

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**ORDER ON RECONSIDERATION**

**Adopted: November 28, 2018**

**Released: November 28, 2018**

By the Commission:

**I. INTRODUCTION**

1. In this Order on Reconsideration, we dismiss or alternatively deny the Petition filed by AT&T Services, Inc. (AT&T) seeking partial reconsideration of the *Aureon Tariff Investigation Order* which concluded our investigation into the lawfulness of the interstate switched transport rate contained in Transmittal No. 36 of Tariff F.C.C. No. 1 for Iowa Network Access Division d/b/a Aureon (Aureon).<sup>1</sup> Specifically, we deny AT&T's request that the Commission calculate the competitive local exchange carrier (LEC) benchmark rate for Aureon's centralized equal access service using the mileage that AT&T alleges that CenturyLink, the competing incumbent LEC, would charge for the competitive service.<sup>2</sup> Upon review of the record, we find that AT&T's Petition fails on both procedural and substantive grounds.<sup>3</sup>

**II. BACKGROUND**

2. Aureon is a centralized equal access (CEA) provider that was created to aggregate traffic for connection between rural incumbent LECs in Iowa and other networks, and to implement long distance equal access obligations (permitting end users to use 1+ dialing to reach the interexchange carrier (IXC) of their choice).<sup>4</sup> Aureon currently delivers traffic to 206 subtending LECs through several points of interconnection (POIs) across the state.<sup>5</sup> Since its inception, Aureon has been regulated as a dominant carrier subject to the cost-based tariff filing requirements of section 61.38 of our rules.<sup>6</sup> Aureon files its own tariff (Tariff F.C.C. No. 1, the subject of this proceeding) pursuant to section 61.38.

<sup>1</sup> Petition for Reconsideration of AT&T Services, Inc, WC Docket No. 18-60 (filed Aug. 30, 2018) (Petition); *see Iowa Network Access Division Tariff F.C.C. No. 1*, Transmittal No. 36, WC Docket No. 18-60 et al., Memorandum Opinion and Order, FCC 18-105 (rel. July 31, 2018) (*Aureon Tariff Investigation Order*).

<sup>2</sup> Petition at 2.

<sup>3</sup> *See* 47 CFR § 1.106; *see also* 47 U.S.C. § 405(a).

<sup>4</sup> *Application of Iowa Network Access Div.*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (CCB 1988) (*Aureon Section 214 Order*).

<sup>5</sup> *See* Letter to Marlene H. Dortch, Secretary, FCC, from James U. Troup and Tony S. Lee, Counsel for Aureon at 1-2 (May 25, 2018). According to Aureon, it has 16 POIs in Iowa, only some of which are currently in use. *See* Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 at 27, 29 (May 3, 2018) (Direct Case).

<sup>6</sup> 47 CFR § 61.38; *see, e.g., Aureon Section 214 Order*, 3 FCC Rcd at 1469, para. 10; *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9692, para. 30 (2017) (*Aureon Liability Order*). Under section 61.38, any tariff changes must include, among other things, the

3. For purposes of the *USF/ICC Transformation Order* and its implementing rules, Aureon also is a competitive LEC.<sup>7</sup> In the *USF/ICC Transformation Order*, the Commission found that application of the ICC reforms would generally apply to competitive LECs via the “CLEC benchmark rule.”<sup>8</sup> As a CEA provider, Aureon does not serve end users, and as such the procedure for implementing its benchmarking obligation is contained in subpart (f) of section 61.26 of our rules.<sup>9</sup> Under this subpart, “[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services . . . .”<sup>10</sup> Therefore, Aureon’s tariffed switched transport rate cannot exceed that of the incumbent LEC to which it must benchmark.

4. On June 8, 2017, pursuant to section 208 of the Communications Act of 1934, as amended (the Act), AT&T filed a formal complaint against Aureon claiming that Aureon’s tariffed interstate transport rate violated the Commission’s rules.<sup>11</sup> On November 8, 2017, the Commission issued the *Aureon Liability Order*, partially granting AT&T’s complaint.<sup>12</sup> The Commission confirmed that Aureon is a competitive LEC subject to the CLEC benchmark rules, but it did not reach the question of whether Aureon’s tariffed rate as of July 1, 2013 violated section 51.911(c) of the Commission’s rules, because it lacked an adequate record on which to determine the appropriate benchmark.<sup>13</sup> The Commission directed Aureon to file tariff revisions consistent with the *Aureon Liability Order* and to include all necessary cost studies and support as required by section 61.38 of the Commission’s rules.<sup>14</sup>

5. Aureon filed revisions to its interstate access Tariff F.C.C. No. 1 on February 22, 2018.<sup>15</sup> AT&T and Sprint challenged Aureon’s proposed revised rate, alleging that it was inconsistent with the

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basis for the ratemaking employed and economic information to support the change, including specific cost information and cost projections. 47 CFR § 61.38(b).

<sup>7</sup> *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 25 (citing 47 CFR §§ 51.901-51.919).

<sup>8</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17937, para. 807 (2011) (*USF/ICC Transformation Order*), *aff’d*, FCC 11-161, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014). This obligation, adopted in its initial form in 2001, provides that a competitive LEC may not tariff interstate access charges above those of the competing incumbent LEC for similar services. See 47 CFR § 61.26; *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*Seventh Report and Order*).

<sup>9</sup> 47 CFR § 61.26(f).

<sup>10</sup> *Id.*

<sup>11</sup> *Aureon Liability Order*, 32 FCC Rcd at 9684, para. 16.

<sup>12</sup> *Id.* at 9677, para. 1 (see also *id.* at n.2 (AT&T elected to have the Commission determine damages in a separate phase of the proceeding (citing 47 CFR § 1.722(d)). The Commission found that Aureon violated the Commission’s rate cap requirement by increasing its interstate switched transport rate in June 2013 to \$0.00896 per minute of use, which exceeded the rate that was in effect on December 29, 2011 (\$0.00819). *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 24. The Commission further found that Aureon violated section 51.911(b) of the Commission’s rules because it did not lower its intrastate switched access rates as required. *Id.*; 47 CFR § 51.911(b).

<sup>13</sup> *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 24; 47 CFR § 51.911(c).

<sup>14</sup> *Id.* at 9695, para. 35; 47 CFR § 61.38; Letter from Lisa B. Griffin, Deputy Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, to James F. Bendoragel, Jr., Counsel for AT&T, and James U. Troup, Counsel for Aureon (Jan. 10, 2018) (on file in EB-17-MD-001) (extending the filing deadline to February 22, 2018).

<sup>15</sup> Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36 (Feb. 22, 2018) (available via the Commission’s Electronic Tariff Filing System) (Aureon Transmittal No. 36); Letter from James U. Troup, Counsel for Iowa Network Access, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 36 (filed Feb. 22, 2018).

Commission's benchmark and cost-based rate rules.<sup>16</sup> Aureon asked the Commission to deny those petitions.<sup>17</sup> Acting on delegated authority, the Wireline Competition Bureau (the Bureau) concluded that substantial questions of lawfulness existed with respect to Aureon's revised switched transport rate,<sup>18</sup> and suspended the rate for one day, allowing the rate to become effective on March 1, 2018, imposed an accounting order, and instituted an investigation into the lawfulness of Aureon's switched transport rate.<sup>19</sup>

6. Following that investigation, in the *Aureon Tariff Investigation Order*, we found that, as a competitive LEC, Aureon's switched transport rate must comply with our transitional switched access service rate rules, which impose a rate cap for all LECs<sup>20</sup> and a benchmarking obligation on Aureon, as a competitive LEC.<sup>21</sup> We further found that, as a dominant carrier, Aureon must also comply with our rules governing the development of cost-based rates.<sup>22</sup> As a result, Aureon's tariffed switched transport rate cannot exceed the lower of: (i) Aureon's rate cap, (ii) its competitive LEC benchmark, or (iii) its cost-based rate.<sup>23</sup>

7. Regarding the application of the competitive LEC benchmark obligation to Aureon, we concluded that CenturyLink was the competing incumbent LEC.<sup>24</sup> Because CenturyLink has a different rate structure than Aureon, however, we translated CenturyLink's multi-element rate into a single per-minute of use (MOU) composite rate to which Aureon must benchmark.<sup>25</sup> CenturyLink's tandem transport charge contained a mileage-based component, so we considered evidence about how many miles to use in determining the composite rate. AT&T recommended using 22 miles because it asserted that is the mileage it would be charged by CenturyLink for the delivery of AT&T's traffic.<sup>26</sup> Aureon proposed using the weighted average mileage for all traffic carried on its network in 2017 of 103.519.<sup>27</sup>

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<sup>16</sup> Petition of AT&T to Reject or to Suspend and Investigate Iowa Network Services Inc. Tariff Filing, Transmittal No. 36 (filed Feb. 26, 2018); Petition of Sprint to Reject or to Suspend and Investigate Iowa Network Access Division d/b/a Aureon Tariff, Transmittal No. 36 (filed Feb. 26, 2018).

