

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

In the Matter of)	
)	
July 1, 2018)	WC Docket No. 18-100
Annual Access Charge Tariff Filings)	
)	

Petition for Waiver

South Dakota Network, LLC (SDN), by its attorneys, hereby requests a waiver of section 69.3(f)(1) of the Commission's rules, which requires SDN to file its biennial access tariff filing with an effective date of July 1, 2018.¹ In light of the Commission's recent order designating issues for investigation regarding Aureon's tariff,² SDN seeks permission to file its biennial access tariff on September 17, 2018, with an effective date of October 2, 2018.³ This will promote efficient use of Commission resources by allowing SDN time to review the result of that proceeding for impact on SDN's own tariff filings.

SDN is a centralized equal access (CEA) provider, authorized by the Commission to implement long distance equal access obligations and to aggregate traffic for connection between rural incumbent LECs and interexchange carrier (IXC) networks.⁴ In the order authorizing SDN, the Commission permitted SDN to require IXCs to connect to LECs that subtend SDN indirectly

¹ 47 CFR 69.3(f)(1).

² *In re: Iowa Network Services Access Division Tariff* FCC No 1., WC Docket No. 18-60, DA 18-395, (rel. April 19, 2018) (*Designation Order*).

³ SDN notes that it is not able to file for an October 1, 2018 effective date because the 15-day notice requirement establishes Sunday, September 16, 2018 as the corresponding filing date.

⁴ *In re: Application of SDCEA, Inc.*, 5 FCC Rcd 6978 (FCC 1990).

through SDN's tandem switch rather than indirectly through another intermediate carrier or directly to the subtending LEC.⁵

Since its inception, SDN has been regulated as a dominant carrier subject to the tariff filing requirements of section 61.38 of the Commission's rules. As a dominant carrier, SDN has prepared and filed a cost study to support its tariffed rate. Since the *Transformation Order*,⁶ SDN has capped its interstate rates at 2011 levels. SDN has reduced its capped interstate rates based on the cost study.

In the recent *Aureon Order*, the Commission found that Aureon, a CEA provider, is a competitive local exchange carrier (CLEC) for purposes of the Commission's intercarrier compensation rules.⁷ As such, the Commission found that Aureon must comply with section 51.911(c) of the rules, which prohibits CLECs from tariffing a rate that exceeds that of the competing incumbent LEC. The Commission, however, did not determine what the benchmark rate might be. The Commission also required Aureon to file complying tariff revisions. The Commission found that Aureon must continue to comply with section 61.38 and supply supporting material, such as cost studies.

On February 22, 2018, Aureon filed its tariff, as required, which was suspended by the Wireline Competition Bureau for investigation. On April 19, 2018, the Bureau designated a number of issues for investigation, including the appropriate benchmark rate for Aureon's interstate switched transport service; the cost and demand data needed to support Aureon's revised rate pursuant to section 61.38 of the Commission's rules; and whether supporting cost

⁵ *Id.* at ¶21.

⁶ *In re: Connect America Fund*, 26 FCC Rcd 17663 (FCC 2011).

⁷ *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, Proceeding Number 17-56, EB-17-MD-001 (rel. Nov. 8, 2017) (*Aureon Order*) at ¶25.

information should be considered once the Commission determines the appropriate benchmark rate.⁸ The Bureau, on its own motion, waived Aureon's annual access tariff filing requirement, pursuant to section 69.3(f)(1) of its rules, through July 1, 2019.

Although SDN's tariff filing is not the subject of the *Designation Order*, the resolution of the issues raised therein may impact SDN's upcoming tariff filing and its tariffed rate, in particular, concerning the appropriate benchmark rate and whether supporting cost information should be considered once the appropriate benchmark rate is determined. Pursuant to section 69.3(f)(1) of the rules, SDN is required to submit its access tariff filing just prior to the deadline for the conclusion of the Aureon tariff investigation. This could result in SDN being required to revise its tariff shortly after it is filed and effective to incorporate any changes required by the conclusion of the Aureon tariff investigation. It also could result in the unnecessary use of Commission resources, if the SDN tariff filing is suspended for investigation and an investigation started shortly before the conclusion of the Aureon tariff investigation.

The Commission's rules may be waived for "good cause shown."⁹ 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 general rule; and (c) such deviation will serve the public interest.¹⁰ In making these determinations, the Commission may consider, among other things, evidence of hardship and more effective implementation of overall policy on an individual basis.¹¹

⁸ *Designation Order*, *supra* note 2.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *Id.*

¹¹ *Id.* See also, *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

Strict compliance with section 69.3(f)(1) would not be in the public interest in this case and SDN should not be required to file its annual access tariff until after the conclusion of the Aureon tariff investigation. The Aureon investigation will address issues that may impact SDN's tariff filing and require SDN to refile its access tariff. Moreover, the Aureon investigation will be concluded less than one month after the effective date of SDN's scheduled section 69.3(f)(1) tariff filing.

In the *Designation Order*, the Bureau granted Aureon a waiver of section 69.3(f)(1) on finding that strict compliance with the rule would not be in the public interest. Specifically, the Bureau recognized that pursuant to section 69.3(f)(1) of the rules, Aureon would be 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, just prior to the deadline for the conclusion of the tariff investigation, which could lead to overlapping tariff investigations. The Bureau found that strict compliance with section 69.3(f)(1) would be “an unnecessary use of time and resources by the Commission, Aureon, and any interested parties.”¹²

SDN's waiver request should be granted for these reasons, also. SDN's request to file its tariff on September 17, 2018 is a short and reasonable amount of time which would allow SDN to review the result of the *Designation Order* and prepare and file its tariff and cost study, as appropriate. This short extension of SDN's current tariff until its revised access tariff is effective on October 2, 2018, should not unreasonably prejudice any party.

For the foregoing reasons, SDN respectfully requests grant of this waiver.

¹² *Designation Order* at ¶35.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Taillefer', with a stylized, cursive script.

Benjamin H. Dickens, Jr.
Mary J. Sisak
Salvatore Taillefer, Jr.

Counsel to South Dakota Network, LLC

May 4, 2018