

**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)	

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: November 29, 2018**Released: November 29, 2018****Direct Case Due for SDN by: December 11, 2018****Oppositions to Direct Case Due by: December 18, 2018****I. INTRODUCTION**

1. In this Order, pursuant to our authority in sections 204 and 205 of the Communications Act of 1934, as amended (Act),¹ we designate one issue for investigation regarding the lawfulness of the tariff revisions that South Dakota Network, LLC (SDN) filed with the Commission on September 17, 2018,² and were advanced for a day,³ suspended for a day and became effective on October 2, 2018. Specifically, we designate for investigation the appropriate benchmark rate for SDN's interstate switched access service.

II. BACKGROUND**A. Procedural History and Recent Precedent**

2. SDN is one of three centralized equal access (CEA) service providers that were formed to implement long distance equal access obligations and aggregate traffic for connection between rural incumbent local exchange carrier (LEC) and interexchange carrier (IXC) networks. The other two CEA providers are Iowa Network Access Division d/b/a Aureon (Aureon) and Minnesota Independent Equal Access Corporation (MIEAC). Pursuant to section 69.3(f)(1) of the Commission's rules, SDN was required to submit an annual access charge tariff filing for the biennial period July 1, 2018 through June 30, 2020, with an effective date of July 1, 2018.⁴ On May 4, 2018, SDN sought a waiver of the tariff filing date, citing an ongoing investigation into the lawfulness of Aureon's interstate switched access

¹ 47 U.S.C. §§ 204, 205.

² See South Dakota Network, LLC Tariff F.C.C. No. 1, Transmittal No. 13 (filed Sept. 17, 2018) (Transmittal No. 13) (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. 13 (filed Sept. 17, 2018) (Transmittal Letter) (available via ETFS).

³ When a tariff is advanced for a day, the effective date listed in the tariff is moved to one day earlier so that the suspension of the tariff can occur on that day, thereby allowing the tariff to become effective on the original effective date.

⁴ *July 1, 2018 Annual Access Charge Filings*, WC Docket No. 18-100, Order, DA 18-599 (WCB June 8, 2018) (*SDN Waiver Order*); see 47 CFR § 69.3(f)(1).

transport rate.⁵ The investigation of the Aureon rate arose, in part, because of Aureon's status as a CEA provider. SDN argued that, absent a waiver, it might need to refile its tariff at the conclusion of the then-pending Commission investigation of Aureon's tariffed rate for CEA service.⁶ The Wireline Competition Bureau (Bureau) granted SDN's waiver request allowing SDN to submit its biennial access tariff filing with an effective date of October 2, 2018.⁷

3. On July 31, 2018, the Commission released the *Aureon Tariff Investigation Order* terminating the Aureon tariff investigation.⁸ In that order, the Commission confirmed that as a CEA provider Aureon was required to comply with both the Commission's transitional switched access rate rules and rules governing cost-based rates.⁹ The Commission found that CenturyLink was the competing incumbent LEC for purposes of calculating Aureon's benchmark rate for switched access services. The Commission declined to find that Aureon's subtending LECs were the competing incumbent LECs for the purpose of Aureon's benchmarking obligation, because Aureon's "subtending LECs' inability to provide the portion of the access services that Aureon provides is the reason they subtend Aureon's network, and therefore they would not provide those services in the event those services were not provided by Aureon."¹⁰

4. The Commission also found that CenturyLink's switched access rate was the appropriate rate regardless of whether CenturyLink provided equal access functionality because "CenturyLink or its predecessors did provide equal access capability to its customers when it was required . . . thus, it has or had the technical capability to offer that functionality were Aureon [here SDN] not providing it, to the extent still necessary, and the Aureon [here SDN] subtending LECs do not."¹¹ The Commission also questioned the continuing need for an equal access function as the Commission previously "adopted an order terminating the remaining obligation of incumbent LECs to maintain equal access for existing customers presubscribed to a stand-alone long-distance provider as of December 28, 2015."¹² The Commission directed Aureon to amend its tariff to reflect the lower of Aureon's benchmark rate (the CenturyLink switched access services rate) or Aureon's corrected cost-based rate.¹³

⁵ Petition for Waiver of South Dakota Network, LLC, WC Docket No. 18-100 at 4 (filed May 4, 2018) (SDN Petition).

⁶ SDN Petition at 3-4. See *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order Designating Issues for Investigation, DA 18-395 (WCB Apr. 19, 2018) (*Aureon Designation Order*). Aureon's tariff refers to Aureon's CEA service as "switched transport." See Aureon Tariff F.C.C. No. 1, § 6.1.3(a), 1st Revised Page 95.

⁷ *SDN Waiver Order* at 1, para. 1.

⁸ See *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Memorandum Opinion and Order, FCC 18-105 (July 31, 2018) (*Aureon Tariff Investigation Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order on Reconsideration, FCC 18-171 (Nov. 28, 2018), *pet. for review pending*, *Iowa Network Servs., Inc. v. FCC*, No. 18-1258 (D.C. Cir. filed Sept. 19, 2018).

⁹ *Aureon Tariff Investigation Order* at 2, para. 1 ("As a result, Aureon's tariffed switched transport rate cannot exceed the lower of (i) Aureon's rate cap, (ii) its competitive LEC benchmark or (iii) its cost-based rate."). Pursuant to section 51.909 of the Commission's rules, SDN was required to cap its switched access rates to those in effect on December 29, 2011. 47 CFR § 51.909. SDN has never filed rates above those rate caps and no one has suggested that they have. Moreover, the rate filed in the transmittal subject to this investigation is below the rate cap applicable to SDN. See Transmittal Letter.

¹⁰ *Aureon Tariff Investigation Order* at 10, para. 24.

¹¹ *Id.* at 11-12, para. 27.

¹² *Id.* at 12, para. 27, n.98 (internal citation omitted).

¹³ *Id.* at 2, para. 1.

5. After release of the *Aureon Tariff Investigation Order*, SDN filed proposed tariff revisions on September 17, 2018, to become effective on October 2, 2018.¹⁴ In its proposed tariff revisions, SDN filed a CEA rate of \$0.004871 per minute based on its cost support.¹⁵ Although SDN takes issue with the Commission's decision in the *Aureon Tariff Investigation Order* on interstate switched access rates, SDN also calculated what it calls a "unified benchmark rate" of \$0.014203 per minute. As described by SDN, its "unified benchmark rate" is a combination of CenturyLink's tandem switching rate (\$0.002288 per minute) and an "equal access service benchmark" (\$0.01195 per minute).¹⁶ According to SDN, because its cost-based rate of \$0.004871 is lower than its "unified benchmark rate" of \$0.014203, SDN used the former rate for purposes of its proposed tariff revisions.¹⁷

6. On September 24, 2018, James Valley Cooperative Telephone Company and Northern Valley Communications, LLC (Petitioners) filed a petition asking the Commission to reject, or to suspend and investigate, the SDN tariff revisions.¹⁸ Petitioners argued that: (1) language in the tariff revision was discriminatory; (2) SDN's benchmark calculation does not comply with decisions in the *Aureon Tariff Investigation Order*, and (3) SDN's traffic projections should be investigated.¹⁹ SDN filed a reply to the Petition on September 28, 2018, requesting that the Petition be denied.²⁰ SDN argued that Petitioners do not have standing to challenge the tariff filing because they are not customers of SDN and that SDN's benchmark rate calculation and traffic projections are reasonable.²¹ On October 1, 2018, Petitioners filed a letter withdrawing in part their objection to SDN's tariff revisions.²²

7. In the *SDN Suspension Order*, we concluded that substantial questions of lawfulness exist

¹⁴ See Transmittal Letter at 1.

¹⁵ South Dakota Network, LLC Tariff F.C.C. No. 1, Centralized Equal Access Service, 2018 Annual Access Tariff Filing, Description and Justification at 2 (filed Sept. 17, 2018) (available via ETFS) (SDN Description and Justification).

