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November 28, 2018

VIA ECFS

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

**Re: *In re Iowa Network Access Division Tariff F.C.C. No. 1*
WC Docket No. 18-60; Transmittal No. 38**

Dear Ms. Dortch:

On behalf of Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”), transmitted herewith for filing in the above-referenced proceeding is a copy of the Public version of Aureon’s Direct Case. On March 26, 2018, the FCC entered a Protective Order covering confidential materials submitted in this proceeding. Pursuant to the terms of the Protective Order, Aureon has designated certain information in its filing as Confidential, and all confidential information has been redacted in this filing. A Confidential version of the foregoing filing is being submitted contemporaneously via the Secretary’s Office as required by the Protective Order.

Should there be any questions with respect to this submission, please contact the undersigned.

Respectfully submitted,

James U. Troup
Tony S. Lee

The signature is a handwritten name in blue ink, appearing to read 'James U. Troup'.

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

PUBLIC VERSION

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

In the Matter of)	WC Docket No. 18-60
)	
Iowa Network Access Division Tariff)	Transmittal No. 38
F.C.C. No. 1)	

**DIRECT CASE OF IOWA NETWORK ACCESS DIVISION
D/B/A AUREON NETWORK SERVICES**

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Dated: November 28, 2018

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	WC Docket No. 18-60
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Iowa Network Access Division Tariff)	Transmittal No. 38
F.C.C. No. 1)	

DIRECT CASE OF IOWA NETWORK ACCESS DIVISION
D/B/A AUREON NETWORK SERVICES

Iowa Network Access Division d/b/a Aureon Network Services (“Aureon”) hereby files its direct case in response to the November 9, 2018 Order Designating Issues for Investigation¹ issued by the Federal Communications Commission (“FCC” or the “Commission”).

I. INTRODUCTION

The Commission has always applied rate regulations for competitive local exchange carriers (“CLECs”) that are very different than its rate regulations for incumbent local exchange carriers (“ILECs”). “The Commission’s regulatory regime for switched access charges differs for dominant carriers and non-dominant carriers, incumbent LECs and competitive LECs.”² Yet, in this tariff investigation, the Commission has ordered Aureon to apply both CLEC rate regulations and ILEC rate regulations to the same service (CEA service) and to a single rate for that service. The *Designation Order* states in pertinent part: “Aureon also is a competitive LEC. As a result, Aureon must comply with the ‘CLEC benchmark rule’ and cannot charge more for

¹ *Iowa Network Access Division Tariff F.C.C. No. 1*, Order Designating Issues for Investigation, WC Docket No. 18-60, Transmittal No. 38, DA 18-1149 (rel. Nov. 9, 2018) (“*Designation Order*”).

² *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, Transmittal No. 36, WC Docket No. 18-60, FCC 18-105, slip op. ¶ 4 (rel. July 31, 2018) (“*Aureon Tariff Investigation Order*”).

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its services than the competing incumbent LEC for the same access services.”³ Despite this application of CLEC rate regulations, the only issues designated for investigation in this proceeding involve rate regulations that apply solely to ILECs.

It is arbitrary, irrational, unreasonable, and contrary to the Commission’s own regulations to regulate Aureon as both an ILEC and a CLEC for the same service. Aureon’s appeals of the Commission’s recent decisions subjecting Aureon to CLEC rate regulations are currently pending before the U.S. Court of Appeals for the D.C. Circuit in Case Nos. 18-1257 and 18-1258.⁴ The public interest is best served by avoiding further litigation concerning the dual ILEC/CLEC rate regulation of CEA service, and conserving the resources of both the parties and the Commission. Should the Commission want to proceed with an investigation of Aureon’s tariff rate, it must also decide that Aureon is not regulated as a CLEC.

The Commission amended Part 32 of its rules so that both the accounting rules and the Section 32.27 affiliate transaction rules apply only to incumbent local exchange carriers.⁵

³ *Designation Order* at ¶ 2.

⁴ It is also important to note that customers of CEA service that are large telephone companies with sophisticated knowledge of the Commission’s regulations have also advised the Commission that Aureon is not a CLEC. “INS [Aureon] is an ILEC for the purpose of imposing tariffed access charges.” *CenturyLink Communications, LLC Informal Compl.* at 11, FCC File No. EB-14-MDIC-0007 (July 31, 2014). “INS [Aureon] fits squarely within the common understanding of the term ‘incumbent local exchange carrier.’ It is unquestionably a LEC...and it is also reasonably classified as an ‘incumbent,’ having come into existence well before the enactment of the 1996 Act. Further, INS [Aureon] was created and is owned by incumbent LECs and also was organized for the express purpose of providing an exchange access service on their behalf.” *AT&T Corp. Formal Compl.*, Legal Analysis at 31, FCC Proceeding Number 17-56, File No. EB-17-MD-001 (June 8, 2017).

⁵ *In the Matter of 2000 Biennial Regulatory Review*, 16 FCC Rcd. 19911, 19960-61 ¶¶ 126-27 (2001); see also, *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 17539, 17550 ¶ 25 (1996) (“*Accounting Safeguards Order*”) (“These accounting safeguards consist of cost allocation and affiliate transaction rules that were designed to keep incumbent local exchange

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Recently, “the Commission clarified that ‘only incumbent local exchange carriers’ are subject to specific USOA requirements and other accounting rules.”⁶ As the Commission has determined that “Aureon is not an ILEC,”⁷ the Commission should not subject Aureon to such burdensome and archaic ILEC-only accounting rules.

It follows from this administrative construction, which is binding upon the Commission,⁸ that the affiliate transaction and other accounting issues raised in the Designation Order are inapplicable to Aureon, as those ILEC-only rules do not apply to CLECs and Aureon is not an ILEC. Subjecting Aureon to the Part 32 accounting regulations is also completely contrary to the Commission’s recent decision to streamline and eliminate the costly burden of complying with those accounting rules. As Chairman Pai rightfully stated:

The Part 32 accounts are the Commission’s Ozymandias. Once an important tool that touched every corner of the telecommunications industry, and one so grand that even the mightiest accountants despaired, the Part 32 accounts now affect only a small and shrinking portion of the marketplace in this era of intermodal competition. And they are, for many, nothing more than archaic relics of our regulator history... This is especially important because every dollar used to comply with the Commission’s outdated regulations is a dollar that can’t be used to build 21st-century networks. And the money involved here isn’t chump change. The record suggests some carriers have been spending millions of dollars a year to comply with the Part 32 accounting rules. To me, that represents potentially thousands of American consumers who could have been digitally connected.⁹

carriers from imposing the costs and risks of their competitive ventures on interstate telephone ratepayers”).

⁶ *In the Matter of Comprehensive Review of the Part 32 Uniform System of Accounts*, 32 FCC Rcd. 1735, 1738 ¶ 9 (2017).

⁷ *In the Matter of AT&T Corp. v. Iowa Network Services, Inc.*, Order on Reconsideration, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001, FCC 18-116, slip op. ¶ 8 (released Aug. 1, 2018).

⁸ *AT&T v. United States*, 299 U.S. 232, 241 (1936).

⁹ *In the Matter of Comprehensive Review of the Part 32 Uniform System of Accounts*, 32 FCC Rcd. at 1766.

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This proceeding is diverting a substantial amount of money away from upgrading Aureon's network for rural Americans in order to comply, as a CLEC, with outdated Part 32 ILEC-only accounting rules.

Clearly, it will adversely affect the public interest should the Commission continue to subject Aureon to such "archaic relics of our regulatory history." Therefore, should the Commission seek to regulate Aureon's rates as a CLEC, the Commission should terminate this proceeding immediately, as it only raises issues applicable to ILECs. Alternatively, if the Commission prefers to further investigate Aureon's tariff rate, it should clarify that Aureon's rates are not regulated as a CLEC, and for the reasons set forth below, find that Aureon's tariff rates are just, reasonable, and lawful.

Aureon has, since its inception, been regulated as a dominant carrier subject to Section 61.38 of the FCC's rules.¹⁰ As a dominant carrier, Aureon is required by Section 61.38 to file cost studies to calculate its tariff rates. Nonetheless, the FCC ruled for the first time in its *Referral Order*¹¹ that Aureon was a CLEC subject to the FCC's non-dominant CLEC rate benchmark rules in Section 61.26. The application of dominant carrier rate regulations applicable to ILECs, and non-dominant carrier rate regulation applicable to CLECs, has never before been applied simultaneously to the same service for any carrier. Although Aureon is allegedly a CLEC, and therefore, should be permitted to charge the CLEC benchmark rate without filing any cost studies,¹² the FCC continues to treat Aureon like an ILEC, and apply

¹⁰ *Designation Order* at 2, ¶ 2 (citing 47 C.F.R. § 61.38; *Application of Iowa Network Access Division*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468 (1988); *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677, 9692, ¶ 30 (2017) ("*Referral Order*").

¹¹ *Referral Order*, 32 FCC Rcd. at 9690, ¶ 25.

