

**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)	Transmittal No. 36
)	Transmittal No. 38
)	Transmittal No. 44

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2023

Released: August 8, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we approve the plan of Iowa Network Access Division d/b/a Aureon Network Services (Aureon) to refund to its customers certain unlawful, tariffed interstate access service charges. In response to a Commission order requiring Aureon to submit certain cost and demand data for calendar years 2018 and 2019,¹ Aureon submitted the required data, as well as a refund plan.² We direct Aureon to issue refunds to its customers in accordance with the terms set forth in its Refund Plan and this Order.³

II. BACKGROUND

2. Aureon, a division of Iowa Network Services, Inc. (INS), is a centralized equal access (CEA) provider that was created to aggregate traffic traveling between rural incumbent local exchange carriers (LECs) in Iowa and other networks, and to implement long distance equal access obligations.⁴ Aureon delivers traffic to its subtending LECs through several points of interconnection across Iowa.⁵

¹ *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Transmittal No. 38, Transmittal No. 44, Order, FCC 22-14 (Feb. 22, 2022) (*Aureon Data Order*).

² Refund Plan of Iowa Network Services, Inc. d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36, Transmittal No. 38, Transmittal No. 44 (filed Apr. 25, 2022) (Refund Plan). There is a *Protective Order* in this proceeding. *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Protective Order, 33 FCC Rcd 2893 (WCB 2018).

³ We direct this action under the authority granted in 47 U.S.C. § 204(a)(1) and in accordance with Commission rules and orders. 47 U.S.C. § 204(a)(1). See *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Order, 33 FCC Rcd 2089 (WCB/PPD 2018) (*Aureon First Tariff Suspension Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Memorandum Opinion and Order, 33 FCC Rcd 7517 (2018) (*Aureon First Tariff Investigation Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, Order, 33 FCC Rcd 8547 (WCB/PPD 2018) (*Aureon Second Tariff Suspension Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, Memorandum Opinion and Order, 34 FCC Rcd 1510 (2019) (*Aureon Second Tariff Investigation Order*).

⁴ *Application of Iowa Network Access Division*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (CCB 1988) (*Aureon Section 214 Order*). Equal access obligations require LECs to permit end users to use 1+ dialing to reach the long-distance provider of their choice.

⁵ 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 (filed May 3, 2018).

Aureon's "Access Division" is the regulated entity that provides CEA service by leasing facilities from a separate, unregulated "Network Division" of INS.⁶ Many of the facilities leased by Aureon are also used by the Network Division, either directly or indirectly, to provide unregulated services.

3. 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 Aureon is also a competitive LEC.⁸ As a result, Aureon cannot tariff a rate for its services that is higher than the rate the competing incumbent LEC charges for the same access services.⁹

4. On November 8, 2017, the Commission adopted the *Aureon Liability Order*, partially granting a complaint filed by AT&T Corp. alleging that Aureon violated the Commission's rate cap and rate parity rules by raising its interstate switched transport rate,¹⁰ contained in Tariff F.C.C. No. 1, to \$0.00896 per minute of use (MOU), and by not lowering its intrastate rates as required by those rules.¹¹ The Commission, among other things, directed Aureon to file interstate 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.¹²

5. In response to the Commission's direction in the *Aureon Liability Order*, on February 22, 2018, Aureon filed Transmittal No. 36, containing revisions to its interstate access Tariff F.C.C. No. 1.¹³ In its tariff revisions, Aureon reduced its interstate switched transport rate to \$0.00576 per MOU,

⁶ See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1510-11, para. 2.

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*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9692, para. 30 (2017) (*Aureon Liability Order*); Order on Reconsideration, 33 FCC Rcd 7964 (2018); Second Order on Reconsideration, 33 FCC Rcd 11855 (2018) (*Second Order on Reconsideration*), *aff'd in part and rev'd in part*; *AT&T Corp. v. FCC*, 970 F.3d 344 (D.C. Cir. 2020) (*AT&T Corp. v. FCC*). 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 §§ 51.901-919); *AT&T Corp. v. FCC*, 970 F.3d at 349.