¹⁶ *Id.* at 2-3. According to SDN, this "equal access service benchmark" is based on the weighted average differential between the premium and non-premium National Exchange Carrier Association (NECA) tariff rates for the LECs that subtend SDN. *Id.* at 3. SDN explains that it "weighted the equal access benchmark by multiplying the respective routing exchange carriers' [subtending LECs'] tariff rate by the originating interstate access minutes routed through SDN's tandem from January through July 2018." *Id.*

¹⁷ *Id.* at 3.

¹⁸ See Petition of James Valley Cooperative Telephone Company and Northern Valley Communications, LLC to Reject or to Suspend and Investigate South Dakota Network, LLC's Tariff, Transmittal No. 13 (filed Sept. 24, 2018) (available via ETFS) (Petition).

¹⁹ *Id.* at 2-3.

²⁰ See Reply to Petition to Reject or to Suspend and Investigate South Dakota Network, LLC's Tariff, WC Docket No. 18-100, Transmittal No. 13 (originally filed Sept. 28, 2018, refiled Nov. 26, 2018) (SDN Reply).

²¹ See generally SDN Reply. SDN has deleted from its revised tariff language Petitioners considered discriminatory. See Letter from Marlene Bennett, Consultant for South Dakota Network, LLC, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 14 (filed Sept. 27, 2018) (available via ETFS). Because the Bureau independently concluded that substantial questions of lawfulness exist with regard to SDN's tariff, it is not necessary for us to address whether Petitioners had standing to challenge SDN's tariff filing. See *infra* n.23.

²² See Letter from G. David Carter, Counsel to James Valley Cooperative Telephone Company and Northern Valley Communications, LLC, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 13 (filed Oct. 1, 2018) (available via ETFS).

regarding SDN's revised switched transport rate that require further investigation.²³ Therefore, pursuant to section 204 of the Act, we advanced the effective date for one day to October 1, 2018 and then suspended the rate for one day, allowing the rate to become effective on October 2, 2018, imposed an accounting order, and instituted an investigation into the lawfulness of SDN's revised interstate switched access service rate.²⁴

B. Commission Authority and Duty to Investigate Tariffs and Prescribe Rates

8. Under section 201(b) of the Act, a common carrier may not charge unjust or unreasonable rates for its services.²⁵ Pursuant to section 204 of the Act, if a tariff filing has been suspended, the burden of proof is on the tariffing carrier to show that the new or revised charge is just and reasonable.²⁶ Pursuant to section 204(a)(1) of the Act, SDN's provision of the information requested in this Order is necessary to determine whether SDN's revised switched access rate is just and reasonable.²⁷ At the conclusion of an investigation under section 204, the Commission may, pursuant to section 205, determine and prescribe what will be the just and reasonable charge or the maximum and/or minimum, charge or charges going forward.²⁸

²³ *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, Order, DA 18-1004 at 2-3, para. 6 (WCB Oct. 1, 2018) (*SDN Suspension Order*) ("We find that there are substantial questions regarding the lawfulness of SDN's tariff revisions that require further investigation.").

²⁴ *SDN Suspension Order* at 3, para. 7 (citing 47 U.S.C. § 204). In response to the *SDN Suspension Order*, SDN submitted Transmittal No. 15 to suspend the revisions made in its Transmittal No. 13. See Letter from Marlene Bennett, Consortia Consulting, Consultant for SDN, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 15 (filed Oct. 5, 2018) (Transmittal No. 15) (available via ETFS). SDN has provided additional information to Commission staff that has clarified its demand forecast and the methodology surrounding its cost allocation. As such, we do not designate those issues for investigation. See Letter from Salvatore Taillefer, Jr., Counsel to SDN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-100, Transmittal No. 13 (filed Nov. 21, 2018); Letter from Salvatore Taillefer, Jr., Counsel to SDN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-100, Transmittal No. 13 (filed Nov. 26, 2018); Letter from Benjamin H. Dickens, Jr., Mary J. Sisak, and Salvatore Taillefer, Jr., Counsel to SDN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-100, Transmittal No. 13 (filed Nov. 27, 2018); see also SDN Reply at 7-8 (providing additional information about its proposed traffic volume calculation); *SDN Suspension Order* at 3, para. 7 ("We may also identify discrete issues that do not warrant further investigation.").

²⁵ 47 U.S.C. § 201(b).

²⁶ 47 U.S.C. § 204(a)(1).

²⁷ *Id.*

²⁸ *Id.* § 205(a).

III. ISSUE DESIGNATED FOR INVESTIGATION

9. As a CEA provider, SDN is a competitive LEC for purposes of the Commission's intercarrier compensation rules.²⁹ Section 51.911(c) of the rules sets forth the competitive LEC benchmark obligation, and specifies that:

[b]eginning July 1, 2013, notwithstanding any other provision of the Commission's rules, all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26³⁰

The term "competing incumbent LEC" is defined in section 61.26(a)(2) to be 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 Because SDN is a CEA provider that does not serve end users, the procedure for its benchmarking obligation is contained in section 61.26(f) of the Commission's rules. Section 61.26(f) requires that "[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services"³²

10. We designate for investigation under sections 204 and 205 of the Act whether in Transmittal No. 13 SDN properly calculated its benchmark rate. Specifically, we designate for investigation whether SDN is using the correct competing incumbent LEC(s) in calculating its benchmark rate, and whether SDN's calculated benchmark rate is based on the rate(s) for the appropriate service(s) of the competing incumbent LEC(s). As discussed above, in the *Aureon Tariff Investigation Order*, the Commission found that CenturyLink was the competing incumbent LEC Aureon should benchmark to, and not the NECA.³³ In its Direct Case, SDN must justify its use of both CenturyLink and NECA as the carriers to which it should benchmark.

²⁹ *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9689, para. 25 (2017) (*Aureon Liability Order*) ("For purposes of the *USF/ICC Transformation Order* and the attendant rules, Aureon [a CEA provider] is a CLEC.") (citation omitted)); *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding No. 17-56, Bureau ID Number EB-17-MD-001, Order on Reconsideration, FCC 18-116 (Aug. 1, 2018), *petitions for review pending*, *AT&T Corp. v. FCC*, No. 18-1007 (D.C. Cir. filed Jan. 8, 2018); *Iowa Network Services, Inc. v. FCC*, No. 18-1257 (D.C. Cir. filed Sept. 18, 2018); *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding No. 17-56, Bureau ID Number EB-17-MD-001, Second Order on Reconsideration, FCC 18-170 (Nov. 28, 2018). The Commission also found that as a dominant carrier, "Aureon must comply with Section 61.38 [of the Commission's rules] and supply 'supporting . . . material' justifying its rates." *Aureon Liability Order* at 32 FCC Rcd 9690, para. 26 (citation omitted). Like Aureon, SDN is a CEA provider and thus these rules also apply to it.

³⁰ 47 CFR § 51.911(c).

³¹ *Id.* § 61.26(a)(2).

³² *Id.* § 61.26(f); see *AT&T Services Inc. and AT&T Corp. v. Great Lakes Comnet, Inc. and Westphalia Telephone Company*, EB Docket No. 14-222, File No. EB-14-MD-013, Memorandum Opinion and Order, 30 FCC Rcd 2586, 2594, para. 25 (2015) (*AT&T v. Great Lakes*), *aff'd in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004-05 (D.C. Cir. 2016) (*Great Lakes v. FCC*) (where the Commission found that an intermediate carrier, Great Lakes Comnet, violated section 61.26(f) when its tariff contained rates benchmarked to the incorrect "competing incumbent LEC").

³³ See *supra* paras. 3-4.

