

**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

**DIRECT TESTIMONY OF
CAREY ROESEL
ON BEHALF OF
NATIVE AMERICAN TELECOM, LLC**

February 7, 2014

Q: PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT OCCUPATION.

A: My name is Carey Roesel and my business address is 2600 Maitland Center Parkway, Suite 300 - Maitland, Florida 32751. I am employed by Technologies Management, Inc. ("TMI") as Vice President and Consultant.

Q. PLEASE DESCRIBE YOUR EDUCATION AND TRAINING.

A. I joined TMI in 1996. In my role at TMI, I work with a wide variety of telecommunications carriers to obtain certification and manage ongoing regulatory issues. I also provide in-depth analysis regarding many telecommunications issues, with a particular focus on intercarrier compensation. Prior to becoming part of TMI, I worked Sprint/United Telephone (now CenturyLink) in regulatory and business planning. I earned my Bachelor of Arts in Economics at the University of Florida and my Master of Arts in Economics from the University of Central Florida.

Q: WHAT ASPECTS OF YOUR WORK HISTORY AND EXPERIENCE HAS A PARTICULAR BEARING ON THE TESTIMONY YOU WILL BE PROVIDING IN THIS MATTER.

A. I have been involved in intercarrier compensation rate development and policy since 1987, first for an incumbent LEC and then for

numerous competitive LECs. Since 1996 I have worked on competitive telecom market entry, certification, compliance, and intercarrier dispute issues.

Q: HAVE YOU PROVIDED TESTIMONY IN PROCEEDINGS IN WHICH LOCAL EXCHANGE CARRIERS HAVE SOUGHT CERTIFICATES OF AUTHORITY?

A: Yes. Most such certifications across the country do not require formal testimony. In those states that do require some form of testimony, I have either represented my client as the expert witness, or prepared my client by providing draft testimony.

Q: IN HOW MANY SUCH PROCEEDINGS HAVE YOU TESTIFIED?

A: I have been involved in hundreds of CLEC certification efforts. I would estimate that some form of testimony was involved in perhaps two or three dozen of these cases.

Q: COULD YOU EXPLAIN THE ROLE OF INTER-CARRIER COMPENSATION RATES IN OUR TELECOMMUNICATION SYSTEM?

A: Explicit, per minute intercarrier compensation for the local exchange carrier's role in originating and terminating non-local calls goes back several decades. Prior to this mechanism, there were substantial *implicit* subsidy flows from non-local to local

telecommunications services. The primary role of intercarrier compensation revenues, or the implicit subsidies that preceded them, is to keep local exchange services affordable.

Q: DOES INTER-CARRIER COMPENSATION HAVE ANY ROLE IN UNIVERSAL SERVICES OR EXPANDING SERVICE TO RURAL OR POORLY SUPPORTED AREAS?

A: Yes. Intercarrier compensation was historically the primary tool for achieving universal service objectives. State and federal regulators have been working over the years to shift this burden to explicit USF funding mechanisms, but intercarrier compensation still plays a substantial role in funding service to rural and underserved areas.

Q: HAVE YOU DONE ANY WORK FOR NATIVE AMERICAN TELECOM?

A: I have worked with NAT since early 2011. My efforts have been focused on tariff development, regulatory compliance issues, and dispute resolution.

Q: DOES NAT HAVE A VALID FEDERAL TARIFF?

A: The first federal tariff TMI filed for NAT was in 2011, and that tariff remains in effect. This tariff is available online via the FCC's ETFS system.

TMI filed the current tariff on a 15-day, "deemed lawful" basis. This method of filing gives interested parties an opportunity to raise issues or objections the FCC may then use to reject the tariff or suspend it for further investigation. Sprint raised several objections to the NAT tariff, NAT responded to these objections, and the FCC allowed NAT's tariff to go into effect as initially filed.

NAT did a corporate reorganization in 2013. TMI reviewed the nature of the reorganization, and advised NAT that under federal rules (47 CFR §63.03), it was a pro forma transaction, and no re-filing of the federal access tariff was necessary.

Q: WAS NAT'S CURRENT TARIFF ISSUED PRIOR TO THE FEDERAL COMMUNICATIONS COMMISSION ISSUED ITS ORDER IN "IN THE MATTER OF CONNECT AMERICA FUND" IN NOVEMBER 2011?

A: Yes. NAT's current tariff, FCC Tariff No. 3, was filed August 8, 2011, and effective August 23, 2011. The FCC's Connect America Order was released November 18 that same year. In NAT's August filing, it voluntarily mirrored the interstate rates of the lowest-priced Price Cap LEC in the state – CenturyLink (fka Qwest). So,

NAT – month’s in *advance of* the FCC’s Connect America Order pricing requirements – reduced its rates to the levels required by that Order.

At about the same time in 2011, TMI prepared and filed intrastate local and access tariffs with the Crow Creek Tribal Utility

Commission. These tariffs are available on the NAT’s web page.

Although I advised NAT that *substantially* higher intrastate access rates were available to them – Qwest’s intrastate rates at the time were over eight times higher than its interstate rates – NAT chose to mirror its interstate rates in the intrastate tariff. Of course, the Connect America Order ended up requiring interstate mirroring for terminating access, but NAT did so about a year and a half quicker than required.

Q: WHAT IS “ACCESS STIMULATION?”

A: The FCC described “access stimulation” this way in the Connect America Order (paragraph 656):

In this section, we adopt revisions to our interstate switched access charge rules to address access stimulation. Access stimulation occurs when a LEC with high switched access rates enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and “free” conference calls. The arrangement inflates or stimulates the access minutes terminated to the LEC, and the LEC

then shares a portion of the increased access revenues resulting from the increased demand with the “free” service provider, or offers some other benefit to the “free” service provider. The shared revenues received by the service provider cover its costs, and it therefore may not need to, and typically does not, assess a separate charge for the service it is offering. Meanwhile, the wireless and interexchange carriers (collectively IXCs) paying the increased access charges are forced to recover these costs from all their customers, even though many of those customers do not use the services stimulating the access demand.

Two things are noteworthy about the FCC’s description. First, access stimulation is always linked to “high switched access rates”. There are never discussions about access stimulation without a reference to an area with much higher than average switched access rates. Second, the “stimulation” describes access minute demand that is *shifted* to a particular LEC, much more than an increase in *overall* access minute demand. In other words, these minutes would likely occur anyway, but “stimulation” efforts pull the minutes to the rural LEC away from another, more urban LEC.

Q: IS “ACCESS STIMULATION” INHERENTLY BAD?

No. There are many things to say about the policy issues and consumer benefits/costs of pre-Connect America Order access stimulation models. Carriers were simply responding to the

market's price signals. For the purpose of my testimony in this case, however, I will focus on *post*-Connect America Order access stimulation, if such a thing can even exist. The access stimulation "problem" (if I concede that there was one) was fundamentally a *pricing* problem. Importantly, the Connect America Order addresses access stimulation under the section titled "Measures to Address Arbitrage". Arbitrage is about exploiting price disparities. By eliminating the price disparities, the Connect America Order – in a single step -- eliminated the host of alleged access stimulation evils.

Q: HOW DID THE FEDERAL COMMUNICATIONS COMMISSION'S ORDER OF NOVEMBER 2011 IN "THE MATTER OF CONNECT AMERICA FUND" CHANGE THE REGULATORY FRAMEWORK FOR TERMINATING ACCESS FEES AND THE PRACTICE OR ARBITRAGING ACCESS STIMULATION?

A: The Connect America Order established a multi-year schedule of access rate reductions that will essentially eliminate terminating access charges at both the state and federal level. Additionally, it made immediate changes to the maximum access rates available to carriers that tripped certain access stimulation triggers. Carriers meeting these conditions had to reduce their access rates down to the level of the lowest-priced Price Cap LEC in the state. These new pricing rules eliminated the incentive for

carriers to shift traffic from urban to rural areas. With “high switched access rates” eliminated and, consequently, the incentive to shift demand from urban to rural areas, “access stimulation” as described by the FCC simply ceased to exist.

