

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

In the Matter of	)	
July 1, 2018 Annual Access Charge Tariff Filings	)	WC Docket No. 18-100
	)	
South Dakota Network, LLC	)	Transmittal No. 13
Tariff F.C.C. No. 1	)	

**ORDER**

**Adopted: October 1, 2018**

**Released: October 1, 2018**

By the Chief, Pricing Policy Division:

**I. INTRODUCTION**

1. On September 17, 2018, South Dakota Network, LLC (“SDN”) filed Transmittal No. 13, proposing revisions to SDN’s interstate access Tariff F.C.C. No. 1 and stating that “[t]he purpose of this tariff filing is to update SDN’s Centralized Equal Access [CEA] rate and to remove the transport rate element from the tariff pursuant to Special Permission No. 18-04.”<sup>1</sup> The proposed revisions are scheduled to become effective on October 2, 2018.<sup>2</sup> Because we conclude that substantial questions of lawfulness exist regarding how SDN revised the centralized equal access service rate contained in its proposed tariff, we suspend the revisions for one day and set for investigation the question of whether SDN properly revised its centralized equal access service rate.

**II. BACKGROUND**

2. SDN is one of three centralized equal access service providers who implement long distance equal access obligations and aggregate traffic for connection between rural incumbent local exchange carrier (LEC) and interexchange carrier (IXC) networks. The other CEA providers are Iowa Network Access Division d/b/a Aureon (Aureon) and Minnesota Independent Equal Access Corporation (MIEAC). Pursuant to section 69.3(f)(1) of the Commission’s rules, SDN was required to submit an access tariff filing for the biennial period July 1, 2018 through June 30, 2020, with an effective date of July 1, 2018.<sup>3</sup> On May 4, 2018, SDN sought a waiver of the tariff filing date, citing an ongoing investigation into the lawfulness of Aureon’s interstate switched access transport rate.<sup>4</sup> The investigation arose, in part, due to Aureon’s status as a CEA provider. SDN argued that it might need to refile its tariff at the conclusion of the then-pending Commission investigation of Aureon’s tariffed rate for CEA service

<sup>1</sup> South Dakota Network, LLC Tariff F.C.C. No. 1 Description and Justification at 1 (filed September 17, 2018) (Description and Justification). See Letter from Marlene Bennett, Consultant for South Dakota Network, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 13 (filed September 17, 2018) (Transmittal Letter). See also Special Permission No. 18-04 (WCB Sept 4, 2018).

<sup>2</sup> See Transmittal Letter at 2.

<sup>3</sup> *In the Matter of July 1, 2018 Annual Access Charge Filings*, Order, DA 18-599 (WCB 2018) (*SDN Waiver Order*). See 47 CFR § 69.3(f)(1).

<sup>4</sup> Petition for Waiver of South Dakota Network, LLC, WC Docket No. 18-100 at 4 (filed May 4, 2018) (SDN Petition).

absent the waiver.<sup>5</sup> The Wireline Competition Bureau (Bureau) granted SDN's waiver request allowing SDN to submit its biennial access tariff filing with an effective date of October 2, 2018.<sup>6</sup>

3. On July 1, 2018, the Commission released the *Aureon Tariff Order* terminating the Aureon tariff investigation.<sup>7</sup> In that order, the Commission found that as a CEA provider Aureon was required to comply with both our transitional switched access rate rules and rules governing cost-based rates, and directed Aureon to amend its tariff to reflect the lower of the applicable competitive local exchange carrier (LEC) benchmark rate or the corrected cost-based rate.<sup>8</sup>

4. In light of the Commission's findings in the *Aureon Tariff Order*, SDN filed the above-referenced proposed transmittal on September 17, 2018, to become effective on October 2, 2018.<sup>9</sup> The tariff filing updated SDN's Centralized Equal Access (CEA) rate. SDN filed a CEA rate of \$0.004871 per minute based on its cost support.<sup>10</sup> Although it takes issue with the *Aureon Tariff Order*'s direction on interstate switched access rates, SDN also calculated a benchmark rate of \$0.014203 per minute that combined into a "unified benchmark rate" CenturyLink's tandem switching rate (\$0.002288 per minute) and an "equal access service benchmark" (\$0.011950 per minute).<sup>11</sup> According to SDN, because its cost-based rate of \$0.004871 is lower than its unified benchmark rate of \$0.014203, it used the former rate for purposes of its proposed transmittal.<sup>12</sup>

