

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

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IN THE MATTER OF THE APPLICATION  
OF NATIVE AMERICAN TELECOM, LLC  
FOR A CERTIFICATE OF AUTHORITY TO  
PROVIDE LOCAL EXCHANGE SERVICE  
WITHIN THE STUDY AREA OF  
MIDSTATE COMMUNICATIONS, INC.

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Docket No. TC11-087

**DIRECT TESTIMONY OF  
GENE DEJORDY  
ON BEHALF OF  
NATIVE AMERICAN TELECOM, LLC**

**February 7, 2014**

**Q: Please state your name and address.**

A: My name is Gene DeJordy. My primary business address is 36 Sasco Hill Terrace, Fairfield, Connecticut 06824.

**Q. On whose behalf are you testifying in this Docket?**

A. I am testifying on behalf of Native American Telecom, LLC ("NAT"), a company organized under Crow Creek Sioux tribal laws and majority owned by the Crow Creek Sioux Tribe.

**Q. What is your education, experience, and current responsibilities?**

A. I am an attorney and business owner with over 30 years experience in the telecommunications and technology industries. Specifically, I am the owner and principal attorney for Dakelyn Consulting, which provides legal, regulatory, and business development consulting for companies, organizations, and tribal governments. In this capacity, my clients include, among others, the Crow Creek Sioux Tribe, the Oglala Sioux Tribe Utilities Commission, and several telecommunications companies in the United States. I am the founder of Native American Telecom Enterprise, LLC, which assists Indian tribes with business, economic, and social development. I've established a non-profit organization,

Native Yes We Can Foundation, whose mission is to assist Native American communities on technological solutions for social and educational purposes.

My education includes a Juris Doctorate degree from The Catholic University of America, a Master of Science degree from George Washington University, and a Bachelor degree from the University of Maryland. I previously served on the Rural Task Force responsible for providing recommendations to the Federal Communications Commission (“FCC”) on universal service policies and rules, and have been a frequent speaker at several industry and government symposiums. I am generally recognized as an expert in the telecommunications industry, especially in the area of universal service, intercarrier compensation, and tribal matters. Attached as Exhibit A is my curriculum vitae.

**Q: What is the purpose of your testimony in this proceeding?**

A: The purpose of my testimony is to explain:

- (i) the history and background of NAT, and the reasons for filing the application for intrastate interexchange authority with the South Dakota Public Utility Commission;

- (ii) the business and economic initiatives being pursued by the Crow Creek Sioux Tribe and NAT, and the relationship of these initiatives to this application; and
- (iii) the public interest benefits to the Crow Creek Sioux Tribe, tribal members, and South Dakota consumers in general to be realized by approval of NAT's application for intrastate interexchange authority.

**Q: Have you previously filed testimony or appeared as an expert witness before regulatory and/or legislative bodies?**

A: Yes. I have previously testified and/or provided testimony in regulatory proceedings in more than 20 states, including the South Dakota Public Utility Commission, and I have testified before the U.S. Congress.

#### **HISTORY AND BACKGROUND OF NAT**

**Q: Please provide a description of NAT's legal and organizational structure.**

A: NAT is a tribally-owed limited liability company organized under Crow Creek Sioux tribal laws. NAT's ownership is: (i) 51% by Crow Creek Holding, LLC, a company organized under Crow Creek Sioux tribal

laws and 100% owned by the Crow Creek Sioux Tribe; (ii) 25% by Native American Telecom Enterprise, LLC, a business development company; and (iii) 24% by WideVoice Communications, Inc., a telecommunications company.

**Q: Originally, did you own NAT?**

A: Yes, I originally established NAT as a South Dakota limited liability company with the purpose of providing telecommunications service in rural areas of South Dakota, including the Crow Creek reservation.

**Q. Did NAT originally file an application for competitive local exchange service (“CLEC”) with the Commission and then dismiss this application?**

A. Yes, as previously stated, NAT’s original purpose was to provide telecommunications service in rural areas of South Dakota, which would require CLEC authorization from the Commission, but, in 2008, NAT was reorganized as a tribally owned company with the purpose of only providing service on the Crow Creek reservation. NAT filed for authority from the Crow Creek Sioux Tribal Authority for the provision of telecommunications service on the Crow Creek reservation and was

granted that authority on October 28, 2008. Thereafter, NAT dismissed its application for CLEC authority with the Commission.

**Q: Please describe NAT's authority to provide telecommunications service on the Crow Creek reservation.**

A: In 1997, the Crow Creek Sioux Tribal Council established the Crow Creek Sioux Tribe Utility Authority ("Tribal Utility Authority") for the purpose of planning and overseeing utility services on the Reservation and to promote the use of these services "to improve the health and welfare of the residents."

On October 28, 2008, the Tribal Utility Authority entered its *Order Granting Approval to Provide Telecommunications Service* ("Approval Order"). Under this Approval Order, NAT was "granted authority to provide telecommunications service on the . . . Reservation subject to the jurisdiction of the laws of the Crow Creek Sioux Tribe." The Approval Order also required that the basic telephone service offered by NAT must be "consistent with the federal universal service requirements of 47 U.S.C. § 214(e) and the rules of the Federal Communications Commission."

Pursuant to the Approval Order, NAT filed its Access Tariffs with the FCC and Tribal Utility Authority ("Tribal Tariff"), governing the

origination and termination of interexchange telephone traffic on the Reservation. NAT's Tribal (Intrastate) access tariff rate is the same as its FCC Interstate access rate which is \$.006327 per minute of use, which is considerably less than what NAT could have otherwise charged for Intrastate access service prior to the unification of interstate and intrastate access rates in 2013.

Based upon NAT's tribal authority to provide telecommunications services on the Crow Creek reservation, NAT has entered into an interconnection agreement with MidState Communications, has obtained local telephone numbers from the North American Numbering Plan Administration ("NANPA"), has filed its interstate access tariff with the FCC, and has contributed to federal funds, including universal service, telecommunications relay services ("TRS"), and local number portability administration ("LNPA").

**Q. Are tribally owned telecommunications carriers operating exclusively on reservations subject to federal and tribal regulation, and not state regulation?**

A. Yes. There are approximately 10 tribally owned telecommunications carriers in the U.S. and each of these carriers are subject to only federal regulation and tribal regulation, unless they have

voluntarily agreed to state regulation for specific purposes. Whereas state regulatory commissions have general regulatory authority in the states, tribal lands are not subject to this same general regulatory authority. For example, both tribally owned carriers and non-tribally owned carriers obtained Eligible Telecommunications Carrier (“ETC”) designation from the FCC if their service area is only within reservation boundaries, even though state commissions have general regulatory authority to designate carriers as ETCs in the state.

**BUSINESS AND ECONOMIC INITIATIVES OF  
NAT AND THE CROW CREEK SIOUX TRIBE**

**Q: Please describe NAT’s network facilities on the Crow Creek reservation.**

A: NAT has physical offices, telecommunications equipment, and telecommunications towers on the Crow Creek reservation. NAT is using WiMAX (Worldwide Interoperability for Microwave Access) technology operating in the 3.65 GHZ spectrum providing service to residential, small business, hospitality and public safety.

NAT’s network infrastructure supports the provision of high-speed broadband services, voice service, data and Internet access, and multimedia. Through the use of advanced antenna and radio technology with OFDMA (Orthogonal Frequency Division Multiplexing), NAT is able to deliver wireless IP (Internet Protocol) voice and data communications.



This 4G technology offers flexible, scalable and economically viable solutions that are key components to deploying in vast rural environments, such as the Crow Creek reservation.

NAT has established connectivity with telecommunications carriers, including MidState Communications, to provide its customers with access to 911, operator services, interexchange services, director assistance, and telecommunications relay services.

**Q: Please describe the current services provided by NAT.**

A. NAT is a full-service telecommunications carrier serving the communications needs of all consumers on the Crow Creek reservation.

