

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)

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: November 9, 2018

Released: November 9, 2018

Direct Case Due for Aureon by: November 28, 2018
Oppositions to Direct Case Due by: December 5, 2018
Rebuttal due by: December 12, 2018

I. INTRODUCTION

1. In this Order, pursuant to the Commission’s authority in sections 204 and 205 of the Communications Act of 1934, as amended (Act),¹ we designate issues for investigation regarding the lawfulness of the Iowa Network Access Division d/b/a Aureon (Aureon) tariff revisions to Aureon’s Tariff No. 1 filed on September 24, 2018 (Transmittal 38).² Our focus in this investigation is Aureon’s cost support for the rates in Transmittal No. 38. Specifically, we designate the following issues for investigation: (1) whether the increase in Aureon’s central office switching equipment investment in Transmittal No. 38 as compared to Aureon’s February 2018 tariff filing (Transmittal No. 36)³ represents investment that is used and useful in Aureon’s provision of regulated interstate service; and (2) whether the annual network lease expense of \$4,299,427⁴ (Filed Lease Expense) complies with the Commission’s affiliate transaction rules.

II. BACKGROUND

A. Aureon

2. Aureon, which is a division of Iowa Network Services, Inc. (INS), is a centralized equal access (CEA) provider that was created to aggregate traffic for connection between rural incumbent local exchange carriers (LECs) in Iowa and other networks, and to implement long distance equal access

¹ 47 U.S.C. §§ 204, 205.

² Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 38 (Sept. 24, 2018) (available via the Commission’s Electronic Tariff Filing System, also filed in WC Docket No. 18-60).

³ Compare Transmittal No. 38 Cost Support at “Sect 5 Part 64-TYCOS” tab (cell F60) with Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36, Attach. 1, “Section 5 Part 64-TYCOS” tab (cell F60) (Feb. 22, 2018).

⁴ Transmittal No. 38, “cost support” spreadsheet at “Sect 4 Part 36-TYCOS” tab (cell I109) (Transmittal No. 38 Cost Support).

obligations (permitting end users to use 1+ dialing to reach the interexchange carrier of their choice).⁵ Aureon currently delivers traffic to 206 subtending LECs through several points of interconnection (POIs) across the state.⁶ Aureon leases the facilities it uses to provide CEA service from a separate, unregulated division of INS, the “Network Division.” Since its inception, Aureon has been regulated as a dominant carrier subject to the cost-based tariff filing requirements of section 61.38 of the Commission’s rules.⁷ For purposes of the *USF/ICC Transformation Order* and its implementing rules, Aureon also is a competitive LEC.⁸ As a result, Aureon must comply with the “CLEC benchmark rule” and cannot charge more for its services than the competing incumbent LEC for the same access services.⁹

B. Procedural History

3. This is the second time in the last seven months that we have designated issues for investigation with respect to an Aureon Tariff filing. In concluding the first investigation, the Commission found that Aureon’s interstate switched transport rate in Transmittal No. 36 of \$0.00576 per minute of use (MOU) was higher than the applicable competitive LEC benchmark rate of \$0.005634 per MOU, and therefore violated the CLEC benchmark rule.¹⁰

4. The Commission also found that Aureon’s cost-based analysis was insufficient to justify its tariff rate for interstate switched transport services.¹¹ The Commission directed Aureon to file full cost support demonstrating that Aureon’s lease expense for access to the Aureon Network Division’s network facilities (Filed Lease Expense) is lower than the fair market value rate for those facilities and lower than the fully distributed cost rate for those leased facilities. The Commission specified that Aureon’s cost support should include: (a) a formal calculation of the fully distributed cost of the lease; (b) central office equipment expense and cable and wire facilities cost allocators that comply with section 64.901(b)(4) of the Commission’s rules; (c) an appropriate method of allocating cable and wire facilities expense (not treating circuits provisioned as DS1s on a basis equivalent to DS3s); and (d) a proper adjustment of

⁵ *Application of Iowa Network Access Div.*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (CCB 1988) (*Aureon Section 214 Order*).

⁶ 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).

⁷ 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 basis for the ratemaking employed and economic information to support the change, including specific cost information and cost projections. 47 CFR § 61.38(b).

⁸ *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 25 (citing 47 CFR §§ 51.901-51.919).

⁹ 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 (10th 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*).

¹⁰ *Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, FCC 18-105, para. 43 (2018) (*Aureon Tariff Investigation Order*), *pet. for recon. pending, pet. for review pending*, *Iowa Network Servs., Inc. v. FCC*, No. 18-1258 (D.C. Cir. filed Sept. 19, 2018). See 47 CFR § 61.26(f).

