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**VIA ECFS**

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

Re: Notice of *Ex Parte* Presentation in WC Docket No. 18-100

Dear Ms. Dortch:

On February 4, South Dakota Network, LLC (“SDN”) met with Lisa Hone, Gil Strobel, Lynne Engledow, and Al Lewis of the Wireline Competition Bureau. Nancy Johnson of SDN and Ben Dickens, Mary Sisak, and Sal Taillefer of the Blooston law firm attended the meeting or participated via conference call on behalf of SDN. In the meeting, SDN discussed its Direct Case and its ex parte letter of January 3, 2019, and the opposition filed by CenturyLink.<sup>1</sup>

Specifically, SDN discussed its argument that CenturyLink would not and cannot currently provide centralized equal access to SDN’s subtending LECs, and therefore cannot be considered the appropriate benchmark for that service.<sup>2</sup> A review of CenturyLink’s opposition makes clear that CenturyLink makes no representation that it could or would offer centralized equal access to SDN’s subtending LECs if SDN did not. CenturyLink states only that there is no record “suggesting that CenturyLink would not charge [the same local end-office switching and tandem switching rates] for performing these functions itself in SDN’s stead, for traffic

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<sup>1</sup> *Direct Case of South Dakota Network, LLC*, WC Docket No. 18-100, filed December 11, 2018 (“*Direct Case*”); Letter from Benjamin H. Dickens, Jr. to Marlene H. Dortch, WC Docket No. 18-100, filed January 3, 2019 (“*Ex Parte Letter*”); *CenturyLink’s Opposition to Direct Case*, WC Docket No. 18-100, filed December 18, 2018 (“*CenturyLink*”).

<sup>2</sup> *Direct Case* at pp. 6-8.

originating from the ILECs currently subtending SDN,” and that SDN should not be permitted to charge an “additur” for centralized equal access because it would permit SDN to recover higher rates than CenturyLink “for the same access services...”<sup>3</sup> Both statements fall far short of a credible representation that CenturyLink could or would provide the services in question (and at no additional charge). Moreover, they are both incorrect.

SDN has demonstrated, on the record, that: a) CenturyLink does not and has never provided equal access service as part of its tandem switching service; b) CenturyLink does not offer equal access service in the service areas of SDN’s subtending ILECs; and c) CenturyLink does not have sufficient capacity on to serve SDN’s subtending LECs.<sup>4</sup> These facts all support SDN’s assertion that CenturyLink would not and could not provide the services in question, and CenturyLink’s opposition does nothing to rebut them.

As SDN also demonstrated, the benchmarking rule was adopted to address a market failure to constrain CLEC tariff rates, evidenced by the fact that CLECs were able to enter markets already served by ILECS at rates well above those ILECs’ rates.<sup>5</sup> It is inherently an intra-market analysis, and this is why the Commission’s rules specify the benchmark is not just any ILEC but the competing ILEC.<sup>6</sup> The benchmark rule was never intended to be applied across service areas to require a CLEC to benchmark to an ILEC that cannot or would not actually compete in the CLEC’s market. To attempt to benchmark to a non-existent offering and require a CLEC to charge no more than the rate an ILEC might or might not assess would completely undermine the purpose of the benchmark rule, and at minimum would constitute an arbitrary and capricious exercise if so ordered by the Commission. Accordingly, the appropriate benchmark is the NECA-based calculation prepared by SDN, for those ILECs actually providing service in the relevant areas.

In addition to the forgoing, SDN also discussed differences between its network and Aureon’s network, including in terms of volume of traffic<sup>7</sup> and number of subtending LECs.<sup>8</sup> SDN also highlighted the fact while the oppositions focus on whether it would be fair to permit

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<sup>3</sup> *CenturyLink* at pp. 4-5, fn 15.

<sup>4</sup> *Direct Case* at pp. 7-8; *Ex Parte Letter* at pp. 5-7.

<sup>5</sup> *Direct Case* at pp. 15-16.

<sup>6</sup> *Ex Parte Letter* at p. 5.

<sup>7</sup> *AT&T Services Inc.’s Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services*, WC Docket No. 18-60, filed May 10, 2018 at p. 73, Table 10; *Direct Case* at Exhibit 1.

<sup>8</sup> *Direct Case* at p. 14; *Direct Case of Iowa Network Access Division d/b/a Aureon Network Services*, WC Docket No. 18-60, filed May 3, 2018 at p. 2.

SDN to charge the benchmark it has calculated, SDN actually filed a cost based rate that is significantly below the benchmark.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin H. Dickens, Jr.", with a stylized flourish at the end.

Benjamin H. Dickens, Jr.

Mary J. Sisak

Salvatore Taillefer, Jr.

*Counsel to South Dakota Network, LLC*

CC: Lisa Hone  
Lynne Engledow  
Al Lewis  
Gil Strobel