Q: DOES ACCESS STIMULATION INCREASE THE COSTS TO CONSUMERS?

A: In a post-Connect America Order world, access stimulation does not increase costs to customers – and can actually *reduce* them. “Stimulated” access traffic is traffic that would have made an appearance on some other carrier’s network and would have created the same or higher access bills to the IXCs. This is particularly true when it comes to conference calling traffic which is arguably very price inelastic. Further, because conference calling improves communications *efficiency* among the participants, total costs tend to be reduced.

Access stimulator tariffed rates are required to be at the *lowest* priced Price Cap LEC rates in the state. In many states, the rates available to an access stimulator are substantially lower than the rates charged by the dominant ILEC in the state. Since the average rate per minute in an access stimulation scenario is now *below* the

overall average, this tends to reduce the average rates per minute and, therefore, the costs to the IXC.

Prior to the Connect America Order, I understand that the overall rate per access minute was higher than average for access stimulation traffic. However, I have never seen it demonstrated that “stimulated” traffic – particularly conference calling traffic – ever translated into higher retail long distance rates for consumers, or increased their costs in any manner.

Q: COULD YOU EXPLAIN THE TERMINATING ACCESS RATES THAT COMPANIES LIKE SPRINT AND CENTURYLINK HAVE TO PAY TO TERMINATE CALLS AT NATIVE AMERICAN TELECOM?

A: Calls terminating to NAT are charged the exact same rate elements, on a function-by-function basis, that would be charged by the LEC in SD with the lowest access rates. Between November 2011, and July 1, 2013, NAT’s intrastate rates were significantly *below* the LEC in SD with the lowest access rates because of NAT’s decision to mirror interstate rates well in advance of any requirement to do so.

Q: HOW DO NAT’S RATES COMPARE WITH THE RATES OF OTHER LECs IN THE STATE?

A: The rates NAT charges in the state are equal to the lowest rates charged by any LEC in SD. In fact, NAT's final overall terminating access rate of \$0.0063270 is lower than other LECs in the state of SD, e.g., Northern Valley.

Q: HOW DO NAT'S TRANSPORT AND MILEAGE FEES COMPARE WITH OTHER LECs IN THE STATE?

A: Like the lowest priced LEC in SD, CenturyLink, NAT charges two elements for "transport" and only one of these is mileage-sensitive.

Q: IS NAT IMPOSING ANY OTHER EXCESSIVE CHARGES ON INTEREXCHANGE CARRIERS, LIKE EXCESSIVE USER, MILEAGE, OR TRANSPORT FEES OR?

A: NAT assesses access charges in the same manner as the ILEC that would otherwise be serving NAT's customers, although the *rates* charged by NAT are substantially lower. In other words, total charges for this traffic are the same as they would be if CenturyLink provided the same service. (In fact, NAT actually bills *fewer* transport miles than the ILEC that serves this area would bill for the same traffic, so the overall fees are less than would be the case if the ILEC provided the service.)

Q: ONE EXPERT HAS NOTED AN OBJECTION TO THE CONCEPT OF MILEAGE PUMPING. WHAT IS THAT, AND IS IT HAPPENING WITH NAT?

A: According to the Connect America Order (paragraph 820), “Mileage Pumping” is “where service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges.” In 2012 AT&T prevailed in a complaint (FCC 12-110) about mileage pumping in Iowa where various LECs had changed their POIs with the Centralized Equal Access (CEA) provider for the sole of “pumping up” the mileage charges. NAT is not mileage pumping. NAT’s mileage charges are the same as what the ILEC serving the same area would charge (except at the much lower CenturyLink rates). Additionally, the tandem provider – SDN – does not have a rate structure like the Iowa CEA that creates an incentive for POI manipulation. Even if NAT were so inclined, mileage pumping is not even an option for them in SD.

Q: WILL THE DENIAL OF NAT’S APPLICATION DO ANYTHING TO REDUCE “ACCESS STIMULATION” IN SOUTH DAKOTA OR ELSEWHERE?

A: Certainly not. The same calls will just be terminated elsewhere. Conferencing is a growing and enormously popular service used by governments, corporations, charities, and individuals. It is also a very efficient way for people to communicate. These calls are going

to be made, whether through NAT, other LECs in the state, or elsewhere.

Q: IS NAT'S APPLICATION IN THE PUBLIC INTEREST OF THE CITIZENS OF SOUTH DAKOTA?

A: Yes. Approving NAT's application will be entirely consistent with historical universal service objectives for basic voice connectivity, as well as the *new* universal service objectives articulated in the Connect America Order – "to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation." Without NAT, the Crow Creek reservation would be among the most unserved/underserved areas in the nation.

Additionally, the increased economic activity sparked by NAT's involvement with Crow Creek reduces the reservation's reliance on outside support which benefits SD's non-tribal citizens.

Q: WHY ARE THE RURAL POOR SO UNDERSERVED WITH COMMUNICATIONS, EMERGENCY SERVICES, AND BROADBAND INTERNET?

A: These areas are extremely costly to serve and there are limited revenue opportunities. There are various funding mechanism designed to bring services to these areas, but they have thus far

been unsuccessful on many parts of the country, and that includes the Crow Creek Sioux tribe.

Q: DOES NAT HAVE THE TECHNICAL, FINANCIAL, AND MANAGERIAL CAPABILITIES TO MEET THE REQUIREMENTS TO PROVIDE INTRASTATE INTEREXCHANGE ACCESS SERVICE IN SOUTH DAKOTA?

A: Definitely. I have worked with NAT for about three years and have seen them demonstrate each of these capabilities *in this market*. (In contrast, I am usually asserting that a CLEC warrants certification because it has provided similar services in *other* markets.)

Q: WILL NAT BE ABLE TO CONTINUE PROVIDING SERVICE?

A: NAT is aware of the declining intercarrier compensation revenues and continues to adjust its business plans accordingly. Although terminating access rates are on a path to zero, end user fees are not. Furthermore, Intercarrier compensation is not the sole source of revenue or funding available to NAT.

Q: HOW WILL MOVEMENT TOWARD THE “BILL AND KEEP” SYSTEM AFFECT NAT AND OTHER LOCAL EXCHANGE CARRIERS?

A: LECs have seen access rates decline for the last 30 years. Traffic volumes have also declined as traditional wireline customers have

moved to wireless and VoIP networks. LECs, both incumbent and competitive, have been forced to accept that these revenues are simply going away. This is not an issue unique to NAT. (However, assuming *arguendo* that NAT is unable to continue operations in a bill and keep environment, the Crow Creek customers will be no worse off than they were *before* NAT came into the picture.)


Q: WAS TMI INVOLVED WITH NAT'S FEDERAL USF (499) FILINGS?

A: Yes. Since early 2013, TMI has handled all of NAT's regulatory compliance reporting obligations. The most significant and complex of these reporting obligations are the annual and quarterly federal USF (499) filings. Federal USF is the largest regulatory assessment for most US carriers and is presently 16.4% of interstate retail revenue. TMI reviewed all of NAT's historical filings and made adjustments where permitted. NAT received a USF credit of approximately \$10K as result of these adjustments.

VERIFICATION

I, *Carey Roesel*, state 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.

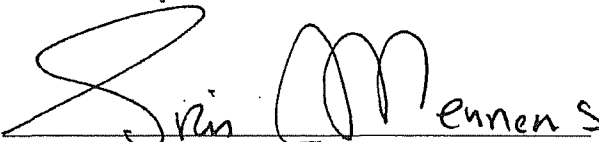
Dated this 2~~nd~~ day of February, 2014.



Carey Roesel

STATE OF FLORIDA)
COUNTY OF Orange)

Subscribed and sworn to before me this 7th day of February, 2014.



Notary Public

My Commission Expires:

(SEAL)