¹¹ *Aureon Tariff Investigation Order*, para.46.

Aureon's allocators to account for CEA and nonregulated traffic sharing the use of the same circuits.¹² The Commission gave Aureon sixty days to file the tariff revisions.¹³

5. Aureon's Transmittal No. 38 reduces Aureon's switched transport rate to the cost-based rate Aureon calculated of \$0.00296 per MOU.¹⁴ Aureon also submitted revised cost support material,¹⁵ which includes a non-jurisdictionalized Filed Lease Expense of \$4,904,646 for Aureon's test year.¹⁶ On September 27, 2018, AT&T filed a petition asking the Commission to reject or suspend and investigate Transmittal No. 38.¹⁷ In its petition, AT&T argues that Aureon's revised cost support fails to comply with the *Aureon Tariff Investigation Order* because Aureon's fair market value analysis is deficient and serious questions persist with regard to how Aureon calculated the tariff rate for CEA service reflected in Transmittal No. 38.¹⁸

6. In light of the arguments presented in AT&T's petition, we found that there were substantial questions of lawfulness regarding Aureon's switched transport rate tariff revisions that required further investigation. Accordingly, we suspended those tariff revisions for one day, continued the existing accounting order, and initiated an investigation into the lawfulness of the switched transport rate.¹⁹ Pursuant to section 204 of the Act, we suspended the rate for one day and allowed the rate to become effective on October 1, 2018, continued the previously-imposed accounting order, and initiated an investigation into the lawfulness of Aureon's revised switched transport rate.²⁰

C. Legal Authority

7. Under section 201(b) of the Act, a common carrier may not charge unjust or unreasonable rates for its services.²¹ Pursuant to section 204 of the Act, if a tariff filing has been suspended, the burden of proof is on the tariffing carrier to show that the new or revised charge is just and reasonable.²² Aureon's provision of the information requested in this Order is necessary to determine whether Aureon's revised switched transport rate is just and reasonable.²³

8. If a carrier includes improper investments in its rate base, the result is rates that are not just and reasonable.²⁴ In order for a carrier to include an investment in its rate base the investment must be "used and useful." Property is considered "used and useful" for regulatory ratemaking purposes if it is "necessary to the efficient conduct of a utility's business, presently or within a reasonable future

¹² *Id.*, para. 123.

¹³ *Id.*, para. 122.

¹⁴ See Aureon Tariff F.C.C. No. 1 at Section 6.8.1(A).

¹⁵ See Transmittal No. 38 D&J at 3-4.

¹⁶ Transmittal No. 38 Cost Support at "Sect 5 Part 64-TYCOS" tab (cell H112).

¹⁷ See Petition of AT&T Services, Inc. to Reject, or to Suspend and Investigate, Iowa Network Services Inc. Tariff Filing (filed Sept. 27, 2018) (AT&T Petition).

¹⁸ AT&T Petition at 2-3.

¹⁹ *Second Aureon Tariff Suspension Order* at para. 5; 47 U.S.C. § 204.

²⁰ *Second Aureon Tariff Suspension Order* at para. 7 (citing 47 U.S.C. § 204).

²¹ 47 U.S.C. § 201(b).

²² *Id.* § 204(a)(1).

²³ *Id.*

²⁴ 47 U.S.C. § 201(b).

period.”²⁵ In determining whether property is “used and useful,” the Commission first considers the need to compensate the utility’s owners for the use of their property in providing public service.²⁶ Second, the Commission weighs the equitable principle that ratepayers should not be forced to pay a return except on investments that can be shown to benefit them.²⁷ Finally, the Commission considers whether a carrier’s investment was prudent,²⁸ and whether the benefit from the investment will be realized in a reasonable period of time.²⁹

9. Although the Commission has identified general principles regarding what constitutes “used and useful” investment to be included in a carrier’s rate base, it has recognized “that these guidelines are general and subject to modification, addition or deletion. The particular facts of each case must be ascertained to determine what part of a utility’s investment is used and useful.”³⁰ The Commission has also allowed investments to be included in a rate base to address inequities or avoid complications and burdens. Thus, the Commission may, in its reasonable discretion, fashion an appropriate resolution that is tailored to the specific circumstances before it.³¹

10. In addition, when a nonregulated entity provides service to an affiliated regulated entity, the Commission’s affiliate transaction rules require an evaluation of the transaction against a ceiling determined by the lower of the fair market value or the fully distributed cost of the transaction.³² Carriers are allowed to “record the transaction at an amount equal to or less than the ceiling”³³ The rules do

²⁵ *American Tel. and Tel. Co.*, Phase II Final Decision and Order, 64 FCC 2d 1, at 38, para. 111 (1977) (*AT&T Phase II Order*).

²⁶ *See id.*

²⁷ “Equally central to the used and useful concept, however, is the equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them. Thus, imprudent or excess investment, for example, is the responsibility and coincident burden of the investor, not the ratepayer.” *Id.* at 38, para. 112. The benefit, however, does not have to be immediate and can include, for example, a portion of equipment that is serving as a reserve for future use. *See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers*, FCC 86-52, 1986 WL 291617, para. 41 (1985) (*Phase I Special Access Tariffs Investigation Order*), remanded on other grounds, *MCI Telecom. Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988).

²⁸ *See, e.g., 1990 AT&T Tariff Revisions Order*, 5 FCC Rcd at 5695, at para. 17 (citations omitted).

²⁹ *AT&T Phase II Order*, 64 FCC 2d at 38, para. 113 (“The phrase ‘presently or within a reasonable future period’ in the denotation of ‘used and useful’ is included to protect ratepayers from being forced to pay a return on investment which may not be used for a considerable length of time or is not needed to serve as a reserve for currently used investment.”).

³⁰ *AT&T Phase II Order*, 64 FCC 2d at 39, para. 1154.

³¹ *See, e.g., American Telephone and Telegraph Co., et al., for authority under section 214 of the Communications Act of 1934, as amended, to supplement existing facilities by construction, acquisition and operation of a lightguide cable between cities on a main route between Cambridge, Mass. and Washington, DC, with extension lightguide cables to various cities along this route*, File No. W-P-C-3071, Memorandum Opinion, Order and Authorization, 84 FCC 2d 303, para. 32 (1981) (*AT&T LightGuide Cable 214 Order*) (acknowledging that rate matters “involve a great deal of judgment,” and concluding that expenditures were “justifiable in the long run and will serve the public convenience and necessity”). Moreover, courts typically defer to the Commission’s discretion on rate-related determinations. *See, e.g., Illinois Bell Tel. Co. v. FCC*, 911 F.2d 776, 780 (D.C. Cir. 1990), *rem. on other grounds, Amendment of Part 65 of the Commission’s Rules of [sic] Prescribe Components of the Rate Base and Net Income of Dominant Carriers*, 7 FCC Rcd 296 (1991) (“In reviewing the Commission’s rules for inclusion of an item in the rate base, in a context in which we have no basis for thinking that the end result will be unjust, we inquire only into whether the agency’s rules are arbitrary or unreasonable.”).

³² *See* 47 CFR § 32.27(c)(2) (“[w]hen 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”).

³³ *Id.*

not allow a carrier to simply assert that it cannot determine the fair market value of a transaction. Further, “[w]hen situations arise involving transactions that are not easily valued by independent means,” the Commission “require[s] carriers to maintain records sufficient to support their value determination.”³⁴

11. In determining the fully distributed cost rate for the facilities subject to a lease, the carrier must directly assign costs either to regulated or nonregulated activities to the maximum extent possible.³⁵ Thus, costs incurred for assets and labor used exclusively for regulated or nonregulated activities are directly assigned or charged to regulated or nonregulated activities in the books of account. Costs that cannot be directly assigned must be grouped into homogeneous cost categories and allocated in accordance with direct or indirect measures of cost causation.³⁶

12. Section 64.901(b)(3) of the Commission’s rules provides a hierarchy of methods for allocating such homogenous groups in the following order (earlier methods to be performed whenever possible in lieu of later methods): (i) “allocated based upon direct analysis of the origin of the cost[s] themselves;”³⁷ (ii) “allocated based upon an indirect, cost-causative linkage to another cost category (or group of cost categories) for which a direct assignment or allocation is available;”³⁸ and, finally, (iii) “allocated based upon a general allocator computed by using the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities.”³⁹

13. Section 64.901(b)(4) of the Commission’s rules requires that total central office equipment investment (both central office transmission equipment investment and central office switching equipment investment) and cable and wire facilities investment be allocated based on “the relative regulated and nonregulated usage of the investment during the calendar year when nonregulated usage is greatest in comparison to regulated usage during the three calendar years beginning with the calendar year during which the investment usage forecast is filed.”⁴⁰

III. ISSUES DESIGNATED FOR INVESTIGATION

14. Having reviewed Transmittal 38, we designate the following issues for investigation: (1) whether Aureon’s increase in central office switching equipment investment attributable to regulated interstate purposes in Transmittal 38 compared to Transmittal 36 represents investment that is used and useful in its provision of regulated jurisdictionally interstate service; and (2) the extent to which Aureon’s Filed Lease Expense complies with the Commission’s affiliate transaction rules, specifically: (a) whether the Filed Lease Expense is equal to or below the fair market value rate for the leased facilities; and (b) whether the Filed Lease Expense is equal to or below the fully distributed cost rate for the leased facilities. For each of the issues designated below, we direct Aureon to identify the individual(s) in the company most knowledgeable on these issues.

³⁴ *Implementation of The Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539, 17610, para. 154 (1996) (*Accounting Safeguards Order*). The Commission has further specified that “the valuation method chosen by the carrier must succeed in capturing the available supporting information regarding the transaction and must utilize generally accepted techniques and principles regarding the particular type of transaction at issue” and that carriers are not exempted “from their statutory obligation under section 220(c) to justify their accounting entries.” *Id.*

³⁵ *See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, Report and Order, 2 FCC Rcd 1298, 1299, para. 2 (1987) (*Joint Cost Order*); 47 CFR § 64.901(b)(2).

³⁶ *Joint Cost Order*, 2 FCC Rcd at 1299, para. 2; 47 CFR § 64.901(b)(3).

³⁷ 47 CFR § 64.901(b)(3)(i).

³⁸ *Id.* § 64.901(b)(3)(ii).

³⁹ *Id.* § 64.901(b)(3)(iii).

⁴⁰ 47 CFR § 64.901(b)(4).

A. Aureon's Increase in Central Office Equipment Investment

15. Aureon's cost support shows that the underlying unseparated total company central office switching investment increased from \$38,769,962 to \$43,196,262 (a difference of \$4,426,300) between Transmittal 36 and Transmittal 38.⁴¹ Aureon explains this increase as: "Additional Projected CAPEX was added for planned Tandem Switch Upgrades/Additions."⁴² AT&T questions why tandem switching investment should be increasing at a time when CEA traffic is declining.⁴³

16. We recognize that Aureon has not allocated the entire \$4,426,300 increase in unseparated total company central office switching investment to the regulated jurisdictionally interstate investment used for Aureon's rate development purposes. Rather, Aureon's rate development applies a factor to its unseparated total company central office switching investment to arrive at a regulated amount, and then an additional factor to arrive at regulated jurisdictionally interstate central office switching investment.⁴⁴ The application of these factors appears to result in Aureon allocating \$2,784,105 to regulated interstate investment out of the total \$4,426,300 increase.⁴⁵

17. Given the decline in demand Aureon projects for its CEA service,⁴⁶ we agree with AT&T that Aureon should, at minimum, provide further explanation for the increase and why the increase is "used and useful in its provision of regulated service."⁴⁷ Accordingly, we direct Aureon in its direct case to provide a detailed explanation and support regarding the rationale for this additional investment to Aureon's provision of regulated interstate service.⁴⁸

B. Aureon's Compliance with the Affiliate Transaction Rules

18. We also designate for investigation the issue of whether Aureon's Filed Lease Expense complies with the affiliate transactions rules, and more specifically whether the Filed Lease Expense is both: (1) equal to or below the fair market value rate for the leased facilities; and (2) equal to or below the fully distributed cost rate for the leased facilities.⁴⁹

⁴¹ Compare Transmittal No. 38 Cost Support at "Sect 5 Part 64-TYCOS" tab (cell F60) with Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36, Attach. 1, "Section 5 Part 64-TYCOS" tab (cell F60) (Feb. 22, 2018).

⁴² Transmission No. 38 Cost Support, "Description 9-2018" tab (rows 33-34).

⁴³ AT&T Petition at 19-20.

⁴⁴ See Transmittal No. 38 Cost Support, "Sect 5 Part 64-TYCOS" tab (row 60), "Sect 4 Part 36-TYCOS" tab (row 60).

⁴⁵ $\$4,426,300 \times 71.75\% \times 87.66\% = \$2,784,105$. The actual change in Aureon's total company jurisdictionally interstate central office switching investment, as compared to its February 2018 filing, was only \$1,017,121 because Aureon lowered its jurisdictionally interstate allocation factor from 94.01% to 87.66%, which offsets a significant amount of the increase. Compare Transmittal No. 38 Cost Support at "Sect 4 Part 36-TYCOS" tab (cell I145) with Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36, Attach. 1, "Section 3 Part 36-TYCOS" tab (cell I145) (Feb. 22, 2018). Aureon appears to explain this decrease by stating that "[a]dditional MOU associated with local traffic have been added to MOU calculations and assigned to Intrastate." Transmittal No. 38 Cost Support "Description 9-2018" tab (row 36).

