

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

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

DOCKET NO. TC11-087

DIRECT TESTIMONY OF

WILLIAM R. EASTON

ON BEHALF OF

QWEST COMMUNICATIONS COMPANY, LLC

MARCH 26, 2012



TABLE OF CONTENTS

I.	IDENTIFICATION OF WITNESS	1
II.	INTRODUCTION AND PURPOSE OF DIRECT TESTIMONY	2
III.	ACCESS STIMULATION BACKGROUND	4
IV.	NATIVE AMERICAN TELECOM AND ACCESS STIMULATION	14
V.	MILEAGE PUMPING.....	20
VI.	QWEST'S RECOMMENDATION	23

I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH QWEST.

A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle Washington. I am employed as Wholesale Staff Director. I am testifying on behalf of Qwest Communications Company, LLC ("Qwest"), doing business as CenturyLink.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In 1980 I received a Masters of Business Administration from the University of Washington. In addition, I am a Certified Management Accountant.

I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in financial management with U S WEST, Qwest and now CenturyLink, including staff positions in the Treasury and Network organizations. From 1996 through 1998, I was Director – Capital Recovery. In this role I negotiated depreciation rates with the FCC and state commission staffs and testified in various regulatory proceedings. From 1998 until 2001 I was a Director of Wholesale Finance, responsible for the management of Wholesale revenue streams from a financial perspective. In this capacity I worked closely with the Product Management organization on their product offerings and projections of revenue. In October of 2001 I moved from Wholesale Finance to the

1 Wholesale Advocacy group, where I am currently responsible for advocacy related to
2 Wholesale products and services.

3

4 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS**
5 **COMMISSION?**

6 A. Yes. I previously testified in docket numbers TC96-184, TC01-098 and TC10-014.

7

~~8 **H. INTRODUCTION AND PURPOSE OF DIRECT TESTIMONY**~~

~~9~~

~~10 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**~~

11 ~~A. The Commission has a seminal case of great importance before it, because Native~~
12 ~~American Telecom ("NAT") has admitted that its certification will be utilized to engage in~~
13 ~~a practice known as "traffic pumping" or "access stimulation." Decisions issued by the~~
14 ~~Iowa Utilities Board and the Federal Communications Commission ("FCC") have~~
15 ~~criticized the practice as an "abuse" and as "arbitrage." The FCC's recent Connect~~
16 ~~America order intended to remove the economic and financial incentives that encouraged~~
17 ~~some carriers to engage in access stimulation and the FCC also cautioned against other~~
18 ~~schemes that may constitute an abuse of the current regulatory scheme. Thus, the South~~
19 ~~Dakota Commission has before it in this docket the threshold and vital issue of whether this~~
20 ~~state should authorize the practice of access stimulation through the issuance of a~~
21 ~~certificate to an applicant who has admitted that the certificate will be used in such a~~
22 ~~manner. Further, to the extent that a certificate is granted for a carrier to engage in access~~
23 ~~stimulation, the Commission should consider the extent to which conditions are necessary~~

1 ~~to eliminate or at least limit potential abuses that could result from a carrier continuing to~~
2 ~~engage in access stimulation after the issuance of the Connect America order.~~

3
4 ~~The purpose of my testimony is to express Qwest's opposition to NAT's request for a~~
5 ~~certificate of authority to provide local exchange service in the area of Midstate~~
6 ~~Communications. NAT's ongoing participation in a scheme to stimulate access billing to~~
7 ~~interexchange carriers ("IXC") such as Qwest is not consistent with the public interest, a~~
8 ~~necessary condition to the granting of a certificate. My testimony will first provide some~~
9 ~~contextual background on access stimulation and review some of the regulatory rulings and~~
10 ~~interpretations of this practice, including the reasons that access stimulation is an abuse of~~
11 ~~the regulatory switched access structure. I will then discuss the FCC's recent Connect~~
12 ~~America order and the guidance it provides on access stimulation schemes. Next I will~~
13 ~~discuss NAT's past involvement in access stimulation and the reasons that access~~
14 ~~stimulation is not in the public interest. For these reasons, Qwest proposes that the~~
15 ~~Commission not grant NAT's request for certification. However, if the Commission is~~
16 ~~inclined to grant a certificate to NAT, then Qwest requests that it be subject to certain~~
17 ~~conditions to limit or prevent future arbitrage abuses in South Dakota. Thus, I will also~~
18 ~~address the concerns, as expressed by the FCC, over forms of abuse in which LECs may~~
19 ~~engage known as "mileage pumping." In short, mileage pumping is designation by the~~
20 ~~LEC of distant points of interconnection with interexchange carrier and then the charging~~
21 ~~of transport on an expensive per minute or per mile basis. Qwest believes that mileage~~
22 ~~pumping abuses will be exacerbated if the LEC is engaging in traffic pumping at high~~
23 ~~volumes and applying distant points of interconnection. Based upon these concerns, Qwest~~

1 ~~proposes conditions to help prevent mileage pumping abuses specifically that Qwest and~~
2 ~~any other requesting interexchange carrier have the ability to connect directly to NAT's~~
3 ~~and office where the free service calling companies have placed their equipment through~~
4 ~~Direct End Office Transport, or sometimes know as Direct Trunked Transport, at just and~~
5 ~~reasonable rates.~~

6
7 **~~III. ACCESS STIMULATION BACKGROUND~~**

8
9 **~~Q. WHAT IS ACCESS STIMULATION?~~**

10 **~~A. Access stimulation, or traffic pumping, is the term used to describe situations where rural~~**
11 ~~local exchange carriers enter into an arrangement with high call volume operations such as~~
12 ~~free conference calling, chat lines, adult entertainment calls and other "free" calls with the~~
13 ~~ultimate objective of deriving revenues solely from interexchange carriers. The conference~~
14 ~~call or chat line operators, also known as free calling companies, place their equipment in~~
15 ~~the central office of the local exchange carrier, and the local exchange carrier assigns local~~
16 ~~numbers to the free service calling companies. Because the free service calling companies~~
17 ~~offer their conference or chat services to customers across the nation for free, this~~
18 ~~arrangement greatly stimulates the amount of traffic to the equipment of the free service~~
19 ~~calling companies, and thus inflates the access minutes terminating to the local exchange~~
20 ~~carrier. The local exchange carrier bills switched access to the interexchange carrier of the~~
21 ~~person who places the call to the free service calling company at its tariffed rate, which in~~
22 ~~rural areas in some states is often several times higher than in non rural areas and~~

1 ~~exchanges¹. The local exchange carrier then provides a kickback to the free service calling~~
2 ~~company, typically about half, of the access revenues that the local exchange carrier~~
3 ~~collects from the interexchange carriers. The local exchange carrier and the free calling~~
4 ~~companies more than covers their costs and profits from the shared revenues. The end~~
5 ~~result is that the IXC's pay higher access charges that provide enormous profits to the free~~
6 ~~service calling companies and the traffic pumping LECs.~~

7
8 ~~Q WHAT ARE THE REASONS THAT ACCESS STIMULATION CONSTITUTES~~
9 ~~ARBITRAGE AND IS CONTRARY TO PUBLIC POLICY?~~

10 ~~A There are many. First, there is the threshold principle that IXCs must deliver traffic to the~~
11 ~~numbers and exchanges called by their end user customers. The FCC has directed~~
12 ~~interexchange carriers to deliver all such traffic in order to promote and safeguard the~~
13 ~~ability of callers to reach their intended destinations. Qwest and other interexchange~~
14 ~~carriers are not permitted to block calls destined to traffic pumping LECs, and Qwest never~~
15 ~~has. Thus, Qwest and other IXCs are forced to deliver the traffic to the traffic pumping~~
16 ~~LEC exchanges, and traffic pumping LECs manipulate this forced arrangement to attempt~~
17 ~~to impose inflated switched access charges upon the IXCs.~~

18
19 ~~Second, traffic pumping LECs abuse the regulatory structure underlying switched access~~
20 ~~rates in rural exchanges. Historically, switched access rates in rural areas have been set at~~
21 ~~rates significantly higher than in non-rural areas in order to provide support to a rural~~

¹ ~~In South Dakota, per RM 05-002 CLECs are not permitted to charge higher switched access rates than the RBOC~~
~~in the state.~~

1 ~~carrier providing essential, basic services in high cost areas. That is, the rates are higher to~~
2 ~~subsidize the high cost of providing basic services to rural residents and businesses. And,~~
3 ~~LECs have been generally amenable to paying the higher rates in consideration of these~~
4 ~~policies and because traffic volumes to rural areas are relatively low. The traffic pumping~~
5 ~~LECs abuse this laudable structure by placing the conference calling equipment in rural~~
6 ~~exchanges, generating exponentially higher traffic volumes to the exchange, which~~
7 ~~combined with their high rural switched access rates lead to increasingly large invoices to~~
8 ~~LECs. For example, in rural exchanges where Qwest typically would receive invoices of~~
9 ~~about a thousand dollars per month before traffic pumping, after certain LECs commenced~~
10 ~~traffic pumping schemes, Qwest would receive invoices for several hundred thousands of~~
11 ~~dollars, for just one month. When one multiplies the months by the number of LECs~~
12 ~~engaging in traffic pumping, the result is tens and hundreds of millions of dollars in~~
13 ~~increased access charges as a result of this scheme. Thus, the public interest component of~~
14 ~~higher switched access rates in rural areas to support basic services to rural residences~~
15 ~~and businesses is abused by traffic pumping LECs that bill millions of dollars out of~~
16 ~~LECs for their own profit and that of their free service calling company partners.~~