⁹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17937, para. 807 (2011), *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 *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001); 47 CFR § 51.911; *AT&T Corp. v. FCC*, 970 F.3d at 349.

¹⁰ Aureon charges for interstate CEA service using a single tariffed rate called the "switched transport rate," which is non-distance sensitive and recovers the costs of both transport and tandem switching. See *Aureon Liability Order*, 32 FCC Rcd at 9681-82, para. 11. In its consideration of the *Aureon Liability Order*, the D.C. Circuit set aside the Commission's determination that Aureon violated the rate cap for interstate access charges, but deferred to the Commission's resolution of the tariff-related issues resulting from the complaint proceeding. *AT&T Corp. v. FCC*, 970 F.3d at 350-51.

¹¹ *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 24.

¹² *Id.* at 9695, para. 35; 47 CFR § 61.38.

¹³ Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 36 (filed Feb. 22, 2018) (available via the Commission's Electronic Tariff Filing System (ETFS)); Iowa Network Access Division, Tariff F.C.C. No. 1, Transmittal No. 36, 32nd Rev. Page 1, 16th Rev. Page 1.1, 13th Rev. Page 145, § 6.8.1 (filed Feb. 22, 2018) (available via ETFS) (collectively Transmittal No. 36).

effective March 1, 2018.¹⁴ The Wireline Competition Bureau (Bureau) suspended the revised rate, imposed an accounting order, and opened an investigation into the lawfulness of Aureon's revised interstate switched transport rate that became effective on March 1, 2018.¹⁵ While the Commission investigated the rate that became effective on March 1, 2018, Aureon's customers continued to pay Aureon the disputed rate included in Transmittal No. 36.

6. On July 31, 2018, the Commission issued a Memorandum Opinion and Order detailing the findings of the investigation into the tariff revision submitted in Transmittal No. 36.¹⁶ The Commission found that the proposed rate of \$0.00576 per MOU was lower than the applicable rate cap, but higher than the competing incumbent LEC rate of \$0.005634 for the same service, and directed Aureon to refile its interstate switched transport rate in accordance with the order and to include cost support for the revised rate.¹⁷ Aureon submitted a revised tariff on September 24, 2018, reducing its interstate switched transport rate to \$0.00296 per MOU effective October 1, 2018.¹⁸ On September 28, 2018, the Bureau suspended the rate filed in Transmittal No. 38, continued the existing accounting order, and set for investigation the lawfulness of the revised interstate switched transport rate.¹⁹

7. After reviewing the information Aureon submitted, the Commission concluded that Aureon failed to provide adequate cost support to justify the tariffed interstate switched transport rate of \$0.00296 contained in Transmittal No. 38, as required by the Commission's rules.²⁰ The Commission also found that Aureon's cost support failed to demonstrate that Aureon's claimed expense for network facilities leased by the Access Division from the Network Division as reflected in the interstate revenue requirement for CEA service complied with the Commission's affiliate transaction rule.²¹ Aureon also failed to establish that it paid its affiliated Network Division less than the lower of: (1) the fair market value of the leased facilities; and (2) the fully-distributed costs of the leased facilities.²² Accordingly, the Commission directed Aureon to revise its tariffed interstate switched transport rate.²³

¹⁴ Transmittal No. 36 (proposed revision to § 6.8.1(A)).

¹⁵ See generally *Aureon First Tariff Suspension Order*. The Bureau's suspension order initiated a proceeding to investigate only the rate filed in Transmittal No. 36 and had no bearing on rates from previously filed tariff transmittals. See *Second Order on Reconsideration*, 33 FCC Rcd at 11857-58, para. 7 ("AT&T maintains that the Commission's separate investigation into Aureon's 2018 tariff is somehow dispositive as to the appropriate benchmark and cost-based rate from mid-2013 to 2018. It is not. The 2018 tariff investigation is prospective only, relates to a tariff that Aureon submitted in 2018, and has no bearing on Aureon's 2012 or 2013 tariffs.") (internal citations omitted).

¹⁶ See *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7524-66, §§ III-V.