¹² A CLEC's access rates are conclusively presumed to be just and reasonable if the rates are at or below the benchmark. *Access Charge Reform, et al.*, Seventh Report and Order and Further

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ILEC rate regulations to CEA service. In doing so, the FCC has, for the second time in seven months, invoked its ILEC rate regulations to review Aureon's rates, and specifically, whether Aureon's increase in central office equipment ("COE") is justified, and whether it is in compliance with the Commission's ILEC affiliate transaction rules.¹³

As further detailed below, the FCC should find that Aureon's increased COE investments are justified. The company is planning to replace its old, obsolete 30 year old switching equipment because spare parts are no longer available. Furthermore, it is increasingly expensive and difficult to obtain manufacturer support because the switch is far past its expected lifespan. The Commission should also find that Aureon complies with the ILEC affiliate transaction rules, and therefore, its proposed rate in Transmittal No. 38 is supported by its cost studies, and therefore, reasonable.

II. ARGUMENT

A. **General Framework For Determining the Reasonableness of the CEA Network Lease Rate.**

The Commission has previously acknowledged that it is difficult for Aureon to determine a fair market value for the lease of the fully operational CEA network provided by the Network Division to the Access Division.¹⁴ Nonetheless, the FCC directed Aureon to make a good faith estimate of the fair market value of the lease rate.¹⁵ The Commission also requested additional information regarding third party leases that that could be used to ascertain whether Aureon's

Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9938, ¶ 40 (2001). The FCC has determined that the CLEC benchmark rate for Aureon is \$0.005634. *Aureon Tariff Investigation Order* at 19, ¶ 43.

¹³ *Designation Order* at 2, ¶ 3 & 6, ¶ 18.

¹⁴ *Aureon Tariff Investigation Order* at 25, ¶ 62.

¹⁵ *Id.*

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lease rate should be subject to a “prevailing rate” if those services are the same as those provided by the Network Division to the Access Division. The prevailing price, fair market value, and fully distributed cost determinations are all part of a three-step process to determine whether Aureon’s lease rate is reasonable.

First, the Commission must determine if there is a “prevailing price” applicable to the lease.¹⁶ Section 32.27(c) states that non-tariffed services¹⁷ provided between a carrier and its affiliate that qualify for “prevailing price valuation” must be recorded at the prevailing price.¹⁸ As further detailed below in Section II.B., a “prevailing price” is one in which a service sold by the Network Division to third parties is more than 25 percent of the total quantity of the same service sold to the Access Division. Second, if there is no prevailing price, then the Commission must determine if the lease is being provided by the Network Division to the Access Division at less than fair market value.¹⁹ Third, and again, if there is no prevailing price, the Commission must determine if the lease is being provided by the Network Division to the Access Division at less than fully distributed cost.²⁰ If there is no prevailing rate for the lease, and the lease rate is less than fair market value and fully distributed cost, then the lease rate complies with the ILEC rule, Section 32.27.

¹⁶ See 47 C.F.R. §§ 32.27(c) & (d).

¹⁷ The service provided by the Network Division to the Access Division by way of the facilities lease is an unregulated, non-tariffed service.

¹⁸ 47 C.F.R. § 32.27(c).

¹⁹ “For all other services sold by or transferred to a carrier from its affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.” 47 C.F.R. § 32.27(c). “When services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded.” 47 C.F.R. § 32.27(c)(2).

²⁰ *Id.*

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As further discussed below, there is no prevailing price for the lease provided by the Network Division to the Access Division, and the lease rate is less than fair market value and fully distributed cost. Accordingly, as Aureon's lease rate is reasonable, the Commission should find that Aureon's tariff rate is lawful.

B. There is no Prevailing Rate Applicable to the CEA Network Lease Provided by the Network Division to the Access Division.

In the *Designation Order*, the Commission directed Aureon to report “[w]hether the Network Division leases its network facilities to any other entities, who they are and how much the Network Division charges for such services.”²¹ The information requested appears to be directed towards determining whether there is a “prevailing rate” at which Aureon must record the CEA network lease from the Network Division to the Access Division. Under the FCC’s ILEC-only regulations, “the regulated company must record the transaction with its nonregulated affiliates at market price if that is the ‘prevailing price held out to the general public.’”²² Specifically, Section 32.27(c) provides, in pertinent part, that “[n]on-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in [Section 32.27(d)], shall be recorded at the prevailing price.”²³ Section 32.27(d) states that in order for the prevailing price valuation to apply, “sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service

²¹ *Designation Order* at 8.

²² *Sw. Bell. Corp. v. FCC*, 869 F.2d 1378, 1380 (D.C. Cir. 1990) (citing *Separation of Costs of Regulated Telephone Services from Costs of Nonregulated Activities*, Report and Order, 2 FCC Rcd. 1298 (1987); 47 C.F.R. §§ 32.27(b) and (c)).

²³ 47 C.F.R. § 32.27(c).

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sold by an entity. Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis.”²⁴

In Aureon’s case, there is no applicable prevailing price for the CEA network lease at issue because the service the Network Division provides to third parties is not the same service provided to the Access Division. “The mere offering of an asset or service to unaffiliated entities is not sufficient to establish a prevailing price. A substantial quantity of business must be conducted with unaffiliated third parties in order to establish a true prevailing price.”²⁵ Section 32.27(d) establishes a 25 percent threshold for prevailing price valuation, which must be applied on a “service-by-service basis, rather than on a product-line or service-line basis.”²⁶ With respect to the service that is provided by the Network Division to the Access Division, that service is “CEA Transport Service,” which enables the Access Division to access all 2,700 miles of the CEA network to route calls to all of the LECs that subtend Aureon’s CEA network.²⁷

In contrast, the services that the Network Division provides to third parties are not “CEA Transport Service” because, among other things, those services do not provide access to the entire CEA network, and would not enable third parties to connect to all of the LECs that subtend Aureon’s network.²⁸ Rather, the service those parties receive are point-to-point services that only enable them to route traffic from one discrete location to another, or are for a purpose completely different from CEA service, such as “direct Internet access” circuits for the provision

²⁴ 47 C.F.R. § 32.27(d).

²⁵ *Accounting Safeguards Order*, 11 FCC Rcd. at 17600, ¶ 134.

²⁶ 47 C.F.R. § 32.27(d). The asset-by-asset inquiry for prevailing price valuation is inapplicable in this proceeding because it is a service that is being provided by the Network Division to the Access Division, rather than a sale or transfer of assets.

²⁷ Declaration of Frank Hilton at ¶ 2, attached hereto as Exhibit A (“Hilton Decl.”).

²⁸ Hilton Decl. at ¶ 3.

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of broadband.²⁹ Furthermore, services provided to third parties are not CEA Transport Service because they take into account other factors that are not applicable to CEA Transport Service, including, but not limited to, whether the service is:

- On-net, off-net, or combined³⁰
- Unprotected point-to-point service vs. ring protected service³¹
- On new routes with lower costs
- On routes with significant excess capacity (as a general matter, prices go up over time as capacity becomes more scarce)
- On routes where demand is dropping (as a general matter, prices fall as excess capacity begins flooding the market)
- Sold as part of a larger offering (for example, flat pricing per location as part of a 500 circuit backhaul deal)
- Sold based upon a competitive bid³²

AT&T would have the FCC apply prevailing price valuation to the Access Division's lease rate on a putative service-line basis, rather than a service-by-service basis, which is contrary to the plain language in Section 32.27(d). For example, in its Petition to Reject or to Suspend and Investigate Aureon's proposed tariff, AT&T asserts that "Aureon may actually be required to charge the Access Division the same price for [] capacity [[**BEGIN CONFIDENTIAL**]]

²⁹ *Id.*

³⁰ On-net refers to service that is provided on network facilities owned by Aureon. Off-net refers to service that is provided by Aureon using facilities that are leased by Aureon from other carriers, i.e., a resold service. *Id.* at ¶ 4 n.2.

³¹ In this example, point-to-point service refers to an "unprotected circuit" that will fail if there is a fiber cut. A ring protected service is a premium service that is provided on a self-healing fiber ring that provides redundant circuit paths in the event of a fiber cut. *Id.* at ¶ 4 n.3.

³² *Id.* at ¶ 4.

³³ AT&T Petition at 10 (emphasis omitted).

[[END CONFIDENTIAL]]

AT&T's argument fails not only because the services provided to third-parties, such as **[[BEGIN CONFIDENTIAL]]** **[[END CONFIDENTIAL]]**, is not a service-by-service comparison, i.e., point-to-point service is not the same service as CEA Transport Service, but also because the monthly charges, capacities, features, and mileage for point-to-point services provided by Aureon to third parties that AT&T compares to CEA Transport Service vary too widely to establish a prevailing rate.³⁶ For example, **[[BEGIN CONFIDENTIAL]]**

³⁴ *Id.*

³⁵ *See AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding Number 17-56, File No. EB-17-MD-001, AT&T Formal Complaint, Rhinehart Initial Decl. ¶ 17 (filed June 8, 2017).

³⁶ Given that the types of service provided to third parties involve vastly different circuit capacities with different feature sets, and for a myriad of different purposes, a general statement that non-CEA transport service is comparable to CEA Transport Service is inappropriate as that is a service-line basis comparison.

³⁷ Hilton Decl. at ¶ 5.

³⁸ *Id.*

[[END CONFIDENTIAL]]

Section 32.27(d) requires an applicable prevailing rate to be established on a service-by-service basis, rather than on a service-line basis.⁴⁰ To the extent that there is a service-by-service comparison that can be done to establish a prevailing rate for Aureon's CEA service, **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] In order to be paid for transporting wireless intraMTA traffic, Aureon is required to negotiate individual contracts with carriers.⁴¹ **[[BEGIN CONFIDENTIAL]]**

³⁹ *Id.* **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] *Id.* At ¶ 6.

⁴⁰ 47 C.F.R. § 32.27(d).

⁴¹ *See Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850, 902 (S.D. Iowa 2005), *aff'd*, *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006).

[[END CONFIDENTIAL]]

The point-to-point services provided by Aureon to third parties are not CEA Transport Services, and vary greatly with respect to the rates, capacities, and mileage for each circuit. Therefore, there is no prevailing rate for point-to-point transport services provided to third parties comparable to Aureon's interdivisional lease rate.

C. Comparing Aureon's Lease Rate to Other CEA Transport Services Available on the Open Market is a Reasonable Methodology for Determining Fair Market Value.

In the *Accounting Safeguards Order*, the Commissions determined that the procedures carriers use in estimating fair market value should vary with the circumstances of each transaction, and declined to specify the methodologies that carriers must follow to estimate fair market value.⁴⁴ Nonetheless, CEA services provided by other CEA providers offer a reasonable way to estimate the fair market value for Aureon's facilities lease.

⁴² Hilton Decl. at ¶ 7.

⁴³ *Id.*

⁴⁴ *Accounting Safeguards Order*, 11 FCC Rcd. at 17609, ¶ 153.

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Under standard valuation techniques, the most reliable indicator of market price tends to be the comparable sales approach, in which the price charged for the hypothetical transaction in question is determined by prices charged in actual market transactions involving similar goods. Two types of market transactions can serve as external benchmarks for comparable sales. *The easiest case occurs when a network owner sells into an external market the same type of access mandated by the government.* In that situation, market value determination is simple because comparable sales can serve as a reliable proxy for the services provided.⁴⁵

The FCC has agreed that carriers required to estimate fair market value under Section 32.27(c) should be able to do so by comparing service prices associated with an affiliate transaction to those readily available on the open market.⁴⁶ State utility commissions that have adopted affiliate transaction rules substantially similar to that in Section 32.27(c) have also determined that the fair market value for affiliate transactions is the price for a comparable service on the open market.⁴⁷

⁴⁵ Daniel F. Spulber & Christopher S. Yoo, *Access to Networks: Economic and Constitutional Connections*, 88 Cornell L. Rev. 885, 900-01 (2003) (emphasis added). Prof. Spulber is the Elinor Hobbs Professor of International Business, Professor of Strategy at Northwestern University, and Professor of Law, Northwestern University School of Law (Courtesy). See https://www.kellogg.northwestern.edu/faculty/directory/spulber_daniel.aspx (last visited Nov. 20, 2018). Prof. Yoo is the John H. Chestnut Professor of Law, Communication, and Computer & Information Science; Director, Center for Technology, Innovation & Competition, University of Pennsylvania Law School. See <https://www.law.upenn.edu/cf/faculty/csyoo/> (last visited Nov. 20, 2018).

⁴⁶ *Southern New England Telephone Co.*, 14 FCC Rcd. at 7161 ¶ 5 (FCC agreed with Cablevision's comments that estimating the fair market value of marketing, billing, sales, and other services should not be a difficult process because those services are routinely available on the open market).

⁴⁷ See, e.g., *In the Matter of the PGA/ACA Filing of Atmos Energy Corp. for the West Area (Old Butler), West Area (Old Greeley), Southeastern Area (Old Semo), Southeastern Area (Old Neelyville), Kirksville Area & the Northeast Area*, Report and Order, Docket No. GR-2008-0364, 2011 WL 5831353 ¶ 26 (Mo. P.S.C. Nov. 9, 2011) (fair market value of a good or service can be defined as the price that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction); *In re California Water Serv. Co.*, Opinion Resolving General Rate Cases, Decision 07-12-055, 2007 WL 5377598 n.95 (Ca. P.U.C. Dec. 20, 2007) (fair market value is the price that is established under an arms-length transaction).

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“[M]arket value may be inferred from the price charged for access to a substitute transmission technology providing similar services.”⁴⁸ In this case, services that are comparable to (but not nearly as extensive as) the CEA Transport Service provided to the Access Division are the CEA transport services provided by other CEA providers. There are only two other CEA service providers other than Aureon: SDN and MIEAC. The CEA transport services provided by SDN and MIEAC, and available on the open market to third parties by way of their tariffs, are reasonably comparable to (although not as extensive as) the CEA Transport Service provided to Aureon’s Access Division for several reasons.

First, like Aureon, SDN, and MIEAC operate networks that enable interexchange carriers (“IXCs”) that compete against AT&T to connect to all of the LECs that subtend their networks, and bring the benefits of competitive choice of long distance carriers to customers living in rural areas. Before the creation of Aureon, SDN, and MIEAC, customers living in rural areas in Iowa, South Dakota, and Minnesota, could only use AT&T as their provider of interstate long distance service. The CEA transport service for those networks were designed to connect IXCs to all of the subtending LECs, rather than provide a link to individual LECs.

Second, the CEA transport services provided by SDN and MIEAC are reasonably comparable to (although not as extensive as) the CEA Transport Service provided by Aureon’s Network Division because they provide access to the entire CEA network of SDN and MIEAC respectively. The CEA networks enable IXCs competing against AT&T to connect their customers to residents served by all of the CEA providers’ subtending LECs. This is in stark contrast to non-tariff transport service provided to third parties that only enable those parties to connect to a single LEC through a point-to-point transport link.

⁴⁸ *Access to Networks: Economic and Constitutional Connections*, 88 Cornell L. Rev. at 901.

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Third, SDN and MIEAC's CEA networks are subject to similar operational restrictions as Aureon's CEA network. Both SDN and MIEAC sought and received authority from the FCC to lease facilities from an affiliate to provide CEA service.⁴⁹ Such leases lead to similar operational requirements to ensure that each CEA service provider does not earn more than a fair return. Those operational considerations are not present in non-tariff services, which are subject to a number of different pricing factors as discussed above in Section II.B.

The Commission noted that SDN and MIEAC's rates were set more than six and 18 years ago, respectively;⁵⁰ however, that does not mean that those rates cannot be used as fair market value comparables. The market for CEA transport service is limited as there are only three CEA providers in the entire nation.⁵¹ Transport provided by other providers is not similar to CEA transport service for the reasons discussed above.⁵² The FCC has stated that the source of such information could come from "catalog listings,"⁵³ which could include rates listed in filed tariffs. Indeed, in the *Accounting Safeguards Order*, the BOCs argued that because rates appearing in publicly filed agreements or statements of generally available terms "will be subject to review by State regulators *similar to tariff review*, such rates provide the same protection against cross-

⁴⁹ See *Application of SDCEA, Inc.*, Memorandum Opinion, Order and Certificate, 5 FCC Rcd. 6978, ¶ 4 (1990) ("SDCEA maintains it will lease [] facilities from its parent corporation, SDN."); *Minnesota Independent Equal Access Corp.*, Docket P-3007/NA-89-76, 1991 WL 501782 (Minn. PUC, Jan. 10, 1991)) ("In the MIEAC system, MEAFCO owns the access tandem and leases it to MIEAC.")

⁵⁰ *Designation Order* at 7.

⁵¹ *Aureon Tariff Investigation Order* at 2 n.5.

⁵² To the extent that any non-CEA transport service could be used as a comparator, such service would necessarily need to be for transport service provided in rural areas as CEA networks are designed to route calls to rural LECs, and do not serve urban areas.

⁵³ *Southern New England Telephone Co.*, 14 FCC Rcd. at 7161.

subsidization.”⁵⁴ The FCC agreed, and amended its “affiliate transactions rules to allow incumbent local exchange carriers to use charges appearing in publicly-filed agreements submitted to a State commission”

Given that the FCC previously found that it was appropriate for carriers to comply with the fair market value requirement by using tariff-based valuations, there is no reason for the FCC to deviate from its prior decision and prohibit Aureon from using the tariff rates in the SDN and MIEAC tariffs to determine the fair market value of the CEA Transport Service. Furthermore, the CEA transport services provided by SDN and MIEAC are not as extensive as the CEA Transport Service provided by the Network Division to the Access Division, the fair market value of the Network Division’s CEA Transport Service must necessarily be higher than the rates that SDN and MIEAC charge for transport.

D. Using the Replacement Cost of the CEA Transport Facilities to Determine Fair Market Value is the Next Best Method.

The Commission invited Aureon to file an alternative calculation of the fair market value rate for the leased CEA network if Aureon so chose, provided that the calculation was properly supported.⁵⁵ Aureon accepts this invitation, and provides an alternative calculation based on the replacement cost of the fully operational CEA network,⁵⁶ which confirms that the lease rate is less than fair market value. Such an estimate should approximate the market value of all the inputs used to create and operate the network.⁵⁷

⁵⁴ *Accounting Safeguards Order*, 11 FCC Rcd. at 17611 ¶ 156 (emphasis added).

