

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**SOUTH DAKOTA NETWORK, LLC
Tariff F.C.C. No. 1, Transmittal No. 13**

**Transmittal No. 13
September 17, 2018 Access Charge
Tariff Filings**

**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**

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Pursuant to Section 204(a)(1) of the Communications Act (“Act”)¹ and Section 1.773 of the Commission’s rules,² James Valley Cooperative Telephone Company (“JVCTC”) and its affiliate, Northern Valley Communications, LLC (“NVC”), petition the Commission to reject, or to suspend and investigate, the above-captioned revised tariff filed by South Dakota Network, LLC (“SDN”), on September 17, 2018, under Transmittal No. 13 (“Revised Tariff”).

INTRODUCTION

On September 17, 2018, SDN submitted to the Commission a revised tariff that, under Section 5.1, purports to provide IXC’s with the choice of obtaining “Direct-Trunked Transport,” but only for traffic routed to a “Routing Exchange Carrier [] engaged in access stimulation as defined by the FCC.” As JVCTC and NVC explain more fully below, this is not the first time that SDN has tried to amend its tariff in the hopes of interfering with NVC’s right to provide tariffed transport charges, however, SDN’s under-the-radar tactics are just as unlawful and unwarranted now as they were the first time.

¹ 47 U.S.C. § 204(a)(1).

² 47 C.F.R. § 1.773.

Indeed, the language contained in Section 5.1 of SDN's Revised Tariff is problematic for several reasons. First, it purports to permit long-distance carriers to obtain direct connections "when the Routing Exchange Carrier is engaged in access stimulation as defined by the FCC" and takes the indirect vs. direct connection decision out of the CLEC's hand, thereby violating Section 251(a) of the Communications Act and prior Commission orders, which collectively recognize the CLEC's right to interconnect *directly or indirectly* with other telecommunications carriers. Second, it purports to unilaterally provide direct trunked transport only for traffic terminating to CLECs engaged in access stimulation (*i.e.*, NVC) while denying IXCs the ability to obtain direct connections to the other interconnected LECs subtending SDN's tandem switch, thereby unjustly and unreasonably discriminating against NVC and access stimulation traffic in violation of 47 U.S.C. § 202(a). Third, Section 5.1 of SDN's Revised Tariff describes a "Direct-Trunked Transport" service that SDN is not providing and the Revised Tariff includes no rates for that service, thereby violating Section 203(a) of the Communications Act. For the three reasons listed above, the Commission should reject SDN's Revised Tariff as *prima facie* unlawful.

Even if the Commission does not immediately declare the Revised Tariff unlawful, it still should not let SDN's Revised Tariff take effect without first suspending it. SDN's Revised Tariff should be suspended in light of the Commission's ongoing rulemaking proceeding in WC Docket No. 18-155, wherein the Commission is considering the very question of whether CLECs should be required to offer IXCs direct connections and, if so, under what terms and conditions. SDN's Revised Tariff also presents other major concerns and questions that, at the very least, require the Commission to suspend and investigate the tariff, including: (1) the manner in which SDN defined and labeled its rate elements, (2) the way in which it calculated the applicable

CLEC benchmark rate, and (3) the Revised Tariff's projected traffic volumes (which, according to JVCTC's and NVC's records, appear to be significantly underestimated).

BACKGROUND

JVCTC is an ILEC and a founding member of SDN. Like the other members of SDN, JVCTC has consistently used SDN's CEA services to exchange TDM access traffic with long-distance carriers. Specifically, all TDM traffic is exchanged at SDN's facilities in Sioux Falls, South Dakota, where SDN provides tandem switching before passing the traffic to JVCTC. JVCTC then transports that traffic to its local exchange for switching and ultimate termination to the called party. In exchange for transporting, switching, and terminating the call, JVCTC is entitled by Commission rules to assess its tariffed transport charges on the long-distance carrier who sent the traffic to JVCTC's customer. Each of the other members of SDN operate in an identical manner (*i.e.*, they accept the traffic at SDN's tandem switch in Sioux Falls and then transport the traffic to their respective exchanges for termination).

When JVCTC formed its CLEC-subsidary, NVC, in 1999, it requested and was granted permission by SDN to also use SDN's CEA services to exchange traffic with long-distance carriers. Specifically, NVC requested that "SDN services be provided under the same terms, conditions and prices that apply to James Valley and other SDN owners."³ NVC's request was granted at the September 28, 1999 SDN Board Meeting, and since that time NVC has consistently been responsible for transporting its access traffic from Sioux Falls to its exchange for termination in and around Aberdeen and Redfield, South Dakota.

³ Letter from Doug Eidahl, Chief Exec. Officer, NVC, to Richard Scott, Chief Exec. Officer, SDN (Sept. 8, 1999), attached as **Exhibit 1**.

NVC is a CLEC that engages in access stimulation as defined by the Commission's rules. Specifically, NVC provides service to a few high-volume conference call providers whose traffic terminates in NVC's South Dakota exchanges. After the FCC's 2011 *Connect America Fund Order*, NVC carefully examined the Commission's new rules and, relying on the clarity and certainty of those rules, determined that it would significantly reduce its tariffed access rates in order to continue serving its high-volume customers. NVC's decision to remain in the access stimulation market was a reasonable business decision that has permitted it to help close the digital divide by making investments in and providing broadband Internet to its South Dakota service territories.

Although NVC's tariffed rates fully complied – and still comply – with the *Connect America Fund Order*, certain carriers have from time to time engaged in self-help withholdings in order to try to exert economic pressure on NVC in the hopes of obtaining even lower rates. One such carrier who has historically engaged in this self-help withholding is AT&T. Indeed, three years ago, SDN's decision to aid AT&T in its withholding efforts resulted in litigation between NVC and AT&T, as well as between NVC and SDN. Those cases were settled just earlier this year and NVC hoped – and reasonably expected – that the resolution of those cases would put these issues to rest. Instead, almost immediately, AT&T convinced the Commission to open WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, whereby the Commission issued a Notice of Proposed Rulemaking that is sprinkled with rhetoric, but devoid of facts, data, or evidence.⁴ That docket is on-going and, thus far, only the CLECs have come forward with facts, data, evidence, and

⁴ See generally *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, 2018 WL 2761596 (June 5, 2018) (“Access Stimulation NPRM”).

analysis to justify their positions. The other carries, including AT&T and SDN, however, have not, choosing instead to continue to rely on name calling and fear mongering.

Now, SDN is attempting to circumvent the rulemaking process entirely by seeking to impose its preferred outcome directly on NVC through its bi-annual tariff filing. Specifically, on September 17, 2018, SDN submitted to the Commission a revised tariff that, under Section 5.1, purports to provide IXC's with the choice of obtaining "Direct-Trunked Transport," but only for traffic routed to a "Routing Exchange Carrier [] engaged in access stimulation as defined by the FCC."