¹⁷ *Id.* at 7567, paras. 122-23, 126.

¹⁸ See Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 38 (filed Sept. 24, 2018) (available via ETFS and WC Docket No. 18-60); Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 38, 14th Rev. Page 145, § 6.8.1 (filed Sept. 24, 2018) (available via ETFS) (collectively Transmittal No. 38).

¹⁹ See generally *Aureon Second Tariff Suspension Order*.

²⁰ *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1514, para. 12.

²¹ *Id.*; 47 CFR § 32.27 (governing affiliate transactions). The Commission found that Aureon may not ignore the rate at which its unregulated Network Division sells DS3 transport services to third parties (on a nonregulated basis) when estimating fair market value for the Network Division's leased network to the Access Division. See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1516-17, paras. 14-19.

²² See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1514, para. 12.

²³ *Id.* at 1523, para. 39.

8. On April 29, 2019, Aureon filed tariff revisions proposing a new interstate switched transport rate, to become effective May 14, 2019,²⁴ but in a series of tariff filings, Aureon further revised the rate and deferred the effective date to October 15, 2019.²⁵ On September 27, 2019, the Bureau granted Aureon's application for special permission and waived section 61.59 of the Commission's rules to allow Aureon to make changes to a tariff that had not been effective for 30 days.²⁶ On September 30, 2019, Aureon filed Transmittal No. 44, and accompanying cost support, proposing a revised tariffed interstate switched transport rate of \$0.00411, which became effective on October 15, 2019 and was deemed lawful.²⁷

9. The rates submitted in Transmittal Nos. 36 and 38, while unlawful, were in effect from March 1, 2018, through October 14, 2019. The unlawful rates charged during that period are subject to refunds for overearnings.²⁸ Although most carriers voluntarily submit refund plans following tariff investigation orders, Aureon did not take steps to issue refunds to its customers or submit to the Commission a plan to do so.²⁹ As a result, the Commission issued an order explicitly requiring Aureon to submit the data necessary to enable the Bureau to formulate a refund plan and conclude the investigation into Aureon's interstate switched transport rate.³⁰ In the *Aureon Data Order*, the Commission directed Aureon to provide actual historical year cost of service studies for 2018 and 2019,³¹ a detailed accounting of company-wide and interstate switched transport service investments and expenses,³² and billing and collection data regarding each customer to which Aureon provided switched transport service during the

²⁴ See Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 40 (filed Apr. 29, 2019) (available via ETFS); Iowa Network Access Division., Tariff F.C.C. No. 1, Transmittal No. 40, Description and Justification, Cost Support Material (filed Apr. 29, 2019) (available via ETFS); Iowa Network Access Division Tariff, F.C.C. No. 1, 36th Rev. Page 1, 18th Rev. Page 1.1, 15th Rev. Page 145, § 6.8.1 (dated Apr. 29, 2019) (available via ETFS) (proposing an increased interstate switched transport rate of \$0.00363).

²⁵ Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 41 at 1 (filed May 10, 2019) (available via ETFS) (deferring effective date from May 14, 2019 to June 28, 2019); Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 42 at 1 (filed June 21, 2019) (available via ETFS) (deferring effective date from June 28, 2019 to August 1, 2019); Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 43 at 1 (filed July 22, 2019) (available via ETFS) (deferring effective date from August 1, 2019 to October 15, 2019).

²⁶ See Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Application No. 9 (filed Sept. 27, 2019) (available via ETFS) (requesting special permission for waiver of section 61.59 "so that changes may be made to tariff material that has not yet been effective for 30 days"); Iowa Network Access Division, Tariff F.C.C. No. 1, 40th Rev. Page 1, 22nd Rev. Page 1.1, 19th Rev. Page 145, § 6.8.1 (dated Sept. 30, 2019) (available via ETFS) (noting that tariff changes were issued under authority of Special Permission Number 19-004); see also 47 CFR § 61.59.

