calls between IXC's, on one hand, and rural local exchange carriers ("LECs"), on the other, at an affordable rate made possible by concentrating the rural traffic of 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 LECs. CEA service is not directly provided to individual consumers or end users.

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. Rural LECs in Iowa could not offer their end users a competitive choice of long distance carriers due to the substantial expense of upgrading hundreds of rural end office switches with equal access capabilities, the disparate types of equipment used among the LECs, and the lack of a comparable network from a competing IXC for connecting end users' calls. Furthermore, 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

³ *FCC 214 Order* at 1471 ¶ 19.

⁴ *Id.* at 1468 ¶ 3.

⁵ *Nw. Bell*, 477 N.W.2d at 681.

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 section 214 authorization to Aureon to build a fiber optic network to provide CEA service.⁶ 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.⁷ Aureon’s network thus brought long 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.”⁸ Aureon’s CEA service connects the IXCs’ facilities – at a single location in Des Moines⁹ – 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

⁶ Aureon’s Access Division leases capacity from Aureon’s Network Division in order to provide CEA service to IXCs.

⁷ *FCC 214 Order*, 3 FCC Rcd at 1468 ¶ 4, 1471 ¶¶ 21, 23.

⁸ *Id.* at 1468 ¶ 3.

⁹ CEA service also provides IXCs with the convenience of interconnecting with the CEA network at other locations specified in the CEA tariffs.

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."¹⁰ CEA service has succeeded in making it attractive for fifteen IXC's to use the CEA network to originate traffic, and for seventeen IXC's 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 network than just a choice of competitive long distance carriers. Rural service providers exist to serve their local rural communities, and to ensure that rural customers have access to advanced communications and video services comparable to those that subscribers in urban areas receive. Aureon's CEA service and ancillary offerings have enabled rural LECs and non-LEC broadband providers to provide advanced communications services to the rural LECs' local 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, rural LECs would struggle to keep up with modern service offerings and technologies as a result of their small subscriber and revenue bases.

In this proceeding, the FCC needs to adopt rules that ensure that rural customers will be able to continue to receive the same quality and level of advanced communications services available in urban areas, while at the same time, eliminate arbitrage opportunities that are currently plaguing the industry. As discussed in further detail below, Aureon urges the Commission to adopt rules that (1) preserve the financial viability of CEA service so that

¹⁰ *Id.* at 1468 ¶ 4 and 1474 ¶ 38.

multiple, competing broadband providers find it economically feasible and attractive to provide advanced, critical services in rural areas; and (2) prohibit revenue sharing or other arrangements that undermine the provision of legitimate communications services to the public.

II. DISCUSSION

A. Aureon's Network is Critical to Providing Advanced Broadband Communications Services in Rural Iowa, and Needs to be Treated Differently Than the Networks of Non-Dominant Carriers Providing Switched Access Service to End Users.

In its comments, South Dakota Network ("SDN") stated that its regulated CEA operations are funded solely through interstate and intrastate tandem access charges, and that it has no end users and it is not eligible to receive Connect America Fund ("CAF") support.¹¹ SDN further informed the Commission that CEA providers do "not fit neatly under the *Transformation Order's* description of an ILEC or a CLEC", and therefore, "the Commission should define and address tandem and transit services provided by a CEA provider separately from any consideration of these services as provided by 'Rate-of-Return Carriers,' which are defined as ILECs in the *Transformation Order*, or CLECs."¹² Aureon agrees with SDN, and supports SDN's comments advocating separate treatment of CEA providers from non-dominant ILECs or non-dominant CLECs that provide service to end users.

Like SDN, Aureon does not have any end users, and it does not receive any CAF support. Aureon's regulated CEA operations are funded solely through intercarrier compensation it receives from IXC's that use Aureon's CEA service, and not by end user fees. In granting certification under 47 U.S.C. § 214 for the operation of the CEA network, the Commission determined that "[Aureon] is a dominant carrier providing exchange access services subject to

¹¹ SDN Comments at 1, 7.

¹² *Id.* at 5.