⁵⁵ *Designation Order* at 8.

⁵⁶ “Examples of methods for determining fair market values for both assets and services include . . . [the] replacement cost of an asset” *Accounting Safeguards Order*, 11 FCC Rcd. at 17610, ¶ 154.

⁵⁷ *Access to Networks: Economic and Constitutional Connections*, 88 Cornell L. Rev. at 902

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Replacement cost, which refers to the cost of purchasing an input at current market prices, in turn provides a reasonable approximation of market value. Replacement costs are forward-looking costs of constructing the network and include all costs that the utility would incur to rebuild its system, including capital, land, labor services, and management. Accordingly, the market value of the inputs used to create a network includes the replacement costs of facilities and equipment, as well as the user cost of capital evaluated using the market cost of capital, land and land rights evaluated using current market rents, and current operation and maintenance expenses. A good proxy for replacement cost is the recent purchase cost of the input. . . . It is now generally accepted that replacement cost is superior to historical cost as a measure of market value⁵⁸

In order to determine the replacement cost of Aureon's 2,700 mile CEA network, Aureon first identified the inputs needed to create and operate the network.⁵⁹ Those inputs did not include switching equipment as that is owned by the Access Division, and not leased.⁶⁰ The equipment included in the inputs for replacement cost of the leased facilities are as follows:

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⁵⁸ *Id.* at 902-03.

⁵⁹ Declaration of Pat Vaughan at ¶ 2, attached hereto as Exhibit C ("Vaughan Decl.").

⁶⁰ *Id.*

⁶¹ *Id.* at ¶ 3.

⁶² *Access to Networks: Economic and Constitutional Connections*, 88 Cornell L. Rev. at 902 ("market value of the inputs used to create a network includes . . . current operation and maintenance expenses").

⁶³ Vaughan Decl. at ¶ 3.

⁶⁴ Further details regarding the source of the information to determine the amount of the cost inputs are set forth in Mr. Vaughan's declaration.

⁶⁵ Vaughan Decl. at ¶ 14.

⁶⁶ *Id.*

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A complete annual revenue requirement has been developed using the replacement cost listed above, along with appropriate cost of capital and overhead carrying charges sourced from existing Aureon financials, and that revenue requirement is included with the revised Cost Support workbook that has been included in this filing. The annual revenue requirement developed using the replacement cost of the CEA network is \$6,579,794, which is substantially above the lease charge of \$4,904,646.⁶⁷ Because the lease charge is less than the revenue requirement, this demonstrates that the lease charge is less the fair market value using the cost replacement methodology.

E. A Waiver is Warranted if the Commission Determines That There is no Additional, Relevant Data Available for Aureon to Make a Good Faith Fair Market Value Estimate.

In the *Aureon Tariff Investigation Order*, the Commission noted the difficulty faced by Aureon in determining the fair market value for the CEA network lease, and directed Aureon to “either file information to demonstrate compliance with this requirement or to seek waiver of the same.”⁶⁸ Should the Commission determine that additional information is needed to support Aureon’s good faith estimate, and that there is no additional, relevant data available for Aureon to make a good faith fair market value estimate, Aureon respectfully requests a waiver of the requirement to comply with the fair market value showing in Section 32.27(c). As Section 32.27(c) only applies to ILECs, such a waiver is only necessary if the Commission decides to regulate Aureon as an ILEC rather than a CLEC.

⁶⁷ Declaration of Brian Sullivan at ¶ 18, attached hereto as Exhibit B (“Sullivan Decl.”)

⁶⁸ *Aureon Tariff Investigation Order* at 25, ¶ 62.

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The Commission may grant a waiver of its rules for good cause shown.⁶⁹ Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, if such deviation will serve the public interest, and if waiver of the rule is consistent with the principles underlying the rule.⁷⁰ In addition, a petition for waiver of the Commission's Part 32 rules must demonstrate that: (1) special circumstances warrant a departure from a prescribed procedure or technique; (2) a specifically defined alternative will result in a substantially equivalent or more accurate portrayal of operating results or financial conditions, consistent with the principles of Part 32; and, (3) the application of such alternative procedure will maintain uniformity in substantive results among telecommunications companies.⁷¹ Aureon has provided a good faith fair market value Aureon's CEA network lease rate pursuant to Section 32.27(c), and as discussed below, a waiver of that requirement is warranted if the Commission determines that there is no additional, relevant data available for Aureon to make a good faith fair market value estimate for the lease rate.

First, special circumstances warrant deviation from the general rule.⁷² Aureon is only one of three CEA providers in the entire nation. Aureon has provided two separate fair market value estimates using valuation techniques that are widely accepted in the industry: (i) comparable rates available on the open market for comparable service, i.e., CEA transport

⁶⁹ 47 C.F.R. § 1.3.

⁷⁰ See *United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules*, Order, 13 FCC Rcd. 214 (1997) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972)); see also *Aliant Communications Co. Petition for Waiver of Section 32.27 of the Commission's Rules*, Order on Reconsideration, 14 FCC Rcd. 6231 (1999).

⁷¹ 47 C.F.R. § 32.18.

⁷² This first element in Section 32.18 is substantially similar to the general requirement to show that special circumstances exist for a waiver.

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available from SDN and MIEAC, and (ii) the replacement cost of Aureon's CEA transport network. The market for comparable CEA network services that the Network Division provides to the Access Division is extremely limited because in order to perform a valid market comparison, similar services must be used to determine the fair market value for the CEA Transport Service provided by the Network Division to the Access Division. As discussed above, point-to-point transport services are not comparable to the CEA transport service provided by SDN and MIEAC because point-to-point services do not, among other things, provide access to an entire CEA network to reach all of the LECs connected to the network. Special circumstances exist to grant a waiver if the Commission finds that additional information is needed to support Aureon's good faith estimates because there is no additional, relevant data available for Aureon to make a good faith fair market value estimate for Aureon's lease rate.

Second, Aureon has submitted specifically defined alternatives that will result in a substantially equivalent or more accurate portrayal of operating results or financial conditions, consistent with the principles of Part 32.⁷³ Section 32.27(c) requires carriers regulated pursuant to ILEC rate regulations to demonstrate that affiliate transactions be recorded at no more than the lower of fair market value and fully distributed cost. The FCC determined in the *Aureon Tariff Investigation Order* that, consistent with the principles of Part 32, Aureon must allocate costs using the DS-3-based system method to allocate costs to the Access Division, rather than the DS-1-based circuit method previously used.⁷⁴ That alternative methodology has resulted in a

⁷³ This second element in Section 32.18 is substantially similar to the general rule that waivers be consistent with the principles underlying the rule.

⁷⁴ *Aureon Tariff Investigation Order* at 34-36.

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significant reduction in Aureon's lease rate, and reduced its overall CEA switched transport rate from \$0.00576 (the rate in Transmittal No. 36) to \$0.00296 (the rate in Transmittal No. 38).⁷⁵

Third, the methodology used by Aureon to allocate costs will maintain uniformity in substantive results among telecommunications companies. Specifically, the FCC established in the *Aureon Tariff Investigation Order* that CEA providers should use the system method to allocate costs among their regulated and non-regulated operations. In light of that decision, and the dearth of information on the open market regarding comparable services, the methodology used by Aureon to calculate its lease rate and the resulting CEA tariff rate will maintain uniformity among CEA providers when SDN and MIEAC file their cost support for their tariff filings.

Finally, grant of the requested waiver would serve the public interest. Aureon has been embroiled in litigation with large IXCs, such as AT&T and Sprint, for almost a decade over the payment of Aureon's CEA invoices. Aureon has not been paid millions of dollars for the several years of CEA service it has provided AT&T and Sprint, which has adversely affected Aureon's ability to upgrade and improve its aging infrastructure. Although Aureon has now been forced to upgrade its 30 year old switch and related infrastructure as a result of the lack of spare parts and limited manufacturer support, that upgrade has been adversely affected by the continued failure of IXCs to pay their invoices.⁷⁶ The lack of sufficient revenues has required Aureon to make compromises in its network planning, and to take a much more measured and long term approach for the upgrade.

⁷⁵ The FCC has also determined that, not only is Aureon subject to ILEC rate regulations, but Aureon is also subject to the CLEC rate benchmark, which the Commission ruled was \$0.005634. *Aureon Tariff Investigation Order* at 2, ¶ 2; 16, ¶ 35; 19, ¶ 43. Subjecting Aureon to CLEC rate regulation is not consistent with Part 32 ILEC rate regulation.

⁷⁶ Hilton Decl. at ¶ 8.

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The public interest would be served by providing certainty regarding Aureon's CEA rate. A good beginning on providing such certainty was achieved by the *Referral Order*, which clarified that Aureon must be compensated for access stimulation traffic.⁷⁷ Providing guidance to the telecommunications industry regarding the appropriate CEA rate should cause reasonable long distance carriers to finally pay their outstanding CEA invoices. Aureon can then use those revenues to invest in and modernize the CEA network to benefit rural customers in Iowa and Nebraska.

III. RESPONSES TO SPECIFIC ISSUES DESIGNATED FOR INVESTIGATION

In this section, Aureon provides specific responses to additional issues designated for investigation by the FCC, and information requested as set forth in the *Designation Order*.

A. Increase in Central Office Equipment Investment

1. Explanation and Rationale for Additional Investment (*Designation Order*, ¶¶ 15-17)⁷⁸

In the *Designation Order*, the Commission directed Aureon to explain its increased investment in total company central office switching equipment in light of the decline in demand for CEA service. Aureon's increased COE investments are reasonable because they are necessary to update and replace outdated switch equipment and related facilities used for the provision of CEA service. Aureon's switches were originally manufactured in 1988 and 1989, and they are difficult and expensive to manage and maintain due to their vintage.⁷⁹ In the past, Aureon was not able to make the necessary investments to upgrade its equipment due to the

⁷⁷ See *Referral Order* at ¶¶ 20-22 & 31-34.

⁷⁸ The FCC has directed "Aureon to identify the individual(s) in the company most knowledgeable on [the] issue" designated for investigation. *Designation Order* at 5, ¶ 14. Frank Hilton is the person at Aureon most knowledgeable about the issue designated for investigation in paragraphs 15 through 17 of the *Designation Order*.

⁷⁹ Hilton Decl. at ¶ 8.

failure of large carriers, such as AT&T and Sprint, to pay Aureon's CEA invoices.⁸⁰ Aureon's switch was manufacturer discontinued in 2016 with limited technical support available, and no new hardware is available from the vendor.⁸¹ Aureon cannot continue to wait for payment of millions of dollars in past due invoices before purchasing new COE and related infrastructure.⁸² Before its current equipment fails, causing degraded or disrupted service to end users located in rural areas of Iowa, Aureon must undertake an extensive project to replace its old COE for new, modern equipment.⁸³

The new switching equipment will be used and useful in Aureon's provision of regulated service because that equipment will, in fact, be used to provide CEA service. The increase in COE cost as a result of the switch replacement project is reflected in the increased projected COE investment noted by AT&T and the Commission.

B. Compliance with the Affiliate Transaction Rules

**1. Narrative Explanation of Fair Market Value Calculations
(Designation Order, ¶¶ 19-20)⁸⁴**

As described previously, Aureon utilizes the fiber optic network of its Network Division to provide CEA service to IXC's. Aureon leases transport and termination services from the

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Aureon has retained the services of an independent cost consultant, JSI, Inc., to conduct its cost studies and fair market value analysis. Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in paragraphs 19-20 of the *Designation Order*. To the extent Mr. Sullivan relied on information provided by Aureon to respond to those paragraphs, Frank Hilton, Jeff Schill, and Pat Vaughan are the individuals at Aureon most knowledgeable about that information. With regard to the information provided to Mr. Sullivan regarding the replacement cost of the CEA network, Pat Vaughan and Peter Kenne are the individuals at Aureon most knowledgeable about that information.

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Network Division in an amount that is greater than \$500,000 per year, and pursuant to the requirements in Section 32.27, Aureon must compare the lease rate to the fully distributed cost for the assets being used, and also to the fair market value of the service provided.⁸⁵ In Aureon's September 24, 2018 filing (Tariff Transmittal No. 38), Aureon provided computations that validate that the lease charge being included in the revenue requirement for the Access Division (\$4,299,427) is lower than both the fully distributed costs of the underlying assets used for the service, and the fair market value estimate that would apply if the service was purchased from an unaffiliated third-party CEA service provider.⁸⁶ Both of those calculations were included in the Cost Support Excel workbook on the tab labelled "Network Lease – Cost Market Comp".⁸⁷

The service that is provided to the Access Division is the transport of switched access traffic from its central switching point (as well as from alternate points of interconnection ("POIs")) and ultimately termination to the LECs' facilities connected to Aureon's CEA network.⁸⁸ As indicated in prior filings, Aureon's CEA service is fairly unique in the telecommunications landscape, and not readily subject to fair market valuation. In response to the *Aureon Tariff Investigation Order*, Aureon included a good faith fair market value estimate with Tariff Transmittal No. 38 to comply with this ILEC-only requirement by comparing the switched access transport services provided by other CEA providers, and specifically, those provided to SDN and MIEAC.⁸⁹

⁸⁵ 47 C.F.R. § 32.27(c).

⁸⁶ Sullivan Decl. at ¶ 5.

⁸⁷ *Id.*

⁸⁸ *Id.* at ¶ 7.

⁸⁹ *Id.* at ¶ 6.

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While SDN and MIEAC have different network and regulatory characteristics, it is reasonable to benchmark the transport lease against these entities.⁹⁰ Both companies are required by the FCC to file cost based tariff rates, subject to review and approval by the FCC. Presumably, the rates they charge are supported by the underlying costs involved with providing CEA transport. Specific responses to questions posed by the FCC regarding the comparison of SDN and MIEAC to Aureon are set forth below.

It is important to note that because the Access Division's lease is only for the transport and termination of CEA minutes, any rates that involve switching (tandem or otherwise) were not included in the fair market valuation process.⁹¹ The cost of Aureon's switching investment was not obtained through an intracompany lease, and the assets associated with such investment are included in the "rate base" and the resulting revenue requirement and rate development.⁹² In response to the FCC's Designation Order, Aureon has supplemented (and revised) the fair market comparisons included in Transmittal 38, with these calculations included in the attached cost support.⁹³ These additions/changes are summarized below.

Terminating-to-Originating Traffic Ratio⁹⁴

The FCC's *Designation Order* questioned the use of the 50%/50% terminating-to-originating traffic ratio that was utilized in the comparison with MIEAC. MIEAC's rate for originating minutes of use is significantly higher than the rate for terminating minutes, and as a

⁹⁰ See Section II.C., *supra*, showing that it is appropriate to use the CEA transport tariff rates of SDN and MIEAC to make a good faith fair market value estimate for Aureon's CEA Transport Service leased to the Access Division.

⁹¹ Sullivan Decl. at ¶ 7.

⁹² *Id.* at ¶ 8.

⁹³ *Id.*

⁹⁴ See, *id.* at ¶¶ 9-16.

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result, the ratio of minutes to each category is significant in this comparison. A 50/50 application was used as more detailed information was not available from SDN or MIEAC at the time of filing. The CEA transport service rate comparison has been revised by including minutes supplied by Aureon for the period YTD 2018. These minutes, (a recap is included in the cost support) reflect a terminating/origination ratio of **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] respectively.

This ratio has been applied to the TYCOS minutes to yield charges of \$4,036,478, as compared to the original MIEAC result of \$13,908,817. Although this result is less than Aureon's lease charge by \$868,168, the fair market value of Aureon's CEA transport service is necessarily higher than the tariff rates of these two other CEA service providers because their CEA networks are far less extensive as Aureon's CEA network. Furthermore, numerous other comparisons of market pricing, including the replacement cost comparison detailed below, satisfy the "lower of cost or market test". In addition, the rate taken from the SDN tariff was changed to the rate listed in the tariff for "Centralized Equal Access" as opposed to "Access Transport." Although it would appear that an access transport rate would be more appropriate for this comparison, review of the SDN tariff shows that the CEA rate is actually lower, and also appears to have been updated more recently (July 1, 2016). In an effort to be conservative in the fair market valuation, this rate was chosen for the comparison with updated results.

In addition to the CEA providers' rates that were used to benchmark the Aureon lease, the following other publicly available tariff rates were used and included in the market comparison:

- a. National Exchange Carrier Association ("NECA") July 1, 2018 Tariff No. 5 rates for tandem switched transport facilities and tandem switched terminations, applied to the

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Aureon TYCOS CEA Minutes of Use, switched terminations, and transport mileage (103.519 miles per the FCC's July 31, 2018 Order). The result of this comparison is revenues of \$60,449,738, which is well in excess of the lease expense.

b. NECA Dedicated Transport (lowest rate band) from the July 1, 2018 tariff. DS-3 Direct Trunk Transport and Direct Trunk termination rates were applied to the CEA DS-3s (from the Circuit Inventory) both dedicated 100% and an allocation of Joint and Common DS-3s. While CEA service does not provide dedicated transport (the FCC mandatory use policy does not allow IXCs to order direct trunk transport over Aureon's network), a comparison using these rates is valid. The lowest current rate band was chosen in an effort to be conservative. Application of these rates yields revenues of \$8,608,820, which again, is above the lease amount by a substantial margin.

c. Although CenturyLink does not provide transport service that is comparable to CEA Transport Service, Aureon's lease rate was also compared to potential charges that could result from the rates filed in the CenturyLink F.C.C. Tariff No. 11 for both switched transport (Originating/Terminating Third Party Transport) as well as dedicated transport using inputs and rate applications similar to the NECA comparisons. The result of this comparison is as follows:

Switched Transport rates:	\$8,697,742
Dedicated Transport:	\$4,828,968

As is the case with the NECA comparison, the CenturyLink Switched Transport comparison is substantially higher than the Aureon lease charge. The CenturyLink Dedicated Transport revenue comes in very close to the Aureon lease of \$4,904,646.

d. In Transmittal 38, a simple average was taken of the SDN and MIEAC transport rates to compare with the Aureon lease charge. This comparison has been updated to

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include the additional surrogates discussed above, i.e., NECA and CenturyLink rates.

The high result that was generated using the NECA tandem switched transport rates was discarded as an outlier, and the remaining comparisons were averaged. The result of \$7,897,615 remains substantially (61%) higher than the rate used in the Aureon lease, as shown in the table below:

11. Summary of Market Comparisons:	Lease Expenses:	\$4,904,646.27
a South Dakota Network (SDN) -	Line 4, Above	\$13,316,068
b Minnesota Independent Equal Access Corp.	Line 6, Above	\$4,036,478
c NECA Tandem Switched Transport	Line 7, Above	\$60,449,738
d NECA Dedicated Transport - DS3	Line 8, Above	\$8,608,820
e Century Link Third Party Transport	Line 9, Above	\$8,697,742
f Century Link Dedicated Transport	Line 10, Above	\$4,828,968
Simple Average of Market		
g Comparisons:		\$16,656,302
h Average w/out NECA Tandem Switched (Outlier)		\$7,897,615
7. Comparison of Lease vs. Market Estimate:	Line 1 Less Line 11 h	(\$2,992,969.12)
		-61%

Alternative Fair Market Value Estimate Using Replacement Cost⁹⁵

In addition to the updated and additional fair market value comparisons based on the tariff rates of other carriers for transport services, Aureon has performed a completely new fair market value estimate using a “replacement cost” approach, as described previously in this response. A revenue requirement was developed for a complete replacement of the underlying transport network (switching was not included, as described above) plus direct operating expenses based on current estimates.

⁹⁵ Sullivan Decl. at ¶¶ 17-23.

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The complete revenue requirement development is included in the revised Cost Support under the Tab labeled “Replacement Cost Comp”. Once the “Total” Revenue requirement was developed, the same allocation to CEA services (i.e., Part 64) was applied to this replacement network, with a composite allocation of 23%, applied to the COE and CWF components separately. The result of this comparison shows a fair market value replacement cost of \$6,579,794, which is higher than the CEA revenue requirement for the existing network of \$6,180,980, and is significantly higher than the lease charge of \$4,904,646.

**a. Justification for SDN and MIEAC Rate Elements Selected
(Designation Order, ¶ 20, Bullet Point One)⁹⁶**

As described above, the rate elements in the SDN and MIEAC tariffs were selected because they are the only available prices for a CEA transport network offered by an unaffiliated third party. While Aureon combines all cost elements into a single rate element, both SDN and MIEAC include multiple rate elements. Initially, the Access Transport Rate element was selected from the SDN Tariff, and the “Transport” rates were chosen from the MIEAC Tariff. As described above, the previous comparisons have been updated based on the issues raised in the FCC’s *Designation Order*.

**b. Relevance of Regulatory Accounting-Based Rate-of-Return
Methodology to Aureon’s Rates (Designation Order, ¶ 20,
Bullet Point Two)⁹⁷**

As discussed in Section II.C, *supra*, finding “comparables” for the Aureon CEA network lease was difficult because there are very few carriers that provide CEA service. SDN and

⁹⁶ Brian Sullivan is the person most knowledgeable about the issue designated for investigation in this bullet point. *See* Sullivan Decl. at ¶¶ 19-20.

⁹⁷ Brian Sullivan is the person most knowledgeable about the issue designated for investigation in this bullet point. *See id.*

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MIEAC were chosen as comparators as they are engaged in a materially similar service offering, i.e., CEA service, although their networks are far less extensive as Aureon's CEA network. The rates chosen were found in current FCC approved tariffs on file, and it is Aureon's understanding that SDN and MIEAC are subject to the same review and scrutiny as Aureon. The assumption underlying the fair market value analysis is that the overall cost of providing CEA service, on a unitized basis, is sufficiently comparable. The rates utilized in these updated comparisons were filed with the FCC in July of 2016, which is of sufficiently recent vintage for comparison purposes.

**c. Why Aureon is Sufficiently Similar to SDN and MIEAC
(Designation Order, ¶ 20, Bullet Point Three)⁹⁸**

As further detailed in in Section II.C, *supra*, Aureon is sufficiently similar to SDN and MIEAC because, like Aureon, SDN and MIEAC: (i) operate networks that enable IXC's that compete against AT&T to connect to all LECs that subtend their networks; (ii) provide CEA transport services that are reasonably comparable to (although not as extensive as) the CEA Transport Service provided by the Network Division; and (iii) are subject to the same operational restrictions as Aureon's CEA network. No other carriers provide a CEA transport service that enable IXC's to connect to many different LECs for the completion of calls to rural areas.

Notwithstanding the foregoing, Aureon recognizes that while the CEA networks of SDN and MIEAC provide similar functionalities to Aureon's CEA network, their networks have different configurations and characteristics. To the extent that, *arguendo*, transport services

⁹⁸ Frank Hilton and Patrick Vaughan at Aureon are the persons at Aureon most knowledgeable about the issue designated for investigation in this bullet point. Brian Sullivan at JSI is also knowledgeable about the issue designated for investigation in this bullet point. *See* Sullivan Decl. at ¶¶ 19-21.

provided by non-CEA providers are relevant comparators to CEA Transport Service (and Aureon does not concede that they are), Aureon has added the transport service of NECA and CenturyLink as additional comparables to its fair market value analysis. In addition, Aureon has included for the first time a revenue requirement based on replacement costs for the Aureon network.

d. Amount of Aureon's CEA Originating and Terminating Traffic (*Designation Order*, ¶ 20, Bullet Point Four)⁹⁹

As discussed above in Section III.B.1, the comparison of rates charged by other CEA service providers for the use of an entire CEA network to connect to numerous LECs has been updated to use actual originating and terminating traffic, as compared to the previous use of a 50/50 relationship. This update shows a reduction in the fair market value comparison for MIEAC, but still demonstrates that Aureon's lease rate is below fair market value.

e. Relevance of Tariffed Per-MOU Switched Access Rates to Determining Fair Market Value for Wholesale Transport (*Designation Order*, ¶ 20, Bullet Point Five)¹⁰⁰

The CEA transport rates for SDN and MIEAC represent the only third party rates for comparing the CEA transport service that was provided by the Network Division to the Access Division. Taken in combination with two calculations of fully distributed cost, including the fair market value replacement cost of the CEA transport network, these comparisons represent a good faith fair market value estimate of Aureon's lease rate if the Access Division were required to obtain the service on the open market. Further details regarding the revised comparison, and

⁹⁹ Frank Hilton and Jeff Schill at Aureon are the persons at Aureon most knowledgeable about the traffic at issue. Brian Sullivan at JSI is the person most knowledgeable about the fair market value calculation. *See* Sullivan Decl. at ¶ 22.

¹⁰⁰ Brian Sullivan is the person most knowledgeable about the issue designated for investigation in this bullet point. *See* Sullivan Decl. at ¶ 23.

the relevance of SDN and MIEAC's tariffed CEA transport rates, are set forth in Sections II.C and III.B.1, *supra*.

f. Network Division Lease to Other Entities (*Designation Order*, ¶ 20, Bullet Point Six)¹⁰¹

The Commission directed Aureon to provide information regarding the identity of the entities to whom Aureon leases facilities, and how much the Network Division charges for such services. That information involves prices for non-regulated services and is highly confidential. Therefore, Aureon is providing that information under seal directly to staff in an Excel spreadsheet named "Third Party Leases."

g. [[BEGIN CONFIDENTIAL

[[END CONFIDENTIAL]] (*Designation Order*, ¶ 20, Bullet Point Seven)¹⁰²

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¹⁰¹ Frank Hilton is the person at Aureon most knowledgeable about the issue designated for investigation in this bullet point. Brian Sullivan at JSI is also knowledgeable about this issue.

¹⁰² Frank Hilton is the person at Aureon most knowledgeable about the issue designated for investigation in this bullet point. Brian Sullivan at JSI is also knowledgeable about this issue.

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2. Fully Distributed Cost

- a. Central Office Expense and Cable and Wire Facilities Cost**
*(Designation Order, ¶¶ 21-30)*¹⁰⁴

¹⁰³ To the extent there is a prevailing rate for CEA service, that rate is \$0.0065. *See* Section II.B, *supra*.

¹⁰⁴ Brian Sullivan and Paul Nesenson at JSI, and Frank Hilton and Pat Vaughan at Aureon, are the persons most knowledgeable about the issues designated for investigation in paragraphs 21-30 the *Designation Order*. Paragraphs 21 and 22 are introductory in nature, and therefore, no specific response is required for those paragraphs.