NAT provides the following services:

1. high-speed broadband (Internet) service and telephone service to more than 150 residential customers and several business and tribal government customers;
2. an Internet Library and Technology Center at 210 Samboy Drive, Fort Thompson and a satellite center at 100 Drifting Goose Lane, Fort Thompson, that provides residents of the Crow Creek reservation with free Internet and computer services;

3. terminating and originating access services for long distance carriers carrying interexchange telecommunication traffic to and from NAT; and
4. facilities and services for end user customers, like Free Conferencing Corporation and Crow Creek Holdings, LLC, that locate their businesses on the Crow Creek reservation.

**Q. What additional services does NAT intend to provide on the Crow Creek reservation by seeking approval from the Commission for intrastate interexchange authority?**

A. NAT is seeking authority from the Commission to provide intrastate interexchange service for traffic that (i) originates on NAT's network and terminates in South Dakota off of the Crow Creek reservation, or (ii) originates in South Dakota off of the Crow Creek reservation and terminates on NAT's network. Initially, NAT was carrying this traffic based upon its Tribal Approval, but, in the interest of comity, NAT ceased carrying this traffic and filed this amended application with the Commission.

**Q. If NAT obtains intrastate interexchange authority from the Commission, then what regulatory oversight would the Commission have over NAT's services?**

A. The Commission would have regulatory oversight over NAT's rates, terms and conditions of intrastate access services for traffic that (i) originates on NAT's network and terminates in South Dakota off of the Crow Creek reservation, or (ii) originates in South Dakota off of the Crow Creek reservation and terminates on NAT's network.

**Q. What are NAT's plans for expanding service on the Crow Creek reservation?**

- A. NAT has plans to:
1. expand coverage on the Crow Creek reservation using the 1.8 Ghz spectrum acquired from Sprint;
  2. provide enhanced services on the Crow Creek reservation using a network infrastructure provided by Tazca; and
  3. offer new services, including roaming.

**Q. You state that NAT has acquired spectrum from Sprint. When did NAT acquire spectrum from Sprint?**

A. NAT entered into an agreement to acquire spectrum (1850 – 1855 Mhz and 1930 – 1935 Mhz) from Sprint in September 2014, which was approved by the FCC on October 19, 2014. This agreement provides for, among other things, the use of the spectrum and governing law.

Attached as Confidential Exhibit B is a copy of Asset Purchase Agreement (Licenses Only) between Sprint Corporation and NAT.<sup>1</sup>

Exhibit C is a copy of NAT's FCC spectrum license obtained as a result of the spectrum purchase agreement with Sprint.

**Q. What was the purpose in obtaining spectrum from Sprint?**

A. The spectrum was purchased for the express purpose of providing local exchange service and other services on the Crow Creek reservation.

**Q. Specifically, how will the Sprint spectrum be used by NAT?**

A. NAT has an agreement with Tazca – Connects for the deployment LTE Fixed Wireless Broadband network infrastructure on the Crow Creek

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<sup>1</sup> The Asset Purchase Agreement (Licenses Only) between Sprint Corporation and Native American Telecom, LLC is subject to a confidentiality agreement and can be disclose only to the extent required by law or any government entity of competent jurisdiction. Consequently, Exhibit B will be introduced upon order of the Commission.

reservation to support local telephone and Internet services throughout the reservation. NAT will use the Sprint spectrum to expand its coverage and local exchange services on the Crow Creek reservation.

**Q. What new or enhanced services will NAT provide using the Tazca – Connects network solution?**

A. The Tazca – Connects network solutions builds upon the existing services provided by NAT today and will include:

- local telephone service;
- broadband or Internet service;
- mobility services, including roaming; and
- services, such as distance learning, tele-medicine, remote monitoring, and technology-based communication services.

The Tazca Connects network solution is more fully described in Exhibit D.

**Q. Has NAT established a business plan or financial model for deployment of service on the Crow Creek reservation?**

A. Yes. NAT has been in operation for more than 4 years providing service to tribal members and organizations on the Crow Creek reservation. NAT is in the process of expanding service throughout the Crow Creek reservation. Attached, as Confidential Exhibit E, is NAT's

financial projections for deploying fixed wireless telephone and broadband service, along with roaming services, throughout the Crow Creek reservation.

**Q. Based upon your experience, does NAT have the financial capability to provide competitive local exchange service on the Crow Creek reservation?**

A. Yes. NAT clearly has the financial capability to provide telecommunications services on the Crow Creek reservation, as demonstrated by its more than 4 years in business and providing competitive local exchange service on the Crow Creek reservation. NAT has implemented a well-established business model based upon a combination of access revenue, local services revenue, and new service revenue. Whereas the typical rural telephone company relies on universal service subsidies that are now being reduced or even eliminated, NAT has established a business model based upon economic development principles. By building a telecommunications infrastructure that can support economic development, NAT is enabling technology companies to locate and/or do business on the Crow Creek reservation. Free Conferencing Corporation is now located on the Crow Creek reservation and there are on-going discussions with other

businesses, including call centers, wireless service providers, and internet and radio providers.

**Q. What happens to NAT's business model if one source of revenue is reduced or eliminated?**

A. Like other companies in an evolving marketplace, at different stages of its business, NAT will rely more or less on different sources of revenue. By creating a business model based upon economic development, as opposed to regulatory fiats, NAT will continue to prosper to the benefit of the Crow Creek Sioux Tribe, residents of the reservation, and investors.

**Q. What makes the Crow Creek reservation an attractive location for business development?**

A. Many rural areas of the country are not realizing the benefits of economic development because natural or man-made resources do not support business and economic development. Some rural areas of the country, such as North Dakota, are realizing economic development because of natural resources, like coal. Other rural areas of the country, including the South Dakota, are using Wind energy to spur economic development. The Crow Creek reservation is using both its

natural resources, such as wind and water, and its man-made resources, such as an advanced telecommunications infrastructure, to spur economic development. Based upon these natural and man-made resources, along with its designation as a HUBZone development area, the Crow Creek Sioux Tribe and NAT is charting a course for economic development in a historically under-developed area of the country.

**Q. You state that Crow Creek is in a HUBZone development area.**

**What does this mean for the Crow Creek Sioux Tribe and NAT?**

A. On January 9, 2014, the Crow Creek Sioux Tribe filed an application (HUBZone Application No. 51310) with the Small Business Administration for participating in the HUBZone Program, which among other things, enables the Tribe, through NAT, to participate in sole source government contracts. This would not be possible, but for the establishment of NAT as a tribally owned business on the Crow Creek reservation with years of experience, capable of servicing government contracts for telecommunications and technology services. Attached, as Exhibit F, is a copy of the HUBZone filing.



## CONCLUSION

**Q: Does NAT have the technical, financial, and managerial qualifications to provide local and interexchange services in South Dakota?**

A: Yes, NAT has the technical, financial, and managerial qualification to provide the telecommunications services as outlined in NAT's revised application filed with the Commission on June 3, 2013. NAT currently provides facilities-based basic local exchange telephone service along with advanced broadband services on the Crow Creek reservation and, by filing this application, seeks the additional authority, if necessary, to provide intrastate interexchange access service for traffic that originates or terminates off of the Crow Creek Reservation within the state of South Dakota.

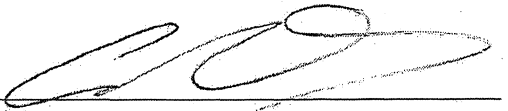
**Q: Does this conclude your testimony?**

A: Yes, it does.

**VERIFICATION**

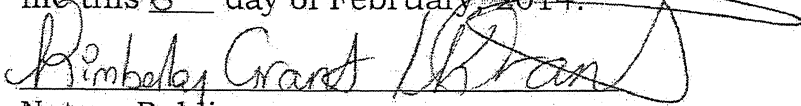
I, *Gene DeJordy*, state that I have first-hand knowledge of the matters set forth above and hereby verify that, to the best of my knowledge and belief, the allegations and statements contained herein are true and correct.

Dated this 6<sup>th</sup> day of February 2014.

  
Gene DeJordy

STATE OF CONNECTICUT    )  
COUNTY OF Fairfield    )

Subscribed and sworn to before me this 6<sup>th</sup> day of February 2014.



Notary Public

My Commission Expires:

(SEAL)