<sup>17</sup> Consolidated Reply of Iowa Network Services, Inc. d/b/a Aureon Network Services to the Petitions to Reject or to Suspend and Investigate Filed by AT&T Corp. and Sprint (filed Feb. 28, 2018).

<sup>18</sup> The "switched transport service" at issue in this proceeding and described in Transmittal No. 36 includes tandem switching as well as transport service. See Aureon Transmittal No. 36.

<sup>19</sup> Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36; WC Docket No. 18-60, Order, DA 18-199 (WCB/Pricing Feb. 28, 2018) (*Aureon Tariff Suspension Order*). In response to the *Aureon Tariff Suspension Order*, Aureon submitted Transmittal No. 37 to suspend the revisions made in its Transmittal No. 36. See Letter from James U. Troup, Counsel for Iowa Network Services, Inc., to Marlene H. Dortch, Secretary, FCC, Transmittal No. 37 (filed Mar. 1, 2018) (Transmittal No. 37) (available via the Commission's Electronic Tariff Filing System). On April 19, 2018, the Bureau released an order designating issues for investigation regarding the lawfulness of the Aureon tariff revisions. *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Order Designating Issues for Investigation, DA 18-395 (WCB Apr. 19, 2018).

<sup>20</sup> *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17932-34, paras. 798, 800-01 ("We also take measures today to start reforming other elements as well by capping all interstate switched access rates in effect as of the effective date of the rules, including originating access and all transport rates."), 17934, para. 801 ("Thus, at the outset of the transition, all interstate switched access and reciprocal compensation rates will be capped at rates in effect as of the effective date of the rules. We cap these rates as of the effective date of the rules.").

<sup>21</sup> 47 CFR § 51.911(c).

<sup>22</sup> *Id.* § 61.38; see generally 47 CFR Parts 32, 36, 64, 65, and 69.

<sup>23</sup> *Aureon Tariff Investigation Order* at para. 1.

<sup>24</sup> *Id.* at para. 30.

<sup>25</sup> *Id.* at para. 37.

<sup>26</sup> *Id.* at para. 39.

8. After evaluating various options for determining the transport mileage to be used in the calculation of the composite benchmark rate, we decided to use Aureon's weighted average mileage for 2017 because it provided "the best estimate of the actual mileage of traffic traversing Aureon's network."<sup>28</sup> We also found that Aureon's cost-based analysis was insufficient to justify its tariffed rate for interstate switched transport services. We therefore directed Aureon to recalculate its interstate switched transport rate consistent with the *Aureon Tariff Investigation Order* and amend its Tariff F.C.C. No. 1 to reflect the lower of the competitive LEC benchmark rate or the corrected cost-based rate.<sup>29</sup>

9. In its Petition seeking reconsideration of the decision to use Aureon's mileage in determining the composite benchmark rate, AT&T claims that, in calculating the competitive LEC benchmark rate for Aureon's CEA service, we should have used the mileage that CenturyLink would charge for the service, instead of the weighted average mileage for calls on Aureon's network.<sup>30</sup> Aureon filed an opposition to AT&T's Petition<sup>31</sup> and a group of competitive LECs (BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communications Corporation, Northern Valley Communications, LLC, OmniTel Communications, and Louisa Communications) (Joint CLECs) filed comments also opposing the Petition.<sup>32</sup> AT&T filed a reply to those oppositions and Sprint filed in support of AT&T.<sup>33</sup>

### III. LEGAL STANDARD

10. Petitions requesting reconsideration of a Commission order are governed by section 1.106 of our rules.<sup>34</sup> Petitions for reconsideration that do not warrant consideration by the Commission include those that "[r]ely on arguments that have been considered and rejected by the Commission within

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<sup>27</sup> *Id.* at para. 40.

<sup>28</sup> *Id.* at para. 43.

<sup>29</sup> We also found that Aureon's switched transport rate in Transmittal No. 36 of Tariff F.C.C. No. 1 of \$0.00576 was lower than its rate cap of \$0.00819, but not lower than the applicable competitive LEC benchmark rate of \$0.005634. *Aureon Tariff Investigation Order* at para. 2.

<sup>30</sup> Petition at 1-2, 5. AT&T agrees that we correctly identified CenturyLink as the competing incumbent LEC and agrees that we identified the correct CenturyLink service, tandem switching and transport, for benchmarking purposes. *Id.* at 4-5.