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i. **Responses to FCC Questions Regarding Transmittal No. 38. (*Designation Order*, ¶ 23).**

In paragraph 23 of the *Designation Order*, the Commission directed “Aureon to provide a complete narrative explanation of the circuit counts/inventory it used in the calculations Aureon made in support of Transmittal 38,” and “to explain why such data appear to differ so significantly between Transmittal 36 and Transmittal 38, and in so doing to provide information about the relative vintages of the data and, if the vintages vary, why a newer vintage was used.”¹⁰⁵

In response to the *Aureon Tariff Investigation Order*, Aureon undertook a complete inventory of all DS-1/DS-3 and other circuits utilized in the interstate revenue requirement development.¹⁰⁶ Aureon engaged JSI to come on site to Aureon’s facility and assist with this fresh inventory.¹⁰⁷ Apart from any other rationale, the FCC’s requirement that all allocations for Cable and Wire (“C&W”) be done using DS-3 level allocations as opposed to DS-1 allocations, necessitated a complete circuit recount on that basis.¹⁰⁸ For example, the prior circuit inventory did not indicate how many DS-3 systems were used for CEA services, as CEA service counts were previously conducted only on a DS-1 level.¹⁰⁹

Due to the 60-day deadline set in the *Aureon Tariff Investigation Order* for Aureon to refile its tariff and cost support consistent with the revised methodology outlined in that decision, reconciliation with the prior year’s circuit inventories was not feasible, and in many cases, not

¹⁰⁵ *Designation Order* at 9, ¶ 23.

¹⁰⁶ Sullivan Dec. at ¶ 24.

¹⁰⁷ *Id.* at ¶ 3.

¹⁰⁸ *Id.* at ¶ 24.

¹⁰⁹ *Id.*

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applicable.¹¹⁰ For example, the prior circuit inventory, which was completed on a DS-1 level for CEA services, included 1,827 DS-1 circuits associated with CEA.¹¹¹ The updated inventory completed on a DS-3 basis, only “counts” DS-1s that are included on “joint and common” DS-3 facilities. Specifically, there are 837 DS-1s counted in the updated inventory.¹¹²

In its tariff compliance filing, Aureon provided the Commission with an updated inventory that is used to allocate the joint network on a relative use basis.¹¹³ This allocation was done using the following processes consistent with the FCC’s Part 64 rules: Directly assign to either CEA or non-CEA service where possible, first on the basis of the “rings,” and second on the basis of DS-3s, (as directed by the FCC).¹¹⁴ Joint and common DS-3s are then allocated based on the number of in-use DS-1s carried on those DS-3s.¹¹⁵ The results of this allocation methodology update have dramatically reduced the allocation of facilities (both Central Office and Cable and Wire) to CEA service (from 24% to 16%, and from 71% to 26%, respectively).¹¹⁶

Aureon has also now created an active inventory process that can be readily updated for future tariff filings if needed.¹¹⁷ The FCC noted dramatic differences in the current inventory filed in Transmittal No. 38, from that in Transmittal No. 36. Upon further investigation, Aureon determined that the difference was due to a flawed circuit inventory reporting system that was

¹¹⁰ *Id.* at ¶ 25.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at ¶ 26.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Declaration of Paul Nesenson at ¶ 5, attached hereto as Exhibit D (“Nesenson Decl.”).

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found to be inaccurate after manually running a report for each individual circuit channel.¹¹⁸ The old system could not produce circuit IDs to physically confirm their presence.¹¹⁹ The new list was developed using reporting criteria that searched through billing for each circuit in service and matched it to each service channel in the transport records.¹²⁰ That information was then verified through electronic physical inventory records.¹²¹ With additional checks and cross references performed using those records, this inventory investigation was found to be the most accurate representation of circuits used in Aureon's transport services.¹²²

Specific answers to the FCC questions regarding Transmittal No. 38 follow below (FCC questions in italics).¹²³

- *An explanation of the relationship between the various spreadsheet worksheets/tabs;*

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¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Paul Nesenson at JSI is the person most knowledgeable about the responses to the FCC's questions set forth in this section. The responses are supported by Mr. Nesenson's declaration in paragraphs ¶ 6 thereto.

[[END CONFIDENTIAL]]

- *Definitions of the terms "ring" and "ring node," and the relationship between these worksheets/tabs, as well as POIs between Aureon and its subtending carriers;*
- Ring: A network in which each node connects to exactly two other nodes, forming a single continuous pathway for signals through each node in a ring. Data travels from node to node, with each node along the way handling every packet. There can be many nodes in a ring, which eventually meet to create a circular path. This topology is used because of its redundancy. Redundancy refers to the fact that one part of the ring could be cut but then the signal would still be transmitted the other way to get to its termination point. They are illustrated as purple Excel tabs.
- Node: Either a redistribution point or a communication endpoint. A physical network node is an active electronic device that is attached to a network, and it is capable of creating, receiving, or transmitting information over a communications channel or "Ring". These are connection points with electronics to form a continuation of the purple ring tabs.

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- *The disposition in Aureon's inventory of each of the circuits that Aureon previously used for cost allocation purposes that are of capacity greater than DS3 and why such disposition is reasonable;*
- A complete inventory of circuits and services were identified as of the report generation date. Specific circuits larger than a DS3 were not found, so any investment classified with previously listed circuits are now included in Aureon's current inventory of circuits. Aureon is not incorporating any allocations based on spare capacity (i.e., only active circuits are included), therefore, the distinction between ring types is not relevant.
- *An affirmative unqualified statement that no services are sold by the Network Division on the "Joint and Common" rings that are not represented on the corresponding tabs in the circuit inventory.*

There are no services sold by the Network Division on the "Joint and Common" rings that are not represented on the corresponding tabs in the circuit inventory.¹²⁴

ii. Response to Designation Order, ¶ 24.¹²⁵

The FCC directed Aureon to project the circuits used in the allocation of Central Office Transmission equipment and Cable and Wire Facilities, based on the process found in Part 64 of the FCC's rules. This projection has been done and the results are included in the allocations

¹²⁴ Hilton Decl. at ¶ 9.

¹²⁵ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶ 24. See Sullivan Decl. at ¶¶ 27-29.

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included with the supporting model as filed with the FCC. The projections themselves can be found below:

Development of 3 Year Projections Per FCC Order:			
	2019	2020	2021
Projected % Growth in CEA Circuits:	-0.70%	-1.40%	-2.10%
Projected % Growth in non CEA Circuits:	1.50%	3.00%	4.50%
3 Year Growth Factor: CEA			97.90%
3 Year Growth Factor: Non CEA and Joint and Common			104.50%
Note: 100% CEA and 100% Non CEA will be grown by above. Joint and Common will be grown by Non CEA			

Aureon determined the annual reduction in CEA circuits based on a simple estimate based on the loss of T-1s for CEA in the past year, which was minimal. Non-CEA circuits were estimated to grow 1.5% annually.¹²⁶

In the course of these proceedings, AT&T has repeatedly indicated that CEA circuit counts should closely follow any annual losses in overall CEA minutes of use. The argument is unfounded, and is not reflected in industry practice – most notably by AT&T itself.¹²⁷ JSI performs FCC Part 36/69 cost studies for a large number of rate-of-return ILECs – over 150 annually – and in the course of performing those studies, JSI must inventory message toll and other IXC circuits that connect rural LECs with AT&T and other long distance carriers.¹²⁸ Despite the fact that most rural LECs have lost a very large percentage of access lines (and perhaps an even greater percentage of interstate long distance minutes of use), those LECs have not seen any material changes to the number of message toll circuits created for their

¹²⁶ Sullivan Decl. at ¶ 28.

¹²⁷ *Id.* at ¶ 29.

¹²⁸ *Id.*

interconnection with AT&T, or other RBOCs and IXC's.¹²⁹ Most typically, the number of circuits only changes based on major network reconfigurations or realignments.¹³⁰

In this context, and particularly because a brand new circuit inventory system for all types of circuits has been created, Aureon is now in a good position to update the quantities of all of its circuits on an annual basis. Aureon has made a good faith projection of circuits showing a decrease in CEA circuits along with an increase of non-CEA circuits. Future projections will have the benefit of historic updates to this inventory upon which those projections can be based.

iii. Response to *Designation Order*, ¶¶ 25-27¹³¹

As indicated previously, Aureon's projections do include reductions for CEA circuits of all types for 2019, 2020, and 2021. The current circuit count (August, 2018) does not include any amounts of "temporary" circuits (either for CEA or for Non CEA) for any reason. As a result of this, Aureon does not envision any major reductions to occur as a result of removal of large groups of circuits, and has based its estimates on modest annual decreases accordingly. It is important to note that while any previous "temporary" circuits that may have been needed for network reconfigurations are not included in the current inventory, there is no projection being made for future "temporary" circuits that may be needed (for example) in the case of the switch upgrade that is expected to take place in 2019. All historic and projected circuits do not include any circuits that are "temporary" in nature.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶¶ 25-27. See Sullivan Decl. at ¶ 30.

iv. Response to *Designation Order*, ¶ 28¹³²

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v. Response to *Designation Order*, ¶ 29¹³³

Rate-of-return ILECs that are required to perform complete Part 64 allocations of investments and expenses, as well as to categorize network investment into functional categories (found in Part 36 of the FCC rules) typically rely on detailed continuing property records (“CPR”) and categorization studies in connection with completing their allocations and assignments. Aureon, which is not an ILEC, does not maintain detailed COE or CWF CPRs that provide the needed information to perform these types of allocations. In previous filings, Aureon developed allocations of network expenses based on a comparison of the total circuits associated with T-1 service (which carried CEA service) vs. the number of circuits associated with other

¹³² Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶ 28. See Sullivan Decl. at ¶ 31.