²⁷ Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 44 (filed Sept. 30, 2019) (available via ETFS); Iowa Network Access Division, Tariff F.C.C. No. 1, Transmittal No. 44, Description and Justification, Cost Support Material (filed Sept. 30, 2019) (available via ETFS); Iowa Network Access Division, Tariff F.C.C. No. 1, 40th Rev. Page 1, 22nd Rev. Page 1.1, 19th Rev. Page 145, § 6.8.1 (filed Sept. 30, 2019) (available via ETFS) (collectively Transmittal No. 44). Transmittal No. 44 included a proposed effective date of Oct. 15, 2019.

²⁸ See *Aureon Data Order* at 4-5, para. 9.

²⁹ See *id.*

³⁰ *Id.*

³¹ *Id.* at 5, para. 10.

³² *Id.* at 5-6, para 11.

relevant period.³³ On April 25, 2022, Aureon submitted its Refund Plan and the data required by the Commission in the *Aureon Data Order*.³⁴

10. In its Refund Plan, Aureon calculated separate rates for 2018 and 2019 derived from actual historical year cost studies and demand data for those calendar years.³⁵ Aureon subtracted the derived rate from the unlawful rate charged in the relevant time periods to determine the appropriate refund credit per MOU.³⁶ Aureon proposed to credit its customers \$0.00346 per MOU for the period March 1, 2018, through September 30, 2018, and \$0.00066 per MOU for the period October 1, 2018, through December 31, 2018, based on the rate derived from its 2018 cost study.³⁷ For the period January 1, 2019, through October 14, 2019, Aureon proposed no refund for any customer, because its 2019 cost study rate is higher than the rate it charged.³⁸ Aureon's Refund Plan also included interest, compounded daily, using the "Internal Revenue Service [IRS] non-corporate rates for overpayment and underpayment."³⁹ In response to questions from Commission staff, Aureon later clarified that as a corporation it should have identified the interest rate used in the Refund Plan as the IRS *corporate* interest rate to calculate the interest due to affected customers.⁴⁰

11. Aureon excluded AT&T, Verizon, Inteliquent, and Lumen from its refund calculations, explaining that it has reached settlement agreements with those customers, thereby satisfying its refund liability with respect to those carriers.⁴¹ Although, as advised by Commission staff, Aureon submitted its refund calculations using the relevant time periods during which the unlawful rates were in effect and without offsetting its "overearnings" under Transmittal 36 with "underearnings" under Transmittal 38, it did so under protest.⁴²

12. On April 28, 2022, the Bureau issued a Public Notice seeking comment on Aureon's Refund Plan.⁴³ Lumen filed comments objecting to the Refund Plan.⁴⁴ First, Lumen challenged Aureon's use of actual MOUs in determining a refund rate for interstate switched transport.⁴⁵ Lumen argued that Aureon should instead calculate its refund liability using projections based on the Commission's rules, or alternatively, using the demand forecasts Aureon used in setting the unlawful rates.⁴⁶ Next, Lumen

³³ *Id.* at 6, para. 12.

³⁴ Refund Plan.

³⁵ *Id.* at 3-5.

³⁶ *Id.*

³⁷ *Id.* at 5.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Letter from Carey S. Stover, Aureon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60 at 1 (filed June 26, 2023) (Aureon June 26, 2023 *Ex Parte* Letter) ("Aureon should have used the 'corporate' rate as Aureon is a corporation.").

⁴¹ Refund Plan at 6. *See* Comments of Lumen Technologies, Inc. WC Docket No. 18-60, at 1, n.3 (filed May 13, 2022) (Lumen Comments).

⁴² Refund Plan at 2-3 & n.1.

⁴³ *Wireline Competition Bureau Seeks Comment on Refund Plan of Iowa Network Access Division*, Public Notice, DA 22-467 (rel. Apr. 28, 2022).

⁴⁴ Lumen Comments at 2.

⁴⁵ *Id.* at 2-3.

⁴⁶ *Id.* at 2-7.

suggested that Aureon overstates its revenue requirement by using estimates of available circuits, instead of actual inventory.⁴⁷ No other party submitted comments on Aureon's Refund Plan.