Title II regulations and application requirements of Section 63.01.”¹³ As a dominant carrier, Aureon is required to file cost and traffic studies with the FCC every two years as required by Section 61.38 of the Commission’s rules.¹⁴ Aureon’s CEA rate under Section 61.38 is inversely related to the amount of traffic carried – i.e., as traffic volumes increase, the CEA rate decreases, and vice versa. The unique rate regulations applicable to dominant CEA providers, such as Aureon, warrants treating CEA providers differently than non-dominant carriers and wireless carriers. It is important to note that Aureon is the only carrier that is subject to both Section 61.38 dominant carrier regulations, and CLEC price cap and rate parity rules.¹⁵

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. Aureon’s network will enable the future carriers that provide broadband services that will replace stand-alone IXC service 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. 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. Aureon’s network has also been upgraded to ensure accurate traffic measurement for multiple competitive carriers sending traffic to the service areas of 200 LECs.

¹³ *FCC 214 Order*, 3 FCC Rcd. at 1470, ¶ 10.

¹⁴ 47 C.F.R. § 61.38.

¹⁵ See *In re AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, DA FCC 17-148 at 13-14 (rel. Nov. 8, 2017) (“*AT&T v. Aureon*”) (ruling for the first time that Aureon is a dominant carrier subject to Section 61.38, and a CLEC that must comply with the CLEC rate cap and rate parity rules).

Furthermore, 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, the competitive advanced service and broadband carriers that benefit from the use of the CEA network to extend the provision of their services into rural areas (rather than the subtending LECs) should compensate Aureon for transporting traffic over the CEA network.

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,¹⁶ and many of the submissions to refresh the record from AT&T and other carriers do not prioritize ensuring that the level of service to rural subscribers is protected. Rather, the priority for the large, nationwide carriers is to increase corporate profits.

B. CEA Service will Facilitate the Transition to an All IP Network.

As discussed above, CEA service has enabled rural consumers to reap the benefits of ever-changing technological advances by concentrating traffic, and making service more affordable to provide in rural areas. Telecommunications services are now transitioning to IP-based technologies. The issue of how to route originating IP traffic from rural LECs to competitive broadband providers or to terminate IP traffic to the consumers located in the rural LECs' service areas still remains. Ensuring that Aureon's network remains financially and technically viable to transport IP traffic will facilitate the transition to an all IP network in rural Iowa.

In its comments, T-Mobile argues that the PSTN architecture is inefficient, and needs to be replaced with a full transition to IP technologies because it will eliminate single points of failure, reduce facility costs, and enhance security.¹⁷ Although T-Mobile's observations are

¹⁶ 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 Intervenor 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").

¹⁷ T-Mobile Comments at 5-7.

correct to a certain extent for some legacy networks, they do not hold true for CEA networks. Aureon's network is a modern high-capacity fiber network that has the capability to provide the necessary facilities and functionalities to ensure reliable and secure delivery of IP traffic as the PSTN is transitioned away from traditional TDM technologies. Aureon's network is comprised of more than 2,800 miles of fiber, using self-healing fiber ring technology. Aureon leases an additional 900 miles of fiber. If there is a fiber cut, the network will automatically re-route traffic so that service will continue without interruption. Furthermore, Aureon has redundant tandems located in Des Moines and Kamrar, Iowa. In the unlikely event that one of the tandems is out of service, the other tandem can be used as an alternative. Aureon's network is designed with the necessary redundancy and technologies to ensure that all traffic traversing the network can reliably reach its destination. However, such reliability and redundancy can only be maintained and improved if the FCC's rules ensure the financial viability of CEA service providers..

With regard to cost issues, CEA service will facilitate, rather than hinder, the transition to an all IP network. As discussed above, Aureon files its cost and traffic studies in accordance with Section 61.38 of the Commission's rules. Aureon is prohibited by FCC rule from earning more than its authorized rate of return. There is no ability for Aureon or other CEA providers to artificially inflate their rates, or engage in "traffic pumping" schemes, because the CEA rate decreases as traffic volumes increase. Moreover, the concentration of traffic by Aureon will make it more economical for IP-IP connections at lower cost urban areas, such as Des Moines, rather than establishing peering or interconnection points in high-cost rural areas.¹⁸

¹⁸ T-Mobile urges the FCC to expedite the transition to IP by creating incentives to interconnect at a few points of interconnection, and to establish "Safe Harbor POIs" whereby existing interconnection arrangements would be eliminated if a non-ILEC elected to interconnect at a

As the PSTN transitions to an all-IP topology, concerns regarding communications security are also addressed by Aureon's network. Aureon provides many of the security and other network functionalities for the subtending LECs to ensure the privacy and protection of communications. Aureon's network incorporates the latest security features to guard against hacking and other outside attacks, thereby alleviating the risks that rural LECs might not otherwise have the resources to install the patches and updates needed against new threat vectors. Indeed, Aureon acts as a "trusted third party" for purposes of CALEA for the vast majority of the subtending rural LECs, whose limited resources would be strained to provide the necessary security and required CALEA operations to respond to court orders and law enforcement wiretap requests.