⁴⁶ See *Aureon Tariff Investigation Order*, paras. 92-113.

⁴⁷ AT&T Petition at 19-20.

⁴⁸ See *AT&T Phase II Order*, 64 FCC 2d, at 38, para. 111.

⁴⁹ 47 CFR § 32.27(c)(2).

1. Fair Market Value

19. Aureon asserts that the fair market value rate for its leased facilities is \$14,755,045 per year,⁵⁰ which is approximately three times Aureon's non-jurisdictionalized Filed Lease Expense of \$4,904,646.⁵¹ Without explanation, Aureon calculates its estimate of the fair market value of the Filed Lease Expense by multiplying its projected CEA MOUs (2,599,778,953) by two different cost-based rates offered by CEA providers in other states and then calculating the average.⁵² The first rate appears to be South Dakota Network, LLC's (SDN's) then-effective per-MOU rate for "Access Transport" (\$0.006001).⁵³ The second rate is an unweighted average of Minnesota Independent Equal Access Corp.'s (MIEAC's) per-MOU rates for Originating Transport (\$0.009900) and Terminating Transport (\$0.000800).⁵⁴ Aureon appears to indicate through a notation that this unweighted average is meant to assume that pertinent traffic is 50 percent originating and 50 percent terminating.⁵⁵

20. We direct Aureon to file a full narrative explanation of its fair market value calculation, including all assumptions made, justification for such assumptions, and justification for Aureon's methodology. Based on the Bureau's understanding of Aureon's calculation, Aureon is directed to address the following specific matters, among others, in providing its narrative explanation:

- Why Aureon selected the particular SDN and MIEAC rate elements that it selected;
- How rates that were set using a regulatory accounting-based rate-of-return methodology are relevant to determining the fair market value rate for any party's assets, particularly Aureon's;⁵⁶
- Why Aureon believes it is sufficiently similarly situated to SDN and MIEAC, particularly with respect to network topology but also in other respects, to justify using the per-MOU transport rates of these carriers as a valid basis for comparison, if using such rates are valid at all;

⁵⁰ Transmittal No. 38 Cost Support, "Network Lease -Cost Market Comp" tab (cell F163).

⁵¹ Transmittal No. 38 Cost Support at "Sect 5 Part 64-TYCOS" tab (cell H112). In determining Aureon's compliance with our affiliate transaction rules, we must compare amounts that have not yet been separated between the interstate and intrastate jurisdictions. Although Aureon uses the same network to provide switched transport service for jurisdictionally interstate and intrastate calls, Aureon's rate that is the subject of this investigation solely applies to interstate traffic. The Commission's Part 36 jurisdictional separations rules establish a process for separating jurisdictionally interstate and jurisdictionally intrastate costs so that an interstate revenue requirement can be computed that forms the basis for a rate-of-return carrier's rate. 47 CFR Part 36. This process, however, occurs after application of the Commission's Part 32 accounting rules, which include the affiliate transaction rules that govern our inquiry into Aureon's lease expense. *Id.* Part 32; § 32.27.

⁵² Transmittal No. 38 Cost Support at "Network Lease -Cost Market Comp" tab (rows 148-63).

⁵³ See South Dakota Network, LLC Tariff F.C.C. No. 1 at Section 6.8.1(A) (8th Revised Page 134). SDN recently proposed eliminating this rate element from its tariff as part of a transmission that is effective, but subject to investigation. See *South Dakota Network, LLC Tariff F.C.C. No. 1*, Transmittal No. 33; WC Docket No. 18-100, Order, DA 18-1004 (WCB/Pricing Oct. 1, 2018).

⁵⁴ See Minnesota Independent Equal Access Corp. Tariff F.C.C. No. 1 at § 6.8.1(A).

⁵⁵ Transmittal No. 38 Cost Support at "Network Lease -Cost Market Comp" tab (cell E159).

⁵⁶ We note that SDN and MIEAC rates used by Aureon were set more than six and 18 years ago, respectively. See Letter from Marlene Bennett, Consultant for South Dakota Network, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 8 (filed June 25, 2012); Letter from Gerard J. Duffy, Attorney for Minnesota Equal Access Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, Transmittal No. 12 (filed June 26, 2000).

- Whether Aureon originates as much CEA traffic as it terminates and, if not, why it is reasonable to compute MIEAC's "unitary" rate using a non-weighted average of MIEAC's originating and terminating transport rates;⁵⁷
- How tariffed per-MOU switched access rates are relevant to determining the fair market value rate for wholesale transport capacity;
- Whether the Network Division leases its network facilities to any other entities, who they are and how much the Network Division charges for such services; and
- [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION].⁵⁸

If Aureon so chooses, Aureon may file an alternative calculation of the fair market value rate for the leased facilities, provided that this calculation is supported by a full narrative explanation including all assumptions made, justification for such assumptions, and justification for Aureon's methodology.

2. Fully Distributed Cost

21. According to Aureon, the Filed Lease Expense relates almost entirely, either directly or indirectly, to two types of facilities owned by the Network Division. The first type of facility is a subset of central office equipment, which consist of the cables and wires used for distribution, as well as the poles, ducts, and conduit that such cables and wires occupy.⁵⁹ The second type of facility primarily driving Aureon's Filed Lease Expense is cable and wire facilities, which consists of the cables and wires used for distribution, as well as the poles, ducts, and conduit that such cables and wires occupy.⁶⁰ Many of the same general facilities leased by Aureon are also used by the Network Division to provide nonregulated services.⁶¹

22. We designate for investigation two categories of issues relating to whether Aureon has adequately demonstrated that the Filed Lease Expense is less than or equal to the fully distributed cost rate for the leased facilities: (1) the reasonableness of Aureon's central office equipment and cable and wire facilities cost allocation methodology; and (2) computational issues.

a. Aureon's Central Office Expense and Cable and Wire Facilities Cost Allocation Methodology

23. In the *Aureon Tariff Investigation Order*, the Commission required Aureon to file cost support that, among other things: (1) uses central office equipment and cable and wire facilities cost allocators that comply with section 64.901(b)(4) of the Commission's rules and; (2) uses an appropriate method of allocating cable and wire facilities expense (not treating circuits provisioned as DS1s on a basis equivalent to DS3s). Aureon's circuit counts/inventory⁶² plays a critical role in Aureon's central office equipment and cable and wire facilities cost allocation methodology because relative circuit use drives its

⁵⁷ It would seem, for example, that if Aureon's CEA traffic is 40% originating and 60% terminating, the relevant MIEAC "unitary rate" should be an average weighting MIEAC's originating rate by 60% and its terminating rate by 40% ($\$0.009900 \times 0.40$) + ($\0.000800×0.60) = $\$0.004440$).

⁵⁸ AT&T Petition at 11. We note that Aureon does not appear to have complied with paragraph 62 of the *Aureon Tariff Order* and again direct Aureon to do so in its Direct Case.

⁵⁹ See 47 CFR § 32.2410.

⁶⁰ *Id.*

⁶¹ *Aureon Tariff Investigation Order* at para. 51.

⁶² In addition to the summary circuit counts provided in Aureon's cost support spreadsheet, Aureon also filed a separate circuit inventory spreadsheet as part of Transmittal No. 38 (Aureon Circuit Inventory).

calculation of such allocators. As AT&T observes,⁶³ the data in Transmittal 38, however, appears to differ dramatically from those in Transmittal 36. We, therefore, direct Aureon to provide a complete narrative explanation of the circuit counts/inventory it used in the calculations Aureon made in support of Transmittal 38. As part of that narrative, we direct Aureon 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. In providing its narrative explanation of the circuit counts used in Transmittal 38, we also direct Aureon to include in that explanation:

- An explanation of the relationship between the various spreadsheet worksheets/tabs;
- Definitions of the terms “ring” and “ring node,” and the relationship between these terms, as well as POIs between Aureon and its subtending carriers;
- **[BEGIN CONFIDENTIAL INFORMATION]**

[END

CONFIDENTIAL INFORMATION];

- 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;⁶⁵ and
- 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.⁶⁶

24. In the *Aureon Tariff Investigation Order*, the Commission directed Aureon to provide an explanation in its tariff transmittal if did not project a decrease in circuits used for CEA purposes in determining the projected central office equipment and cable and wire facilities allocators for 2019 and 2020.⁶⁷ Aureon failed to do so. We therefore now direct Aureon to provide an explanation for the basis of the circuit count projections that it uses, including any supporting data. This applies to projections regarding all types of circuits.

25. In the *Aureon Tariff Investigation Order*, the Commission observed that Aureon reported **[BEGIN CONFIDENTIAL INFORMATION]**

⁶³ AT&T Opposition at 14-16.