<sup>31</sup> See generally Aureon Opposition. Aureon begins its opposition by rearguing why it believes it is not a competitive LEC and that the Commission should not apply the CLEC benchmark rule to it. *Id.* at 1-7. Aureon did not file a petition for reconsideration of the *Aureon Tariff Investigation Order*, so this issue is not properly before the Commission on reconsideration. Moreover, such a request is outside the scope of this proceeding. As we explained in the *Aureon Tariff Investigation Order*, we will not "revisit, in the context of a tariff investigation, the Commission's earlier decision that Aureon is a competitive LEC for purposes of the rules adopted in the *USF/ICC Transformation Order*." *Aureon Tariff Investigation Order* at paras. 19-20, n.72. We already considered and rejected Aureon's arguments as to why it is not a competitive LEC for purposes of the intercarrier compensation rules in our order granting in part and denying in part Aureon's Petition for Reconsideration of the *Aureon Liability Order*. See *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Order on Reconsideration, FCC 18-116, para. 6 (rel. Aug. 1, 2018) ("The plain text of the Commission's rules and orders in existence at the time Aureon filed its tariff provided Aureon ample notice of its regulatory status and obligations [as a competitive LEC].").

<sup>32</sup> Comments of Competitive Local Exchange Carriers Opposing AT&T's Petition for Reconsideration at 2 (filed Sep. 19, 2018) (Joint CLECs Comments).

<sup>33</sup> Reply in Support of Petition for Reconsideration of AT&T Services, Inc. at 2 (filed Sept. 26, 2018) (AT&T Reply); Sprint Support of AT&T's Petition for Reconsideration (filed Sept. 26, 2018) (Sprint Support).

<sup>34</sup> 47 CFR §§ 1.106 (petitions for reconsideration in non-rulemaking proceedings); 1.106(p) (listing examples of petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission).

the same proceeding”<sup>35</sup> and those that “rely on facts or arguments not previously presented to the Commission.”<sup>36</sup> The Commission may, however, consider facts or arguments not previously presented only if: (1) they “relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;” (2) they were “unknown to petitioner until after [their] last opportunity to present them to the Commission, and ... could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity;”<sup>37</sup> or (3) “[t]he Commission . . . determines that consideration of the facts or arguments relied on is required in the public interest.”<sup>38</sup>

#### IV. DISCUSSION

11. We find AT&T’s arguments on reconsideration to be procedurally and substantively flawed. As an initial matter, we observe that AT&T’s Petition relies on arguments already considered and rejected in this proceeding and offers no new facts.<sup>39</sup> On reconsideration, AT&T’s fundamental argument is that the benchmark rate Aureon uses should be calculated using the mileage that AT&T claims CenturyLink would charge if CenturyLink were providing the switched access service instead of Aureon.<sup>40</sup> We considered and rejected that argument in the *Aureon Tariff Investigation Order*.<sup>41</sup> That AT&T disagrees with our previous conclusion is not an adequate basis for reconsideration.<sup>42</sup> To the extent the Petition contains arguments not previously presented, these arguments were or should have been known to AT&T prior to adoption of the *Aureon Tariff Investigation Order*.<sup>43</sup> For example, in the Petition, AT&T attempts to bolster arguments it previously made about using CenturyLink’s rather than Aureon’s mileage in computing the benchmark rate by newly focusing on our rules and alleging that our rules require consideration of the “access services that would be provided by the competing ILEC *on its own network* in lieu of the ‘switched exchange access services used [by the CLEC] to send traffic to or from an end user.’”<sup>44</sup> Although our rules provide for consideration of arguments that could have been made but were not if we determine that the public interest so requires, AT&T tellingly makes no claim that

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<sup>35</sup> *Id.* § 1.106(p)(3); see *Application of Razorcake/Gorskey Press, Inc. For a New LPFM Station at Pasadena, California*, File No. BNPL-20131114AXZ, Order on Reconsideration, 32 FCC Rcd 6593, 6594, para. 3 (MB 2017) (*Razorcake Order*).

<sup>36</sup> 47 CFR § 1.106(p)(2); see *Razorcake Order*, 32 FCC Rcd at 6594, para. 3.

<sup>37</sup> 47 CFR §§ 1.106(c)(1); 1.106(b)(2).

<sup>38</sup> *Id.* § 1.106(c)(2).

<sup>39</sup> See Joint CLECs Comments at 2-6 (arguing that the Petition should be summarily denied because it relies on arguments previously made and rejected).