11. As an initial matter, we recognize that SDN has tariffed a rate based on its costs rather than a benchmark rate, because the benchmark rate it calculated was higher than its cost-based rate.³⁴ We nonetheless must determine if SDN's benchmark rate calculation was accurate to determine if the benchmark rate actually might be lower than the cost-based rate. SDN created a benchmark rate for its tariffed interstate switched access service by combining a rate of \$0.002288 for tandem switching service from CenturyLink Tariff F.C.C. No. 11 and a rate of \$0.01195 for equal access service based on the "weighted average differential between premium and non-premium originating local switching rates in the NECA tariff," which SDN claims includes the provision of equal access functionality, for a combined "unified benchmark rate" of \$0.014203.³⁵ Neither SDN's tariff filing nor its reply provide sufficient explanation or justification for its use of two different carriers, where one of them is NECA, as "the competing incumbent LEC." It must provide an explanation and justification for doing so.

12. Moreover, SDN effectively concedes that CenturyLink is the competing incumbent LEC to which it must benchmark for purposes of provision of its interstate switching services. However, SDN's tariff filing fails to assert that CenturyLink does not or would not provide the equal access capability that SDN provides if SDN did not provide it. In its reply, SDN does assert that CenturyLink does not offer equal access functionality,³⁶ but SDN does not explain why the Commission should allow SDN to include an equal access functionality in its tariffed rate when it is no longer obligated to provide such a service.³⁷ In light of the Commission's findings in the *Aureon Tariff Investigation Order* that CenturyLink's switched access rates, and not NECA's, were the appropriate benchmark for Aureon, SDN must justify its decision to assert that SDN's appropriate benchmark is not limited to the CenturyLink rate, including its basis for interpreting the Commission's rules to allow it to include NECA as a competing incumbent LEC to which it may benchmark its rates.

13. Even if SDN is justified in identifying a second competing incumbent LEC to reflect the CEA services SDN offers, in its Direct Case SDN must justify its use of a weighted average differential between premium and non-premium originating local switching rates in the NECA tariff. According to SDN, NECA's tariff for local end office switching contains different rates depending on whether equal access functionality is provided.³⁸ SDN does not provide local end office switching service³⁹ so it must explain and justify why NECA rates for that local end office service functionality should be used in SDN's benchmark calculation.⁴⁰ In the *Aureon Tariff Investigation Order*, the Commission found that CenturyLink would provide the switched access service that Aureon provided (here SDN) if Aureon did

³⁴ SDN Description and Justification at 3.

³⁵ *Id.* at 2-3.

³⁶ SDN Reply at 5. However, CenturyLink has not participated in this proceeding and has offered no information about how it tariffs its interstate service for South Dakota or whether that offering does or does not include equal access functionality.

³⁷ The Commission granted forbearance from equal access obligations in 2015 to all LECs; however, the Commission required incumbent LECs to maintain equal access for existing customers presubscribed to a stand-alone long-distance provider as of December 28, 2015. *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, WC Docket Nos. 14-192 et al., Memorandum Opinion and Order, 31 FCC Rcd 6157, 6188-89, para. 54 (2015). The Commission recently adopted an order terminating the remaining obligation of incumbent LECs to maintain equal access for existing customers presubscribed to a stand-alone long-distance provider as of December 28, 2015. *See Nationwide Number Portability et al.*, WC Docket No. 17-244 et al., Report and Order, FCC 18-95, at 5-6, paras. 14-16 (July 13, 2018).

³⁸ SDN Reply at 4.

³⁹ *See supra* para. 9.

⁴⁰ *See* Petition at 14 (Petitioners argue that SDN "ignored Commission precedent by attempting to benchmark this rate to NECA, rather than CenturyLink." *Id.* (citing *Aureon Tariff Investigation Order* at 8, 14, paras. 18, 31)).

not, and not the NECA carriers.⁴¹ SDN must explain and justify why these same questions, regarding which carrier would provide the switched access service if SDN did not, do or do not apply to it.

14. In apparent support of using the NECA rate, SDN asserts that “[t]he majority of SDN’s CEA minutes are associated with Routing Exchange Carriers [SDN’s subtending LECs] participating in the NECA tariff.”⁴² In its Direct Case, SDN must tell us how many of SDN’s subtending LECs participate in the NECA tariff and in which NECA rate(s) they participate. SDN must also address how a subtending incumbent LEC that partners with SDN to provide access services to IXC’s for the origination and termination of traffic could be considered to be competing with SDN as that term was intended and defined in the Commission’s rules, and therefore might justify SDN benchmarking its rate to the NECA rate. In doing so, SDN should explain why the Commission should find it appropriate for SDN to benchmark in part to the NECA rates, when the Commission rejected doing so in the case of Aureon.

15. Further, as SDN concedes, the NECA equal access charge only applies to originating access service.⁴³ Yet, SDN’s calculated benchmark rate would apply to both originating and terminating access services.⁴⁴ In its Direct Case SDN must provide a justification for including the equal access service component in the terminating switched access rate when SDN’s terminating switched access does not include the provision of that functionality. In addition, SDN must explain and justify including the equal access service component in all originating switched access rates as that functionality may not be provided for all calls originating from every one of its subtending LECs.

IV. PROCEDURAL MATTERS

16. *Filing Schedules.* This investigation is designated WC Docket No. 18-100. South Dakota Network, LLC (d/b/a SDN) is designated as a party to this investigation of the listed tariff filing.

17. SDN shall file its Direct Case no later than **December 11, 2018**. The Direct Case must present SDN’s position with respect to the issues described in this Order. Pleadings responding to the Direct Case may be filed no later than **December 18, 2018**, and must be captioned “Oppositions to Direct Case” or “Comments on Direct Case.” Additional pleadings will not be permitted or considered,⁴⁵ but *ex parte* presentations will be accepted until **February 14, 2019**.⁴⁶

- ☐ Electronic Filers: Direct cases and other pleadings may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- ☐ Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - ☐ All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.

⁴¹ *Aureon Tariff Investigation Order* at 10-11, para. 25 (“Aureon and its subtending LECs each provide a portion of the access service needed to originate or terminate a call from or to an end user customer of one of the subtending LECs [T]he question to be answered is whether CenturyLink would provide the portion of the access that Aureon provides if Aureon did not provide it”).

⁴² SDN Reply at 6.

⁴³ SDN Description and Justification at 3.

⁴⁴ See Petition at 15.

⁴⁵ 47 CFR §§ 1.1200(a).

⁴⁶ This date is necessary to give the Commission adequate time to evaluate the complete record prior to the statutory deadline of March 1, 2019.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

18. There is a *Protective Order* in this proceeding.⁴⁷ Commenters should file any information they want afforded confidential treatment pursuant to the guidance and limitations in the *Protective Order*.

19. *Requirements for Filing of Spreadsheets.* All spreadsheets filed in this proceeding must be filed in fully-operational spreadsheet in native Microsoft Excel electronic format. All spreadsheet cells that contain entries that are references to or calculations based on other spreadsheet cells must include the formula for such reference or calculation. This includes references and calculations based on entries in different worksheets within the same workbook file.

20. *Ex Parte Requirements.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

21. *Paperwork Reduction Act.* This Order designating issues for investigation does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 47 U.S.C. § 3506(c)(4).

22. *Contact Person.* For further information about this proceeding, please contact Christopher S. Koves, Wireline Competition Bureau, Pricing Policy Division, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-8209, Christopher.Koves@fcc.gov.

V. ORDERING CLAUSES

23. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201(b), 203(c),

⁴⁷ *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, Protective Order, DA 18-1158 (WCB Nov. 14, 2018).

⁴⁸ 47 CFR §§ 1.1200 et seq.

204(a), 205 and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the issue set forth in this Order IS DESIGNATED FOR INVESTIGATION.

24. IT IS FURTHER ORDERED that South Dakota Network, LLC (d/b/a SDN) IS a party to this proceeding.

25. IT IS FURTHER ORDERED that South Dakota Network, LLC (d/b/a SDN) SHALL INCLUDE, in its Direct Case, a response to each request for information that it is required to answer by this Order.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk
Chief, Pricing Policy Division
Wireline Competition Bureau