

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

IN THE MATTER OF THE APPLICATION) Docket No. TC11-087
OF NATIVE AMERICAN TELECOM, LLC)
FOR A CERTIFICATE OF AUTHORITY TO)
PROVIDE LOCAL EXCHANGE SERVICE)
WITHIN THE STUDY AREA OF)
MIDSTATE COMMUNICATIONS, INC.)

Sprint Communications Company L.P.

Direct Testimony of Randy G. Farrar

Filed August 30, 2013

PUBLIC VERSION

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1 **DIRECT TESTIMONY**

2

3 **I. Introduction**

4

5 **Q. Please state your name, occupation, and business address.**

6 A. My name is Randy G. Farrar. My title is Regulatory Policy Manager for
7 Sprint United Management, the management subsidiary of Sprint
8 Corporation. My business address is 6450 Sprint Parkway, Overland Park,
9 Kansas 66251.

10

11 **Q. What is your educational background?**

12 A. I received a Bachelor of Arts degree from The Ohio State University,
13 Columbus, Ohio, with a major in history. Simultaneously, I completed a
14 program for a major in economics. Subsequently, I received a Master of
15 Business Administration degree, with an emphasis on market research, also
16 from The Ohio State University.

17

18 **Q. Please summarize your work experience.**

19 A. I have worked for a subsidiary of Sprint Corporation (or of its Sprint
20 predecessor in interest) since 1983 in the following capacities:
21 - 2011 to present: Regulatory Policy Manager. I provide financial,
22 economic, and policy analysis concerning interconnection, switched and

1 special access, reciprocal compensation, and other telecommunications
2 issues at both the state and federal level.

3 - 2005 to 2011: Senior Manager – Interconnection Support. I provided
4 interconnection support, and financial, economic, and policy analysis
5 concerning interconnection and reciprocal compensation issues.

6 - 1997 to 2005: Senior Manager – Network Costs. I was an instructor for
7 numerous training sessions designed to support corporate policy on
8 pricing and costing theory, and to educate and support the use of various
9 costing models. I was responsible for the development and support of
10 switching, transport, and financial cost models concerning reciprocal
11 compensation, unbundled network elements, and wholesale discounts.

12 - 1992 to 1997: Manager - Network Costing and Pricing. I performed
13 financial analyses for various business cases, analyzing the profitability of
14 entering new markets and expanding existing markets, including Custom
15 Calling, Centrex, CLASS and Advanced Intelligent Network features, CPE
16 products, Public Telephone and COCOT, and intra-Local Access and
17 Transport Area (“LATA”) toll. Within this time frame, I was a member of
18 the USTA’s Economic Analysis Training Work Group (1994 to 1995).

19 - 1987 to 1992: Manager - Local Exchange Costing. Within this time frame
20 I was a member of the United States Telephone Association’s (USTA)
21 New Services and Technologies Issues Subcommittee (1989 to 1992).

1 - 1986 to 1987: Manager - Local Exchange Pricing. I investigated alternate
2 forms of pricing and rate design, including usage sensitive rates, extended
3 area service alternatives, intraLATA toll pricing, and lifeline rates.

4 - 1983 to 1986: Manager - Rate of Return, which included presentation of
5 written and/or oral testimony before state public utilities commissions in
6 Iowa, Nebraska, South Carolina, and Oregon.

7
8 I was employed by the Public Utilities Commission of Ohio from 1978 to
9 1983. My positions were Financial Analyst (1978 - 1980) and Senior
10 Financial Analyst (1980-1983). My duties included the preparation of Staff
11 Reports of Investigation concerning rate of return and cost of capital. I also
12 designed rate structures, evaluated construction works in progress,
13 measured productivity, evaluated treatment of canceled plant, and
14 performed financial analyses for electric, gas, telephone, and water utilities.
15 I presented written and oral testimony on behalf of the Commission Staff in
16 over twenty rate cases.

17
18 **Q. What are your responsibilities in your current position?**

19 A. In my current position, I provide financial, economic and policy analysis
20 concerning interconnection, access, traffic pumping, and reciprocal
21 compensation issues. My analysis supports negotiations, arbitrations or
22 other proceedings between Sprint's wireless and/or CLEC entities and other
23 telecommunications carriers. I maintain a working understanding of the

1 interconnection, access, and reciprocal compensation provisions of the
2 Communications Act of 1934 (“the Act”) as amended by the
3 Telecommunications Act of 1996 (“the 1996 Act”) and the resulting rules
4 and regulations of the Federal Communications Commission (“FCC”).
5

6 **Q. Have you provided testimony before other regulatory agencies?**

7 A. Yes. In addition to my previously referenced testifying experience, since
8 1995 I have presented written or oral testimony or affidavit before twenty-
9 seven state regulatory agencies (Alabama, Arizona, Arkansas, California,
10 Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana,
11 Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio,
12 Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas,
13 Virginia, and Wisconsin) and the FCC, concerning interconnection issues,
14 reciprocal compensation, access reform, traffic pumping, universal service,
15 the avoided costs of resold services, local competition issues such as the
16 cost of unbundled network elements, and economic burden analyses in the
17 context of Incumbent Local Exchange Carrier (“ILEC”)-claimed rural
18 exemptions.
19

20 **II. Purpose and Scope of Testimony**

21

22 **Q. On whose behalf are you testifying?**

1 A. I am testifying on behalf of Sprint Communications Company L.P. (“Sprint”),
2 a subsidiary of Sprint Corporation.

3

4 **Q. What is the purpose of this proceeding?**

5 A. On May 31, 2013, Native American Telecom, LLC (“NAT-CC”)¹ applied to
6 the South Dakota Public Utilities Commission (“Commission”) for a state
7 Certificate of Authority “to provide intrastate interexchange access service.”²

8 However, according to Mr. Holoubek, NAT-CC is seeking “competitive local
9 exchange carrier authority to provide intrastate interexchange access
10 service for traffic that m[a]y originate or terminate off of the Crow Creek
11 reservation.”³ (Emphasis added.) Thus, it is not clear whether NAT-CC is
12 seeking Commission authority to operate as a local exchange carrier.

13

14 This is the third time that NAT-CC has applied for a state Certificate. The
15 first time was September 8, 2008 when NAT-CC applied to the Commission
16 for a state Certificate of Authority to provide competitive local exchange
17 service on the Crow Creek Reservation.

18

19 The second time was October 11, 2011, when NAT-CC applied to the
20 Commission for a state Certificate of Authority to provide competitive local

¹ The acronym “NAT-CC,” i.e., NAT-Crow Creek, is used in the April 1, 2009 *Joint Venture Agreement* to reference Native American Telecom, LLC. This testimony will use that acronym to better distinguish NAT-CC from NATE (Native American Telecom Enterprise, LLC), a wholly non-tribal entity that is a part owner of NAT-CC.

² *Amended Application for Certificate of Authority*, dated May 31, 2013, at page 1.

³ *July 26, 2013 Direct Testimony of Jeff Holoubek*, at page 2.

1 exchange service on the Crow Creek Reservation.⁴ That application was
2 revised on January 27, 2012, and then superseded by its third request.

3
4 This hearing is to determine whether NAT-CC's third request should be
5 granted.

6
7 **Q. Have you previously submitted testimony in this proceeding?**

8 A. Yes. I prepared and caused to be filed Direct Testimony dated March 26,
9 2012. That testimony was focused on NAT-CC's January 27, 2012 revised
10 Application For Certificate of Authority and the Direct Testimonies filed in
11 support of that Application. Subsequently, NAT-CC filed an *Amended*
12 *Application* on May 31, 2013, filed new supporting Direct Testimonies on
13 July 26, 2013, and provided additional Discovery Responses. Thus, while
14 NAT-CC's motives are unchanged, its position and our knowledge of the
15 facts surrounding this proceeding have changed significantly since my
16 March 26, 2012 Direct Testimony.

17
18 Rather than sponsor that prior testimony, I have evaluated NAT-CC's
19 *Amended Application*, as well as the additional Discovery Responses
20 related to that *Amended Application*, and prepared new testimony tailored to
21 the *Amended Application* now pending.

22

⁴ Although filed on October 11, 2011, the *Amended Application* was dated September 30, 2011.

1 **Q. What is the purpose of your Direct Testimony?**

2 A. The purpose of my Direct Testimony is to demonstrate to the Commission
3 that NAT-CC is a sham entity, established for the sole purpose of “traffic
4 pumping.” It is not in the public interest to grant this Certificate.

5

6 First, as pointed out by the FCC in its recent *CAF Order*,⁵ “traffic pumping”
7 is not in the public interest. As I discuss in Section V.D, the FCC has taken
8 deliberate steps to end the practice.

9

10 Second, the *2009 Joint Venture Agreement*⁶ between (1) the Crow Creek
11 Sioux Tribe (“CCST”), (2) Native American Telecom Enterprise, LLC
12 (“NATE”), and (3) WideVoice Communications, Inc. (“WideVoice” or
13 “WVC”), was deliberately and intentionally designed for only one purpose –
14 to promote NAT-CC’s “traffic pumping” business and to enrich NATE and
15 WideVoice. Note that it has been reported that this *2009 Joint Venture*
16 *Agreement* was revised in 2012, but Sprint has not received a copy of this
17 document.⁷

18

⁵ *In the Matter of Connect America Fund, et al*; WC Docket No. 10-90, et al; FCC 11-161; Report and Order and Further Notice of Proposed Rulemaking; Adopted October 27, 2011, Released November 18, 2011 (“*CAF Order*”).

⁶ Joint Venture Agreement, April 1, 2009, By And Between Crow Creek Sioux Tribe And Native American Telecom Enterprise, LLC And WideVoice Communications, Inc. (“*2009 Joint Venture Agreement*”). See Attachment RGF-1.

⁷ See NAT—CC’s response to Staff’s DR No. 2-1, dated May 31, 2013; Attachment RGF-13. Also see NAT-CC’s response to Sprint DR No. 17, dated August 5, 2013; Attachment RGF-14. Although NAT-CC claims to have provided this document, Sprint has not received this document.

1 Third, the *2009 Service Agreement* between NAT-CC and Free
2 Conferencing Corporation (a Las Vegas, Nevada corporation) was
3 deliberately and intentionally designed for only one purpose – to promote
4 NAT-CC’s “traffic pumping” business and to enrich Free Conferencing
5 Corporation.⁸ The *2009 Service Agreement* was apparently revised in
6 2012, but it appears that Sprint has not received the final signed document.⁹

7
8 Fourth, the FCC has found that “traffic pumping” schemes, such as
9 NAT-CC’s, harms consumers because it diverts capital away from more
10 productive uses such as broadband deployment.¹⁰

11
12 Finally, NAT-CC provides little meaningful benefit to the CCST. NAT-CC
13 exists to materially benefit only three entities: NATE, WideVoice, and Free
14 Conferencing Corporation. Due to actions taken by the FCC in the *CAF*
15 *Order*, the NAT-CC business model has been made unsustainable.
16 NAT-CC is currently operating at a loss. Eventually, NAT-CC will be forced
17 to exit the South Dakota market, leaving the CCST with negligible benefits.

⁸ *Service Agreement By and Between: Native American Telecom – Crow Creek and Free Conferencing Corporation*, effective July 1, 2009 (*2009 Service Agreement*). See Attachment RGF-2.

⁹ See Attachment RGF-3 (BATES 327 – 347), NAT-CC’s response to Sprint RFPD No. 6, dated February 15, 2013 (*2012 Service Agreement*). Sprint received two documents. The first document is a revised *Service Agreement* signed by the parties in November/December, 2012; however, this document does not include the revised Schedule B. The second document is a red-lined *Service Agreement* which does include the revised Schedule B; however, this document is not signed by the parties. Thus, it is not clear that Sprint has the final, signed document.

¹⁰ See *CAF Order*, at ¶ 663.

1 **III. NAT-CC is Providing Service Without a Certificate**

2

3 **Q. Does NAT-CC have a Certificate of Authority to provide competitive**
4 **local exchange service to non-tribal members on the Crow Creek**
5 **Reservation?**

6 A. No, NAT-CC does not have a Certificate of Authority to provide either
7 “competitive local exchange service” or “intrastate interexchange access
8 service” to non-tribal members on the Crow Creek Reservation.

9

10 **Q. Has NAT-CC requested a Certificate?**

11 A. Yes, NAT-CC has requested a Certificate on three occasions. First, on
12 September 8, 2008, NAT-CC applied to the Commission for a Certificate to
13 provide “competitive local exchange service.” However, on October 28,
14 2008, after NAT-CC obtained authorization from the Tribal Utility Authority,
15 NAT-CC withdrew its application from the Commission. I am not providing a
16 legal opinion, but I understand that it is Sprint’s position that this did not give
17 NAT-CC the right to provide intrastate local exchange services to a non-
18 Tribal member such as Free Conferencing Corporation.

19

20 Second, on October 11, 2011, NAT-CC reapplied to the Commission for a
21 Certificate to provide “competitive local exchange service.” It revised this
22 application on January 27, 2012.

23

1 Third, on May 31, 2013, NAT-CC again reapplied to the Commission for a
2 Certificate, modified to be limited to “intrastate interexchange access service
3 for traffic that originates or terminates off of the Crow Creek reservation
4 within the state of South Dakota.” As already discussed, Mr. Holoubek
5 states that NAT-CC is seeking authority to provide “competitive local
6 exchange carrier authority to provide intrastate interexchange access
7 service for traffic that m[a]y originate or terminate off of the Crow Creek
8 reservation.” (Emphasis added.) Thus, it is not clear whether NAT-CC is
9 seeking Commission authority to operate as a local exchange carrier.

10

11 This hearing is a result of that third application.

12

13 **Q. Is NAT-CC providing service to a non-tribal member without a**
14 **Certificate?**

15 A. Yes, NAT-CC has been providing service to Free Conferencing Corporation,
16 a non-tribal member, without any Certificate since approximately December
17 2009.¹¹ Note that NAT-CC affirmed that Free Conferencing Corporation is
18 not a tribal member.¹²

19

¹¹ It is Sprint's position that while NAT-CC is providing a service to Free Conferencing Corporation, the latter is not an end-user as necessary to impose access charges.

¹² See NAT-CC's response to Sprint Request For Admission No. 2, Attachment RGF-4.

1 In NAT-CC's current application, it is essentially asking the Commission for
2 permission to continue doing what it has been doing, without permission, for
3 nearly four years.

4

5 **Q. Does NAT-CC require a Certificate in order to provide service to a**
6 **non-tribal member?**

7 A. Sprint has taken the position that NAT-CC needs a Certificate to provide
8 service to non-tribal members. Ultimately, that is a legal question that
9 Sprint's attorneys will brief.

10

11 NAT-CC's current position on this point is not clear. Its 2011 and revised
12 2012 *Applications* asked for the authority to provide local exchange service,
13 which seems to be an admission that it needs a Certificate to provide local
14 exchange service to Free Conferencing Corporation. However, its 2013
15 *Amended Application* asked for the authority to provide "intrastate
16 interexchange access service," not local services. However, Mr. Holoubek
17 states that NAT-CC is seeking authority to provide "competitive local
18 exchange carrier authority to provide intrastate interexchange access
19 service." (Emphasis added.)

20

21 While Sprint's attorneys will address this issue in its legal briefs, I do not
22 believe it is possible for a carrier to provide access services unless that
23 carrier is a certified local exchange carrier.

1

2 **Q. Does NAT-CC claim that its provision of service to Free Conferencing**
3 **Corporation is authorized by federal law?**

4 A. Yes, NAT-CC claims that its service to Free Conferencing Corporation is
5 interstate, so it does not need authority from the Commission to provide that
6 service. Specifically, NAT-CC stated:

7 Free Conferencing Corporation's services are not intrastate services.
8 As such, Crow Creek Telecom LLC / NAT is not required to obtain
9 SDPUC authorization for Free Conferencing Corporation's services.¹³
10

11 This is important for two reasons. First, this is not what NAT-CC claimed
12 earlier in this proceeding.

13
14 Second, while NAT-CC may be billing Free Conferencing Corporation "end
15 user access charges" set forth in its FCC tariff, those are services provided
16 to customers of local exchange service.¹⁴ If a LEC's end-user access
17 charges (i.e., subscriber line charges or SLCs) apply to customers of local
18 exchange service, NAT-CC needs that local authority.

19
20 **Q. Do you believe it is in the public interest to give a Certificate to a**
21 **company that has been willfully operating, perhaps illegally, without a**
22 **certificate for over four years?**

¹³ NAT-CC's Response to Sprint Interrogatory No. 50; Attachment RGF-14.

¹⁴ Attachment RGF-15, BATES 3, NAT-CC Tariff FCC No. 3; Effective August 23, 2011; Section 4.1: "End User Access Service provides for the use of Company common lines by end users who obtain local exchange service from the Company under its general and/or local exchange tariffs."

1 A. No, I do not believe it is in the public interest to give a Certificate to a
2 company that has been willfully operating, perhaps illegally, without a
3 certificate for nearly four years.
4

5 **IV. NAT-CC Is a Sham Entity**
6

7 **Q. Please describe the creation of NAT-CC, the *Service Agreements*, and**
8 **the *Joint Venture Agreements*.**

9 A. On August 26, 2008, NAT-CC was organized under the laws of South
10 Dakota by the Los Angeles office of Legalzoom.com Inc. Per the NAT-CC
11 Articles of Incorporation, its two founders were Gene DeJordy and Tom
12 Reiman, who are non-tribal members. Thus, NAT-CC was initially created
13 without any involvement by the CCST.¹⁵ According to the *2013 Amended*
14 *Application*, NAT-CC “is currently in the process of being organized as a
15 Crow Creek tribal entity organized under, and operating under, the Crow
16 Creek tribal laws.”¹⁶ However, despite its requests, Sprint has not been
17 provided any documents concerning this reorganization.¹⁷
18 On September 8, 2008, NAT-CC applied to the Commission for a state
19 Certificate of Authority to provide competitive local exchange service on the
20 Crow Creek Reservation. That application described NAT-CC as “a joint

¹⁵ Preliminary Injunction Transcript, Sprint Communications Company L.P. v. Native American Telecom, U.S. Court Dist. Of S.D., Case 10-4110, Tr. p. 50, 82-83 (Oct. 14, 2010) (“Oct. 24, 2010 Tr.”), Attachment RGF-5. See also NAT Articles of Organization, Attachment RGF-6.

¹⁶ *2013 Amended Application*, at page 2.

¹⁷ See *Sprint Motion to Compel*, August 21, 2013.

1 venture with the Crow Creek Sioux Tribe ... to provide service only within
2 the exterior boundaries of the Crow Creek Indian Reservation.” There was
3 no mention of providing service to out-of-state companies.

4
5 On October 28, 2008, NAT-CC obtained authorization from the Tribal Utility
6 Authority to provide LEC services within the Crow Creek Indian Reservation.
7 Again, there was no mention of providing service to out-of-state companies.
8 NAT-CC then withdrew its application for a certificate from the Commission.

9
10 On April 1, 2009, the first NAT-CC *Joint Venture Agreement* was signed by
11 the CCST, NATE, and WideVoice.

12
13 In April/May 2009, NAT-CC and Free Conferencing Corporation signed the
14 first *Service Agreement* making Free Conferencing Corporation the sole
15 provider of conferencing service for NAT-CC.¹⁸

16
17 On October 11, 2011, for the second time NAT-CC applied to the
18 Commission for a state Certificate of Authority to provide competitive local
19 exchange service on the Crow Creek Reservation.

20
21 In November/December, 2012, NAT-CC and Free Conferencing Corporation
22 apparently signed a revised *2012 Service Agreement*.¹⁹ Free Conferencing

¹⁸ See Attachment RGF-2, *2009 Service Agreement*, paragraph 6.

1 Corporation is no longer the exclusive provider of conferencing service for
2 NAT-CC. However, Free Conferencing Corporation appears to be the sole
3 provider at this time.

4
5 Sometime in 2013, it has been reported that a revised *Joint Venture*
6 Agreement exists. However, despite its requests, Sprint has not been
7 provided this document.²⁰

8
9 On May 31, 2013, for the third time NAT-CC applied to the Commission for
10 a state Certificate of Authority modified to be limited to “intrastate
11 interexchange access service for traffic that originates or terminates off of
12 the Crow Creek reservation within the state of South Dakota.”

13
14 **Q. The 2012 and 2013 Direct Testimonies of Jeff Holoubek, Brandon**
15 **Sazue, and Carey Roesel on behalf of NAT-CC describe the benefits to**
16 **the CCST provided by NAT-CC. Do you agree with the conclusion of**
17 **their testimonies?**²¹

18 A. No. I believe that NAT-CC has brought very little benefit to the CCST.
19 NAT-CC has, however, provided significant financial benefit to NATE,
20 WideVoice, and Free Conferencing Corporation. In fact, it would appear

¹⁹ See Attachment RGF-3. As already discussed, it is not clear that Sprint has the final, signed, document.

²⁰ As already discussed, Sprint does not have this document. See *Sprint Motion to Compel*, August 21, 2013.

²¹ It is my understanding that NAT-CC's counsel has advised that NAT will not offer the 2012 Direct Testimony of Mr. David Erickson. As such, I do not address it.

1 from the terms of the *2009 Joint Venture Agreement*, the sole purpose of
2 NAT-CC was, and continues to be, the enrichment of NATE, WideVoice,
3 and Free Conferencing Corporation.

4
5 **Q. Please describe the ownership interest in Native American Telecom**
6 **(“NAT-CC”).**

7 A. Per the *2009 Joint Venture Agreement*, NAT-CC had the following legal
8 ownership:

- 9 • The CCST owned 51% of NAT-CC,
- 10 • NATE, which is owned by non-tribal members Tom Reiman and
11 Gene DeJordy, owned 25% of NAT-CC, and
- 12 • WideVoice, which is a Nevada corporation that operates an end
13 office switch in California, owned 24% of NAT-CC. Dave Erickson
14 (who also owns Free Conferencing Corporation, the sole provider of
15 conferencing services for NAT-CC) has an ownership interest in
16 WideVoice.

17
18 This ownership arrangement still exists today.²²

19
20 However, as discussed below, the CCST's 51% ownership results in little
21 meaningful control over NAT-CC, and has resulted in little benefit.

22

²² *July 26, 2013 Direct Testimony of Jeff Holoubek*, at page 4.

1 Q. Does the CCST receive any meaningful financial benefit from NAT-CC
2 under the terms of the *2009 Joint Venture Agreement*?

3 A. No. While the terms of the *2009 Joint Venture Agreement* assigned 51%
4 ownership to the CCST, in reality the CCST receives no meaningful
5 financial benefit. The terms of the *2009 Joint Venture Agreement* assure
6 that only NATE, WideVoice, and Free Conferencing Corporation profit from
7 NAT-CC.

8
9 First, in the *2009 Service Agreement*, NAT-CC agreed to pay 75% - 95% of
10 the gross revenues it receives from Free Conferencing Corporation traffic
11 directly back to Free Conferencing Corporation (which is owned and
controlled by the same parties as WideVoice). **[Begin Confidential]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 [End Confidential]

16 Second, it is not clear if the CCST is entitled to receive any portion of the
17 25% of switched access revenues not paid directly to Free Conferencing
18 Corporation. The CCST is only allowed its share of predefined “Net Profits,”
19 which are narrowly defined by the *2009 Joint Venture Agreement*.
20 Specifically, the *2009 Joint Venture Agreement* states:

21 **Section 6.01 Net Profits.**
22 Net Profits is defined as: (1) revenue generated from the provision of
23 service to end user customers, including payments and universal
24 service support, but **does not include other sources of revenue,**
25 **such as access charges,** related to services provided by third-party
26 businesses to locate on the reservation unless separately identified as
27 NAT-CC revenue in an arrangement with third-party businesses; minus
28 (2) costs associated with the build-out, operation, and maintenance of
29 the telecommunications network on the Crow Creek reservation,
30 including repayment of debt, interest, taxes, and maintenance and
31 operations expenses. (Bold emphasis added – except title.)
32

33 In addition, the CCST may not be entitled to any portion of the “end user”
34 revenues which Free Conferencing Corporation, a “third-party business,”
35 may pay to NAT-CC.

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It also appears that the CCST may not realize any portion of end-user revenues generated from tribal members living on the reservations because tribal members receive service at no charge.²⁴

Third, per terms of the *2009 Joint Venture Agreement*, NATE and WideVoice get to “set aside” 15% of “Gross Revenues.” Specifically, the *Joint Venture Agreement* states:

Section 6.06 WVC and NATE Cost Passthrough Escrow for On-Going Operation and Maintenance Costs.
NATE and WVC will incur expenses related to the operation and maintenance of the Crow Creek telecommunications network that may not be readily segregated from the other operation and maintenance expenses incurred by NATE and WVC. To cover such expenses, **15% of gross revenues of NAT-CC shall be set aside and placed in an escrow account for the benefit of NATE and WVC.** (Bold emphasis added – except title.)

This “set aside” clause essentially allows NATE and WideVoice to “skim off” 15% of gross revenues before NAT-CC sees a dime. Mr. Holoubek states that the “set aside” clause of the *2009 Joint Venture Agreement*, has not been implemented. However, he explicitly states, “that clause has not been enforced due to CenturyLink’s and Sprint’s actions.”²⁵ This implies that as long as NAT-CC continues to operate, NATE and WideVoice certainly have

²⁴ Preliminary Injunction Transcript, *Sprint Communications Company L.P. v. Native American Telecom*; U.S. District Court, District of South Dakota, Case 10-4110, March 3, 2011 (“*Mar. 3, 2011 Tr.*”) Tr. P. 150, Attachment RGF-7.

²⁵ *Direct Testimony of Jeff Holoubek*, dated April 20, 2012, at page 8.

1 the ability and the incentive to “set aside” 15% of gross revenues in the
2 future.

3

4 **Q. Does the CCST have any meaningful decision making or operational**
5 **control over NAT-CC, or ability to influence financial decisions?**

6 A. No. The CCST has virtually no meaningful control over NAT-CC, despite its
7 51% legal ownership. The terms of the *2009 Joint Venture Agreement*
8 assures all meaningful control is in the hands of NATE and WideVoice.

9

10 First, despite 51% ownership, the terms of the *2009 Joint Venture*
11 *Agreement* give the CCST only three of the nine seats on the Board of
12 Directors. Specifically, the *Joint Venture Agreement* states:

13 **Section 8.01 Board of Directors.**
14 The Board of Directors shall consist of Nine (9) members. Three (3)
15 members of NAT-CC’s Board of Directors shall be designated by
16 CCST
17

18 Second, the CCST has no control over the day-to-day operations of the
19 NAT-CC network, even when it directly affects the Crow Creek Indian
20 Reservation and its Citizens. This control is reserved solely in the hands of
21 NATE. If a dispute arises on this issue, the CCST has only three of nine
22 votes.²⁶ Specifically, the *2009 Joint Venture Agreement* states:

23 **Section 6.07 Voting Rights.**

²⁶ The CCST has agreed that any disputes among the joint venture parties shall be resolved through arbitration in South Dakota, but not necessarily on the CCST land. As a matter of contract, the governing law is that of South Dakota or federal, not tribal.

1 (b) Regarding decisions affecting the regular and ordinary operations
2 of the CLEC and the CLEC network, **NATE shall have the authority**
3 **to make decisions concerning the regular and ordinary**
4 **operations of the CLEC and CLEC Network as it affects the Crow**
5 **Creek Indian Reservation, its Citizens and Customers.** Where
6 disagreements, disputes or conflicts arise regarding the operations of
7 the CLEC and CLEC Network, resolution will be accomplished through
8 a Majority Rule vote of the designated Board of Directors, each director
9 having one equally weighted vote. (Bold emphasis added – except
10 title)
11

12 Third, the CCST has no control over the technical aspects of the NAT-CC
13 network, including “traffic pumping.” This control is reserved solely in the
14 hands of WideVoice. If a dispute arises on this issue, the CCST has only
15 three of nine votes. Specifically, the *2009 Joint Venture Agreement* states:

16 ***Section 6.07 Voting Rights.***

17 (c) WVC shall have authority over the normal operations of NAT-CC as
18 it affects the technical aspects of NAT-CC including but not limited to
19 **traffic flow over the Network.** Where disagreements, disputes or
20 conflicts arise regarding the operations of the CLEC and CLEC
21 Network, resolution will be accomplished through a Majority Rule vote
22 of the designated Board of Directors, each director having one equally
23 weighted vote. (Bold emphasis added – except title.)
24

25 Note that the reference to “traffic flow over the Network” includes NAT-CC’s
26 “traffic pumping” business, in which NATE and WideVoice maintain total
27 operational and financial control under the terms of the *2009 Joint Venture*
28 *Agreement.*

29
30 Finally, the CCST only has 51% voting rights in matters that deal directly
31 with tribal matters. Specifically, the *2009 Joint Venture Agreement* states:

1 **Section 6.07 Voting Rights.**

2 (a) Regarding decisions affecting the physical health and financial
3 success and wellbeing of the Crow Creek Indians Reservation and
4 its Citizens, CCST shall have 51%
5

6 However, given the previous limitations of the CCST's involvement in
7 NAT-CC's operations, this "right" is essentially meaningless.
8

9 **Q. What is your conclusion concerning the terms of the *2009 Joint***
10 ***Venture Agreement* and the testimonies of Jeff Holoubek and Carey**
11 **Roesel on behalf of NAT-CC?**

12 A. Despite NAT-CC being described as a joint, tribally-owned venture,
13 designed to bring financial benefits to the CCST, the *2009 Joint Venture*
14 *Agreement* is, in fact, deliberately and intentionally designed to leave all
15 meaningful control in the hands of NATE and WideVoice.
16

17 More importantly, the *2009 Joint Venture Agreement* is deliberately and
18 intentionally designed to leave all financial benefit in the hands of NATE,
19 WideVoice, and Free Conferencing Corporation.
20

21 **Q. Please discuss the role of Free Conferencing Corporation in NAT-CC.**

22 A. The role of Free Conferencing Corporation cannot be understated and is
23 key to understanding how and why NAT-CC was created.

- 1 • Per the *2009 Service Agreement*,²⁷ Free Conferencing Corporation
2 was guaranteed to be the sole provider of conferencing services for
3 NAT-CC. Although this guarantee was dropped from the *2012 Service*
4 *Agreement*,²⁸ it appears that Free Conferencing Corporation remains
5 the sole provider of conferencing services for NAT-CC.
- 6 • Free Conferencing Corporation, which provides the “free” conferencing
7 services essential to “traffic pumping,” is owned and controlled by
8 Dave Erickson.²⁹
- 9 • Dave Erickson owns and controls WideVoice, which in turn means that
10 Dave Erikson owns and controls a significant portion of NAT-CC.³⁰
- 11 • In July 2010, Mr. Carlos Cestero, an employee of Free Conferencing
12 Corporation, took over as controller for NAT-CC. He acts as controller
13 for NAT-CC, Free Conferencing Corporation, WideVoice, and three
14 other entities owned by Dave Erickson.³¹ He is not being paid by
15 NAT-CC.³² Mr. Cestero opened two new NAT-CC bank accounts, for
16 which only WideVoice employees have access (and NATE employees,
17 including Tom Reiman and Gene DeJordy do not).³³

²⁷ See Attachment RGF-2, *2009 Service Agreement*, paragraph 6.

²⁸ See Attachment RGF-3, *2012 Service Agreement*, paragraph 6.

²⁹ See Attachment RGF-7, Mar. 3, 2011 Tr. p. 67.

³⁰ See Attachment RGF-7, Mar. 3, 2011 Tr. p. 67.

³¹ See Attachment RGF-7, Mar. 3, 2011 Tr. p. 13-16, 20-21.

³² See Attachment RGF-7, Mar. 3, 2011 Tr. p. 20.

³³ See Attachment RGF-7, Mar. 3, 2011 Tr. p. 79.

- 1 • In 2010, Mr. Jeff Holoubek, the Director of Legal and Finance for Free
2 Conferencing Corporation, became President of NAT-CC without (to
3 our knowledge) even a vote taken by the NAT-CC Board of Directors.
- 4 • Starting in 2009, WideVoice made loans to NAT-CC in order to pay for
5 day-to-day operations.³⁴ When AT&T made a \$150,107 payment to
6 NAT-CC in January/February 2011, Mr. Holoubek simply directed Mr.
7 Cestero to use \$140,000 of that payment to payback some of the
8 WideVoice loans.³⁵ This was not in accordance with the *2009 Service*
9 *Agreement* which required that 75% - 95% of that amount be paid to
10 Free Conferencing Corporation, and the balance retained by NAT-CC.
- 11 • Free Conferencing Corporation appears to be the only conference
12 calling company with which NAT-CC is a business partner. In fact,
13 prior to the *2012 Service Agreement*, NAT-CC was explicitly prohibited
14 from doing business with any other conference calling company.³⁶
15 Since 2010, NAT-CC has paid Free Conferencing Corporation a
16 cumulative total of **[Begin Confidential]** [REDACTED] **[End**
17 **Confidential]** in “Marketing Fees”, which is actually a sharing of
18 purported switched access revenues.
- 19

³⁴ See Attachment RGF-7, March 3, 2011 Tr. p. 24, 25, 35-39.

³⁵ See Attachment RGF-7, March 3, 2011 Tr. p. 98.

³⁶ See Attachment RGF-2, *2009 Service Agreement*, paragraph 6.

1 Thus, NAT-CC either (1) was sending bills to Free Conferencing
2 Corporation in 2011 – 2012 contrary to the terms of the *2009 Service*
3 *Agreement* and withholding them in discovery, or (2) it has created
4 backdated billing information. If, in fact, NAT-CC has created backdated
5 billing information, the FCC has found this to be evidence of sham
6 arrangements.

7
8 In addition, regardless of NAT-CC’s billings, it did not follow its FCC tariff,
9 which requires NAT-CC to assess these end-user access charges only to
10 “end users who obtain local exchange service from [NAT-CC] under its
11 general and/or local exchange tariffs.”⁴¹

12
13 Finally, as discussed in Section V.C, this end-user access revenue
14 information is also inconsistent with information reported by NAT-CC in its
15 FCC Form 499-A.

16
17 **Q. Has NAT-CC acknowledged that its business plan is entirely**
18 **dependent on IXC access charges?**

19 A. Yes. NAT-CC has acknowledged that its business plan is to rely on the
20 billing of access charges to IXCs. Mr. Reiman testified on this point.

21 Specifically, he stated:

⁴¹ Attachment RGF-15, BATES 3, NAT-CC FCC Tariff No. 3, § 4.1. See also Attachment RGF-17; Resp. to Sprint’s Interrogatory 9 regarding failure to collect and remit surcharges.

1 [w]e bill [the IXCs], and that's how this whole big picture works. That's
2 how [sic] the business model is based on.⁴²
3

4 Mr. DeJordy also has commented on the point that the business was
5 established for the purpose of billing access charges. Specifically, he
6 stated:

7 [the] business model is largely dependent on the use of
8 FreeConferenceCall and other services that use its networks to
9 terminate calls.⁴³
10

11 V. Financial Analysis of NAT-CC

12

13 **Q. In its 2013 Amended Application, NAT-CC states, “As demonstrated by**
14 **these financial statements, NAT[CC] is profitable and has the financial**
15 **resources necessary to provide service on the Crow Creek**
16 **Reservation.” Is this correct?**

17 A. No. NAT-CC was not, is not, and never will be profitable. **[Begin**

18 **Confidential]** [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] **[End Confidential]** Most importantly, because the FCC's

24 *CAF Order* curbs intercarrier compensation abuses such as “traffic

⁴² See Attachment RGF-5, Oct. 14, 2010 Tr. p. 66.

⁴³ <http://blog.freeconferencecall.com/?paged=7>.

[Redacted]

[Redacted]						
[Redacted]						
[Redacted]						

- [Redacted]
- [Redacted]
- ■ [Redacted]
- [Redacted]

■ [Redacted]

[REDACTED]

6 [End Confidential]

7 **B. NATE, WideVoice, and Free Conferencing Corporation Profitability**

8

9 **Q. Have NATE, WideVoice, and Free Conferencing Corporation**
10 **benefitted from its ownership position in NAT-CC?**

11 A. Yes, NATE, WideVoice, and Free Conferencing Corporation have profited
12 handsomely from their investment in NAT-CC. The terms of the *2009 Joint*
13 *Venture Agreement* and the *2009 and 2012 Service Agreements* virtually
14 guarantee that NATE, WideVoice, and Free Conferencing Corporation will
15 profit from NAT-CC. Using reasonable assumptions, I estimate that through
16 2Q 2013, NATE, WideVoice, and Free Conferencing Corporation
17 collectively have realized a positive cash flow of approximately **[Begin**
18 **Confidential]** [REDACTED] **[End Confidential]**.

19

20 **Q. How did you arrive at these figures?**

21 A. There are at least four sources of income for NATE, WideVoice, and Free
22 Conferencing Corporation. First, through 2Q 2013, NAT-CC's cumulative

⁴⁸ July 26, 2013 Direct Testimony of Jeff Holoubek, at page 16.

1 "Marketing Expense," i.e., direct transfers of switched access revenues
2 directly into the coffers of Free Conferencing Corporation, is **[Begin**
3 **Confidential]** [REDACTED] **[End Confidential]**. This is cash sent directly to
4 Free Conferencing Corporation in Las Vegas, Nevada, which is owned by
5 Dave Erickson (who also is an owner of WideVoice). This is also cash
6 which will never be seen by the CCST.

7
8 Second, Thomas Reiman, one of the owners of NATE, receives a monthly
9 stipend of **[Begin Confidential]** [REDACTED]
10 [REDACTED]
11 [REDACTED] **[End Confidential]**.

12
13 Finally, as of December 31, 2012 NAT-CC has an outstanding loan to
14 Widevoice of **[Begin Confidential]** [REDACTED]
15 [REDACTED] **[End Confidential]**

16
17 The following Table 3 summarizes the estimated total positive cash flow of
18 **[Begin Confidential]** [REDACTED] **[End Confidential]** that has been
19 realized by NATE, WideVoice, and Free Conferencing Corporation. Again,
20 this is cash sent directly to parties other than the CCST, and which will
21 never be seen by the CCST.

1 **Table 3**
2 **NATE, WideVoice, and Free Conferencing Corporation**
3 **2010 – 2Q 2013 Cash Flows**
4
5

[Begin Confidential]

[End Confidential]

6
7
8
9 In addition, as already discussed, per the terms of the *2009 Joint Venture*
10 *Agreement*, NATE and WideVoice are permitted to skim-off 15% of “Gross
11 Revenues” before the CCST sees a dime. Again, Mr. Holoubek states that
12 clause has not been implemented. However, he explicitly states, “that
13 clause has not been enforced due to CenturyLink’s and Sprint’s actions.”⁴⁹

14 This implies that if NAT-CC prevails in this proceeding, it certainly has the
15 ability and the incentive to do so in the future. Using 2013 revenues to date,
16 this implies a potential additional windfall of approximately [Begin

17 **Confidential]** [Redacted] [End

18 **Confidential]** annually to NATE and WideVoice.
19

⁴⁹ *Direct Testimony of Jeff Holoubek*, dated April 20, 2012, at page 8.

1 **C. Other Financial Issues**

2

3 **Q. The 2013 Amended Application and the accompanying Direct**
4 **Testimonies go to great lengths to discuss the benefits that NAT-CC**
5 **brings to the CCST. Is this correct?**

6 A. The 2013 Amended Application and the Direct Testimonies of Messrs.
7 Holoubek and Sazue present NAT-CC as some sort of “Robin Hood” for the
8 CCST. But, as I recall the storyline, “Robin Hood” did not keep all the
9 money for himself. Collectively, NATE, WideVoice, and Free Conferencing
10 Corporation have extracted approximately **[Begin Confidential]** [REDACTED]
11 **[End Confidential]** of cash directly from NAT-CC, shipped it off to Nevada
12 or California, and left the CCST with six (6) depreciated work stations and
13 eleven (11) depreciated PCs.

14

15 **Q. In its Response to Sprint DR No. 22, NAT-CC provided what appears to**
16 **be monthly bills issued by NAT-CC to Free Conferencing Corporation**
17 **beginning September 2009 (BATES 501). Is this information**
18 **consistent with other financial information provided by NAT-CC?**

19 A. No, the assorted information provided by NAT-CC concerning end-user
20 billings to Free Conferencing Corporation is inconsistent and contradictory.

21

22 Specifically, in its Response to Sprint DR No. 22, NAT-CC provided (what
23 appears to be) monthly bills issued by NAT-CC to Free Conferencing

1 Corporation beginning September 2009 (BATES 501-545). **[Begin**

Confidential] [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

10 [Redacted]

11 [Redacted]

12 [Redacted]

13 [Redacted] **[End**

14 **Confidential]**

15

16 **Q. According to the *Amended Application*, NAT-CC “has created seven**
17 **jobs (three full-time and four part-time)” Is this correct?**

18 A. There is little evidence of paying jobs having been created for CCST
19 members. According to NAT-CC’s General Ledger detail for 2012,⁵⁰ under
total Payroll Expenses of only **[Begin Confidential]** [Redacted]

[Redacted]

[Redacted]

⁵⁰ Attachment RGF-9, NAT-CC Response to Sprint DR No. 20, BATES 447 – 448.

█ [Redacted]
█ [Redacted]
█ [Redacted]
█ [Redacted]
█ [Redacted]
6 [Redacted] [End

7 **Confidential]**

8

9 **Q. Are there other financial opportunities for NATE and WideVoice?**

10 A. Yes. As already discussed, per the terms of the *2009 Joint Venture*
11 *Agreement*, NATE and WideVoice are permitted to skim-off 15% of “Gross
12 Revenues” before the CCST sees a dime. Again, Mr. Holoubek states that
13 clause has not been implemented. However, he explicitly states, “that
14 clause has not been enforced due to CenturyLink’s and Sprint’s actions.”⁵¹
15 This implies that if NAT-CC prevails in this proceeding, it certainly has the
16 ability and the incentive to do so in the future. Using 2013 revenues to date,
17 this implies a potential additional windfall of approximately **[Begin**

18 **Confidential]** [Redacted] **[End**

19 **Confidential]** annually to NATE and WideVoice.

20

⁵¹ *Direct Testimony of Jeff Holoubek*, dated April 20, 2012, at page 8.

1 **D. Future Financial Viability of NAT-CC**

2

3 **Q. Do you believe that NAT-CC is a financially viable entity in the future?**

4 A. No. NAT-CC is not a viable financial entity now, and I do not believe that
5 NAT-CC can possibly become a financially viable entity in the future. As
6 already discussed, NAT-CC was established for one reason only, “traffic
7 pumping.” In recent FCC decisions, the FCC has specifically targeted
8 “access stimulation,” its term for “traffic pumping.”

9

10 **Q. How has the FCC targeted “traffic pumping?”**

11 A. In the FCC’s recent *CAF Order*, the FCC has an entire section titled “Rules
12 To Reduce Access Stimulation.” In this Order, the FCC recognizes the
13 harmful effects of traffic pumping. For example, the FCC explicitly states:

14 The record confirms the need for prompt Commission action to
15 address the adverse effects of access stimulation (¶ 662)

16

17 Access stimulation imposes undue costs on consumers, inefficiently
18 diverting capital away from more productive uses such as broadband
19 deployment. (¶ 663)

20

21 The record indicates that a significant amount of access traffic is going
22 to LECs engaging in access stimulation. ... When carriers pay more
23 access charges as a result of access stimulation schemes, the amount
24 of capital available to invest in broadband deployment and other
25 network investments that would benefit consumers is substantially
26 reduced. (¶ 664)

27

28 Access stimulation also harms competition by giving companies that
29 offer a “free” calling service a competitive advantage over companies
30 that charge their customers for the service. (¶ 665)

31

32 ... excess revenues that are shared in access stimulation schemes
33 provide additional proof that the LEC’s rates are above cost. (¶ 666)

1

2 **Q. Has the FCC explicitly rejected NAT-CC’s premise that assisting Tribal**
3 **lands somehow justifies “traffic pumping?”**

4 A. Yes. NAT-CC’s premise is essentially a “Robin Hood” defense – it’s alright
5 to “rob the bank” as long as the stolen funds are put to good use.⁵²

6 However, the FCC has explicitly rejected NAT-CC’s premise that assisting
7 Tribal lands somehow justifies “traffic pumping.” Explicitly, the FCC stated:

8 Several parties claim that access stimulation offers economic
9 development benefits, including the expansion of broadband services
10 to rural communities and tribal lands. Although expanding broadband
11 services in rural and Tribal lands is important, we agree with other
12 commenters that how access revenues are used is not relevant in
13 determining whether switched access rates are just and reasonable in
14 accordance with section 201(b). ... Moreover, Congress created an
15 explicit universal service fund to spur investment and deployment in
16 rural, high cost, and insular areas, and the Commission is taking
17 action here and in other proceedings to facilitate such deployment.
18 (¶ 666)
19

20 For example, the *CAF Order* has set aside \$50 million of the Phase I
21 Mobility Fund in 2012 specifically for tribal areas, and \$100 million of the
22 Phase II Mobility Fund annual budget in future years specifically for tribal
23 areas. Unlike abusive schemes such as “traffic pumping,” the *CAF Order*
24 provides mechanisms that are explicit and purposeful, consistent with the
25 universal service requirements of the Telecom Act.