¹³³ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶ 29. See Sullivan Decl. at ¶¶ 32-39.

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types of transmission services, specifically DS-3, OC-3 and others. Trial prices were utilized from historic data to weight circuit counts by cost differentials. In light of the FCC's determinations in the *Aureon Tariff Investigation Order*, Aureon has discontinued this methodology, and replaced it with a new process based on the following:

A "hierarchical approach is used based on Part 64 principles of direct assignment where possible and allocations being made where necessary."¹³⁴ Specifically:

Aureon's CEA network is largely based on circuits carried over OC-48 rings. Aureon's circuit inventory found 50 such rings currently in service. Those rings were divided into "Rings Containing CEA circuits" and "Rings not Containing CEA circuits. Note that no rings were utilized exclusively for CEA service. As a result, rings "containing CEA service" are treated as Joint and Common units. Note also that there is no assumption being made that either category of fiber ring carries a material cost difference from any other ring, other than in terms of the distance traversed by the ring (distances are actually measured for each ring), and as a result, trial prices or equipment/fiber costs are not utilized. Trial prices applied to this process would only be relevant if different units were utilized for each service, i.e., DS-1s for CEA vs. DS-3s for other services. That is not the case in this method. As result, an initial allocation is made for all

¹³⁴ Section 64.901 – Allocation of Costs, states, in relevant part:

(b) In assigning or allocating costs to regulated and nonregulated activities, carriers shall follow the principles described herein.

...

(2) Costs shall be directly assigned to either regulated or nonregulated activities whenever possible.

(3) Costs which cannot be directly assigned to either regulated or nonregulated activities will be described as common costs. Common costs shall be grouped into homogeneous cost categories designed to facilitate the proper allocation of costs between a carrier's regulated and nonregulated activities.

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fiber rings that are not associated with CEA service at all. With regard to COE, 56% is assigned to non CEA service in this step, while CWF, which uses mileage, assigns 33% to Non CEA.

The rings that are treated as “Joint and Common” are subjected to an allocation based on in service DS-3s identified per the inventory. DS-3s were also either directly assigned to CEA, to Non CEA, or to joint and common for those DS-3s that carry both CEA and non CEA DS-1 circuits. Assignments are made for each of these categories, with 38% - COE and 36% - CWF of the joint and common rings being allocated to Non CEA at this step.

For those DS-3s that include DS-1s for both CEA and non-CEA service, a count of these DS-1s is used to allocate the DS-3s. It is important to note at this step – unlike the prior allocation method, there is no inventory of “total” DS-1s for CEA or other services. The only DS-1 counts that are used here are those found on the “Joint and Common” DS-3 circuits. This final step results in 56% - COE and 55% - CWF allocations for the joint and common DS-3 costs being assigned to Non CEA service.

Finally, the total allocation for CEA is determined based on the total of:

- Direct assignment of DS-3s to CEA; and
- Allocation of joint and common DS-3s based on actual DS-1s.

With regard to Ethernet circuits, Aureon provides special access (now referred to as BDS) service via Ethernet circuits to non-CEA customers. Unlike fiber rings, Ethernet circuits do not have to utilize dedicated fibers – in fact numerous Ethernet circuits can be carried over single fiber optic strands. Comparison of Ethernet to SONET rings are to some extent an apples-to-orange comparison, but in this sense they are much more similar to a DS-3 vs. an actual Fiber Ring. For purpose of the COE and CWF cost allocations, each class of Ethernet is treated as a “ring” and included in the total number of circuits as “non CEA” DS-3s.

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This method is superior to the previous method in that it more fully complies with the principles found in Part 64 of the FCC Rules. This method also does not utilize a single, inconsistent metric (i.e., DS-1s for CEA vs. DS-3s for non CEA) that may not be consistent with relative use. Both services are treated equally with regard to used circuits. Also note that there are no assignments being made based on “excess capacity” – all circuits listed are currently “in use”. While it is true that not all of the DS-3s are equally “full” with DS-1s, Aureon is not creating “unused” DS-3s in a OC-48 ring and assigning these to a particular service.

The FCC also directed Aureon to update the allocations made to Cable and Wire facilities in the *Aureon Tariff Investigation Order*. AT&T and others had focused their complaints on this allocation, while to some extent concurring with the allocation of Central Office Equipment. (The fact that the allocation to CEA was 71% for CWF vs. only 24% for COE likely played a role in this). Aureon has updated both COE and CWF so as to create a method that is consistent in its allocation methodology, and that can be updated regularly with actual data given obtainable information, as well as a method that comports with Part 64 in a manner that is readily documented and observed. The allocation to CEA service decreased by 33% for COE (to accompany the major decrease in allocation in CWF). Using this method demonstrates Aureon’s good faith in this process.

vi. Response to *Designation Order*, ¶ 30¹³⁵

The circuit inventory utilized in Aureon’s tariff compliance filing represents a completely updated, and is a more accurate allocation method than what was previously utilized. The new circuit inventory system will facilitate future allocations more readily in that a template has been

¹³⁵ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶ 29. See Sullivan Decl. at ¶ 40.

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created that can be updated with new information as needed. With regard to the determination of whether the costs represented by these allocations are “used and useful,” Aureon states that all circuits that are showing as being used for CEA service are, in fact, being used to provide CEA service. SONET and TDM technologies have been, to some extent, replaced by more efficient transmission technologies. However, Aureon has not been able to effectuate a conversion to new technologies for CEA service for several reasons, including cost and the need to interface with numerous subtending LECs as well as IXC that continue to use legacy technologies. Aureon has conducted numerous market tests to validate that the costs are not otherwise overstated.

b. Other Issues

i. Calculation of Accumulated Appreciation Reserves (Designation Order, ¶¶ 31-32)¹³⁶

This issue has been corrected in the updated cost support. The impact was not material.

ii. Pertinent Central Office Expense (Designation Order, ¶ 33)¹³⁷

Aureon combines both switching and transmission expense in its summary of financials (Section 9) as well as the Part 64, Part 36, and Part 69 allocation sections. The expenses associated with the transmission equipment are removed from the Study in the Part 64 Section (Section 5 for TYCOS), and only switching expenses are included in the revenue requirement development. However, in the initially provided calculation, the portion of switching expense that was allocated to the “other” column, was included in the allocation of Opex. That has been corrected in the fully distributed cost model that is attached. The impact of this change (along

¹³⁶ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶¶ 31-32. See Sullivan Decl. at ¶ 41.

¹³⁷ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶ 33. See Sullivan Decl. at ¶ 42.

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with other changes) did not alter the conclusion that the lease expense assigned to CEA is substantially below the fully distributed cost of the underlying assets.

iii. Income Tax Adjustments (*Designation Order*, ¶ 34)¹³⁸

This issue has been corrected in the updated cost support. The impact was relatively minor, and does not impact the fully distributed cost analysis for the lease rate. The comparison has been updated and corrected.

IV. CONCLUSION

Aureon fully complies with the FCC's affiliate transaction rules because the Network Division's lease rate to the Access Division is less than fair market value and fully distributed costs. Aureon has made a good faith fair market value estimate using two widely accepted methodologies, i.e., using rates for comparable services provided by SDN and MIEAC, and replacement cost. Other non-regulated services provided by the Network Division to third parties are not relevant to the Commission's inquiry as they are not CEA Transport Service that enable carriers to route calls to all of the LECs that subtend the CEA network, and therefore, do not establish a prevailing rate for Aureon's lease. Limited point-to-point transport services connecting to only a single LEC's network are not comparable to the 2,700 mile CEA transport network connecting to the networks of 200 LECs. Aureon has also provided additional information pursuant to the *Designation Order* validating its cost support methodology, demonstrating that the transport lease rate is less than the Network Division's fully distributed costs, and appropriately updated information previously provided to address questions raised by the FCC.

¹³⁸ Brian Sullivan at JSI is the person most knowledgeable about the issue designated for investigation in *Designation Order* ¶ 33. See Sullivan Decl. at ¶ 43.

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The FCC should find that Aureon's tariff rate is lawful, that its good faith fair market value estimates are reasonable, and that its cost study, as updated herein, fully supports Aureon's filed rate. To the extent that the Commission determines that additional information is needed to support Aureon's good faith estimate, and that there is no additional, relevant data available for Aureon to make a good faith fair market value estimate, Aureon respectfully requests a waiver (if the FCC decides to regulate Aureon as an ILEC rate than a CLEC) of the requirement to comply with the fair market value showing in Section 32.27(c).

Respectfully submitted,

/s/ James U. Troup

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Dated: November 28, 2018

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EXHIBIT A

Declaration of Frank Hilton

This entire exhibit is confidential, and has been removed from the public version of this document.

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EXHIBIT B

Declaration of Brian Sullivan

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EXHIBIT C

Declaration of Pat Vaughan

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EXHIBIT D

Declaration of Paul Nesenson

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CERTIFICATE OF SERVICE

I, Tony S. Lee, hereby certify that on this 28th day of November 2018, copies of the foregoing document were sent to the following:

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