⁶⁴ See Transmittal No. 38 Cost Support, “CCT Inventory and Allocations” tab (cell W6).

⁶⁵ See, e.g., Aureon Transmittal No. 36 Direct Case, Exh. D, Dec. of Brian Sullivan, Attach. 3, “Summary” tab (rows 16-17, 19-24).

⁶⁶ This would seem to mean, among other things, that, to the extent that Aureon sells non-regulated service on such rings, it is all provided **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**.

⁶⁷ *Id.*, para. 79.

[END CONFIDENTIAL INFORMATION].

28. Additionally, Aureon's implementation of its circuit count projections for future years appears to be flawed. **[BEGIN CONFIDENTIAL INFORMATION]**

⁶⁸ *Id.*

⁶⁹ Transmittal No. 36 AT&T Opposition at 51-52, 54-55.

⁷⁰ Transmittal No. 36 Aureon Rebuttal at 43-44.

⁷¹ **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION].

⁷² *Aureon Tariff Investigation Order* at para. 79.

⁷³ Transmittal No. 38 Cost Support, "CCT Inventory and Allocations" tab (row 66)

⁷⁴ Transmittal No. 38 Cost Support, "CCT Inventory and Allocations" tab (rows 66-67).

⁷⁵ Transmittal No. 38 Cost Support, "CCT Inventory and Allocations" tab (cells W37, W42, W43, W49, W50, AE37, AE42, AE43, AE49, AE50).

[END CONFIDENTIAL INFORMATION].

29. *Aureon's Methodology for Allocating Cable and Wire Facilities, as well as Central Office Transmission Expense.* Aureon appears to have changed the manner in which it computes both its cable and wire facilities and central office equipment transmission expenses.⁷⁷ Although the *Aureon Tariff Investigation Order* directed Aureon to amend only its cable and wire facilities allocation methodology, because Aureon also amended its central office equipment transmission allocation methodology, we also designate for examination the methodology used by Aureon for allocating central office equipment transmission. We direct Aureon to provide a full narrative explanation for this new methodology for both the central office equipment and cable and wire facilities allocators, including support for all assumptions made, an explanation of how such methodology is compliant with the *Aureon Tariff Investigation Order*,⁷⁸ and citation to relevant statutory and regulatory authority, where applicable. Such explanation should include, among other things, a description of how Aureon's methodology relates to the manner in which costs on the Network Division's network are actually incurred, that is, among other things, whether these costs vary based on the number of fiber pairs, the provisioned high-capacity optical or other services, etc. For example, [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION].⁷⁹

30. As a further matter regarding Aureon's methodology for computing its central office equipment and cable and wire facilities allocators, to whatever extent Aureon proposes using a central office equipment and/or cable and wire facilities cost allocator that is reliant on circuit counts that do not [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION], we require Aureon to provide a full explanation as to why the circuit counts that it seeks to use are reasonable and how they are "used and useful" in the provision of CEA service.

b. Other Issues

31. Aureon's calculation of the fully distributed cost rate of the leased facilities raises three calculation issues: (1) calculation of accumulated depreciation reserves; (2) pertinent central office equipment expense; and (3) taxable income adjustments. We direct Aureon to provide an explanation for its treatment of each of these matters and to provide any corrections, as necessary.

32. *Calculation of Accumulated Depreciation Reserves.* In Aureon's fully distributed cost rate computation, Aureon's accumulated depreciation for central office equipment transmission and cable and wire facilities are netted from the original cost of its central office equipment transmission and cable and wire facilities assets, respectively, and, thus, lower the net investment (or rate base) return, and income tax expense components of the fully distributed cost rate calculation as these assets age.⁸⁰ These amounts, as indicated by their name, are cumulative and are adjusted each year to reflect an additional

⁷⁶ See, e.g., Transmittal No. 38 Cost Support, "CCT Inventory and Allocations" tab (cells W38, W44, AE38, AE44).

⁷⁷ Transmittal No. 38 Cost Support, "Description 9-2018" tab (rows 49-64).

⁷⁸ This includes, but is not limited to, "discuss[ing] the relevance and accuracy of AT&T's claims regarding the manner in which a wholesale customer, such as the Access Division, would actually lease circuits for use such as Aureon's network, as well as the relevance of Aureon's nonregulated DS3 pricing as it compares to any DS3 pricing that could be derived from Aureon's C&WF allocation methodology." *Aureon Tariff Order* at 89.