STANDARD

Pursuant to Commission precedent, a tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation, or order.⁵ Even if a tariff does not clearly conflict with the Communications Act or a Commission rule, it is subject to suspension and investigation if it raises substantial questions of lawfulness.⁶

DISCUSSION

I. SDN'S REVISED TARIFF SHOULD BE REJECTED, OR AT THE LEAST SUSPENDED, BECAUSE OF THE LANGUAGE ADDED IN SECTION 5.1

A. The Language Purporting to Permit Direct-Trunked Transport for Access Stimulation Traffic Violates Section 251(a) of the Act

SDN's Revised Tariff purports to permit long-distance carriers to obtain direct connections "when the Routing Exchange Carrier is engaged in access stimulation as defined by

⁵ See, e.g., *Am. Broad. Cos. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); see also *In re MCI Telecomms. Corp. v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983).

⁶ *In re AT&T Commc'ns., Inc. (Transmittal No. 148)*, Memorandum Opinion and Order, 101 F.C.C.2d 144 (1985); *In re ITT World Commc'ns., Inc. (Transmittal No. 2191)*, Memorandum Opinion and Order, 73 F.C.C.2d 709, 716 n.5 (1979).

the FCC.” Congress has vested the CLECs with the right to choose whether to engage in direct or indirect interconnection. As such, to the extent that SDN’s tariff is read to strip an access-stimulating CLEC of its Congressionally-provided choice, and give that power to the long-distance carrier, it is unlawful.

The Commission has *never* declared that long-distance carriers have a right to demand direct connections from CLECs, instead choosing to consistently honor the plain text of 47 U.S.C. § 251(a), which gives CLECs the choice of whether to interconnect with IXCs directly *or* indirectly. Indeed, Congress, the Commission, and federal courts have all previously recognized that CLECs, unlike ILECs, are not required to offer a tariffed direct connection. Section 251(a) clearly allows CLECs to “interconnect directly *or indirectly* with the facilities and equipment of other telecommunications carriers.”⁷

In the *Local Competition Order*, the Commission examined the text and legislative history of the Communications Act and concluded that Congress did not intend to impose direct interconnection obligations on CLECs because the “clear language” of Section 251(a) permitted CLECs to choose “indirect connection” if they so desired.⁸ As the Commission acknowledged in that proceeding: “indirect connection ... satisfies a telecommunications carrier’s duty to interconnect pursuant to section 251(a) ... [and] ***direct interconnection ... is not required under section 251(a)***” for CLECs.⁹ Moreover, the Court of Appeals for the Ninth Circuit recently affirmed the Commission’s holding via its own examination of Section 251(a) in *North County Communications Corporation of Arizona v. Qwest Corp.*, wherein the court recognized that

⁷ 47 U.S.C. § 251(a).

⁸ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C. Rcd. 15499, 15991, ¶ 997 (1996) (“*Local Competition Order*”).

⁹ *Id.*

“CLECs are governed by §§ 251(a) and (b), which do not *require* them to interconnect directly.”¹⁰

In short, then, the Commission and the courts have recognized that the “clear language” of Section 251(a) left the decision of whether to have a direct or indirect interconnection in the hands of each individual CLEC. SDN’s tariff language, however, conflicts with the Communications Act and Commission precedent insofar as it could be read to allow IXC’s to demand direct connections from CLEC’s just because they are engaging in access stimulation.¹¹ SDN cannot rewrite the Communications Act via a simple revision to one section of its tariff; its Revised Tariff, therefore, should be rejected because it is *prima facie* unlawful.

B. By Singling Out Access Stimulation Traffic for Direct Connections, SDN’s Revised Tariff Incorporates Unjust and Unreasonable Discrimination

It is important to understand that this is not SDN’s first effort to use its federal tariff to interfere with NVC’s right to provide tariffed transport charges. As noted above, NVC has consistently provided transport on traffic from Sioux Falls to Groton, South Dakota, and has consistently assessed a tariffed transport charge on long-distance carriers that utilize SDN’s centralized equal access service. Although NVC’s tariffed rates fully complied – and still comply – with the *Connect America Fund Order*, certain carriers have from time to time engaged in self-help withholding in order to try to exert economic pressure on NVC in the hopes of obtaining even lower rates. Indeed, in 2013 AT&T began withholding payment from NVC,

¹⁰ 824 F.3d 830, 841 (9th Cir. 2016).

¹¹ The language in Section 5.1 of SDN’s Revised Tariff seems to be in conflict with Section 2.4.8(B) and Section 5.4(A), which recognize that the Routing Exchange Carrier provides the transport between the tandem switch and the end office. (NVC is a Routing Exchange Carrier listed in Section 9 of SDN’s tariff.) In an email exchange, SDN’s counsel has disclaimed any intention of overriding NVC’s right to choose between direct and indirect interconnection. However, SDN has taken no action to withdraw or clarify the inconsistent language in its tariff filing.

demanding that NVC transport its traffic from Sioux Falls at rates below those in NVC's federal tariff. Despite its long-standing policy that direct connects were not available to carriers subtending the SDN tandem switch, SDN suddenly flip-flopped in early November 2013, taking AT&T's side and demanding that NVC (and only NVC) agree to AT&T's demands.

When NVC did not immediately capitulate to SDN's newly-announced policy, SDN attempted to impose its will on NVC via a tariff filing. On March 5, 2014, SDN filed a proposed amendment to its federal tariff with the FCC.¹² That amendment would have added a new service to SDN's tariff entitled "Terminating Direct Trunk Transport," which, if implemented, would have allowed long-distance carriers, like AT&T, to request that SDN provide direct trunks for traffic to a carrier "engaged in Access Stimulation."¹³ At the time, NVC was the only member company of SDN engaged in access stimulation. SDN did not advise NVC of its intent to file the amendment, nor did it seek NVC's consent prior to filing the revision, even though NVC was the only SDN member or affiliate that would have been adversely affected by it.

As NVC would later learn, on or about March 18, 2014, members of the Commission's Wireline Competition Bureau called SDN and encouraged SDN to withdraw the proposed amendment.¹⁴ The FCC staff believed the tariff amendment was discriminatory, improper, and impermissibly omitted any prices for this new "Terminating Direct Trunk Transport" service.¹⁵ SDN withdrew the tariff and abandoned any effort to file a new or revised tariff permitting it to

¹² See Letter and Attached Tariff Material from Marlene Bennett, Consultant, Consortia Consulting, to Marlene H. Dortch, Secretary, FCC (Mar. 5, 2014), attached as **Exhibit 2**.