Finally, requiring LECs to route traffic over Aureon's network when those LECs voluntarily choose to connect to the network will also ensure more reliable calls to rural areas. It is Aureon's understanding that calls to rural LECs connected to Aureon's network that have revenue sharing agreements with conference calling companies are often blocked when they are routed over the CEA network, but those calls will complete when they are transported over the networks of alternate tandem service providers, such as HD Tandem, that are affiliated with free conference calling companies. Upon information and belief, the free conference calling companies block calls that traverse the CEA network from completing in order to force traffic to the alternate tandem service provider affiliated with the free conference calling company. There is no sharing of transport revenues when calls go over the CEA network; there is only revenue

Safe Harbor POI. T-Mobile Comments at 8-9. Should the Commission decide to adopt T-Mobile's Safe Harbor POI proposal, the FCC should designate Aureon's tandem switches as Safe Harbor POIs for connections to the subtending LECs. Such designations would be consistent with the FCC's CEA mandatory use policy established for LECs that have chosen to connect to the CEA network and elected to voluntarily enter into traffic agreements with Aureon.

sharing available when calls are transported by the alternate tandem provider affiliated with the free conference calling company. As discussed in further detail below in Section II.C, arbitrage schemes can be eliminated if the FCC enforces its mandatory use policy for CEA service so that LECs choosing to connect to the CEA network must route all of their traffic over the CEA network or disconnect from the CEA network for all of the traffic.

C. Preserving CEA Service Will Reduce Arbitrage Schemes, and Such Schemes can be Eliminated Through Additional Intercarrier Compensation Reforms.

As noted by many commenters, despite the transition to bill-and-keep for access charges, regulatory arbitrage schemes have continued involving, among others, traffic pumping, mileage pumping, and 8YY origination. Although the FCC addressed mileage pumping in 2012 in its *Alpine* decision,¹⁹ other arbitrage schemes continue to exist. The solution to eliminating arbitrage is not through the adoption of a blanket bill-and-keep intercarrier compensation regime as that would destroy the economic viability of Aureon's network, causing competitive carriers to abandon rural areas, and reducing rural competition and consumer choice. Rather, arbitrage opportunities can be severely curtailed, if not eliminated, by enforcing the FCC's mandatory use policy for CEA, and adopting appropriate intercarrier compensation reforms.

As the Commission is aware, in order to ensure that Aureon's tariff rate for CEA service remained affordable for smaller competitors, the FCC imposed a mandatory terminating use policy that requires traffic to be routed over the CEA network if a LEC voluntarily chooses to connect to the CEA network. Specifically, the FCC stated as follows:

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 [Iowa Network Access Division's] inclusion of a mandatory terminating

¹⁹ *AT&T Corp. v. Alpine Commc'ns, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 11511 (2012) (holding that subtending LECs could only bill IXC's for transport to the closest point of interconnection with the Aureon CEA network).

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’.”²⁰

The Commission also adopted Section 69.112(i) of its rules, which only exempts LECs from providing direct connections to their end office switches for traffic that is routed over the CEA network. Despite the mandatory requirement to use Aureon’s CEA network to transport traffic if a LEC chooses to connect to the CEA network, a substantial volume of the traffic to a few LECs connected to the CEA network is being diverted off the CEA network pursuant to revenue sharing agreements with alternative transport providers that only serve to increase costs for competitive IXC’s,²¹ and line the pockets of those behind the arbitrage schemes. Although enforcing the mandatory CEA use policy is one part of the solution, adopting appropriate intercarrier compensation reforms is the other.

One of the largest enablers of CEA bypass traffic is HD Tandem, which has filed comments in this proceeding. HD Tandem’s proposal to “expedite the IP Transition” is to allow originating carriers to choose the route over which to send their traffic if a LEC has an access revenue sharing agreement, and the LEC experiences either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.²² HD Tandem’s proposal merely serves to increase and

²⁰ *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201 ¶¶ 2, 3.

²¹ Traffic that bypasses the CEA network causes an increase in the costs for other carriers to use Aureon’s CEA service because the bypass traffic is not included in Aureon’s traffic studies, thereby resulting in a higher CEA rate for all CEA service users. Routing bypass traffic over the CEA network would decrease the CEA rate for all IXCs sending traffic over Aureon’s facilities because the CEA rate decreases as traffic volumes increase.

²² HD Tandem Comments at 6.

facilitate access stimulation. If carriers like HD Tandem are permitted to continue to bypass the CEA network for traffic terminating to the end offices of LECs that have elected to connect to the CEA network, rather than comply with the FCC mandatory CEA use policy, large amounts of traffic will continue to be diverted from the CEA network, the CEA rate will remain higher for all other IXC's, and traffic to participants in revenue sharing schemes will increase.

It is important to note HD Tandem's comments were submitted by its President, David Erickson. Mr. Erickson is also the CEO of Free Conferencing Corp., one of the largest free conference calling providers involved in revenue sharing with LECs. To say that HD Tandem's comments are self-serving would be a gross understatement. HD Tandem omits from its comments that HD Tandem and its affiliate, Free Conference Corp., are involved in revenue sharing, and would stand to benefit enormously if the FCC were to adopt HD Tandem's proposal.

Revenue sharing arrangements have also appeared outside of the landline context, such as for 8YY traffic. In those arrangements, the largest nationwide wireless carriers require 8YY traffic to be sent through a preselected tandem provider, which charges IXC's to transport calls.²³ The preselected tandem provider then shares revenues with the wireless carrier, which the wireless carrier would not otherwise be entitled to collect since wireless carriers are not permitted to charge for access service.²⁴ Revenue sharing in the manner undertaken by

²³ See Comments of Peerless Network, Inc., West Telecom Services, LLC, Peninsula Fiber Network, LLC; Alpha Connect, LLC, Rural Telephone Service Company, Inc. d/b/a Nex-Tech, Nex-Tech, LLC, Tennessee Independent Telecommunications Group, LLC d/b/a iRIS Networks at 15 (describing in further detail arbitrage schemes by wireless carriers involving intermediate carriers).

²⁴ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and

intermediate carriers, such as HD Tandem, and intermediate carriers partnered with wireless carriers, do not serve the public interest because those arrangements only increase costs to other carriers and their customers, with excess revenues being shared among scheme participants without any clear benefit to subscribers.

The solution to this problem is not to extend the bill-and-keep regime to tandem providers. As noted by Peerless Network, Inc. et al., the rate transitions adopted under the *2011 USF/ICC Transformation Order* reduced tandem switching and transport charges only where the terminating price cap carrier also owns the tandem switch in the serving area.²⁵ However, the transitions did not apply to tandem switching and transport providers that do not own the end office because they do not have end users from which to recover payments under a bill-and-keep system.²⁶ The solution to the arbitration and revenue sharing problem in the industry is to enforce the FCC's existing rules. If a LEC is connected to the CEA network, then all traffic to that LEC must be transported over the CEA network, and the CEA rate will decrease as traffic volumes increase. If a LEC is not connected to the CEA network, or is connected to the CEA network but not routing all of its traffic over the CEA network, that LEC should lose the benefit of the exemption from direct connections for CEA traffic in Section 69.112(i), and offer direct trunked transport upon receiving a request from an IXC.²⁷

Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 738 n.1286 (2011) ("*2011 USF/ICC Transformation Order*") ("CMRS providers are prohibited from filing interstate access tariffs, see 47 C.F.R. § 20.15(c), but may collect access charges from an IXC if both parties agree pursuant to contract. Practically speaking, this means that CMRS providers generally do not collect access charges for calls that originate or terminate on their networks.")

²⁵ Peerless Network, Inc., et al., Comments at 23-24.

²⁶ *Id.* at 24.

²⁷ See 47 C.F.R. § 69.112.