17
18 ~~As I discuss below, the FCC has attempted to remove the incentive of high terminating~~
19 ~~switched access rates for LECs engaging in access stimulation in the Connect America~~
20 ~~order, however, as I also address below, it appears that traffic pumping LECs such as NAT~~
21 ~~intend to continue this practice, likely supporting their schemes through high transport rates~~
22 ~~in the place of terminating switched access rates~~

1 ~~Next, it is against public policy that entities that do not use or subscribe to a service be~~
2 ~~forced to support the costs and enormous profits of the providers of the service. That is,~~
3 ~~IXCs do not use the services provided by the free service calling companies, such as~~
4 ~~conference calling or chat line services; rather, it is the end user callers that consume these~~
5 ~~services. But, the IXCs are forced to deliver and thus incur the switched access charges~~
6 ~~that are shared with the free service calling companies, and thus the IXCs support the costs~~
7 ~~and bestow huge profits upon the free service calling companies.~~

8
9 ~~Finally, IXCs are not permitted to pass on the specific costs of traffic pumping to the~~
10 ~~individual end user customers that are placing calls to the free service calling companies.²~~
11 ~~IXC's current charges to their end user customers are not calculated based on traffic~~
12 ~~pumping traffic patterns, although, as IXCs incur the enormous cost of traffic pumping~~
13 ~~LEC's switched access bills, all their customers ultimately must absorb these costs through~~
14 ~~higher rates. Thus, despite the marketing of the underlying calling services as "free," there~~
15 ~~is little that is free about them. In sum, the Commission and IXCs should be wary of any~~
16 ~~scheme in which a rural LEC is attempting to generate large volumes of minutes for calls to~~
17 ~~free service calling companies and in which the LEC intends to invoice IXCs on a usage or~~
18 ~~per minute basis.~~

19
20 Q. ~~WHAT IS THE POLICY SIGNIFICANCE OF AN AGREEMENT TO SHARE~~
21 ~~REVENUES BETWEEN THE LEC AND THE FREE SERVICE CALLING~~
22 ~~COMPANIES?~~

² See 47 U.S.C § 254 (g).

1 A. ~~The sharing of access revenues between the LEC and the free service calling companies~~
2 ~~means that such revenues are being used for more than simply covering the costs of the~~
3 ~~LEC to provide service. And, such revenues are not being used to support basic services to~~
4 ~~legitimate residential and business customers in rural areas. When access revenues are~~
5 ~~shared to support and provide large profits to free service calling companies, the LEC is~~
6 ~~charging in excess of the rates appropriate to further valid public interests and is misusing~~
7 ~~the regulatory system that tightly controls access rates.~~

8
9 Q ~~HAS THE FCC ISSUED RULINGS ANALYZING THE POLICY HARMS THAT~~
10 ~~RESULT FROM ACCESS STIMULATION?~~

11 A. ~~Yes. In its February 8, 2011, Connect America Fund Notice of Proposed Rule Making and~~
12 ~~Further Notice of Proposed Rulemaking, the FCC described such traffic pumping~~
13 ~~arrangements as an "arbitrage scheme" (par. 626) and found that~~

14 ~~"Access stimulation imposes undue costs on consumers, inefficiently~~
15 ~~diverting the flow of capital away from more productive uses such as~~
16 ~~broadband deployment, and harms competition. Although long distance~~
17 ~~carriers are billed for and pay for minutes associated with access~~
18 ~~stimulation schemes, all customers of these long distance providers bear~~
19 ~~these costs and, in essence, ultimately support businesses designed to take~~
20 ~~advantage of today's above-cost intercarrier compensation system.~~
21 ~~Projections indicate that the annual impact to the industry from access~~
22 ~~stimulators is significant." (par. 637); and~~

23
24 ~~"Moreover, access stimulation harms competition by giving companies~~
25 ~~that offer a "free" service a competitive advantage over companies that~~
26 ~~charge their customers for the service. As a result, "free" conferencing~~
27 ~~providers that leverage arbitrage opportunities can put other companies~~
28 ~~that charge consumers for services at a distinct competitive disadvantage."~~
29 ~~(par. 638).~~

1 ~~Q. HAVE STATE REGULATORS INVESTIGATED ACCESS STIMULATION AND~~
2 ~~TAKEN STEPS TO CURB THIS PRACTICE?~~

3 ~~A. Yes. In Iowa, Qwest filed a complaint against eight local exchange carriers engaging in~~
4 ~~traffic pumping. The primary issue before the Iowa Board was, in short, whether the traffic~~
5 ~~pumping LECs were allowed to charge under their switched access tariffs for calls~~
6 ~~delivered to free service calling companies. Following extensive discovery and hearings,~~
7 ~~the Board found in Qwest's favor and stated:~~

8 ~~Based on the record in these proceedings, the Board finds that the intrastate~~
9 ~~interexchange calls to the conference calling companies were not subject to access~~
10 ~~charges. Refunds and credits to the IXC's are ordered. The Board also announces~~
11 ~~that it is initiating a proceeding to consider proposed rules intended to prevent this~~
12 ~~abuse in the future.³~~

13 ~~The Iowa Board also initiated show cause hearings to determine if two of the Iowa local~~
14 ~~exchange carriers should have their certificates revoked, in part because they had few, if~~
15 ~~any, traditional local exchange customers.⁴~~

16 ~~As this Commission is also aware, there is currently a complaint, brought by Sprint against~~
17 ~~NAT, pending before the Commission regarding access stimulation traffic (TC10-026).~~

18
19 ~~Q. HOW DOES THE CONNECT AMERICA ORDER ADDRESS ACCESS~~
20 ~~STIMULATION?~~
21

³ Docket ECU-07-2 Final Order Summary, September 21, 2000.

⁴ In Re: Great Lakes Communications Corp., SP11 2011-0004 (TC11-05 Q), In Re: Adventure Communication Technology, LLC, Docket No. ECU 2011-0002. In the docket involving the traffic pumping LEC known as "Great Lakes", a carrier that engaged in only traffic pumping, the Board indicated during its oral deliberations that continued validity of Great Lakes's certificate would be predicated upon the offering of services to legitimate end user customers. The Board has not issued a final written order.

1 A. ~~The FCC's recent Connect America order was intended to rid the industry of access~~
2 ~~stimulation by removing the financial incentives for engaging in this form of arbitrage.⁵~~
3 ~~The order addressed traffic pumpers' exploitation of the switched access rate structure by~~
4 ~~requiring the filing of new, revised tariffs with a new rate if a LEC satisfies two criteria of~~
5 ~~"access stimulation." The two criteria are: 1) the existence of a revenue sharing~~
6 ~~arrangement between the LEC and a calling company; and 2) a volume component, met if~~
7 ~~the LEC (a) has a three to one ratio of terminating to originating traffic in any month or (b)~~
8 ~~experiences more than a 100 percent increase in traffic volume in any month measured~~
9 ~~against the same month during the previous year.⁶ If a CLEC meets these criteria, then it~~
10 ~~must file a revised tariff with the FCC setting all of its switched access rates to the rates of~~
11 ~~the price cap LEC with the lowest interstate switched access rates in the state.~~

12
13 ~~The overriding intent of the FCC is to reduce traffic pumping by the elimination of traffic~~
14 ~~pumping and arbitrage incentives. The Order's opening section is entitled "Rules to~~
15 ~~Reduce Access Stimulation."⁷ The FCC consistently recognizes that access stimulation~~
16 ~~results in unjust and unreasonable rates to LECs and presents several other policies~~
17 ~~supporting the issuance of access stimulation rules (one reason for the need to overhaul~~
18 ~~the entire intercarrier compensation regime is the wasteful and costly arbitrage schemes~~
19 ~~that have proliferated).⁸ ("curtail wasteful arbitrage practices," including access~~

~~⁵ In the Matter of Connect America Fund, "Report and Order and Further Notice of Proposed Rulemaking," FCC~~
~~11-161 (released November 18, 2011), at ¶¶ 656-701.~~

~~⁶ Connect America, at ¶¶ 23, 667.~~

~~⁷ Connect America, at ¶ 656.~~

~~⁸ Id., at ¶ 9.~~

1 ~~stimulation),⁹ (“inflated profits that almost uniformly make the LEC's interstate switched~~
2 ~~access rates unjust and unreasonable”),¹⁰ (“The record confirms the need for prompt~~
3 ~~Commission action to address the adverse effects of access stimulation”),¹¹ (“Access~~
4 ~~stimulation imposes undue costs on consumers”),¹² (“Access stimulation also harms~~
5 ~~competition”),¹³ (“excess revenues that are shared in access stimulation schemes provide~~
6 ~~additional proof that the LEC's rates are above cost”),¹⁴ (FCC refers to these rule changes~~
7 ~~as a “prohibition on access stimulation”),¹⁵ (“similar arbitrage scheme”).¹⁶~~

8
9 ~~In other parts of the access stimulation section, the FCC expressed the intention of~~
10 ~~monitoring future access stimulation activities~~

11 ~~should the traffic volumes of a competitive LEC that meets the access~~
12 ~~stimulation definition substantially exceed the traffic volumes of the price~~
13 ~~cap LEC to which it benchmarks, we may reevaluate the appropriateness~~
14 ~~of the competitive LEC's rates and may evaluate whether any further~~
15 ~~reductions in rates is warranted. In addition, we believe the reforms we~~
16 ~~adopt elsewhere in this Order will, over time, further reduce intercarrier~~
17 ~~payments and the incentives for this type of arbitrage.¹⁷~~

18
19 ~~And, the concluding paragraphs of the access stimulation section outline the intended result~~
20 ~~of the FCC's new rules and required rates:~~

21 ~~Taking this basic step will immediately reduce some of the inefficient~~
22 ~~incentives enabled by the current intercarrier compensation system, and~~
23 ~~permit the industry to devote resources to innovation and investment~~
24 ~~rather than access stimulation and disputes. We have balanced the need~~

⁹ ~~Id.~~, at ¶ 35.

¹⁰ ~~Id.~~, at ¶¶ 657, 662.

¹¹ ~~Id.~~, at ¶ 662.

¹² ~~Id.~~, at ¶ 662.

¹³ ~~Id.~~, at ¶ 666.

¹⁴ ~~Id.~~, at ¶ 666.

¹⁵ ~~Id.~~, at ¶ 674.

¹⁶ ~~Id.~~, at ¶ 676.

¹⁷ ~~Id.~~, at ¶ 690.

1 ~~for our new rules to address traffic stimulation with the costs that may be~~
2 ~~imposed on LECs and have concluded that the benefits justify any~~
3 ~~burdens. Our new rules will work in tandem with the comprehensive~~
4 ~~intercarrier compensation reforms we adopt below, which will, when fully~~
5 ~~implemented, eliminate the incentives in the present system that give rise~~
6 ~~to access stimulation.~~¹⁸
7

8 Q. ~~HAS THE FCC ISSUED FURTHER CLARIFICATION SINCE THE CONNECT~~
9 ~~AMERICA ORDER WAS ISSUED?~~

10 A. ~~Yes. One issue arising out of the Connect America order was whether previous FCC~~
11 ~~precedent adjudicating access stimulation and traffic pumping issues carry over after the~~
12 ~~effective date of the FCC's new rules. Those FCC cases, in particular the cases known as~~
13 ~~Farmers & Merchants and Northern Valley, reiterated existing federal law that a LEC's~~
14 ~~switched access tariffs must include an end-user component in which that customer is~~
15 ~~receiving telecommunications services purchased from the LEC for a fee.~~¹⁹ ~~Despite this~~
16 ~~clear precedent, the traffic pumping industry has contended that mere compliance with the~~
17 ~~FCC's new tariff rules from the Connect America order exonerates them from complying~~
18 ~~with the rulings from the Farmers and Northern Valley cases. Thus, Sprint filed a petition~~
19 ~~for clarification in the Connect America docket requesting clarification that:~~

- 20 ▪ ~~The [Connect America] Order does not overturn previous Commission~~
21 ~~rulings or standards for determining whether a LEC's free service provider~~
22 ~~partner is a legitimate end-user/customer under its access tariff, and,~~
23
24 ▪ ~~The Order does not overturn the statutory requirement that~~
25 ~~telecommunications services be offered "for a fee."~~²⁰
26

¹⁸ ~~11-1701~~

¹⁹ ~~Qwest Comm'ns Corp. v. Farmers & Merchants Mutual Tel. Co. ("Farmers II"), 24 FCC Rod. 14801 (2009),~~
~~2009 WL 4073944 (F.C.C.); In the Matter of Qwest Communications Company, LLC, v. Northern Valley~~
~~Communications, LLC, File No. EB-11-MD-001, Memorandum Opinion and Order, Released June 7, 2011.~~

²⁰ ~~Petition for Reconsideration and Clarification of Sprint Nextel Corporation, WC Dkt. 10-99, filed December 29,~~
~~2011.~~

1 ~~On February 3, 2012, the Wireline Competition Bureau and the wireless~~
2 ~~Telecommunications Bureau issued a clarifying order²¹ affirming the points presented by~~
3 ~~Sprint's petition. The Bureau's Order says:~~

4 ~~25. Access Stimulation and Previous Rulings on End Users. In the~~
5 ~~USE/ICC Transformation Order, the Commission adopted revisions to its~~
6 ~~interstate switched access charge rules to address access stimulation. Prior~~
7 ~~to the USE/ICC Transformation Order, the Commission adopted several~~
8 ~~orders resolving complaints concerning access stimulation under~~
9 ~~preexisting rules and compliance with the Communications Act. We~~
10 ~~clarify that the USE/ICC Transformation Order complements these~~
11 ~~previous decisions and nothing in the USE/ICC Transformation Order~~
12 ~~should be construed as overturning or superseding these previous~~
13 ~~Commission decisions.²²~~
14

15 ~~Q. HAS THE CONNECT AMERICA ORDER ELIMINATED CONCERNS ABOUT~~
16 ~~ACCESS STIMULATION?~~

17 ~~A. No. In fact, the Connect America order acknowledged evidence in its record of another~~
18 ~~form of arbitrage, "mileage pumping," in which "service providers designate distant~~
19 ~~points of interconnection to inflate the mileage used to compute the transport charges."²³~~
20 ~~The FCC sought comment in its Further Notice of Proposed Rulemaking to investigate this~~
21 ~~form of arbitrage.²⁴ And, despite the FCC's admonitions against traffic pumping practices,~~
22 ~~it has come to the attention of Qwest that certain traffic pumping LECs are indeed planning~~
23 ~~on charging access rates with high transport rates. Thus, abuse of terminating access rates~~
24 ~~may be replaced by new schemes in which high transport rates are charged for calls~~
25 ~~delivered to free service calling companies.~~
26

²¹ ~~In the Matter of Connect America Fund, WC Dkt. No. 10-90, et al., DA 12-147, released February 2, 2012.~~

²² ~~Id., at ¶ 25.~~

²³ ~~Connect America, at ¶ 828.~~

²⁴ ~~Id.~~

1 ~~Q. ARE THERE ALSO PENDING COURT CASES CONCERNING ACCESS~~
2 ~~STIMULATION?~~

3 A. ~~Yes. There are a number of pending court cases, including a suit brought by Sprint against~~
4 ~~NAT which is before the United States District Court for the District of South Dakota (CV~~
5 ~~10-4110).~~

6
7 ~~IV. NATIVE AMERICAN TELECOM AND ACCESS STIMULATION~~

8
9 ~~Q. WHAT IS THE BASIS FOR YOUR UNDERSTANDING THAT NAT IS~~
10 ~~INVOLVED IN ACCESS STIMULATION?~~

11 A. ~~My understanding is based on several pieces of information, including statements made by~~
12 ~~NAT and individuals directly associated with NAT. As was discussed previously, there are~~
13 ~~ongoing complaints against NAT, both here before this Commission and before the United~~
14 ~~States District Court in South Dakota. This ongoing litigation has yielded information that~~
15 ~~confirms not only that NAT is engaged in access stimulation, but also that it represents the~~
16 ~~vast majority of its business. Indeed, without its access stimulation scheme, NAT would~~
17 ~~likely not exist.~~

18
19 ~~Q. HOW SIGNIFICANT A PORTION OF NAT'S BUSINESS IS FREE CONFERENCE~~
20 ~~CALLING SERVICES?~~

21 A. ~~It appears to be nearly the entirety of NAT's business. In the Sprint complaint docket~~
22 ~~which is before this Commission (TC10-26), a Sprint Access Verification Analyst filed an~~
23 ~~affidavit on September 27, 2010 stating that study data for July 2010 indicates that~~

1 ~~99.98% of the traffic NAT wants to be paid for terminating actually goes to conference~~
2 ~~bridge equipment and not to an end user on the Reservation.”²⁵ In addition, the Treasurer~~
3 ~~of Crow Creek Sioux tribe acknowledged the significance of free conference calling~~
4 ~~services to the NAT business model stating, “Well, if it wasn’t for FreeConferenceCall,~~
5 ~~there really wouldn’t be a NAT.”²⁶ Attached as Exhibit WRE-1 is the relevant excerpt~~
6 ~~from the District Court transcript.~~

7
8 ~~Q ARE THERE CLOSE LINKS BETWEEN NAT AND THE FREE CONFERENCE~~
9 ~~CALLING SERVICES?~~

10 A. ~~Yes. Testimony in the Sprint complaint case before the United States District Court of~~
11 ~~South Dakota demonstrates that the entities that manage both NAT and Free Conferencing~~
12 ~~Corporation are one and the same. The controller for Free Conferencing Corporation of~~
13 ~~Long Beach, California, whose flagship product is FreeConferenceCall.com, is also the~~
14 ~~controller for NAT.²⁷ Attached as Exhibit WRE-2 is the relevant excerpt from the District~~
15 ~~Court transcript. In addition, the acting president of NAT, Jeff Holoubek, is the Director of~~
16 ~~Legal and Finance at Free Conferencing Corporation.²⁸ Attached as Exhibit WRE-3 is the~~
17 ~~relevant excerpt from the District Court transcript.~~

25 ~~Docket No. TC10-026, Affidavit of Amy S. Clausen, September 27, 2010, pp. 6-7.~~

26 ~~Civ. 10-4110, United States District Court, District of South Dakota, Southern Division, Sprint Communications Company, L.P. Plaintiff vs. Native American Telecom, LLC, D.J. Jones, in his official capacity as Special Judge of Tribal Court and Crow Creek Sioux Tribal Court Defendants. Transcript of Motion Hearing, March 3, 2011, p. 147.~~

27 ~~Id., p. 147.~~

28 ~~Id., p. 68.~~

1 ~~Q. WHAT IS THE FINANCIAL LINKAGE BETWEEN THE TWO COMPANIES?~~

2 ~~A. The controller for both NAT and Free Conferencing Corporation testified in the same~~

3 ~~hearing that there is a marketing fee agreement between the two parties whereby Free~~

4 ~~Conferencing Corporation gets 75% of the access revenues generated and NAT retains the~~

5 ~~remaining 25%.²⁹ Attached as Exhibit WRE-4 is the relevant excerpt from the District~~

6 ~~Court transcript. This percentage split, which grants a higher percentage to the free service~~

7 ~~calling company than I have seen in other cases, demonstrates that a significant portion of~~

8 ~~access revenues will be directed toward an entity that is not providing the access service~~

9 ~~itself, and thus suggests that the rates charged by NAT for either termination or transport of~~

10 ~~calls to its free service calling companies is unjust, unreasonable, and constitutes an~~

11 ~~arbitrage scheme, for the reasons I state above.~~

12
13 Q. HAS NAT ACKNOWLEDGED THAT IT PLANS TO ENGAGE IN ACCESS
14 STIMULATION IN THE AREA THAT IS THE SUBJECT OF ITS APPLICATION
15 FOR CERTIFICATE OF AUTHORITY?

16 A. Yes. Attached as Exhibit WRE-5 is a copy of NAT's response to CenturyLink's discovery
17 request 1.8. In its response, NAT states that it will be engaging in access stimulation in the
18 area for which is requesting certification.

19
20 ~~Q. WILL NAT CONTINUE TO HAVE REVENUE SHARING AGREEMENTS WITH~~
21 ~~FREE SERVICE CALLING COMPANIES?~~

²⁹ Id., p. 52.

1 ~~A. Yes. As I discuss above, the Connect America order has a two part test for whether a LEC~~
2 ~~is engaging in access stimulation. One of the criteria is that the LEC has a revenue sharing~~
3 ~~agreement with a free service calling company. Thus, by NAT's admission that it will be~~
4 ~~engaging in access stimulation as defined in the Connect America order there is ample~~
5 ~~evidence that NAT will continue to split its access revenues with companies such as Free~~
6 ~~Conferencing at a percentage that siphons 75% of access revenues from IXC's to an entity~~
7 ~~that is not providing any access services at all.~~

8
9 ~~Q. DOES NAT'S BUSINESS MODEL HAVE IMPLICATIONS ON ITS REQUEST~~
10 ~~FOR CERTIFICATION?~~

11 ~~A. Absolutely. There are at least two concerns for this Commission to consider related to~~
12 ~~NAT's reliance on access stimulation. The first concern goes directly to the requirements~~
13 ~~in the South Dakota statutes and administrative rules that the company requesting~~
14 ~~certification demonstrate that it has sufficient technical, financial, and managerial~~
15 ~~capabilities to provide the local exchange services applied for.³⁰ A second concern has to~~
16 ~~do with deciding whether the public interest is served by certifying a carrier whose true~~
17 ~~focus is serving only free conference calling services rather than providing traditional local~~
18 ~~exchange service.~~

19
20 ~~Q. PLEASE DESCRIBE THE CONCERNS RELATED TO NAT DEMONSTRATING~~
21 ~~IT POSSESSES SUFFICIENT TECHNICAL, FINANCIAL AND MANAGERIAL~~
22 ~~CAPABILITIES.~~

³⁰ SDCL 49-34-37 and PRSD 20.10.52.03.

1 A. ~~NAT's near total reliance on access stimulation revenues raises serious questions about its~~
2 ~~financial viability. During the United States District Court hearing referenced above, it~~
3 ~~was revealed that NAT's finances are in a rather precarious state due to Sprint withholding~~
4 ~~payment. In fact, NAT's counsel stated at the hearing that if Sprint does not pay NAT, it is~~
5 ~~likely to either file bankruptcy or go out of business.~~³¹ ~~Attached as Exhibit WRE 6 is the~~
6 ~~relevant excerpt from the District Court transcript. The future appears even less promising~~
7 ~~as NAT's access stimulation scheme becomes increasingly unviable as IXC's insist that~~
8 ~~access stimulators comply with the terms and conditions in their tariffs and as the FCC's~~
9 ~~intercarrier compensation rates transition to a bill and keep basis. In light of these~~
10 ~~developments, it is not at all clear that NAT possesses the financial capability necessary for~~
11 ~~approval of its certification request.~~

12
13 Q. ~~ARE THERE ANY OTHER INDICATIONS THAT LECs INVOLVED IN ACCESS~~
14 ~~STIMULATION SCHEMES DO NOT HAVE THE FINANCIAL CAPABILITY TO~~
15 ~~PROVIDE TELECOMMUNICATIONS SERVICES?~~

16 A. ~~Yes. Traffic pumping schemes have resulted in claims brought by IXCs, including Qwest,~~
17 ~~requesting a return of monies illegally obtained by the LEC. But, Qwest's experience has~~
18 ~~shown that traffic pumping LECs fail to take fiscally responsible steps to cover their~~
19 ~~potential liabilities. The very nature of their arrangements with free service calling~~
20 ~~companies indicates that a traffic pumping LEC may not be able to cover its potential~~
21 ~~liabilities. Under their contracts with free service calling companies, when a traffic~~

³¹ ~~Civ. 10-4110, United States District Court, District of South Dakota, Southern Division, Sprint Communications Company, L.P., Plaintiff vs. Native American Telecoms LLC, D.J. Jones, in his official capacity as Special Judge of Tribal Court, and Crow Creek Sioux Tribal Court, Defendants. Transcript of Motion Hearing, March 3, 2011, pp. 206, 208.~~

1 ~~pumping LEC receives monies from an IXC, it immediately tenders usually half, and in the~~
2 ~~case of NAT, 75%, of the money to its free service calling company partners. Thus the~~
3 ~~traffic pumping LEC fails to retain the monies that are in dispute and potentially subject to~~
4 ~~refund. On the traffic pumping LEC may attempt to move the monies out of reach of the~~
5 ~~IACs, by distributions to its owners, some of whom include family trusts, or by converting~~
6 ~~the funds into illiquid facilities and plant. Under these circumstances, the traffic pumping~~
7 ~~LEC fails in its duties of operating and managing itself in a financially responsible manner~~
8 ~~that reserves funds for its contingent liabilities.~~

9
10 Q. ~~PLEASE DISCUSS THE PUBLIC POLICY CONSIDERATIONS OF THE NAT~~
11 ~~APPLICATION~~

12 A. ~~As I stated above, there are real concerns related to whether approving NAT's certification~~
13 ~~request is in the public interest. Given NAT's past practices and its admission that it will~~
14 ~~be engaging in access stimulation in the area where it is requesting certification, the~~
15 ~~Commission must question whether providing service to free conference calling services,~~
16 ~~as opposed to providing traditional local exchange service, is truly in the public interest. It~~
17 ~~is telling that the testimony filed by NAT in this case fails to address, or even mention,~~
18 ~~access stimulation as a service it will be providing, despite the fact that it currently~~
19 ~~constitutes nearly the entirety of its business.~~

20
21 ~~NAT touts the economic social and educational impacts of its business on the Crow Creek~~
22 ~~Reservation, but the FCC rejected this very argument as a justification for access~~
23 ~~stimulation in its Connect America order, stating:~~

1 ~~Several parties claim that access stimulation offers economic development~~
2 ~~benefits, including the expansion of broadband services to rural communities and~~
3 ~~tribal lands. Although expanding broadband services in rural and Tribal lands is~~
4 ~~important, we agree with other commenters that how access revenues are used is~~
5 ~~not relevant in determining whether switched access rates are just and reasonable~~
6 ~~in accordance with section 201(b). In addition, excess revenues that are shared in~~
7 ~~access stimulation schemes provide additional proof that the LEC's rates are~~
8 ~~above cost. Moreover, Congress created an explicit universal service fund to spur~~
9 ~~investment and deployment in rural, high cost, and insular areas, and the~~
10 ~~Commission is taking action here and in other proceedings to facilitate such~~
11 ~~deployment.~~³² (Footnotes omitted).

12
13 ~~Taking the economic social and educational impacts on the Crow Creek Reservation out of~~
14 ~~the equation, it is not clear that NAT's providing service to free conference calling services~~
15 ~~does anything to serve the public interest.~~

16
17 **~~V. MILEAGE PUMPING~~**

18
19 **~~Q. ARE YOU CONCERNED ABOUT THE PROSPECT THAT TRAFFIC PUMPING~~**
20 **~~DECS WILL ENGAGE IN A FORM OF MILEAGE PUMPING?~~**

21 A. ~~Yes. As I noted earlier, it has come to Qwest's attention that some traffic pumping LECs'~~
22 ~~intend to designate distant points of interconnection between the LEC and IXC, and then~~
23 ~~charge a usage based per minute transport rate, and a transport rate premised upon~~
24 ~~mileage. Charging inflated transport charges, even though the LEC is charging the~~
25 ~~termination rates prescribed by the FCC in the Connect America order, could result in a~~
26 ~~financially viable traffic pumping scheme for the LEC. In short, a mileage pumping~~
27 ~~scheme has similar components to the traffic pumping schemes of the recent past high~~

³² ~~In the Matter of Connect America Fund, "Report and Order and Further Notice of Proposed Rulemaking,"~~
~~FCC 11-161 (released November 18, 2011), at ¶ 666.~~

1 ~~traffic volumes, per minute charges, and sharing of revenues with an entity that did not~~
2 ~~provide any of the access services.~~

3
4 Q. ~~DOES QWEST HAVE A RECOMMENDATION TO HELP LIMIT MILEAGE~~
5 ~~PUMPING?~~

6 ~~At Yes. It is a common industry practice for LECs to allow IXC's to directly connect to the~~
7 ~~end office of the LEC in order to allow the IXC to save on common transport and tandem~~
8 ~~switching charges. This type of dedicated connection is known as "Direct End Office~~
9 ~~Transport (DEOT)" or "Direct Trunked Transport (DTT)." Typically, the LEC offers DTT~~
10 ~~to an IXC by leasing a facility connected between the IXC's Point of Presence (POP) and~~
11 ~~the LEC's end office. The LEC's charges typically include a non-recurring connection~~
12 ~~charge, a fixed monthly charge, and a variable charge based upon the distance between the~~
13 ~~IXC's POP and the LEC's end office. DTT service thus allows an IXC that delivers~~
14 ~~relatively high volumes of traffic to the LEC's exchange to save from paying per minute~~
15 ~~tandem switching and transport charges. Qwest Corporation, as a local exchange carrier,~~
16 ~~offers DTT throughout its incumbent region, including in South Dakota, to any requesting~~
17 ~~IXC.~~

18
19 ~~Qwest recommends that this Commission, if it should grant NAT's certificate, condition its~~
20 ~~certificate upon the requirement that NAT provide DTT to any requesting IXC at~~
21 ~~reasonable rates, terms and conditions.~~

1 ~~Q. HAS THE FCC RULED THAT CLECS ARE OBLIGATED TO OFFER DTT TO~~
2 ~~IXCS THAT WANT TO DELIVER TRAFFIC DIRECTLY?~~

3 A. ~~Yes, in the PrairieWave case, after stating that CLECs have the ability to charge for tandem~~
4 ~~switching under certain circumstances, the FCC stated that this ability is premised upon~~
5 ~~allowing IXCs to interconnect through DTT. The FCC stated as follows:~~

6 ~~Our decision here is premised on the assumption that a competitive LEC~~
7 ~~will permit an IXC to install direct trunking from the IXC's point of~~
8 ~~presence to the competitive LEC's end office, thereby bypassing any~~
9 ~~tandem function. So long as an IXC may elect to direct trunk to the~~
10 ~~competitive LEC end offices, and thereby avoid the tandem switching~~
11 ~~function and associated charges, there should be limited incentive for~~
12 ~~competitive LECs to route calls unnecessarily through multiple switches,~~
13 ~~as suggested by AT&T.³³~~
14

15 Q. ~~DOES NAT CURRENTLY OFFER DTT THROUGH ITS SOUTH DAKOTA~~
16 ~~INTRASTATE ACCESS TARIFF?~~

17 A. ~~Yes. However, the tariff does not provide a rate for DTT. Section 3.8.1 B.1 states that~~
18 ~~"All elements of Direct Trunked Transport are priced on an Individual Case Basis (ICB)."~~
19 ~~Thus Qwest cannot determine whether the DTT rate is reasonable or not.~~
20

21 Q. ~~DOES QWEST HAVE A PROPOSAL FOR WHAT WOULD BE A REASONABLE~~
22 ~~RATE FOR DTT?~~

23 A. ~~Yes. As discussed above, the FCC in the Connect America order required LECs engaging~~
24 ~~in access stimulation to apply the access rates of the price cap carrier, which in South~~
25 ~~Dakota is Qwest Corporation. Qwest's proposes that its DTT rates should apply to any~~

³³ ~~In the Matter of Access Charge Reform, PrairieWave Telecommunications, Inc. Petition for Waiver of Sections~~
~~6426(b) and (c) or in the Alternative Section 64.26(a)(6) of the Commission's Rules, CC Docket No. 96-262,~~
~~Released February 14, 2008, at ¶ 27.~~

1 ~~LEC engaging in access stimulation in this state. Qwest's rates for DTT include only a~~
2 ~~non-recurring charge, a fixed monthly rate, and a rate that varies by the distance between~~
3 ~~points of interconnection. Qwest does not charge a usage based, per minute charge for~~
4 ~~DTT, and thus the arbitrage dangers of mileage pumping will be avoided.~~

5
6 ~~VI. QWEST'S RECOMMENDATIONS~~

7
8 ~~Q. WHAT IS QWEST RECOMMENDING THAT THIS COMMISSION DO WITH~~
9 ~~REGARD TO NAT'S CERTIFICATION REQUEST?~~

10 A. ~~For all of the reasons cited previously, Qwest believes it is in the public interest for the~~
11 ~~Commission to deny NAT's request. Such a denial would send a clear message that~~
12 ~~certification is to be granted only to provide legitimate local exchange service, not to~~
13 ~~engage in arbitrage schemes such as access stimulation.~~

14 ~~Q. ARE THERE OTHER OPTIONS AVAILABLE TO THE COMMISSION?~~

15 A. ~~Yes. South Dakota Code 20:10:32:07 offers one such option. ARSD 20:10:32:07 states:~~

16 ~~ARSD 20:10:32:07. Certification subject to commission imposed terms and~~
17 ~~conditions. In addition to the requirements imposed by this chapter on providers~~
18 ~~of local exchange services, the commission, in granting a certificate of authority~~
19 ~~to provide local exchange services, may impose additional terms and conditions,~~
20 ~~on a competitively neutral basis, that it finds necessary to preserve and advance~~
21 ~~universal service, protect the public safety and welfare, ensure the continued~~
22 ~~quality of service, and safeguard the rights of consumers. The preservation and~~
23 ~~advancement of universal service shall be a primary concern.~~

24
25 ~~Using South Dakota Code 20:10:32:07 as its underlying authority, if the Commission~~
26 ~~chooses to grant NAT a certificate, then, for the reasons stated above, Qwest recommends~~
27 ~~that it be conditioned upon the requirement that NAT offers DTT connections to its end~~

1 ~~office to any requesting EXC at the same rates, terms and conditions that Qwest~~
2 ~~Corporation offers in South Dakota in order to prevent NAT from engaging in any form of~~
3 ~~mileage pumping scheme.~~

4
5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes it does. Thank you.**

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

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.))))))	Docket No. TC11-087
--	----------------------------	---------------------

**CENTURYLINK'S STATEMENT OF MATERIAL FACTS AND RESPONSE TO
NAT'S STATEMENT OF UNDISPUTED FACTS**

Qwest Communications Company, LLC, a Delaware Limited Liability Company, doing business as "CenturyLink QCC" ("CenturyLink"), through counsel, pursuant to SDLC § 15-6-56 (c) (2) hereby submits its Statement of Material Facts as to which CenturyLink contends creates genuine issues of fact to be tried. In a separate section, CenturyLink also responds to NAT's "Statement of Undisputed Material Facts."

CENTURYLINK'S STATEMENT OF MATERIAL FACTS

1. ~~Access stimulation, or traffic pumping, is the term used to describe situations where rural local exchange carriers enter into an arrangement with high call volume operations such as free conference calling, chat lines, adult entertainment calls and other "free" calls with the ultimate objective of deriving revenues solely from interexchange carriers. Easton Direct at 4.~~
2. ~~The conference call or chat line operators, also known as free calling companies, place their equipment in the central office of the local exchange carrier, and the local exchange carrier assigns local numbers to the free service calling companies. Easton Direct at 4.~~
3. ~~Because the free service calling companies offer their conference or chat services to customers across the nation for free, this arrangement greatly stimulates the amount of traffic to the equipment of the free service calling~~

~~companies, and thus inflates the access minutes terminating to the local exchange carrier. Easton Direct at 4.~~

4. ~~The local exchange carrier bills switched access to the interexchange carrier of the person who places the call to the free service calling company at its tariffed rate, which in rural areas in some states is often several times higher than in non-rural areas and exchanges. Easton Direct at 4.~~
5. ~~The local exchange carrier then provides a kickback to the free service calling company, typically about half, of the access revenues that the local exchange carrier collects from the interexchange carriers. Easton Direct at 5.~~
6. ~~The local exchange carrier and the free calling companies more than covers their costs and profits from the shared revenues. Easton Direct at 5.~~
7. ~~The end result of paragraphs 1 through 6 above is that the IXCs pay higher access charges that provide enormous profits to the free service calling companies and the traffic pumping LECs. Easton Direct at 5.~~
8. ~~Access stimulation constitutes arbitrage and is contrary to public policy. Easton Direct at 5.~~
9. ~~IXCs must deliver traffic to the numbers and exchanges called by their end user customers. Easton Direct at 5.~~
10. ~~The FCC has directed interexchange carriers to deliver all such traffic in order to promote and safeguard the ability of callers to reach their intended destinations. Easton Direct at 5.~~
11. ~~Qwest and other interexchange carriers are not permitted to block calls destined to traffic pumping LECs, and Qwest never has. Thus, Qwest and other IXCs are forced to deliver the traffic to the traffic pumping LEC exchanges, and traffic pumping LECs manipulate this forced arrangement to attempt to impose inflated switched access charges upon the IXCs. Easton Direct at 5.~~
12. ~~Traffic pumping LECs abuse the regulatory structure underlying switched access rates in rural exchanges. Easton Direct at 5.~~

13. ~~Historically, switched access rates in rural areas have been set at rates significantly higher than in non-rural areas in order to provide support to a rural carrier providing essential, basic services in high cost areas. That is, the rates are higher to subsidize the high cost of providing basic services to rural residents and businesses. Easton Direct at 5-6.~~
14. ~~IXCs have been generally amenable to paying the higher rates in consideration of these policies and because traffic volumes to rural areas are relatively low. Easton Direct at 6.~~
15. ~~The traffic pumping LECs abuse this laudable structure by placing the conference calling equipment in rural exchanges, generating exponentially higher traffic volumes to the exchange, which combined with their high rural switched access rates lead to increasingly large invoices to IXCs. Easton Direct at 6.~~
16. ~~An example of the above is that, in certain rural exchanges where Qwest typically would receive invoices of about a thousand dollars per month before traffic pumping, after certain LECs commenced traffic pumping schemes, Qwest would receive invoices for several hundred thousands of dollars, for just one month. Easton Direct at 6.~~
17. ~~When one multiplies the months by the number of LECs engaging in traffic pumping, the result is tens and hundreds of millions of dollars in increased access charges as a result of this scheme. Easton Direct at 6.~~
18. ~~Thus, the public interest component of higher switched access rates in rural areas to support basic services to rural residences and businesses is abused by traffic pumping LECs that bill millions of dollars out of IXCs for their own profit and that of their free service calling company partners. Easton Direct at 6.~~
19. ~~The FCC has attempted to remove the incentive of high terminating switched access rates for LECs engaging in access stimulation in the Connect America order; however, it appears that traffic pumping LECs such as NAT intend to continue this practice, likely supporting their schemes through high transport rates in the place of terminating switched access rates. Easton Direct at 6.~~

20. ~~It is against public policy that entities that do not use or subscribe to a service be forced to support the costs and enormous profits of the providers of the service. Easton Direct at 7.~~
21. ~~That is, IXC's do not use the services provided by the free service calling companies, such as conference calling or chat line services; rather, it is the end user callers that consume those services. Easton Direct at 7.~~
22. ~~But, the IXC's are forced to deliver and thus incur the switched access charges that are shared with the free service calling companies, and thus the IXC's support the costs and bestow huge profits upon the free service calling companies. Easton Direct at 7.~~
23. ~~IXC's are not permitted to pass on the specific costs of traffic pumping to the individual end user customers that are placing calls to the free service calling companies. Easton Direct at 7.~~
24. ~~IXC's current charges to their end user customers are not calculated based on traffic pumping traffic patterns, although, as IXC's incur the enormous cost of traffic pumping LEC's switched access bills, all their customers ultimately must absorb these costs through higher rates. Easton Direct at 7.~~
25. ~~Thus, despite the marketing of the underlying calling services as "free," there is little that is free about them. Easton Direct at 7.~~
26. ~~The Commission and IXC's should be wary of any scheme in which a rural LEC is attempting to generate large volumes of minutes for calls to free service calling companies and in which the LEC intends to invoice IXC's on a usage or per minute basis. Easton Direct at 7.~~
27. ~~There is an important policy significance of an agreement to share revenues between the LEC and the free service calling companies. Easton Direct at 7-8.~~
28. ~~The sharing of access revenues between the LEC and the free service calling companies means that such revenues are being used for more than simply covering the costs of the LEC to provide service. Easton Direct at 8.~~

29. ~~And, such revenues are not being used to support basic services to legitimate residential and business customers in rural areas. Easton Direct at 8.~~
30. ~~When access revenues are shared to support and provide large profits to free service calling companies, the LEC is charging in excess of the rates appropriate to further valid public interests and is misusing the regulatory system that tightly controls access rates. Easton Direct at 8.~~
31. ~~In its February 8, 2011, Connect America Fund Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking, the FCC described such traffic pumping arrangements as an "arbitrage scheme." Easton Direct at 8.~~
32. ~~The overriding intent of the FCC is to reduce traffic pumping by the elimination of traffic pumping and arbitrage incentives. Easton Direct at 10.~~
33. ~~The FCC consistently recognizes that access stimulation results in unjust and unreasonable rates to IXCs and presents several other policies supporting the issuance of access stimulation rules. Easton Direct at 10.~~
34. ~~The Connect America order acknowledged evidence in its record of another form of arbitrage—"mileage pumping," in which "service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges." Easton Direct at 13.~~
35. ~~Despite the FCC's admonitions against traffic pumping practices, it has come to the attention of Qwest that certain traffic pumping LECs are indeed planning on charging access rates with high transport rates. Easton Direct at 13.~~
36. ~~Thus, abuse of terminating access rates may be replaced by new schemes in which high transport rates are charged for calls delivered to free service calling companies. Easton Direct at 13.~~
37. ~~Ongoing litigation has yielded information that confirms not only that NAT is engaged in access stimulation, but also that it represents the vast majority of its business. Easton Direct at 14.~~
38. ~~Without its access stimulation scheme, NAT would likely not exist. Easton Direct at 14.~~
39. ~~The Treasurer of Crow Creek Sioux tribe acknowledged the significance of free conference calling services to the NAT business model stating, "Well, if it wasn't for FreeConferenceCall, there really wouldn't be a NAT." Easton Direct at 15.~~

40. ~~The controller for both NAT and Free Conferencing Corporation testified in the same hearing that there is a marketing fee agreement between the two parties whereby Free Conferencing Corporation gets 75% of the access revenues generated and NAT retains the remaining 25%. Easton Direct at 16.~~
41. ~~This percentage split grants a higher percentage to the free service calling company than Mr. Easton has seen in other cases. Easton Direct at 16.~~
42. ~~This percentage split demonstrates that a significant portion of access revenues will be directed toward an entity that is not providing the access service itself, and thus suggests that the rates charged by NAT for either termination or transport of calls to its free service calling companies is unjust, unreasonable, and constitutes an arbitrage scheme. Easton Direct at 16.~~
43. In its discovery responses, NAT states that it will be engaging in access stimulation in the area for which is requesting certification. Easton Direct at 16.
44. ~~By NAT's admission that it will be engaging in access stimulation as defined in the Connect America order there is ample evidence that NAT will continue to split its access revenues with companies such as Free Conferencing at a percentage that siphons 75% of access revenues from IXC's to an entity that is not providing any access services at all. Easton Direct at 17.~~
45. ~~Traffic pumping schemes have resulted in claims brought by IXC's including Qwest, requesting a return of monies illegally obtained by the LEC. Easton Direct at 18.~~
46. ~~Qwest's experience has shown that traffic pumping LECs fail to take fiscally responsible steps to cover their potential liabilities. Easton Direct at 18.~~
47. ~~Under their contracts with free service calling companies, when a traffic pumping LEC receives monies from an IXC, it immediately tenders usually half, and in the case of NAT, 75%, of the money to its free service calling company partners. Easton Direct at 18-19.~~
48. ~~Thus, the traffic pumping LEC fails to retain the monies that are in dispute and potentially subject to refund.~~
49. ~~Or, the traffic pumping LEC may attempt to move the monies out of reach of the IXC's, by distributions to its owners, some of whom include family trusts, or by converting the funds into illiquid facilities and plant. Easton Direct at 19.~~

50. ~~Under these circumstances, the traffic pumping LEC fails in its duties of operating and managing itself in a financially responsible manner that reserves funds for its contingent liabilities. Easton Direct at 19.~~
51. ~~It has come to Qwest's attention that traffic pumping LECs intend to designate distant points of interconnection between the LEC and IXCs, and then charge a usage-based, per-minute transport rate, and a transport rate premised upon mileage. Easton Direct at 20.~~
52. ~~Charging inflated transport charges, even though the LEC is charging the termination rates prescribed by the FCC in the Connect America order, could result in a financially viable traffic pumping scheme for the LEC. Easton Direct at 20.~~
53. ~~A mileage pumping scheme has similar components to the traffic pumping schemes of the recent past—high traffic volumes, per-minute charges, and charging of revenues with an entity that did not provide any of the access services. Easton Direct at 20-21.~~
54. ~~It is a common industry practice for LECs to allow IXCs to directly connect to the end office of the LEC in order to allow the IXC to save on common transport and tandem switching charges. This type of dedicated connection is known as "Direct End Office Transport (DEOT)" or "Direct Trunked Transport (DTT)." Easton Direct at 21.~~
55. ~~Typically, the LEC offers DTT to an IXC by leasing a facility connected between the IXC's Point of Presence (POP) and the LEC's end office. Easton Direct at 21.~~
56. ~~The LEC's charges for DTT typically include a non-recurring connection charge, a fixed monthly charge, and a variable charge based upon the distance between the IXC's POP and the LEC's end office. Easton Direct at 21.~~
57. ~~DTT service thus allows an IXC that delivers relatively high volumes of traffic to the LEC's exchange to save from paying per-minute tandem switching and transport charges. Easton Direct at 21.~~
58. ~~Qwest Corporation, as a local exchange carrier, offers DTT throughout its incumbent region, including in South Dakota, to any requesting IXC. Easton Direct at 21.~~

59. ~~Qwest recommends that this Commission, if it should grant NAT's certificate, condition its certificate upon the requirement that NAT provide DTT to any requesting IXC at reasonable rates, terms and conditions. Easton Direct at 21.~~
60. ~~NAT's tariff does not provide a rate for DTT. Easton Direct at 22.~~
61. ~~Section 2.8.1 D.1 of NAT's access tariff states that "All elements of Direct Trunked Transport are priced on an Individual Case Basis (ICB)." Easton Direct at 22.~~
62. ~~The FCC in the Connect America order required LECs engaging in access stimulation to apply the access rates of the price cap carrier, which in South Dakota is Qwest Corporation. Easton Direct at 22.~~
63. ~~Qwest's rates for DTT include only a non-recurring charge, a fixed monthly rate, and a rate that varies by the distance between points of interconnection. Easton Direct at 23.~~
64. ~~Qwest does not charge a usage based, per minute charge for DTT, and thus the arbitrage dangers of mileage pumping will be avoided. Easton Direct at 23.~~
65. ~~Qwest proposes that its DTT rates should apply to any LEC engaging in access stimulation in this state. Easton Direct at 22, 23.~~

CENTURYLINK'S RESPONSE TO NAT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On October 11, 2011, NAT filed its Application for Certificate of Authority ("Application") with the South Dakota Public Utilities Commission ("Commission").

CENTURYLINK RESPONSE: Undisputed.

2. Exhibit A to this Application contains NAT's "Certificate of Organization – Limited Liability Company" from the South Dakota Secretary of State's Office. (Application-Exhibit A).

CENTURYLINK RESPONSE: Undisputed.

3. Exhibit B to this Application contains a listing of NAT's key management personnel. (Application-Exhibit B).

CENTURYLINK RESPONSE: CenturyLink does not dispute that Exhibit B to NAT's Revised Application purports to be a listing of NAT's key management personnel, ~~but Sprint has placed into the record facts showing that David Erickson is also part of NAT's management. Farrar Direct, at 9-19.~~

4. Exhibit C to this Application contains NAT's confidential financial statements. (Application-Exhibit C).

CENTURYLINK RESPONSE: CenturyLink does not dispute that Exhibit C to NAT's Revised Application contains certain confidential financial information. ~~But, Sprint contends that such information is not complete and accurate. Farrar Direct, p. 26.~~

5. On November 30, 2011, Commission Staff served a series of Data Requests on NAT. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 2).

CENTURYLINK RESPONSE: Undisputed.

6. NAT's Response Data to the Commission Staff's Data Requests was December 21, 2011. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 3).

CENTURYLINK RESPONSE: Undisputed.

7. NAT provided its Responses to the Commission Staff's Data Requests in a timely manner. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 4).

CENTURYLINK RESPONSE: Undisputed.

8. On January 27, 2012, NAT filed its Revised Application for Certificate of Authority ("Revised Application") with the Commission.

CENTURYLINK RESPONSE: Undisputed.

9. NAT's Revised Application incorporates the original Application's Exhibits A-C. (Revised Application).

CENTURYLINK RESPONSE: Undisputed.

10. NAT's Revised Application seeks authority to provide local exchange and interexchange service within the Crow Creek Sioux Tribe Reservation ("Reservation") which is within the study area of Midstate Communications, Inc. ("Midstate"). (Revised Application, page 1).

CENTURYLINK RESPONSE: Undisputed.

11. NAT's Revised Application provides all information required by ARSD 20:10:32:03. (Revised Application).

CENTURYLINK RESPONSE: ~~CenturyLink disputes the inference that NAT has provided all the information necessary to address all of the relevant issues in this docket as framed by the pleadings and Commission orders. As stated in CenturyLink's Brief in Opposition to NAT's Motion for Summary Judgment, the issues in this docket include whether NAT's access stimulation activities are within the public interest and whether certain conditions should be placed upon that NAT's certificate, if granted. NAT has not submitted any information to the Commission addressing these issues.~~

12. On January 31, 2012, NAT's Revised Application was "deemed complete" by the Commission's Staff. (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 5).

CENTURYLINK RESPONSE: Undisputed.

13. NAT's business address is 253 Ree Circle, Fort Thompson, South Dakota 57339, Telephone: 949-842-4478, Facsimile: 562-432-5250, Web page: NativeAmericanTelecom.com. (Revised Application, page 2; Direct Testimony of Jeff Holoubek on Behalf of NAT, page 3) (hereinafter "Holoubek Testimony, page -").

CENTURYLINK RESPONSE: Undisputed.

14. NAT is a tribally-owned telecommunications company organized as a limited liability company under the laws of South Dakota. (Revised Application, pages 2-3; Holoubek Testimony, page 3).

CENTURYLINK RESPONSE: CenturyLink does not dispute that NAT is owned in part by the Crow Creek Sioux Tribe, ~~but it notes that Sprint has filed testimony in support of its position that NAT is a sham entity. Farrar Direct, pp. 9-10.~~

15. NAT's principal office is located at 253 Ree Circle, Fort Thompson, South Dakota 57339. (Revised Application, page 2; Holoubek Testimony, page 4).

CENTURYLINK RESPONSE: Undisputed.

16. NAT's registered agent is Scott R. Swier, 133 N. Main Street, P.O. Box 256, Avon, South Dakota 57315. (Revised Application, page 2; Holoubek Testimony, page 4).

CENTURYLINK RESPONSE: Undisputed.

17. NAT has a certificate of authority from the South Dakota Secretary of State to transact business in South Dakota. (Revised Application, page 4 and Exhibit A; Holoubek Testimony, page 4).

CENTURYLINK RESPONSE: Undisputed.

18. NAT's Federal Tax Identification Number is 26-3283812. (Revised Application, page 12; Holoubek Testimony, page 12).

CENTURYLINK RESPONSE: Undisputed.

19. NAT's South Dakota sales tax number is 1012-1173-ST. (Revised Application, page 12; Holoubek Testimony, page 12).

CENTURYLINK RESPONSE: Undisputed.

20. NAT's ownership structure consists of the Crow Creek Sioux Tribe (51%) ("Tribe"), P.O. Box 50, Fort Thompson, South Dakota 57339-0050, Native American Telecom Enterprise, LLC (25%) ("NAT Enterprise"), 747 S. 4th Ave., Sioux Falls, SD 57104, and WideVoice Communications, Inc. (24%) ("WideVoice"), 410 South Rampart, Suite 390, Las Vegas, NV 89145. (Revised Application, pages 3, 6; Holoubek Testimony, pages 4-5).

CENTURYLINK RESPONSE: CenturyLink does not dispute this is the ownership structure set forth in the joint venture agreement, ~~but Sprint has filed testimony denying that the Tribe is effectively an "owner" exercising the rights normally held by one with 51% ownership. Farrar Direct, pp 9-19.~~

21. The Tribe is a federally-recognized Indian tribe with its tribal headquarters located on the Crow Creek Sioux Tribe Reservation ("Reservation") in Fort Thompson, South Dakota. (Revised Application, page 3).

CENTURYLINK RESPONSE: Undisputed.

22. NAT Enterprise is a telecommunications development company. (Revised Application, page 3).

CENTURYLINK RESPONSE: Because this statement is not verified or otherwise supported by sworn testimony, there is no appropriate citation to the record and thus is not an undisputed fact for purposes of summary judgment. SDCL 15-6-56(c)(1).

23. WideVoice is a telecommunications engineering company.

CENTURYLINK RESPONSE: Because this statement is not verified or otherwise supported by sworn testimony, there is no appropriate citation to the record and thus is not an undisputed fact for purposes of summary judgment. SDCL 15-6-56(c)(1).

24. NAT seeks to provide facilities-based telephone service to compliment its advanced broadband services. (Revised Application, page 1).

CENTURYLINK RESPONSE: ~~CenturyLink disputes this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink, not to compliment NAT's advanced broadband services. See Easton Direct, pp. 4-5, 16.~~

25. NAT proposes to offer local exchange and interexchange service within the Reservation, which is within the study area of Midstate. (Revised Application, page 6; Holoubek Testimony, page 13).

CENTURYLINK RESPONSE: ~~CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as~~

~~CenturyLink not to compliment NAT's advanced broadband services. See Easton Direct, pp. 4-5, 16.~~

26. NAT will provide service through its own facilities. (Revised Application, page 6; Holoubek Testimony, pages 8, 10).

CENTURYLINK RESPONSE: Undisputed.

27. NAT is currently interconnected with Midstate and other carriers for the exchange of telecommunications traffic. (Revised Application, page 6; Holoubek Testimony, page 8).

CENTURYLINK RESPONSE: CenturyLink does not dispute that NAT may be currently interconnected with Midstate. ~~CenturyLink disputes that NAT is offering reasonable rates, terms and conditions by which CenturyLink could connect to NAT's end office through Direct Trunked Transport and thus is requesting that the Commission impose such conditions upon NAT's certificate, if granted. See Easton Direct, at 20-23.~~

28. NAT is using WiMAX (Worldwide Interoperability for Microwave Access) technology operating in the 3.65 GHZ licensed spectrum providing service to residential, small business, hospitality and public safety. (Revised Application, pages 6-7; Holoubek Testimony, page 8).

CENTURYLINK RESPONSE: Undisputed. ~~However, CenturyLink disputes the absence of NAT addressing or providing any information about its facilities and services used in connection with its admitted access stimulation activities, issues well within this docket as framed by the pleadings. See CenturyLink's Response in Opposition to NAT's Motion for Summary Judgment.~~

29. The network supports high-speed broadband services, voice service, data and Internet access, and multimedia. (Revised Application, page 7; Holoubek Testimony, page 8).

~~CENTURYLINK RESPONSE: CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 4-5, 16.~~

30. Through the use of advanced antenna and radio technology with OFDM1 OFDMA (Orthogonal Frequency Division Multiplexing), NAT is able to deliver wireless IP (Internet Protocol) voice and data communications. (Revised Application, page 7; Holoubek Testimony, page 9).

~~CENTURYLINK RESPONSE: CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 4-5, 16.~~

31. This 4G technology offers flexible, scalable and economically viable solutions that are key components to deploying in vast rural environments, such as the Reservation. (Revised Application, page 7; Holoubek Testimony, page 9).

~~CENTURYLINK RESPONSE: CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 4-5, 16.~~

32. NAT has established a toll-free number and email address for all customer inquiries and complaints, and has a physical location on the Reservation to handle customer complaints and inquiries within twenty-four (24) hours. (Revised Application, page 8; Holoubek Testimony, pages 9-10).

CENTURYLINK RESPONSE: Undisputed.

33. NAT has established connectivity with telecommunications carriers to provide its customers with access to 911, operator services, interexchange services, directory assistance, and telecommunications relay services. (Revised Application, page 8).

CENTURYLINK RESPONSE: ~~CenturyLink disputes this statement because NAT's connectivity with IXCs is also for the purpose of engaging in traffic pumping schemes. See Easton Direct at 4-5, 16.~~

34. NAT will target its direct marketing efforts to only those individuals and organizations within the Reservation. (Revised Application, page 9; Holoubek Testimony, page 10).

CENTURYLINK RESPONSE: ~~CenturyLink disputes this statement because of the absence of any reference by NAT to its free service calling company partner and the scheme between the two to engage in access stimulation. See Easton Direct, at 14-17.~~

35. As a newly-formed limited liability company, NAT is not registered or certificated to provide telecommunications services in other states, nor has NAT applied for or ever been denied authority to provide telecommunications services in other states. (Revised Application, page 10; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: Undisputed.

36. NAT will utilize advertising designed to market its services. (Revised Application, page 10; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: ~~CenturyLink disputes this statement because of the absence of any reference by NAT to its free service calling company partner and the scheme between the two to engage in access stimulation. See Easton Direct, at 14-17.~~

37. NAT will not solicit customers via telemarketing. (Revised Application, page 10; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: Undisputed.

38. NAT will require all personnel to be trained in NAT's policies and procedures to ensure affirmative customer selection of service from NAT. (Revised Application, pages 10-11; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: ~~Disputed. CenturyLink, as a "customer" of access services, is forced to use NAT's access services — there is no "affirmative selection" of access services by IXC. See Easton Direct at 5.~~

39. NAT will require customers to complete an order form and/or a Letter of Authorization ("LOA") selecting NAT as the customer's carrier, if a consumer is switching local service providers. (Revised Application, page 11; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: Undisputed as to non-IXCs. ~~However, CenturyLink, as a "customer" of access services, is forced to use NAT's access services — there is no "selection" of access services by IXC. See Easton Direct at 5.~~

40. NAT will comply with all state and federal rules prohibiting the slamming of customers. (Revised Application, page 11; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: Undisputed, as to the term: "slamming."

41. NAT has never had a complaint filed against it with any state or federal commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered. (Revised Application, page 11; Holoubek Testimony, page 11).

CENTURYLINK RESPONSE: Undisputed.

42. NAT will post the current rates, terms and conditions for its local and interexchange services offered in South Dakota on its website located at www.NativeAmericanTelecom.com. (Revised Application, page 11; Holoubek Testimony, page 12).

CENTURYLINK RESPONSE: Undisputed.

43. NAT will notify customers by mail, email or telephone, depending upon the customer's expressed preference, as to how notification should be made, to apprise them of any changes in rates, terms and conditions of service. (Revised Application, page 11; Holoubek Testimony, page 12).

CENTURYLINK RESPONSE: Undisputed as to non-IXC "customers."

44. NAT is a tribally-owned telecommunications carrier currently providing service on the Reservation. (Revised Application, page 3; Holoubek Testimony, page 4).

CENTURYLINK RESPONSE: ~~See Response to Number 14, above.~~

45. 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." (Revised Application, page 4; Holoubek Testimony, page 5).

CENTURYLINK RESPONSE: Undisputed.

46. On October 28, 2008, the Tribal Utility Authority entered its *Order Granting Approval to Provide Telecommunications Service* ("Approval Order"). (Revised Application, page 4; Holoubek Testimony, page 5).

CENTURYLINK RESPONSE: Undisputed.

47. 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." (Revised Application, page 4; Holoubek Testimony, pages 5-6).

CENTURYLINK RESPONSE: Undisputed

48. NAT currently provides service on the Reservation pursuant to this Approval Order. (Revised Application, page 3; Holoubek Testimony, page 4).

CENTURYLINK RESPONSE: CenturyLink does not dispute that NAT currently provides service on the Reservation.

49. NAT currently provides high-speed Internet access, basic telephone, and long-distance services on and within the Reservation. (Revised Application, page 3; Holoubek Testimony, page 5).

CENTURYLINK RESPONSE: ~~CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 4-5, 16.~~

50. NAT has physical offices, telecommunications equipment, and telecommunications towers on the Reservation. (Revised Application, page 5; Holoubek Testimony, page 6).

CENTURYLINK RESPONSE: Undisputed.

51. NAT provides a computer training facility with free Internet and telephone service to tribal members. (Revised Application, page 5; Holoubek Testimony, page 6).

CENTURYLINK RESPONSE: ~~Disputed on the basis of Sprint's evidence that the computer training facility has not opened. Farrar Direct, Ex. 4, p. 150.~~

52. NAT provides 110 high-speed broadband and telephone installations at residential and business locations on the Reservation. (Revised Application, page 5; Holoubek Testimony, page 7).

CENTURYLINK RESPONSE: ~~CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access~~

~~stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 45, 16.~~

53. NAT has established an Internet Library with six (6) work stations that provide computer/Internet opportunities for residents that do not otherwise have access to computers. (Revised Application, page 5; Holoubek Testimony, page 7).

CENTURYLINK RESPONSE: Undisputed.

54. NAT has years of managerial and technical experience in providing the telecommunications services proposed in its Revised Application. (Holoubek Testimony, page 13).

CENTURYLINK RESPONSE: ~~CenturyLink disputes the inference that NAT's managerial capabilities should be considered without reference to its access stimulation activities, and whether acting contrary to the public interest shows an absence of managerial ability. See CenturyLink's Brief in Opposition to NAT's Motion for Summary Judgment -- Legal Standards Governing Nat's Application For Certification~~

55. Patrick Chicas ("Chicas") is the Chief Technical Officer for NAT. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

56. Chicas' business address is 410 South Rampart, Suite 390, Las Vegas, Nevada 89145.

CENTURYLINK RESPONSE: Undisputed.

57. Chicas has overall responsibility for NAT's strategic guidance, network operations, and network planning and engineering. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

58. Chicas also serves as President and a Managing Director for Wide Voice, LLC. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

59. From September 2003 to April 2009, Chicas was a co-founder and Chief Technology Officer of Commpartners, Inc., a nationwide CLEC. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

60. From August 2000 to November 2003, Chicas was the president, co-chairman, and a member of the board at Rubicon Media Group, a sector pioneering Internet publishing concern recently sold to Advanstar Communications, Inc. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

61. From March 1999 to August 2000, Chicas was the vice president for Data Services at Mpower Communications. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

62. While at Mpower, Chicas designed the company's entire IP infrastructure and the first production VoIP (Voice Over Internet Protocol) network for small business services. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

63. From January 1997 to September 1998, Chicas was the first executive hire and vice president of operations at Digital Island, Inc. (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

64. Chicas also has prior telecommunications experience with Pacific Bell (now AT&T), PacTel Cellular (now Verizon), and GTE Mobilnet (now Verizon). (Application-Exhibit B).

CENTURYLINK RESPONSE: Undisputed.

65. Jeff Holoubek ("Holoubek") is NAT's acting president. (Application-Exhibit B; Holoubek Testimony, page 2).

CENTURYLINK RESPONSE: Undisputed.

66. Holoubek received his law degree from the Boston University School of Law. (Application-Exhibit B; Holoubek Testimony, page 3).

CENTURYLINK RESPONSE: Undisputed.

67. Holoubek received his Masters of Business Administration (M.B.A.) from California State University-Fullerton. (Application-Exhibit B; Holoubek Testimony, page 3).

CENTURYLINK RESPONSE: Undisputed.

68. Holoubek holds Bachelor of Arts degrees in Accounting, Finance, and Philosophy. (Holoubek Testimony, page 3).

CENTURYLINK RESPONSE: Undisputed.

69. NAT is not a publicly-held entity. (Holoubek Testimony, page 14).

CENTURYLINK RESPONSE: Undisputed.

70. NAT has provided its "confidential financial documents" for the Commission's analysis and review. (Holoubek Testimony, page 14).

CENTURYLINK RESPONSE: Undisputed.

71. The "confidential financial documents" provided by NAT to the Commission include (1) NAT's Balance Statements and (2) NAT's Profit & Loss Statements (through December 31, 2011). (Affidavit of Scott R. Swier in Support of NAT's Motion for Summary Judgment, ¶ 6).

CENTURYLINK RESPONSE: Undisputed.

72. NAT is committed and prepared to allocate the necessary resources to provide high-quality telecommunications services to its customers. (Holoubek Testimony, page 14).

CENTURYLINK RESPONSE: ~~CenturyLink disputes the completeness of this statement. As shown in Mr. Easton's Testimony, NAT has admitted that it will engage in "access stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 4-5, 16.~~

Dated: April 11, 2012.

Respectfully submitted,

By: /s/ Todd Lundy
Todd L. Lundy (Admitted Pro Hac Vice)
CenturyLink Law Department
1801 California St., #1000
Denver, CO 80202
Telephone: 303-992-2510
todd.lundy@centurylink.com

And

Christopher W. Madsen
Boyce, Greenfield, Pashby & Welk, L.L.P.
300 S. Main Avenue
P.O. Box 5015
Sioux Falls, SD 57117-5015
Main: (605) 336-2424
Direct: (605) 731-0202
Fax: (605) 334-0618