13. At the time the Commission issued the *Aureon Data Order* and Aureon submitted its Refund Plan, Aureon and Lumen were engaged in litigation over the terms of a settlement agreement regarding related matters.⁴⁸ Aureon and Lumen have since settled the dispute over Aureon's charges for CEA service provided to Lumen prior to October 14, 2019.⁴⁹ Lumen now "takes no position on the amount of any refund to be issued to Aureon's other customers for charges assessed on traffic prior to October 14, 2019."⁵⁰

III. DISCUSSION

14. We find that Aureon's proposed Refund Plan is reasonable and we approve the company's proposal to refund overcharges paid by its customers from March 1, 2018 through October 14, 2019, plus interest compounded daily, by issuing a credit on the invoices of affected customers. We also find reasonable Aureon's proposal to use the IRS corporate rate for calculating interest on the refunds.

15. *Legal Authority and Standard of Review.* Section 204(a) of the Communications Act of 1934, as amended, grants the Commission the authority to set refunds, with interest, for "such portion of . . . revised charges as by its decision shall be found not justified."⁵¹ The broad permissive language of the statute "leaves refund decisions to the discretion of the Commission."⁵²

16. *Refund Period.* When directing Aureon to file a refund plan, the Commission instructed the company to "develop its actual, historical year revenue requirement for interstate switched transport service separately for calendar years 2018 and 2019."⁵³ Although Aureon uses actual costs, including the Commission's prescribed rate of return on rate base, derived from calendar year 2018 and 2019 cost studies in its Refund Plan to develop its actual, historical year revenue requirements, Aureon nevertheless protests this approach, suggesting instead that it should be permitted "to calculate the rates of return using [the 2017-2018 and 2019-2020] two-year monitoring periods."⁵⁴ In essence, Aureon proposes to lump together its earnings under unlawful tariffs with earnings under lawful tariffs, even though only the unlawful tariffs are at issue here. Aureon neither explains nor provides support for its proposed approach.⁵⁵ Aureon does not, for example, provide its actual, realized rate of return on rate base for either of these two-year monitoring periods even though it advocated for use of that data. We find that

⁴⁷ *Id.* at 8-9.

⁴⁸ See Refund Plan at 6-7; Letter from Timothy M. Boucher, Assistant General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Apr. 21, 2022); Letter from Carey S. Stover, Aureon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60 at 1 (filed Aug. 1, 2022) ("Aureon excluded Lumen from the refund plan because our dispute with Lumen was and is still being handled by the U.S. District Court for the Southern District of Iowa.").

⁴⁹ Letter from Timothy M. Boucher, Assistant General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60, at 1 (filed Jan. 10, 2023).

⁵⁰ *Id.*

⁵¹ 47 U.S.C. § 204(a)(1).

⁵² *Las Cruces TV Cable v. FCC*, 645 F.2d 1041, 1047 (D.C. Cir. 1981). Cf. *New England Tel. & Tel. Co. v. FCC*, 826 F.2d 1101, 1111 (D.C. Cir. 1987) (finding the Commission's explanation in support of a calendar year-based calculation of refunds "sensible enough" and its ultimate choice "not unreasoned"). See also *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7567, para. 125; *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1523, para. 38 (the Commission directed the Bureau in both orders to determine any refunds that may be required once revised rates are effective).

⁵³ *Aureon Data Order* at 4-5, paras. 9-10. Aureon did not contest the Commission's order.

⁵⁴ Refund Plan at 2 & n.1.

⁵⁵ See *id.* at 2.

calculating refund rates using actual costs and actual demand for the limited period during which the unlawful tariffs were in effect and subtracting these rates from the rates that were actually billed is the most appropriate method for determining refunds, and is consistent with Commission precedent.⁵⁶

17. *Use of Historical Data.* We find that Aureon’s use of actual, historical cost and demand data is consistent with the requirements adopted in the *Aureon Data Order* and is a reasonable method for determining Aureon’s refund rate. Refunds must be made for the backward-looking period during which the accounting order was in effect.⁵⁷ The Commission’s use of actual historical data ensures that refund rates are cost-based and therefore just and reasonable for the backward-looking refund liability period.

18. As an initial matter, Lumen argued⁵⁸ that we should require Aureon to derive a refund rate using projected MOUs for 2018 and 2019, rather than actual historical year data.⁵⁹ Citing section 61.38(b)(1)(ii) of our rules, Lumen asserted that Aureon should have set its refund rates using the same projected MOUs it “would have used had it complied with the Commission’s rules from the outset,” or, alternatively using the same projected minutes as it used to set its unlawful rates.⁶⁰ We find Lumen’s arguments to be inapposite. Section 61.38, which Lumen relies on to support its position, applies only to *prospective* rate changes; it does not apply to retrospective refunds, such as the ones at issue here.⁶¹ We find using actual historical year cost studies and demand data to be an appropriate and reasonable methodology for determining refunds in this case.

19. *Circuit Inventory Estimates.* Lumen broadly contended that the revenue requirement Aureon calculated in its Refund Plan was flawed, but the only example of a specific flaw cited by Lumen was that “Aureon continues to provide estimates of DS-3s in its CEA network rather than the actual inventory requested by the Commission.”⁶² Aureon explains that it did not maintain records of the inventory of actual circuits in 2018.⁶³ Given that Aureon does not have an “actual inventory,” we find Lumen’s argument unpersuasive. Accordingly, we allow Aureon to use estimates of circuit inventory in calculating its 2018 costs.

⁵⁶ See, e.g., *2001 Annual Access Tariff Filings*, CC Docket No. 01-206, Order, 17 FCC Rcd 2110, 2110-11, paras. 2-3 (PPD 2002); *July 1, 2018 Annual Access Charge Tariff Filings, South Dakota Network, LLC, Tariff F.C.C. No. 1*, WC Docket No. 18-100, Memorandum Opinion and Order, 34 FCC Rcd 3671, 3672, paras. 4-5 (WCB 2019) (*SDN Refund Order*); *Northern Valley Communications, LLC, Tariff F.C.C. No. 3*, WC Docket No. 20-11, Memorandum Opinion and Order, DA 22-865, at 11, para. 25 (WCB 2022) (*Northern Valley Refund Order*).

⁵⁷ 47 U.S.C. § 204(a)(1); see also *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, Order Designating Issues for Investigation, 27 FCC Rcd 10311, 10321, para. 28 (WCB/PPD 2012). Here, the orders to keep account are contained in the *Aureon First Tariff Suspension Order* and *Aureon Second Tariff Suspension Order*. *Aureon First Tariff Suspension Order*, 33 FCC Rcd at 2091, para. 9 (“Iowa Network Access Division d/b/a Aureon shall keep accurate account of all amounts received that are associated with the switched access rates that are subject to this investigation.”); *Aureon Second Tariff Suspension Order*, 33 FCC Rcd at 8549, para. 9 (“The accounting order applicable to Iowa Network Access Division d/b/a Aureon, shall remain in effect until this investigation is concluded.”).

⁵⁸ Although Lumen no longer takes any position on Aureon’s refund liability, we nonetheless address the arguments Lumen originally made in its comments.

⁵⁹ Lumen Comments at 3, 5.

⁶⁰ *Id.* at 3, 5-7. Section 47 CFR § 61.38(b)(1)(ii) states, in relevant part, that “[f]or a tariff change the issuing carrier must submit . . . [a] study containing a projection of costs for a representative 12 month period” and subsection (iii) requires, among other things, “the projected effects on the traffic and revenues for the same representative 12 month period used in (b)(1)(ii) above.”

⁶¹ 47 CFR § 61.38(b)(1)(ii) (requiring all tariff changes to be accompanied by “[a] study containing a projection of costs for a representative 12 month period”).

⁶² Lumen Comments at 8-9.

⁶³ Refund Plan at 4.

20. As the Commission explained in the *Aureon Second Tariff Investigation Order*, carriers are required to account for their physical plant in accordance with the accounting rules set forth in Part 32 of our rules.⁶⁴ Where physical plant inventory is unavailable, however, carriers and the Commission must rely on estimates. For example, when conducting inventory audits of carriers, the Commission itself has employed sampling to provide statistical inventory estimates.⁶⁵ Aureon's actual circuit inventory is unavailable, making estimates the only method of establishing circuit inventory for the purpose of calculating a revenue requirement. Aureon's approach is within the range of reasonable approaches that it might have used to estimate the number of circuits for 2018. As there is nothing in the record to suggest that an alternative approach would produce more accurate estimates, we find Aureon's estimates and the resulting revenue requirement for 2018 to be reasonable, given the circumstances.

21. *Offset for "Underearnings."* Although Aureon did not attempt to offset its 2018 overcharges with its "undercharges" from 2019—when its tariffed rate was below the rate derived from its cost study—in its Refund Plan, it expresses disagreement with that approach.⁶⁶ As an initial matter, the use of an offset would require that we allow Aureon to improperly meld the charges from two different monitoring periods and straddle two different tariff investigations. In addition, customers charged the interstate switched access rate during 2019 that later turned out to be lower than the rate Aureon's actual costs and demand justified, received no notice that the rate might be insufficient to meet Aureon's revenue requirement or that they might be asked to pay a higher rate for those services. Adopting an offset, as Aureon asks us to do, would amount to an impermissible, retroactive rate increase.⁶⁷ Aureon filed the tariffed rates that it now claims are too low. It would be inequitable to allow Aureon to retroactively increase those rates, even if those increases come in the guise of an offset.⁶⁸ The record does not demonstrate any unusual circumstance that might provide good cause to offset Aureon's 2018 refund liability with its 2019 undercharges.

22. *Interest Rates.* In a recent *ex parte* filing Aureon clarifies that as a corporation it should have identified the interest rates used in its Refund Plan as the IRS *corporate* interest rates for overpayment and underpayment rather than the IRS *non-corporate* interest rates for overpayment and underpayment.⁶⁹ In its Refund Plan, Aureon used the IRS interest rates for underpayment which are the same for corporate and non-corporate entities.⁷⁰ No parties commented on the interest rates to be used in

⁶⁴ See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1521-23, paras. 32-35.

⁶⁵ See, e.g., *BellSouth Telecommunications' Continuing Property Records Audit*, Order, 14 FCC Rcd 4258, Audit Report of the Continuing Property Records of BellSouth Telecommunications, Inc., at 10 & Appx. B (1999).

⁶⁶ Refund Plan at 2-3 & n.1.

⁶⁷ See *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 152 (1962) ("The company having initially filed the rates and either collected an illegal return or failed to collect a sufficient one must . . . shoulder the hazards incident to its action including not only the refund of any illegal gain but also its losses where its filed rate is found to be inadequate."); *1993 Annual Access Tariff Filings*; *1994 Annual Access Tariff Filings*, Order, 20 FCC Rcd 6077, 6083, para. 11 (WCB 2005) (refusing to allow a carrier "to recoup past undercharges due to its miscalculated lower formula adjustment and offset these underearnings against the amount it overearned by miscalculating its sharing obligation" deeming them a form of "retroactive rate increase"); *1993 Annual Access Tariff Filings*, Memorandum Opinion and Order, 12 FCC Rcd 8349, 8355-56, para. 16 (CCB 1997) (noting the carriers "were clearly on notice that their allocation method was potentially unlawful" once the Bureau suspended their tariffs and, therefore, "assumed any risk of a refund, and had no reasonable basis to assume that they would be entitled to make up undercharges").

⁶⁸ See *S. California Edison Co. v. FERC*, 805 F.2d 1068, 1072 (D.C. Cir. 1986) ("Equity does not move in favor of one whose own conduct or action has brought upon it misfortune or pecuniary loss.").

⁶⁹ Aureon June 26, 2023 *Ex Parte* Letter.