<sup>40</sup> See, e.g., AT&T Services, Inc.’s Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 at 25-28 (filed May 10, 2018) (AT&T Opposition); AT&T Services, Inc.’s Surrebuttal in Support of its Opposition to Aureon’s Direct Case, WC Docket No. 18-60, Transmittal 36 at 15-20 (filed June 25, 2018).

<sup>41</sup> *Aureon Tariff Investigation Order* at para 43. See *id.* at para. 42 (“AT&T contends that the mileage used in the composite calculation should reflect the mileage between CenturyLink’s tandem switches and the local exchanges of the subtending LECs. We disagree. ... The Commission has never required that the mileage component of competitive LEC transport rates reflect something other than the actual network used, which is what AT&T would have us do here”).

<sup>42</sup> See generally Joint CLEC Comments at 2-6.

<sup>43</sup> See Petition at 6-7, 11-22. For example, AT&T contends that the Commission’s approach provides Aureon with excessive revenue, fails to constrain an exercise of monopoly power, and encourages arbitrage. See *id.* at 11-22.

<sup>44</sup> Petition at 4 (quoting 47 CFR § 61.26(f)) (emphasis added).

consideration of any of its arguments is “required in the public interest.”<sup>45</sup> Because the Petition presents no new facts, precedent or arguments that were not or could not have been asserted prior to release of the *Aureon Tariff Investigation Order*, and because AT&T does not assert, and we do not find, that consideration of any newly presented facts or arguments is “required in the public interest,” the Petition is procedurally flawed and we dismiss it on that basis.

12. Although AT&T’s Petition fails on procedural deficiencies alone, as an alternative and independent basis for rejecting the Petition, after considering each of AT&T’s substantive arguments, we also find that the Petition fails on the merits. The arguments in the Petition fall into three general categories—that the composite benchmark rate provided for in the *Aureon Tariff Investigation Order*: (1) violates the text of the CLEC benchmark rule;<sup>46</sup> (2) violates the Commission’s objectives in adopting the CLEC benchmark rules;<sup>47</sup> and (3) results in internal inconsistencies and is otherwise problematic.<sup>48</sup> Below, we address AT&T’s claims and affirm the conclusions reached in the *Aureon Tariff Investigation Order* and therefore deny the Petition.

13. *The Aureon Tariff Investigation Order Is Consistent with the Text of the CLEC Benchmark Rule.* First, we reject AT&T’s claims that the benchmark rate we calculated violates the text of the CLEC benchmark rule.<sup>49</sup> Section 61.26(f) of the rule specifies that “[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services . . . .”<sup>50</sup> AT&T reads into the rule a non-existent requirement that the “rate charged by the competing ILEC for the same access services” be based on the competing ILEC’s network, i.e., the weighted average distance between the competing ILEC’s tandem switching offices and the subterminal end offices.<sup>51</sup>

14. AT&T characterizes the benchmark rate we adopted as an impermissible “hybrid” rate because it uses the CenturyLink per-MOU-per-mile transport rate but takes into account Aureon’s weighted average miles, rather than the distance the same traffic would travel if the service were provided by CenturyLink.<sup>52</sup> AT&T’s argument conflates mileage-based *rates* and mileage-based *charges*. The tariffed, per-mile transport rate is a constant and does not change based on the number of miles that traffic is carried by the provider. Section 61.26(f) of our rules specifies that “the rate” charged for access services provided by the competitive LEC may not exceed “the rate charged by the competing incumbent LEC for the same access services.”<sup>53</sup> In this case, that “rate” charged by the competing incumbent LEC is CenturyLink’s per-MOU, per-mile transport rate. Our rules do not specify that the amount *charged* must be the same if the mileage applied to that rate is different for the competitive LEC.

15. In support of its assertion that the text of section 61.26(f) supports its argument, AT&T first incorrectly argues that the term “switched exchange access services,” defined in section 61.26(a)(3), requires that the incumbent LEC’s transport mileage be used to calculate the benchmark rate for the

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<sup>45</sup> See *id.* § 1.106(c)(2).

<sup>46</sup> See Petition at 7-10.

<sup>47</sup> *Id.* at 11-15.

<sup>48</sup> *Id.* at 15-22.

<sup>49</sup> *Id.* at 8.

<sup>50</sup> 47 CFR. § 61.26(f).

<sup>51</sup> See Petition at 7-8.

<sup>52</sup> *Id.* at 9-10.

<sup>53</sup> 47 CFR § 61.26(f).

competitive LEC.<sup>54</sup> The definition in section 61.26(a)(3) simply explains that “switched access exchange services” should be understood as the “functional equivalent of the ILEC interstate exchange access services typically associated with” certain rate elements and identifies those elements. It includes “tandem switched transport facility (per mile)” as one of the rate elements typically included in an incumbent LEC’s interstate exchange access services. The text of the rule does not, however, specify or even suggest that the incumbent LEC’s average transport mileage should be used to calculate the benchmark rate used by competitive LEC.