In order to address arbitrage issues, NCTA proposes to extend bill-and-keep to corporate affiliates engaged in access stimulation, and “any arrangement under which a terminating service provider receives compensation . . . for traffic routed to the terminating provider.”²⁸ Aureon supports NCTA’s proposal, provided that the FCC make clear that CEA subtending LECs are not affiliates of Aureon and do not receive compensation from Aureon.²⁹ Aureon further submits that bill-and-keep should also apply to situations where a tandem operator and a party involved in a revenue sharing agreement are commonly controlled.³⁰ HD Tandem and Free Conferencing Corp. are commonly controlled by Mr. Erickson. HD Tandem should not be permitted to avoid having its rates go to bill-and-keep for access stimulation traffic by establishing a sharing arrangement between the LEC and the conference calling provider, rather than between the LEC and HD Tandem.

On November 16, 2017, a group of carriers and associations filed a letter asking the Commission to take action to address access stimulation by adopting rules to shift the financial responsibility for the costs of transporting access stimulation traffic from IXC’s that use Aureon’s

²⁸ NTCA Comments. at 5.

²⁹ The traffic agreements that Aureon has with the subtending LECs are not revenue sharing agreements. *AT&T v. Aureon* at 17. The Iowa Utilities Board required the CEA mandatory use requirement to be implemented through traffic agreements between Aureon and the subtending LECs. *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 5 (IUB Dec. 7, 1988).

³⁰ Control for these purposes would be determined pursuant to the FCC’s control factors as set forth in the Commission’s *Intermountain Microwave* decision. *Intermountain Microwave*, Public Notice, 12 F.C.C. 2d 559 (1963). With respect to NCTA’s proposal to apply bill-and-keep to entities that are corporate affiliates, Aureon submits that the *Intermountain Microwave* criteria is a more appropriate test as it is unclear what ownership level would be required for parties to be deemed affiliates. For example, in SDN’s case, it has one shareholder that holds more than a 10% interest, and it is unclear if that amount of interest would cause the shareholder to be deemed an SDN corporate affiliate for purposes of NCTA’s proposal.

CEA network to LECs that are engaged in access stimulation.³¹ In essence, the Joint Letter proposes that Aureon bill LECs for CEA service if the LEC has a revenue sharing agreement. Aureon is not a party to any access revenue sharing agreement,³² and it is impossible for Aureon to know which of the 200 LECs subtending Aureon's CEA network have entered into revenue sharing agreements. The Joint Letter's proposal for eliminating access stimulation is not practical, and would burden Aureon's limited financial resources with the impossible task of trying to inquire, investigate, and determine whether third parties have entered into access revenue sharing agreements.

Even if Aureon learned that a subtending LEC had an access revenue sharing agreement, it is not technically feasible for Aureon's billing system to bill the LEC, rather than the IXC that has routed its traffic to Aureon. The Joint Letter's proposal would force Aureon to incur substantial costs to establish a new billing system that would bill CEA service to IXCs, when Aureon does not know of any access revenue sharing agreements for that traffic, but would bill certain LECs when Aureon happens to receive proof of an access revenue sharing agreement. Such a new billing system could be extremely expensive if the necessary software does not currently exist. The Joint Letter's proposal does not provide funds to reimburse Aureon for the considerable costs of developing a new billing system, and Aureon's costs will not be recoverable from LECs if access stimulation traffic declines. Therefore, the Joint Letter's proposal will lead to substantial economic waste that can be avoided by the solution to access stimulation that Aureon has proposed in these reply comments. Moreover, the Joint Letter's

³¹ See Joint Letter of AT&T Communications, Windstream Services, Frontier Communications, Verizon, NTCA – The Rural Broad Band Administration, NCTA – The Internet & Television Association, WTA – Advocates for Rural Broadband, and USTelecom Association, CC Docket No. 01-92, WC Docket No. 16-363 (filed. Nov. 16, 2017) (“Joint Letter”).

³² *AT&T v. Aureon* at 17

proposal will also increase the amount of intercarrier compensation litigation as a result of the inevitable round-robin of finger pointing arising from IXCs refusing to pay for alleged access stimulation traffic by claiming that access charges should be recovered from LECs, and LECs claiming that IXCs are liable for such charges because the LECs are not involved in access stimulation.

Aureon's proposals do not require the development of new billing systems, will reduce the amount of litigation to collect unpaid access charges, and will avoid significant, unwarranted costs that would be incurred for new equipment investments and litigation costs. Aureon's proposals can be implemented without the complexity, impracticality, and confusion that will be wrought by the Joint Letter's proposal. Under Aureon's proposal, there is no need for the tandem owner to know whether third parties have a revenue sharing agreement. Aureon's proposal does not impose upon tandem owners the burden of investigating and determining who to bill, whether it be the IXC or the LEC. There is no billing at all for access stimulation traffic under Aureon's proposal when a LEC has a revenue sharing agreement with a tandem owner (or affiliated transport provider) because tandem switching and transport would immediately move to bill-and-keep. Furthermore, by simply clarifying and confirming that LECs voluntarily connecting to the CEA network, must route all switched access traffic (in either TDM and IP) over the CEA network, the Commission will eliminate the apparent loophole that is permitting a few subtending LECs to route access stimulation traffic via access stimulation transport providers like HD Tandem.

D. The FCC has Authority to Regulate the Rates of CEA Service Providers.

AT&T alleges that the Commission has no legal authority to regulate the rates of any intermediate services under the Section 251(b)(5) bill-and-keep framework because Sections 251(b)(5) and 252(d)(2) only apply to compensation for the "transport and termination" of

traffic.³³ Accordingly to AT&T, Section 251(b)(5) does not apply to intermediate carriers because they do not terminate traffic.³⁴ AT&T's assertion regarding the FCC's authority, or lack thereof, to regulate the rates of intermediate carriers is far too expansive when applied in the context of CEA service providers.

AT&T argues that existing FCC rules already make clear that "transport," as used in Section 251(b)(5), includes only situations in which the carrier providing the transport is also the terminating provider.³⁵ However, Section § 51.701 only applies to "Non-Access Telecommunications Traffic", which is any traffic exchanged between a LEC and a non-CMRS telecommunications carrier, except for telecommunications traffic that is exchange access, information access, or exchange services for such access.³⁶ The traffic that is subject to Aureon's CEA tariff is access traffic, which is specifically excluded from the FCC's reciprocal compensation regulations.

Moreover, as a dominant carrier, CEA providers, such as Aureon, calculate their tariff rates on the basis of traffic and cost studies required by Section 61.38.³⁷ Aureon has submitted traffic and costs studies in support of its tariff rate since the company's inception in 1988. As a dominant provider of CEA service, and an intermediate carrier, Aureon's rates continue to be subject to Section 61.38 filing requirements, and regulated by the FCC.

³³ AT&T Comments at 16.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 47 C.F.R. § 51.701(a)

³⁷ *Technology Transitions*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 9290 n.43 (2016).

AT&T's assertion regarding the Commission's ability to regulate the rates of intermediate carriers, and in particular, CEA providers, is contrary to the FCC's long history of CEA service rate regulation. To the extent that the FCC determines that there is any merit to AT&T's comments that intermediate carrier rates should be deregulated, the Commission should carve out an exception for CEA providers just as it did in other proceedings.³⁸

III. CONCLUSION

CEA providers, such as Aureon, provide critical services that enable rural subscribers to enjoy the benefits of modern communications services, including a competitive choice of service providers, broadband services, and innovative video services. Centralizing traffic and other services, and making it more economical for competitive broadband providers to extend their services to the service areas of 200 rural LECs, advances the public interest, and serves to bring new economic opportunities to rural areas that have generally suffered from population attrition over the last several decades. The FCC should enforce its existing rules, and ensure that all traffic bound for CEA network subtending LECs is required to be transported over the CEA network. Not only will this eliminate the financial incentive for parties that engage in arbitrage activities, but it will also result in lower costs to all carriers that use Aureon's CEA service through reductions in the CEA rate. Aureon urges the Commission to enforce its current rules, and adopt additional rules that move the rates of intermediate carriers to bill-and-keep if they engage in revenue sharing arrangements.

³⁸ See, e.g., *Technology Transitions*, 31 FCC Rcd. at 9290 n.43 (ruling that ILECs would be reclassified as non-dominant carriers, but that CEA providers would continue to be classified as dominant carriers); *Transport Rate Structure and Pricing*, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006, 7048-49, ¶ 91 (1992) (excluding CEA providers from the requirement to offer direct-trunked transport service).

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: troupe@fhhlaw.com

lee@fhhlaw.com

Counsel for Iowa Network Services, Inc.

d/b/a Aureon Network Services

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