

**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	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 20, 2019**

**Released: May 21, 2019**

**By the Chief, Wireline Competition Bureau:**

**I. INTRODUCTION**

1. In this Order, we approve the refund plan submitted by South Dakota Network, LLC (SDN) to refund overcharges for its interstate switched access service paid by affected carriers (its customers), plus interest compounded daily, by issuing a credit on future invoices sent to the affected customers. In so doing, we effectuate the Commission's direction in the *SDN Tariff Investigation Order* that SDN work with the Wireline Competition Bureau to file a revised tariffed rate and to determine any refunds due to its customers.<sup>1</sup>

**II. BACKGROUND**

2. As a centralized equal access (CEA) provider, SDN's tariff must comply with both the Commission's rules governing transitional switched access rates—including the competitive local exchange carrier benchmark rule—and those governing cost-based rates.<sup>2</sup> In the *SDN Tariff Investigation Order*, the Commission found that SDN's tariffed rate of \$0.004871 per minute of use was unlawful because it exceeded the benchmark rate applicable to SDN's tariffed interstate switched access service of \$0.002288 per minute of use.<sup>3</sup>

3. SDN filed revised tariff pages incorporating the applicable benchmark rate.<sup>4</sup> The revised tariff became effective on April 5, 2019.<sup>5</sup>

<sup>1</sup> *July 1, 2018 Annual Access Charge Tariff Filings; South Dakota Network, LLC Tariff F.C.C. No. 1*, WC Docket No. 18-100; Transmittal No. 13, Memorandum Opinion and Order, FCC 19-15, 2019 WL 1033939 at \*8, para. 29 (Mar. 1, 2019) (*SDN Tariff Investigation Order*); pet. for review pending, *South Dakota Network, LLC v. FCC*, No. 19-1094 (D.C. Cir. filed Apr. 29, 2019).

<sup>2</sup> See *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9690, para. 26 (2017); *Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, 33 FCC Rcd 7517, para. 1 (2018); pet. for review pending, *Iowa Network Servs., Inc. v. FCC*, No. 18-1258 (D.C. Cir. filed Sept. 19, 2018); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order on Reconsideration, 33 FCC Rcd 11860 (2018).

<sup>3</sup> *SDN Tariff Investigation Order* at \*1, para. 2.

<sup>4</sup> See *South Dakota Network, LLC Tariff F.C.C. No. 1*, Transmittal No. 16 (filed Mar. 29, 2019) (available via the Commission's Electronic Tariff Filing System (ETFS)); Letter from Marlene Bennett, Consortia Consulting, Consultant for SDN, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 16 (filed Mar. 29, 2019) (available via ETFS).

4. SDN filed its refund plan on April 17, 2019.<sup>6</sup> In its refund plan, SDN identified the amount due to each of its customers, and calculated interest at the Internal Revenue Service (IRS) non-corporate rate for overpayment and underpayment. This rate was 5% for the period October 2, 2018-December 31, 2018 and 6% from January 1, 2019 through June 2019. We sought comment on SDN's proposed refund plan and no objections were raised.<sup>7</sup>

### III. DISCUSSION

5. We find that SDN's refund plan is reasonable and we, therefore, approve SDN's proposal to refund overcharges paid by its customers from October 2, 2018—the date the rate found unlawful became effective—plus interest compounded daily, by issuing a credit on the invoices of affected customers. Because SDN is a limited liability company and not a corporation, we find reasonable its proposal to use the IRS non-corporate overpayment rate for calculating the applicable interest for refunds.<sup>8</sup> Consistent with precedent, we direct SDN to pay interest on the refund amounts due to each customer until it has paid the full refund amount due to that customer.<sup>9</sup> SDN must compute interest on a daily compounded basis at the applicable IRS non-corporate overpayment rate. 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.

### IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, and 201-204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, and 201-204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, that the refund plan filed by South Dakota Network, LLC, subject to the application of interest as delineated in paragraph 5 of this Order, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

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<sup>5</sup> *Id.*

<sup>6</sup> See Refund Plan of South Dakota Network, LLC, WC Docket No. 18-100; Transmittal No. 13 (filed Apr. 17, 2019) (SDN Refund Plan).

<sup>7</sup> See *Wireline Competition Bureau Seeks Comment on South Dakota Network, LLC Refund Plan*, WC Docket No. 18-100; Transmittal No. 13, Public Notice, DA 19-317 (WCB Apr. 23, 2019).

<sup>8</sup> Previous refund plans have involved corporations and have, therefore, used the corporate overpayment rate. See *2001 Annual Access Tariff Filings*, CC Docket No. 01-206, Order, 17 FCC Rcd 2110 (WCB 2002) (*ALLTEL Refund Order*) (accepting the IRS corporate overpayment rate as means of calculating applicable interest on refunds); *Investigation of Tariffs Filed by ACS of Anchorage, Inc. and the National Exchange Carrier Association; December 17, 2001 MAG Access Charge Tariff Filings*, CC Docket No. 02-36, CCB/CPD No. 01-23, 17 FCC Rcd 15909 (CCB 2002) (*ACS Refund Order*) (accepting the IRS corporate overpayment rate as means of calculating applicable interest for refunds).

<sup>9</sup> See *ALLTEL Refund Order*; see also *ACS Refund Order*.