⁷⁰ Aureon did not specify in its Refund Plan that it used the IRS interest rates for underpayment to calculate the applicable interest due to its customers that were overcharged but the IRS website confirms that the interest rates Aureon provided in its Refund Plan coincide with those for corporate and non-corporate underpayment. Refund

(continued....)

this proceeding.⁷¹ Aureon asks that we “approve the refund plan as presented, noting that the rate should have been identified as the corporate rate instead of the non-corporate rate.”⁷² We accept and find reasonable Aureon’s use of the IRS corporate underpayment rate for calculating the applicable interest on refunds.⁷³ Accordingly, given the circumstances specific to the investigations into Aureon’s interstate switched transport rate, we find that Aureon’s Refund Plan will reasonably compensate customers who were charged unlawful rates during the March 1, 2018, through October 14, 2019 period.

23. Although in its Refund Plan Aureon projected a refund payment date of May 1, 2022, this Order is being released after that date. Therefore, we direct Aureon to pay interest on the refund amounts due to each customer charged unlawful rates from March 1, 2018 to October 14, 2019 until the date Aureon pays the full refund amount due to that customer.⁷⁴ Aureon must compute interest compounded on a daily basis at the applicable IRS corporate underpayment rate according to the more-recent IRS corporate underpayment interest rates of 4% for May 1, 2022 to June 30, 2022, 5% for July 1, 2022 to September 30, 2022, 6% for October 1, 2022 to December 31, 2022, and 7% for January 1, 2023 to September 30, 2023.⁷⁵

24. We direct Aureon to make the determined refunds, plus applicable interest as detailed above, to its affected customers, in the manner prescribed in the Refund Plan.⁷⁶ If Aureon does not provide refunds prior to September 30, 2023 it must calculate interest using any forthcoming IRS corporate interest rate for underpayment. These refund payments will conclude the two investigations into Aureon’s interstate switched transport rate. In the event that any settlement agreements with customers identified by Aureon are deemed void and Aureon’s refund liability is reinstated by a court, we direct Aureon to calculate such refunds in the same manner as prescribed in the Refund Plan, and to pay the refund accordingly.

IV. ORDERING CLAUSES

25. **ACCORDINGLY, IT IS ORDERED**, pursuant to sections 4(i), 4(j), 5, 201-204, 218, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, 201-204, 218, and 403, sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and the *Aureon Data Order*, that the Refund Plan of Iowa Network Access Division d/b/a Aureon Network Services is

Plan at 5; IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷¹ Aureon used the IRS underpayment interest rate in its Refund Plan while other subjects of tariff investigations have used the IRS overpayment interest rate in their refund plans. *See, e.g., SDN Refund Order*, 34 FCC Rcd at 3672, paras. 4-5; *Northern Valley Refund Order* at 11-12, para. 26 (both using the IRS overpayment rate to calculate the applicable interest for refunds. We accept Aureon’s use of the IRS corporate underpayment interest rate here. Refund Plan at 5; IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷² Aureon June 26, 2023 *Ex Parte* Letter.

⁷³ Refund Plan at 5. Aureon mistakenly lists in its Refund Plan a 5% interest rate from March 1, 2018 to December 31, 2018. *Id.* The corporate underpayment interest rate was 5% from March 1, 2018 to March 31, 2018, 4% from April 1, 2018 to June 30, 2018 and 5% from July 1, 2018 to December 31, 2018. Aureon must modify the interest calculation and refund payment to affected customers accordingly. IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷⁴ *See SDN Refund Order*, 34 FCC Rcd at 3672, para. 5 (“Requiring SDN to pay interest on the refund amounts due to each customer until it has paid the full amount due to that customer removes any incentive to delay refund payments.”).

⁷⁵ IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷⁶ *See* Refund Plan at 6 (“refunds plus interest . . . will be credited to each affected carrier”).

APPROVED and that Iowa Network Access Divisions shall complete refunds to affected customers in the manner prescribed in the Refund Plan and subject to the application of interest as provided in paragraphs 22 through 24 of this Order.

26. **IT IS FURTHER ORDERED** that pursuant to section 1.102 of the Commission's rules, 47 CFR § 1.102, this Order **SHALL BE EFFECTIVE** upon release.

WIRELINE COMPETITION BUREAU

Trent B. Harkrader
Chief
Wireline Competition Bureau