¹³ *Id.*

¹⁴ See Email from Bill Heaston, Vice President, SDN to Mark Shlanta, Chief Exec. Officer, SDN (Mar. 18, 2014), attached as **Exhibit 3** ("We met telephonically with FCC staff regarding our tariff filing.... Basically the staff had two concerns – tariff reads discriminatorily and there is no price associated with DTT in the tariff.... The staff continued to express concerns.... We think our only reasonable option at this point is to withdraw the tariff.").

¹⁵ See *id.*

provide Direct Trunk Transport or its equivalent, implicitly acknowledging in the process that it understood its tariff amendment unlawfully discriminated against NVC and its lawful engagement in access stimulation.

SDN's latest Revised Tariff filing attempts to reintroduce the same type of discrimination that the Commission's staff previously found problematic. As the Commission is well aware, the Communications Act prohibits unjust and unreasonable discrimination.¹⁶ It would be unjust and unreasonable for SDN to unilaterally impose direct connection obligations on NVC via its federal tariff, particularly while denying IXCs the ability to obtain direct connections to the other interconnected LECs subtending SDN's tandem switch. This is particularly true where the Commission is currently engaged in a rulemaking process to evaluate the legality of whether direct connections should be permitted for access stimulation traffic and, if so, under what conditions.¹⁷

Unless and until the Commission adopts new rules that are found to not violate the Communications Act, SDN has no basis for imposing discriminatory treatment on NVC. Of course, if SDN wants to authorize direct connections to all members and affiliates, that may change the equation. But, for SDN to do anything less violates the Communications Act, Commission rules, and Commission precedent, all of which SDN is uniquely aware of given its earlier attempts to engage in similar discriminatory practices to the detriment of NVC.

Furthermore, SDN's discriminatory approach makes no sense in light of the Commission's recent confirmation in the *Aureon Tariff Order*, wherein the agency concluded

¹⁶ 47 U.S.C. § 202(a).

¹⁷ See generally *Access Stimulation* NPRM, 2018 WL 2761596.

that carrying access stimulation traffic is consistent with the mandate of a CEA provider and that having higher traffic volumes in fact works to reduce the CEA provider's cost-based rate:

AT&T's allegation that CEA networks were intended to carry low traffic volumes is of little weight since, as a Section 61.38 carrier, Aureon's calculated rates should decrease to reflect the increase in the volume of traffic.... Regardless of how access stimulation traffic compares in character and volume to the types of traffic that were originally anticipated for CEA service, we find that Aureon has acted lawfully and consistently with its Tariff in transporting access stimulation traffic.¹⁸

The language added by SDN to Section 5.1 of its Revised Tariff constitutes unjust and unreasonable discrimination in light of the Commission's existing rules and prior statements, all of which lead to the conclusion that CEA providers have no lawful basis to discriminate against access stimulation traffic. Accordingly, the Commission should reject SDN's Revised Tariff as unlawfully discriminatory.

C. SDN is Not Capable of Providing "Direct-Trunked Transport" for NVC's Traffic, Meaning its Revised Tariff Describes a Service that SDN Does Not Offer

Based on SDN's current network configuration, SDN is not capable of providing "Direct-Trunked Transport" (*i.e.*, a "direct connection") for traffic bound to NVC. A direct connection between an IXC and a CLEC would mean that the traffic is not switched by a tandem switch.¹⁹ SDN's network is configured, however, to provide centralized equal access service, whereby it uses its tandem switch to serve an aggregation and distribution function. As a result, all of the traffic that SDN hands off to NVC is switched by SDN's tandem switch. Thus, all of

¹⁸ *In re AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, Memorandum Opinion and Order, 32 F.C.C. Rcd. 9677, ¶ 19 (2017).

¹⁹ According to *Newtons Telecom Dictionary*, an "indirect connection" is the "interconnection of two carriers' network, which are not directly connected to each other, via a third carrier's network, to which the two carriers are each directly connected." *Indirect Connection*, NEWTONS TELECOM DICTIONARY (31st ed. 2018). This definition, therefore, leads to the inescapable conclusion that a "direct connection" would be one in which two carriers are "directly connected," rather than "connected to each other, via a third carrier's network."

the traffic SDN delivers to NVC is tandem-switched traffic, making it part of SDN's regulated CEA service and *not* a "direct connection." The result is that SDN's inclusion of a "Direct-Trunked Transport" service in its Revised Tariff describes a type of service that it does not actually offer or provide.

A direct connection for traffic bound for NVC would – by definition – be negotiated directly between NVC and the interexchange carrier.²⁰ SDN would have no role to play in establishing the terms and conditions under which NVC would provide a direct connection. To date, NVC has worked with several carriers to facilitate IP-interconnections for their traffic, and while other carriers, like Inteliquent and AT&T, have explored the potential for establishing direct connections to NVC, agreements were not ultimately reached between NVC and these carriers, as they each were unable or unwilling to obtain or install the facilities necessary to complete the direct connections. In any event, because SDN does not provide direct connections, there is no reason for SDN's Revised Tariff to even address the subject.

Even assuming *arguendo* that SDN was capable of providing a direct connection service, as a dominant carrier, SDN's Revised Tariff would still be unlawful. As a dominant provider, SDN is required to set forth the "charges" and the "classifications, practices, and regulations affecting such charges" in its tariff.²¹ SDN's Revised Tariff provides no information regarding the direct connection service it contends will be made available for traffic terminating to NVC. For this reason, SDN's Revised Tariff violates Sections 203(a) of the Act and should be rejected or suspended.

²⁰ See *Local Competition Order*, 11 F.C.C. Rcd. at 16171, ¶ 1408 (recognizing that "competitive telecommunications carriers that have the obligation to interconnect with requesting carriers may choose, based upon their own characteristics, whether to allow direct or indirect interconnection"); see also Section I, *supra*.

²¹ 47 U.S.C. § 203(a).

D. By Adding Section 5.1 to its Revised Tariff, SDN is Circumventing the Open Rulemaking Docket and Usurping the Commission’s Authority to Set Policy Based on a Fully-Developed Record

The effect of SDN’s purported offering of “direct connections” to IXC’s also appears to be an effort by SDN to circumvent the FCC’s on-going rulemaking proceeding in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, wherein the Commission is considering the very question of whether CLECs should be required to offer IXC’s direct connections and, if so, under what terms and conditions.²² That rulemaking proceeding has only just begun and, as NVC has previously articulated in comments regarding those proceedings,²³ still requires extensive data production, review, and analysis before it progresses any further.

To date, SDN has not provided any data to support its preferred policy positions and to facilitate the Commission’s efforts to engage in evidence-based decision making in that docket. Instead, SDN apparently seeks to use its tariff filing to circumvent the evidence-based rulemaking process. But, by attempting to obtain its desired policy outcome through a tariff filing, it is placing the Commission in an untenable position of deciding an important policy issue without appropriate evidence, support, or input from other parties. This under-the-radar process implemented by SDN’s Revised Tariff submission is woefully inadequate. The formal process that the Commission has commenced in WC Docket No. 18-155, which is intended to comply with the Administrative Procedures Act, is the only process through which the CLEC direct connection issue should be resolved. Accordingly, the Commission should reject SDN’s

²² See *Access Stimulation NPRM*, 2018 WL 2761596, at *4, ¶ 13.

²³ See generally Comments of Competitive Local Exchange Carriers, at 42-50, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 (June 20, 2018).

Revised Tariff, or, at a minimum, suspend it and launch a detailed investigation that is on par with the Commission’s recently completed Aureon tariff investigation, as only these actions will enable the Commission to reach a well-reasoned, evidence-based decision.

II. SDN’S USE OF NECA RATES TO CALCULATE ITS CLEC BENCHMARK RATE IS IN DIRECT DEFIANCE OF THE COMMISSION’S CONCLUSIONS IN THE *AUREON* TARIFF INVESTIGATION

In order to conclude that its purported cost-based rate is lower than the CLEC benchmark rate that the Commission has otherwise determined would apply, SDN asserts that its total benchmark rate is comprised of two services: (1) tandem switching service and (2) equal access service.²⁴ While SDN benchmarks its tandem switching service rate to CenturyLink’s rate (just as the Commission has required INS to do in the *Aureon Rate Order*²⁵), the remainder of its benchmark analysis defies Commission precedent. Specifically, SDN’s inclusion of a rate of \$.01195 for “equal access service”²⁶ is a transparent and erroneous effort to inflate its benchmark rate above the rate charged by CenturyLink.

First, the Commission has never previously recognized “equal access service” as being properly included in a CLEC benchmark rate. The FCC has defined the services that a CLEC can typically include in its composite rate in part 61.26 of its rules,²⁷ and that rule provides that a CLEC may typically bill for the following elements: “[c]arrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport

²⁴ See generally South Dakota Network, LLC Tariff F.C.C. No. 1, Centralized Equal Access Service, 2018 Annual Access Tariff Filing, Description and Justification (September 17, 2018) (“SDN 2018 Revised Tariff Description and Justification”).

²⁵ See *In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, 2018 WL 3641034, at *5, ¶ 18 (2018) (“*Aureon Rate Order*”).

²⁶ See SDN 2018 Revised Tariff Description and Justification at 3.

²⁷ 47 C.F.R. § 61.26.

facility (per mile); tandem switching.”²⁸ Instead of complying with this rule, SDN has simply invented a new rate element out of whole cloth. Moreover, SDN does not even attempt to explain what technical features are included in its “equal access service” nor how the technical features within its “equal access service” are somehow greater or different than the services that a carrier would customarily receive as part of SDN’s traditional tandem switching service. SDN’s failure to explain and justify the invention of a new rate element warrants investigation, at the very least.

Second, even if SDN’s new rate element is somehow appropriate because of its unique role as a CEA provider, SDN has still ignored Commission precedent by attempting to benchmark this rate to NECA, rather than CenturyLink. In the *Aureon Rate Order*, the FCC expressly rejected Aureon’s claim that NECA, rather than CenturyLink, was the appropriate CLEC for it to benchmark to.²⁹ The same result naturally follows in South Dakota, where CenturyLink is the largest ILEC in the state and the carrier that would be most likely to provide tandem switching service in the absence of SDN. Accordingly, SDN’s effort to inflate its benchmark by relying on NECA’s rates, rather than CenturyLink’s rates, must be rejected in order to avoid creating inconsistent and irrational precedent.

Third, even if SDN appropriately created a new rate element *and* appropriately benchmarked that rate element based on NECA’s rates, the CLEC benchmark calculation would still warrant investigation because SDN has not demonstrated that it has appropriately calculated the rate that should apply for this service. SDN describes the creation of its newly-invented rate element as follows:

²⁸ *Id.* § 61.26(a)(3)(i).

²⁹ *See Aureon Rate Order*, ¶¶ 18, 31.

SDN determined the equal access benchmark based on the weighted average differential between premium and non-premium originating local switching rates in the NECA tariff billed by the routing exchange carriers utilizing the tandem. SDN weighted the equal access benchmark by multiplying the respective routing exchange carriers' tariff rate by the originating interstate access minutes routed through SDN's tandem from January through July 2018.³⁰

This approach has several flaws. As an initial matter, SDN fails to explain why the difference between “premium and non-premium originating local switching rates” is the functional equivalent of the “equal access service” that it seeks to include within its benchmark. Moreover, based on SDN's description of the rate element, the centralized equal access service relates to “*originating* local switching.”³¹ SDN offers no explanation for how its centralized equal access would apply to the *termination* of long-distance traffic. Thus, SDN's CLEC benchmark calculation appears on its face to be inflated because it applies an originating-only rate element to *all* of its traffic, including terminating traffic. Given that SDN switches a high volume of terminating traffic bound for NVC, it appears that SDN's “combined unified benchmark rate of \$.014203”³² may be grossly inflated.

In sum, SDN has failed to establish that it has correctly calculated the applicable CLEC benchmark rate. Indeed, at least on the current record, the applicable CLEC benchmark rate cannot possibly be higher than the \$0.002288 that CenturyLink charges for its tandem switching service. In light of this, SDN's cost-based rate of \$0.004871 likely violates the Commission's directive requiring the CEA provider's rate to be “the lower of the competitive LEC benchmark rate or the corrected cost-based rate.”³³ Therefore, the Commission should reject SDN's Revised Tariff filing for directly contradicting Commission precedent or, at the very least, should suspend

³⁰ SDN 2018 Revised Tariff Description and Justification at 3.

³¹ *See also*

³² *See id.*

³³ *Aureon Rate Order*, ¶ 2.

and investigate SDN's rate to determine whether SDN has appropriately calculated the applicable CLEC benchmark rate.

III. SDN'S PROJECTED TRAFFIC VOLUMES WARRANT VERY CAREFUL SCRUTINY

JVCTC and NVC also believe that the Commission should suspend and investigate SDN's cost-based rate calculation in order to determine if SDN has improperly adjusted its projected traffic volumes in order to produce a higher per-minute rate. In its current rate calculation, SDN projects that it will perform tandem switching for 130,770,574 minutes of traffic per year.³⁴ As discussed below, this projection, combined with recent Commission precedent, raises substantial questions about whether SDN has included appropriate traffic volumes in its rate calculations.