16. AT&T then cites a different section of our rules, section 69.111(a)(2)(i), which provides an explanation of an incumbent LEC’s per-minute charge for tandem-switched transport and the calculation of mileage between the incumbent’s switches.<sup>55</sup> By its terms, however, section 69.111(a)(2)(i) does not apply to competitive LECs and there is nothing in the text of the CLEC benchmark rule that requires a competitive LEC to comply with section 69.111 when benchmarking its rate to the competing incumbent LEC.<sup>56</sup>

17. When the Commission adopted the benchmarking rule, it recognized that some switched access rates may be distance-sensitive.<sup>57</sup> The Commission could have adopted rules specifying that, for purposes of determining a benchmark rate, a competitive LEC must use both the rate and the transport miles that would be used by the competing incumbent LEC to which it must benchmark. No such rule exists. If it did, the Commission would also have needed to provide a way for competitive LECs to know enough about the relevant competing incumbent LEC’s network facilities, design and routing decisions to determine how calls would be routed over those network facilities. That is at best impractical, but most likely, impossible.<sup>58</sup> In its opposition to the Direct Case, AT&T calculated its average of 22 miles using CenturyLink’s network based on AT&T’s knowledge of the traffic AT&T sends over CenturyLink’s network.<sup>59</sup> Not only is this information unavailable to Aureon for purposes of calculating a benchmark, but it may not be representative of how CenturyLink routes traffic.<sup>60</sup> More fundamentally, our rules do not direct Aureon or other competitive LECs to guess how other carriers might route traffic over a different network.

18. *The Aureon Tariff Investigation Order is Consistent with the Objectives of the Commission when it Adopted the CLEC Benchmark Rule.* We likewise reject AT&T’s arguments that our decision to use transport mileage that reflects Aureon’s network in calculating the composite benchmark

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<sup>54</sup> See Petition at 4-5, 7.

<sup>55</sup> Petition at 8.

<sup>56</sup> As Aureon correctly states, “that section [69.111(a)(2)(i) of the Commission’s rules] is only relevant to the computation of transport charges provided by the ILEC, and that are contained in the ILEC’s own tariff.” Aureon Opposition at 14-15.

<sup>57</sup> *Seventh Report and Order*, 16 FCC Rcd at 9946, para. 55.

<sup>58</sup> But see Sprint Support at 5-6. Sprint asserts that in an “analogous” situation, it did not choose to use its competitive LECs’ actual transport mileage in calculating a composite transport rate, but rather routed traffic so the transport mileage would be reduced. *Id.* We note that Sprint is discussing its rate calculation in the context of 8YY traffic and that Sprint’s ratemaking philosophy is not the subject of this tariff investigation. Whether Sprint correctly choose a subset of its transport mileage in calculating its composite tariff rate in no way suggests that Aureon could or should know how CenturyLink’s network is constructed and used so it could use CenturyLink’s transport mileage in calculating its tariff rate. That is not required by our rules.

<sup>59</sup> AT&T Opposition at 27.

<sup>60</sup> CenturyLink is not a participant in this proceeding and has offered no information about how it routes its traffic in Iowa.

rate violates the objectives of the CLEC benchmark rule.<sup>61</sup> At the outset, as we observed in the *Aureon Tariff Investigation Order*, Aureon's rate structure using a single, per-MOU rate element "is consistent with the Commission's orders pertaining to the CLEC benchmark, which permit competitive LECs flexibility in establishing their rate structures."<sup>62</sup> Because CenturyLink, the competing incumbent LEC for purposes of calculating Aureon's benchmark rate, has a different tariffed rate structure than Aureon, we had to translate CenturyLink's multi-element tariff rate into a single per-MOU rate to which Aureon must benchmark its tariff rate.<sup>63</sup> Once Aureon's rate is tariffed, it must apply that tariff to calls placed on its network.