⁷⁹ See Aureon Circuit Inventory, "Ring Allocations" tab, "Ethernet Rings" tab.

⁸⁰ Transmission No. 38 Cost Support, "Network Lease -Cost Market Comp" tab (cells F43, F67).

year's worth of depreciation expense. In updating these amounts for the present year, however, Aureon appears to have added depreciation expense for the prior year rather than the test year,⁸¹ which would cause accumulated depreciation to be lower and the fully distributed cost rate to be greater than they otherwise should be.

33. *Pertinent Central Office Expense.* In Aureon's direct case for the Bureau's investigation of Aureon's February 2018 tariff filing, Aureon stated that "[t]he costs of switching are not included in the lease rate."⁸² Nevertheless, as AT&T observes, Aureon's computation of the fully distributed cost rate includes central office equipment maintenance expense based on an allocation of central office equipment transmission *and* central office equipment switching expense, rather than merely the former.⁸³

34. *Income Tax Adjustments.* Aureon's fully distributed cost rate includes a measure of federal and state income tax. Federal and state taxable income, however, must reflect the deduction of tax-deductible interest expense. Aureon's calculation of federal and state taxable income, and thus federal and state income tax, however, do not appear to reflect such deductions.⁸⁴

IV. PROCEDURAL MATTERS

35. *Filing Schedules.* This investigation is designated WC Docket No. 18-60. Iowa Network Access Division (d/b/a Aureon) is designated as a party to this investigation of the listed tariff filing.

36. Aureon shall file its direct case no later than **November 28, 2018**. The direct case must present Aureon's position with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than **December 5, 2018**, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Aureon may also file a "Rebuttal" to oppositions or comments no later than **December 12, 2018**. Additional pleadings will not be permitted or considered,⁸⁵ but *ex parte* presentations will be accepted until **February 14, 2019**.⁸⁶

- Electronic Filers: Direct cases and other pleadings may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

⁸¹ See Transmission No. 38 Cost Support, "Sect PYCOS and TYCOS Financials" tab (cells H31, H32). It would appear that these cells should be adding depreciation expense from cells in column H (test year) rather than column G (prior year).

⁸² Transmittal No. 36 Direct Case, Exh. D, Dec. of Brian Sullivan at 20.

⁸³ AT&T Petition at 20 (discussing the contents of Transmittal No. 38 Cost Support, "Network Lease – Cost Market Comp" tab (cell F50).

⁸⁴ See Transmittal No. 38 Cost Support, "Network Lease – Cost Market Comp" tab (cells F45, F57, F69, F81).

⁸⁵ 47 CFR §§ 1.1200(a).

⁸⁶ This date is necessary to give the Commission adequate time to evaluate the complete record prior to the statutory deadline of February 28, 2019.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

37. There is a *Protective Order* in this proceeding.⁸⁷ Commenters should file any information they want afforded confidential treatment pursuant to the guidance and limitations in the *Protective Order*.

38. *Requirements for the Filing of Spreadsheets.* All spreadsheets filed by Aureon, as well as data rebutting spreadsheets filed by Aureon, must be filed in fully-operational spreadsheets in native Microsoft Excel electronic format. All spreadsheet cells that contain entries that are references to or calculations based on other spreadsheet cells must include the formula for such reference or calculation. This includes references and calculations based on entries in different worksheets within the same workbook file.

39. *Ex Parte Requirements.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

40. *Paperwork Reduction Act.* This Order designating issues for investigation does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 47 U.S.C. § 3506(c)(4).

41. *Contact Persons.* For further information about this proceeding, please contact Edward Krachmer, FCC Wireline Competition Bureau, Pricing Policy Division, Room 5-A230, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-1525, Edward.Krachmer@fcc.gov or Richard Kwiatkowski, FCC Wireline Competition Bureau, Pricing Policy Division, Room 5-A460, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-1383, Richard.Kwiatkowski@fcc.gov.

⁸⁷ *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Protective Order, DA 18-294 (WCB Mar. 26, 2018) (*Protective Order*).

⁸⁸ 47 CFR §§ 1.1200 et seq.

V. ORDERING CLAUSES

42. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201(b), 203(c), 204(a), 205 and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

43. IT IS FURTHER ORDERED that Iowa Network Access Division (d/b/a Aureon) IS a party to this proceeding.

44. IT IS FURTHER ORDERED that Iowa Network Access Division (d/b/a Aureon) SHALL INCLUDE, in its Direct Case, a response to each request for information that it is required to answer by this Order.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk
Chief, Pricing Policy Division
Wireline Competition Bureau