26

27 **Q. How has the FCC addressed the problem of “traffic pumping?”**

⁵² As already discussed, the financial benefit is not flowing to the CCST, but rather to NATE, WideVoice, and Free Conferencing Corporation.

- 1 • All IXCs pay the \$0.006327 rate on every terminating minute,
2 • NAT-CC pays a 75% “Marketing Fee” to Free Conferencing
3 Corporation, per terms of the *2012 Service Agreement*, and
4 • All other Revenues and Operating Expenses remain unchanged.
5

6 **Q. What effect will a rate of \$0.0007 have on NAT-CC’s financials?**

7 A. At a rate of \$0.0007, NAT-CC’s already failing business model will fail at an
8 accelerated rate. Table 5 restates NAT-CC’s 2013 Income Statement
9 assuming all IXCs pay the 2016 rate of \$0.0007 for all terminating minutes.

1
2
3
4
5

Table 5
NAT-CC 2013 Income Statement
Restated for July 2016 Rate of \$0.0007

[Begin Confidential]

█

█

█

█

10

█ **[End Confidential]**

11

12

Again, beginning July 1, 2017, all traffic will be exchanged on a Bill-and-

13

Keep basis, without monetary compensation, assuring the failure of

14

NAT-CC's business model.

15

16

Q. You have predicted that NAT-CC will fail financially. Do you have any

17

evidence that such a dire fate awaits "traffic pumpers" such as

18

NAT-CC?

1 A. Yes. Sprint was faced with a similar “traffic pumper” CLEC in Iowa,
2 Aventure Communication Technology. Similar to NAT-CC, Aventure
3 attempted to legitimize its “traffic pumping” business model by providing
4 service to a handful of traditional (14 business and 169 residential)
5 customers. In Supplemental Direct Testimony dated November 30, 2012, I
6 predicted Aventure’s demise by making very similar observations about
7 Aventure’s lack of financial viability as I have made in this proceeding.⁵⁶ I
8 repeated these arguments at an oral hearing in Des Moines, IA in January
9 2013. In contrast to my testimony, Aventure repeatedly declared its
10 financial viability before the Iowa Utilities Board. However, in May 2013,
11 Aventure announced it was discontinuing all regulated telecommunications
12 services, and it would abandon its 14 business and 169 residential
13 customers effective August 10, 2013.⁵⁷

14
15 **Q. Are “traffic pumping” conferencing companies such as Free**
16 **Conferencing Corporation at financial risk?**

17 A. Yes. As the FCC *CAF Order* mandated rate reductions take place, there
18 will be significantly fewer industry revenues to be shared amongst the
19 “traffic pumping” conferencing companies. At least one “traffic pumping”

⁵⁶ *In Re: Aventure Communication technology, LLC, Complainant, vs. Qwest Communications Corporation; Sprint Communications Company L.P.; AT&T Communications of the Midwest, Inc., and TCG Omaha, a Partnership; and Level 3 Communications, Inc., Respondents; Iowa Department of Commerce Utilities Board; Docket No. FCU-2011-0002.*

⁵⁷ See Attachment RGF-11.

1 conferencing company, Global Conference Partners, a direct competitor of
2 Free Conferencing Corporation, has recently declared bankruptcy.⁵⁸

3

4 **VI. Summary and Conclusion**

5

6 **Q. Please summarize your Direct Testimony.**

7 A. As already discussed, NAT-CC's sole purpose for existence is to be a
8 "traffic pumper." NAT-CC's business model is already failing. Even in the
9 best of conditions, i.e., if all IXCs pay the current tariffed rate for all
10 terminating minutes, NAT-CC's business model will continue to fail. Per the
11 FCC's *CAF Order*, with a further rate reduction in 2016 to a rate of \$0.0007,
12 further undermining NAT-CC's business model. In 2017 the industry will
13 adopt a Bill-and-Keep arrangement without monetary compensation. Under
14 Bill-and-Keep, NAT-CC's business model, and any business model which
15 relies on termination charges from other carriers, will absolutely fail.

16

17 However, while NAT-CC's business model fails, Free Conferencing
18 Corporation's business model has been wildly successful. From 2010
19 through 2Q 2013, Free Conferencing Corporation has siphoned off a total of

20 **[Begin Confidential]** [REDACTED]

21 [REDACTED]

22 [REDACTED]

⁵⁸ See Attachment RGF-12.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] [End Confidential]. Again, the
4 CCST will not see any of this cash flow.

5
6 However, once the NAT-CC business model inevitably fails, NATE,
7 WideVoice, and Free Conferencing Corporation will exit the market, taking
8 their accumulated windfall with them, leaving the CCST with six (6) fully
9 depreciated work stations, and eleven (11) fully depreciated PCs.

10
11 **Q. Will NAT-CC's ultimate demise have any other adverse financial**
12 **impact on the CCST?**

13 A. I don't know. NAT-CC "is currently in the process of being organized as a
14 Crow Creek tribal entity organized under, and operating under, the Crow
15 Creek tribal laws."⁵⁹ Although this is a legal issue, such reorganization may
16 place the CCST under significant adverse financial exposure due to
17 NAT-CC's ultimate demise.

18
19 **Q. Should NAT-CC be granted certification in South Dakota?**

20 A. No. For the reasons set forth in this testimony, the Commission should
21 deny NAT-CC's request for a Certificate, and should prohibit further
22 provision of service by NAT-CC to non-tribal members in the state.

⁵⁹ 2013 Amended Application, at page 2.

1 In light of the confusion regarding what NAT has asked for, and its changing
2 position regarding authority it needs from the Commission, in the event the
3 Commission does award a certificate, the order should be abundantly clear
4 as to what that certificate authorizes, and as to what obligations come along
5 with the certificate.

6

7 **Q. Does this conclude your Direct Testimony?**

8 A. Yes, it does. However, as already discussed, NAT-CC has refused to
9 answer many of Sprint's Interrogatories and Document Requests.⁶⁰ Sprint
10 reserves the right to supplement this testimony subject to any additional
11 responses from NAT-CC.

12

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⁶⁰ See *Sprint Motion to Compel*, August 21, 2013.