19. In calculating the distance-sensitive component of the composite benchmark rate applicable to Aureon, we used the weighted average mileage of calls placed on Aureon's network to ensure that when Aureon tariffs that composite benchmark rate and applies it to calls carried on its network, it will result in the same effective per-mile transport charge for a call placed on its network as CenturyLink would charge per-mile of transport for a call carried on its network. Specifically, in our calculation using the weighted average for calls placed on Aureon's network of 103.519 miles and the CenturyLink distance-sensitive rate per mile for tandem-switched transport of \$0.000030, we calculated the distance sensitive component to be included in Aureon's composite benchmark rate to be \$0.003106.<sup>64</sup> AT&T claimed that the average that should be used, based on CenturyLink's network, is 22 miles.<sup>65</sup> Using 22 average miles, multiplied by the CenturyLink tariffed per-mile tandem-switched transport rate of \$0.000030 results in a distance-sensitive component of \$0.000660 that would be included in the composite benchmark rate.<sup>66</sup>

20. We disagree with AT&T's assertion that under the CLEC benchmark rule, "Aureon is prohibited from tariffing a rate that results in higher revenues, regardless of whether it bills a composite rate or not."<sup>67</sup> The pertinent discussion in the *Seventh Report and Order* concerns differences between per-MOU rates and flat rates<sup>68</sup> and does not concern instances in which the actual quantity of service provided by the competitive LEC differs from the incumbent LEC, as it does here (Aureon providing 103.519 miles of transport as compared to CenturyLink's 22 miles of transport). This reading of the *Seventh Report and Order* is most consistent with the language of the CLEC benchmark rule requirement that "the rate for the access services provided [by the competitive LEC] may not exceed the rate charged

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<sup>61</sup> Petition at 11-15.

<sup>62</sup> *Aureon Tariff Investigation Order* at para. 36 (citing *Seventh Report and Order*, 16 FCC Rcd 9923, 9945, para.54 ("[b]y moving CLEC tariffs to the 'rate of the competing ILEC' we do not intend to restrict CLECs to tariffing solely the per-minute rate that a particular ILEC charges for its switched, interstate access service"); *id.* at 9946, para. 55 ("our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure"))).

<sup>63</sup> *Aureon Tariff Investigation Order* at para. 37.

<sup>64</sup> *Id.* at para. 43. Aureon supports our use of its weighted average mileage of calls on its network and the CenturyLink tariffed rate for tandem-switched transport per mile to calculate the composite benchmark rate. Aureon Opposition at 11 (Aureon explains that this is the calculation required by the CLEC benchmark rule and "[t]his is precisely the standard that the FCC used."). That is the calculation we made, consistent with our rules.

<sup>65</sup> *Aureon Tariff Investigation Order* at para. 39 (citing AT&T Direct Case Opposition at 27).

<sup>66</sup> See Petition at 12.

<sup>67</sup> *Id.* at 11 (citing *Seventh Report and Order*, 16 FCC Rcd at 9945, para. 54).

<sup>68</sup> For example, the Commission discusses permitting competitive LECs to recover through per-MOU charges an equivalent to the flat-rated presubscribed interexchange carrier charge then assessed by incumbent LECs on IXC. *Seventh Report and Order*, 16 FCC Rcd at 9945, para. 54).



by the competing ILEC for the same access services.”<sup>69</sup> Both Aureon and CenturyLink will be charging an effective rate of \$0.000030 per-mile per-MOU for the same tandem-switched transport service.

21. As we previously explained, although the networks and facilities of competitive LECs, like Aureon, may be different from the networks of the incumbents with which they compete, such differences do not necessarily impede the ability to benchmark access services.<sup>70</sup> And the Commission’s long-standing policy is that competing LECs should charge only for services they actually provide.<sup>71</sup> Therefore, using the average distance for calls carried on Aureon’s network, weighted by the number of calls placed on each route, to calculate the distance-sensitive component of the composite benchmark rate applicable to Aureon using CenturyLink’s tariffed distance-sensitive rate for tandem-switched transport ensures that when Aureon charges for the service it actually provides, the effective per-mile rate it charges will be equal to but not higher than the CenturyLink tariffed per-mile rate, as our rules require. Using our calculation also ensures that Aureon will, on a per-mile basis, “receive revenues equivalent to those” CenturyLink would receive from IXCs on a per-mile basis for providing the distance-sensitive portion of the same transport service, consistent with the Commission’s objective when it adopted the CLEC benchmark rule in the *Seventh Report and Order*.<sup>72</sup>