A review of prior SDN tariff filings shows that this estimate reflects a large, unexplained decline from its previously reported projected traffic volumes:

Projection for 7/1/14 – 6/30/15: 370,268,443³⁵

Projection for 7/1/16 – 6/30/17: 201,300,000³⁶

Projection for 7/1/18 – 6/30/19: 130,770,574

JVCTC and NVC acknowledge that at least some portion of this reduction may be attributed to the fact that certain carriers exchange traffic with NVC in IP format, which is not transported through SDN's tandem switch. Because the traffic is not switched by SDN's tandem switch, the

³⁴ See SDN 2018 Revised Tariff Description and Justification at 2.

³⁵ See generally South Dakota Network, LLC Tariff F.C.C. No. 1, Centralized Equal Access Service, 2014 Annual Access Tariff Filing, Description and Justification (June 24, 2014) ("SDN 2014 Revised Tariff Description and Justification").

³⁶ See generally South Dakota Network, LLC Tariff F.C.C. No. 1, Centralized Equal Access Service, 2016 Annual Access Tariff Filing, Description and Justification (June 24, 2016) ("SDN 2016 Revised Tariff Description and Justification").

demand for SDN's centralized equal access services may have declined. However, this fact alone does not account for SDN's **62 percent reduction in traffic projections** over the course of the past four years. And, as explained more fully below, SDN's traffic projections do not appear to accurately reflect the traffic volumes that SDN continues to switch at its tandem switch.

In the past year, SDN has **switched** 495,684,084 minutes of traffic bound for NVC alone (this is exclusive of the IP-traffic that is delivered to NVC directly). Thus, SDN's projections do not even include all of the traffic that it has switched for termination to NVC. Rather, SDN continues to switch nearly 4-times as much traffic to NVC as it has it includes in its Revised Tariff rate calculation. And, to avoid any doubt, NVC reasonably anticipates that, during SDN's projection period, SDN will deliver to NVC alone traffic volumes that greatly exceed the 130 million minutes SDN has used to develop its projected rate.

JVCTC and NVC believe that the reason for this anomaly is SDN's decision to enter into off-tariff contracts with certain long-distance carriers, whereby those carriers continue to receive tandem switching services from SDN but do not pay the same tarified rate that other IXC's must pay. By stripping out these carriers' traffic volumes, SDN is able to prop up its tarified rate on the backs of other IXC's who continue to use the CEA provider's tarified services. JVCTC and NVC believe that this practice violates SDN's obligations as a dominant carrier – whose services **must** be tarified – and that SDN's engagement in this practice is itself unjust and unreasonably discriminatory.³⁷ JVCTC and NVC also believe SDN's conduct is a significant contributing factor to the false impression that the rates for access stimulation traffic are excessive. For this reason, JVCTC and NVC ask the Commission to gather the evidence necessary to fully investigate whether SDN's tarified rates comply with the Commission's precedent.

³⁷ See 47 U.S.C. § 203(c); see also 47 U.S.C. § 202(a).

While JVCTC and NVC believe an investigation is warranted, they also believe it is necessary and appropriate to acknowledge that the Commission's recent decision determining that CEA providers are a never-before-seen combination of "dominant carrier" and "CLEC" raises important policy questions that the Commission has not yet resolved.³⁸ Chief among those policy questions is the extent to which a CEA provider can provide tandem switching to some carriers pursuant to contract, while forcing other carriers to continue to pay a rate that, at least in theory, may be based on cost. It is time for the Commission to fully articulate its policy on this issue so that all carriers, CLECs, IXC's, and CEAs alike, can have certainty and make informed business decisions.

At present, however, because the Commission has not provided adequate guidance regarding these critical policy questions, it is impossible to conclude that SDN's proposed cost-based rate is valid. For this reason, the Commission should suspend and investigate SDN's Revised Tariff and determine whether SDN has included accurate traffic volumes in its tariff.

CONCLUSION

For the reasons set forth above, JVCTC and NVC respectfully urge the Commission to reject SDN's Revised Tariff or, at the very least, suspend and investigate SDN's Revised Tariff. As explained above, Section 5.1 of SDN's Revised Tariff raises many concerns upon which its lawfulness should be questioned, including its clear rejection of NVC's right to interconnect directly or indirectly with other carriers, its unjust and unreasonable discrimination against access stimulation traffic, and its inclusion of a "Direct-Trunked Transport" service that SDN is not even capable of providing. Moreover, SDN's Revised Tariff also raises many questions that require closer inspection and review, including its labeling of the necessary rate elements,

³⁸ See generally, e.g., *Aureon Rate Order*.

questionable calculation of the applicable CLEC benchmark rate, and significantly underestimated projected traffic volumes. The fact that many of these issues are also being decided in the Commission's much more formal access stimulation rulemaking proceedings only further support JVCTC's and NVC's request. Accordingly, its Petition should be granted, and SDN's Revised Tariff should be rejected or suspended and investigated.

Dated: September 24, 2018

Respectfully submitted,

/s/ G. David Carter
INNOVISTA LAW PLLC
G. David Carter
John C. Nelson, Jr.
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Suite 508
Washington, DC 20006
(202) 869-1502
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CERTIFICATE OF SERVICE

I certify that on September 24, 2018, I caused the foregoing Petition to be served on the following parties by courier service:

Ben Dickens
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L St., N.W.
Suite 300
Washington, D.C. 20037

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Best Copy and Printing, Inc.
Copy Contractor
Federal Communications Commission
Portals II
445 12th St., S.W.; Room CY-B402
Washington, D.C. 20554

Kris Monteith
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Pamela Arluk
Chief, Pricing Policy Division
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Dated: September 24, 2018

/s/ G. David Carter
G. David Carter

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**SOUTH DAKOTA NETWORK, LLC
Tariff F.C.C. No. 1, Transmittal No. 13**

**Transmittal No. 13
September 17, 2018 Access Charge
Tariff Filings**

**DECLARATION OF JAMES GROFT IN SUPPORT OF PETITION OF
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY AND
NORTHERN VALLEY COMMUNICATIONS, LLC TO REJECT OR TO
SUSPEND AND INVESTIGATE SOUTH DAKOTA NETWORKS LLC'S TARIFF**

I, James Groft, do depose under oath and state as follows:

1. I am the Chief Executive Officer of James Valley Cooperative Telephone Company ("JVCTC") and Northern Valley Communications, LLC ("NVC"). I offer this declaration based on my personal knowledge.
2. JVCTC is an incumbent local exchange carrier ("ILEC") and a founding member of SDN. NVC is a competitive local exchange carrier ("CLEC") and a subsidiary of JVCTC and, like JVCTC, is governed by SDN's Operating Agreement and allowed to use SDN's CEA services to exchange traffic with long-distance carriers. NVC was explicitly granted these rights pursuant to SDN's September 28, 1999 Board Meeting.
3. Like the other members of SDN, both JVCTC and NVC have consistently used SDN's centralized equal access ("CEA") services to exchange TDM access traffic with long-distance carriers at SDN's facilities in Sioux Falls, South Dakota, whereat SDN provides tandem switching service before passing the traffic to the SDN member company, including JVCTC and NVC. JVCTC and NVC thereafter transport the traffic to their local exchanges for switching and ultimate termination to the called party.

4. Like the other members of SDN, in exchange for transporting, switching, and terminating calls, JVCTC and NVC are entitled under South Dakota Public Utilities Commission (“SDPUC”) and Commission rules to assess tariffed transport charges on the long-distance carrier that sends the traffic to JVCTC’s and NVC’s customers.

5. Accordingly, NVC has consistently provided transport on traffic from Sioux Falls to Groton, South Dakota, and has consistently assessed a tariffed transport charge on long-distance carriers that use SDN’s CEA service.

6. In November 2005, NVC began serving high volume conference call companies, a practice that is otherwise known as access stimulation. After the FCC’s 2011 *Connect America Fund Order*, NVC carefully examined the Commission’s new rules and, relying on the clarity and certainty of those rules, determined that it would significantly reduce its tariffed access rates in order to continue serving its high-volume customers. NVC’s decision to remain in the access stimulation market was a reasonable business decision that has permitted it to help close the digital divide by making investments in and providing broadband Internet to its South Dakota service territories.

7. Since its adoption in 2011, NVC has always set its tariffed access rates in accordance with the Commission’s *Connect America Fund Order*.

8. Despite fully complying with the *Connect America Fund Order*, certain carriers have engaged in self-help withholding to NVC’s detriment, refusing to pay a portion and/or all of NVC’s tariffed access charges in the hopes of obtaining even lower rates from NVC.

9. One of the largest carriers to engage in self-help withholding against NVC is AT&T Corp. (“AT&T”), which periodically since January 2008 has refused to pay NVC’s tariffed access charges. AT&T most recently refused to pay NVC’s tariffed access charges beginning in

March of 2013, at which time it also began demanding that NVC either bypass SDN's tandem or transport AT&T's traffic at rates below those in NVC's federal tariff.

10. In early November 2013, SDN's CEO, Mark Shlanta, began demanding that NVC agree to AT&T's demand to bypass SDN's tandem or to otherwise significantly reduce the transport charges NVC assessed on AT&T. Mr. Shlanta admitted to NVC that the reason for this sudden change was because SDN sought to obtain other business from AT&T, namely a contract to provide backhaul services from AT&T to transport telecommunications traffic from various AT&T cell phone towers in South Dakota and surrounding states.

11. Because NVC did not give into AT&T's demands, on March 5, 2014, SDN filed a proposed amendment to its federal tariff, adding a new "Terminating Direct Trunk Transport" service that would have allowed long-distance carriers to request that SDN provide transport service to carriers engaged in access stimulation. At the time, NVC was the only SDN member company engaged in access stimulation, and SDN did not advise NVC of its intent to file the amendment.

12. SDN ultimately withdrew this amendment after FCC staff advised SDN that it appeared to unlawfully discriminate against access stimulation traffic and because the tariff included no price for this service.

13. Ultimately, NVC filed suit against AT&T in the United States District Court for the District of South Dakota and later filed suit against SDN in the Fifth Judicial Circuit of South Dakota.

14. NVC settled its litigation with AT&T and SDN earlier this year. NVC hoped and reasonably expected that SDN would no longer attempt to interfere with NVC's right to provide tariffed transport charges.

15. SDN's inclusion of the language in Section 5.1 of its revised tariff is inconsistent with NVC's expectation because it attempts to empower long-distance carriers to choose a "direct connection" service, even though the Communications Act and Commission policy leave that choice to CLECs.

16. Like its March 2014 effort to tariff a transport service for access stimulation traffic, SDN's most recent effort to address transport services for access stimulation traffic is flawed because it: (1) discriminates against access stimulation traffic; and (2) attempts to include a service in SDN's tariff without providing the corresponding rate, terms, and conditions for the service.

17. In addition, it is important to note that SDN is not capable of actually providing Direct Trunked Transport for access stimulation traffic terminating to NVC's exchange because SDN's CEA network is configured to only provide centralized equal access service, whereby it uses its tandem switch to aggregate and hand off traffic to its member CLECs at its tandem switch. Moreover, SDN is not capable of providing Direct Trunked Transport because such connections, by definition, are to be negotiated directly between a CLEC and an IXC, meaning CEA providers like SDN have no role to play in the provision of this service or in establishing the terms and conditions upon which the service is provided.

18. To date, NVC has worked with several carriers to facilitate IP-interconnections for their traffic (meaning the traffic is not transported through SDN's tandem switch), and while other carriers, like AT&T and Inteliquent, have explored these options with NVC, agreements were not ultimately reached between NVC and these carriers, as they each were unable and/or unwilling to obtain or install the facilities necessary to complete the direct connections.

19. While AT&T has not withheld payment of NVC's tariffed access charges since it settled its litigation with NVC, another interexchange carrier, Inteliquent, Inc. ("Inteliquent"), began withholding payment shortly after the Commission released the Notice of Proposed Rulemaking in Docket No. 18-155. Upon information and belief, SDN has an off-tariff contract with Inteliquent for which it provides tandem switching services at a rate below SDN's tariffed CEA rate.

20. Based on NVC's records, between July 2017 and June 2018, SDN switched approximately 495,684,084 minutes of traffic bound for NVC. A table detailing the month-by-month tabulation of the traffic delivered to NVC via SDN's tandem switch follows:

Bill Date	Usage Dates	Minutes
8/5/17	7/1/17-7/31/17	75,813,598
9/5/17	8/1/17-8/31/17	50,980,158
10/5/17	9/1/17-9/30/17	34,446,780
11/5/17	10/1/17-10/31/17	28,486,067
12/5/17	11/1/17-11/30/17	35,437,615
1/5/18	12/1/17-12/31/17	29,997,158
2/5/18	1/1/18-1/31/18	41,042,230
3/5/18	2/1/18-2/28/18	34,249,096
4/5/18	3/1/18-3/31/18	42,676,409
5/5/18	4/1/18-4/30/18	42,535,528
6/5/18	5/1/18-5/31/18	40,435,920
7/5/18	6/1/18-6/30/18	39,583,525
Total		495,684,084

I declare under the penalty of perjury that the foregoing is truthful and correct to the best of my knowledge, information, and belief.

Dated: September 24, 2018



James Groft

EXHIBIT 1

September 8, 1999

Richard Scott, CEO
South Dakota Network, Inc.
2900 W. 10th St.
Sioux Falls, SD 57104

RE: NVC's REQUEST FOR SDN SERVICES TO SUPPORT ITS CLEC OPERATIONS IN THE ABERDEEN USWC EXCHANGE

Dear Rich:

Northern Valley Communications (NVC) is close to turning up its telecommunications network in the Aberdeen USWC's exchange. NVC currently has dial tone and is testing its network services. We anticipate that NVC will be ready to provide a full line of services in early October. NVC will be remotely switching its Aberdeen traffic via James Valley's EWSD switch in Groton. Clint Hanson, Russ Claussen, Tony Madsen and myself have all had various conversations with you and your staff over the last year as NVC prepared to provide dial tone, long distance, LNP and other advanced services to our customers in Aberdeen.

Last week we conferenced with Chuck Fejfar and I agreed I would review the various services NVC needs from SDN with you and make a written request, which is the substance of this letter. First, thank you and your staff for your valuable input into our CLEC project. We have sought the advice of SDN's staff at several points during our planning. By this letter NVC requests the following SDN services:

1. LNP That SDN provide NVC with tandem switching capabilities to reach Illuminet and the NPAC database to provide LNP services in the Aberdeen exchange.
2. SS7 NVC previously received a letter of authority from SDN to allow NVC to use SDN's SS7 network.
3. Intrastate and Interstate Equal Access Like all other LECs in South Dakota, NVC intends to provide Intrastate and Interstate equal access to its customers. Therefore, NVC requests this CEA capability from SDN. SDN is uniquely suited to provide this service. Like other ILECs in the state, we believe our customers would be best served by SDN's equal access capabilities and having the ability to access IXCs interested in providing long distance in Aberdeen at SDN's Sioux Falls tandem.
4. Operator Services NVC requests to use SDN's operator services vendor for all NVC provided operator services.
5. 911 Services NVC requests that SDN route our 911 trunks consistent with the same methods that James Valley's trunks are routed today.

To the extent possible, NVC requests that the above SDN services be provided under the same terms, conditions and prices that apply to James Valley and other SDN owners, unless our CLEC status requires a different treatment. Please provide a written quote for the prices you would charge for the above services. Also, NVC is willing to sign a written contract with a reasonable term commitment. With our plan to launch services in early October and the time needed to set up these services, we would appreciate a response to our request as soon as possible.

If you have any questions please contact me. Larry Hettinger and Don Lee have been working with NVC on our long distance options and tariff issues. Thanks in advance for your consideration of the above request and we look forward to working with SDN.

Sincerely,

Doug Eidahl
CEO

Cc: Chuck Fejfar
Mark Shlanta
Clint Hanson
Dennis Hagny
Larry Hettinger
Don Lee

EXHIBIT 2



**This filing is made pursuant to
Section 204(a)(3) of the Communications Act
and becomes effective in 15 days.**

March 5, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: South Dakota Network, LLC
Centralized Equal Access Service
Revised Access Tariff Filing
FRN 0005-0974-07

Dear Ms. Dortch:

The accompanying tariff material issued by South Dakota Network, LLC ("SDN"), and bearing FCC No. 1, effective March 20, 2014, is sent to you electronically for filing in compliance with the requirements of the Communications Act of 1934, as amended.

The revised tariff allows for direct trunk transport for a customer terminating high volumes of access minutes to a Routing Exchange Carrier or other entity engaged in Access Stimulation, as defined by the FCC. The tariff filing consists of the revised tariff language and check sheets. In compliance with Section 61.14 of the Commission's Rules, the transmittal, FCC Form 159 and the statutory processing fee are being sent via the Commission's Electronic Tariff Filing System.

All correspondence and inquiries, including petitions against the filing, should be directed to Marlene Bennett at: Consortia Consulting, 2100 Highland Way, Suite V, Mitchell, South Dakota 57301, Phone 605.990.2918, Fax 866.372.5733, email mbennett@consortiaconsulting.com.

Sincerely,

/s/ Marlene Bennett

Marlene Bennett
Consultant for South Dakota Network, LLC

Attachments

South Dakota Network, LLC**TARIFF F.C.C. NO. 1
Seventh Revised Page 1
Cancels Sixth Revised Page 1****CENTRALIZED EQUAL ACCESS SERVICE****CHECK SHEET**

Title Page 1 and Pages 1 to 166, inclusive, of this tariff are effective as of the date shown. Revised pages as set forth below contain all changes from the original tariff which are in effect on the date hereof.

<u>Page</u>	<u>Revision #</u>	<u>Page</u>	<u>Revision #</u>	<u>Page</u>	<u>Revision #</u>
Title	Original	33	Original	67	2 nd *
1	7th*	34	Original	67.1	Original *
1.1	2nd*	35	Original	68	Original
2	Original	36	Original	69	Original
3	Original	37	Original	70	1st
4	1st	38	Original	71	1st
5	Original	39	Original	72	Original
6	Original	40	Original	73	Original
7	Original	41	Original	74	Original
8	Original	42	Original	75	Original
9	Original	43	Original	76	Original
10	1st	44	Original	77	1st
11	Original	45	Original	78	1 st
12	Original	46	Original	79	Original
13	Original	47	Original	80	1 st
14	Original	48	Original	81	1 st
15	Original	49	1st	82	Original
16	Original	50	1st	83	Original
17	Original	51	1st	84	Original
18	Original	52	Original	85	1st
19	Original	53	Original	86	Original
20	Original	54	Original	87	1st
21	Original	55	Original	88	Original
22	Original	56	Original	89	1st
23	Original	57	Original	90	1st
24	Original	58	Original	91	1st
25	Original	59	Original	92	Original
26	1st	60	Original	93	Original
27	1st	61	1st	94	Original
28	1st	62	Original	95	Original
29	Original	63	Original	96	1st
30	Original	64	Original	97	Original
31	Original	65	Original	98	Original
32	Original	66	Original	99	1st

*Indicates New This Issue

Issued: March 5, 2014
Effective: March 20, 2014

**By: Chief Executive Officer
2900 West 10th Street
Sioux Falls, South Dakota 57104**

South Dakota Network, LLC

TARIFF F.C.C. NO. 1
Second Revised Page 1.1
Cancels First Revised Page 1.1

CENTRALIZED EQUAL ACCESS SERVICE
CHECK SHEET – Cont'd

Title Page 1 and Pages 1 to 166, inclusive, of this tariff are effective as of the date shown. Revised pages as set forth below contain all changes from the original tariff which are in effect on the date hereof.

