Law Offices
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW
Washington, DC 20037

(202) 659-0830
Facsimile: (202) 828-5568

BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
SALVATORE TAILLEFER, JR.

ARTHUR BLOOSTON
1914 – 1999

Affiliated South American Offices
Estudio Jauregui & Associates
Buenos Aires, Argentina

Harold Mordkofsky
OF COUNSEL

Eugene Maliszewskyj
ENGINEERING CONSULTANT

January 3, 2019

Writer's Contact Information
sta@bloostonlaw.com
202-828-5562

REDACTED – FOR PUBLIC INSPECTION

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: South Dakota Network, LLC Tariff F.C.C. No. 1
WC Docket No. 18-100; Transmittal No. 13

Dear Ms. Dortch:

South Dakota Network, LLC ("SDN"), by its attorneys, hereby submits the attached written *ex parte* presentation in the above-referenced docket. Pursuant to the Protective Order adopted by the Commission in this proceeding,[1] SDN requests confidential treatment for this information, which is commercially sensitive information that is not normally released to the public.

In accordance with the Protective Order and the Commission's rules, one redacted copy has been filed via ECFS; one confidential, non-redacted copy has been submitted via hand delivery to the Secretary's Office; and two confidential, non-redacted copies have been

[1] *In the Matter of South Dakota Network, LLC Tariff F.C.C. No. 1*, PROTECTIVE ORDER, WC Docket No. 18-100, et al., DA 18-1158, released November 14, 2018.

submitted via hand delivery to Mr. Christopher Koves.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Benjamin H. Dickens, Jr.
Mary J. Sisak
Salvatore Taillefer, Jr.
Counsel to South Dakota Network, LLC

LAW OFFICES
BLOOSTON, MORDKOFSKY, DICKENS, DUFFY & PRENDERGAST, LLP
2120 L STREET, NW
WASHINGTON, DC 20037

(202) 659-0830
FACSIMILE: (202) 828-5568

BENJAMIN H. DICKENS, JR.
JOHN A. PRENDERGAST
GERARD J. DUFFY
RICHARD D. RUBINO
MARY J. SISAK
D. CARY MITCHELL
SALVATORE TAILLEFER, JR.

ARTHUR BLOOSTON
1914 – 1999

AFFILIATED SOUTH AMERICAN OFFICES
ESTUDIO JAUREGUI & ASSOCIATES
BUENOS AIRES, ARGENTINA

HAROLD MORDKOFSKY
OF COUNSEL

EUGENE MALISZEWSKYJ
ENGINEERING CONSULTANT

January 3, 2019

WRITER'S CONTACT INFORMATION
202-828-5510
bhd@bloostonlaw.com

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: South Dakota Network, LLC Tariff FCC No. 1
WC Docket No. 18-100; Transmittal No. 13

Dear Ms. Dortch:

This letter responds to arguments made by James Valley Cooperative Telephone Company ("JVCTC") and its CLEC affiliate, Northern Valley Communications, LLC ("NVC," together, "JVCTC/NVC"), and by CenturyLink, Inc. ("CenturyLink") in opposition to the Direct Case filed by South Dakota Network, LLC ("SDN") in the above-referenced proceeding on December 11, 2018.[1] Both pleadings essentially argue that SDN's use of an equal access element, in addition to a tandem switching benchmark, contravenes the *Aureon Tariff Order*,[2] the

[1] *James Valley Cooperative Telephone Company's and Northern Valley Communications, LLC's Opposition to the Direct Case of South Dakota Network, LLC*, WC Docket No. 18-100, filed December 18, 2018 (*JVCTC/NVC Opposition*); *CenturyLink's Opposition to Direct Case,* WC Docket No. 18-100, filed December 18, 2018 (*CenturyLink Opposition*).
[2] *In re: Iowa Network Access Division Tariff F.C.C. No. 1,* Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 36, FCC 18-105, released July 31, 2018 at ¶18 ("*Aureon Tariff Order*).

Transformation Order,[3] and section 61.26 of the Commission's rules. Specifically, CenturyLink and/or JVCTC/NVC argue 1) CenturyLink alone is the competing ILEC for purposes of establishing SDN's benchmark; 2) SDN's proposed equal access benchmark rate would result in double recovery; 3) SDN's proposed "additur" would permit it to recover higher rates than CenturyLink charges for the same access services, contrary to the benchmark rules; 4) SDN's composite benchmark rate is unreasonable and unlawful; and 5) SDN's benchmark rate is not properly supported. As discussed in greater detail below, CenturyLink and JVCTC/NVC are wrong on all counts.

As a threshold observation, SDN submits that its September 17, 2018 tariff filing was not the subject of any petition to suspend or reject by any actual customer; such a petition was filed only by JVCTC/NVC, who purchase no access service from SDN. As such, these two affiliated companies lack standing.[4] No IXC – including CenturyLink, which now opposes SDN's Direct Case – has made any allegation of economic injury. Indeed, the substance of CenturyLink's argument boils down to the proposition that its putative competitor, SDN, is charging <u>too much</u> for its service. The absence of any real IXC complaint here should inform the Commission that there is no access service dispute here.

I. <u>SDN'S BENCHMARK COMPLIES WITH THE COMMISSION'S RULES</u>

Both CenturyLink and JVCTC/NVC argue, to differing degrees, that CenturyLink is the sole competing ILEC for the purposes of calculating SDN's benchmark. CenturyLink contends that in the *Aureon Tariff Order*, the Commission concluded that "CenturyLink was the

---

[3] *In re Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 F.C.C. Rcd. 17663 (2011), aff'd, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) ("*Transformation Order*").
[4] *See Reply to Petition to Reject or Suspend and Investigate South Dakota Network, LLC's Tariff,* WC Docket No. 18-100, filed November 26, 2018.

competing LEC for purposes of establishing Aureon's competitive LEC benchmark" and that "SDN has failed to demonstrate any basis for concluding that it is in any material way distinct from Aureon on these issues."[5] CenturyLink concludes, therefore, that "CenturyLink is clearly the competing LEC for purposes of establishing SDN's competitive LEC benchmark."[6] Without elaboration, JVCTC/NVC asserts that "… SDN's terminating access rates should be benchmarked solely to CenturyLink's tandem switching element, which is currently $.002288 per minute in CenturyLink Tariff FCC No. 11."[7] Neither argument is correct.

A. SDN's Use of Two Competitive ILECs For Benchmarking Is Appropriate

The Commission's benchmarking rules recognize that a CLEC can partially replace an ILEC, and that a competing ILEC might provide only a part of the switched access service that is provided by the CLEC:

> (1) *CLEC* shall mean a local exchange carrier that provides <u>some or all</u> of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of "incumbent local exchange carrier" in 47 U.S.C. 251(h).[8]
>
> (2) *Competing ILEC* shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services<u>, in whole or in part</u>, to the extent those services were not provided by the CLEC.[9]

It is axiomatic that if more than one LEC can be involved in the provision of switched access service, then more than one ILEC can be the relevant "competing ILEC" for purposes of the Commission's benchmark rule.[10] There is simply no requirement – and nor could there be in a

[5] *CenturyLink Opposition* at p. 2.
[6] *Id.*
[7] *JVCTC/NVC Opposition* at p. 10.
[8] CFR 47 § 61.26(a)(1) Emphasis added.
[9] CFR 47 § 61.26(a)(2) Emphasis added.
[10] Although the Commission uses the term *competing* ILEC within its rules, it is not competition that is the defining characteristic of its benchmark policies. Rather, it is *substitutability* in that

market characterized by innovation – that CLECs provide service using the identical architecture that ILECs would use to provide service, nor that they may not replace jointly-provided (by ILECs) access services in whole or in part. As such, it is entirely reasonable to compute a benchmark rate cap based on more than one ILEC if the CLEC is providing a service that combines functionality of both.

The defining characteristic of centralized equal access ("CEA") is that it provides, in consolidated form, a switched access service that would otherwise involve two functions: (a) equal access in the end-office and (b) tandem switching for traffic aggregation.[11] In the absence of SDN's CEA arrangement, the traffic would *revert* to its original configuration where (a) equal access would be provided by the rural ILEC's end office switch and (b) traffic would be aggregated by a tandem. In South Dakota, CenturyLink is the ILEC tandem.

The Commission's benchmark rules explicitly require that the access rates of *distinct* competing ILECs be combined in the benchmark analysis because the substitute architecture that "would be" used in the absence of SDN's switched access service would involve *distinct* constituent parts. The Commission requires that the benchmark calculation consider "the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions."[12] In this instance, the relevant access component of tandem switching would be provided by CenturyLink; the relevant access component of equal access would be provided by the rural

---

the rule looks to identifying the ILEC that would provide the exchange access services in place of the CLEC whose access service is being held to the benchmark test.

[11] *See In re: Application of Indiana Switch Access Division.* 1986 FCC LEXIS 3689 at ¶ 23 (2986)(" Equal access could be provided by converting each office of the ITCs [independent telephone companies] rather than through the scheme proposed by ISAD."); *See also In re the Application of SDCEA, Inc.*, 5 FCC Rcd 6987 at ¶¶7-8 (FCC 1990)(*"SDN 214"*).

[12] *In re: Access Charge Reform*, 19 FCC Rcd 9108 at ¶9 (2004).

ILEC.

B. CenturyLink is Not the Competing ILEC for Equal Access Service

There is no question that the relevant rate for the equal access functionality provided by SDN must be based on the end office rates of the rural ILECs subtending SDN. While CenturyLink end offices may have equal access functionality, that functionality (and therefore its rate) is relevant *only* for those end-users served by the CenturyLink switch. Equal access functionality in one end office switch is simply not available to the subscribers of another, any more than any other end-office feature can be made available to the loops that connect to a different local switch. CenturyLink could no more provide equal access functionality to the customers of the relevant rural ILECs than it can provide dial-tone to customers that reside outside the CenturyLink service territory.

The Commission's benchmark rules do not consider the rates of just any ILEC, they require that the analysis consider the rates "of the incumbent local exchange carrier … that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[13] In the absence of SDN, end-users would not change from the rural ILEC to CenturyLink for service and would thus not be connected to the CenturyLink end office. The only rates relevant to the benchmark calculation of the equal access function are the rates of the rural ILECs that actually serve the end-user.

SDN's Direct Case shows there are a number of differences between Aureon and SDN, which CenturyLink does absolutely nothing to address in its opposition, and which JVCTC/NVC either concedes or actively supports. This includes issues raised by SDN that were not resolved in the *Aureon Tariff Order*, and which impact whether SDN must be allowed to determine a

[13] CFR 47 § 61.26(a)(2) Emphasis added.

benchmark for equal access functionality and whether CenturyLink is the appropriate benchmark for this functionality under the Commission's rules and orders. Among these, while the Commission found that it could not determine from the record whether Aureon's subtending LECs still use or require equal access functionality and that "it is difficult to imagine a significant demand for equal access capability," [14] SDN has shown that this is not the case in South Dakota. Rather, a number of IXCs are providing stand-alone long-distance service in the service areas of SDN's subtending LECs and, in fact, approximately three quarters of SDN's originating access traffic is sent to large, national IXCs. While the Commission no longer requires equal access,[15] the fact remains that customers still value and utilize the capability. Because carriers still are using equal access provided by SDN, the Commission must include this access component in the calculation of the benchmark rate.

SDN has demonstrated that its section 214 authority granted by the Commission clearly shows that the Commission authorized SDN to provide equal access functionality <u>instead of the local exchange carriers that utilize the SDN tandem switch.</u>[16] Thus, the ILECs subtending SDN's switch are the substitutes for SDN's equal access service functionality.

SDN has shown that CenturyLink has never provided equal access service as part of its tandem switching service in South Dakota and that it currently could not provide functionally equivalent equal access at its tandem for the LECs subtending SDN because it does not have sufficient IP-based transport connections. CenturyLink appears to acknowledge that it provides

[14] *Aureon Tariff Order* at ¶27.

[15] It does not matter that the Commission arguably no longer requires that ILECs offer equal access; what matters is that the service is used. The Commission does not require that ILECs offer tandem switching, but there is no dispute that tandem switching charges form a relevant part of a benchmark rate calculation when tandem switching is used. This is no different than here, where the SDN equal access capability is being used even if it is no longer required.

[16] *SDN 214* at ¶¶3, 7, and 24.

equal access through its local end office switches and not its tandem switches when it states that equal access “is the function of its Feature Group D service reflected in its relevant FCC tariff for South Dakota,"[17] which shows that CenturyLink's local end offices are equipped with equal access capabilities[18] and not its tandem switches.[19] SDN notes that the LERG appears to show that CenturyLink's tandem switches and end office switches in South Dakota are physically separate.

SDN also has shown that CenturyLink does not maintain local end office switches or provide local service in the service areas of SDN's subtending ILECs. Therefore, it is not able to provide equal access via its local end office switches to the SDN subtending ILECs. Further, while CenturyLink end offices in its service area may have equal access functionality, that functionality is relevant *only* for those end-users served by the CenturyLink switch. It simply is not available to the subscribers of another LEC. Thus, while in the *Aureon Tariff Order* the Commission found that "CenturyLink or its predecessors did provide equal access capability to its customers when it was required, and may still provide it to customers grandfathered by the Commission; thus, it has or had the technical capability to offer that functionality were Aureon not providing it, to the extent still necessary...,"[20] this clearly is not the case in South Dakota.[21]

---

[17] *See CenturyLink Opposition* at 5, n. 13 and 14 and Appendix B.

[18] *See CenturyLink Opposition* at Appendix B, Tariff F.C.C. No.11, 1st Revised Page 6-231, Section 6.7.5, effective August 8, 2015.

[19] Although the Commission states in the Aureon Tariff Investigation Order that local end office switches can also be tandem switches, it appears from the LERG that this is not the case for CenturyLink in South Dakota. Rather, the LERG appears to show separate tandem and local end office switches.

[20] *Aureon Tariff Order* at ¶27.

[21] The Commission also found that the Aureon subtending LECs do not have the technical capability to offer equal access functionality. This does not change the fact that SDN's 214 authority shows that the subtending ILECs would provide equal access if SDN did not. It also does not change the fact that CenturyLink does not and cannot provide equal access to the SDN subtending ILECs.

II. SDN'S BENCHMARK DOES NOT RESULT IN DOUBLE RECOVERY

CenturyLink and JVCTC/NVC both contend that SDN's proposed equal access benchmark rate would result in a "double recovery."[22] As CenturyLink puts it, "[t]he ILECs subtending SDN already, themselves, charge the premium local switching rates in the NECA tariff and therefore already recover for the equal access end office functionality that SDN claims it may also charge for."[23] SDN's proposed benchmark rate would not result in double recovery if it includes a benchmark for equal access service based on the differential between the NECA premium and non-premium local end office switching rate, as alleged by CenturyLink and JVCTC/NVC, as both CenturyLink's and JVCTC/NVC's arguments on this issue miss an important distinction: the benchmark calculation represents a rate *cap*, not the rate that SDN proposes to *charge*. SDN's filed rate is a cost-based rate that is well below the calculated benchmark about which CenturyLink and JVCTC/NVC complain.

The benchmark rule was adopted to allow CLECs to benefit from tariffed rates without requiring them to perform cost studies.[24] The competing ILEC rate was chosen as the benchmark because ILEC rates are created through cost studies, which the Commission held provide a measure of certainty that those rates (or any rate falling beneath them) were reasonable and could be tariffed by CLECs.[25] Therefore, whether a subtending LEC charges the premium or non-premium rate is irrelevant to calculating the CLEC's benchmark for equal access service. As the Commission recognized in the *Aureon Tariff Order*, the benchmarking rule does not restrict CLECs to tariffing solely to the per-minute rate of a particular ILEC, nor does it require any

---

[22] *CenturyLink Opposition* at p. 4; *JVCTC/NVC Opposition* at pp. 13-14.
[23] *CenturyLink Opposition* at 4. *See also, JVCTC/NVC Opposition* at 14.
[24] *In re: Access Charge Reform*, 16 FCC Rcd 9923 at ¶41.
[25] *Id.*

particular rate elements or rate structure.[26] Nor does the benchmark rule require the competing ILEC and CLEC to provide every aspect of a service in order to use the ILEC rate as a benchmark for the relevant access component.[27] Rather, the Commission's intent was to cap the CLECs rate and levels equivalent to those charged by the ILECs.[28] The weighted-differential calculation SDN used in preparing its benchmark meets those requirements. Accordingly, its benchmark is appropriate.

Further, on information and belief, the ILECs subtending SDN, pursuant to Commission rules, submit only their actual cost or averaged cost as allowed by the Commission <u>for services and functionalities that they actually provide</u>[29] to NECA for use in determining the rates for services for each NECA rate band. Both SDN and its subtending ILECs are, and have been, regulated as cost-based dominant carriers, and both SDN's and its subtending ILECs' equal access costs have been reviewed by the Commission through the tariff process. Both have recovered equal access service costs pursuant to the terms and conditions of their respective tariffs. Does SDN "double recover" where a new benchmark mirrors the current way equal access is provided? Is it "double recovery" to construct an equal access benchmark where CenturyLink has no such service at its tandem? The answer is 'no.'

The Commission's benchmarking rules do not require the competing ILEC and CLEC to provide every aspect of a service in order to use the ILEC rate as a benchmark. Section

---

[26] *Aureon Tariff Order* at ¶36.
[27] Section 61.26(a)(1) of the Commission's rules define CLEC as "a local exchange carrier that provides <u>some or all</u> of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of "incumbent local exchange carrier"[27] and Section 61.26(a)(2) of the Commission's rules define competing ILEC as "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, <u>in whole or in part</u>, to the extent those services were not provided by the CLEC."
[28] *In re: Access Charge Reform,* 16 FCC Rcd 9923 at ¶54.
[29] Subtending ILECs are primarily responsible for the presubscription process, which cost is borne by those ILECs.

61.26(a)(1) of the Commission's rules define CLEC as "a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of "incumbent local exchange carrier"[30] and Section 61.26(a)(2) of the Commission's rules define competing ILEC as "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[31]

The SDN subtending LECs provide local end office switching via FGD.[32] SDN provides equal access functionality, which is a part of local end office switching. SDN's section 214 authority makes clear that the SDN subtending ILECs would have provided equal access functionality in its entirety if SDN had not been authorized to do so by the Commission. The differential between the NECA premium and non-premium local end office switching rate shows that there is a cost associated with equal access and quantifies that cost when the ILEC provides the entirety of local end office functions, including all equal access functions. Accordingly, under the structure established by the Commission, it is not accurate to say that SDN is "double recovering" when it uses the NECA tariff rates of the SDN subtending ILECs as the benchmark for equal access service.

III. SDN'S BENCHMARK DOES NOT RESULT IN HIGHER RATES THAN CENTURYLINK

CenturyLink argues that "SDN's proposed "additur" would permit it to recover higher rates than CenturyLink charges for the same access services" and that this result is contrary to

[30] 47 CFR § 61.26(a)(1) Emphasis added.
[31] 47 CFR § 61.26(a)(2) Emphasis added
[32] The NECA tariff provides that "FGD is provided at Telephone Company designated end office switches whether routed directly or via Telephone Company designated electronic access tandem switches." National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Page 6-89, Section 6.8.1(b)

the Commission's CLEC benchmark rule.[33] This also is not true. As an initial matter, SDN does not provide "the same service" as CenturyLink's tandem service because SDN also provides equal access and CenturyLink, as a provider of tandem service, does not.

CenturyLink then implies that its rate for equal access functionality, that it acknowledges is provided through its local end office switch, is zero because it charges the same local end office switching rate for FGA and FGB service that it charges for FGC and FGD service. This is not relevant, however, as SDN has shown that CenturyLink cannot be the competing ILEC, within the meaning of the Commission's benchmarking rules for the provision of equal access provided via its local end office switches. In any event, although CenturyLink may not assess a separate rate for equal access service that does not mean that there is no cost for this functionality. In the *Access Charge Reform* proceeding, price cap carriers argued that the Commission must allow them to recover the continuing costs of providing equal access and the Commission did so by stating that it considers the ongoing costs of providing equal access "as part of the normal costs of providing telephone service."[34] Moreover, the fact that CenturyLink charges the same originating rate for Feature Groups A and B as it does for Feature Groups C and D does not mean there is no cost associated with equal access. It could mean that CenturyLink is inappropriately assessing equal access cost to FGA and B.[35] It also must be noted that CenturyLink's rates, because it is a price cap carrier, are not cost-based.

[33] *CenturyLink Opposition* at p. 4.
[34] *In the Matter of Access Charge Reform,* 12 FCC Rcd 15982 at ¶312 (1997).
[35] It also may be that CenturyLink has no or very little FGA and B traffic, which would mean, as a practical matter, that the cost of equal access is recovered primarily or wholly through its FGD rates. CenturyLink's tariff provides that FGC is no longer available once an end office is equipped with equal access (or FGD service). Therefore, it appears CenturyLink has no FGC traffic. CenturyLink Operating Companies Tariff F.C.C. No.11, 1st Revised Page 6-231, Section 6.7.5, effective August 8, 2015.

REDACTED - FOR PUBLIC INSPECTION

SDN computed a composite benchmark, which includes tandem switching that is benchmarked to CenturyLink's tandem switching service and equal access that is benchmarked to the differential between the premium and non-premium local switching rate for ILECs subtending SDN's switch. CenturyLink's tandem switching service does not include equal access functionality and, in fact, equal access is a function of local end office switching service. There is no prohibition on CLECs benchmarking to different competitive ILECs when different ILECs provide part of the service provided by the CLEC. Accordingly, because SDN used CenturyLink's rate for tandem service and added a benchmark for equal access to determine a composite rate, SDN is charging the same rate for tandem switching service as the competing ILEC for that service, CenturyLink, in compliance with the Commission's rules.

IV. <u>SDN'S COMPOSITE BENCHMARK IS LAWFUL</u>

According to JVCTC/NVC, the reductions in terminating access required by the *Transformation Order* produce the “inescapable” result that SDN’s composite rate is unlawful.[36] However, SDN notes that JVCTC/NVC’s argument here is devoid of any discussion of section 61.26’s benchmark mechanism or how it has been applied. That JVCTC/NVC omitted discussion on this point is perhaps understandable given the Commission’s action in the *Aureon Tariff Order*, which completely undercuts this argument. There, in calculating a composite benchmark rate for Aureon, the Commission expressly condoned the use of a single rate:

> [w]hen Aureon first tariffed its CEA service, however, <u>Aureon used a single rate structure with a single rate element on a per-MOU basis</u>, [fn omitted] and it has continued to do so. This is consistent with the Commission’s orders pertaining to the CLEC benchmark, which permit competitive LECs flexibility in establishing their rate

[36] *JVCTC/NVC Opposition* at pp. 4-5.

structures. [fn omitted].[37]

Thus, the composite rate structure which JVCTC/NVC argue is now unlawful for SDN was explicitly approved by the Commission in the *Aureon Tariff Order.* Indeed, Aureon's currently effective tariff pages show one rate that is applied to both originating and terminating access minutes.[38]

V. SDN'S BENCHMARK RATE IS PROPERLY SUPPORTED

JVCTC/NVC's argument that SDN has failed to meet its burden of proof with regard to its originating benchmark rate[39] is also incorrect. As discussed earlier, the Commission's rules and precedent do not require separate originating and terminating benchmark rates and indeed, the Commission has already approved a composite rate for Aureon. As to the argument that SDN failed to provide its benchmark calculation,[40] JVCTC/NVC are simply wrong. The calculation itself was provided in the Description and Justification of SDN's tariff filing[41] and again in SDN's reply to the *Petition to Reject or Suspend and Investigate* filed by JVCTC/NVC.[42] Specifically:

1. SDN identified the originating interstate access minutes routed through the SDN tandem from January 2018 through July 2018 for each Routing Exchange Carrier.

2. SDN multiplied the minutes of use by the respective rates to identify the revenue

---

[37] *Aureon Tariff Order* at ¶36, citing *In re Access Charge Reform*, 16 FCC Rcd at ¶55 ("our benchmark rate for CLEC switched access does not require any particular rate elements or rate structure"). Emphasis supplied.

[38] See Exhibit A. Like Aureon, SDN's composite originating and terminating interstate access rate has been tariffed since its inception.

[39] *JVCTC/NVC Opposition* at pp.11-13.

[40] *Id.*

[41] *Description and Justification*, South Dakota Network, LLC F.C.C. Tariff No. 1 Transmittal 13, filed September 17, 2018.

[42] *Reply to Petition to Reject or Suspend, supra* note 4 at p. 7.

REDACTED - FOR PUBLIC INSPECTION

by premium and non- premium rate. A rate differential of zero was used for carriers not participating in the NECA tariff.

3. SDN subtracted the non- premium revenue from the premium revenue, and divided by the originating interstate access minutes for all of the Routing Exchange Carriers to arrive at the equal access benchmark.

The calculation is all that is necessary to determine whether SDN's benchmark meets the Commission's requirements. Indeed, SDN notes that the *Designation Order* did not designate as an issue for investigation whether the calculation was performed correctly.[43] Nevertheless, SDN provides the attached chart showing the originating minutes of use per NECA rate band.[44] SDN contends that all of the originating minutes are "equal access" minutes because every IXC ordering tariffed access service from SDN has ordered Feature Group D access service; all originating minutes are 1+ dialed, except for less than .04% of minutes dialed via 10XXX; and all 1+ dialed minutes require SDN to employ equal access functionality, such as routing the traffic to the correct IXC and counting and recording the minutes.

Finally, JVCTC/NVC's assertion that SDN failed to show "how it treated the originating traffic volumes for the three carriers that do not participate in or mirror NECA's rates"[45] is also simply wrong. The treatment of such carriers is clearly explained in SDN's reply to JVCTC/NVC's *Petition to Reject or Suspend and Investigate*, where SDN specifically stated that it used a rate differential of zero for carriers not participating in or mirroring the NECA tariff.[46] SDN then divided the differential between premium and non- premium revenue by the

---

[43] *See Designation Order; JVCTC/NVC Opposition* at p. 12 (alleging SDN "has failed to submit evidence that it actually performed the mathematical rate calculation accurately.")
[44] Exhibit B.
[45] *JVCTC/NVC Opposition* at pp. 12-13.
[46] *Reply to Petition to Reject or Suspend, supra* note 4 at p. 7.

originating interstate access minutes for all of the carriers (including those not participating in or mirroring the NECA tariff) to arrive at the equal access benchmark.[47] As SDN further noted, by including a zero rate differential for carriers not participating in or mirroring the NECA tariff, the calculated benchmark is actually lower than it could be.[48]

VI. CONCLUSION

For the forgoing reasons, the Commission should reject the arguments of CenturyLink and JVCTC/NVC, and find that SDN is using the correct competing incumbent LECs in calculating its benchmark rate; that SDN's benchmark rate does not result in double recovery or permit it to recover higher rates than CenturyLink charges for the same access services; and that SDN's composite benchmark rate is reasonable, lawful, and properly supported.

Respectfully submitted,

SOUTH DAKOTA NETWORK, LLC

By__________________________

Benjamin H. Dickens, Jr.
Mary J. Sisak
Salvatore Taillefer, Jr.
Counsel to South Dakota Network, LLC

CC: Gil Strobel
Lynne Engledow
Al Lewis
Christopher Koves
David Carter
Tim Boucher

[47] *Id.*
[48] *Id.*

EXHIBIT A

CENTRALIZED EQUAL ACCESS SERVICE

6. Switched Access Service (Cont'd)

6.8 Rates and Charges

6.8.1 Switched Transport

(A) Rate

	Rate Per Access Minute	
	$ 0.00296	(R)

	Rate Per Call Blocked
(B) Network Blocking Charge +	$ 0.0070

(C) Nonrecurring Charges

(1) Installation

	Rate Per Trunk
Activation of the first trunk or SNAC contained in the order	$ 514.68
Activation of each additional trunk or SNAC contained in an order	$ 12.55

(2) Interim NXX Translation

	Rate Per Order
Activation or deactivation of the first NXX code contained in an order	$ 213.70
Activation or deactivation of each additional NXX code contained in an order	$ 23.81

+Applies to FGD

EXHIBIT B

South Dakota Network, LLC

[redacted]