22. We further decline to modify our decision based on AT&T’s argument that the Commission adopted the CLEC benchmark rule to protect IXCs from the exercise of monopoly power by competitive LECs by limiting “the revenues the CLEC can collect to the revenues that the competing ILEC would charge if it rather than the CLEC provided the service.”<sup>73</sup> The Commission expressed a policy preference to more generally limit the revenues a competitive LEC might earn, but the Commission’s rules address rates that may be tariffed and not revenues that may be earned as a result of those tariffed rates. Although AT&T seems to take issue with the effectiveness of the CLEC benchmark rule in meeting the stated policy objectives, our task in evaluating Aureon’s tariffed rate is to determine whether that rate complies with the applicable rules. Requiring Aureon to use the CenturyLink tariffed per-mile transport rate in calculating its composite benchmark rate ensures that on a per-mile basis, Aureon receives the same revenues that CenturyLink would receive for the same distance of transport service—consistent with AT&T’s statement of the Commission’s policy objective to limit “the revenues the CLEC can collect to the revenues that the competing ILEC would charge if it rather than the CLEC provided the service.”<sup>74</sup>

23. To the extent that AT&T complains that Aureon’s network routing choices result in inflated transport miles and thus encourage arbitrage,<sup>75</sup> that issue is different from an allegation that Aureon’s rate violates the benchmark rule or the stated objectives of that rule. The Commission remains

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<sup>69</sup> 47 CFR. § 61.26(f).

<sup>70</sup> *Aureon Tariff Investigation Order* at para. 28.

<sup>71</sup> See *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Eighth Report and Order and Fifth Order on Reconsideration*, 19 FCC Rcd 9108, 9118-19, para. 21 (1999) (“our long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide . . . [and] [w]e believe that a similar policy should apply to competitive LECs”); see also *Bell Atlantic Tel. Comps., Transmittal No. 418, Revisions to Tariff F.C.C. No. 1*, Order, 6 FCC Rcd 4794, 4795, para. 9 (1991); *AT&T Corp. v. Bell Atlantic-Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556 (1998).

<sup>72</sup> *Seventh Report and Order*, 16 FCC Rcd at 9945, para. 54.

<sup>73</sup> Petition at 13.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 14-15 (citing *Seventh Report and Order*, 16 FCC Rcd at 9925, para. 3).

committed to addressing allegations of arbitrage and is considering new rules in the context of a rulemaking proceeding to address these very concerns.<sup>76</sup>

24. *The Aureon Tariff Investigation Order Is Not Otherwise Problematic.* Finally, we reject AT&T's contention that the Commission's use of Aureon's network in our calculation of the distance-sensitive component of the composite benchmark rate is "internally inconsistent" and is otherwise "problematic."<sup>77</sup> AT&T alleges that we "disclaimed the relevance of Aureon's network structure" in deciding who was the competing incumbent LEC and which of the competing incumbent LEC's services were relevant for applying the CLEC benchmark rule,<sup>78</sup> but then we "embraced Aureon's network structure in setting the benchmark rate."<sup>79</sup> Again, AT&T confuses calculation of a composite benchmark rate for use by Aureon with Aureon's application of the rate in its tariff. As the Commission explained in the *Aureon Tariff Investigation Order*, it was necessary under the unique circumstances here to consider how the CenturyLink rate would be applied to the Aureon network.<sup>80</sup> If Aureon's tariff mirrored CenturyLink's and therefore contained a separate per-mile, per-MOU rate element (as CenturyLink's tariff does), there is no question that Aureon's tariff rate would be applied to the actual service Aureon provides using its network. Aureon would therefore receive the same revenues as it does under its differently structured tariff. Thus, the approach is not "internally inconsistent" as AT&T contends, but simply applies the calculated benchmark rate to Aureon's network. Moreover, we disagree with AT&T that use of Aureon's weighted average miles in calculating the benchmark rate is problematic because the "rationale has no support in the text or policy of the rules, and it relies on faulty assumptions."<sup>81</sup> As explained above, our use of Aureon's weighted average mileage to calculate the distance-sensitive component of the composite benchmark rate fully complies with the CLEC benchmark rule.<sup>82</sup>

## V. ORDERING CLAUSES

25. ACCORDINGLY, IT IS ORDERED, that, pursuant to sections 1, 4(i) and (j), 201-202, 251, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-202, 251, and 254, and sections 1.3 and 1.106 of the Commission's rules, 47 CFR §§ 1.3, 1.106, the Petition for Reconsideration of AT&T Services, Inc. filed on August 30, 2018 is DISMISSED and, on alternate and independent grounds, it is DENIED.

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<sup>76</sup> See *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 (rel. June 5, 2018).

<sup>77</sup> Petition at 15.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 17.

<sup>80</sup> See *Aureon Tariff Investigation Order* at paras. 39-43.

<sup>81</sup> Petition at 18.

<sup>82</sup> See *supra* paras. 13-23.

26. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this Order on Reconsideration SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary