

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	

CENTURYLINK'S OPPOSITION TO DIRECT CASE

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December 18, 2018

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CENTURYLINK'S OPPOSITION TO DIRECT CASE

CenturyLink, Inc.¹ (CenturyLink) submits this opposition related to the Commission's *Order Designating Issues for Investigation* issued on November 29, 2018 regarding the lawfulness of South Dakota Network, LLC (SDN) switched access rates (*SDN Investigation Order*)² and in opposition to SDN's Direct Case filed on December 11, 2018 (*SDN Direct Case* or *Direct Case*).³

I. INTRODUCTION AND SUMMARY

The *Investigation Order* and the *SDN Direct Case*, in essence, present the question of whether SDN should be permitted to recover an *additur* on top of the CenturyLink ILEC rates for the same service – when calculating SDN's competitive LEC rate for its access services. As discussed in greater detail below, it should not and SDN's contentions to the contrary should be rejected.

¹ This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

² *July 1, 2018 Annual Access Charge Tariff Filings; South Dakota Network, LLC Tariff F.C.C. No. 1*, WC Docket No. 18-100, Order Designating Issues for Investigation, DA 18-1214 (rel. Nov. 29, 2018).

³ Direct Case of South Dakota Network, LLC, filed herein (Dec. 11, 2018).

II. DISCUSSION

A. The Commission Has Already Established That SDN Is A CLEC Subject To The Commission's CLEC Benchmark Rule And Related Transformation Order Parity And Transition Rules.

As the Commission notes in the *Investigation Order*, SDN is, like Iowa Network Access Division d/b/a Aureon (Aureon) and Minnesota Independent Equal Access Corporation (MIEAC), a centralized equal access (CEA) provider formed to implement long distance equal access obligations and aggregate traffic for connection between rural ILECs and interexchange (IXC) networks.⁴

In its *Aureon Order* issued in November 2017, the Commission concluded that Aureon is a CLEC and that, as a CLEC, Aureon is subject to the Commission's CLEC benchmark rule and the rate cap and rate parity requirements adopted by the Commission in the *Transformation Order*.⁵

SDN has failed to demonstrate any basis for concluding that it is in any material way distinct from Aureon on these issues.

Accordingly, SDN is also indisputably a CLEC subject to the Commission's CLEC benchmark rule and the rate cap and rate parity requirements adopted by the Commission in the *Transformation Order*.

⁴ *SDN Investigation Order*, at ¶ 2.

⁵ See *AT&T Corp., Complainant, v. Iowa Network Services, Inc. d/b/a Aureon Network Services, Defendant.*, File No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677 ¶ 1, 9688-92 ¶¶ 23-28 (2017), *appeals pending sub nom., AT&T Corp. v. FCC*, Nos. 18-1007, *et al.* (*pet. for rev. filed Jan. 8, 2018*); *see also* 47 C.F.R. § 61.26.

B. The Commission Has Already Established That, Under These Rules, SDN Must Benchmark To CenturyLink ILEC Rates For The Same Access Service.

In its *Aureon Tariff Investigation Order* issued in July 2018, the Commission concluded that, because Aureon is both a CLEC and a dominant provider, its tariffed switched access rates cannot exceed the lower of: (1) Aureon's rate cap; (2) its competitive LEC benchmark; or (3) its cost-based rate.⁶ Additionally, in that same order, the Commission determined that CenturyLink was the competing LEC for purposes of establishing Aureon's competitive LEC benchmark.⁷

SDN has failed to demonstrate any basis for concluding that it is in any material way distinct from Aureon on these issues.

Accordingly, SDN is also clearly subject to the *Aureon Tariff Investigation Order*'s rate framework and, similarly, its access rates cannot exceed the lower of: (1) its rate cap; (2) its competitive LEC benchmark; or (3) its cost-based rate. And, CenturyLink is clearly the competing LEC for purposes of establishing SDN's competitive LEC benchmark.

C. Under This Framework, SDN Is Not Entitled To An *Additur* On Top Of The CenturyLink ILEC Rates For The Same Access Service.

The *Investigation Order* and the *SDN Direct Case*, in essence, present the question of whether SDN should be permitted to recover an *additur* on top of the CenturyLink ILEC rates for the same service – when calculating SDN's competitive LEC rate for its access services. It should not and SDN's contentions to the contrary should be rejected.

⁶ See *Iowa Network Access Division, Tariff F.C.C. No. 1*, WC Docket No. 18-60; Transmittal No. 36, Memorandum Opinion and Order, FCC 18-105, at ¶¶ 1-2, 18-30, 89, 114-21 (rel. July 31, 2018), *appeal pending sub nom., Iowa Network Services, Inc., et al. v. FCC*, Nos. 18-1258 (*pet. for rev. filed* Sep. 19, 2018).

⁷ *Id.*, Memorandum Opinion and Order at ¶ 18.

At the core of SDN's contentions that it is entitled to additional compensation are its arguments that it, essentially, provides two services and that separate CLEC benchmarks should apply to each.⁸ Specifically, SDN contends that it provides both tandem access services (tandem switching and transport) and end office access services ("equal access").⁹ And, it contends that CenturyLink's \$.002288 rate provides the benchmark cap for the former, but that a "weighted average differential between premium and non-premium originating local switching rates in the NECA tariff[]" (calculated as \$.01195) provides the benchmark for the latter.¹⁰ Thus, according to SDN, since its proposed rate of \$.004871 is below \$.014203 (the purported combined unified benchmark combining \$.002288 and \$.01195), its rates are lawful.¹¹ SDN is wrong. The appropriate competitive LEC benchmark for this matter is CenturyLink's \$.002288 rate and, therefore, SDN's proposed \$.004871 rate is unlawful.

To begin with, SDN's proposed *additur* to its benchmark would result in a double recovery. The 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.¹²

Additionally, SDN's proposed *additur* would permit it to recover higher rates than CenturyLink charges for the same access services – and it is impossible to reconcile such a result with the letter and spirit of the Commission's CLEC benchmark rule. The parallel, in the

⁸ *SDN Direct Case* at iv, 4, 19-20.

⁹ *Id.* at 4.

¹⁰ *SDN Direct Case* at 12; and see also 13, 19-20. See also, *SDN Investigation Order*, ¶ 11.

¹¹ See *id.* at 15-19.

¹² See Declaration of Tami Spocogee and NECA tariff pages, attached hereto as Appendix A.

CenturyLink price cap ILEC world, to the NECA tariff premium versus non-premium local switching rates, are the CenturyLink ILEC's Feature Group C and D versus Feature Group A and B local switching rates.¹³ However, there is no difference in such rates in CenturyLink's current tariffs.¹⁴ In other words, CenturyLink imposes no higher end office charges based on whether it is providing equal access functionality. The CenturyLink tandem rate of \$.002288 is the entirety of CenturyLink's tariffed access charge compensation for the entirety of the SDN access functionality at issue (whether characterized as tandem or end office or both). Under these circumstances, there is no basis whatsoever for arguing that SDN should be permitted to recover a greater amount than CenturyLink's tariff charges for the same service.¹⁵

¹³ See CenturyLink Operating Companies Tariff F.C.C. No. 11, Section 6, Switched Access Service, attached hereto as Appendix B. Directly responsive to the questions raised in footnote 35 of the *Investigation Order (SDN Investigation Order, ¶ 11, n. 35)*, CenturyLink still provides equal access service. Indeed, this is the function of its Feature Group D service reflected in its relevant FCC tariff for South Dakota. See *id.*, Appendix B (for example, Section 6.7.5). The Commission's recent forbearance order (*Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*; WC Docket Nos. 14-192, *et al.*, Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015)) allowed CenturyLink to cease offering new customers the choice of separate long distance provider, but CenturyLink is still required to enable equal access for existing customers. As a result, it has not, as a result of this forbearance, eliminated any of its network equal access network functionality.

¹⁴ See *id.*, Appendix B (Section 6.8.2).

¹⁵ Nor is there any record suggesting that CenturyLink would not charge these same rates for performing these functions itself in SDN's stead, for traffic originating from the ILECs currently subtending SDN. Here, it is noteworthy that those underlying ILECs, themselves, already provide (and, themselves, tariff and charge for) equal access functionality as well as transport. *SDN Direct Case*, at 5, n. 18. Thus, regarding the questions raised in Paragraph 13 of the *Investigation Order (SDN Investigation Order, at ¶ 13)*, SDN wholly fails to provide any basis for distinguishing SDN from Aureon on the question of which ILEC would provide the service that SDN provides if SDN did not.

III. CONCLUSION

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

CENTURYLINK

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Its Attorney

December 18, 2018

APPENDIX A

**Before the
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DECLARATION OF TAMI SPOCOGEE

I, Tami Spocogee, having been duly sworn, state the following upon personal knowledge:

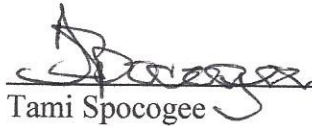
1. I am a citizen of the United States of America and I reside in the State of Oklahoma.
2. I am over the age of eighteen years.
3. I am a Senior Audit Consultant for TEOCO Corporation, a leading provider of planning, assurance, analytics, and optimization software solutions to communications service providers worldwide.
4. Through the TEOCO Corporation, I have been engaged by CenturyLink to assist in its work to identify, compile, and analyze billing data, payments, tariff rates, individual rate elements, local exchange carrier switched access rates, and other details in connection with switched access services provided and billed across the industry.
5. This declaration is intended to support CenturyLink's Opposition to the Direct Case of South Dakota Network, LLC for *In the Matter of 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.

6. I have reviewed the South Dakota Network, LLC (SDN) Direct Case document filed on December 11, 2018. I have also examined the tariffs of each of the ILECs subtending SDN as well as the billing to CenturyLink's IXC entity in recent months. Each of those ILECs, themselves, charge the premium local switching rates in the NECA tariff (see pages from NECA tariff attached hereto) and therefore already recover for the equal access end office functionality that SDN claims it may also charge for.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2018



Tami Spocogee

12/18/18 CTL Opposition-Declaration (WC 18-100) -

Cancels 11th Revised Page 17-10.2.1.2

Appendix A

ACCESS SERVICE

17. Rates and Charges (Cont'd)17.2 Switched Access Service (Cont'd)17.2.2 Local Transport (Cont'd)RateTariff
Section
ReferencePremium Access (Cont'd)

-	<u>Tandem Switched Transport</u>		6.1.3(A) (3)
-	<u>Tandem Switched Facility</u>		
	Per Access Minute Per Mile		
	Rate Band 1	\$0.000204	
	Rate Band 2	\$0.000439	(I)
-	<u>Tandem Switched Termination</u>		
	Per Access Minute Per		
	Termination		
	Rate Band 1	\$0.001067	(I)
	Rate Band 2	\$0.002277	(I)
-	<u>Tandem Switching</u>		
	Per Access Minute Per		
	Tandem		
	Rate Band 1	\$0.002691	(I)
	Rate Band 2	\$0.005744	(I)
	<u>Network Blocking Per Blocked Call</u>		6.8.6
	Applied to FGD only	\$0.0167	

Refer to the Tandem Switched Transport Rate Band Table in Section 17.5.1 following, to view company specific rate band assignments.

Transmittal No. 1549

Issued: June 18, 2018

Effective: July 3, 2018

Director - Access Tariffs
80 So. Jefferson Road, Whippany, NJ 07981

ACCESS SERVICE

17. Rates and Charges (Cont'd)17.2 Switched Access Service (Cont'd)17.2.3 End Office(A) Local SwitchingRatePremium

Per Originating Access Minute

- Rate Band 1	\$0.014678	(I)
- Rate Band 2	\$0.019572	(I)
- Rate Band 3	\$0.024464	(I)
- Rate Band 4	\$0.029358	(I)
- Rate Band 5	\$0.034251	(I)
- Rate Band 6	\$0.039143	(I)
- Rate Band 7	\$0.044037	(I)
- Rate Band 8	\$0.048930	(I)

Per Terminating Access Minute #

- Rate Band 1	\$0.002133	(R)
- Rate Band 2	\$0.002133	(R)
- Rate Band 3	\$0.002133	(R)
- Rate Band 4	\$0.002133	(R)
- Rate Band 5	\$0.002133	(R)
- Rate Band 6	\$0.002133	(R)
- Rate Band 7	\$0.002133	(R)
- Rate Band 8	\$0.002133	(R)

Refer to the Local Switching (LS) Rate Band Table in Section 17.5.1, following, to view company specific rate band assignments.

The composite Terminating Local Switching rates shown above include the Terminating Information Surcharge rate element.

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80 So. Jefferson Road, Whippany, NJ 07981

ACCESS SERVICE

17. Rates and Charges (Cont'd)17.2 Switched Access Service (Cont'd)17.2.3 End Office (Cont'd)

(A)	<u>Local Switching</u> (Cont'd)	<u>Rate</u>
	<u>Non-Premium</u>	
	Per Originating Access Minute	
-	Rate Band 1	\$0.006605	(I)
-	Rate Band 2	\$0.008808	(I)
-	Rate Band 3	\$0.011010	(I)
-	Rate Band 4	\$0.013211	(I)
-	Rate Band 5	\$0.015413	(I)
-	Rate Band 6	\$0.017614	(I)
-	Rate Band 7	\$0.019818	(I)
-	Rate Band 8	\$0.022019	(I)
	Per Terminating Access Minute #	
-	Rate Band 1	\$0.002133	(R)
-	Rate Band 2	\$0.002133	(R)
-	Rate Band 3	\$0.002133	(R)
-	Rate Band 4	\$0.002133	(R)
-	Rate Band 5	\$0.002133	(R)
-	Rate Band 6	\$0.002133	(R)
-	Rate Band 7	\$0.002133	(R)
-	Rate Band 8	\$0.002133	(R)

Refer to the Local Switching (LS) Rate Band Table in Section 17.5.1, following, to view company specific rate band assignments.

The composite Terminating Local Switching rates shown above include the Terminating Information Surcharge rate element.

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ACCESS SERVICE

REGULATIONS, RATES AND CHARGES

Applying to the provision of Access Services
within a Local Access and Transport Area (LATA)
or equivalent market areas for
Connection to Interstate Communications Facilities
for Customers within the operating territory of

Qwest Corporation d/b/a CenturyLink QC
in the State(s) of

Arizona (AZ) (Company Code [CC] 5101)
Colorado (CO) (CC 5102)
Idaho (ID - Boise LATA) (CC 5103)
Idaho (ID - Spokane LATA) (CC 5162)
Iowa (IA) (CC 5141)
Minnesota (MN) (CC 5142)
Montana (MT) (CC 5104)
Nebraska (NE) (CC 5143)
New Mexico (NM) (CC 5105)
North Dakota (ND) (CC 5144)
Oregon (OR) (CC 5163)
South Dakota (SD) (CC 5145)
Utah (UT) (CC 5107)
Washington (WA) (CC 5161)
Wyoming (WY) (CC 5108)

as provided herein

Access Services are provided by means of wire, fiber optics, radio or
any other suitable technology or a combination thereof.

This Tariff replaces Qwest Corporation Tariff F.C.C No. 1.

* This entire Tariff is issued under the authority of Special Permission No. 13-005.

ACCESS SERVICE

6. SWITCHED ACCESS SERVICE

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ACCESS SERVICE

6. SWITCHED ACCESS SERVICE

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ACCESS SERVICE**6. SWITCHED ACCESS SERVICE****6.7 RATE REGULATIONS****6.7.5 CHANGE OF SWITCHED ACCESS SERVICE TYPE (Cont'd)**

- B. Service type upgrade from CST2 or Feature Group C Service to CST3 or Feature Group D Service

When CST2 or FGC service is upgraded to a CST3 or FGC service, the nonrecurring charge will not apply. Because CST2 or FGC is no longer available in an end office once the end office is equipped with equal access capabilities, such upgrades will be performed by the Company without the customer being required to place an order for the change, unless a customer specifies an increase in the number of transmission paths.

When the effective dates for the disconnect and start of service are the same, the minimum period, as set forth in 5.2.5, preceding, will not change. When the effective dates for the disconnect and start of service are different, a new minimum period will be established for the CST3 or FGD Service. For all other changes other than a change in service type, a new minimum period will be established on the CST3 or FGD.

At the customer's option, the Company will allow a change to SS7 out of band signaling and a change in direction from one-way to two-way to occur at the same time the CST2 or FGC is upgraded to CST3 or FGD. When this kind of request is received, the customer will be assessed a SS7 Rearrangement Charge when conditions in 6.7.1.C.5., preceding, are met. When upgrading CST2 or FGC to CST3 or FGD with SS7 out of band signaling, the disconnect date and the connect date on the orders must be the same date and a new minimum period will apply on the CST3 or FGD service.

If a customer has the optional feature, Multiple POTS Tandem Sectorization (MPTS) and a non-equal access end office is upgraded to a equal access end office with the tandem serving area, the MPTS nonrecurring charges do not apply.

ACCESS SERVICE

6. SWITCHED ACCESS SERVICE

6.8 RATES AND CHARGES (Cont'd)

6.8.2 LOCAL SWITCHING

A. Local End Office Switching

RATE PER
ACCESS MINUTE

1. End Office Switching Rates

- LS1 - Feature Groups A and B,
and Bundled *DID*[1]
 - Originating \$0.001974
 - Terminating 0.000000 (R)
 - LS2 - Feature Groups C and D
 - Originating 0.001974
 - Terminating 0.000000 (R)
 - LS3 - CSL, CST1 and Unbundled
DID[1]
 - Originating 0.001905
 - Terminating 0.000000 (R)
 - LS4 - CST2 and CST3
 - Originating 0.001905
 - Terminating 0.000000 (R)
2. End Office Shared Port
- Originating 0.000747
 - Terminating 0.000000

MONTHLY
RATE

3. End Office Dedicated Trunk Port,[2]
Per Trunk \$3.00

[1] *DID* available only in ID (Spokane LATA), OR, WA.

[2] The End Office Dedicated Trunk Port rate was calculated based upon a 50/50 split between originating and terminating traffic using this flat-rated port. The FCC in their FCC 11-161 ICC Transformation order in section 51.907(d)(1) allowed Price Cap Carriers to use an equal split to divide the charge between originating and terminating elements. When the terminating portion of the rate is reduced and then combined with the originating portion of the rate a single flat rate is generated for billing purposes. The Originating portion of the charge is \$3.00.

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **CENTURYLINK'S**
OPPOSITION TO DIRECT CASE to be served via electronic mail upon the following:

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Ross Dino

December 18, 2018