<u>Page</u>	<u>Revision #</u>	<u>Page</u>	<u>Revision #</u>	<u>Page</u>	<u>Revision #</u>
100	Original (M)	134	6th	163	Original
101	1st	135	Original	164	Original
102	Original	136	Original	165	Original
103	1st	137	1st	166	Original
104	1st	137.1	Original		
105	1st	137.2	Original		
106	1st	137.3	Original		
107	1st	137.4	Original		
108	1st	137.5	Original		
109	1st	138	Original		
110	1st	139	Original		
111	1st	140	Original		
112	Original	141	Original		
113	Original	142	Original		
114	1st	143	1st		
115	Original	144	Original		
116	Original	145	1st		
117	Original	146	1st		
118	Original	147	1st		
119	Original	148	Original		
120	Original	149	Original		
121	1st	150	Original		
122	Original	151	Original		
123	Original	152	Original		
124	Original	153	Original		
125	Original	154	Original		
126	Original	155	Original		
127	Original	156	Original		
128	1st	157	1st		
129	1st	158	Original		
130	1st	159	Original		
131	1st	160	Original		
132	Original	161	Original		
133	Original	162	Original		

*Indicates New This Issue

Issued: March 5, 2014

Effective: March 20, 2014

By: Chief Executive Officer
2900 West 10th Street
Sioux Falls, South Dakota 57104

South Dakota Network, LLC

TARIFF F.C.C. NO. 1
Second Revised Page 67
Cancels First Revised Page 67

CENTRALIZED EQUAL ACCESS SERVICE

5. Ordering Options for Switched Access Service

5.1 General

- (A) This section sets forth the regulations and other related charges for Access Orders for Access Service. These charges are in addition to other applicable charges as set forth in other sections of this Tariff.

An Access Order is an order, in a form or format acceptable to SDN and the customer, to provide the customer with Access Service, access related services, or to provide changes to existing services.

Transport is provided as tandem switched only. Direct-Trunked Transport as defined in Section 2.6 is not available to a Routing Exchange Carrier's end office since equal access is provided through the SDN centralized access tandem (Federal Communications Commission No. DA 90-1964), unless the conditions outlined in 5.1(B) following apply.

(N)
(N)

Unless covered under another separate contract or agreement (i.e. transiting traffic service agreement), all traffic delivered by an IC to the SDN access tandem will be considered access traffic and billed accordingly.

- (B) Terminating Direct Trunk Transport may be ordered by a customer terminating high volumes of access minutes to an end office served by a Routing Exchange Carrier or any other entity engaged in Access Stimulation (as defined by the FCC) if the following conditions are applicable:

(N)

1. The Routing Exchange Carrier or any other entity engaged in Access Stimulation has a interstate terminating to originating traffic ratio of at least 3:1 in a calendar month and the minutes are terminating to an end office within a single operating company number (OCN), or
2. The Routing Exchange Carrier or any other entity engaged in Access Stimulation has had more than a 100% growth in interstate terminating switched access minutes of use in a month compared to the same month in the preceding year for a single end office within an operating company number (OCN).

This exception allowing Direct Trunk Transport is only available for an end office within a single OCN for a Routing Exchange Carrier or any other entity engaged in Access Stimulation. Direct Trunk Transport is not available for an end office within an OCN for a Routing Exchange Carrier not engaged in Access Stimulation.

(N)

Certain material formerly found on this page now appears on Original Page 67.1.

Issued: March 5, 2014

Effective: March 20, 2014

By: Chief Executive Officer
2900 West 10th Street
Sioux Falls, South Dakota 57104

CENTRALIZED EQUAL ACCESS SERVICE

5. Ordering Options for Switched Access Service (Cont'd)

5.1.1 Ordering Conditions

Access Service may be ordered from SDN. Switched Access Service is provided in Feature Group D with Signaling System Number 7 (SS7) arrangements only between the customer's point of termination at SDN's central access tandem and a Routing Exchange Carrier's point of interconnection. Access Service between a customer's premises and the customer's point of termination at the SDN access tandem is solely the responsibility of the customer and must be provided by the customer or ordered from another carrier. Access Service from the Routing Exchange Carrier's point of interconnection to an end office must be ordered from a Routing Exchange Carrier or other Exchange Telephone Company. SDN will determine the Transport facilities to be provided between a Routing Exchange Carrier's point of interconnection and SDN's central access tandem on the basis of the capacity ordered.

(M)

The customer shall supply all the necessary information to provide service, (e.g., customer name, customer address, customer contact and facility interface, etc.)

Orders for Access Service between SDN's central access tandem and the Routing Exchange Carrier's point of interconnection shall be in BHMCs.

(M)

Issued: March 5, 2014

Effective: March 20, 2014

By: Chief Executive Officer
2900 West 10th Street
Sioux Falls, South Dakota 57104

EXHIBIT 3

From: Bill Heaston [Bill.Heaston@sdncommunications.com]
Sent: Tuesday, March 18, 2014 3:19 PM
To: Mark Shlanta; Nick Kortan
Cc: Darla Rogers; Ben Dickens; Mary J. Sisak; Marlene Bennett
Subject: DTT Tariff filing

We met telephonically with FCC staff regarding our tariff filing that is scheduled to go into effect on 3/20/14. Basically the staff had two concerns – tariff reads discriminatorily and there is no price associated with DTT in the tariff. The more we talked the more issues the staff seemed to raise. Several of us asked for clarification of their statements. We pointed out that the FCC already discriminates where traffic stimulation is concerned. The FCC recognizes off tariff contracts, but we seem to be half in tariff and half contract. The staff continued to express concerns and offered to help us redraft the tariff. We think our only reasonable option at this point is to withdraw the tariff. Marlene is working with the staff to accomplish that. Marlene will also open up discussions with staff to try to put pen to paper with a staff version of what would work. Marlene will try to accomplish that yet this week. Ben believes that once we do that and have a firmer grasp of what the staff's concerns are, we need to schedule a face to face with staff to work through any issues. Call if you have any questions or comments.

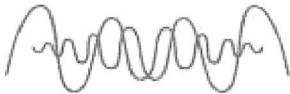
Bill Heaston | VP Legal & Regulatory

South Dakota Network, LLC (dba SDN Communications)

bill.heaston@sdncommunications.com

2900 W. 10th St. | Sioux Falls, SD 57104

(w) 605.978.3596 | (c) 605.351.1601 | (tf) 800.247.1442



SDN COMMUNICATIONS®
www.sdncommunications.com



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