5. On September 24, 2018, James Valley Cooperative Telephone Company and North Valley Communications, LLC (Petitioners) filed a petition asking the Commission to reject, or to suspend and investigate, the proposed SDN transmittal.<sup>13</sup> SDN filed a reply to the Petitioners on September 28, 2018, requesting that the petition be denied.<sup>14</sup> On October 1, Petitioners filed a letter withdrawing in part, but not in full, their objection to SDN's tariff revisions.<sup>15</sup>

### III. DISCUSSION

6. We find that there are substantial questions regarding the lawfulness of SDN's tariff

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<sup>5</sup> SDN Petition at 4. See *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order Designating Issues for Investigation, DA 18-395 (rel. Apr. 19, 2018) (*Aureon Designation Order*). Aureon's tariff refers to Aureon's CEA service as "switched transport." See Aureon Tariff F.C.C. No. 1, § 6.1.3(a), 1<sup>st</sup> Revised Page 95.

<sup>6</sup> *SDN Waiver Order*, para. 1.

<sup>7</sup> See *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Memorandum Opinion and Order, FCC 18-105 (*Aureon Tariff Order*).

<sup>8</sup> *Id.* at para. 1.

<sup>9</sup> See Transmittal Letter at 1.

<sup>10</sup> Description and Justification at 2.

<sup>11</sup> *Id.* at 2-3. According to SDN, this "equal access service benchmark" is based on the weighted average differential between the premium and non-premium National Exchange Carrier Association (NECA) tariff rates for the LECs that subtend SDN. *Id.* at 3. SDN weighted its subtending LECs' rate differentials by each LECs' originating interstate access minutes routed through SDN's tandem switch from January through July 2018. *Id.*

<sup>12</sup> *Id.* at 3.

<sup>13</sup> See Petition of James Valley Cooperative Telephone Company and North Valley Communications, LLC to Reject or to Suspend and Investigate South Dakota Network, LLC's Tariff, Transmittal No. 13 (filed Sept. 24, 2018) (Petition).

<sup>14</sup> See Reply to Petition to Reject or to Suspend and Investigate South Dakota Network, LLC's Tariff, Transmittal No. 13 (filed Sept. 28, 2018).

<sup>15</sup> See Letter from David Carter, Counsel to James Valley Cooperative Telephone Company and Northern Valley Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-100, Transmittal No. 13 (filed October 1, 2018).

revisions that require further investigation. The Petitioners identify concerns about the methodology SDN employed to calculate its revised rate.<sup>16</sup> Specifically, the Petitioners challenge SDN's use of a NECA rate to derive its CLEC benchmark, and questions whether SDN included appropriate traffic volumes in its cost-based rate calculations.<sup>17</sup>

7. In light of the arguments and evidence presented by the Petitioners, we find that substantial questions of lawfulness exist regarding SDN's centralized equal access rate tariff revisions that require further investigation, and we suspend those tariff revisions for one day, impose an accounting order, and initiate an investigation into the lawfulness of the rate.<sup>18</sup> We will identify the specific issues that are the subject of the investigation in an upcoming designation order and may include, but not be limited to, the issues identified in this Order. We may also, by order, identify discrete issues that do not warrant further investigation.

#### IV. *EX PARTE* REQUIREMENTS

8. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>19</sup> Persons making *ex parte* presentations must file in WC Docket No. 18-100 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.

#### V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the effective date of the centralized equal access rate of South Dakota Network, LLC Tariff F.C.C. No. 1 contained in Transmittal No. 13 IS advanced for one day to October 1, 2018, and then SUSPENDED for one day until October 2, 2018, and an investigation IS INSTITUTED.

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<sup>16</sup> Petitioners had also raised concerns about language SDN added to the tariff, which allowed direct trunk transport service for interexchange carriers only when the routing exchange carrier was engaged in access stimulation. *See* Petition at 5-13. However, SDN has deleted that language from its revised tariff. *See* Letter from Marlene Bennett, Consultant for South Dakota Network, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Transmittal No. 14 (filed September 27, 2018).

<sup>17</sup> Petition at 13-18.

<sup>18</sup> 47 U.S.C. § 204.

<sup>19</sup> 47 C.F.R. §§ 1.1200 et seq.

10. IT IS FURTHER ORDERED that South Dakota Network, LLC SHALL FILE a supplement within five business days from the release date of this order reflecting the suspension. South Dakota Network, LLC should cite the “DA” number on the instant order as the authority for the filing.

11. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291, South Dakota Network, LLC SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the centralized equal access rate that is subject to this investigation.

12. IT IS FURTHER ORDERED that the Petition of James Valley Cooperative Telephone Company and Northern Valley Communications, LLC to Reject or Suspend and Investigate the proposed tariff revisions contained in South Dakota Network, LLC Transmittal No. 13 is GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk  
Chief, Pricing Policy Division