

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

ORDER

Adopted: June 8, 2018

Released: June 8, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant petitions filed by two centralized equal access (CEA) providers, South Dakota Network, LLC (SDN) and Minnesota Independent Equal Access Corporation (MIEAC) (together, Petitioners), requesting waivers of the Commission’s rule requiring Petitioners to submit their biennial access tariff filings with an effective date of July 1, 2018.1 In light of the sua sponte waiver the Commission recently granted to another CEA provider, Iowa Network Access Division d/b/a Aureon (Aureon),2 we find good cause exists for granting a three-month waiver to allow Petitioners to submit their biennial access tariff filings with an effective date of October 2, 2018.

2. As CEA providers, SDN, MIEAC, and Aureon implement long distance equal access obligations and aggregate traffic for connection between rural local exchange carrier (LEC) and interexchange carrier (IXC) networks.3 On April 19, 2018, we released an order designating issues for investigation regarding the lawfulness of tariff revisions filed with the Commission by Aureon that arise, in part, because of Aureon’s status as a CEA provider.4 Considering the pendency of the Aureon investigation, we also granted a sua sponte waiver of Section 69.3(f)(1) of the Commission’s rules with respect to Aureon’s submission of its biennial access tariff filing effective on July 1, 2018 for a period of one year (i.e., until July 1, 2019).5 We explained that “strict compliance” with the rule “would not be in the public interest during the pendency of this investigation as it could . . . lead to overlapping tariff investigations, which would be an unnecessary use of time and resources . . . .”6

3. Petitioners are also CEA providers and are also required pursuant to section 69.3(f)(1) to submit their own access tariff filings for the biennial period July 1, 2018, through June 30, 2020, with an effective date of July 1, 2018.7 Citing the Aureon Designation Order, SDN seeks a waiver of our tariffing

1 Petition for Waiver of South Dakota Network, LLC, WC Docket No. 18-100 (filed May 4, 2018) (SDN Petition); Petition for Expedited Temporary Waiver of Minnesota Independent Equal Access Corporation, WC Docket 18-100 (filed May 9, 2018) (MIEAC Petition). 47 CFR § 69.3(f)(1).

2 See In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1, WC Docket No. 18-60, Order Designating Issues for Investigation, DA 18-395, 11-12, paras. 33-35 (rel. Apr. 19, 2018) (“Aureon Designation Order”).

3 SDN Petition at 1; MIEAC Petition at 1.

4 See Aureon Designation Order.

5 Id. at 11, para. 33.

6 Id. at 12, para. 35.

7 47 CFR §§ 61.38, 69.3(f)(1).

rules to allow it to submit its biennial access tariff on September 17, 2018, with an effective date of October 2, 2018.<sup>8</sup> SDN argues that without the requested waiver, it may need to refile its access tariff at the conclusion of the Aureon investigation.<sup>9</sup> Similarly, MIEAC seeks a limited temporary waiver until October 2, 2018, because of the “substantial uncertainty in preparing its access tariff filing this year” caused by “the relevance of the issues presented in the [Aureon] Investigation.”<sup>10</sup> In their waiver requests, Petitioners stress that the pending Aureon investigation “raises the risk that filing its access tariff at this time could subject [the tariff filing] to investigation under [s]ections 204 and 205 of the Communications Act, as amended, and the Commission’s tariff rules.”<sup>11</sup>

4. Pursuant to statute, the Aureon tariff investigation must conclude no later than July 31, 2018.<sup>12</sup> CenturyLink, which was the only party to file comments regarding the SDN and MIEAC waiver requests, opposes those requests.<sup>13</sup> CenturyLink cites the *INS/Aureon Order* finding that Aureon is a competitive LEC (CLEC) and violated the Commission’s rate cap and rate parity rules, and ordering Aureon to submit a tariff revision consistent with that decision.<sup>14</sup> The tariff that Aureon filed in response to the *INS/Aureon Order* is the tariff presently under investigation. CenturyLink argues that because SDN and MIEAC are also CLECs, they must also comply with “the Commission’s longstanding CLEC benchmark rule and its *ICC Transformation Order* transitional rules applicable to CLECs,” and asserts that they are seeking this waiver to continue to delay coming into compliance following the *INS/Aureon Order*.<sup>15</sup>

## II. DISCUSSION

5. We recognize that the upcoming tariff filing deadline will occur just prior to the deadline for conclusion of the Aureon tariff investigation and, consistent with our *sua sponte* waiver in the *Aureon Designation Order*, we temporarily waive section 69.3(f)(1) of the Commission’s rules with respect to Petitioners, to allow them to file their access tariffs with an effective date of October 2, 2018.<sup>16</sup>

6. Generally, the Commission’s rules may be waived for “good cause shown.”<sup>17</sup> The Commission may exercise its discretion to waive a rule where: (a) the particular facts make strict compliance inconsistent with the public interest; (b) special circumstances warrant a deviation from the

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<sup>8</sup> SDN Petition at 1 (referencing *Aureon Designation Order*).

<sup>9</sup> SDN Petition at 4; *see also* MIEAC Petition at 4.

<sup>10</sup> MIEAC Petition at 4; *see also* SDN Petition at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *See* 47 U.S.C. § 204(1)(a). The Commission is required to conclude any investigation into a new or revised tariffed charge within five months after the charge was to become effective, which in this case was March 1, 2018.

<sup>13</sup> CenturyLink Opposition to Petition for Waiver and Petition for Expedited Temporary Waiver, WC Docket No. 18-100 (filed May 25, 2018) (CenturyLink Comments).

<sup>14</sup> *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, Proceeding No. 17-56, EB-17-MD-001 (rel. Nov. 8, 2017) (*INS/Aureon Order*). Aureon has filed a petition for reconsideration of the *INS/Aureon Order*. *See* Petition for Reconsideration, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001 (filed Dec. 8, 2017). In its Petition for Reconsideration, Aureon argues that the Commission failed to provide fair notice that it would apply its rate cap and rate parity rules to Aureon, and “classify Aureon as a CLEC” under those rules. *Id.* at 8.

<sup>15</sup> CenturyLink Comments at 2.

<sup>16</sup> The Bureau sought comment on the Petitions on May 15, 2018. *See Wireline Competition Bureau Seeks Comment on Petitions for Waiver and Expedited Temporary Waiver*, WC Docket No. 18-100, Public Notice, DA 18-499 (rel. May 15, 2018).

<sup>17</sup> 47 CFR § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

general rule; and (c) such deviation will serve the public interest.<sup>18</sup> In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.<sup>19</sup>

7. Just as we did for Aureon, we find that good cause exists for a waiver of the section 69.3(f)(1) requirement to make a biennial tariff filing effective on July 1, 2018 as it pertains to SDN and MIEAC. Strict compliance with section 69.3(f)(1) would not be in the public interest during the pendency of the Aureon investigation as it could lead to concurrent tariff investigations in which legal issues overlap, which would result in an unnecessary expenditure of time and resources by the Commission, Petitioners, and other interested parties.<sup>20</sup> Additionally, SDN is correct that because Petitioners are similarly situated to Aureon, depending on the outcome of the Aureon investigation, they may need to file tariff revisions in response to the outcome of that investigation. Granting Petitioners temporary waivers leaves in place the services and rates, for which Petitioners have filed cost support, under Petitioners' respective existing tariffs and ensures that these will remain in effect during the brief waiver periods,<sup>21</sup> thereby protecting the public interest.

8. Moreover, because Petitioners are the only two other CEA providers, we find that special circumstances warrant a deviation from the general rules. Accordingly, we reject CenturyLink's opposition to Petitioners' waiver requests. CenturyLink asserts the CLEC benchmark rule applies to SDN and MIEAC, but fails to acknowledge that there is an unresolved dispute in the Commission's on-going investigation of Aureon's tariff over the appropriate benchmark to use.<sup>22</sup> The Commission's resolution of this question for Aureon will necessarily inform SDN and MIEAC's analysis of the benchmark rate to use in their tariff filings. Similarly, CenturyLink fails to acknowledge that there is a continuing dispute in the Aureon tariff investigation about whether supporting cost information is relevant to a CEA's tariff once the Commission identifies the competing incumbent LEC(s) to which the CEA must benchmark.<sup>23</sup>

9. Furthermore, we conclude that the waivers serve the public interest by avoiding unnecessary expenditures of time and resources. In its opposition, CenturyLink fails to address SDN and MIEAC's concerns regarding the potential for unnecessary, costly investigations and additional filings, and therefore CenturyLink does not explain how we can avoid such inefficiencies should we deny Petitioners' waiver requests.<sup>24</sup> Moreover, any harm CenturyLink alleges would be for such a short period of time, that it would be outweighed by the potential cost of failing to grant the requested waivers.

### III. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i) and (j), and 201-203 of the Communications Act, 47 U.S.C. §§ 154(i)-(j), 201-203, and section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that the petition for waiver filed by South Dakota Network, LLC and the petition for expedited temporary waiver filed by Minnesota Independent Equal Access Corporation ARE GRANTED as described herein.

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<sup>18</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> MIEAC Petition at 4-5 (waiver will "enable more effective implementation of overall tariff policy by avoiding expenditure of private and public resources on duplicative regulatory compliance and oversight").

<sup>21</sup> See MIEAC Petition at 5; see also SDN Petition at 4.

<sup>22</sup> CenturyLink Comments at 2; *Aureon Designation Order* at 4-7, paras. 9-16.

<sup>23</sup> *Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60 at 62-64 (filed May 3, 2018).

<sup>24</sup> SDN Petition at 3; MIEAC Petition at 4.

11. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, the obligation to file biennial access tariffs with an effective date of July 1, 2018 pursuant to section 69.3(f)(1) of the Commission's rules, 47 CFR § 69.3(f)(1), IS WAIVED as it pertains to SDN and MIEAC to permit such carriers to file biennial access tariffs with an effective date of October 2, 2018.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau