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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF TC11-087
NATIVE AMERICAN TELECOM, LLC FOR A
CERTIFICATE OF AUTHORITY TO PROVIDE
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES AND LOCAL EXCHANGE SERVICES
IN SOUTH DAKOTA

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Transcript of Proceedings
Volume II, Pages 322-602
February 25, 2014

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
Karen Cremer
Greg Rislov
Patrick Steffensen
Katlyn Gustafson
Tina Douglas

APPEARANCES

Scott Swier, Native American Telecom
Stephen Wald, Native American Telecom
Phil Schenkenberg, Sprint Communications
Tom Tobin, Sprint Communications
Bret Lawson, Sprint Communications
Diane Browning, Sprint Communications
Rich Coit, SDTA
Meredith Moore, Midstate Communications
Tom Welk, CenturyLink

Reported By Cheri McComsey Wittler, RPR, CRR

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota Education
Association Building, 411 East Capitol Avenue, Pierre,
South Dakota, on the 24th and 25th days of February,
2014, commencing at 8:30 a.m. on February 25, 2014.

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1 CHAIRMAN HANSON: We will begin the hearing
2 then.

3 MS. AILTS WIEST: We left off with NAT. Would
4 you like to call your next witness.

5 MR. SWIER: We'd call Dave Erickson.

6 MR. SCHENKENBERG: Can I just ask that we do a
7 housekeeping item?

8 And I talked to Mr. Swier about this. I wasn't
9 sure the record was clear that the exhibit that was
10 Mr. Holoubek's deposition transcript also included the
11 exhibits? Because it was filed once with the exhibits
12 and then filed the second time with the corrected
13 transcript but not the exhibits.

14 I just want the record to be clear that that
15 exhibit, NAT 6, is the deposition plus the exhibits to
16 the transcript, which I think Mr. Swier intends.

17 MS. AILTS WIEST: Is that correct?

18 MR. SWIER: That's correct.

19 MS. AILTS WIEST: Okay. Thank you.

20 DAVE ERICKSON,
21 called as a witness, being first duly sworn in the above
22 cause, testified under oath as follows:

23 DIRECT EXAMINATION

24 BY MR. SWIER:

25 Q. Mr. Erickson, please introduce yourself to the

1 Commission.

2 A. My name is Dave Erickson. I'm the founder and CEO
3 of Free Conferencing Corporation.

4 Q. Dave, What's your business address?

5 A. 4300 Pacific Coast Highway, Long Beach California,
6 90804.

7 Q. And, Mr. Erickson, you have submitted two sets of
8 written testimony in this case; correct?

9 A. I have.

10 Q. Your first written testimony was submitted on
11 April 20 of 2012, and your second set of testimony was
12 filed on February 7 of 2014; correct?

13 A. That is correct.

14 Q. All right. Would you please give the Commission a
15 summarization of your testimony relating to this
16 contested case hearing?

17 A. Free Conferencing Corporation specializes in toll
18 conferencing. There's about 350 plus toll conferencing
19 providers in the United States of America.

20 What we did different is we removed organizer fees
21 from toll conferencing. And so instead of charging a
22 per minute rate to the organizer or a flat rate to the
23 organizer or some other type of fee, we eliminated all of
24 the fees involved with the organizer in organizing a
25 conference call.

1 That has created the fastest growing audio
2 conferencing company in the world. We're the largest
3 privately held conferencing company in the world. And we
4 are 100 percent organic, meaning that we have done no
5 acquisitions, mergers, or acquiring of any other
6 companies.

7 Q. Dave, let me stop you there. Just to give a sense
8 of the size of your company, how many countries does
9 Free Conferencing engage in business?

10 A. So we're operating this exact same business model in
11 56 different countries, and we hope to expand to 80
12 different countries.

13 Q. Okay. Go ahead.

14 A. I've been called a traffic pumper. I've been called
15 an access stimulator. For my entire career in this
16 business I have always complied and followed the rules.
17 Pre the CAF Order, there was no regulatory definition of
18 access stimulation.

19 As of the CAF Order there is a definition of access
20 stimulation, and there's rules in order to comply with
21 that, which I believe then makes you no longer an access
22 stimulator.

23 We make sure that all of our vendors and that our
24 company complies with those rules. What I do is no
25 different than AT&T Conferencing sending traffic to

1 Teleport Communication Group, both AT&T Conferencing and
2 Teleport Communications are owned by AT&T. By the
3 definition found in the CAF Order, they would be an
4 access stimulator.

5 They're sharing revenue to the parent company.
6 They're collecting terminating access on a CLEC of
7 theirs, and it's all provided by AT&T Conferencing. No
8 different than Verizon Conferencing sending conferencing
9 to MCI, both owned by Verizon.

10 Some will get you to -- or try to get you to believe
11 that because our service is free, that we create all this
12 traffic that wouldn't be there, that would be
13 incrementally new traffic. And although there are some,
14 the lion's share of the traffic that we receive is from
15 pay customers.

16 And I know this. The industry knows this. Right.
17 The industry reports say that. We've lowered the price
18 of conferencing. So we see the Free Conferencing very
19 much in the public interest. Lowering the price of
20 services, creating the availability of a service, is in
21 public interest.

22 I am a Sprint customer. Sprint prices to the
23 competition instead of their costs. Sprint has the
24 ability to charge more. Sprint has the ability to cancel
25 my plan if I use conference calling. Conference calling

1 can be singled out over all other calls, and they do it
2 in their terms and conditions.

3 But if they did that, I would go to the competition.
4 And if I went to the competition, I would stop paying
5 them and, therefore, they don't do that, which means they
6 price to the competition. They are not captive. They
7 can cancel the plan. They don't have to complete the
8 conference calls because they can cancel the plan.

9 Sprint is competitive.

10 Sprint also whole sales its traffic, which means
11 that they take traffic that they are not required to
12 take, that they seek out and find traffic that they can
13 put on their network and send to our destinations, even
14 though they do not pay. That should be criminal.
15 They're going out of their way to find this traffic.

16 Free Conferencing is not only a good business model,
17 it's an extremely innovative company. It's an award
18 winning company. We are innovators.

19 Some think that the minute terminating access goes
20 away as per the CAF Order that it's lights out for
21 Free Conferencing, that the business model is over. This
22 couldn't be farther from the truth.

23 It's pay customers that come to Free Conference
24 Call. If free wasn't free anymore, they would become pay
25 customers again. These people need conference calling.

1 Conference calling is a 60 billion minute a year
2 industry. They're going to continue to conference call,
3 regardless.

4 In all of our locations, including the tribal phone
5 companies, we've shown this innovativeness. We've shown
6 a high level of service. We believe that these people
7 would stick with us. We believe that they would pay for
8 the services that they're now getting for free. And we
9 feel that if they paid for the services, if there was no
10 more competitive free services, that this would be a boom
11 for the company, that we would go somewhere from 50 cents
12 a month per customer to \$10 a customer.

13 But this is competitive right now. It's a
14 competitive marketplace. The rules allow us to do this,
15 and because of that, people are paying less for
16 conferencing.

17 Another issue, Free Conference Call brings in paying
18 customers for other services. And so as a loss leader,
19 Free Conferencing like many other services where they
20 offer something for free to be able to get information on
21 a customer, to sell them services that are enjoined with
22 the services they're giving for free as a way to increase
23 revenues, we do that.

24 We have the possibility to do that. We continue to
25 do that. We will always do that. And we'll be loyal

1 with our partners. And so where we're on the reservation
2 right now we intend on staying there, and we intend on
3 doing all kinds of business there.

4 The equipment that we have on that reservation is
5 capable of doing audio, video, and data conferencing.
6 It's some of the most sophisticated equipment in the
7 world, in the entire world. It's high definition. It's
8 the best. Right?

9 So we'd like to do more. We feel our hands are a
10 little tied right now. The idea that we're the only
11 customer of the tribal phone company, I've seen this over
12 and over again. Wide Voice the phone company -- for a
13 long period of time I was the only customer in that
14 company. Today they serve Microsoft. They serve Skype.
15 They serve Vonage.

16 They serve 30 large companies that you would know
17 the names. And it's grown out of a relationship with
18 Free Conferencing and that phone company, them building a
19 network that we require to deliver our high-level
20 services. And when they build that network they can use
21 that network for other things. There's no excluding of
22 any kind of businesses or anything.

23 If you look at Wide Voice, you'll see a very, very
24 successful company with millions and millions of dollars
25 of revenue outside of the Free Conferencing model, and

1 for the first period of time we were the only customer
2 there.

3 I think the Tribe would do well. I think that right
4 now what Sprint is imposing upon the Tribe is a
5 self-fulfilling prophecy. What I'm hearing in these
6 rooms and what I've heard in testimony, they've really
7 put a heavy load on the Tribe. And for that then they
8 argue things like financial viability.

9 If the Tribe's situation wasn't financially viable,
10 I wouldn't be there. If I didn't think it was going to
11 work out, I wouldn't be there. I'm running services for
12 the United States Government as well as governments
13 around the world.

14 I'm running services for the Fortune 1000, the
15 Fortune 100. There's 30 million users of my service
16 monthly. And over the period of time we've had
17 70 million unique users, which is 1 percent of
18 humanity.

19 I'm not going to take these services, the run we're
20 on, the success we're having, and throw caution to the
21 wind for any reason. I believe in what's happening
22 there. I believe that they have the ability to serve me.
23 I have the belief that they have the ability to serve
24 other people.

25 It's a quality network. It has high uptime. All of

1 the minutes are done on the reservation, on the bridges,
2 on the reservation. We have backup bridges located
3 around the country, and we can move traffic around if
4 there's a catastrophic disaster of some sort. But we are
5 on the reservation, and we are doing business.

6 The Native Americans have advantages with our
7 Federal Government, and I would like to see them take
8 advantage of it. And I believe that if they did, they
9 could do much better than a Wide Voice, much better than
10 some of the other companies I work with.

11 So that's the end of my summary.

12 MR. SWIER: No further questions.

13 MS. AILTS WIEST: Sprint.

14 CROSS-EXAMINATION

15 BY MR. SCHENKENBERG:

16 Q. Good morning, Mr. Erickson.

17 A. Good morning.

18 Q. You started off your summary by describing your
19 company as providing toll conferencing. Did I hear that
20 right?

21 A. Yes.

22 Q. What do you mean when you say toll conferencing?

23 A. There's two kinds of conferencing. There's
24 toll-free, which toll-free numbers use. And then there's
25 toll conferencing in which there's a toll number that's

1 used.

2 Q. Okay. So when you say "toll" you mean a
3 conference -- somebody calling into a conference bridge
4 is, for example, dialing a (605)477 number from wherever
5 they happen to be located instead of calling an (800) or
6 an (877) number?

7 A. That's correct.

8 Q. You mentioned, I believe, that the lion's share of
9 minutes are for pay minutes?

10 A. From pay.

11 Q. From pay?

12 A. So people that were paying either for a toll-free
13 service per minute or paying for a toll service per
14 minute or paying for like a flat rate toll service.

15 Q. Okay. So these are people who previously were
16 obtaining a toll-free service paying for the right to
17 dial -- have your group dial into an (800) number and
18 paying an organizer fee, for example, and now they've
19 moved into your model.

20 A. No organizer fees, yeah.

21 Q. No organizer fees. Okay.

22 You made some statements about Sprint's provision of
23 wholesale service. Now that's not something you have any
24 personal knowledge of, is it?

25 A. I do.

1 Q. Personal knowledge?

2 A. I've seen a rate sheet.

3 Q. Okay. You've seen a rate sheet that identifies
4 rates Sprint's long distance would charge other carriers
5 for wholesale. Is that what you're saying?

6 A. Yes.

7 Q. You don't have any personal knowledge as to whether
8 or to what extent this happens with respect to NAT; is
9 that correct?

10 A. I've just seen rates.

11 Q. Thank you. You also said in your summary that you
12 believe that under the FCC's CAF Order, which has a
13 definition of access stimulation, if you follow the
14 rules, you're no longer an access stimulator.

15 Is that what you said?

16 A. That's my belief. They set out and say that it's a
17 high volume service in which revenue is shared, and if
18 that's the case, then there's a certain compliance that's
19 required and it starts with the CLEC filing at the lowest
20 price cap LEC's rate.

21 So I look at that, and I think, okay, so is that the
22 solution that then makes the access stimulator not an
23 access stimulator? Because when I was in front of the
24 FCC and we were working on the NPRMs and the discussions
25 that ultimately ended in that part of the CAF Order what

1 I brought to light was that, you know, AT&T is sending
2 traffic -- AT&T's conferencing traffic to Teleport
3 Communications Group and that they were both owned by
4 AT&T.

5 And what everybody came to the conclusion was is
6 that that's okay and that's normal because they're at the
7 lowest price cap LEC's price.

8 And so if after you go to the lowest price cap
9 LEC's price, if you're an access stimulator, then AT&T's
10 an access stimulator and Verizon and many other
11 companies.

12 Q. And I'm not trying to make this real complicated.
13 You don't dispute that Free Conferencing with respect to
14 its operations -- I'm sorry.

15 You don't dispute that NAT with respect to its
16 relationship with Free Conferencing has to comply with
17 those FCC rules because it has high minutes and revenue
18 sharing; right?

19 A. Right. It complies with those rules.

20 Q. You were here yesterday when Mr. Holoubek was
21 examined?

22 A. I was.

23 Q. I asked him what services Free Conferencing was
24 receiving from NAT. And he identified the ability to
25 receive calls.

1 Is that a service that Free Conferencing is
2 receiving from NAT?

3 A. The ability to receive calls?

4 Q. Sure. If calls are made into a number that has
5 been -- NAT has allowed you to use those calls, get
6 delivered to your bridges?

7 A. Phone service, yeah.

8 Q. Phone service. Space; is that right?

9 A. Space, yes.

10 Q. Power?

11 A. Yes.

12 Q. Maintenance?

13 A. Some maintenance, yes.

14 Q. Internet addresses?

15 A. Yes.

16 Q. Internet access?

17 A. Yes.

18 Q. Anything else?

19 A. I think that's about it.

20 Q. And that's all being received for \$6.45 per line; is
21 that correct?

22 A. I don't think so.

23 Q. You think Free Conferencing is paying more than
24 \$6.45 a line to NAT?

25 A. I think that that's the end user charges, and those

1 are separate from some of that other stuff.

2 Q. Okay. When you say "end user charges" you're
3 talking about subscriber line charges per an interstate
4 tariff?

5 A. I am talking about the regulated end user charges
6 that are extrapolated from like the Farmers Order and
7 the different regulatory discussions that have taken
8 place.

9 And what we've done is we've hired a consultant to
10 navigate those waters for us and pinpoint exactly what
11 those need to be. And then we make sure that those are
12 paid as per those orders and those rules.

13 Q. Okay. So that \$6.45, you don't know where that
14 comes from?

15 A. What do you mean I don't know where it comes from?

16 Q. Well, I asked you if this is the subscriber line
17 charge that comes out of an interstate tariff, and is
18 that -- is that your understanding or don't you know?

19 A. I just -- you know, I think you're kind of in the
20 weeds for me a little bit.

21 Q. Okay. If I asked you what document tells you you
22 have to pay \$6.45 to NAT per line, do you know what
23 document that is?

24 A. So the way it works is my instructions are are that
25 we are to follow the letter of the law exactly as it is,

1 and we pay consultants to figure all of that stuff out
2 and line it out for us. Because me simply trying to do
3 it on my own with adversaries like you trying to redefine
4 everything as it goes and never giving us a clear
5 definition of what it is you want, the best thing we can
6 do is get consultants to do that, and I would trust them
7 to do that.

8 Q. Okay. And in addition to that \$6.45 a line, is it
9 your understanding that Free Conference pays additional
10 amounts per month to NAT for the services we just
11 identified?

12 A. Well, so in the early days of this there was things
13 called netting arrangements. And it's really interesting
14 what has taken place. I don't -- I don't disagree with
15 it or rule against it, but, you know, if ultimately what
16 comes to Free Conferencing is a net gain, and there's
17 costs involved with providing the service, I'm going to
18 say that the company that's giving us the net gain is
19 taking care of their expenses. And that's the way that I
20 looked at it.

21 As time went on, regulations changed, companies like
22 Sprint made arguments and said, hey -- so you've got to
23 go in and you've got to cross every T and dot every I,
24 and you've got to make within your netting arrangements
25 transactions and accountings that pass this money back

1 and forth so that we can define you as an end user, even
2 though -- even though it makes no difference to Sprint
3 whatsoever, no difference.

4 It's not cheaper. It's not more. You guys can't
5 tell whether or not it's being done. Because it doesn't
6 affect you.

7 But, nonetheless, the rules are put in place. And
8 what I'm here to tell you today is we are following those
9 rules per my instructions to our consultants to calculate
10 that stuff as per the rules and to follow those rules
11 exactly.

12 Q. Mr. Erickson, I asked you a very specific question
13 and I want to ask it again. And I'd like you to answer
14 that question.

15 A. Okay.

16 Q. Is it your testimony that currently Free
17 Conferencing is paying NAT more than \$6.45 a line for
18 that group of services that we talked about a couple of
19 minutes ago on a monthly basis?

20 A. What's your definition of paying?

21 Q. Getting a bill, looking at the bill, and issuing a
22 check or other means of payment for the amount billed.
23 Like normal commercial entities would understand to be a
24 billing and payment arrangement.

25 A. Well, that's what -- you just confused me with the

1 last part because that's not the only way to pay bills.

2 Q. Okay. So is your answer yes that there is
3 additional amounts being paid and you need to explain how
4 those are being paid?

5 A. I don't think you made your question clear.

6 Q. Is Free Conferencing paying a -- an invoice for
7 amounts greater than \$6.45 a line currently?

8 A. I'm not sure.

9 Q. A few minutes ago you said you weren't -- you didn't
10 necessarily agree with -- well, okay.

11 So you don't know what Free Conferencing is paying
12 per month to NAT for those services?

13 A. So, as I stated before -- and I hope I'm not being
14 confusing, right -- a netting relationship is a normal
15 activity in business. It happens all the time. Some
16 might even say that a netting relationship happens more
17 times than a billing relationship.

18 So why I'm confused a little bit is because he's
19 asking me whether or not we pay, which one way to pay
20 would be in a netting relationship. And then he thins
21 the question down and gets back to where only parts done
22 in a bill. And what I'm here to tell you is we're doing
23 both with them.

24 We have a certain amount of money that we have to
25 pay in order to be in regulatory compliance, and we are

1 doing everything we can to identify what that law is,
2 what those regulations are, and comply to them.

3 I think it's ridiculous that a netting relationship
4 doesn't work. But so what. It's been asked of us to pay
5 these invoices to show that those invoices have been paid
6 so that they can be identified.

7 But it hasn't been required of us to only do
8 business through invoice. So we still do business
9 through netting arrangements with the regulatory part
10 that needs to be invoiced, clearly identified, clearly
11 separated out so that we're in compliance with the law.

12 Does that help you?

13 Q. It does. And so NAT is providing value to Free
14 Conferencing in an amount greater than \$6.45 a line;
15 right?

16 A. Whether it be invoiced or netted?

17 Q. Right. Right.

18 A. Yes.

19 Q. And in exchange instead of being billed and
20 remitting payment, Free Conferencing is providing some
21 other value back to NAT, and those offset?

22 A. Yes.

23 Q. And they offset off the books?

24 A. What do you mean "off the books"?

25 Q. Off the books.

1 A. Well, I disagree with "off the books." I think it's
2 a netted relationship.

3 Q. Is there a ledger entry in NAT's financials for
4 those netted amounts?

5 A. I believe that netted arrangements are in the
6 ledger, yes.

7 Q. Really? Okay. Do we know how much is being netted
8 each month? Is there an agreement --

9 A. That's part of the netting thing. I think, you
10 know, when netting exists you can see that netting exists
11 and, therefore, it's in the ledger. Right.

12 I think what you want to do is say is it all broken
13 down and all diced up? I'm not sure why you're even
14 interested in that because I don't see how it affects
15 Sprint.

16 Q. So you believe if we go to NAT's ledger, we're going
17 to see some offsetting amounts, X amount provided in-kind
18 from NAT to Free Conferencing and the same amount
19 provided back in-kind from Free Conferencing to NAT?

20 MR. SWIER: I'm going to object at this point.
21 I've given him some leeway. I don't see how this is
22 relevant to the three prongs that have to be proven here.

23 I think we're getting into the weeds here, and I
24 just don't see the relevancy. And I'd ask that opposing
25 counsel share what the relevancy is there.

1 MS. AILTS WIEST: Mr. Schenkenberg.

2 MR. SCHENKENBERG: If there were any other
3 evidence of this being run as a sham entity, this would
4 be Exhibit A.

5 MS. AILTS WIEST: Objection overruled.

6 Q. So I just want to -- we can go back after the
7 hearing, the parties and the Commission, and look at the
8 ledger. And I want just to understand what you think the
9 ledger, General Ledger, will show.

10 And it will show, you believe, some identifiable
11 amounts in-kind, provided in-kind from one entity to the
12 other, and the same amount provided in-kind back?

13 A. I will repeat myself. It will show that there's
14 netting. Right. That's all it's going to show. How it
15 shows that, I don't exactly know in your accounting
16 terms, but we have a netting arrangement. It's not being
17 hidden. It's accounted for like any other netting
18 arrangement. And so --

19 Q. And --

20 A. I don't want to get into the details of exactly how.
21 Okay.

22 Q. Okay. And I'm sorry. Last question on this. Do
23 you think that the amounts that are being netted back and
24 forth are reflected on the ledger?

25 A. You know, I'm not an accountant. I just know that

1 we have a netting arrangement. And that it's beneficial
2 to both companies and it covers the costs in both
3 companies and that there's costs and that those costs are
4 all accounted for and that that netting relationship
5 covers all of that.

6 Q. And if those are not reflected on the books, the
7 amount of the netting, couldn't there be problems paying
8 the right taxes and assessments?

9 A. Taxes and assessments on what?

10 Q. Income earned by NAT for the provision of certain
11 services.

12 A. I'm not sure what you're talking about.

13 Q. Well, if you don't send a bill and you don't reflect
14 on your books that you've earned income, you can't pay
15 taxes and assessments on it; isn't that correct?

16 A. I don't understand that to be true.

17 Q. Can you turn to page 7 of your testimony that you
18 just filed recently?

19 A. Do we have a number or something?

20 Q. This is the February 7 testimony. This is NAT 5.

21 A. I'm there.

22 Q. Page 7. You mention in this testimony for-pay
23 services. I apologize. I don't see my reference here.
24 But you recall in your testimony talking about services
25 that Free Conferencing receives payment from the caller

1 for?

2 A. Yes.

3 Q. Okay. And how does that work? Does the person
4 being assigned the NAT number pay a monthly fee for
5 access to that number to you directly?

6 A. So pay services are services that we invoice for.

7 Q. You invoice the person who has been assigned the
8 (605)477 number.

9 A. Could be.

10 Q. And in what circumstances does your company invoice
11 the customer as opposed to just allowing this to happen
12 for free?

13 A. So, you know, it's interesting. I'll tell you guys
14 a little funny story. When we started offering free
15 audio conferencing one of the issues was is a lot of
16 people said, well, it's too good to be true.

17 And there's actually people that would come to our
18 cites and say, oh, something's going to happen. It's too
19 good to be true. They had disbelief. So those people
20 I'd charge them \$99 a month and they'd pay and they'd get
21 the same service.

22 So that's one form of pay service.

23 Q. Okay. And so if I were to go on the Free
24 Conferencing -- is it freeconferencing.com?

25 A. Freeconferencecall.com. Freeconferencing.com.

1 There's a number of them.

2 Q. Okay. If I were to go on that website and get one
3 of your numbers so I could use it for conferencing
4 purposes, I can do that and be assigned a number without
5 paying Free Conferencing Corporation anything; right?

6 A. Correct.

7 Q. If I want some higher level of service or --

8 A. If you want to pay for the same service, I'll charge
9 you.

10 Q. Okay. Are there various levels of service, though,
11 that if you want to have access to more lines or
12 recordings or some other kind of service or
13 functionality, you can pay more?

14 A. Yeah. There's -- you know, sometimes we have large
15 conferences, and so we'll require a deposit. Often, you
16 know, when someone has 2,000 callers in a conference they
17 want to reserve that kind of space. It takes capacity in
18 order to facilitate calls that large.

19 So we might say, well, we'll hold you out some
20 capacity at such and such time, but in order to do that,
21 you know, we want a \$2,000 a deposit, you know, we want a
22 dollar per port, we want \$2 per port. If you want 2,000,
23 pay us for 1,000, those kind of things.

24 We also sell toll-free services. And so our
25 toll-free services we're able to route that toll-free

1 traffic anywhere to any of our bridges. Our bridges all
2 provide the same functionality. Toll-free is just
3 another way to get to the same bridges, and so you could
4 have toll-free numbers terminating to the bridges in
5 South Dakota on the Indian reservation and the toll-free
6 could route there tomorrow and the next day we could
7 route it to Los Angeles because we have complete control
8 over where that type of traffic gets routed and we spread
9 it across the network.

10 And so in some cases the toll-free number, you know,
11 might change its location and area of where the
12 conferencing gets mixed based on capacity or when we're
13 trying to create capacity for some of these larger
14 customers.

15 We have flat rate services we've been doing since
16 inception where we charge people \$99 a month for those
17 services. We have video conferencing services. We have
18 screen sharing services. We have voicemail services.
19 And all of these services are all capable on the
20 Native American Indian Reservations.

21 Q. Part of the business model of Free Conferencing
22 Corporation -- I always want to make sure I say this
23 right. Free conference corporation or Free Conferencing?

24 A. Free Conferencing Corporation.

25 Q. Okay. Free Conferencing Corporation is revenue

1 sharing; right?

2 That's one of the things that is occurring in Fort
3 Thompson that requires you and NAT to comply with those
4 FCC rules; right?

5 A. Can you repeat that?

6 Q. Sure. You are engaged in -- your company is engaged
7 in revenue sharing with NAT?

8 A. Yes.

9 Q. NAT when it bills for access services and collects
10 those has an obligation to pay a certain amount that's
11 received on to Free Conferencing; right?

12 A. Yes.

13 Q. And essentially the way this works is because calls
14 are being delivered in between local exchange areas,
15 they're delivered via interexchange carriers and NAT
16 claims are then subject to the terms of their access
17 tariffs when they're terminated through to Free
18 Conferencing; right?

19 A. I'm sorry. First I thought you were telling me what
20 was happening.

21 Q. Do you agree with that?

22 A. I think for the most part.

23 Q. If all these calls were within a single local
24 exchange area, there wouldn't be any revenue to share,
25 would there?

1 A. If all these calls were in a single local exchange
2 area, there wouldn't be any revenue to share?

3 Q. I can give you a more concrete example.

4 A. Please.

5 Q. If you had a bridge in Los Angeles and a conference
6 call was being -- there was a conference call between and
7 among five callers located in Los Angeles, there wouldn't
8 be any access charges billed on any of those calls into
9 the bridge; right?

10 A. Not necessarily true.

11 Q. In what circumstances would access be billed on a
12 call between customers in Los Angeles?

13 A. So a guy in Los Angeles is using some kind of CLEC
14 or enhanced service provider, is buying their
15 telecommunication access from a tier 2 carrier, and the
16 tier 2 carrier takes it in from another state so it
17 trombones through another state and comes back in. Or
18 that that carrier just pays for regular interstate access
19 in that situation.

20 Q. In the more common -- more commonly calls within a
21 local exchange area are delivered between carriers on a
22 local basis without access charges. Isn't that a fair
23 statement?

24 A. You know, I think it might be a fair statement. But
25 these are conference calls. And so typically these

1 people are geographically disbursed. And so your
2 hypothetical is a little confusing to think that, you
3 know, a bunch of people sitting in the same office or the
4 same city are going to be conferencing each other.

5 But I suppose in the narrow little stripe that
6 you've given me to work with, yeah, there probably
7 wouldn't be, you know, terminating access on that call.
8 But there could be.

9 Q. Okay. You identify on page 3 of your testimony
10 filed February 7, 2013, that NAT numbers are being
11 assigned to the State of Indiana Family & Social Services
12 Administration; is that right?

13 A. I believe so.

14 Q. And so it's certainly possible, is it not, that
15 calls, conference calls being set up through that Indiana
16 state agency are not geographically disbursed throughout
17 the country.

18 A. I don't know how you come up with that but --

19 Q. You don't expect those calls to be originating
20 within Indiana given that these are conferences set up by
21 an Indiana agency?

22 A. I don't know. Some of them are like, you know,
23 agencies that handle like people with Alzheimer's or
24 something like that.

25 And so in a situation like that it's -- you know,

1 this patient's in Indiana. Maybe there's a family member
2 in Indiana, and they've gone to this agency for help.
3 But the family's disbursed. The family's in New York.
4 They're in California, Oklahoma. And the idea of a
5 conference call, and it's really great use of a Free
6 Conference Call, is to bring the family together in a
7 time like that.

8 It's hard to make those kind of decisions with a
9 family member. It's crucial that the decisions be made.
10 And so agencies like the agency he speaks of use our
11 service, recommend our service, tell people to get an
12 account, that it's going to help them through the
13 phase.

14 And we receive letters from those people saying
15 they're very, very grateful for the service. So I don't
16 think it's necessarily just Indiana.

17 Q. And let's take an example where you have a couple of
18 callers in Indiana and a couple of callers outside of
19 Indiana. It's extraordinarily unlikely that any of those
20 callers are going to be within Fort Thompson; right?

21 A. Correct.

22 Q. And so all four of those calls -- again, we're
23 assuming four calls into a bridge -- are all going to be
24 made between local calling areas; right?

25 A. I'm -- say that to me again.

1 Q. Sure. These are all going to be interexchange
2 calls. They're going to be between exchanges.

3 A. Almost all conference calls are.

4 Q. Yeah. And that's by design; right?

5 A. It's just the nature of the business.

6 Q. And it's one of the reasons why -- that's what gets
7 you into the access regime; right? I mean, because
8 they're interexchange, you end up being in a position to
9 point to access tariffs?

10 A. Mr. Schenkenberg, with all respect, I've been in
11 this industry for a long time, and what you're talking
12 about is absolute craziness. The idea that somehow we're
13 going to locate bridges in all the local exchanges
14 throughout the United States so that somehow these little
15 conference calls that you just talked of where people are
16 going to be right in the same area could conference
17 without access is absolutely absurd. It's crazy.

18 Q. Mr. Erickson, I'm not suggesting that's -- I'm not
19 suggesting anything of the sort. What I would like to
20 ask you, though, is it is true on that call involving
21 Indiana, the Indiana agency, that all of those calls are
22 going to have to go to South Dakota; right?

23 That's a yes or no question. They're all going to
24 have to go to South Dakota; is that correct?

25 A. So in your example you're saying if the people are

1 in Indiana and they're calling South Dakota, the calls
2 are going to have to go to South Dakota?

3 Q. I'm saying if this is a bridge associated with the
4 Indiana agency we identified --

5 A. Yes.

6 Q. -- that's been assigned a (605)477 number for
7 conferencing purposes?

8 A. Right.

9 Q. All calls are going to have to go to South Dakota;
10 right?

11 A. If the number's in South Dakota, the calls are going
12 to go to South Dakota.

13 Q. Not only are the calls going to have to go to
14 South Dakota, they're going to have to go 137 miles from
15 the SDN network to NAT's switch so they can be
16 terminated; right?

17 A. Potentially.

18 Q. Unless there's some kind of direct connection
19 arrangement?

20 A. There's direct connection arrangements, and there's
21 also third-party tandems.

22 Q. And that 137 miles of transport equates to a
23 significant amount of -- portion of the access charge
24 that NAT assesses.

25 MR. SWIER: I'll object as a misstatement of the

1 facts regarding the 137 miles. That's an incorrect
2 assumption that they're making, which I think Mr. Roesel
3 will talk about later. But that's an absolutely
4 incorrect fact.

5 We'll object on the fact that he's asking him
6 to answer questions based on improper and incorrect
7 facts.

8 MR. SCHENKENBERG: Mr. Farrar's testimony that
9 has that number has been received by the Commission. So
10 it's in the record, and they can cross Mr. Farrar on it
11 if they'd like.

12 MS. AILTS WIEST: Yes. The objection is
13 overruled.

14 A. So to your 137 miles, there's like reality, which
15 there's 137 miles, and then there's I think perhaps what
16 you're getting to, which is the length of transport from
17 the tandem to the end office. And, you know, there's
18 more than one way to do that.

19 Q. And if you were obligated -- let me state it
20 differently. If you had no revenue sharing
21 opportunities, isn't it true that you would place your
22 bridges in places that would require less transport for
23 the calls to be completed?

24 A. If there was no revenue share, it wouldn't make a
25 difference to me. It would be based on who was willing

1 to give me the best deal to be in their location.

2 Q. And that would in all likelihood depend in part on
3 the amount of transport required to get to that
4 location?

5 A. No, it wouldn't.

6 Q. It would not. I'd like you to turn to your -- I
7 guess you have that testimony in front of you,
8 February 7. On page 5 -- on page 5 towards the top you
9 talk about the Buy Indian Act?

10 Oh, I'm -- yeah. This is the February 7, 2014.
11 You're talking about the Buy Indian Act in that second
12 paragraph?

13 A. Yes.

14 Q. And it says will give NAT an advantage in providing
15 pay audio conferencing, video conferencing and data
16 conferencing to federal agencies?

17 A. Yes.

18 Q. Do you mean that will give Free Conferencing an
19 advantage, or do you mean that will give NAT an
20 advantage?

21 A. I mean it will give NAT an advantage.

22 Q. Does NAT provide audio conferencing?

23 A. Not at this time. But they're fully capable of it.

24 Q. And is it your understanding that the Buy Indian Act
25 applies to services purchased by all federal agencies or

1 just the Bureau of Indian Affairs? Or don't you know?

2 A. So I know that there's advantage in both. I don't
3 know which acts cover which pieces exactly. But I know
4 that there's an advantage to both. I know there's a huge
5 advantage in Government agencies, you know, agencies like
6 the Department of Defense.

7 Currently on the Native American reservation in
8 Crow Creek and Pine Ridge we're serving Department of
9 Homeland Security, Center For Disease Control, the FAA,
10 numerous Government agencies.

11 Q. NAT is or Free Conferencing is?

12 A. Well, I like to think we are; right? We are a team
13 that are providing the terminating access, that are
14 providing the location, facility. We're providing the
15 applications.

16 But, you know, it's always been my intention to see
17 the Native Americans provide those kind of services to
18 the Government, whether it be in a partnership with us,
19 whether it be as a brokerage of our services.

20 We are talking about a resource that is untapped,
21 that is so huge, so valuable, the type of capacity that
22 we can present, the size of the conference calls --

23 So, for example, my network handles 1,000 person
24 reservationless calls. Any time you want to get 1,000 of
25 your friends together and get them all on a conference

1 call, you don't even need to schedule it. So I see this
2 as a great advantage to those agencies.

3 Q. Okay. My question was do you understand that the
4 Buy Indian Act applies to purchases of all agencies or
5 just the BIA? And I think you said you don't know; is
6 that right? A yes or no answer would be --

7 A. I know that it gives them an advantage.

8 Q. All agencies an advantage or just --

9 A. Your "all agency" thing confuses me. I don't know
10 that it's all agencies.

11 Q. Okay. Thank you. You talked about wanting to be in
12 this area for long-term. But you're a businessman in
13 this business to make money; right?

14 A. Yes.

15 Q. And if you decided that it wasn't profitable -- let
16 me say it differently. If you decided that you wanted to
17 leave Fort Thompson, that would be relatively easy for
18 you to do, for your company to do; right?

19 A. Are we back in the hypothetical world?

20 Q. No. If somebody said -- you made a decision
21 tomorrow that you wanted to leave Fort Thompson --

22 A. So if; right?

23 Q. Yes.

24 A. This is like a hypothetical, if I was going to
25 leave, you know, could I leave and would I leave and

1 should I leave?

2 Q. That is certainly hypothetical. Absolutely.

3 It would be relatively easy for you to do that;
4 right?

5 A. I don't know what you mean by that.

6 Q. Well, you move bridges to another location where
7 you've got --

8 A. Can you tell me what location I'd move them to?

9 Q. You have numerous locations that could accept the
10 amount of traffic that is going into Fort Thompson today;
11 right?

12 A. How do you know that?

13 Q. Isn't that true?

14 A. How do you know that?

15 Q. Do you not?

16 A. Well, you know, me sitting here right now I'd have
17 to evaluate how much traffic they have. And, you know,
18 you're talking about millions and millions of minutes a
19 month.

20 To say, yeah, I've just got that kind of capacity
21 laying around in other places that doesn't need the
22 headroom that I could just take it, I mean, yes, we are
23 definitely in a hypothetical world.

24 Q. And you could reassign -- you could give your
25 customers numbers that are different from (605)477, and

1 then those calls would go to those other locations;
2 right?

3 A. So we are in multiple locations. We do have
4 capacity in those locations. If for some reason an
5 emergency arose, I could probably spread that traffic
6 around.

7 We don't keep unbelievable amounts of headroom
8 because we're growing at a rapid pace. We've had months
9 where we've grown by close to 60 million minutes of
10 traffic in a single month. October of last year.

11 So I get the point you're making, and it could be
12 possible. But the idea here is that we're working with
13 these people. They're working with us. And I'm not
14 giving up on good partners. I'm not moving out of there.
15 I don't understand the hypothetical.

16 Q. Do you -- do you have any pay customers in
17 South Dakota?

18 A. I think we went over this, but I'll do it again. I
19 believe there's pay customers in South Dakota.

20 Q. And is -- it's true, is it not, that Free
21 Conferencing Corporation is not authorized to do business
22 in South Dakota?

23 A. I don't understand that to be the case.

24 MR. SCHENKENBERG: May I approach?

25 MS. AILTS WIEST: Yes.

1 MR. SCHENKENBERG: We'll mark this as Sprint 35.

2 (Sprint Exhibit 35 is marked for identification)

3 Q. Mr. Erickson, if one went to the Secretary of
4 State's website and typed in -- do you see where it says
5 corporate name there, Free Conferencing?

6 A. I do, yeah.

7 Q. Free Conferencing. And if -- if Free Conferencing
8 Corporation were registered with the Secretary of State,
9 that should be reflected as a search result in that
10 search; is that correct?

11 MR. SWIER: And I'll object. That's a
12 misstatement. What we do at the Secretary of State's
13 office is this can be filled in. There's no requirement
14 that it be.

15 There's no requirement that Free Conference Call
16 has to actually enlist the services of the Secretary of
17 State's office to set up a corporate entity.

18 So what they're trying to do here is they're
19 trying to say because Free Conferencing is not a
20 South Dakota entity, they can't do business.

21 They don't need to be a South Dakota LLC.
22 They don't need to be a South Dakota general partnership.
23 So you're taking him down the line going on a
24 hypothetical that's absolutely ridiculous and incorrect
25 and shows a blatant disregard of how business works in

1 South Dakota.

2 MR. SCHENKENBERG: I'm certainly not trying to
3 do that. And I have no objection to -- I believe this
4 search means this entity as a -- Arizona entity?

5 Q. Is it Arizona? Incorporated in Arizona?

6 A. What entity are you talking about?

7 Q. Free Conferencing Corporation.

8 A. I believe it's Nevada.

9 MR. SCHENKENBERG: I'm sorry. Nevada. So it's
10 a Nevada company. But my understanding is if you're
11 authorized to do business in the state, this would be
12 reflected in such a search.

13 I have no objection to a late filed exhibit if
14 NAT wants to file something showing that Free
15 Conferencing is authorized to do business in the state.
16 And I'm wrong, I'm wrong. I have no objection to that.

17 MR. SWIER: And here's my issue with this.
18 Perhaps Mr. Schenkenberg can show us that Google is
19 authorized to do business in South Dakota and Skype is
20 authorized to do business in South Dakota.

21 I'm pretty confident that if you go and use the
22 website, Google is not registered in South Dakota.
23 Probably four or five people here this morning have
24 already used Google in this room in the Capitol of
25 South Dakota. Skype, not part of the business

1 transaction list in South Dakota. None of them are. The
2 same type of situation with Free Conferencing.

3 So if you can show that Google and Skype are
4 registered in South Dakota, then you've got a little bit
5 better argument. If not, we're apples to oranges.

6 MR. SCHENKENBERG: And perhaps this is an issue
7 to be picked up in briefs in terms of relevance.

8 I believe Mr. Erickson testified that he's got
9 paying customers in South Dakota so he's billing
10 South Dakota people for stuff.

11 MS. AILTS WIEST: And just to go to the
12 objection, I'll overrule the objection, and the document
13 can speak for itself and the parties can argue as to its
14 relevancy in the briefs.

15 A. So as I understand it, I'm a Nevada corporation
16 operating in California and that people that we bill are
17 all over the United States, all over the world, and that
18 they choose to call into our services, where they're
19 located and everywhere where we're geographically
20 located. I believe we're doing so appropriately.

21 It's not just me that does this. It's a lot of
22 service providers that provide service to SDN customers
23 operate in 50 states but bill all 50 states. Pretty
24 normal.

25 MR. SCHENKENBERG: Sprint has no further

1 questions for this witness.

2 Thank you, Mr. Erickson.

3 THE WITNESS: Thank you.

4 MS. AILTS WIEST: Ms. Moore.

5 MR. COIT: No questions from SDTA.

6 MS. MOORE: No questions for Midstate. Thank
7 you.

8 MS. CREMER: No questions from Staff. Thank
9 you.

10 MS. AILTS WIEST: Commissioners.

11 COMMISSIONER NELSON: Good morning. Just a
12 couple of questions. You talked about when access goes
13 to bill and keep that that doesn't wreck your business
14 model, that you think your customers will stick with you,
15 they'll become pay customers; is that correct?

16 THE WITNESS: Yeah. Absolutely. We think that
17 when access goes to a bill and keep model there will be
18 no other competitive free conferencing companies and that
19 we will begin to charge.

20 And as I stated in my testimony here, what we
21 get per customer is somewhere under 50 cents right now,
22 and we estimate that would go to around \$10.

23 COMMISSIONER NELSON: And I could understand and
24 see how that could happen. And you testified that that
25 would be a financial benefit to Free Conferencing.

1 THE WITNESS: It would be a boom, yeah.

2 COMMISSIONER NELSON: But that leaves NAT
3 completely out of that circle; is that correct?

4 THE WITNESS: I disagree. So we're paying for
5 services there, and because there's access there's also
6 revenue for them. I think that if we went from a free
7 model as we are doing now with under 50 cents per
8 customer a month to a pay model with, you know, \$10 plus
9 per month, that, you know, there would be a restructuring
10 of the deal.

11 The only situation is is that restructuring
12 right now doesn't make any sense because this is the
13 competitive marketplace today. And in some ways
14 people -- you know, and I've been involved in panels, and
15 they say, well, you know, it's curtains for you. We're
16 actually waiting for this; right?

17 We're currently providing about 12 percent of
18 all of the conferencing in the world by conferencing
19 service providers. And that in a no longer free world
20 represents a huge, huge amount of money.

21 COMMISSIONER NELSON: But if you're paying the
22 6.25 per line to NAT, why would you need to restructure
23 the deal?

24 THE WITNESS: Probably because their percentage
25 of the access would go away, and, therefore, they'd say

1 something like, you know, gee whiz, we'd like to get a
2 little more money for the rack, the power, and I would be
3 more than happy to do that with them.

4 COMMISSIONER NELSON: Yesterday I asked a
5 question about the routing of calls. And I think we've
6 established that when a call comes in to NAT's switch it
7 goes immediately to the bridge that's located in
8 Fort Thompson. In some of the early testimony in this
9 case there was some talk about the call then going to a
10 switch in L.A. and on from there.

11 Can you clarify for me whether that's the case
12 and how that works?

13 THE WITNESS: So I'm not exactly sure where --
14 where that testimony came from. However, there is the
15 capability of running a complete backup of everything
16 that's going on in Los Angeles just for redundancy
17 sake.

18 And so I don't know if it got confused there.
19 But here's my stance and my orders company wide, and it's
20 directed to my partners and vendors as well: We are in
21 the terminating access business. And there's now, I
22 feel, very clear rules on how to do that. And if that's
23 the business we're in, we're going to follow those to a
24 T. And if that requires us to have our bridges where
25 they need to be in order to collect that terminating

1 access, you can bet they're going to be there.

2 COMMISSIONER NELSON: So from what I'm
3 understanding, in a typical situation we're not talking
4 about some emergency backup needs, but in a typical
5 situation from that call the call's going to go from
6 NAT's switch to your bridge in Fort Thompson and that's
7 where all the calls come together.

8 There's no need for them to be routed throughout
9 L.A.; is that correct?

10 THE WITNESS: That is absolutely correct, yes.

11 COMMISSIONER NELSON: Okay. Well, that
12 clarifies a misunderstanding I've had almost from day
13 one in this whole situation where there was this talk
14 about sending stuff out to L.A. That didn't make sense
15 to me.

16 THE WITNESS: It's been accused of our company
17 over and over again as with a lot of other allegations,
18 but I think at this point, I mean, it would be absolutely
19 crazy for me to try and bend the rules. And so we don't.
20 We follow them precisely.

21 COMMISSIONER NELSON: I appreciate that.

22 You have equipment located in South Dakota;
23 correct?

24 THE WITNESS: Yes.

25 COMMISSIONER NELSON: You are doing business in

1 South Dakota with NAT.

2 THE WITNESS: On the reservation, yes.

3 COMMISSIONER NELSON: But you don't believe that
4 you have to be registered as a foreign corporation in
5 South Dakota; is that correct?

6 THE WITNESS: That's currently the situation.

7 COMMISSIONER NELSON: No further questions.

8 CHAIRMAN HANSON: I have to piggyback on that.
9 I thought Commissioner Nelson did an excellent job.

10 Good morning, by the way.

11 THE WITNESS: Good morning.

12 CHAIRMAN HANSON: I thought he would follow up
13 with the question why. You testified that you have folks
14 that -- and I can appreciate the complexity of the
15 business that you're in, to make certain that you're
16 following -- you're dotting all the Is and crossing all
17 the Ts and making certain that you're 100 percent within
18 the law on every situation.

19 But if you're doing business in South Dakota, it
20 would seem logical that you'd have to register with the
21 Secretary of State's office as a corporation, if you are
22 in South Dakota and if you are a foreign corporation
23 you'd have to file.

24 Someone's given you advice not to apparently.
25 Why wouldn't you?

1 THE WITNESS: Well, I don't know that anyone's,
2 you know, given me advice not to do that. The company
3 did seek all of the necessary approvals with the Tribe,
4 and we're operating solely in -- within their
5 reservation.

6 And, you know, I'll submit I could be wrong on
7 this. And I'll look into it, and if it needs to be
8 cured, fixed, reconciled in some way, you know, I'd be
9 more than willing to do that.

10 There's no -- no intention of mine to try and
11 skirt any kind of authority. I would think that I kind
12 of lean the other way.

13 CHAIRMAN HANSON: Leaning the other way, would
14 that just be to be on the safe side? That's pretty easy
15 to do. I'm just curious -- you know, it certainly had to
16 have come up somewhere along the line that, hey,
17 shouldn't we register?

18 I would assume you're registered in the other
19 states where you're doing business and charging for your
20 services?

21 THE WITNESS: I believe so.

22 CHAIRMAN HANSON: All right. Thank you.

23 THE WITNESS: You know, I -- I personally don't
24 make all of those decisions for the company. I require
25 that we stay up to date on all of that stuff. And,

1 again, if somehow it's been overlooked or if somehow it's
2 in error, if it's appropriate that we do file and
3 reconcile, then we will.

4 CHAIRMAN HANSON: Thank you.

5 MS. AILTS WIEST: Do you have any redirect?

6 MR. SWIER: No.

7 MS. AILTS WIEST: Thank you.

8 THE WITNESS: That's it? Thank you, guys.

9 (A short recess is taken)

10 MS. AILTS WIEST: We'll go back on the record.

11 NAT, do you have your next witness?

12 MR. SWIER: Yes. We'll have Carey Roesel.

13 CAREY ROESEL,

14 called as a witness, being first duly sworn in the above
15 cause, testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MR. WALD:

18 Q. Mr. Roesel, could you introduce yourself to the
19 Commission.

20 A. Sure. My name is Carey Roesel. I am vice president
21 and consultant for Technologies Management, Inc. or TMI.

22 Q. And what is TMI?

23 A. Oh, TMI is a regulatory consulting firm.

24 Q. And you've provided written testimony on February 7,
25 2014, and February 17, 2012. Do you affirm that

1 testimony?

2 A. I do.

3 Q. Would you provide a summary of your testimony?

4 A. Sure. At TMI I'm the vice president and consultant.
5 I've been there for 17 years. Prior to that I was with
6 Sprint Global Division for nine years. I have a
7 bachelor's degree in economics as well as master's degree
8 in economics.

9 TMI as a regulatory consulting firm has participated
10 in hundreds of CLEC and IXC certifications around the
11 country. We have prepared thousands of tariff revisions
12 and initial tariff filings.

13 We have approximately 120 competitive companies that
14 we do full compliance reporting for. That is, we handle
15 all of the regulatory compliance for those companies and
16 ensure that they have the appropriate tariffs filed, all
17 reports are filed and appropriately populated.

18 My personal experience has focused substantially on
19 intercarrier compensation. From the very first day that
20 I arrived at Sprint my -- the document that appeared on
21 my desk -- there weren't computers at that time on desks
22 in 1987, but there was a binder, an intrastate switched
23 access tariff. And I was directed to know it, understand
24 it, and love it. And that's what I endeavored to do.

25 Our carrier -- the carriers we represent are from

1 the largest cable companies, the largest national
2 carriers down to the smallest startups.

3 For Native American, what TMI provides to Native
4 American is compliance reporting. We've done extensive
5 rate development and tariff work for Native American,
6 other consulting activities.

7 We like to think of all of our clients as being, you
8 know, fully compliant regulatory participants. I do want
9 to say, and I'll elaborate on this later, that Native
10 American in particular has wanted to make sure with
11 erring on the side of caution that they are in full
12 compliance. Every client wants to be in compliance.
13 Some take it more seriously than others, and NAT takes it
14 very seriously.

15 It's been said that this proceeding is
16 extraordinary, and people have different reasons for
17 describing it as extraordinary. To me having
18 participated in, again, hundreds of certification
19 proceedings, and in many cases it's not even a
20 proceeding, it's a filing, it's a registration, but to
21 see a case contested like this and to be here for a CLEC
22 certification is truly extraordinary. It's something
23 I've never seen before having worked at TMI for
24 17 years.

25 I do want to talk about the role of intercarrier

1 compensation. You know, intercarrier compensation,
2 explicit permanent access charges have existed for more
3 than 30 years. Prior to that, there was a complex system
4 of intracompany exchanges of revenue that were very much
5 like access charges where usage sensitive charges
6 continued to pay for fixed cost recovery.

7 It's been a huge part of Universal Service Funding,
8 implicit Universal Service Funding. Now we are all
9 familiar with the Universal Service Fund and explicit
10 sources of funding. Switched access and other
11 intercarrier compensation continues to be a large
12 contributor to implicit Universal Service Funding,
13 although to a declining degree.

14 Access stimulation has been a huge part of the
15 discussion that we've had. And I agree with what's being
16 said by Dave and I think Jeff articulated this it.
17 Access stimulation was described in the CAF Order as --
18 and has always been described in every article, pro and
19 con, that I've ever seen on access stimulation as the
20 combination of a LEC with unusually high access charges
21 combined with an end user with unusually high traffic
22 volume.

23 So traffic -- access stimulation has always and
24 everywhere been combined with or has required those two
25 things to be true.

1 Now the FCC did describe a trigger mechanism that if
2 you meet the trigger, then you are required to reprice
3 your services, and that is to address and to remedy, to
4 fully remedy, the access stimulation problem, whatever
5 that problem is perceived to be.

6 Now having worked with a number of clients, that in
7 many, many cases my clients have nothing to do with
8 access stimulation. In some cases they do. In some
9 cases clients have been pulled into the triggers when
10 they don't meet the definition of traditional access
11 stimulation at all.

12 So the controversy now is -- to me, is not is the
13 remedy sufficient. I haven't seen really until this
14 proceeding is the remedy for stimulation sufficient. The
15 controversy is does a company meet the trigger or not?

16 There are a number of companies that I work with
17 that argue that they do not meet the trigger, yet
18 interexchange carriers maintain that they do meet the
19 trigger. So it's a question of are you going to comply?
20 Do you meet the triggers? Are you going to comply with
21 those rate reductions or not?

22 I really have never heard anybody describe the rate
23 reductions as being insufficient to address the access
24 stimulation problem. So to talk about access stimulation
25 pre CAF Order and access stimulation post CAF Order, we

1 can use the same term, but they are very different
2 things. I mean, the rate is substantially less. As I
3 think most people in this room know we're talking
4 about -- usually about a 90 percent reduction in the
5 access rate once the traffic stimulation triggers are
6 met.

7 So does traffic stimulation truly exist once a
8 company agrees to comply with the pricing requirements of
9 the traffic stimulator? It seems that by losing the high
10 access rates the definition of access stimulation is
11 gutted and wouldn't apply anymore to a company that
12 complies with those requirements.

13 Now NAT's response -- and I even hesitate to call it
14 a response to the CAF Order because it preceded the CAF
15 Order. Working with NAT I was developing the FCC access
16 tariff as well as the state access tariff, not filed with
17 the PUC but filed with the Tribal Authority. And I had
18 advised NAT what the maximum rate was that they could
19 charge both intrastate and interstate.

20 Somewhat to my surprise, I really can't even think
21 of a time when this has happened -- when I have told a
22 client that regulations allow for you to charge up to
23 this rate, I've never seen a client say I would like --
24 you know, I'm okay with less than that.

25 NAT was the one that said thanks for the advice,

1 Carey, but we are going to go with the Qwest rate. Now
2 the Qwest rate, as Jeff had indicated, is the RBOC
3 rate -- (Inaudible).

4 THE COURT REPORTER: Excuse me.

5 A. I referred to it as the Qwest rate, and I should
6 have referred to it now as the proper company of
7 CenturyLink.

8 As it turns out, by going with the CenturyLink rate,
9 Native American was complying with the CAF Order in
10 advance of the CAF Order because CenturyLink is the
11 lowest priced price cap LEC in South Dakota.

12 Now again to my surprise when we filed the
13 intrastate tariff, I generally like to give my clients
14 good news about the rates they can charge. I said the
15 South Dakota rates are substantially higher than
16 interstate. But NAT made the decision to mirror
17 interstate rates.

18 Now in that case mirroring interstate rates for
19 intrastate tariffs was more than a year and a half in
20 advance of the requirement to do that. The access
21 stimulation triggers do not require an intrastate filing,
22 only an interstate filing. The CAF Order as part of the
23 transition of rates downward has -- part of the
24 transition was for July 1, 2013, all terminating rates to
25 mirror interstate. We didn't have to make a filing for

1 Native American because their rates were already at the
2 interstate rate.

3 I do want to say something about the lowest price
4 price cap LEC rate. You know, we have looked at that
5 around the country. So I know we're only talking about
6 South Dakota here. In many case the lowest price price
7 cap LEC does create a substantial reduction.

8 And so anybody who has to go with the lowest price
9 price cap LEC rate is taking the rate to below average
10 levels, not just RBOC levels.

11 The issue of mileage has come up in this proceeding.
12 You know, mileage pumping is described and defined as a
13 CLEC selecting a distant point of interconnection for the
14 purpose -- for the sole purpose of inflating the mileage
15 calculation, and the mileage revenue.

16 Now this happens and I've seen it happen in Iowa.
17 Iowa has a tandem provider that is similar to SDN, and
18 the name of that tandem provider is INS. INS has
19 multiple points of interconnection around Iowa. There
20 was a CLEC that could have selected a point of
21 interconnection 14 miles away, but they selected a point
22 of interconnection 140 miles away.

23 And whether they selected 140 miles or 14 miles did
24 not impact the price charged by INS. INS charges a fixed
25 rate no matter what the mileage is.

1 Clearly by selecting the distant point of
2 interconnection the Iowa CLEC was taking advantage of the
3 opportunity to inflate mileage.

4 In NAT's case that's not even possible. SDN is not
5 structured that way. If you use SDN tandem services, you
6 meet them where SDN is. The suggestion that NAT is
7 mileage pumping or that their mileage is excessive at
8 111 miles -- that's the number we want to work with, not
9 137. But 111 miles is -- that's because that's where the
10 Crow Creek Tribe is.

11 If you're a customer of Native American, you're
12 going to be greater than 111 miles from the tandem that
13 serves that area.

14 Now that's another point where Native American
15 decided to go with a lower rate. When I'm calculating
16 the rate I want to look at the full mileage from the
17 tandem to the end office switch. I had provided that
18 mileage to Native American. It was Native American's
19 decision to go with a closer point for the sake of
20 mileage calculation.

21 So I believe our calculation was from the SDN
22 tandem to the Kimball exchange, the Kimball end office,
23 111 miles. So NAT has actually understated the actual
24 miles of transport that are being provided. And
25 anything -- certainly nothing at all related to mileage

1 pumping or stimulating mileage in any way.

2 South Dakota is -- people here know better than me,
3 there's going to be high mileage involved. You know,
4 there are routes, CenturyLink routes, that are nearly
5 300 miles from the tandem. And so the idea that 111 is
6 excessive for South Dakota strikes me as a surprise.

7 Now even if mileage is the key factor, the way a
8 carrier avoids transport charges is to do a direct
9 connect. If you do direct connect, you're providing
10 direct facilities. You're not paying any usage sensitive
11 charges for the transport.

12 So if a carrier objects to the 111 miles and they
13 can do a direct connect, I think NAT has been clear that
14 they are open to direct connect relationships.

15 If they go with a direct connect relationship, given
16 the rates that NAT mirrors, the lowest priced price cap
17 LEC in South Dakota, that would make South Dakota and NAT
18 in particular one of the cheapest places to terminate
19 traffic. You could hardly find a location with a lower
20 local switching rate than what NAT charges. So if
21 mileage is an issue, that's easily avoided.

22 And I think that concludes my opening.

23 MS. AILTS WIEST: Sprint.

24 MR. WALD: I'm finished. I think he's finished.

25

CROSS-EXAMINATION

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BY MR. SCHENKENBERG:

Q. Good morning, Mr. Roesel.

A. Morning.

Q. You spent some time talking about reduction of access rates, and I guess I just want to ask, you would agree, would you not, that NAT's access rates are above cost today?

A. I think everybody's access rates are above cost.

MR. WALD: Objection. Relevance.

MR. SCHENKENBERG: He spent a number of minutes talking about why the rates that are currently in effect are very low or much lower. I think this is a fair follow-up question.

MR. WALD: Everybody's in business here. Nobody has any rates that are below costs or at cost. Everybody's supposed to be making a profit so what is the relevance?

MS. AILTS WIEST: Objection overruled.

A. You know, I would say access rates have always and everywhere been above cost.

Q. And --

A. Go ahead.

Q. And they're high enough above cost that NAT can send 75 percent of those access revenues on to Free

1 Conferencing; right?

2 A. You know, I'm not sure -- you know, doing a cost
3 study to determine what the margin is and what's
4 available there, you know, I don't know that we can speak
5 to how much above cost they are.

6 You know, I would say that especially under a direct
7 connect scenario, local switching only, whether NAT --
8 whether Free Conferencing and NAT share revenue, when
9 you're talking about among the lowest rates in the
10 country, anybody who bills access, anybody who bills
11 access, would be in a position to share revenue. What
12 would that do to their total cost picture?

13 In many cases it would devastate it because access
14 has always been the kind of service that makes
15 contributions to fixed underlying costs.

16 Q. So is it your testimony that NAT's decision to share
17 revenue in the way it has to Free Conferencing is
18 devastating to it?

19 A. No. No.

20 Q. So it's your testimony that -- or it's your belief
21 that the revenue it's receiving is sufficient to allow it
22 to share most of that revenue with Free Conferencing and
23 still cover its own costs?

24 A. I haven't seen the costs. And I haven't seen what
25 that looks like. I would say, you know -- so if you

1 wanted to rephrase the question and simply say, you know,
2 if it's a matter of fact that a percentage of revenue is
3 being shared, you know, I don't know that we can
4 necessarily go to the point of, well, then that must mean
5 that there's sufficient profit. I can't speak to that.

6 Q. So is it also true that you can't speak to whether
7 NAT is financially viable under its current business
8 plan?

9 A. I would not be the best expert on the financial
10 viability of NAT.

11 Q. But you did give testimony to that effect?

12 A. Yes. Yes.

13 Q. And if there were a direct connect established, that
14 would be done where?

15 A. A direct connect is anywhere a carrier can meet the
16 local exchange carrier. So it's not like they can meet
17 in some distant, neutral location. To do a direct
18 connect is to come to the end office switch of the local
19 exchange carrier and directly connect the facility that
20 you provide yourself or lease from somebody and directly
21 connected to that end office switch.

22 Q. So the mileage that you talked about doesn't go
23 away; it's just paid for by the interexchange carrier in
24 a different manner than it would be if it were delivered
25 via SDN?

1 A. A substantially different manner, correct. A
2 dedicated monthly recurring charge that may have a
3 mileage sensitive component but not a usage sensitive
4 component.

5 Q. You've been advising NAT since 2011; is that
6 correct?

7 A. Correct.

8 Q. And you described your company as, I believe, a
9 regulatory -- providing regulatory compliance and
10 services; is that correct?

11 A. Yes. That's right.

12 Q. Not legal services?

13 A. Not legal services.

14 Q. You're not a lawyer?

15 A. I'm not a lawyer.

16 Q. Is Native American Telecom, LLC, is that your
17 client?

18 A. They are.

19 Q. And is that who you send your bill to?

20 A. Yes.

21 Q. And that's who pays the bill?

22 A. Yes.

23 Q. Do you understand in this proceeding what service
24 NAT is seeking the authority to provide?

25 A. Yes.

1 Q. Is that inter -- intrastate access service?

2 A. It would -- I think it would be intrastate access
3 service.

4 Q. And that's a service that's provided to
5 interexchange carriers?

6 A. Correct.

7 Q. And it's provided to interexchange carriers who seek
8 to deliver calls into local customers of the LEC?

9 A. That is correct.

10 Q. And is it your belief as a consultant that local
11 service being provided by the LEC is subject to the
12 Tribe's jurisdiction?

13 A. That's correct also.

14 Q. Is it your understanding that NAT provides services
15 to tribal members today using Wi-max, W-I-M-A-X,
16 technology?

17 A. Yes.

18 Q. Is that an IEP-based service?

19 A. I wouldn't be the best one to address the technical
20 matters. So I -- I probably shouldn't venture into that.

21 Q. Do you have -- have you given advice to NAT as to
22 whether that service as its provisioned is ever subject
23 to any State Commission jurisdiction and authority
24 regardless of whether it's on a reservation?

25 A. TMI does do work to help companies differentiate the

1 requirements for VoIP service versus traditional TDN
2 service. Our clients make decisions on the regulatory
3 treatment that they -- in some cases that they choose to
4 submit to for lack of a better term.

5 For example, if you look at the capable companies,
6 cable companies are traditionally offering services on a
7 VoIP basis. Some companies say to do that I need to be a
8 CLEC and I'm going to act like a CLEC and obey all the
9 regulations of the CLEC. Some do not.

10 And these are the largest cable companies in America
11 that have different interpretations of that. So we
12 provide that service. But companies still can decide the
13 regulatory treatment that they are going to be
14 comfortable with, given the business model.

15 Q. And let's expand this beyond the provision of Wi-max
16 service and include the provision of service to Free
17 Conferencing.

18 Is it your understanding that that service, that
19 call termination service provided to Free Conferencing,
20 is an internet protocol service?

21 A. I wouldn't be -- I wouldn't be able to address
22 whether it's an IP service or not.

23 Q. Okay. You haven't asked that question?

24 A. I don't think -- I don't think I've gotten into that
25 level of detail.

1 Q. Isn't that an important question to ask?

2 A. I don't think so.

3 Q. Isn't it true that on your website you advise
4 readers of your website that an IP provider does not need
5 a certificate in South Dakota?

6 A. What we have done is we've summarized the
7 requirements of the state, and if you are a -- if you
8 hold yourself out as a VoIP service provider, in many
9 states you do not need to become a CLEC. In many cases
10 VoIP providers choose to be CLECs even if the
11 requirements are not there -- if it's not a requirement
12 from the CLEC.

13 Q. But it is true, is it not, that on your website you
14 have information saying it's not necessary in
15 South Dakota for a VoIP provider to be certificated?

16 A. I believe that's true, yes.

17 Q. And ultimately, I mean, that's a decision you
18 indicate that carriers can choose to be CLECs, but isn't
19 that a legal issue for the Commission to decide?

20 Does the Commission have jurisdictional authority
21 over that service?

22 A. Well, you know, it's interesting. I did a panel at
23 Comtel. Comtel is the largest organization for
24 competitive telephone companies. And I particularly
25 wanted to get a panel together on the issue of different

1 regulatory treatment, different regulatory strategies.

2 And on that panel I had Time Warner Cable. I had
3 Cox Communications. Comcast was invited but declined to
4 participate and other CLECs. And every participant
5 characterized their service as a VoIP service. Cox in
6 particular said -- Cox is a CLEC everywhere. Time Warner
7 Cable is a CLEC. They have separate affiliates.

8 So I've seen among these large cable companies a
9 decision to be a CLEC, to submit themselves -- and I
10 think Time Warner Cable actually refers to it this way as
11 choosing to submit to state regulation for the purpose of
12 obtaining interconnection rights, obtaining intercarrier
13 compensation, and other things, obtaining numbers
14 directly, although the FCC now has VoIP providers under a
15 trial getting numbers directly without CLEC
16 certification. But yeah. So there are different reasons
17 why a company would choose to be a CLEC even if their
18 service is an IP service.

19 Q. And I'm understanding you're not a lawyer, but the
20 idea of consenting to jurisdiction has -- is a bit of a
21 mine field, is it not?

22 A. I would think so, yes.

23 Q. And in your -- your belief is that NAT has consented
24 to the jurisdiction of the Tribe for the purposes of
25 being certified as a CLEC on the reservation?

1 A. Yeah. Yeah.

2 Q. Well, let's assume for a minute -- and this is a
3 hypothetical. We'll just assume that the Commission
4 decided that it didn't have jurisdiction over IP service
5 providers?

6 A. The Commission did not have jurisdiction. All
7 right.

8 Q. The Commission then also would not have
9 jurisdiction over the access -- intrastate access leg as
10 well; right?

11 A. The Commission wouldn't have jurisdiction over the
12 access portion of that service?

13 Q. Right. A call delivered in to an IP provider.

14 A. Yeah. I would say if a Commission decides that --
15 if a Commission determines it does not have jurisdiction,
16 then that Commission then would seem to not have
17 jurisdiction over the intercarrier compensation for
18 intrastate call.

19 But I would want to add that there are cases where
20 intercarrier compensation can still be billed and
21 provided. And the FCC was very clear that, you know,
22 whether you're providing it on a TDM basis or an IP
23 basis, that they look at the functional equivalent of the
24 service, not is it being provided TDM, therefore it's
25 access.

1 It's if it's IP, access charges can apply as well.
2 And actually the FCC said for PSTN -- VoIP PSTN traffic
3 interstate rates apply. That would work for NAT in
4 either case because they charge the same rates interstate
5 as intrastate. So it may be completely under the FCC's
6 jurisdiction. In either case it doesn't make a
7 difference for the rates NAT charges.

8 Q. Okay. So there's some legal issues that the
9 Commission needs to decide with respect to their
10 jurisdiction. Is that fair to say?

11 A. Oh, I would say all the State Commissions for the
12 last several years have been wrestling with their
13 jurisdiction over IP services, yes.

14 Q. Let me ask you one more question on jurisdiction but
15 ask it with respect to the service that Mr. DeJordy
16 talked about yesterday.

17 A. Uh-huh.

18 Q. Are you familiar with that service? Were you privy
19 to discussions about that plan?

20 A. I was not.

21 Q. Okay. You heard the testimony yesterday.

22 A. I did.

23 Q. You understand the spectrum that's being used?

24 A. Uh-huh.

25 Q. That it's a commercial mobile radio service

1 spectrum?

2 A. Right.

3 Q. And we could use for either a CDMA or voice over LTE
4 service; is that correct?

5 A. Yeah. Uh-huh.

6 Q. And would it be your advice to NAT that that's --
7 that service is beyond the Commission's jurisdiction as a
8 mobile wireless service?

9 A. Wireless is not something that we deal with
10 extensively.

11 Q. Okay.

12 A. So I would probably not be qualified to answer that.

13 Q. Thank you. And let's assume for a minute that the
14 Commission were to grant NAT's application and provide it
15 the authority to provide intrastate access service.

16 Is that a service that would be provided per a
17 tariff?

18 A. It is.

19 Q. And, as I understand it, NAT has proposed no
20 intrastate tariff in that proceeding -- in this
21 proceeding. Is that your understanding as well?

22 A. You know, I know that we prepared what I -- what is
23 in my files as an intrastate access tariff.

24 Q. But it's something -- it's something that's on --
25 it's available on the NAT website?

1 A. Correct.

2 Q. And it -- does it apply to calls on the
3 reservation?

4 A. Well, since it's filed with -- there is a -- it's a
5 tricky situation because it is filed with the Tribal
6 Authority. And so it technically would only cover calls
7 on the tribal lands.

8 And intrastate tariff on file with the South Dakota
9 PUC would be for calls originating outside the Tribe,
10 terminating within the Tribe.

11 Q. And that's -- we just -- we don't have a proposed
12 intrastate tariff to be filed with the South Dakota PUC
13 in the record. Is that right?

14 A. I assume that's true. But what I would say is
15 the -- the intrastate or intraTribe tariff filed with the
16 Tribal Authority is substantially similar to any
17 intrastate tariff that would be filed, terms, conditions,
18 rates, everything else.

19 Q. I think Mr. Holoubek indicated that TMI had been
20 engaged to provide advice on billing of amounts by NAT to
21 Free Conferencing. Have you been involved in those -- in
22 providing that advice?

23 A. Yes.

24 Q. And is it your understanding that today NAT is
25 being -- I'm sorry. Is billing Free Conferencing \$6.45 a

1 line for services provided?

2 A. Right. That is the tariffed subscriber line charge
3 in NAT's FCC access tariff.

4 Q. Okay. And that's -- what a subscriber line charge
5 is, it's a charge that is assessed by a local exchange
6 carrier to its end user really for the right to make and
7 receive long distance calls; right?

8 A. Correct. Now the subscriber line charge is an
9 unusual thing, always has been. It was controversial
10 from the beginning. And it reflected a desire on the
11 part of regulators to move away from permanent use
12 switched access charges.

13 Q. I just want to make sure the record's clear. Move
14 away from --

15 A. Permanent switched access charges.

16 Q. Permanent?

17 A. Permanent. So from the '80s the implementation of
18 SLC, subscriber line charge, at the federal level was
19 designed to take the load off the federal access charges.

20 My clients, especially the smaller ones that are new
21 to the business, when I do compliance reporting for them
22 and I ask them for the interstate portion of their local
23 exchange service, that's a confusing question. What do
24 you mean the interstate portion of local exchange
25 service?

1 Well, the subscriber line charge is -- has
2 traditionally been for ILECs the interstate portion of
3 local exchange service. You can't talk about local
4 exchange services separately from subscriber line
5 services.

6 Q. And NAT is not charging Free Conferencing a separate
7 local charge on its bills; right?

8 A. Not -- I wouldn't know specifically about that, but
9 I do know what NAT has tariffed for subscriber line
10 charges.

11 Q. Do you know what NAT has tariffed for local
12 charges?

13 A. I don't believe NAT has tariffed local charges.

14 Q. You don't believe that the NAT tribal tariff has
15 local charges included in it?

16 A. You know, I should have that information off the top
17 of my head.

18 Q. That's fine.

19 A. But for some reason I cannot picture right now the
20 NAT local exchange tariff.

21 Q. Do most of your other clients assess a local charge
22 to their local customers?

23 A. Yes. Most do.

24 Q. The ones that are involved -- well, strike that.

25 And it's quite unusual among your clients, is it

1 not, to be charging nothing more than a subscriber line
2 charge?

3 A. It is unusual.

4 Q. Can you look at Sprint Exhibit 34. It should be on
5 your file to the right. It's the loose pile. It looks
6 like this on the front.

7 A. Yep.

8 Q. We're going to try not to say any of the numbers out
9 loud.

10 A. Okay.

11 Q. All right. You were here yesterday when I asked
12 Mr. Holoubek about that?

13 A. Yes.

14 Q. So we're going to -- we're not going to say any
15 numbers out loud because we're still webcasting, and
16 these are confidential.

17 MR. WALD: Did you say 32?

18 MR. SCHENKENBERG: 34. The one with the yellow
19 highlighting.

20 MR. WALD: Got it. Thank you.

21 Q. So this first spreadsheet was produced in December
22 of 2011. Were you involved in putting this together?

23 A. I don't think I was involved in putting this
24 spreadsheet together. But certainly the numbers, the
25 rates --

1 Q. Okay.

2 A. -- I had information on.

3 Q. And that's a -- thank you. So things like ports
4 used and PRIs would have been something the company
5 generated?

6 A. Yes.

7 Q. And then you would have identified rates?

8 A. Correct.

9 Q. And the \$6.45 we've talked about; right? That's
10 from the interstate tariff?

11 A. Yes.

12 Q. And the PRI rate, do you know where that comes
13 from?

14 A. The PRI rate should come from the same FCC tariff
15 that the per port rate comes from. And should equate to
16 approximately five times the per port rate.

17 Q. Okay. And if that's the case then, why don't you
18 add those two numbers together to get the applicable
19 USF -- I'm sorry. Applicable interstate revenue for USF
20 contributions? Do you know?

21 A. So I'm looking, and I see totals for total port
22 cost. I see total for PRI. And then I see applicable
23 revenue, which appears to correspond only to the ports.

24 Q. Right.

25 A. And not to the PRI. So I don't know why -- I don't

1 know why that does not sound cross.

2 Q. Okay. Is it possible that that \$35 came from a
3 local tariff, not a federal tariff?

4 A. It's possible. I think that based on it looking to
5 be approximately 5 percent of the port rate, it looks too
6 suspiciously like a subscriber line charge to me to be
7 anything other than a subscriber line charge.

8 Q. Okay. And what do you -- what does one get when one
9 buys a PRI in your experience?

10 A. It's a 23 D+B dedicated exchange service. So it's
11 approximately a T1's worth of service, and it's used for
12 high volume inbound.

13 (Sprint Exhibit 36 is marked for identification)

14 MR. SCHENKENBERG: May I approach?

15 MS. AILTS WIEST: Yes.

16 Q. I'm showing you what's been marked as Sprint 36.
17 This is an Interrogatory and its response.

18 MR. SCHENKENBERG: I guess I'd move the
19 admission. It's signed by Mr. Holoubek.

20 MS. AILTS WIEST: Any objection to Sprint 36?

21 MR. WALD: I think it's unclear what the
22 relevance is.

23 MS. AILTS WIEST: Can you explain the relevance?

24 MR. SCHENKENBERG: Well, the witness is trying
25 to answer or trying to tell me he's understanding of what

1 services are purchased and where they come from. And I
2 think he testified that he tied these numbers to the
3 tariffs, and this is an answer that NAT provided saying
4 what services were provided by tariff.

5 MS. AILTS WIEST: Does anyone have an
6 objection?

7 MR. WALD: No objection.

8 MS. AILTS WIEST: Sprint 36 has been admitted.

9 MR. COIT: No objection.

10 MS. MOORE: No objection.

11 MR. COIT: A little late.

12 Q. Does this -- and I think we could probably find the
13 page reference, if that were helpful. Does this refresh
14 your recollection about there being a State tariff or
15 Tribal tariff that --

16 A. Yeah. I would like to see Section 5.1 page 1. If
17 you have it.

18 Q. Yeah. It's NAT Exhibit 16. Did you find the
19 Section?

20 A. I have found it, and the format of this is very
21 familiar to me. And I should have had better knowledge
22 off the top of my head about the page.

23 Q. Is this PRI charge, this \$35 PRI charge, something
24 that comes from the Tribal tariff?

25 A. Yes.

1 Q. Okay.

2 A. Yeah. Because and actually when I was doing the
3 math in my head the 6.45 times 5 did not exactly equal
4 the 35. So although suspiciously close, it's not exact,
5 yeah.

6 Q. Okay. Do you know why that -- well --

7 A. And that actually does explain why this spreadsheet
8 looks the way it does.

9 Q. Without the USF contribution?

10 A. Right.

11 Q. Based on the PRI charge?

12 A. Correct. That's right. Because what it's saying is
13 what is USF assessable. This is not USF assessable, but
14 the subscriber line charges are.

15 Q. Okay. Can you turn to the last page of Sprint 34,
16 which is a revised spreadsheet that was produced later in
17 discovery.

18 A. Sprint 34?

19 Q. It's the loose one that we looked at a couple of
20 minutes ago.

21 A. Yes.

22 Q. It's a little hard to read.

23 A. Yeah. That is small. Yeah.

24 Q. Did you -- were you involved in helping put this
25 response together?

1 A. No. I was not directly involved in that, no.

2 Q. Do you know why there's no longer any PRI charge
3 being shown?

4 A. It looks to me that the purpose of this is to
5 identify USF assessable charges. So as far as USF
6 assessments, those charges would be irrelevant.

7 Q. Okay. Do you know why the PRI charge was never
8 assessed to Free Conferencing on the bills that were
9 issued to Free Conferencing?

10 A. The \$35?

11 Q. Yes.

12 A. No, I don't.

13 Q. And when you look at that tariffed provision on the
14 tribal tariff.

15 A. Uh-huh.

16 Q. Do you believe that the service provided per that
17 language would include things like space, IP addresses,
18 and power?

19 A. I wouldn't be in a position to say everything that's
20 included in that.

21 Q. Okay. Have you advised NAT as to what it should
22 charge Free Conferencing for the services that are being
23 provided?

24 A. I've limited my input really to the charges I think
25 are really crucial. And those would be the ones that are

1 USF assessable. Those are the ones that were issued when
2 a carrier was saying that's not really an end user.

3 If you have subscriber line charges in your FCC
4 tariff, you need to be charging those subscriber line
5 charges to your end user customers, or, as you know from
6 Farmers, the accusation is that they are real customers.

7 Q. Okay. So you're not in a position to testify
8 whether Free Conferencing is compensating NAT for space
9 and power and IP addresses.

10 A. I wouldn't be able to comment on that, no.

11 Q. I want to ask you -- you can put that away. You can
12 close up that binder.

13 Do you have your February 7 testimony close by?

14 A. I do.

15 Q. I want to walk through --

16 A. Oh, February 7 testimony?

17 Q. Yes.

18 A. Oh, yes. Okay.

19 Q. I have want to ask you a few questions about NAT's
20 rates, rate elements. And you talked a little about this
21 in your summary. And I just want to make sure that we're
22 all on the same page.

23 A. Yeah.

24 Q. So when you talk about rates in this testimony are
25 you talking about -- you're talking about both interstate

1 and intrastate?

2 A. I think I mentioned both interstate and intrastate
3 rates in here.

4 Q. But the 006 number, .006?

5 A. Yeah.

6 Q. That's an interstate number, that's an interstate
7 rate?

8 A. That is an interstate rate, and it's also what
9 appears in the tariff filed with the Tribe for
10 intraTribal services.

11 Q. And are you aware that the bills that Sprint gets
12 from NAT just have that number on it; they don't have the
13 rate elements broken out?

14 A. I wasn't aware that's how it was presented, but that
15 is a common practice.

16 Q. Okay. And so somebody reading the bill needs to try
17 to do the math, figure out which elements apply, some of
18 which might be per mile, and work their way into
19 understanding a rate?

20 A. Well, what we did is I have clients on both sides.
21 I have clients that publish a composite rate. And then,
22 of course, I tell them when the IXC gets the bill you
23 need to be able to explain what those charges are. I
24 have many clients do disaggregate billing, per element
25 billing.

1 NAT did both. So NAT has a composite rate. There's
2 a very clear footnote in the tariff that explains the
3 exact mileage and the exact elements that apply for the
4 type of service provider.

5 Q. Can you find that footnote? Is that something you
6 can find in short order?

7 A. Oh, I think so.

8 Q. Okay. Because it should be NAT -- the interstate
9 tariff?

10 A. The interstate tariff, yes.

11 Q. NAT 17.

12 A. It's on page 84.

13 Q. And what does it say?

14 A. It says "Composite switched access services rate per
15 minute of use without company provided tandem switching,
16 Footnote 2. The composite rate is .0063270." Footnote 2
17 says "Composite includes tandem switched transport,
18 termination, tandem switched transport facility (per
19 mile), tandem switching, common transport multiplexing,
20 common switching, and end office shared port."

21 Q. And that's where your 111 miles from?

22 A. Oh, yeah. It goes on to say that "Transport mileage
23 is 111 measured as airline mileage using the VNH
24 coordinates method in accordance with standard industry
25 practices."

1 Q. We don't need to do the math here today, but your
2 testimony would be that the elements that are being
3 provided on a per minute basis added up and then added to
4 the per mile rate element times the number of miles would
5 equal .006 and change?

6 A. That is correct. Yeah.

7 Q. It is true then that if there were -- if calls were
8 being terminated to a LEC that was at the SDN switch, for
9 example, the overall composite rate would be lower to
10 terminate that call?

11 A. If it were terminated to a LEC, another LEC, that
12 subtends SDN's tandem --

13 Q. Let me ask it a little bit differently. Those
14 111 miles do add up to a significant percentage of the
15 composite rate?

16 A. Right. Not as high as what Sprint testified to
17 but --

18 Q. Right.

19 A. Yeah.

20 Q. I just want to ask you a few questions about
21 499 forms. You've talked about USF remittances, and the
22 Federal Universal Service Program is supported by
23 assessments on communication services, interstate
24 communication services, and so all carriers have to
25 calculate interstate revenues and then pay the applicable

1 percentage into the fund; right?

2 A. That's correct.

3 Q. All right. And there's a mechanism for doing that,
4 and it's filing 499 forms quarterly and then annually?

5 A. That's right.

6 Q. And your company -- your company was engaged by NAT
7 to help it make those filings; is that right?

8 A. They were.

9 Q. And it is -- I don't want to go over all of these,
10 but it is true, is it not, that NAT has filed at least
11 two different versions of its annual 499 form for 2010,
12 '11, and '12?

13 A. That's correct.

14 Q. And so there's been a significant amount of work
15 internally, I would assume, to try to figure out which
16 numbers should go on which lines.

17 A. Yes.

18 Q. And your advice has changed over time?

19 A. It has not. We were not involved in the 499 filings
20 directly until the beginning of 2013. We offered
21 conceptual support on high-level issues, but there was
22 another person internally that actually prepared the
23 reports.

24 When we got involved in 2013 we saw that some
25 errors had occurred, and we have worked to correct those

1 errors.

2 Q. When you say "person internal" you're talking
3 internal to NAT?

4 A. Yes.

5 Q. And who was that?

6 A. Do I need to bring the person's name? Tara
7 Odenthahl [phonetic].

8 Q. And you understand her to be an NAT employee or a
9 Free Conferencing employee?

10 A. I wouldn't know exactly who -- I knew she had a
11 responsibility for those forms.

12 Q. And what were the errors that you advised had
13 occurred?

14 A. I can't actually describe all of them. Large
15 amounts of revenue were recorded on the wrong line. In
16 some cases it resulted in I think an overassessment to
17 NAT. So it was -- there were a number of errors that
18 we -- that we tried to correct.

19 Q. And there was a period of time, was there not,
20 during which NAT had reported that it had collected
21 amounts that it hadn't actually collected?

22 A. I couldn't speak directly to that. I don't know
23 that for sure.

24 Q. You're not aware of whether NAT on a 499 reported
25 receiving amounts from Free Conferencing as end user

1 revenue that it hadn't actually received?

2 A. I wouldn't have direct knowledge of that.

3 Q. Okay. That's not something you advised NAT on?

4 A. What I have advised NAT on is when you have tariff
5 subscriber line charges those do need to be billed, and
6 that's what's reported on the 499 as subscriber line
7 charge revenue.

8 Q. And it would be your advice that you can't report on
9 the 499 amounts that you haven't collected.

10 A. That would be my advice.

11 Q. And today is NAT following your -- strike that.

12 Today is NAT filing its 499 forms representing that
13 the income it receives from Free Conferencing is VoIP
14 service income?

15 A. I'm trying to think if we -- I don't think we report
16 it as VoIP income, no. I'd have to check to see. But
17 that is -- that is a -- you know, a difficult matter
18 for -- for companies. And it wouldn't change the overall
19 assessment whether they report it as VoIP or not.

20 Q. You talk in your 2014 testimony, February 7, 2014,
21 testimony, on page 9 you say "Conference calling improves
22 communications efficiency among participants." And
23 you've emphasize the word "efficiency."

24 Do you see there?

25 A. I'm on page 9. My pagination may be different.

1 What number was it?

2 Q. I'm sorry. What?

3 A. What number question?

4 Q. The question is "Does access stimulation increase
5 the costs to consumers?"

6 I can show you my copy.

7 A. Sure.

8 Q. And so I just want to ask you a couple of questions
9 about efficiency.

10 A. Sure.

11 Q. Is it -- would you agree that the current
12 intercarrier compensation system provides an incentive to
13 a carrier -- I'm sorry. To a conference call company
14 like Free Conferencing to locate its bridges in a place
15 that has a significant amount of transport associated
16 with it?

17 A. Yeah. I'd say all of the factors being equal there
18 would be a greater incentive of that being the case,
19 sure.

20 Q. And even though that's not the most efficient place
21 to place those bridges?

22 A. You know, customers are where they are. And so to
23 speak of end users in the McIntosh exchange, for example,
24 300 miles from the tandem, you know, I think those
25 customers have located in a place that's maybe

1 inefficient from a transport perspective.

2 So, you know, would it be possible for Free
3 Conferencing to locate somewhere where the transport
4 mileage is reduced to where the rates are lower? That's
5 possible. That's not where the customer is.

6 MR. SCHENKENBERG: Sprint has no further
7 questions. Thank you.

8 MR. COIT: No questions from SDTA.

9 MS. MOORE: No questions from Midstate.

10 CROSS-EXAMINATION

11 BY MS. CREMER:

12 Q. Good morning, Mr. Roesel.

13 A. Hi.

14 Q. You and I have talked a couple of times over the
15 years. This application, others; is that correct?

16 A. That is correct.

17 Q. And do you recall if in this docket in particular or
18 maybe one of our other CLEC discussions where we have
19 explained that Staff's preference is that the CLEC
20 applicant get its COA first and then come back with a
21 second filing on the switched access tariff?

22 A. Say that just again so I make sure we have all our
23 terminology straight.

24 So you're saying to get their Certificate of
25 Authority from the Commission first?

1 Q. Correct.

2 A. And then file an access tariff after that?

3 Q. Right.

4 A. I can't recall South Dakota specifically. There are
5 many jurisdictions where we get the Certificate of
6 Authority first and subsequently filed the access tariff.
7 That's correct.

8 MS. CREMER: Okay. Thank you.

9 MS. AILTS WIEST: Commissioners.

10 COMMISSIONER NELSON: Good morning. First of
11 all, thank you for your straightforward responses to the
12 questions. I appreciate that. I've got a few.

13 From your testimony this morning I understand,
14 is it correct, that your company's position is that the
15 South Dakota PUC does not have authority over
16 interconnected VoIP providers?

17 THE WITNESS: You know, I was assuming that
18 what -- that what Sprint was telling me based on the
19 website was accurate. And I have no reason to think it's
20 not.

21 I know that we produce what we used to call a
22 VoIP policy monitor. It retains the name on it. And we
23 provide summary information about the regulatory status
24 of VoIP services in every state. Lots of footnotes, lots
25 of attachments.

1 So I'd be happy to share that information with
2 the Commission about what we publish. Of course, we want
3 to make sure it's accurate. But I don't have direct
4 knowledge right now about what we say about South Dakota
5 and VoIP services.

6 COMMISSIONER NELSON: Thank you. I would love
7 to see that, and I would also love to see what your legal
8 analysis is to support that position if, in fact, that's
9 your company's position.

10 THE WITNESS: Sure.

11 COMMISSIONER NELSON: The remainder of my
12 questions stem from what I've indicated yesterday.

13 In Mr. Holoubek's deposition there was reference
14 to this Exhibit 3. Have seen this (indicating)?

15 THE WITNESS: I don't know that I've seen that.

16 COMMISSIONER NELSON: I'd like to ask you some
17 questions on this particular exhibit, but what I don't
18 know is what the number is in the exhibits that have been
19 filed. I know it was --

20 MR. SCHENKENBERG: I think it's 9.

21 THE WITNESS: NAT Exhibit 9?

22 MR. SCHENKENBERG: 9, part 2 of 3, perhaps.

23 MS. CREMER: Or is it 6?

24 MR. SCHENKENBERG: I'm sorry. 6.

25 MS. CREMER: It's 6, and then it's Exhibit 3.

1 THE WITNESS: Lots of variations.

2 COMMISSIONER NELSON: And so if I could ask,
3 have you seen these prior to now?

4 THE WITNESS: I have not.

5 COMMISSIONER NELSON: From what I understand in
6 reading Mr. Holoubek's deposition, these are some
7 examples that Mr. Schenkenberg produced and attempted to
8 ask Mr. Holoubek some questions about them and he was
9 unable to answer those questions and I understand that
10 you might be able to. And so that's where we're going.

11 THE WITNESS: Okay.

12 COMMISSIONER NELSON: In the first sheet that's
13 titled Tribal Member To Tribal Member South Dakota, and
14 you'll see O for originating and T for terminating within
15 the box labeled Crow Creek Reservation.

16 And so my question is with this particular
17 example of phone call, who has jurisdiction, in your
18 opinion?

19 THE WITNESS: Yeah. And I would have to make
20 sure -- yeah. It is my opinion -- this is not some sort
21 of a legal analysis.

22 I think my opinion would be that solely on the
23 Crow Creek Reservation it would be under the Tribal
24 Authority.

25 COMMISSIONER NELSON: And is the COA that's

1 being requested here today anywhere related to this type
2 of call?

3 THE WITNESS: I do not think so.

4 COMMISSIONER NELSON: Moving to the next sheet
5 titled Tribal Member To Free Conferencing Corp
6 South Dakota, and you'll see this representing a call on
7 the reservation from a tribal member to Free Conferencing
8 Corp.

9 Who has jurisdiction over that call?

10 THE WITNESS: Again, you know, I have to qualify
11 it. You know, when I think of a geographic boundary and
12 if I think of that geographic boundary as a sovereign
13 boundary, whether that is a tribal member or not -- but I
14 did hear some testimony indicating that perhaps whether
15 it's a tribal member, that would make a difference.

16 But to me it would appear to be the same as the
17 previous, that it's going to Free Conferencing. Or it's
18 going within parties in a geographic boundary that has
19 sovereign authority.

20 COMMISSIONER NELSON: And so would this request
21 for a COA anywhere be related to that type of call?

22 THE WITNESS: I would not think so.

23 COMMISSIONER NELSON: I want to ask the same
24 question on this sheet with a little variation. And it
25 was indicated yesterday -- somebody had hinted at this.

1 If a call is being made on the reservation from a tribal
2 member using NAT's services to another tribal member
3 using Midstate's services, who has jurisdiction over that
4 call?

5 THE WITNESS: So if it's within Midstate's
6 operating territory, also within the Crow Creek
7 Reservation? Yeah. I think that's a -- I would want to
8 think through that. I don't have -- I don't know that I
9 can speak authoritatively on that.

10 You know, certainly Midstate is under the
11 authority of the South Dakota Commission. I think a good
12 argument could be made that for that call maybe Midstate
13 needs to be under the Tribal Authority for that.

14 So I can see arguments both ways, but I wouldn't
15 be able to speak authoritatively and automatically on
16 that.

17 COMMISSIONER NELSON: I understood you to say
18 that Midstate would need to be under authority for that.
19 Does the COA that's being requested here in any way cover
20 this type of call?

21 THE WITNESS: I'm thinking that it -- the only
22 way it would -- and just getting back to some of my
23 discussion about IP providers, the reason some IP
24 providers choose to be CLECs is for interconnection
25 rights.

1 So perhaps, you know, if the Tribal Authority --
2 if somebody in the Tribal Authority's interconnecting
3 with somebody under South Dakota PUC authority, perhaps
4 for interconnection rights South Dakota PUC would be
5 involved. But so I would say probably not. But, again,
6 we're starting to get to the fringes of where I'm, you
7 know --

8 COMMISSIONER NELSON: Do you understand that
9 this Commission has to deal with the fringes?

10 THE WITNESS: Yes.

11 COMMISSIONER NELSON: We have to answer that
12 question.

13 THE WITNESS: Yes, I do.

14 COMMISSIONER NELSON: And so it's your testimony
15 that perhaps for interconnection NAT would have to have a
16 COA for this type of purpose, this type of call?

17 THE WITNESS: Right. I know that -- I know that
18 LECs will often refuse to interconnect with carriers that
19 are not certified by the same authority the LEC is
20 certified under. So yes.

21 COMMISSIONER NELSON: The next page titled
22 Tribal Member To Midstate South Dakota. And this
23 apparently is a call that originates on the reservation
24 but terminates to a Midstate customer off the
25 reservation.

1 THE WITNESS: Off the reservation. So this is
2 outside of the -- outside of the operating territory of
3 Crow Creek?

4 COMMISSIONER NELSON: It's off the reservation,
5 but it's another Midstate customer. Midstate has
6 territory outside the reservation boundaries.

7 THE WITNESS: Right.

8 COMMISSIONER NELSON: Who has jurisdiction over
9 this call?

10 THE WITNESS: This would appear to be off the
11 reservation and, therefore, it would be under the
12 South Dakota PUC's authority.

13 COMMISSIONER NELSON: Would the COA that's being
14 requested here today cover this type of call?

15 THE WITNESS: I think it would.

16 COMMISSIONER NELSON: The next sheet, Tribal
17 Member To South Dakota LEC. And this -- perhaps similar
18 to the one that we just dealt with, call originating on
19 the Crow Creek Reservation but terminating to a
20 South Dakota LEC other than Midstate.

21 THE WITNESS: Yeah. Without looking at it in
22 more detail, it wouldn't seem that it would be different
23 than the termination to Midstate, other than the local or
24 nonlocal nature of the call. But I don't think that
25 would actually make a difference.

1 COMMISSIONER NELSON: And it would be your
2 contention then that the COA that's being requested here
3 today would cover this type of call; correct?

4 THE WITNESS: Yes.

5 COMMISSIONER NELSON: The next sheet, tribal
6 member making a call to a Minnesota LEC where the call
7 originates on the reservation and terminates in
8 Minnesota.

9 Who would have jurisdiction over that?

10 THE WITNESS: The FCC would have jurisdiction
11 over that.

12 COMMISSIONER NELSON: And would the COA being
13 requested here today in any way impact on that call?

14 THE WITNESS: Only peripherally. There is a --
15 I think it's important, you know, to look at interstate
16 and intrastate services hand in hand. And so for a
17 company to not have intrastate authority as a CLEC, you
18 know, would seem to give -- you know, raise issues about
19 interstate authority.

20 Now you don't have to prove your intrastate
21 authority in order to get intrastate authority, but they
22 are related.

23 COMMISSIONER NELSON: If a company had a tribal
24 CLEC COA, does that resolve that issue?

25 THE WITNESS: I think it does for -- yeah. I

1 think it does for interstate services, yes.

2 COMMISSIONER NELSON: The next sheet shows
3 inbound traffic from a Midstate customer located off the
4 reservation with a call terminating to a NAT customer on
5 the reservation.

6 Who has jurisdiction over that call?

7 THE WITNESS: That is -- that is -- this is on
8 the tribal lands?

9 COMMISSIONER NELSON: The --

10 THE WITNESS: Off tribal lands?

11 COMMISSIONER NELSON: The termination would be
12 on tribal land, but the origination would be off.

13 THE WITNESS: This would be under the
14 South Dakota Public Utilities Commission.

15 COMMISSIONER NELSON: And the COA being
16 requested here today would impact on this?

17 THE WITNESS: You know, for a company to
18 terminate a call that is -- so it's originated by a
19 company that is under the South Dakota PUC's authority
20 off the reservation. To simply perform a termination
21 function, you know, I don't know that that would require
22 a South Dakota authority to do that.

23 COMMISSIONER NELSON: Next sheet, a call
24 originating in Midstate's territory outside the
25 reservation terminating to Free Conferencing bridge on

1 the reservation. Who has jurisdiction over that call?

2 THE WITNESS: This is a local call; right? This
3 is local. It's off the Tribe, but it's local, right. So
4 it's a local call from Midstate to a Crow Creek end user
5 customer.

6 COMMISSIONER NELSON: It would be from another
7 Midstate exchange, not the Fort Thompson exchange.
8 Another Midstate exchange.

9 THE WITNESS: Okay. You know, since there's two
10 parties involved, I think for them to originate a local
11 call it's -- the Midstate local originated call is under
12 the South Dakota PUC. For NAT to terminate that call on
13 the tribal lands, I don't know that that --

14 I'm sort of on the fence on that one. There's
15 no compensation involved. They're not providing an
16 access service. But, you know, a terminated local
17 call -- you know, we are -- I just want to be careful
18 that -- I'm happy to offer my opinion on some of these
19 things, but these sort of jurisdictional questions I know
20 that the Commission has to wrestle with these so I'm
21 offering the best opinion I can off-the-cuff.

22 So with that reservation, then I would say they
23 may or may not need South Dakota PUC authority to handle
24 that call.

25 COMMISSIONER NELSON: The next example is a call

1 originating from some other South Dakota LEC, terminating
2 to a tribal member on the reservation.

3 Who has jurisdiction over that call?

4 THE WITNESS: And I assume this is a
5 South Dakota LEC. It's a nonlocal call. It's going to
6 the SDN tandem and then going into the Crow Creek
7 Reservation.

8 Crow Creek is then providing -- since it's
9 nonlocal, Crow Creek is providing an intrastate switched
10 access service. And I think because it's intrastate and
11 outside -- and the jurisdiction of the call is outside of
12 the tribal lands, it would require a South Dakota PUC
13 authority.

14 COMMISSIONER NELSON: And, therefore, would be
15 covered under the COA being requested here?

16 THE WITNESS: Correct.

17 COMMISSIONER NELSON: The next one I think is
18 literally exactly the same except terminating at the
19 Free Conferencing bridge.

20 THE WITNESS: My answer would be the same for
21 that one.

22 COMMISSIONER NELSON: Answer would be same.
23 Call originating from Minnesota LEC and terminating to a
24 tribal member on the reservation.

25 Who would have jurisdiction over that call?

1 THE WITNESS: I think the FCC would have
2 jurisdiction over that call, and I believe that Native
3 American can provide that without South Dakota
4 authority.

5 COMMISSIONER NELSON: And the next -- the last
6 one, I think, looks like the same type of arrangement but
7 only terminating at the Free Conferencing bridge.

8 THE WITNESS: Yeah. And I would say the same.
9 FCC authority, and the Tribal Authority gives it the
10 ability to provide that termination service on tribal
11 lands.

12 COMMISSIONER NELSON: Mr. Roesel, thank you.

13 MS. AILTS WIEST: Mr. Roesel, were you involved
14 in their Amended Application?

15 THE WITNESS: In what? I'm sorry.

16 MS. AILTS WIEST: In the Amended Application of
17 NAT to the Commission.

18 THE WITNESS: I think I was, yes.

19 MS. AILTS WIEST: And I'm just trying to clarify
20 this. I noticed in the Amended Application that
21 sometimes when you cite to rules you're citing to
22 chapters -- our ARSD Chapters 20:10:24 and 20:10:32.

23 Is it your understanding that 20:10:24 relates
24 to an interexchange toll Certificate of Authority?

25 THE WITNESS: It would be, yes.

1 MS. AILTS WIEST: Is NAT requesting toll
2 interexchange authority here?

3 THE WITNESS: You know, it's -- and I need to --
4 I don't know specifically what our thought processes were
5 for the NAT application. But it is -- it is routine that
6 when we ask for authority we ask for both CLEC authority
7 and IXC authority.

8 It would be very unusual for a CLEC based on the
9 number of clients we have to ask for only local authority
10 and not interexchange authority.

11 MS. AILTS WIEST: So is it your understanding
12 that in its application it is asking for toll authority
13 and local exchange authority?

14 THE WITNESS: It would, yes.

15 MS. AILTS WIEST: And do you think that is
16 encompassed in its terms to provide intrastate
17 interexchange access service?

18 THE WITNESS: Could you ask that again?

19 MS. AILTS WIEST: Right. The question is, in
20 the first sentence they're requesting authority to
21 provide intrastate interexchange access service for
22 traffic that originates or terminates off of the
23 Crow Creek Reservation within the State of South Dakota.

24 How would you describe intrastate interexchange
25 access service? The definition.

1 THE WITNESS: I think I understand the question
2 earlier now. I think are they asking for interexchange
3 authority so they can provide interexchange access
4 services? No. Local exchange authority provides the
5 ability to provide access services, yes.

6 MS. AILTS WIEST: So intrastate interexchange
7 access service is a service that is provided by a local
8 exchange carrier?

9 THE WITNESS: Yes.

10 MS. AILTS WIEST: But it's still your
11 understanding that they are also requesting
12 interexchange authority, commonly referred to as toll
13 authority?

14 THE WITNESS: Correct. I think that the
15 question I would ask not just NAT but any client seeking
16 authority in South Dakota, are you going to have end user
17 customers have the ability to originate interexchange
18 intrastate long distance calls?

19 If the answer is yes, then we need to get
20 interexchange authority.

21 MS. AILTS WIEST: Thank you. Do you have any
22 redirect?

23 MR. WALD: I do.

24

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REDIRECT EXAMINATION

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BY MR. WALD:

Q. Mr. Roesel, first, in your experience with I think you said hundreds of applications by CLECs across the United States have you ever been examined like this by a Intervener like Sprint?

A. No. Not at all.

Q. Have you ever experienced an Intervener like Sprint even questioning the financial ability of a CLEC applicant?

A. I never have.

Q. Have you ever heard of such a thing?

A. Not until this proceeding.

Q. Now there was some discussion about the access stimulation triggers.

A. Yes.

Q. Have there been other CLECs that have triggered the triggers?

A. Oh, yeah. Yeah. I have clients that have, I think, tripped the triggers because they were performing -- they were providing the services that were traditionally thought of as access stimulation. So no surprise there.

There have been some clients that would not be associated with traditional access stimulation but

1 because of the nature of the triggers, revenue sharing
2 plus an imbalance of traffic or growth in traffic, that
3 they have been caught up in the net.

4 The very thing that the FCC was hoping would not
5 happen and these parties have come in and said when the
6 CAF Order is being prepared, you know, I think that
7 you're casting too wide a net, we are seeing the effects
8 of that.

9 Where CLECs are having to defend themselves against
10 the charges of access stimulation and having tripped the
11 triggers when in many cases they haven't tripped the
12 triggers but they have the appearance of having tripped
13 them.

14 Or in some cases the IXCs simply know that the
15 carrier is not an access stimulator, but they think
16 because of the nature of the triggers they have sort of,
17 you know, caught them in this net and will benefit from
18 it from lower access rates.

19 Q. Now are there CLECs that are paying at the lowest
20 rate in their state because of the trigger or not doing
21 substantial business with free conferencing companies?

22 A. Are there CLECs that are charging lowest price price
23 cap rates?

24 Q. Because of the CAF Order that are not doing most of
25 their business with free conferencing companies?

1 A. Oh, definitely. Definitely, yes.

2 Q. Now Mr. Schenkenberg asked you about the costs and
3 whether -- I think he was basically getting at whether it
4 was fair that Free Conferencing was paying -- getting
5 75 percent of the fee generated by its calls.

6 On the other hand, NAT is getting 25 percent of the
7 gross; right?

8 A. That's my understanding, yes.

9 Q. Right. And NAT doesn't have any expenses associated
10 with the Free Conferencing bridge and network; right?

11 A. That's right.

12 Q. So the actual costs of accepting and conferencing
13 that traffic has been assumed by Free Conferencing
14 because they've provided the equipment for that; right?

15 A. That's right.

16 Q. And receiving a gross margin of 25 percent in a
17 business like telecommunications is pretty good; right?

18 A. That would be great, yeah.

19 Q. Now there were all of these questions about whether
20 NAT is properly billing the subscriber line charges and
21 these things. It's very technical. I'm not sure I
22 understand it, and I'm not sure if anybody in the room
23 understands it.

24 But the problems arise because the Tribe is not
25 billing its customers because its services. Is that some

1 of the generation of the problem?

2 A. Can you phrase it differently?

3 Q. Was there an issue with reporting because the Tribe
4 was not billing the tribal members for the service? Was
5 that part of the issue?

6 A. Yeah. I think really most of the errors I saw, you
7 know, I think I can trace back to just errors on the part
8 of the preparer, the individual preparer, not on the part
9 of the practices of the company.

10 Q. Okay. Is NAT in compliance?

11 A. We -- yeah. NAT is in compliance. And, like I
12 said, we work very hard to make sure that stays the case.

13 Q. And how long have you been working with NAT?

14 A. We've worked with NAT for over three years. And
15 then what I call a full compliance reporting capacity for
16 about a year.

17 Q. And how would you compare NAT's dedication to being
18 in compliance with your other clients?

19 A. Yeah. You know, I would -- I would want to
20 reemphasize that, you know, every client cares about
21 compliance, but some take it more seriously and go to
22 greater lengths than others.

23 And it's been my experience with NAT that -- always
24 erring on the side of caution. In cases where I've
25 offered higher access rates they want to go with lower

1 access rates. There's a high level of commitment to
2 compliance at Native American.

3 Q. Now if you look at Exhibit 16, which I guess is the
4 tariff that you prepared and exhibit -- their Exhibit 34,
5 which is the spreadsheet.

6 A. Okay.

7 Q. Could you just explain again how Exhibit 16 explains
8 why the last page of Exhibit 34 looks the way it does?

9 A. If I understand the question, I think what we're
10 saying here is this is a spreadsheet that is used to
11 determine the USF obligation. It would be improper to
12 include the \$35 as part of the USF obligation. You would
13 only include subscriber line charge revenues on this.

14 So while this includes a category for that revenue,
15 it's not assessable. That would be my answer to why
16 this -- and I don't know if that's your question.

17 Q. That is my question.

18 A. Yeah. You know, so including this as part of -- and
19 even before when it was -- it looked like it should sum
20 across but -- and that was just the nature of the
21 spreadsheet, the way it was put together. But the
22 spreadsheet says in the last column it specifically
23 identifies USF.

24 My error was in assuming that the 6.45 and \$35 were
25 related because of the -- you know, the proximity of the

1 5 to 1 relationship PRI has to other VoIP services. But,
2 again, it's the local charge, not the subscriber line
3 charge that's being captured here. So that would not be
4 captured in the USF column.

5 Q. Okay. Now Mr. Schenkenberg was asking you about the
6 mileage charges.

7 A. Yeah.

8 Q. And I'd like to direct your attention to a chart
9 that Mr. Farrar prepared.

10 A. Would this be Table 6?

11 Q. No. It's Mr. Farrar's chart of mileage.

12 A. It looks like in Randy's testimony I see Table 6,
13 NAT/CC's composite interstate switched access --

14 Q. Yeah. Which page is it?

15 A. I'm not sure if the pagination was correct on mine,
16 but actually it's page 12.

17 Q. Okay. That's right. Now is -- is this table
18 accurate?

19 A. This table is not accurate.

20 Q. What's wrong with it?

21 A. I can understand how the calculations work because
22 Sprint was assuming these three elements were the only
23 elements that apply. And so they looked at the local
24 switching rate, which was correct. They looked at the
25 mileage rate. And the elements themselves are correct.

1 The only way you can get to NAT's composite rate of
2 .006327 is to inflate the mileage in order to bridge that
3 gap.

4 So what was clear to me when I saw this is that the
5 common trunk port often called the shared port is not
6 included. That would definitely apply unless you're in a
7 direct connect scenario -- again, Sprint's in the
8 position of avoiding the shared trunk port charge by
9 going with a direct connect.

10 The other element that was excluded was the common
11 transport multiplexing element. By far the bigger of the
12 two omitted elements is the common trunk port at .00747.

13 The CMUX is substantially less than that at .000036.
14 When those are added back in, we get the correct mileage,
15 what I would even say is the understated mileage of 111.

16 Q. And that's what was in the tariff?

17 A. That's what was in the tariff, yes.

18 Q. Had Mr. Farrar actually read the tariff in its
19 entirety, he would have known that.

20 A. Yeah. I think it's pretty clear. I say it's a
21 footnote, but the font size is the same. It's not a
22 hidden footnote. I think it's -- we wanted to be
23 extremely clear about the elements that are being
24 billed.

25 Q. And so just to get to the bottom line, if Sprint did

1 a direct connect, instead of having a total composite
2 rate of .006327, what would approximately be the rate
3 that it would have to pay?

4 A. And I would say, just to make sure to qualify it,
5 that typically in a direct correct scenario the only
6 thing that's left is local switching. If there's been
7 surcharges, that applies to. But in this case we're only
8 talking about local switching.

9 Now they would be occupying a dedicated port on the
10 switch, and the price for that dedicated port would need
11 to be calculated. It would need to use the shared port
12 as a surrogate or have a monthly recurring charge for the
13 dedicated port.

14 Assuming the port is dedicated and paid for on a
15 monthly recurring basis, then the local switching charge
16 would be .001974. And that would be -- that would be the
17 cheapest place to terminate a call in just about any
18 major area in the country. That's a very low local
19 switching rate.

20 Q. And Sprint so far has basically not availed itself
21 of that opportunity?

22 A. That's my understanding.

23 Q. Because if they did that, they'd have to start
24 paying?

25 MR. SCHENKENBERG: Object. I'm going to object

1 to the question as facts not in evidence.

2 MR. WALD: Object to the question or the paying?

3 MS. AILTS WIEST: Overruled.

4 Q. Mr. Schenkenberg asked you a question about the
5 499 forms.

6 A. Right.

7 Q. And he asked you a question about whether Free
8 Conferencing had failed to make payments that are due or
9 failed to report income, I think?

10 A. Right.

11 Q. Now we've seen all the exhibits in the case. A
12 question is not evidence. You've now seen all the
13 evidence. We've presented all the exhibits.

14 Are you aware of any evidence that Free Conferencing
15 has failed to report income or make payments that are
16 due?

17 A. That Free Conferencing?

18 Q. Yes.

19 A. No.

20 Q. Now he also asked you about your written testimony
21 that on whether access stimulation creates costs for
22 customers.

23 A. Uh-huh.

24 Q. And could you explain what your testimony is on
25 that?

1 A. Yeah. I think in a -- since I make a very big
2 distinction between access stimulation pre CAF Order and
3 post CAF Order, pre CAF Order when you're talking about
4 unusually high access rates, you know, I think that --
5 you know, I didn't see any evidence that it actually
6 increased the cost of long distance calling, but it
7 certainly is above average access termination fees in the
8 mix somehow.

9 Now if the FCC had decided, well, we're just going
10 to go with the average, you know, let's not have above
11 average access rates, let's have average, so they
12 produced an average and say, hey, it's going to be the
13 average access rate, it won't raise the average if you're
14 a traffic stimulator to trip the trigger.

15 Instead what they did is went with the lowest price
16 price cap rate, which is often less than the RBOC in the
17 state. So they actually went with a set of elements that
18 are below average. So it would appear then that traffic
19 that falls under the access stimulation trigger post CAF
20 Order would reduce the average price of access charges.

21 Q. I just wanted to follow up with a couple of
22 questions that Commissioner Nelson asked.

23 You understand that the Crow Creek Sioux Tribe has a
24 status of a sovereign nation?

25 A. That's right.

1 Q. And you understand that there is some sentiment that
2 the status of sovereign nation gives it the same status
3 as a state?

4 A. That's right.

5 Q. And there are some who believe that its status as a
6 sovereign state means that it doesn't need any CLEC
7 approval from the state. Do you understand that?

8 A. Yes.

9 Q. Do you agree with that?

10 A. You know --

11 Q. I'm not asking you to take a position if you don't
12 want to.

13 A. Yeah. That's a good question. Yeah. And working
14 this proceeding, there has been -- has been enlightening
15 on those issues. I think there's a good argument that
16 we're talking about.

17 Now it's an interstate call. And so if it's a
18 sovereign nation, then it becomes an interstate call, not
19 an intrastate call.

20 So, you know, I think there are good arguments on
21 both sides on that one. But, yeah, you know, if we
22 assume that we're talking about a sovereign nation, now
23 these calls that -- we went through the diagrams. Those
24 could be interstate calls.

25 Q. You also agree with the path taken by NAT that if

1 there's concern by the State, that they want to regulate
2 a certain area, that the application that's being sought
3 here is appropriate?

4 A. Right.

5 Q. And you're behind that totally?

6 A. Yeah.

7 Q. As is NAT?

8 A. Sure. Yes.

9 MR. WALD: That's all the questions I have.

10 MS. AILTS WIEST: Any further recross based on
11 redirect?

12 MR. SCHENKENBERG: I do. Thank you.

13 RECROSS-EXAMINATION

14 BY MR. SCHENKENBERG:

15 Q. Mr. Roesel, are you familiar with an entity by the
16 name of Wide Voice, LLC?

17 A. I am.

18 Q. And you do consulting work for Wide Voice, LLC?

19 A. I do.

20 Q. And have you been involved in Wide Voice, LLC's CLEC
21 applications in various states?

22 A. I have been.

23 Q. And you're aware, are you not, Wide Voice has come
24 under -- there's been opposition to those filings?

25 A. Yes.

1 Q. And as a result of opposition, Wide Voice has
2 withdrawn such applications in numerous states?

3 A. I wouldn't say numerous. I think it's been
4 withdrawn maybe in two states.

5 Q. South Dakota, Minnesota, Iowa?

6 A. I don't think it was -- I wouldn't -- it could be
7 all of those as withdrawn. I don't know that the
8 application was submitted, protested, and withdrawn in
9 all of those states.

10 Q. Those are other examples of CLEC applications that
11 were contested?

12 A. Yes.

13 Q. Did I hear you say in response to a question from
14 Mr. Wald that NAT has no expenses associated with its
15 receipt of calls -- I'm sorry. With its termination of
16 calls to Free Conferencing?

17 A. I think he was describing that -- the portion of the
18 call that is carried by Free Conferencing, the handling
19 of the call by Free Conferencing, not the handling of the
20 call by NAT.

21 Q. I think the question was isn't it true that NAT gets
22 25 percent of access charges and has no expenses
23 associated with that.

24 A. I think -- I think NAT is performing a function.
25 There are definitely expenses associated with that

1 function. Those are largely -- there's always been the
2 tension between usage sensitive recovery of fixed costs,
3 the policy implications of that. So there clearly are
4 costs that NAT is incurring. And are those on an
5 incremental basis? Are those costs lower than the
6 25 percent of the access revenue they're billing and
7 keeping? I couldn't speak to that, but I know that the
8 usage sensitive costs are very low.

9 Q. Okay. Just so we're clear, it is incorrect to say
10 NAT has no expenses associated with those calls.

11 A. I would not say that NAT has no expenses with those
12 calls.

13 Q. And, in fact, perhaps one of the most significant
14 ones would be the cost of the trunk provided by SDN
15 that's of a capacity to handle all of those minutes;
16 right?

17 A. I would imagine that would be significant.

18 Q. And power.

19 A. (Witness nods head).

20 Q. Thank you. You were asked a broad question about
21 whether NAT is in compliance. And you answered it yes
22 that you believe NAT is in compliance.

23 Isn't it true, though, that you can't say that NAT
24 is in compliance with its local tribal tariff with
25 respect to its relationship with Free Conferencing?

1 A. Can I say they're in compliance with their local
2 tariff? I don't think I -- I don't think I can speak to
3 exactly what billing has occurred under that tariff.

4 Q. And you answered a question from Mr. Wald over my
5 objection that I think Mr. Wald said Sprint hasn't
6 availed itself of the direct connect option because then
7 it would have to start paying.

8 A. Uh-huh.

9 Q. Now you don't know Sprint's motivations personally;
10 right?

11 A. Sprint's motivations, no.

12 Q. And are you familiar with the settlement that Qwest
13 reached?

14 A. The settlement Qwest reached with whom?

15 Q. With NAT to do direct connect.

16 A. Oh, CenturyLink?

17 Q. Yes.

18 A. To the direct connect?

19 Q. Yes.

20 A. I have some awareness with that.

21 Q. And are you aware that that agreement did not
22 resolve payment issues?

23 A. Wouldn't be aware of that. I mean, I would add the
24 reason I made that statement, when a carrier actually
25 direct connects with another company that is -- that is a

1 clear agreement that I'm going to occupy a dedicated port
2 on your switch.

3 I'm establishing my own facilities, and the clear
4 understanding would be that payment would occur for the
5 switched -- for the remaining switched access charges. I
6 think a company -- it would make no sense for a CLEC to
7 allow a direct connect and then still they're occupying a
8 dedicated port and I'm billing them local switching only
9 and yet I'm getting their revenue. That wouldn't make
10 sense.

11 Q. Commissioner Nelson asked you about what's on your
12 website. I have a couple of pages printed out. If I
13 showed those to you, do you think you'd be able to
14 identify them as coming from your website?

15 A. Sure.

16 (Sprint Exhibit 37 is marked for identification)

17 Q. This is Sprint 37. Do you recognize these pages as
18 having come from TMI's website?

19 A. I do.

20 MR. SCHENKENBERG: And I don't need to ask this
21 witness any questions about the document, but given
22 Commissioner Nelson's --

23 A. Sure.

24 MR. SCHENKENBERG: -- question, I thought I
25 would have them foundation laid and then offer them into

1 evidence.

2 I would move the admission.

3 MS. AILTS WIEST: And this would be Sprint
4 Exhibit 37?

5 MR. SCHENKENBERG: Yes.

6 MS. AILTS WIEST: Is there an objection to
7 Sprint Exhibit 37?

8 THE WITNESS: And I would add that we would
9 certainly value the Commission's input on anything they
10 see here that they find incorrect or misleading because
11 that's certainly not the intent.

12 I think one thing this does not include is maybe
13 the full treatment. And so I'd be happy to provide the
14 Commission our complete analysis of South Dakota's
15 position on VoIP services.

16 MR. SCHENKENBERG: I have no objection to such a
17 late filed exhibit. Although it ought to be something in
18 existence today as opposed to created after today.

19 THE WITNESS: Oh, sure.

20 MS. AILTS WIEST: Is there an objection to
21 Exhibit 37?

22 MR. WALD: There's no evidence that the bridge
23 at issue is a VoIP bridge. We don't have any problem
24 with the Commission seeking information from this
25 witness, but the bridge, in fact, of FCC is not a VoIP

1 bridge.

2 MS. AILTS WIEST: So this can be admitted?

3 MR. WALD: So we object as to relevance, but we
4 don't have any problem with the witness supplying
5 information to the Commission, not part of this
6 proceeding.

7 MS. AILTS WIEST: Okay. The objection is
8 overruled, and it's admitted.

9 MR. SCHENKENBERG: I have nothing further.

10 MS. AILTS WIEST: Did anyone else have any
11 further recross?

12 MR. COIT: No recross.

13 MS. MOORE: Nothing from Midstate.

14 MS. CREMER: Nothing from Staff.

15 CHAIRMAN HANSON: I'll apologize since I should
16 have asked the questions earlier. However, counsel
17 brought up a question about sovereignty.

18 And I recognize you're not an attorney and
19 expert on sovereignty relationships. I'm just curious
20 from the standpoint of the application, though, with --
21 from a practical standpoint when we're talking about
22 interconnections.

23 Is there a -- let's take -- reservations are
24 recognized as sovereign --

25 American-Indian reservations are recognized by

1 the Federal Government in the United States as sovereign
2 nations with certain unique characteristics and
3 relationships. If I can look at an example, as for
4 Canada, for instance, or Mexico, they're sovereign
5 nations obviously.

6 Does Sprint or any provider have a requirement
7 to provide service in Canada?

8 THE WITNESS: Do any U.S. providers have
9 requirements to serve Canada?

10 CHAIRMAN HANSON: Correct.

11 THE WITNESS: No.

12 CHAIRMAN HANSON: Do they have any requirement
13 to serve an American-Indian reservation in South Dakota?

14 THE WITNESS: Would a U.S. company that is a
15 common carrier, right, a U.S. common carrier, would they
16 be relieved of the obligation to provide service on a
17 tribal area because it's also a sovereign nation?

18 CHAIRMAN HANSON: Excellent question.

19 THE WITNESS: Yes. I want to make sure I
20 understood correct.

21 I think a good argument could be made, you know,
22 if we're going to compare it to Canada and say, yeah, I
23 mean, I think if it's a nation within a nation and a U.S.
24 common carrier chose not to provide service there, you
25 know.

1 But if you're talking about -- if you're talking
2 about could they refuse to terminate traffic there, I
3 would say no. So to provide service is to have an end
4 user there. But to deliver traffic, you know, I think if
5 we look at the rural call completion requirements of the
6 FCC, I think it's pretty clear that -- if this is what
7 you're getting at. It may not be at all. I think the
8 requirement to terminate traffic there would be very
9 clear.

10 CHAIRMAN HANSON: So there are relationships
11 that are very different between the sovereign nation of,
12 for instance, Canada or Mexico than there is with a
13 American-Indian reservation?

14 THE WITNESS: I would say there are differences,
15 yes.

16 CHAIRMAN HANSON: Okay. And the obligations,
17 therefore, are different.

18 THE WITNESS: Yes.

19 CHAIRMAN HANSON: Thank you.

20 MS. AILTS WIEST: Do you have any further
21 redirect, Mr. Wald?

22 MR. WALD: I just have a couple of follow ups.

23 REDIRECT EXAMINATION

24 BY MR. WALD:

25 Q. One, it's true, is it not, that the Free

1 Conferencing bridge is not a VoIP bridge?

2 A. That has been my understanding. I didn't want to
3 try to speak authoritatively to that, you know, whether
4 it is or not. But it is my understanding that it is not
5 a VoIP bridge.

6 Q. And Mr. Schenkenberg asked you if you were aware of
7 Sprint's motivations for not paying. It's well-known
8 that Sprint doesn't pay because it has a cost containment
9 policy throughout the United States; right?

10 MR. SCHENKENBERG: Objection. Calls for
11 speculation. Relevance.

12 MR. WALD: He asked about the witness's
13 knowledge.

14 MS. AILTS WIEST: Objection overruled.

15 A. One of the things I do is work on intercarrier
16 compensation disputes. And I work on them for, again,
17 the largest -- companies, not just NAT, many, many CLECs
18 have collection issues. And so I work on dispute
19 resolution.

20 And, you know, I think it's -- I think it's -- my
21 experience is that among the largest carriers I would
22 say Sprint is the least likely to pay of the major
23 carriers.

24 MR. WALD: Thank you. That's all we have.

25 MS. AILTS WIEST: Any further cross?

1 MR. SCHENKENBERG: I have a document I'd like to
2 be received. I can ask this witness about it. But it's
3 a discovery response we got in the fall that has some
4 call routing diagrams that are in color. I think maybe
5 this is a deposition exhibit, and so it's already in the
6 record in black-and-white.

7 But I've got it in color, and it shows this
8 being an IP service into the NAT voice application box,
9 which is Free Conferencing.

10 The idea that this is not an IP bridge is a new
11 fact, and I feel like if something has changed, we have
12 an issue of surprise. I just want to make sure this is
13 in the record. I can ask this witness about it, or I can
14 just offer it.

15 MR. WALD: If he wants to offer it through
16 Mr. Erickson, that would be okay with us.

17 MS. AILTS WIEST: Mr. Erickson.

18 MR. SCHENKENBERG: Mr. Erickson?

19 MR. WALD: Well, this witness -- he's proposing
20 to offer a new document not in connection with the
21 cross-examination of this witness. And if he wants to
22 offer it through a competent witness, he can do that.

23 MR. SCHENKENBERG: I can do it through this
24 witness. He was just asked on redirect about whether
25 this is an IP bridge.

1 MR. WALD: Well, if the witness knows. But if
2 the witness doesn't have any personal knowledge of this
3 exhibit, it's not going to go in. Mr. Erickson would
4 have personal knowledge about this exhibit.

5 MR. SCHENKENBERG: Can I mark it, and we'll go
6 from there?

7 MS. AILTS WIEST: Go ahead.

8 (Sprint Exhibit 38 is marked for identification)

9 MR. SCHENKENBERG: This will be Sprint 38.

10 MS. AILTS WIEST: Just to clarify, you said it's
11 not already in the record, but you said something about
12 black-and-white copy might be somewhere? Where is that
13 at?

14 MR. SCHENKENBERG: I believe it's in the
15 Holoubek deposition transcript.

16 MS. CREMER: It's Holoubek Exhibit 4 under --
17 well, it's Exhibit 6, and it's under Exhibit 4 of
18 Exhibit 6 of Holoubek.

19 MS. AILTS WIEST: So it's already in the record;
20 it's just not already in the record as a color copy?

21 MR. SCHENKENBERG: Right. And the color is
22 important for the legend at the bottom of the page.

23 I'd just move the admission of this, which is
24 already in the record and was received in discovery from
25 Mr. Swier.

1 MR. WALD: Well, if it's already in evidence,
2 why is he moving its admission?

3 MS. AILTS WIEST: I believe because it's in
4 color.

5 MR. WALD: Oh. Then I don't have any problem.

6 MS. AILTS WIEST: Okay. Then Sprint Exhibit 38
7 has been admitted.

8 Q. If you go to the last page, did you have any
9 involvement in preparing these?

10 A. I did not.

11 Q. Have you seen them before?

12 A. I have not.

13 Q. The last page at the top, take your time that you
14 need, but there's right in the middle collocated voice
15 application services, which is in the NAT building.

16 Do you see that?

17 A. Yes.

18 Q. And there's a blue arrow that -- at the bottom shows
19 Voice over IP connection?

20 A. Yes.

21 Q. That is up to the collocated voice applications?
22 Does that picture look inconsistent with the
23 understanding that you expressed a couple of minutes ago
24 about whether Free Conferencing's bridge is an IP-based
25 bridge?

1 A. Yeah. This diagram shows a blue connection to the
2 collocated voice application services, and blue is
3 indicated as Voice over IP connection.

4 MR. SCHENKENBERG: Thank you. Nothing further.

5 MR. WALD: No questions of this witness.

6 MS. AILTS WIEST: Okay. Thank you. Any
7 questions?

8 Thank you, Mr. Roesel.

9 I believe this would be a good time to stop for
10 lunch. Again, I would propose an hour and 15 minutes.
11 It's about 11:40. So we'll come back in an hour and 15.

12 (A lunch recess is taken)

13 MS. AILTS WIEST: We'll go back on the record.

14 NAT, did you have any additional witnesses?

15 MR. WALD: Not at this time.

16 MS. AILTS WIEST: Sprint.

17 MR. SCHENKENBERG: Sprint would call
18 Mr. Randy Farrar.

19 RANDY FARRAR,

20 called as a witness, being first duly sworn in the above
21 cause, testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MR. SCHENKENBERG:

24 Q. Good afternoon, Mr. Farrar.

25 A. Good afternoon.

1 Q. By whom are you employed?

2 A. Sprint.

3 Q. And did you prepare and cause to be filed testimony
4 in this proceeding?

5 A. Yes, I did.

6 Q. And in particular did you cause to be filed
7 testimony dated August 20 of 2013?

8 A. Yes.

9 Q. And, for the record, I misidentified the date. I'm
10 sorry. It's August 30. Was it August 20 or 30th?

11 A. 30th.

12 Q. I am perpetuating my mistake. I think on the
13 exhibit list I put the incorrect August 20 date. For the
14 record, it was August 30.

15 And there were Exhibits RGF-1 through RGF-17?

16 A. Correct.

17 Q. And then did you cause to be filed supplemental
18 direct testimony dated December 4, 2013?

19 A. Yes.

20 Q. And attached to that Exhibits RGF-18 through 20?

21 A. Yes.

22 Q. I'm sorry. 18 through 23?

23 A. Yes.

24 Q. Okay. And did you cause to be filed testimony dated
25 February 14 of 2014?

1 A. Yes.

2 Q. With RGF-24?

3 A. Yes.

4 Q. Do you have any corrections to be made to any of
5 those three pieces of written testimony?

6 A. Yes, I do.

7 Q. What's the first?

8 A. Okay. The first, on the August 30, 2013 testimony,
9 on page 31, line 5 the word "no" needs to be stricken
10 from the answer.

11 On page 41, Table 4, column D, row 4, the rate,
12 instead of .012654 that should be .006327. And then --

13 MS. AILTS WIEST: Would you repeat that one.

14 THE WITNESS: It should be .006327. Just the
15 number to the left should have been copied over.

16 A. And then column D, row 4, the rate of .01265 should
17 have been .006327.

18 And then under column F where it says July 2016
19 Rate, that should just simply be the word "tariff."

20 Then on page 43, Table 5 again, the same thing,
21 column D, row 4 the rate should be -- instead of .012654,
22 it should be .006327.

23 In both cases that didn't have any effect on any of
24 the calculations on the rest of the table.

25 In my -- moving on to my December 4, 2013,

1 testimony, on page 6, Footnote 4 where it says Exhibit
2 RGF-22, it should be RGF-21.

3 MS. AILTS WIEST: Would you repeat that again.

4 A. On page 6, Footnote 4, first row where it says
5 Exhibit RGF-22 it should be 21.

6 MS. AILTS WIEST: Thank you.

7 A. Okay. And then finally on my February 14, 2014,
8 testimony, page 12, Table 6 they were correct. I did
9 leave out the shared port. Though I would disagree about
10 whether or not common muxing belongs there or if it's
11 really irrelevant.

12 But if you do include the shared port, the rate
13 becomes, you know, 111 miles instead of 137 miles. It
14 doesn't change anything as far as the rest of my
15 testimony nor the conclusions whether it's 111 or whether
16 it's 137. It doesn't really matter to me.

17 I guess one calculation I didn't make is where I say
18 the transport is 65 percent of the total rate. That
19 number would now be -- if I hit all the buttons right, it
20 would be 53 percent, 53.1 percent.

21 Q. And that number would then go into the table instead
22 of 65 and then also on line 12?

23 A. Yeah. On line 12 the 65 percent would be 53
24 percent. And then, again, any place you see 137 miles --
25 it comes in twice in the answer above on row 7 and on

1 row 13 -- that would be 111. I believe that's the only
2 time those numbers occur.

3 Q. Is that all the corrections?

4 A. Yes.

5 MR. SCHENKENBERG: I would like to address --
6 there are a few exhibits to Mr. Farrar's testimony that
7 have not been received to which there were objections.

8 Can I address those now?

9 MS. AILTS WIEST: Yes.

10 MR. SCHENKENBERG: The first is Sprint
11 Exhibit 7, which is RGF-5, which is October 2010
12 transcript from a preliminary injunction hearing in the
13 Federal Court case. It involves Mr. Williams giving
14 testimony on technical issues. That was attached to
15 Mr. Farrar's testimony, providing support for some of the
16 facts that he identified in his testimony.

17 And it's all testimony elicited by NAT witnesses
18 being represented by NAT counsel. We think it's
19 admissible under the rules.

20 I would suggest, having looked at this again,
21 that pages 151 to page 240 are legal argument made by
22 counsel, and that probably should be stricken from the
23 exhibit. And we propose to do that.

24 We'll just remove those pages from our official
25 copy. And that's pages 151 forward. Again, because

1 that's legal argument of counsel, not testimony.

2 And we would offer that exhibit with that
3 modification.

4 MS. AILTS WIEST: Go ahead.

5 MR. WALD: Our objection is based partly on that
6 and partly on if he wants to cite specific testimony
7 that's relied on by Mr. Farrar in this transcript by one
8 of our witnesses, he specifically references his opinion,
9 we don't have an objection to that.

10 But that's not what he's doing. He's trying to
11 offer the entire transcript. Even when he takes out the
12 attorney argument, he's still trying to put in all of the
13 testimony, which is not relevant.

14 So I don't have a problem with any specific
15 passage or witnesses that -- from one of our employees or
16 agents that Mr. Farrar cites, but that's not what he's
17 doing.

18 MS. AILTS WIEST: And Mr. Schenkenberg has went
19 through this, and it appears you cite a couple of places
20 to the transcript in the testimony.

21 What would be the problem with using just those
22 pages?

23 MR. SCHENKENBERG: We could do that, if that's
24 your ruling.

25 MS. AILTS WIEST: And so you might want to

1 double-check these. I had in one footnote you referenced
2 page 50 and 82 to 83. And in another footnote you
3 reference page 150. If that's not correct, just let me
4 know. And maybe there were others. I just did a find
5 for transcripts.

6 MR. SCHENKENBERG: Why don't we try to confirm
7 that at break.

8 MS. AILTS WIEST: Just confirm that. Yeah.

9 MR. SCHENKENBERG: Thank you.

10 MS. AILTS WIEST: So with that, Exhibit 7 we
11 will admit the specific page numbers as referenced in
12 Mr. Farrar's testimony.

13 MR. SCHENKENBERG: Would you like me then on the
14 official copy to remove all the other pages from the
15 binder?

16 MS. AILTS WIEST: Yes.

17 MR. SCHENKENBERG: We'll confirm that 50, 82,
18 83, and 150 are complete, and then we'll remove the rest.

19 MS. AILTS WIEST: Yes. And, you know, my ruling
20 is just admit the specific pages to the extent -- to the
21 extent those pages aren't correct. Again, my ruling is
22 not to the specific pages, just to admit the ones that
23 were referenced in his testimony.

24 MR. SCHENKENBERG: And I think this is a
25 condensed transcript so if you put in 50, it may include

1 four pages. You don't want me to get out the scissors,
2 do you, and cut a quarter?

3 MS. AILTS WIEST: I think it will be on the
4 record that those will not be --

5 MR. SCHENKENBERG: I'm sorry. This is not the
6 condensed. I understand your ruling.

7 The next exhibit to which there was an
8 objection, two exhibits, were 13 and 14.

9 MS. AILTS WIEST: Yes.

10 MR. SCHENKENBERG: Which are RGF-11, a press
11 release regarding Aventure, and RGF-12, which is a
12 bankruptcy filing.

13 May I inquire of this briefly of Mr. Farrar as
14 to the purpose for his attaching those to his
15 testimony?

16 MS. AILTS WIEST: Yes.

17 Q. Can you just explain why you attached those to your
18 testimony?

19 A. Yeah. They supported the portion of my testimony
20 that talked about my experience with other traffic
21 pumpers, specifically Aventure.

22 Q. And the press release that was RGF-11, where did
23 that come from?

24 A. As I recall, I just Googled it, but I don't really
25 remember precisely.

1 Q. Thank you.

2 MR. SCHENKENBERG: With that, we'd offer these
3 two exhibits. They support Mr. Farrar's testimony on an
4 issue -- he's given testimony on 12, which is a
5 bankruptcy filing, is a public record and something that
6 can be pulled off ECF. And it is what it is, and we
7 think these ought to be admitted and, again, the
8 Commission can determine the weight.

9 MS. AILTS WIEST: Mr. Wald.

10 MR. WALD: This proceeding is supposed to be an
11 individualized determination of the merits of NAT's
12 application. There are hundreds of phone companies in
13 America.

14 This news release with respect to Aventure,
15 first of all, it's hearsay. It's inadmissible for about
16 50 reasons like that. And besides which who cares about
17 Aventure.

18 We could bring in many successful LECs, some of
19 which started with one person in the garage, some of
20 which started with tens of millions of dollars of
21 funding. That's not the issue here. The issue here is
22 what happens with this CLEC application.

23 The same thing is true with respect to this
24 Bankruptcy Petition about Global Conference Partners.
25 It's one company. If you -- I don't think this

1 Commission wants to have an evidentiary hearing on the
2 reasons for its bankruptcy and why one company might have
3 failed.

4 It's not even a CLEC. It's a conferencing
5 company that had enormous amounts of debt, unlike Free
6 Conferencing that has no debt.

7 It's also not even a complete version of this
8 bankruptcy filing. It's just a side show, and for that
9 reason it wouldn't be admissible.

10 MS. AILTS WIEST: Do you have any further
11 response to that, Mr. Schenkenberg?

12 MR. SCHENKENBERG: Only to point out that
13 Mr. Farrar did have personal experience dealing with
14 Aventure, and he was involved and gave testimony in the
15 Iowa case, which I neglected to say when I argued a
16 minute ago. But other than that, no.

17 MS. AILTS WIEST: With respect to Exhibit 13,
18 that is a newspaper article. I will not admit that.

19 With respect to Exhibit 14, that is a public
20 record, and that will be admitted.

21 MR. SCHENKENBERG: Thank you. I think the
22 last -- the last exhibit is RGF-16, which is Sprint
23 Exhibit 18. And this is several 499 forms, one 499-Q
24 form, and then a 499-A form.

25 These are documents that were produced in

1 discovery by NAT. I don't believe there's any dispute
2 that they were. They were signed by NAT. And we've had
3 testimony today from Mr. Roesel about the 499s.
4 Mr. Roesel actually gave testimony, written testimony,
5 that the 499s were done correctly and talking about his
6 role in that, and he was subject to cross-examination and
7 redirect on those issues as well.

8 And Mr. Farrar's testimony simply identified
9 that there were some unusual things that were going on
10 with respect to 499 filings and attached some documents
11 from NAT just to -- so the Commission could see that.

12 So we would offer RGF-16, which is Sprint 18.

13 MS. AILTS WIEST: Any response, Mr. Wald?

14 MR. WALD: Yes. Our objection is that the
15 exhibit's not complete.

16 As you heard testimony from Mr. Roesel, the
17 499s, there was errors made by, clerical errors in terms
18 of what lines numbers were put on it. They were
19 corrected. And we don't have any objection to the
20 original errored forms and the corrected forms to be
21 offered, but these are just the errored forms.

22 If they put in the complete forms with
23 submissions with corrections, we would have no
24 objections.

25 MS. AILTS WIEST: Would you have any objection

1 to putting in the other forms, Mr. Schenkenberg, so we
2 have a more complete record on this issue?

3 MR. SCHENKENBERG: I don't. I have -- I don't
4 think I have what could be called a complete. It's going
5 to be a bit of a task. We'll have to do that I think
6 after the hearing ends and do it as a late filed
7 exhibit.

8 MS. AILTS WIEST: Would that be okay?

9 MR. WALD: Sure. No objection to that.

10 MR. SCHENKENBERG: Who's going to do that? Is
11 that something NAT will do?

12 MS. AILTS WIEST: I assume.

13 MR. WALD: We'll certainly coordinate with
14 Sprint on that and make sure the Commission has the full
15 set of forms and we'll either do it jointly or we'll do
16 it ourselves.

17 MS. AILTS WIEST: Okay. So I'll allow
18 Exhibit 18 to the extent that it is supplemented by the
19 later corrected filings for form 499.

20 MR. WALD: Thank you.

21 MS. AILTS WIEST: Thank you. Is that it?

22 MR. SCHENKENBERG: That is it on exhibits.

23 Q. Mr. Farrar, do you have a summary of your testimony
24 to present to the Commission?

25 A. Yes, I do.

1 Q. I'm sorry. I think I neglected to ask you that if I
2 asked you the questions in your prefiled testimony, would
3 your answers be the same today?

4 A. Yes.

5 Q. With that, can you provide a summary?

6 A. Yes. First I'll start off, you know, why are we
7 here?

8 I've heard a lot of testimony that Sprint's the bad
9 guys and Sprint doesn't pay its bills. There's something
10 like 1,400 LECs in this country, and we exchange traffic
11 with all of them. We have very few disputes with the
12 vast majority of them. We pay our access bills to the
13 vast majority of them without any disputes whatsoever.

14 The common denominator in all of those is Sprint.
15 We are here today because NAT is engaged in a business
16 model which the FCC has said is not in the public
17 interest. That's why we're here.

18 As far as we've heard a lot of references to the FCC
19 CAF Order. I want to make it very clear the FCC Order --
20 in that order the FCC ruled that access stimulation is
21 not in the public interest. There's an entire section of
22 that order titled Rules To Reduce Access Stimulation.
23 There's 46 paragraphs in there on how they're going to
24 reduce access stimulation.

25 There's nothing confusing, there's nothing unclear

1 about that order. That order uses the word
2 "stimulation" 178 times, every time in a negative
3 context. They actually refer to access stimulation as a
4 scheme 28 times.

5 And here's just a couple of examples. Paragraph 660
6 and 62 uses the term "adverse effects of access
7 stimulation."

8 Paragraph 663 says "Access stimulation imposes undue
9 costs on consumers."

10 Paragraph 664, "When carriers pay more access
11 charges as a result of access stimulation schemes, the
12 amount of capital available to invest in broadband
13 deployment and other network investments that would
14 benefit consumers is substantially reduced."

15 Paragraph 665, "Access stimulation also arms
16 competition by giving companies that offer a 'free'
17 calling service a competitive advantage over companies
18 that charge their customers for the service."

19 And finally paragraph 666, "Excess revenues that are
20 shared in access stimulation schemes provide additional
21 proof that the LEC's rates are above cost."

22 Now as far as what is access stimulation, again,
23 the FCC Order and the FCC rules define access
24 stimulation. It's defined in paragraph 658, and it's
25 codified or codified, however you pronounce that word, in

1 CFR 47 Section 61.3, "Access stimulation consists of two
2 components, revenue sharing and excessive volume."

3 NAT/CC is absolutely positively without doubt an
4 access stimulator. No question about that.

5 And the CAF Order, the call America -- the Connect
6 America Fund Order explicitly targets traffic pumpers
7 just like this. That's --

8 Just a little bit of how this works and why Sprint
9 is here. What this whole traffic pumping access
10 stimulation model involves is -- started off in rural
11 exchanges where rates were very, very high. And
12 companies like Free Conference Calling and a bunch of
13 other ones would go into rural exchanges, rural telephone
14 companies with very high rates, and they would put
15 conference bridges there.

16 The only reason a conference bridge is in rural
17 America is because the rates were so high. And they
18 called themselves Free Conferencing Company and free this
19 and free that. Because for the vast majority of the
20 cases the end user -- for the end user it was a free
21 service. So when a Sprint customer used his phone,
22 generally speaking almost universally it was free to that
23 Sprint customer.

24 And so the Sprint customer would charge, you know, a
25 bunch of Sprint customers -- instead of having this call

1 which would -- logically in a efficient network would
2 stay locally, these calls get shipped up to rural America
3 such as central South Dakota for the express purpose of
4 generating terminating access charges.

5 Now we've heard a lot of testimony about how if they
6 weren't free, you know, the call would still take place.
7 Well, I don't understand -- A, I don't understand why the
8 rules of economics don't apply to conference calling, and
9 I certainly don't know why they wouldn't apply to the
10 State of South Dakota.

11 Of course, when something's free you get more of it.
12 But even to the extent that the call -- some of those
13 calls would take place -- you know, we heard, you know --
14 again, say a bunch of people in Indianapolis want to get
15 on a conference call. Without traffic pumping schemes to
16 direct that traffic to rural South Dakota, what would
17 happen is that call would -- almost certainly would
18 originate and terminate within, say, the greater
19 Indianapolis area.

20 And to the extent that when wireless terminated
21 calls that originate and terminate within a single MTA --
22 an MTA is an FCC term for a large geographic area that
23 usually encompasses one or more states -- as long as that
24 call originates and terminates within the MTA and it's
25 with a wireless call at one end, there's not going to be

1 any termination charges.

2 The only reason there's ever a termination charge is
3 when you pump it up to rural South Dakota suddenly you
4 have a termination charge. And, obviously, you know, if
5 a Sprint customer calls a Verizon customer, even
6 interstate there's not going to be any exchange of
7 termination. So you only generate termination charges by
8 shipping these calls to rural South Dakota.

9 I have called this thing a sham entity. That is a
10 derogatory arm, but I guess I use it on purpose. This
11 whole thing we've heard a lot of testimony about how
12 Free Conferencing and NAT and NATE and everybody else,
13 you know, are one big happy family. Every time they have
14 a Staff meeting everything goes fine they seem cumbayah
15 and everything's just perfect.

16 Well, again, everything's not perfect. NAT/CC has
17 lost money year after year after year after year. So
18 what's the common denominator, what's the elephant in the
19 middle of the room that NAT doesn't want to talk about?
20 The number's confidential and I won't blurt it out here,
21 but there's a couple truckfuls worth of money that have
22 been shipped to a company in, you know, California and
23 Nevada. That's a fact.

24 So even though NAT keeps losing money, money keeps
25 getting shipped out to California and Nevada. That's the

1 purpose of this whole enterprise. And they have been
2 wildly successful. I mean, that's their purpose. And
3 congratulations. You've been wildly successful at
4 shipping cash out to California. That's what the purpose
5 of this is.

6 The Joint Venture Agreement, when you read that, I
7 find it quite fantastic. 75 percent of gross revenues
8 are shipped off to Free Conferencing. There's also a
9 section in that agreement which I guess you can read it
10 different ways but when I read it it defines profits to
11 be shared with the Tribe. And the definition of profits
12 explicitly excludes access.

13 So even if Sprint were to theoretically pay all of
14 this money per the terms of the Joint Venture Agreement,
15 any profit would not go to the Tribe anyhow. And I don't
16 know how that exactly would show up in the financials.
17 But, you know, that's what the Joint Venture Agreement
18 says.

19 Something we haven't spent a whole lot of time about
20 but, you know, is the question of mileage pumping. Even
21 though they -- they are conforming to the FCC Order in a
22 sense they are billing the Qwest or the CenturyLink
23 rates. They've also suggested that that solves the
24 problem, there's no longer any traffic pumping, there's
25 no longer any access stimulation because they've got the

1 rate right.

2 Well, that's not what the CAF Order says. There's
3 nothing in the CAF Order that remotely suggests that.
4 And, in fact, I would like to read the last paragraph of
5 this whole section access stimulation, paragraph 701.

6 And it says "Our new rules" referring to the access
7 stimulation rules "will work in tandem with the
8 comprehensive intercarrier compensation reforms we adopt
9 below" which is bill and keep "which will when fully
10 implemented eliminate the incentives in the present
11 system that give rise to access stimulation."

12 So just because they have met the Order doesn't mean
13 access stimulation is no longer occurring or they're no
14 longer in access stimulation. There's nothing in the FCC
15 Order that even remotely suggests that.

16 And, again, going back to mileage pumping, again,
17 why are they in rural South Dakota? Because they get to
18 charge an extra 111 miles of transport which they
19 wouldn't get to charge if they weren't in rural
20 South Dakota or if they weren't in some other rural
21 area.

22 As far as the financial analysis, again, this
23 company has lost money for four consecutive years.
24 There's simply no question about that.

25 Again, they want to blame Sprint. No. The problem

1 is your model. You're exercising a model which the FCC
2 says is not in the public interest. There's 1,400 LECs
3 out there. Very few of them are involved in access
4 stimulation. Those who are not involved in access
5 stimulation again, you know, Sprint pays access charges
6 to lots of LECs all the time. It's a routine part of the
7 business.

8 The new business plan that Mr. DeJordy introduced,
9 Sprint has been asking to see their business plans for
10 two years, and we've gotten nothing. Literally two weeks
11 before the hearing, literally four days before my last
12 amount of testimony is due I get a two and one-fourth
13 page Xerox copy of a Excel spreadsheet. And I'm -- I sit
14 here and listen to myself be maligned because I haven't
15 analyzed this.

16 Well, what the heck do I have to analyze? I have a
17 Xerox copy of something a little over two pages with no
18 backup whatsoever. What in the world am I supposed to
19 analyze? And I'm getting criticized for this.

20 Finally, if this model -- if this new model works,
21 fine. If they can make money without access stimulation,
22 without traffic pumping, without dipping into Sprint's
23 pockets, fine. We're happy. Stop traffic pumping.

24 Finally, my understanding is is that there's three
25 things this Commission needs to be looking at:

1 Financial, managerial, and technological capability.

2 You know, technological has never been an issue
3 here. You know, these guys know how to set up towers and
4 complete telephone calls. That's never been an issue.

5 Financial capability, I think I've already covered
6 that. They're losing money, and they're shipping off
7 75 percent of their gross revenues to a California
8 company. Financially this company has just -- has
9 nothing going for it.

10 Finally, we've heard a lot of testimony about
11 managerial competence and they have so many decades of
12 experience and how good they are at running telephone
13 companies.

14 Well, again, a manager is supposed to be looking out
15 for the company it's supposed to be managing. They're
16 not supposed to be looking out for somebody else. NAT
17 has been losing money for four years running. However,
18 they've shipped two truckfuls worth of money, cash, to
19 California. I don't understand how that is managerial
20 competence.

21 If someone came to me and says, Randy, I've got this
22 great business deal for you. I'm going to manage this
23 company for you. And, by the way, I'm going to ship
24 75 percent of your gross revenues to another company that
25 I happen to own and manage, you know, that's -- oh, but,

1 Randy, by the way, you get a free computer and free
2 telephone service. This is a great deal for you so sign
3 up. And my lawyer, Mr. Schenkenberg, told me this was a
4 great idea, I'd probably find another lawyer.

5 I don't see managerial competence here at all. In
6 fact, I see a conflict. I don't understand how the
7 company receiving 75 percent of the gross revenues
8 managing the company it's paying -- I mean, you've got
9 the same management team. There seems to be some sort of
10 conflict here. This does not sound like managerial
11 competence to me.

12 That concludes my testimony.

13 Q. Thank you, Mr. Farrar. I do have one more question
14 before turning you over for cross. And it relates to NAT
15 Exhibit 13. Is that in your book there? It would be in
16 a white binder. NAT 13. The three ring.

17 A. Is that this thing (indicating)?

18 Q. It is that thing. The third page of NAT 13.

19 A. Yes. I have a copy of that here in front of me.

20 Q. This was something you saw in your deposition; is
21 that correct?

22 A. That's correct.

23 Q. And had you seen it before your deposition?

24 A. No.

25 Q. And you -- do you have any testimony as to whether

1 this accurately reflects NAT's financials in the event
2 that legal disputes went away?

3 A. That's what they claim. I disagree with that.

4 Q. For what reason?

5 A. Okay. There's really -- there's three things wrong
6 with -- you know, again, they've taken out all their
7 legal expenses because, again, this is Sprint's fault.

8 Now you have legal expenses because you have the
9 business model which the FCC says is not in the public
10 interest. That's why you have legal expenses. It's not
11 Sprint's fault that you have legal expenses.

12 So they want to take the expenses out of their plans
13 and projections. Well, that's a nice trick to make them
14 look profitable, but it's putting the cart before the
15 horse.

16 Secondly, we've heard all kind of testimony about
17 all the work that employees of other companies are doing
18 for them, you know, without compensation. Again, if
19 you're going to do some kind of forecast of how this
20 company would do if everyone was paying their bills,
21 you'd have to recognize, you know, you've got to pay
22 somebody to do this stuff. That expense is not reflected
23 in here.

24 But the final and the most important one is one of
25 the real frustrating things I've had with this case is

1 simply NAT is very reluctant to provide information to
2 our data requests and they flat out refuse to provide a
3 lot of information to provide for the data requests.

4 One of the things they've absolutely refused to
5 provide, with one rare exception, was minute of use
6 information. We have asked over and over again for
7 minute of use information, detailed, month by month, you
8 know, carrier by carrier. They have never given us any
9 of the information.

10 There's only one time they've ever given us minute
11 of information. And, again, without revealing the
12 numbers here, I think I can do this without revealing the
13 numbers, they gave us -- one of the data requests, data
14 responses, they did give us one number.

15 And I'll represent it as a gross number of minutes
16 from January through October of 2013, a 10-month period.
17 Okay. That's number X.

18 Q. And is that number reflected on Exhibit RGF-23?

19 A. Can you show that to me? Easier if you showed it to
20 me. Yes.

21 Q. At the bottom of page 9 on RGF-23?

22 A. Yes.

23 Q. Okay.

24 A. That's number X.

25 Q. And can you read, what do they describe that number

1 as being?

2 A. This right here? It says "NAT's total number of
3 terminating minutes of use for each month from January
4 2013 to October 2013 is" -- X.

5 Now, again, my deposition again -- this seems to be
6 a favorite ploy of theirs.

7 MR. WALD: Excuse me. I thought he was going to
8 conclude with one last question on Exhibit 13 and then
9 that was the end of his summary.

10 Q. I think the question was do you have testimony as to
11 the problem associated with the third page of NAT 13? I
12 think this is his final --

13 A. Yes.

14 Q. -- issue that he's raising on that exhibit.

15 A. Now again, you know, they plop this thing down in
16 front of me at my deposition and ask me to start
17 analyzing it, which is a hard thing to do.

18 But I've heard testimony that -- and, again, this
19 does not have any minute of use information on it. There
20 is a row here of revenues, which I have been told, which
21 I have heard, that if you take the total number of
22 minutes times this rate, you'll get this revenue -- this
23 projected revenue.

24 Which means if I go backwards, if I take this
25 projected revenues, divide it by the rate, I will get the

1 minutes. And it's supposed to be January through
2 November of 2013, an 11-month period.

3 Well, if I do that math, I get number Y. Well, X is
4 for 10 months, Y is for 11 months. I expect Y to be a
5 little bit bigger, but I expect it to be in the ballpark.
6 Y is actually -- I can't remember the exact math here.
7 It's like 70 percent greater than X.

8 The numbers don't make any sense. And, again, maybe
9 they're right, but they won't tell us. They won't give
10 us the information. So, again, how do I analyze
11 something when they won't give me a simple number like
12 minute of use?

13 We've been asking for two years, and I can't get a
14 minute of use number out of these guys. At least I
15 can't -- I get one, but it's not consistent with other
16 stuff they give us. That's the problem with this
17 exhibit.

18 MR. SCHENKENBERG: Thank you, Mr. Farrar.

19 Mr. Farrar is available for cross-examination.

20 MS. AILTS WIEST: NAT.

21 CROSS-EXAMINATION

22 BY MR. WALD:

23 Q. Good afternoon, Mr. Farrar. Good to see you again.

24 First you said your answers to all the questions on
25 your written testimony would be the same. So you didn't

1 receive any information from listening to the witnesses
2 today that would change any of your opinions?

3 A. That's correct.

4 Q. Except for Mr. Roesel with respect to the mileage
5 issues?

6 A. That's correct.

7 Q. Meeting the managers or meeting the people didn't
8 have any effect on your opinions?

9 A. No.

10 Q. Now you were here -- you've been here the whole time
11 for the hearing?

12 A. Yes.

13 Q. And if you recall at the very beginning of the
14 hearing I read something that Mr. Schenkenberg had
15 submitted on the motion with respect to your testimony.
16 And he wrote this about you. He said you were here to
17 present the positions and opinions of Sprint.

18 Is that the case?

19 A. Yes.

20 Q. As well as your own positions; is that right?

21 A. Yes.

22 Q. Regarding the matters in this proceeding; is that
23 right?

24 A. Yes.

25 Q. And so you see yourself as actually the

1 representative and spokesman for Sprint as well as an
2 expert?

3 A. Well, you know, I'm not a lawyer. I'm not sure if
4 there's some specific definitions of terms you're
5 throwing at me. But, yes, I'm here representing Sprint's
6 positions and policies as well as my own personal
7 opinions.

8 Q. And you're an employee of Sprint?

9 A. Yes.

10 Q. How long have you been an employee of Sprint?

11 A. 30 years.

12 Q. And so your job is to give -- advance the positions
13 of Sprint?

14 A. That's one of the things that I do, yes.

15 Q. Unlike, say, Mr. Roesel who is an independent
16 consultant, and he provides his own opinions at the
17 request of clients.

18 A. Well, yes. He is giving his opinions, but I would
19 assume that if the clients didn't like his opinions, they
20 would probably go find another expert. But, yes, he is
21 giving his own opinions.

22 Q. But with respect to you, you do what your employer
23 tells you to do.

24 A. Well, again, I am representing Sprint's positions.
25 My personal opinion is I agree with all of those

1 positions. I've never been asked to testify to something
2 I didn't believe in.

3 Q. Certainly you've never given an opinion that's
4 inconsistent with the position that Sprint has taken in a
5 courtroom or a legal proceeding.

6 A. That's a fair statement.

7 Q. Now at least you're not aware of Sprint ever having
8 contested a LEC application before; isn't that right?

9 A. Not that I'm -- maybe they have. I'm not aware of
10 any.

11 Q. So for you this is an absolutely unique experience?

12 A. No, it's not. As I discussed at the deposition,
13 I've actually been on the other side of the table where
14 Sprint was seeking permission, certification, whatever
15 the proper word is, to enter a market as a CLEC. So I've
16 been on the other -- I've been on your side of the table.

17 Q. In terms of contesting a LEC application, it's a
18 unique experience for you?

19 A. To be on this side of the table, yes. I've been on
20 the other side of the table. This is my first time on
21 this side of the table.

22 Q. It's for you -- a unique experience for you to even
23 be aware of Sprint contesting a LEC application?

24 A. I've already answered that question. They may have,
25 but not to my knowledge.

1 Q. Now you say that you're here because it's bad public
2 policy to be an access stimulator.

3 A. Well, I'm here because the FCC says it's bad public
4 policy, and Sprint and I personally agree with that.

5 Q. Well, the U.S. Government also thinks drugs are bad.
6 Are you going around the country speaking about drugs?

7 A. I'm sorry. What?

8 Q. The Government also says that drugs are bad. Are
9 you going around the country speaking about drugs?

10 A. No one's ever asked me to.

11 Q. Okay. So a lot of companies have -- public
12 companies in America have departments that are devoted to
13 charitable affairs. Is this one of Sprint's charitable
14 affairs, you coming here and giving its view on a public
15 policy matter?

16 A. I have no idea what that question means.

17 Q. Well, are you here because there's money in it for
18 Sprint, or are you here because Sprint has something to
19 say about a public policy matter?

20 A. I would assume both. Both are correct.

21 Q. Okay. So you're here because Sprint has a specific
22 financial stake in this particular local exchange carrier
23 application?

24 A. Well, yeah. That's no secret. They've been sending
25 us bills, and we don't think we should have to pay them.

1 That's no secret.

2 Q. Is there any circumstances where Sprint would have
3 to pay a bill issued by Native American Telecom?

4 MR. SCHENKENBERG: Objection. Personal
5 knowledge of the witness.

6 MR. WALD: Let me lay some foundation.

7 MS. AILTS WIEST: Okay.

8 Q. What makes you think you're an expert qualified to
9 testify in this case?

10 A. Do we have to go through this again? All of my
11 experiences, education, work experience is in my
12 testimony, and that's why I think I'm an expert.

13 Q. And that would include how long have you worked for
14 Sprint?

15 A. 30 years.

16 Q. Okay. And you've done what kind of work for them?

17 A. We've been through this. My entire work experience
18 is in my first piece of testimony.

19 Do we have to read my entire beginning of my
20 testimony again? I'll be glad to.

21 Q. Well, we went over that in your deposition and
22 there's some in the recorded testimony but there's people
23 listening on the internet and this is a public hearing.
24 I wouldn't have asked the question if I didn't think it
25 was important.

1 A. It's in my direct testimony that was filed
2 August 30. Would you like me to point out the pages to
3 you?

4 Q. I'd just like you to answer my question. And I
5 think if your counsel finds it an objectionable question,
6 he'll object.

7 A. It's in the record.

8 MR. SCHENKENBERG: I think he's answered the
9 question.

10 Q. Could you just go through why you think you're an
11 expert?

12 MR. SCHENKENBERG: I'm going to object to that
13 question as being vague. If Mr. Wald wants to identify
14 specific opinions and ask about his qualifications on
15 specific opinions, that might be more appropriate.
16 That's a very broad question.

17 MS. AILTS WIEST: Overruled.

18 Q. Why do you think you're an expert? The objection
19 was overruled.

20 A. I have an advanced business degree. I have a
21 master's of business administration degree from The
22 Ohio State University. I have worked in this industry
23 for 30 years. My work -- my work history is laid out in
24 my direct testimony.

25 I have testified before, I believe, 28 state

1 regulatory commissions. 28 state regulatory commissions
2 have deemed me qualified to testify as an expert
3 witness.

4 Q. Now you're offering expert opinion with respect to
5 access stimulation and intercarrier compensation, are you
6 not?

7 A. Yes, I am.

8 Q. So my question is with respect to the issue of
9 intercarrier compensation, is there any circumstances
10 under which Sprint would be obligated to pay Native
11 American Telecom for connecting traffic?

12 A. If -- yes. If their traditional end users, the
13 residential and business consumers, terminated traffic
14 from Sprint, I would agree that terminating compensation
15 would be appropriate on that traffic.

16 Q. So Sprint has a lot of consumer customers, does it
17 not?

18 A. Yes.

19 Q. And they look on the internet, and they decide to
20 sign up for free conference calls service -- actually let
21 me take a step back.

22 If they look on the internet and decide to sign up
23 for a Sprint unlimited plan with free long distance
24 service and they pay Sprint X number of dollars a month
25 and they get a number, that happens a lot?

1 A. Well, yes. Except for one -- it sounds like a minor
2 detail, but I think it's important. We don't offer free
3 long distance. What we do offer is a nationwide local
4 calling area. So that's a slight distinction, but I
5 think it's important.

6 Q. My mistake. Okay. My mistake.

7 So nationwide local service, is that what you called
8 it?

9 A. It's a nationwide local calling -- it's a nationwide
10 calling area.

11 Q. Okay. So you make your deal with your customer for
12 a flat fee you can make as many calls as you want
13 anywhere in the United States?

14 A. Yes.

15 Q. If it's a United States area code, you can call it,
16 and there's no usage charge. Is that fair to say?

17 A. There's no incremental usage charge. That's
18 correct.

19 Q. And then they look on the internet, and they decide
20 I want to make some conference calls with my -- because
21 my business requires it. I want to call all of my
22 customers that want to order this particular widget. And
23 they come across freeconferencecall.com and they sign up
24 for that and they want to make those calls with their
25 unlimited nationwide calling plan that they got from

1 Sprint.

2 Will you connect those calls?

3 A. Generally speaking, yes.

4 Q. And you know when you sign up the Sprint customer
5 there are terminating access fees for making those
6 calls?

7 A. Yes.

8 Q. And you know when you connect that call to the
9 conference there's going to be a terminating access fee
10 to that call?

11 A. Yes.

12 Q. And then is there any circumstances when you're
13 going to pay that terminating access fee for connecting
14 that call?

15 A. Not if it's destined to Native American, no.

16 Q. Well, if it's destined to Northern Valley
17 Communication, are you going to connect that call?

18 MR. SCHENKENBERG: Objection.

19 Q. Pay that fee?

20 MR. SCHENKENBERG: Objection. Foundation. Lack
21 of personal knowledge.

22 MR. WALD: He's an expert on intercarrier
23 compensation and he testified that anything that goes to
24 a rural number is traffic pumping and I'm just asking an
25 expert a hypothetical question, which is routine.

1 MR. SCHENKENBERG: I do not agree that
2 Mr. Farrar is an expert in intercarrier compensation who
3 can be asked in this proceeding questions about
4 specific -- calls to specific carriers under specific
5 documents, contracts, tariffs, and be asked and expected
6 to know the answers to those questions without being
7 given the underlying facts.

8 MS. AILTS WIEST: Objection overruled. To the
9 extent you know.

10 A. It's my understanding that we have reached a
11 settlement with Northern Valley. Even though that
12 traffic is access stimulation traffic --

13 MR. SCHENKENBERG: May I confer with the
14 witness? I just want to --

15 MR. WALD: I would object to that strenuously.

16 MR. SCHENKENBERG: I just want to make sure he's
17 not going to say something that requires us to go into
18 confidential session.

19 MR. WALD: Well, then let's go into
20 confidential session. I would object to him conferring
21 with the witness at all when he's answering a question of
22 mine.

23 MS. AILTS WIEST: Should we go into confidential
24 session then if you're concerned that he might say
25 something that was confidential? We can.

1 MR. SCHENKENBERG: I'd rather confer with him
2 for 10 seconds and find out the answer. But it's up to
3 you.

4 MS. AILTS WIEST: We'll go into confidential
5 session.

6 (Beginning of confidential portion of the transcript.)

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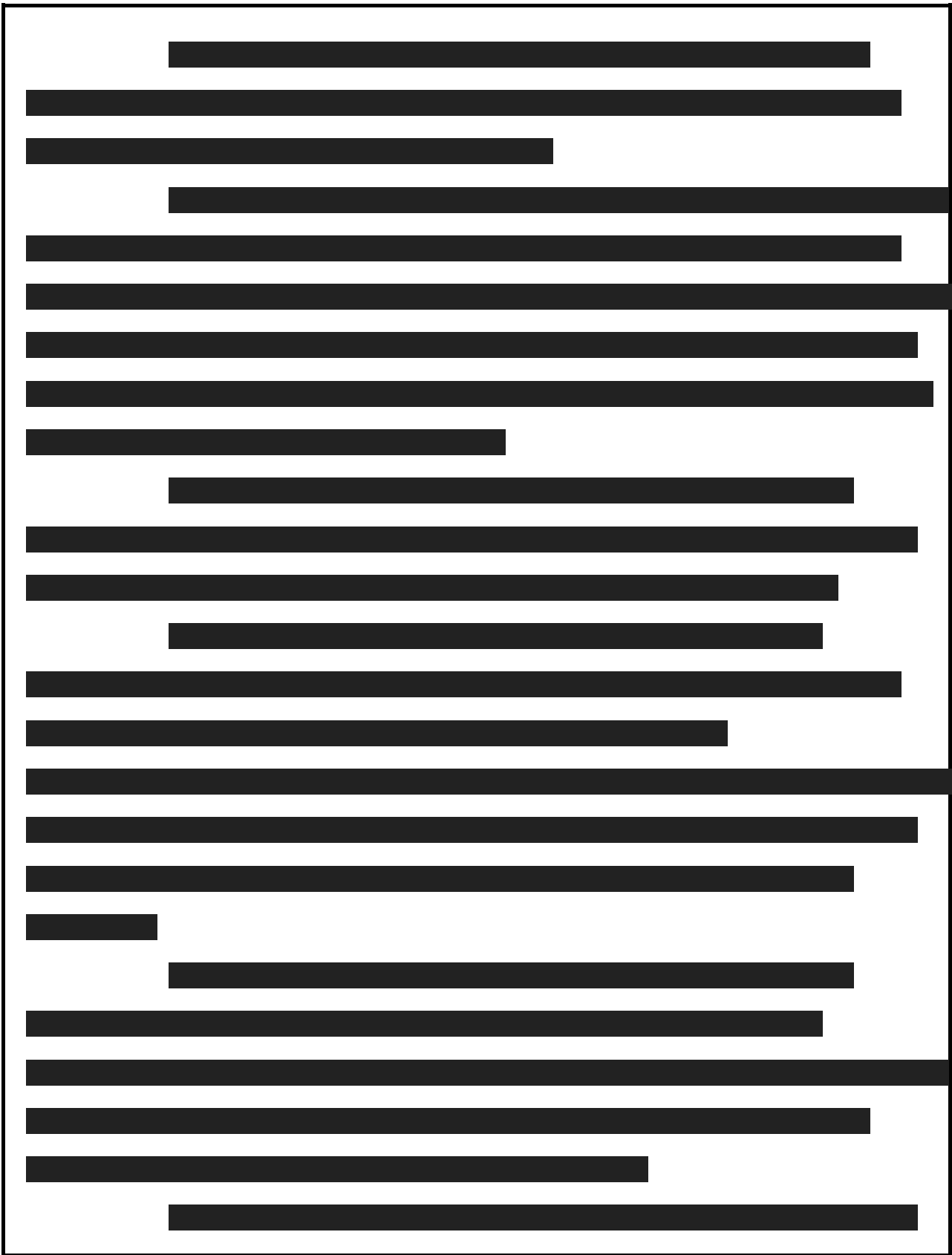
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1 (End of confidential portion of the transcript.)

2 Q. So, Mr. Farrar, is it the position of Sprint that
3 any local exchange carrier who takes significant free
4 conference call traffic in the State of South Dakota
5 should be scrutinized by this Commission?

6 A. No.

7 Q. Just Native American Telecom?

8 A. Not just Native American Telecom because they're
9 Native American Telecom. The circumstances of this case
10 warrants our involvement in this case, and we are -- we
11 would -- and the case that --

12 This is a unique case. NAT is a unique company.
13 And we are here for the reasons that we're here.

14 Q. But part of that is the money that you owe; right?
15 You acknowledge that?

16 A. Again, there's no -- there's no secret here that
17 there's money involved. That's not a secret. I don't
18 know why we keep bringing that up. It's not a secret.

19 Q. How much money do you owe?

20 A. I don't know.

21 Q. Have you calculated that in your analysis of NAT's
22 potential as a business?

23 A. No, I have not.

24 Q. Wouldn't that be an important factor to see what its
25 viability is going forward to evaluate the real

1 liability?

2 A. If I was going to do a speculative analysis based
3 upon a bunch of what-ifs, one of those what-ifs being
4 that some court, some legal authority, would order Sprint
5 to actually pay its bills, yes, I have absolutely no
6 interest, desire, need, to do such an analysis.

7 Q. That seems clear. So let me ask you, did you write
8 your testimony yourself?

9 A. Yes. It's my testimony. I wrote it.

10 Q. And you showed it to counsel, but counsel just made
11 wordsmithing edits; right?

12 A. No. Counsel did more than just wordsmith my
13 testimony. Part of counsel's role is to counsel, and
14 that includes making suggestions of things that -- that
15 would make my testimony better. That's their job.

16 MR. WALD: May I approach?

17 MS. AILTS WIEST: Uh-huh.

18 MR. WALD: I have copies of the transcripts, if
19 the Commission would like them.

20 MS. AILTS WIEST: What are they? Are they in
21 the record?

22 MR. WALD: These are the transcripts I'm going
23 to ask him to look at of his deposition.

24 MS. AILTS WIEST: Okay.

25 Q. So, Mr. Farrar, just so we get everybody

1 understanding the chronology, you submitted your
2 August 30 testimony, and then after that Mr. Holoubek and
3 Mr. Erickson were deposed by Mr. Schenkenberg; right?

4 A. I don't remember the exact chronology, but if you
5 want to -- I'll accept that subject to check that that's
6 the chronology.

7 Q. Well, didn't you submit your December 4 testimony to
8 reflect some of the information that was provided in the
9 deposition that Mr. Schenkenberg took of Mr. Erickson and
10 Mr. Holoubek?

11 A. Yes. That's correct.

12 Q. Okay. And then I took your deposition; right?

13 A. I believe that's correct.

14 Q. And if I could -- if you could look at page 9 of
15 your deposition and on line 16 I asked you this question:
16 "Who wrote your testimony?" And your answer was "I did."
17 Right?

18 A. What page?

19 Q. Page 9, line 16.

20 A. Page 9. I was on 19. That's why I can't find it.

21 Q. Okay.

22 A. Okay.

23 Q. That was accurate?

24 A. Yes.

25 Q. Okay. If you go then to page 12, I asked you this

1 question on line 4: "Okay. But in this proceeding when
2 you said you passed your testimony by him," meaning
3 Mr. Schenkenberg, your attorney, "he then made
4 substantive changes; right?" And your answer was "I
5 would not call them substantive. I would call them
6 mostly wordsmithing edits."

7 MR. SCHENKENBERG: I'm going to object to that
8 question as misrepresenting the testimony. The "him" is
9 his boss, not his counsel. His boss is Mr. Jim Burt.

10 And I also object. And I just want to make this
11 objection. Generally how one uses deposition transcripts
12 is to impeach and to read deposition testimony back to
13 the witness and ask if the witness is testifying per his
14 deposition or has changed his testimony.

15 What has been done here is Mr. Wald has
16 distributed a deposition transcript for the
17 Commissioners, and it's not in evidence. It's not been
18 offered. And that's not really how this ought to
19 proceed. If it's going to be offered, we ought to argue
20 about whether it's offered and received.

21 MR. WALD: Well, as a courtesy, I'm just letting
22 them read along as I'm reading aloud. If you object to
23 that and you want them to give it back, you can ask them.
24 I think that's just a natural courtesy. But I'd be happy
25 to move on to my next question.

1 MR. SCHENKENBERG: So that question is
2 withdrawn? Is that what I understand?

3 MR. WALD: Sure. That question is withdrawn.

4 MS. AILTS WIEST: If you would like, we can give
5 up -- would you prefer us not to look at the deposition,
6 Mr. Schenkenberg?

7 MR. SCHENKENBERG: Well, if it's not going to be
8 offered and received, which I don't think it should be,
9 they shouldn't be kept. They can be used to read along,
10 but they probably should not be maintained when we're
11 done here today.

12 MS. AILTS WIEST: Okay.

13 Q. Let me ask you about your qualifications as an
14 expert. I have some specific questions about them.

15 You don't have any information on how Sprint sets
16 prices for its services; right?

17 A. I am not in the pricing -- my job function does not
18 involve setting prices for any of Sprint's services.
19 That's not my job function.

20 Q. You don't even know the factors that Sprint used to
21 set prices for its services?

22 A. I have no idea what you mean by "factors."

23 Q. Well, what criteria goes into its -- the process by
24 which it sets the prices for its services.

25 A. Well, that goes with my previous answer of my job

1 function does not involve pricing, and I don't know
2 anything -- any question you would ask me about pricing
3 my answer is my job does not involve pricing.

4 Q. Okay. So you don't know how access stimulation
5 might affect the prices of Sprint's services to its
6 customers?

7 A. Not in the specific sense of as how it would affect
8 Sprint's decisions on how to price its services. If you
9 want to talk about economic theory and how costs affect
10 prices, I feel very -- we can talk about that all you
11 want.

12 But I don't know specifically how anyone in Sprint
13 whose job is to set prices, I have no idea how that
14 person would use any of this information in his job
15 because my job does not involve that.

16 Q. Okay. You're not an authority either on any of the
17 laws of the Crow Creek Reservation; right? Or the Crow
18 Creek Tribe?

19 A. That goes without saying.

20 Q. Okay. You don't consider you're an expert on the
21 law of any kind; right?

22 A. That goes without saying.

23 Q. And that would include the regulatory law with
24 respect to telecommunications?

25 A. Well, I am familiar with the laws that revolve

1 around telecommunications. I'm familiar with the FCC
2 orders. I'm familiar with the Telecom Act. But I'm not
3 a lawyer, and I'm certainly not in any position to give
4 legal advice or legal comment on any of those laws.

5 Q. Would you consider yourself qualified to be a
6 consultant of the nature of Mr. Roesel on intercarrier
7 compensation issues and the questions of the type that
8 Commissioner Nelson asked?

9 MR. SCHENKENBERG: I'm going to object to that
10 question as compound.

11 MS. AILTS WIEST: Can you break it down,
12 Mr. Wald.

13 Q. Have you ever written a tariff?

14 A. That's never been my job function. I probably have
15 been -- I probably have been involved in it, but that's
16 never been my job definition, no.

17 Q. If somebody came to you -- if a LEC came to you and
18 asked you to prepare a federal tariff from scratch, could
19 you do it?

20 A. I certainly couldn't sit down today and do it.
21 It's something I'm sure if -- if Sprint asked -- if
22 Sprint reassigned me to a department that involved
23 writing tariffs, could I learn to do that function?
24 Absolutely.

25 Q. So are you -- are you -- I know you admit you're not

1 an expert on the needs of the Crow Creek Tribe, but have
2 you ever visited the reservation?

3 A. No, I have not.

4 Q. Now one would think if you were trying to evaluate
5 the prospects of the business, one might actually visit
6 the business.

7 Did you ever consider doing that?

8 A. No, I did not. I didn't feel it was necessary.

9 Q. Well, you said you were -- you were perplexed by
10 that schedule, the Tarza [sic] schedule. You said you
11 only got it the last minute?

12 A. I don't remember using the word "perplexed." So I
13 really don't know what you mean.

14 Q. Well, you said you didn't understand it. You didn't
15 have enough information.

16 A. I never said I didn't understand it. I said I had
17 absolutely nothing of which I could even begin anything
18 resembling an analysis of it.

19 Q. Well, you didn't know how many homes were in the
20 area that's already part of the built out network, did
21 you?

22 A. No. I have already told you I know nothing about
23 anything that's in that business plan. So, of course, I
24 don't know the number of homes.

25 Q. You would have known that if you actually visited

1 the reservation, wouldn't you?

2 A. Well, given I had three days to analyze your
3 business study that would have consumed at least three of
4 those three days to visit. So no. I did not do that.
5 I did not choose to spend my three-day analysis to do
6 that.

7 Q. When were you first given the assignment of
8 analyzing the prospects of Native American Telecom?

9 A. Oh, I don't know. This case goes back a couple of
10 years.

11 Q. I'm just -- it's an anecdote, but when I first was a
12 lawyer I worked for a bank lawyer and he always told me
13 the first thing you do if you're a lawyer for the bank is
14 you go look at the collateral.

15 And I would think that the first thing you do when
16 you're going to look at a business is you go visit the
17 assets of the business to see what they are. You didn't
18 go look to see the network and what was built out?

19 A. Of course not. I had absolutely no need. I have an
20 M.B.A. I can read a balance sheet. I can read an income
21 statement. I can see negative numbers. I know negative
22 numbers are bad.

23 I don't have to go visit the reservation to see if
24 this company is losing money. Your own documents tell me
25 you're losing money. I don't need to go visit the Tribe

1 to see that.

2 Q. Commissioner Nelson has a lot of other cases to work
3 on. Just in one day looking at this he said, look, you
4 have 150 signups so far. How many are you going to get
5 with a new network when you expand?

6 You don't think he wanted to know that answer when
7 you were given this task two years ago?

8 A. Once again, you're talking about a document --
9 you're mixing things here. First you're talking about a
10 document that I first saw a week before -- four days
11 before my testimony is due. Now you're talking about
12 something two years ago.

13 Can you keep your questions to one document,
14 please.

15 Q. Sure. Why does the reservation only have 150 houses
16 hooked up so far? Do you know that?

17 A. No, I don't.

18 Q. Isn't it important to know?

19 A. No. It's not important for me to know. You're
20 losing money. I don't need to know how many houses you
21 hooked up to see that you're losing money.

22 My analysis is what it was. I looked at the
23 financial information you gave me. I made conclusions
24 based upon that.

25 Q. When you say the "information," we just talked to

1 you about the balance sheets and cash flow statements
2 that were attached to the Application; right?

3 A. No. I'm talking about the financial information you
4 provided in several data requests.

5 Q. You complained you didn't have enough minutes;
6 right?

7 Now Mr. Schenkenberg went to California to depose
8 Holoubek and Mr. Erickson. He spent a whole day doing
9 it. Did you read their transcripts?

10 A. I believe I did.

11 Q. Actually you only just read the stuff that was
12 attached to your deposition; right?

13 A. No. That's not correct.

14 Q. Okay.

15 A. I read the entire document.

16 Q. Before you actually did your written testimony that
17 you filed you only read the exhibits that were attached;
18 isn't that true?

19 A. Prior to -- which -- that's the --

20 Q. The December 4 --

21 A. Yeah. As of the December -- as of December 4 that's
22 correct.

23 Q. Okay.

24 A. Subsequent to that I did read everything.

25 Q. Okay. So before you gave the direct testimony

1 that's the principal testimony at issue here; right?

2 Because the February 14 stuff is just the rebuttal
3 stuff in response to the last minute filings; right?

4 A. I'm sorry.

5 Q. The February 14 testimony, isn't that just the short
6 rebuttal testimony that you filed? That was the last
7 filing; right?

8 MR. SCHENKENBERG: And, for the record,
9 August 30 is the principal direct testimony.

10 MR. WALD: Okay.

11 Q. So then you filed the testimony on December 4, and
12 it's 45 pages? 43 pages; right?

13 A. Yes.

14 Q. And you -- how many pages of the transcripts did you
15 read?

16 A. At that time I had only read those portions of the
17 transcript which I discussed in my testimony.

18 Q. And, in fact, the pages you read are reflected on
19 Exhibit 21; right?

20 A. I'll accept that.

21 Q. Why don't you look on Exhibit 21. Look at exactly
22 what you read.

23 These are pages 121 through 128 and 153 to 156.
24 That's all you read; right?

25 A. I'm sorry. Exhibit 21?

1 Q. This is RGF-21.

2 A. What page numbers did you just refer to?

3 Q. Well, it's the cover page attached, which is page 1
4 through 4. And then 121 to 128.

5 A. Well, it starts --

6 Q. And 153 to 156 is what I have.

7 A. No. It starts at 49. It starts at 49 to 52, and
8 then it jumps to 121 and continues through --

9 Q. Okay. I have a different one. But, anyway, those
10 are the only pages that you read?

11 A. At that time, that's correct.

12 Q. And they were selected for you by counsel; right?

13 A. I had discussion with -- discussions with counsel,
14 and those subjects were part of the conversation.

15 Q. Well, you didn't just happen upon these particular
16 pages since you didn't read the whole transcript. He
17 gave you the pages to read --

18 A. My answer.

19 Q. -- and those --

20 A. I've already answered your question, sir.

21 Q. Let me finish my question.

22 You didn't just happen upon these pages. He gave
23 you the pages to read and attach to your testimony;
24 right?

25 A. This came out of discussions I had with my counsel

1 and I -- and I don't need to give you the details of the
2 discussion with my counsel.

3 Q. Actually you do. Because you're an expert, and
4 anything you relied on in providing your testimony I
5 think is fair game to be disclosed.

6 MR. SCHENKENBERG: I think he's answered the
7 question.

8 Q. What discussions did you have that led you to attach
9 only these pages and not to consider all of the other
10 testimony that was given?

11 MR. SCHENKENBERG: I do object to this question
12 to the extent it asks -- because it asks the Commission
13 to divulge communications with counsel. That is not
14 admissible.

15 And even to the extent that issue would go to an
16 expert's testimony, the rules in South Dakota are that
17 communications between an expert and its counsel are work
18 product -- that's a rule that went into effect I think in
19 2010 or 2011 -- and are protected from disclosure.

20 And the reason was to prevent trials and
21 hearings from being taken up by questions to the expert
22 about communications with counsel, drafts of reports,
23 et cetera. And so those communications are work product.
24 I can provide the rule cite if you'd like.

25 MS. AILTS WIEST: What rule cite is that?

1 MR. SCHENKENBERG: It's rule -- it's SDCL 15- --
2 it's within Rule 26 of the Rules of Procedure.

3 MS. AILTS WIEST: Why don't we take a short
4 break while it appears the attorneys are researching. Be
5 back in 10 minutes.

6 (A short recess is taken)

7 MS. AILTS WIEST: We'll go back on the record.
8 Did the parties figure out what statute we're
9 talking about?

10 MR. SCHENKENBERG: Thank you. And thanks for
11 the opportunity to pull that during the break.

12 The cite is 15-6-26(b). Subpart 3 deals with
13 trial preparation materials. And Subpart 4 deals with
14 trial preparation experts.

15 4(c) says "Trial preparation protection." Trial
16 preparation protection is another word for attorney work
17 product.

18 "Trial preparation protection for communication
19 between a party's attorney and expert witness" and it
20 says Subdivision 15-6-26(b)(3) "protects communication
21 between the party's attorney and any witnesses retained
22 or specially employed to provide expert testimony in the
23 case, or one whose duties as the parties employee
24 regularly involve giving expert testimony, regardless of
25 the form of the communications, except to the extent the

1 communications relate to compensation for the expert
2 study, identify facts or data that the party's attorney
3 provided, and that the expert considered in forming the
4 opinion to be expressed, or identify any assumptions that
5 the party's attorney provided and that the expert relied
6 on in forming the opinions to be expressed."

7 So to the extent there's testimony being given
8 as an expert, this rule protects those communications.
9 To the extent there's testimony that's not what one would
10 designate as expert testimony, then there's
11 attorney-client communication protection without regard
12 to these rules.

13 In any case, the question that was asked -- and
14 I let the question be answered -- did your counsel
15 provide you pages of -- these pages from the deposition
16 because he had not read the entire deposition? And that
17 was answered.

18 And the next question was tell me about the
19 discussions around the Holoubek deposition. I don't
20 remember if it was Holoubek. But the deposition pages
21 that were attached.

22 Those are not intended to obtain information
23 about any of the three exceptions. And that's
24 attorney-client privilege -- I'm sorry. That's work
25 product privilege. Work or attorney-client.

1 MS. AILTS WIEST: Can you read back the exact
2 question?

3 (Reporter reads back the last question.)

4 MS. AILTS WIEST: And what would your response
5 be, Mr. Wald?

6 MR. WALD: Well, the response is in the
7 exception. It says except as to communications that
8 identify facts or data that the party's attorney provided
9 and the expert relied on in forming his opinion. And/or
10 considered in forming his opinion.

11 And that's directly what it is is the whole
12 point here is that he did not go through the transcript
13 and say this was important to form my opinion. The
14 lawyer gave him the parts and said this is what's
15 important. And that's what I'm asking him about is what
16 did the lawyers say when he said this is what's
17 important.

18 I mean, the whole field of this kind of
19 communication has been -- and if this is a new statute,
20 it's going in that direction to make clear that these
21 kinds of things when lawyers provide facts that experts
22 are supposed to rely on they have to be disclosed. And
23 it's clear here because he's identified these specific
24 parts as coming from the lawyer.

25 And it's obvious that Mr. Schenkenberg didn't

1 just say read these five pages. He said read these five
2 pages and look at these particular facts. That's what we
3 want to know.

4 MR. SCHENKENBERG: He's absolutely wrong. The
5 fact that -- what this subpart is designed to get to is
6 if the witness was told -- for example, if I had told
7 Mr. Farrar NAT filed an application in 2008 for a
8 certificate that it ended up withdrawing. And if I told
9 him that and he knows that only because I told him that,
10 that's fair game. That's the exception. That's a fact
11 that the attorney has told the witness to rely on.

12 If I hand him a deposition transcript or pages
13 of a deposition transcript, he knows which pages of the
14 deposition transcript were handed by counsel. That
15 doesn't open it up to all of the conversations with
16 counsel about how his review of those pages turned into
17 testimony. It's just -- it's not within the exception.

18 And I think you also -- in order to order him to
19 answer this question you have to determine that the
20 testimony related to these deposition pages qualifies as
21 expert testimony. Because if it doesn't, it's an
22 attorney-client conversation that is off limits.

23 If it's an expert -- if this piece is an expert
24 opinion under the expert rules, under Rule 702 of the
25 evidence, then you'd have to determine that the

1 communications that we had between counsel, among counsel
2 and the witness, provided facts to him to rely on --
3 facts are in the transcript. The facts don't come from
4 counsel. It's the work product. It's the advice. It's
5 the trial preparation that comes from counsel, and that's
6 what's protected.

7 MS. AILTS WIEST: I will sustain the objection.
8 Go ahead.

9 Q. So, in any event, these pages were given to you by
10 Mr. Schenkenberg; right, Mr. Farrar? Mr. Farrar?

11 A. I've already answered that question. Conversation
12 with my counsel pointed me to these pages, yes.

13 Q. And could you explain why you didn't read the entire
14 transcripts?

15 A. No particular reason. I just didn't.

16 Q. Okay. You realize this is an important matter, at
17 least for the people in this room?

18 A. Yes.

19 Q. Obviously a lot of resources have been devoted by
20 the Commission, Sprint, and Native American Telecom and
21 the Tribe.

22 A. Well, again, I did read the entire transcript at a
23 later point. I did not read the entire transcript. I
24 have no particular reason why I didn't do a lot of things
25 on any particular date. There's no particular reason.

1 I can't tell you why I didn't read it. I just
2 didn't read it. That's my answer. I just didn't read
3 it.

4 Q. Wouldn't you agree it would be important to have all
5 the facts available before one forms an opinion?

6 A. Sir, if I thought it was important for me to read
7 those documents, I would have read them. I didn't read
8 them.

9 Q. Well, if Mr. Schenkenberg thought it was important
10 enough to travel to California to ask the questions,
11 don't you think it would be important enough for you to
12 read the answers?

13 MR. SCHENKENBERG: Objection. Asked and
14 answer.

15 MS. AILTS WIEST: Sustained.

16 Q. If you could look at your December 4 supplementary
17 testimony on page 3.

18 A. I'm sorry. Which testimony?

19 Q. December 4.

20 A. And what page?

21 Q. 3. And on line 8 -- or the question -- by the way,
22 who propounded the questions? Was that Mr. Schenkenberg?
23 Did he write those questions, or did you write the
24 questions?

25 MR. SCHENKENBERG: Again, I'm going to object to

1 this question as seeking information that's protected by
2 the trial preparation rule we just discussed.

3 The manner in which this was prepared is the
4 equivalent of draft reports, which are also addressed in
5 this rule, and that drafting process is not fair game.

6 MS. AILTS WIEST: Sustained.

7 Q. Okay. So, anyway, the question is in your direct
8 testimony you discuss the fact that NAT/CC had not
9 clearly identified what it's seeking authority to do in
10 this case. Is that now clear to you?

11 And then you write -- or the answer is "No. Even
12 Mr. Holoubek, NAT/CC's acting president, does not seem to
13 know the purpose of the application. In his deposition
14 he stated," and then you cite this testimony.

15 And the testimony you cite is "What is it that needs
16 a certificate for?" And the answer --

17 MS. AILTS WIEST: That's confidential.

18 MR. WALD: I don't think this particular part
19 is. And so I think it's okay. Because he doesn't give
20 the whole answer.

21 Q. "You can stipulate to the fact that I am not certain
22 we need a certificate." Question: "Okay. And if you do
23 need a certificate, you are not sure the extent of that
24 need?" Answer: "Right." And you don't give the whole
25 answer.

1 Now that testimony was really about him being unsure
2 as to these jurisdictional issues with respect to the
3 Tribe is a sovereign nation; isn't that true?

4 A. Without looking at the -- without looking at --
5 without looking at the deposition, I can't answer the
6 question.

7 Q. Why don't you --

8 A. But I'll accept it, subject to check. If you're
9 telling me that's the context of it, fine. I'll accept
10 it.

11 Q. Well, why don't you look at your Exhibit 21, which
12 contains page 52 on it. Because after "right" it says
13 "So we spoke about this over and over again."

14 A. Hold on. Can you wait until I get there, please.

15 MS. AILTS WIEST: And, Mr. Wald, this has been
16 filed as confidential so you don't believe that it is
17 confidential?

18 MR. WALD: I'm not going to read anything that's
19 confidential. Yeah.

20 Q. It continues after "right" which you left out. It
21 says "So we spoke about this over and over" --

22 A. I'm sorry. I'm not there. Can you tell me exactly
23 where you are?

24 Q. Page 51, line 24. And your testimony you wrote
25 "right." And then you had an ellipses, dot, dot, dot.

1 The testimony continues "So we spoke about this over
2 and over again at the last hearing and here today that
3 not even the PUC knows for sure whether we need a
4 certificate for some of these services." And then it
5 goes on to discuss some of these jurisdictional issues.

6 So Mr. Holoubek wasn't really confused as to what
7 was going on. It's just this jurisdictional uncertainty
8 about the law; right?

9 A. Again, I'm not sure what -- this whole -- I don't
10 know how to answer your question yes or no because this
11 whole process has been confusing with multiple
12 applications. And I've heard, you know, your witnesses
13 say we don't know what we need and we don't know what we
14 need but if we do need something, we're here. This whole
15 thing is confusing.

16 And you're asking me to explain this. I can't. The
17 deposition reads what it reads. I don't know who thinks
18 what, who knows what. I don't know.

19 Q. Okay. Well, you then conclude in your testimony "I
20 recommend that the Commission decline to award a
21 certificate to an Applicant that does not know the scope
22 of its own request."

23 So is it your believe because there are these
24 uncertainties about the jurisdiction and what happens
25 with a sovereign nation like the Tribe, that --

1 Commissioner Hanson and Commissioner Nelson asked very
2 interesting questions about that. Mr. Roesel gave very
3 interesting answers about what I'm sure the lawyers in
4 this room could write thousands of law review articles
5 about, that that's a reason to justify the denial of the
6 CLEC application?

7 A. I think that's something that the Commission can
8 take into consideration if it so chooses.

9 Q. And that's your opinion?

10 A. That's my opinion.

11 Q. Okay.

12 MR. SCHENKENBERG: I'm sorry. For the record,
13 it appears that when we filed RGF-21 we did not include
14 the page of the transcript that you were -- that he cited
15 to, page 51.

16 MR. WALD: Right. But Mr. Farrar said it was in
17 his copy so I take him at his word that it was in his
18 copy.

19 MR. SCHENKENBERG: Okay. It is in NAT 6, I
20 think, is the full transcript.

21 MS. AILTS WIEST: I believe you filed a revised
22 version with that.

23 MR. SCHENKENBERG: Okay.

24 MR. WALD: It wasn't in my version either, but I
25 took his word that it was part of it.

1 Q. Now you said in response to Mr. Schenkenberg that
2 you have very, very few disputes with other carriers?

3 A. Yes.

4 Q. In fact, Sprint has probably more disputes than any
5 other telephone company; isn't that right?

6 A. I don't know that to be a fact. I don't know that.
7 I know we have disputes with traffic pumpers all the
8 time. But as far as disputes with nontraffic pumping
9 LECs, I don't know that that statement's true.

10 Q. Actually Sprint has had -- have you heard about the
11 case in Federal Court in Virginia where Sprint even had
12 disputes with dozens of telephone companies and the
13 Federal District Court found that Sprint had willfully
14 violated its contract because it had a cost control plan
15 developed in 2009 and carried forward for the next three
16 or four years?

17 A. No. I'm not aware of that.

18 Q. It involved interconnection agreements. Wasn't that
19 your specialty?

20 A. I just told you I was not aware of that.

21 Q. Well, you said you're an expert because you are so
22 familiar with the industry; right?

23 MR. SCHENKENBERG: I'm going to object to that
24 question. The witness has said he's not familiar with
25 the case being cited.

1 Q. How is it you're not familiar with -- you're
2 familiar with the industry but you're not familiar with a
3 notorious case in which a Federal District Court found
4 Sprint to have willfully violated contracts with dozens
5 and dozens of other telephone companies?

6 MR. SCHENKENBERG: Objection. Argumentative.

7 MS. AILTS WIEST: Sustained.

8 Q. Now let me ask you about the actual Application that
9 NAT has filed with the PUC. You have actually read the
10 Application. You don't find anything factually
11 inaccurate about it; right?

12 A. As far as the facts as far as what they're doing,
13 yeah, I don't see any problem with that.

14 Q. Okay. And you believe that the people that are
15 operating the systems are capable and competent?

16 A. Well, again, that -- from a technological basis,
17 yes. From a managerial and financial basis, no.

18 Q. Let's get to access stimulation, everybody's
19 favorite topic of the week it seems to be.

20 Could you tell me how you define access
21 stimulation?

22 Do you need to look at a piece of paper to do
23 that?

24 A. I'm allowed to look at my testimony.

25 Q. That wasn't my question. My question was do you

1 need to, given the fact that you're an expert on it?

2 MR. SCHENKENBERG: I'd ask the Commission to
3 allow the witness leeway to answer the question.

4 MR. WALD: I'm not asking him -- I'm not
5 depriving him of leeway. I'm just asking him if he needs
6 to. He can answer that question.

7 MS. AILTS WIEST: He can answer that.

8 A. No. I didn't need to. I chose to. The FCC has
9 defined traffic pumping, and I agree with the FCC's
10 definition of traffic pumping.

11 Q. My question is how do you define access stimulation?
12 That is my question. Will you please just answer my
13 question how you define, personally, access stimulation?

14 A. In the exact same manner that the FCC defines it. I
15 don't understand what you want me to say.

16 Q. Okay. Well, I asked you in your deposition how you
17 defined it, and you gave me a definition. Do you
18 remember that?

19 A. Yes. I remember that.

20 Q. And do you know what your definition was?

21 A. Not precisely. I had not read the FCC Order
22 recently, and, as I recall the deposition, I had
23 forgotten that the FCC's definition -- one of the two
24 legs of the FCC's definition was revenue sharing. And I
25 had forgotten that part.

1 Q. Well, when I asked you about the definition you said
2 this. You said -- this is a direct quote. "Establishing
3 a business in geographical areas purely because that
4 location allows you to bill the highest local access
5 rates possible."

6 Do you agree with that statement that you gave
7 during your deposition? It was on page 62.

8 A. Yeah. Again, I guess looking back on it, no. That
9 was not the proper definition of access stimulation. The
10 proper definition of -- I'm sorry. The proper definition
11 of access stimulation is found in the FCC rules, and that
12 is -- that is now my definition of access stimulation,
13 the FCC's definition.

14 Q. Okay. So if the one you gave -- you were under oath
15 in your deposition?

16 A. Yes, I was.

17 Q. So then you were wrong?

18 A. I was wrong.

19 Q. And today you're right?

20 A. Yes.

21 Q. Is there some way we can tell when you're wrong and
22 when you're right?

23 MR. SCHENKENBERG: Objection. Argumentative.

24 MS. AILTS WIEST: Sustained.

25 Q. So just throw out the one you gave back then?

1 MR. SCHENKENBERG: Asked and answered.

2 MS. AILTS WIEST: Sustained.

3 Q. So we should refer to the FCC CAF Order?

4 A. For the -- yes.

5 Q. Okay. So let's look at the CAF Order. You can
6 look. I believe it's the last exhibit in our notebook.

7 A. Which notebook?

8 Q. First of all, before we get to it, I believe in your
9 response testimony, the February 14 testimony, you take
10 issue with what Mr. Roesel said. Mr. Roesel said that
11 his understanding of at least post CAF Order access
12 stimulation, it was always used in the context by the FCC
13 of the context of high switched access rates; right?

14 Do you remember him saying that?

15 A. Yes.

16 Q. And you deny that that's what the CAF Order says?

17 A. That is not the definition of access stimulation per
18 the FCC definition.

19 Q. When you say the FCC definition are you talking
20 about the trigger?

21 A. I'm talking about what they refer -- what their --
22 sorry. I'm referring to what their rules call a
23 definition.

24 Q. Okay. And when you said "their rules" you're
25 referring to their Connect America Fund Order issued in

1 November 2011?

2 A. No. I'm referring to CFR 47 Section 61.3. The
3 heading of that section is Definitions.

4 Q. But you also referred -- when I asked you about
5 access stimulation, whether it's good or bad, you said go
6 to look at the CAF Order; right?

7 A. Yes. The 46 paragraphs that say access stimulation
8 is not in the public interest.

9 Q. You can go to the CAF Order. Okay?

10 A. I do not know where it is. That's not the entire
11 CAF Order, but I'm looking at what you're showing me.

12 Q. Right. And if you could look at page 210, it's the
13 Section XI, Measures To Address Arbitrage. And below
14 that is Subsection A, Rules To Reduce Access Stimulation?

15 A. Yes.

16 Q. Okay. You're familiar with this part of the CAF
17 Order?

18 A. Yes.

19 Q. Okay. Now at your deposition you did not even
20 recall that rules to reduce access stimulation came under
21 the heading Measures To Reduce Arbitrage; right?

22 A. Well, no, I did not remember that. And, in fact, it
23 comes under the subheading Rules To Reduce Access
24 Stimulation, which you did not bother to mention at the
25 deposition.

1 Q. Actually I did, but we won't go to that. But, in
2 fact, access stimulation is a subcategory of arbitrage.
3 Do you know what arbitrage refers to in the CAF Order?

4 A. Yeah.

5 Q. And what's your understanding of the use of that
6 term?

7 A. Well, arbitrage is kind of a generic economic term.
8 It's basically taking advantage of any difference between
9 costs and rates or rates and rates for some economic
10 gain.

11 Q. Okay. I want to look at the very first paragraph.
12 It says -- this is paragraph 656. It says "In this
13 section we adopt revisions to our interstate switched
14 access charge rules to address access stimulation."

15 Do you see where it says that?

16 A. Yes.

17 Q. It then says "Access stimulation occurs when a LEC
18 with high switched access rates enters into an
19 arrangement with a provider of high call volume
20 operations, such as chat lines, adult entertainment
21 calls, and free conference calls."

22 Do you agree with that statement?

23 A. Yes.

24 Q. Okay. So in this -- at least in this second
25 sentence of the CAF Order that deals with arbitrage and

1 access stimulation, the FCC identifies access stimulation
2 as occurring when there's high switched access rates;
3 right?

4 A. Yes.

5 Q. Okay. And that's -- the first time it identifies
6 what it is, it's only something that occurs when there's
7 high switched access rates; right?

8 A. Yes.

9 Q. Okay. If you could go to 657, the next paragraph --
10 actually you follow in that same paragraph.

11 The thing that the FCC is trying to address in this
12 order, would you agree, is that these high call volume
13 providers are taking advantage of these rural termination
14 access rates that were made high because costs were
15 assumed to be high because it was expensive to connect
16 calls in rural areas?

17 A. Well, not exactly. Again, the section we read just
18 referred to high access rates. Yes. The rates in rural
19 America were higher than other areas, but that doesn't
20 mean the rates in other areas were not high.

21 So the word -- they refer to high switched access
22 rates. They're not referring to any specific rate. Just
23 high rates.

24 Q. Okay. But the rates were high in areas where what
25 you would call access stimulators were directing traffic

1 because in those areas where the -- where traffic was
2 being directed, rates --

3 The problem that was being addressed by the CAF
4 Order, rates were artificially still high even though
5 there were large volumes of traffic. Would you agree
6 with that?

7 A. Sort of. I mean, all rates were high. Yes, they
8 were higher in rural areas, but they're all high.

9 Q. If you look at the next section, it says "Access
10 stimulation schemes work because when LECs enter traffic
11 inflating revenue sharing agreements they are currently
12 not required to reduce their access rate to reflect their
13 increased volume of minutes."

14 You agree with that?

15 A. Yes.

16 Q. And then it says "The combination of significant
17 increases in switched access traffic with unchanged
18 access rates results in a jump in revenues and, thus,
19 inflated profits that almost uniformly make the LEC's
20 interstate switched access rates unjust and unreasonable
21 under Section 210(b) of the act."

22 Do you see where it says that?

23 A. Yes.

24 Q. Do you agree with that?

25 A. Yes.

1 Q. And the basic mantra of the FCC and the
2 Telecommunications Act is to have just and reasonable
3 rates for everybody; right?

4 A. Yes.

5 Q. If you go down to paragraph 662, subparagraph small
6 a, the FCC begins a section on how they reform access
7 stimulation rules and practices; right?

8 A. Yes.

9 Q. And they adopt a program for reforms to reduce the
10 problems that it perceived arising from access
11 stimulation and these high switched access rates;
12 right?

13 A. Yes.

14 Q. And that program has since been implemented, has it
15 not?

16 A. Again, we are in an eight-year transition. We have
17 begun that eight-year transition. So, yes, the
18 eight-year transition has been implemented.

19 Q. Okay. And if you go to -- by the way, the reform
20 that has been implemented, Sprint was against that
21 reform; right? Sprint wanted bill and keep to come into
22 play immediately and access stimulation to -- or revenue
23 sharing agreements to be banned, did it not?

24 A. Well, that's -- we like the Order. We don't -- or
25 we like the Order. We wished they had done it faster,

1 obviously. Yes. We wished they had implemented a bill
2 and keep regime immediately and not have an eight-year
3 transition. But overall, yeah, we're happy with the
4 Order.

5 Q. But you wanted -- you wanted revenue sharing
6 agreements to be banned; right?

7 A. I don't -- I don't remember specifically. I
8 wouldn't be surprised if we said that in one of our
9 comments. That would not surprise me at all. I don't
10 remember that. And, obviously, yeah, we like bill and
11 keep. If bill and keep is good, then the sooner, the
12 better.

13 Q. By the way, you talk about access stimulation and
14 the motivations behind callers, and you mentioned that
15 conference callers, because it's free it increases
16 volume; right?

17 There was a time when Sprint used to actually charge
18 for toll calls; right?

19 A. Yes.

20 Q. Long distance services. And then you would love
21 free conference companies; right? You liked it when
22 people called long distance?

23 A. Well, again, that would depend upon the rates we
24 were charging our customers to call and the rates that
25 the -- from the pure mathematics it would depend upon the

1 rate we would have been billing versus the rate that the
2 terminating carrier would have been billing us.

3 And mathematically, yeah, if we were charging
4 10 cents a minute and they were charging 5 cents a
5 minute, well, yeah, mathematically we probably would
6 have, yeah, made money on that deal. But if they were
7 charging us 20 cents a minute and we were only getting
8 10 cents a minute, then, no, it would not have worked
9 out.

10 Q. At some point Sprint as a company decided to go to
11 these nationwide plans with unlimited minutes. You do
12 that more than most carriers; right?

13 A. I don't know.

14 Q. And there's a lot of phone service where you just
15 buy a prepaid phone with set number of minutes; right?

16 A. Yeah.

17 Q. And presumably those people are the people that use
18 phones less often than people that buy unlimited plans;
19 right?

20 A. That's a reasonable assumption, yes.

21 Q. So the assumption would be actually that the people
22 that want to use a lot of minutes would more likely go to
23 Sprint plans where there's unlimited use.

24 A. Yeah. That's a reasonable assumption.

25 Q. Because you actually provide -- you criticize Free

1 Conferencing for providing free service, but you provide
2 a service that has free use basically; right? Free
3 incremental use.

4 A. I'll agree with that.

5 Q. So, in fact, the fact that there are services out
6 there that people want to use that have demands for long
7 distance, what I refer to because I'm old, long distance
8 calls, and that there are businesses that want to use
9 Free Conferencing or call call centers like Amazon or
10 whatever it is, they actually stimulate customers to buy
11 your unlimited use plans.

12 A. I think -- if I think I understand your question,
13 yeah, are people more likely to call -- free conference
14 company more likely to buy the unlimited plans, yes, I
15 agree with you.

16 Q. And, in fact, your customer service agreement,
17 Sprint's customer service agreement, allows you to charge
18 your users for calling conferencing companies?

19 A. To be honest, I don't remember. It's been a couple
20 of years since I looked at the terms and conditions. I
21 remember the terms and conditions say you weren't
22 supposed to be calling. I don't remember specifically
23 saying -- you know, they might. I just don't remember
24 that.

25 Q. And I think you acknowledged in your deposition it

1 certainly allows you to terminate their service if they
2 call too much?

3 A. Yeah. Again, last time I looked at it, yes.

4 Q. You wouldn't do that because you're getting
5 customers from the people that I would refer to as power
6 users of your phones?

7 A. Again, that's not true. I mean, there are customers
8 who we have disconnected because they were calling
9 conference lines.

10 Q. But you want -- you're selling your phones and these
11 unlimited plans to people that use them a lot.

12 A. Yes, we are.

13 Q. And that's the thing that makes these services for
14 Free Conferencing possible.

15 A. I think there's a -- I remember hearing this buzz
16 word someplace in some company, propaganda somewhere.
17 But unlimited does not mean unreasonable. And we do
18 have -- our terms and conditions allow us to disconnect
19 service to any customer who we believe is using it in an
20 unreasonable manner. And that's the purpose of having
21 terms and conditions.

22 Q. The fact is, though, you don't do that because if
23 you started doing that, nobody would use your service?

24 MR. SCHENKENBERG: Objection. Asked and
25 answered.

1 MS. AILTS WIEST: Overruled.

2 A. As I said, we do that. We do disconnect customers
3 who abuse -- who -- we do disconnect some customers who
4 make excessive numbers of calls to these free calling
5 companies. We do do that.

6 Q. Well, then what's the problem?

7 A. The problem is is that we are not the phone cops.
8 What we can do is very limited. For example, the most
9 obvious thing is the FCC does not allow us to block
10 calls. Even though the FCC says traffic pumping is not
11 in the public interest, they explicitly do not allow us
12 to block calls to traffic pumpers.

13 I just speak for myself. You know, I would love to
14 be able to block calls to traffic pumpers. That would be
15 my recommendation to Sprint if the FCC allowed us to do
16 that. You know, that's the problem. We're not the phone
17 cops. And the FCC limits what we can do.

18 As I understood the process that happened a couple
19 of years ago is when we did identify abusive customers we
20 sent them a nastygram, sent them an e-mail that said stop
21 it or we're going to disconnect you. And then you go
22 through another billing cycle where you go through some
23 period of time, whatever it is, and if they keep doing
24 it, you know, maybe we send them another nastygram or
25 maybe we go disconnect them.

1 But it's something you can't police on a day-to-day
2 or week-to-week or even a month -- a billing cycle to
3 billing cycle. I would love to be able to block calls to
4 these guys. I wish they would block our calls.

5 Q. Could you --

6 MS. AILTS WIEST: Don't talk over him.

7 A. Personally, I wish they would say, Sprint, you're so
8 horrible, you're not paying your bills, we're going to
9 stop terminating your traffic. Personally, I would say
10 thank you very much.

11 Q. Could you give me an example of a customer of yours
12 that's abusing the conference calling process? What
13 are they doing, five people talking to their friends for
14 12 hours straight? Is that what you're saying is
15 happening?

16 A. I can say for two years ago -- a couple of years ago
17 we found stuff like that going on, yes.

18 Q. And, well, did you terminate them?

19 A. Yes.

20 Q. Okay. So you had your remedy. That's the deal you
21 made with your customers when you gave them service.

22 A. But, again, as I explained, it's -- so much damage
23 is already done before we can act on it. And it is an
24 ongoing problem.

25 Q. Most of the calls in these free conferencing

1 companies are not teenage girls talking to their friends
2 for 12 hours; they're businesses making legitimate
3 business calls. Isn't that true?

4 A. I have no idea.

5 Q. You have no idea who's making these calls, that they
6 would be any different at all if they were pay services,
7 do you?

8 Do you have any data at all that suggests who's
9 making free conference calls is different from making
10 any -- the organizer fee calls, any real data?

11 A. Not specific on that, no.

12 Q. Other than an Economics 101 chart that you took off
13 the internet, do you have any science, report, data,
14 market analysis, that compares organizer fee calls to
15 free conferencing calls as to levels of use?

16 A. Yes. It goes back a couple of years. But I was
17 involved in doing some traffic study, traffic analysis of
18 traffic going to traffic pumpers. And, no, they were not
19 the typical average customer.

20 Q. Okay. What study do you have? Could you identify
21 the specific study? Because it hasn't been produced in
22 this case.

23 A. No. It wasn't a subject of my testimony so why
24 should we?

25 Q. So instead of producing a legitimate study, you

1 produced an Economics 101 demand chart that has
2 completely no utility in this case that you got off the
3 internet?

4 MR. SCHENKENBERG: Objection. Argumentative.

5 MS. AILTS WIEST: Overruled.

6 A. Well, first of all, as far as my -- what I did in my
7 testimony, no. Apparently, I'm the only one in the room
8 who seems to think that basic laws of economics apply to
9 conferencing and they apply to the State of South Dakota.
10 At least no one on that side of the table seems to
11 believe that. That's why I put it in my testimony.

12 Q. The basic laws of economics you cited was that as
13 prices go up demand goes down. Well, wow, that's a real
14 revelation.

15 A. Well, it is a revelation to some of your witnesses.

16 Q. So you're saying if something is free, use will go
17 up. So do you have a lot of users that because you have
18 free marginal usage on your usage plans you would now
19 have enormous amounts of volume on your unlimited use
20 plans?

21 In fact, hasn't the industry found that that's not
22 the case?

23 MR. SCHENKENBERG: I think that was two
24 questions.

25 A. I'm sorry.

1 Q. Hasn't the industry found that unlimited plans do
2 not increase the use?

3 A. I'm not aware of that.

4 Q. Okay. You're supposed to be an expert on
5 telecommunications given your 30 years in the business.
6 You're not aware of that simple -- that simple truth in
7 the telecommunications industry?

8 A. I don't believe it's a simple truth. I don't
9 believe there's any study out there that shows when
10 something is free demand does not go up. I'm not aware
11 of any study that ever shows that.

12 Q. Okay. So are you aware of the data that
13 Mr. Erickson was familiar with that most of his customers
14 come from pay conferencing services?

15 A. No, I'm not.

16 Q. Are you aware of any data that compares pay
17 conferencing services users versus free conferencing
18 service use?

19 A. No, I'm not.

20 Q. Are you aware of any data about the conferencing
21 industry specifically? I mean, there are consultants and
22 research firms that do a great deal of work in this
23 area.

24 Have you familiarized yourself with any of that
25 information?

1 A. No, I have not.

2 Q. And you've relied instead on an Economics 101 chart
3 that you got off the internet?

4 A. Well, until someone tells me the basic rules of
5 economics do not apply, I will continue using charts like
6 that.

7 Q. Well, let me ask you. If all free conferencing goes
8 away, what percentage of the free conferencing users are
9 business customers that will have to conference anyway?

10 A. I don't know.

11 Q. What percentage of them are Government agencies that
12 will have to conference anyway?

13 A. I don't know.

14 Q. What percentage of them are individuals that have
15 family members in diverse places that will want to
16 conference anyway and be willing to pay the \$5 a month or
17 \$10 a month?

18 A. I don't know.

19 Q. Do you believe that any of those things might be
20 factors on whether use would go up or down whether it's
21 free or not?

22 A. I don't believe any of those factors would upset the
23 basic rules of economics.

24 Q. So the fact that Free Conferencing might have 75 or
25 80 percent of its customers are business customers, the

1 fact that they might now have to pay \$10 a month for the
2 service they were getting for free, you think might
3 change whether a caller uses the company?

4 A. I don't know.

5 Q. Do you think it's going to change whether the
6 Homeland Security uses the service, whether the
7 Government has to pay \$10 a month?

8 MR. SCHENKENBERG: Objection. Asked and
9 answered.

10 MS. AILTS WIEST: Sustained.

11 A. I don't know.

12 Q. Now getting back to the Connect America Order, the
13 elements of arbitrage that were part of the pre CAF
14 access stimulation practices, those are now gone, are
15 they got?

16 A. Say that again, please.

17 Q. The arbitraging practices that were of concern to
18 the Commission have now been addressed by the CAF Order,
19 have they not?

20 A. No. I completely disagree.

21 Q. You disagree?

22 A. I disagree. The FCC has made it clear that -- as I
23 read paragraph 701, the FCC made it clear that we're in
24 transition, and they will not be done until the
25 transition is over. So, again, this implication that

1 we're done is simply flat out wrong.

2 Q. Okay. Well, let me turn to page 213 of the CAF
3 Order and paragraph 667.

4 The entire purpose -- one of the main goals of the
5 Federal Communications Act is to have rates be just and
6 reasonable; isn't that right?

7 A. I'll agree.

8 Q. Okay. And in 667 the first sentence says "We adopt
9 the definition to identify when an access stimulating LEC
10 must refile its interstate access tariffs at rates that
11 are presumptively consistent with the act."

12 And by that they mean just and reasonable; right?

13 A. Okay. I'll agree with that.

14 Q. So if you meet under the new criteria the triggers,
15 revenue sharing and a certain amount of traffic, you then
16 have to file a new tariff; right?

17 A. Yes.

18 Q. And you then have to have charges that are the
19 lowest rate in the state; right?

20 A. As of right now, correct.

21 Q. And under the CAF Order you then have just and
22 reasonable rates; right?

23 A. I'm going to say no to that question. Because the
24 whole purpose of the CAF Order is to transition to bill
25 and keep. The FCC has ruled -- has decided whatever you

1 want to use, that bill and keep is the just and
2 reasonable rate.

3 We are in an eight-year transition period. At the
4 end of the transition period things will be just and
5 reasonable. We're in a transition period.

6 Q. It doesn't say in 2017. It says are now. We adopt
7 the definition to identify when access stimulating LECs
8 must refile its interstate tariffs at rates that are
9 presumptively consistent with the act.

10 So in this situation here Native American Telecom
11 has their tariff that's consistent with the new triggers,
12 is it not?

13 A. Yes. And that's one part of this eight-year
14 transition.

15 Q. Right.

16 A. And I've never argued -- no one's ever said that you
17 are not consistent with the rules. But we're in a
18 transition. Things are not going to be correct, right,
19 just, reasonable, until at the end of that transition
20 period.

21 Q. Okay. So you agree that NAT is consistent with the
22 rules as articulated by the Federal Communications
23 Commission?

24 A. As -- yes. As far as where we are in the transition
25 period, yes. NAT is -- NAT is consistent.

1 That doesn't mean they're -- that doesn't mean
2 they're not a traffic pumper. It means they're a traffic
3 pumper meeting the rules.

4 Q. Okay. So and those rules reflect the public policy
5 of the United States?

6 A. Yes.

7 Q. And so they're lawfully operating the business in
8 compliance with the public policy of the United States
9 with respect to interstate traffic; right?

10 A. Yes.

11 Q. And the other LECs in the state that are accepting
12 the same kind of traffic that NAT is accepting on
13 interstate traffic pursuant to the authorization of this
14 Commission and have the lowest rates in the state, charge
15 similar rates than NAT for interstate traffic under the
16 authorization of this Commission, they are also complying
17 with the public policy of the United States?

18 A. Yes. Yes. As, again, referring back to this
19 transition period, yes. They are complying with the
20 transition that the FCC has put in place. They are
21 consistent, yes.

22 Q. And with respect to the intrastate traffic that's
23 been authorized by the Public Utilities Commission, there
24 are state tariffs that also are at the same lowest rate
25 in the state, are in compliance with the public policy of

1 the State of South Dakota.

2 A. I would presume so, yes.

3 Q. And, obviously, this public policy as implemented by
4 the Public Utilities Commission?

5 A. Yes.

6 Q. And now you're asking this Public Utilities
7 Commission to set forth a separate public policy with
8 respect to NAT?

9 A. Yes. Because the FCC has ruled that traffic pumping
10 is not in the public interest. Simply because we -- we
11 are in an eight-year transition, simply because you are
12 complying with the rules of transition suddenly doesn't
13 make this good public policy.

14 The FCC has made it clear this is not good public
15 policy, and that's why they have an eight-year transition
16 to reduce access stimulation.

17 Q. So just so we're clear, you want these three
18 Commissioners to have a separate rule for Native American
19 Telecom that does not apply to all the other LECs in the
20 state?

21 A. Yes. We are asking -- yes. We are asking this
22 Commission to rule that what they're doing is not in the
23 public interest, yes.

24 Q. Look at 672. I'm not sure where to go with that.
25 If you look at 672, it says "Several parties have urged

1 us to declare revenue sharing to be a violation of
2 Section 201(b) of the act."

3 Sprint was one of those parties, wasn't it?

4 A. Again, I don't specifically remember that. You
5 know, I wouldn't be surprised. You know, we probably
6 were, but I just don't remember.

7 Q. Okay. If you look at the next sentence, it says
8 "Other parties argue that the Commission should prohibit
9 the collection of switched access charges for traffic
10 sent to access stimulators." There's a footnote on 13,
11 and it references the comment of Sprint.

12 So Sprint lost that battle?

13 A. Yes.

14 Q. Is this like the last battlefield?

15 MR. SCHENKENBERG: I'm going to object to that
16 question. This topic has already been addressed, and
17 that question is, I think, incomprehensible.

18 MS. AILTS WIEST: Sustained.

19 Q. I want to ask you about mileage. Would you agree
20 with Mr. Roesel that if you have a direct connection,
21 which is certainly okay with NAT, Sprint -- it would cut
22 the rate in half at least?

23 A. Well, A, I have no knowledge about whether NAT would
24 allow us to direct connect or not. I have no idea. But
25 hypothetically if we did direct connect, you would only

1 be billing the end office elements. So, yes, the rate
2 you would bill us would be reduced, yes.

3 Q. And would you agree with his analysis that the rate
4 could be reduced to .002?

5 A. Yeah. That's probably correct.

6 Q. And that actually could be among the lowest rates in
7 the country?

8 A. I don't know that.

9 Q. Would you dispute it?

10 A. I believe -- I have reason to believe there are
11 rates lower than that, but I don't know for certain.

12 Q. That's why I said "among." With respect to "mileage
13 pumping," would you agree with Mr. Roesel that at least
14 classic mileage pumping as recognized by the FCC is when
15 there's more than one route and one takes the longer
16 route and only to get a larger mileage fee?

17 A. No, I wouldn't. And just to try and explain that,
18 I -- I didn't major in philosophy. I did major in
19 ancient history. But, you know, logic, again, all crows
20 are black birds; all black birds are not crows.

21 What Mr. Roesel described is a type of mileage
22 pumping. But I don't think that's the only type of
23 mileage pumping there is.

24 Q. You realize that the Crow Creek Reservation has
25 limited natural resources and limited human resources?

1 A. Well, again, I don't know that, but I'm not
2 surprised to hear you say that.

3 Q. You are welcome to visit really. And that's
4 sincere. You are welcome to visit. And so they have
5 challenges?

6 A. I'm sure they do.

7 Q. And you wouldn't say that if they wanted to --
8 because of their certain unique characteristics of the
9 Tribe, including the fact that it's a sovereign nation
10 under United States law and they're available to federal
11 programs and other characteristics, if they wanted to
12 build a phone company there and it happened to be
13 111 miles away from the closest connection, that wouldn't
14 be a reason not to do it, would it?

15 A. Well, of course not. In fact, I've already
16 testified that, you know, I wish these guys the best of
17 luck. If they can figure out a way to make this without
18 engaging in traffic pumping, you know, fine.

19 Q. You keep saying "traffic pumping." That's not the
20 word the FCC uses.

21 A. Yeah. They call it access stimulation.

22 Q. Okay. Do you have a personal animosity about the
23 practice?

24 A. Hard to explain that. I do think it's -- I mean,
25 there are lots of things that are legal that just don't

1 sound right. You know, ticket scalping is legal, but I
2 don't think it sounds right. I don't think it's good
3 public policy.

4 I know what NAT's doing -- what Free Conferencing is
5 doing is legal, but it just doesn't sound right.

6 Q. In that regard, let me ask you about Sprint's
7 business. Do they wholesale some of the traffic that
8 gets delivered to Native American Telecom?

9 MR. SCHENKENBERG: Objection. Foundation.
10 Personal knowledge.

11 MS. AILTS WIEST: Try to do foundation first.

12 Q. Okay. Well, you say you're here because you're an
13 expert on intercarrier compensation, and you had a long
14 period of time where you worked on interconnection
15 agreements and your relationship between carriers?

16 A. Yes.

17 Q. And you, in fact, negotiated contracts between
18 Sprint and other carriers, did you not?

19 A. Well, again, I've never been -- I have never been a
20 negotiator, but I have been involved in negotiations,
21 yes.

22 Q. And even though you've never run a local exchange
23 carrier, you believe that you've had such a broad scope
24 of experience within the telecommunications business you
25 are -- you're sufficiently qualified to testify on local

1 exchange carriers; right?

2 A. Yes.

3 Q. And that's because you -- during all of your years
4 experience you've had such an exposure to all of the
5 parts of its business that you think you can testify on
6 matters affecting Sprint that are relevant today; right?

7 A. Yes.

8 MS. AILTS WIEST: Go ahead.

9 Q. Now does Sprint wholesale some of the traffic that
10 gets directed to your Native American Telecom?

11 MR. SCHENKENBERG: I've got the same objection.
12 He has asked no questions about this witness's personal
13 knowledge about that fact. He's confusing foundation as
14 an expert which would allow him to ask an opinion of
15 Mr. Farrar with foundation necessary to ask a fact of
16 this witness.

17 There is nothing in Mr. Farrar's testimony that
18 addresses wholesaling of traffic, and there has been no
19 foundational questions about his ability to answer such
20 questions.

21 MR. WALD: Well, it's relevant for a variety of
22 reasons. One, he's also here, as Mr. Schenkenberg's
23 Brief states, as a spokesman for Sprint. Commissioner
24 Hanson asked a variety of questions about whether it was
25 fair for access stimulators to ask money for -- to be

1 connected and whether it was fair pricing.

2 And I think it's equally fair to ask whether
3 Sprint is objecting based on pricing issues, and he's
4 acknowledged much, whether they're collecting money for
5 traffic they're not paying for. That's equally fair.

6 And I think it's also equally fair --
7 Mr. Schenkenberg first asked him about whether there
8 was -- how many disputes Sprint was having. That was the
9 very first thing that came out of his mouth.

10 MS. AILTS WIEST: Objection overruled.

11 Q. So does Sprint wholesale some traffic that gets
12 directed to -- on behalf of other carriers that gets
13 directed to Native American Telecom and other access
14 stimulators?

15 MR. SCHENKENBERG: I'm sorry. I'm going to
16 object to the question as compound. Is it --

17 MR. WALD: I'll withdraw the question.

18 Q. Does Sprint carry some traffic of other telephone
19 companies to Native American Telecom?

20 A. Well, yes. I'm sure -- I'm aware that we have a
21 wholesale business, and I'm sure some of that wholesale
22 business ends up being terminated at NAT.

23 Now what is absolutely not true, which I heard one
24 of your witnesses imply earlier, that we somehow go out
25 and seek wholesale traffic to terminate to NAT, that's

1 absolutely not true. But, yeah, we have a wholesale
2 business, and I'm sure some of that traffic terminates at
3 NAT.

4 Q. So you actually have wholesale business from other
5 carriers' customers -- let me actually step back.

6 Because Commissioner Hanson yesterday asked about if
7 a customer comes, of Sprint, to make a call and you said
8 earlier you have to connect the call to NAT if it's a
9 Free Conferencing call or anybody else; right? You can't
10 block the call; right?

11 A. That's correct.

12 Q. And I don't agree about the economics of it, but
13 regardless whether you have -- you have to connect that
14 call; right?

15 A. Yes.

16 Q. Okay. And now there's a dispute about payment, and
17 Sprint is not paying; right?

18 A. Yes.

19 Q. Okay. There are some calls, though, that you
20 connect that don't come from Sprint customers; right?

21 A. Yes.

22 Q. And you're getting paid, Sprint is getting paid, to
23 connect those calls to Native American Telecom?

24 MR. SCHENKENBERG: Objection. Lack of
25 foundation, personal knowledge.

1 MS. AILTS WIEST: Overruled. If you know.

2 A. Yes. I'm sure there is an extremely small percent
3 of our traffic which terminates to NAT. Some very small
4 percentage originates from wholesale traffic. And I'll
5 give you one specific example.

6 At least a couple of years ago I know we had a
7 wholesale arrangement with a small LEC up in Alaska. We
8 handled all their interexchange traffic on a wholesale
9 basis. So if one of these customers in Alaska picked up
10 the phone and called a NAT number, yes, we would have
11 terminated that call to NAT. But that is a incredibly
12 small amount of traffic.

13 But the answer to your question is yes. But it's an
14 incredibly small amount of traffic.

15 Q. But you say you don't want to pay for any access
16 stimulation; right?

17 A. Yes. That's correct.

18 Q. And that's because it's a material amount; right?

19 A. I'm sure it is.

20 Q. And if it's a material amount, it must be a lot of
21 money; right?

22 A. I'm sure it is.

23 Q. And so the wholesale traffic that you're receiving
24 that's going to what you call access stimulator, that's a
25 material amount too; right?

1 A. No. I just said it's not a material amount.

2 Q. I'm not just talking about NAT. I'm talking about
3 all what you would call access stimulating traffic.

4 A. No. It is not a material amount.

5 Q. Isn't Sprint's wholesale business significant?

6 A. I don't know what you mean by "significant," but,
7 yeah, we have a wholesale business.

8 Q. Let me ask at least with respect to NAT are you at
9 least paying for the calls that you're receiving money
10 for?

11 A. If I can make -- for that -- for the small amount of
12 traffic that is wholesale in nature that we terminate to
13 NAT are we paying that bill? No, we're not.

14 Q. Now is it your belief that Sprint is obligated to
15 pay money under the tariff to NAT currently?

16 MR. SCHENKENBERG: And I'm going to object to
17 this question as beyond this witness's direct testimony.
18 And on relevance grounds and on personal knowledge.

19 MR. WALD: If it goes to the public interest and
20 if it's their belief that they have no obligation to pay,
21 then why would it not be in the public interest to grant
22 the tariff?

23 MS. AILTS WIEST: Objection overruled.

24 A. May I have the question again, please.

25 Q. Is it your belief that Sprint has an obligation to

1 pay under the existing tariff for connecting calls to
2 Native American Telecom?

3 A. My personal belief, no.

4 Q. Then if you don't have any legal obligation to pay,
5 why are you here?

6 A. I'm not sure I understand your question. You were
7 sending us bills. You are expecting them -- you're
8 expecting us to pay, and that's why we're here.

9 Q. When you have a Federal Court case where you're
10 defending that case if you think you have a meritorious
11 defense, then you win. So why are you here?

12 A. I think I've already explained why we're here.

13 MS. AILTS WIEST: Mr. Wald, do you know how much
14 cross you have left? I'm just trying to figure out --

15 MR. WALD: I think a break would be good. I
16 have a significant amount more but not --

17 MS. AILTS WIEST: Okay. We'll take a 10-minute
18 break.

19 (A short recess is taken)

20 MS. AILTS WIEST: Go ahead, Mr. Wald.

21 Q. (BY MR. WALD) So a few last questions on access
22 stimulation, and I'll move on. Is it your -- your belief
23 is that all access stimulation is bad, even after the
24 CAF Order?

25 A. Yes. All access -- all access stimulation is not in

1 the public interest per the CAF Order.

2 Q. Is it your belief that no IXC should have to pay
3 terminating access fees to anybody who's engage in access
4 stimulation?

5 A. Generally speaking, I think the answer to that
6 question is yes. You shouldn't have to pay access on
7 that traffic.

8 Q. That would include not just Native American Telecom
9 but any other LEC in the State of South Dakota?

10 A. If they are involved in access stimulation, yes.

11 Q. And that would also include the other 49 states?

12 A. Yes.

13 Q. Now you realize that's not the position of the
14 Federal Communications Commission.

15 A. I guess I really don't know what the position of the
16 Federal Communications Commission is.

17 Q. Doesn't the Federal Communications Commission
18 respect that the tariffs that are in compliance with the
19 CAF Order are actually going to get paid?

20 A. Again, I'm not aware of any FCC or any other
21 regulatory or legal body which has ordered companies like
22 Sprint to pay access charges to companies like NAT.

23 Q. But you understand that the -- under the CAF Order
24 there's a trigger and if you meet -- if you have a
25 revenue sharing agreement and if you meet certain

1 criteria for traffic volume, then you have to file a
2 revised tariff so your rate is the lowest in the state;
3 right?

4 A. That's correct.

5 Q. Don't you think the FCC then intends that the tariff
6 actually be paid?

7 MR. SCHENKENBERG: Objection. Calls for
8 speculation.

9 MR. WALD: My question is his understanding.

10 MS. AILTS WIEST: Go ahead.

11 A. Again, and we are getting into areas which I'm not
12 terribly familiar with because they are legal things, but
13 my understanding is that all the things that were an
14 issue under the old Farmers case, those issues are still
15 up in the air.

16 And, again, I am aware of lawsuits between Sprint
17 and other carriers involving this whole issue of do you
18 have to pay these tariffs, and, again that's about all I
19 know about it.

20 So, again, the answer to your question is I'm not
21 aware of any legal or regulatory authority who has
22 ordered Sprint to pay these tariffed charges that you're
23 talking about.

24 Q. My question was not about if the tariff isn't
25 complied with. Obviously, people can dispute that. My

1 question is if there's a tariff applied with the CAF
2 Order, the CAF Order post CAF -- if it involves access
3 stimulation, you consider quote "bad" do you think
4 carriers have to pay it?

5 A. My answer's the same.

6 Q. You said you know of no order, but isn't a CAF an
7 order through the constituted federal agency?

8 A. Yes, it is. But that doesn't change my answer.

9 Q. So it's your understanding as an expert for Sprint
10 that post CAF Order there's no legal requirements of a
11 telecommunications carrier to pay the tariff by a local
12 exchange carrier that's otherwise compliant with the CAF
13 Order?

14 A. My answer's the same.

15 Q. Because if they're a quote "bad" access stimulator?

16 A. My answer is the same.

17 Q. Now let me ask you about the public interest.

18 You're here saying that NAT's application is not in the
19 public interest. When you say that which public are you
20 talking about?

21 A. Well, again, the FCC has said it's not in the public
22 interest. And I realize I'm in the State of South Dakota
23 and but it's -- South Dakota is one of the states so when
24 the FCC says it's not in the public interest I believe
25 it's not in the public interest in South Dakota any more

1 than it is in any of the other states.

2 Q. So you think the people of South Dakota are going to
3 be harmed if Native American Telecom is allowed to
4 connect calls to other people in the state?

5 A. I think they will be harmed if Native American
6 telephone and Free Conferencing continue a business plan
7 which the FCC has said is not in the public interest.

8 Q. Well, actually the FCC declined to -- to ban revenue
9 sharing. We went through that already; right?

10 A. Yes. We have gone through that already, and we've
11 spent a lot of time talking about the eight-year
12 transition to bill and keep.

13 Q. Right. And free conferencing is going to go on
14 throughout America and the world regardless of what
15 happens in this proceeding.

16 A. It may even go on beyond the eight-year transition.
17 I have no idea.

18 Q. Right. And Free Conference Call, as you heard, you
19 were here today, you heard Mr. Erickson, you know, has
20 other places to put its minutes so this proceeding is not
21 about whether Free Conference Call is going to continue
22 making conference calls.

23 You understand that; right?

24 A. Well, of course. Mr. Erickson and, you know,
25 Free Conferencing can keep offering free conference

1 calling all they want. I want them to stop billing us
2 access for it.

3 Q. Could you just answer my question. How is it not in
4 the public interest if people on the reservation can make
5 and complete calls to other people in South Dakota?

6 A. Well, I don't know -- same answer. The FCC has said
7 it's not in the public interest. The South Dakota is
8 part of the United States. The tribal areas, as far as I
9 know, are still part of the United States, and it's not
10 in the public interest.

11 Q. Any further -- anything further to say than that?

12 A. No.

13 Q. Okay. Now you said in your testimony, your written
14 testimony, that NAT's sole purpose for its existence is
15 to be a traffic pumper to generate revenue for Free
16 Conferencing.

17 Do you believe that?

18 A. Yes.

19 Q. You realize that the Tribe has an interest here?

20 A. Yes, I do.

21 Q. And the Tribe got benefits?

22 A. Yes. They did get some benefits.

23 Q. Well, they got more than some, don't you think?

24 A. They got some benefits.

25 Q. Okay. And during your deposition you acknowledged

1 that the Tribe was in the best position to make an
2 informed judgment as to whether the transaction was
3 acceptable to the Tribe?

4 A. I don't remember specifically saying that. I
5 remember specifically saying that I'm not here to speak
6 for the Tribe, and I'll let the Tribe do what the Tribe
7 wants to do.

8 Q. Well, you think the Tribe was bamboozled by
9 Mr. Erickson?

10 A. I don't like that word. No. I'm not -- I'm not
11 going to agree with that statement, no.

12 Q. The Tribe has an elected council; right? You
13 understand that?

14 A. Yes, they are. Yes, they do.

15 Q. And they had a lawyer that represented them when
16 they signed the Joint Venture Agreement?

17 A. That's my understanding.

18 Q. Okay. You smile. Is there something funny about
19 that?

20 A. I answered your question, sir.

21 Q. So they got a -- an operating telephone company
22 that's provided -- that has for four years provided free
23 service to 150 homes?

24 A. That's my understanding, yes.

25 Q. That's a significant benefit?

1 A. Again, comparing the benefits that the Tribe has
2 received to the several truckloads of cash that Free
3 Conferencing has received, I don't think they've gotten
4 anywhere near the benefit. Yes, they have gotten some
5 benefit, but they have not gotten anywhere near the
6 benefit that Free Conferencing has.

7 Q. Well, suppose there was two 911 calls that saved two
8 lives piled up against all the money Free Conferencing
9 got. How would you balance that?

10 A. I'm not going to try to balance the value of a human
11 life. I'm not even going to try to answer that question.

12 Q. Well, would it be fair for the Tribe to make its own
13 judgment about that?

14 A. Yes.

15 Q. So when you say that NAT's sole purpose for
16 existence is to be a traffic pumper and generate revenue
17 you'd still agree that its sole purpose in existence is
18 to do that?

19 A. Yes. I honestly believe the only reason this
20 company exists is to pump money to California. And the
21 way for them to pump money to California is to do
22 something on the tribal lands. And, yes, that something
23 on the tribal lands is a benefit to the Tribe. I've
24 never denied that.

25 Q. And do you deny that there might be future benefits

1 to the Tribe?

2 A. There might very well be. Yes. There might be.

3 Q. And that would be a good thing?

4 A. Yes, it would.

5 Q. And you understand now as we've all been sitting
6 here for two days that the existing network technology
7 only has capacity to bring service to a certain number of
8 households? Without a great expense, additional expense.

9 A. I guess to be honest I don't remember that. I don't
10 remember.

11 Q. Okay. But are you aware with the sale of the
12 additional spectrum by Sprint they can now expand greatly
13 the service to the rest of the reservation at a more
14 reasonable cost?

15 A. Well, I agree with the first half of the sentence.
16 I don't know about the more reasonable cost.

17 Q. Cheaper cost.

18 A. I don't know.

19 Q. Okay. Well, that's the testimony I heard. But if
20 that's the case and the service can now be expanded at a
21 much reduced cost because the spectrum allows you to
22 expand service much more cheaply, wouldn't that be an
23 additional benefit for the Tribe and the residents?

24 A. Perhaps. And, again, I have -- as I have said
25 before, I have no problem with NAT being a successful

1 telephone company and doing wonderful things on tribal
2 lands. I expect them to figure out a way to do that
3 without traffic pumping.

4 Q. Well, Sprint had spectrum for, I don't know, many,
5 many years and did nothing with it. You want to bring a
6 telephone company there and bring an economic partnership
7 to the reservation?

8 A. Do I want to? No, that's not my plans.

9 Q. How about Sprint?

10 A. I don't know what Sprint's plans are.

11 Q. Now you made reference to the 70/25 split. That's a
12 common split in the industry, isn't it?

13 A. Yes, it is.

14 Q. Okay. It's not like the Tribe was taken advantage
15 of.

16 A. It's a common split.

17 Q. And that's just the split of the revenue generated
18 by the traffic that Free Conferencing delivers; right?

19 A. Presently that's the only -- the only minutes being
20 generated. So yes.

21 Q. All right. And you heard also Mr. Erickson testify
22 about how businesses, especially startup businesses,
23 often start with one customer; right?

24 A. I heard him say that. I have no idea how true that
25 is. I'm not sure how many businesses start off with only

1 one company. I certainly don't know how many have one
2 company after four years. So I don't know if that's true
3 or not. I heard him say that.

4 Q. If I recall, there were a lot of suppliers to
5 General Motors that just supply General Motors. Do you
6 remember that? Isn't that something that you studied in
7 business school? Is there a concept called monopoly on
8 the buyers?

9 A. I'm aware of that concept. I don't know if there's
10 any companies that deal only with General Motors. There
11 might be. I don't know.

12 Q. But, anyway, having a strong customer or a partner
13 that guarantees you income at the beginning of the
14 business is really something that's good for a business
15 at the beginning; it's not a detriment. Isn't that
16 right?

17 A. Is there a question pending?

18 Q. Yes. When you have a strong customer/partner when
19 you're starting a business that's a positive thing and
20 not a detriment?

21 A. Well, it depends. Again, there's this concept of
22 business risk. And when 100 percent of your revenues is
23 dependent upon one source, a source that can leave
24 tomorrow, no, that's not a good thing.

25 Q. If the source was uncommitted and not strong and

1 might leave, that might be true. But you heard
2 Mr. Erickson make a commitment that that isn't going to
3 happen.

4 Do you have any reason to believe that he's not
5 telling the truth?

6 A. I read the -- I read the deposition of Mr. Erickson,
7 and in his deposition he said he would get up and leave
8 whenever he wanted to. I have personal knowledge. I
9 know for a fact that conference calling companies do move
10 around. They do leave one carrier and move to another
11 carrier. And it's a very easy, simple thing for them to
12 do.

13 Q. Now you printed your own pro forma financials in
14 your summary of your testimony?

15 A. Well, again, I restated the 2013 financials that I
16 had under certain assumptions.

17 Q. And what assumptions did you use?

18 A. I assumed everything was unchanged with the only
19 exception that all the carriers would be -- would pay
20 for all their minutes and that NAT would actually pay
21 75 percent to Free Conferencing.

22 Q. So why did you assume that the carriers would pay if
23 there was no legal obligation to pay?

24 A. I was doing a financial exercise to show that even
25 if the carriers were paying, NAT would still be losing

1 money under this existing business plan.

2 Q. And did you consider any of the potential new
3 revenues?

4 A. No. As I just said, I took 2013 information,
5 information that I knew, and I simply restated the 2013
6 information assuming all the carriers were paying. I did
7 not speculate about any future activities whatsoever.

8 Q. So you've made reference to bill and keep; right?

9 A. Yes.

10 Q. So between now and when bill and keep comes into
11 play, 2017; is that right?

12 A. That sounds right.

13 Q. So all local exchange carriers -- you said there
14 were 1,400 in America?

15 A. About.

16 Q. So all of them are changing their or making plans to
17 change their business models?

18 A. Well, all of them are going to obviously have to
19 deal with a new environment of bill and keep. And where
20 the FCC expects you to get your money from your customers
21 rather than from your competitors, yes, all carriers are
22 going to have to deal with that new environment.

23 And I suppose that's why the FCC came up with its
24 eight-year transition period. They want to soften the
25 blow, if you will.

1 Q. Give people flexibility to plan for the transition;
2 right?

3 A. Yes.

4 Q. Make new deals with their customers?

5 A. Perhaps.

6 Q. Both consumer customers and business customers?

7 A. Probably.

8 Q. And technology partners?

9 A. Yes.

10 Q. Find new technology partners?

11 A. Yes.

12 Q. You heard Mr. Erickson make reference to a LEC that
13 had Microsoft and Skype as technology partners; right?

14 A. I guess I don't really remember that, but I'll
15 accept he said that.

16 Q. And so it's an industry that's developing. Would
17 you say that? General?

18 A. Certainly.

19 Q. And is there any reason why NAT can't take advantage
20 of those things? Let me put it a different way. I
21 withdraw the question.

22 You haven't considered in your analysis any of the
23 things that NAT might be taking advantage of in the
24 future?

25 A. No. That wasn't the purpose of my analysis. The

1 purpose of my analysis was to show that their current
2 business plan will fail even if all the carriers were
3 actually paying all the bills that you've been sending
4 out. That was the purpose of my analysis.

5 Q. If I had \$2 million to invest right now, it would be
6 a whole different picture right now?

7 MR. SCHENKENBERG: I'm sorry. I didn't hear
8 that question.

9 Q. If they had \$2 million in capital right now, it
10 would be a whole different picture, would it not?

11 A. If they had \$2 million, yes, of course.

12 Q. You haven't considered Universal Service Fund
13 income?

14 A. No. Again, I was only looking at 2013 actual
15 information.

16 Q. You haven't considered obviously additional revenue
17 from expanding the network to the rest of the
18 reservation?

19 A. Same answer.

20 Q. You haven't considered revenue from tribal
21 contracts?

22 A. Same answer.

23 Q. The 8(a) program. Some of these things are actually
24 mentioned in the Application, the CLEC Application;
25 correct?

1 A. I don't remember that. But I'll accept that.

2 Q. So you didn't even consider or analyze the things
3 that were mentioned in the CLEC application as potential
4 revenue sources when you were evaluating the prospects of
5 the CLEC?

6 A. No. Because that was not the purpose of my
7 analysis. And, again, as I said earlier, if NAT can make
8 money without traffic pumping, I'm happy for them.

9 Q. Well, don't you think they should have a chance?

10 A. Without traffic pumping, yes.

11 Q. Well, that's all we're asking for here is give them
12 a chance.

13 A. I've never heard you say you were going to stop
14 traffic pumping. If you're saying you're going to stop
15 traffic pumping, fine. We'll all go home. I never heard
16 anyone say that.

17 Q. You're the only person in America I know of that
18 wants all of these things to stop.

19 MR. SCHENKENBERG: I'm going to object to
20 Mr. Wald's testimony about what he knows. It's an
21 improper question.

22 MR. WALD: I'll withdraw.

23 MS. AILTS WIEST: Sustained.

24 MR. WALD: I would join in the objection. I'm
25 sorry for the comments.

1 Q. Do you share that sentiment that everybody should
2 stop access stimulation, even if it's covered by the
3 trigger throughout America?

4 A. Yes. Because the FCC has ruled it's not in the
5 public interest.

6 Q. Okay. Do you believe that AT&T, that's delivering
7 calls with organizer fees to its own affiliated local
8 exchange carrier in South Dakota, is engaging in access
9 stimulation?

10 MR. SCHENKENBERG: Objection. Facts not in
11 evidence and foundation.

12 MS. AILTS WIEST: Sustained.

13 Q. Do you have an understanding -- let me ask you a
14 hypothetical.

15 If a large telecommunications company has a
16 conferencing service that charges organizer fees, has an
17 affiliate subsidiary that's a local exchange carrier in
18 South Dakota it's directing its traffic to and paying
19 termination fees to, should -- is that access stimulation
20 that's bad and in your mind should be banned?

21 A. I guess I'm not sure if I have enough information
22 from your hypothetical to really answer the question.

23 Q. How is it different if a large telecommunication
24 carrier charges its customer \$10 then stimulates the same
25 exact number of calls to a local exchange carrier in

1 South Dakota and the same terminating access fees are
2 paid and that it collects its share because it owns the
3 LEC?

4 MR. SCHENKENBERG: I'm going to object to that
5 hypothetical as explaining something that doesn't exist,
6 and there's no evidence that it does exist.

7 MR. WALD: Well, he wants to abandon everywhere
8 so I think I'm entitled to examine the limits of his
9 public policy proposal to the Commission.

10 MS. AILTS WIEST: Overruled.

11 Q. And I think Dave Erickson also talked about how AT&T
12 was doing just this.

13 So the hypothetical is you have a large
14 telecommunications carrier that's accepting the same
15 number of conference calls as Free Conferencing, and it
16 has a subsidiary that's a local exchange carrier in
17 South Dakota. It's sending the traffic -- the same
18 amount of traffic that Free Conferencing sends to NAT,
19 but it's large carrier is sending it to its subsidiary.
20 It's paying terminating access fees to its subsidiary,
21 and it's getting a cut because it owns them.

22 Is that bad access stimulation?

23 A. I guess the easy answer is I don't know. The FCC
24 has a definition of access stimulation which includes
25 revenue sharing, and when I think of revenue sharing I

1 don't think of intracompany transfers. I think of
2 sharing the revenue with a third party.

3 The FCC definition includes, you know, large volumes
4 such that, you know, terminating traffic XC's,
5 originating traffic -- to answer your question, I don't
6 know.

7 Q. The FCC definition includes affiliates, does it not?
8 Revenue sharing would include taking money from an
9 affiliate, would it not?

10 A. I don't know.

11 Q. Well, assuming it did and the only difference was
12 the fact that it was an affiliate, if payment was within
13 the FCC's definition and the only difference was you got
14 \$10 from the customer in addition to getting the revenue
15 from the back end, would you want that banned too?

16 A. Again, I don't know.

17 Q. Now you also -- you use the word -- I think you
18 claim that NAT is a sham entity?

19 A. Yes.

20 Q. And you mean -- when you say "sham" you mean that
21 it's not duly organized, legally constituted limited
22 liability company?

23 A. No. I mean, their purpose is not what they say it
24 is. Their purpose to me, obviously, is not to make NAT a
25 financially viable company. Their purpose is to ship

1 truckloads of money to California. I think that's the
2 purpose of this entire enterprise.

3 Q. Okay. So when Mr. Sazue stood on that witness stand
4 and took an oath and said that he participates in this
5 company and it's duly organized under tribal resolution,
6 he was lying? That's your testimony?

7 A. No. In fact, as I remember, Mr. Sazue said he was
8 not aware of that large amount of money that's been
9 shipped out to California, and as far as I can tell, no
10 tribal member is aware of that very large amount of money
11 that's been shipped to California.

12 Q. I'm talking about the sham entity. Okay. The sham
13 entity is a limited liability corporation that's been
14 organized under the laws of the Crow Creek Sioux Tribe.

15 You understand that; right?

16 A. Yes. And that sham entity is shipping a huge amount
17 of cash --

18 Q. I'm not asking about what it's doing. I'm talking
19 about just the entity itself, the structure of the
20 entity.

21 Okay. When he said that it was duly approved by the
22 Tribe, do you think he was lying?

23 A. No.

24 Q. When he said we understand how it's organized do you
25 think he was not telling the truth?

1 A. No.

2 Q. Do you think that he's went in -- when he said he
3 went in with open eyes, do you think he was not telling
4 the truth?

5 A. No.

6 Q. Do you think when he said that we understand that
7 Free Conferencing is getting paid a lot of money and we
8 don't have a problem with that, do you think he was
9 telling the truth?

10 A. No. I don't think -- I'm sure he was telling the
11 truth.

12 Q. Okay. So let me ask you -- and then Mr. DeJordy was
13 here on behalf of the 24 percent shareholder. He
14 obviously understands what's going on here too; right?

15 A. He obviously knows what's going on.

16 Q. So let me ask you, sir, who are you to say what
17 three business partners decided to do with an enterprise
18 is designated as a sham entity?

19 MR. SCHENKENBERG: Objection. Argumentative.

20 MS. AILTS WIEST: Sustained.

21 Q. Can you cite any legal basis by which you contend
22 that this is not a duly authorized, properly constituted
23 legitimate business?

24 A. Again, the caveat that I'm not a lawyer, I would
25 agree with your statement.

1 MR. WALD: That's all I have.

2 MS. AILTS WIEST: Thank you. Any cross of this
3 witness?

4 MR. COIT: No cross for SDTA.

5 MS. MOORE: Nothing for Midstate. Thank you.

6 CROSS-EXAMINATION

7 BY MS. CREMER:

8 Q. Good afternoon, Mr. Farrar.

9 Would you agree that most CLECs seeking a
10 Certificate of Authority are start-up companies?

11 A. Yes.

12 Q. And have you reviewed any of the CLEC Certificate of
13 Authority orders issued by this Commission?

14 A. No.

15 Q. If I were to tell you that almost all those
16 orders -- that the Commission has a condition in them
17 that there's either a \$25,000 bond put up by the company
18 or a restriction regarding deposits and prepayments,
19 would you disagree with me that that is a condition in
20 the order?

21 A. No.

22 Q. Do you know the reason the Commission would put such
23 a condition in that order?

24 A. No.

25 Q. And so if I told you that the reason for that

1 condition is that Staff recommends that condition be put
2 in there because the financials of these CLECs are
3 generally in the red, would you agree with me that that
4 is a reasonable condition?

5 A. Yes.

6 MS. CREMER: Thank you.

7 MS. AILTS WIEST: Commissioner questions.

8 COMMISSIONER NELSON: Just one question, I
9 believe.

10 Very early on you said if they, meaning NAT,
11 weren't in rural America, they wouldn't get the 111 mile
12 transport.

13 Because of the comparatively low rate that they
14 have set for access, does that not make this statement
15 irrelevant?

16 THE WITNESS: No. I don't think so. Again,
17 when the FCC Order talks about high rates, you know, they
18 weren't just talking about rural rates versus urban
19 rates.

20 I think pretty much everyone in this room would
21 agree that all access rates are high. They are set
22 above -- it's generally accepted that all access rates
23 are way above the cost for providing the service. And
24 that's really the whole purpose of the CAF Order is
25 because the fact that the rates are so much higher than

1 the actual underlying costs, weird uneconomic things
2 happen like access stimulation. And that's why the FCC
3 is in this eight-year transition to bill and keep. So
4 that's half of it.

5 Now, again, mileage pumping is a part of this
6 whole business model. And, again, there's nothing to
7 stop a conference company from putting conference bridges
8 in a bell tandem. They wouldn't get to bill 111 miles of
9 transport, but there's nothing to stop them.

10 Again, this mileage is what makes rural America
11 so attractive. And, you know, again, why is a company in
12 California doing business in -- no offense but in the
13 middle of South Dakota? You know, because they get to
14 charge 118 miles of transport -- 111 miles.

15 COMMISSIONER NELSON: I thought I only had one
16 question, but I do have a follow up.

17 Given what you talked about that a LEC could
18 operate out of a tandem and that Free Conferencing's
19 bridge could be located in the tandem and that would
20 eliminate the transport element; correct?

21 THE WITNESS: Yes, it would.

22 COMMISSIONER NELSON: Would that LEC still be
23 able to charge .0006327 [sic] for their access component?

24 THE WITNESS: No. Because that .0006
25 implicitly -- or explicitly has 111 miles of transport so

1 if you don't have the transport, the billed rate would be
2 less.

3 COMMISSIONER NELSON: Thank you.

4 COMMISSIONER FIEGEN: We're going to have warm
5 weather for you tomorrow. We promise. I think it's
6 supposed to be 35 or 45 or something.

7 Anyway, it appears to me and appears to I'm sure
8 everybody else that you have a finance background and
9 that you've done that at Sprint and you have a degree, a
10 master's degree.

11 And Gene DeJordy on February 7 has Exhibit E
12 where he did some projections, and it sounds like you
13 didn't have very many days to look at it. And I
14 understand sometimes that gets to be -- you know, it's
15 hard to look at it. But when you looked at this -- and
16 we went through it yesterday. Sometimes -- I'm going to
17 go hypothetical, again, because I love hypothetical.

18 So if you were a financing person that was a
19 bank or a financier and got this spreadsheet on financial
20 projections and you only got it I understand a couple of
21 days in advance but what holes are you seeing in here, or
22 would you be comfortable financing the future projections
23 of this operation, or is there stuff that makes it
24 difficult?

25 THE WITNESS: Well, again, the most honest

1 question is I can't answer any of those questions. I
2 just didn't spend any time at all. The only thing I
3 really know about it is what I heard in the
4 cross-examination. And it was, you know, pretty --
5 seemed pretty simple for someone to shoot holes in it.

6 And I thought Mr. DeJordy's comment, you know, I
7 wouldn't take this to the bank, a curious thing to say.
8 But I really have no -- I have not personally spent any
9 time with that document at all.

10 COMMISSIONER FIEGEN: Okay. Thank you.

11 CHAIRMAN HANSON: Afternoon.

12 THE WITNESS: Hello.

13 CHAIRMAN HANSON: There are actually a lot of
14 tax reasons to do business in South Dakota, a lot of
15 advantages.

16 You were here during -- I have referred a lot to
17 Mr. Swier's opening remarks. You were here during his
18 opening remarks.

19 THE WITNESS: Yes.

20 CHAIRMAN HANSON: And he reminded us of the
21 benchmarks that needed to be met in order for NAT to
22 receive a COA. And he spoke of managerial capabilities,
23 financial capabilities, and technical capabilities.

24 You've addressed a lot of your remarks towards
25 the legal aspects of it. But -- from the standpoint of

1 whether or not they're breaking the law and whether or
2 not they're traffic pumping and whether or not that's
3 legal to do.

4 Is it incumbent upon us to anticipate whether or
5 not they would be breaking the law after they received
6 the COA? Once they go into business, is that something
7 we need to try to anticipate ahead of time?

8 THE WITNESS: The breaking the law part kind of
9 throws me. Because, again, I'm not a lawyer, and I've
10 been very careful not to say anyone's breaking the law.
11 I think it is -- yeah. I mean, as I understand your
12 role, you have to look at the financial, managerial, and
13 technological capability of this company.

14 And to the extent that, yeah, is -- are those
15 things -- are those three things there sufficiently?
16 However you measure that, is that sufficiently going to
17 be there in the future? Yeah. I would imagine that is
18 something you should be looking at.

19 CHAIRMAN HANSON: I don't know. How would we --
20 how would we anticipate that and make that decision prior
21 to them receiving a COA, though?

22 THE WITNESS: Well --

23 CHAIRMAN HANSON: It's like giving a driver's
24 license to my 18 year old grandson.

25 THE WITNESS: It reminds me of every financial

1 commercial on TV. You know, past performance is no
2 guarantee of a future performance. Generally that means
3 we've been making money in the past, but we're not going
4 to guarantee whether you're going to make money in the
5 future.

6 Looking at the past, I think, can give you some
7 indication of the future. This company has absolutely no
8 history of making money. And as I said before, I think
9 the management of this company is -- I mean, again, I
10 can't imagine running a company, hiring somebody to
11 manage it, and them telling me I'm going to send
12 75 percent of your gross revenues to another company.
13 Oh, by the way, I own and manage that company. There's
14 just something inherently wrong with this management
15 structure.

16 And I haven't heard anybody talk about changing
17 the management structure. There's just -- there's
18 something wrong with it.

19 CHAIRMAN HANSON: Speaking of the managerial
20 structure, doesn't the fact that they've been able to
21 operate for an extended period of time reflect upon their
22 capability of whether they would be able to continue from
23 a managerial standpoint, not withstanding the potential
24 change of personnel?

25 THE WITNESS: Well, again, if their intent was

1 to make NAT a profitable company, yes. But, as I said
2 before, I just don't think that's -- that's certainly not
3 why they've been here for the last four years. It's
4 obvious to me if they've been here, their only purpose
5 for the last four years is to ship money to California.

6 And I haven't heard anything -- I haven't heard
7 anything that tells me that they really -- that's
8 changed. I haven't heard anything that tells me that's
9 changed.

10 CHAIRMAN HANSON: But that's a financial aspect
11 one of the three legs. That's not the managerial.

12 THE WITNESS: Oh, I think it's absolutely
13 managerial. You have a management team which is one
14 management team sending 75 percent of revenues to another
15 management team, oh, and it's the same management team.

16 Who sets up a company like that? I mean, I
17 wouldn't. Again, I wouldn't let my company be managed by
18 somebody who's sending 75 percent of my revenues to
19 another company and he manages that company. I wouldn't
20 do that.

21 CHAIRMAN HANSON: Wouldn't it depend upon your
22 expenses and the operation and maintenance and technical
23 aspects, the other costs associated with your company?

24 THE WITNESS: Actually, no. I would never.

25 CHAIRMAN HANSON: Really?

1 THE WITNESS: I would never give management of
2 my company over to people who are managing another
3 company whose sole purpose is to take money from my
4 company. No. I wouldn't -- I'm sorry. I would never do
5 that.

6 CHAIRMAN HANSON: Even though you couldn't
7 operate that company without that other company?

8 THE WITNESS: I would find an -- I would find an
9 independent person to manage my company.

10 CHAIRMAN HANSON: Even though you're going to
11 lose nearly 100 percent of your revenue to do it?

12 THE WITNESS: Well, that's a little bit of a --
13 what's the word for that?

14 CHAIRMAN HANSON: Catch-22.

15 THE WITNESS: Yeah. There you go. That's what
16 I was looking for. There we're in a Catch-22. So I
17 don't know how -- I'm in a Catch-22. I don't know how to
18 answer that question.

19 CHAIRMAN HANSON: From a technical standpoint,
20 with the present persons do you think they're capable of
21 running it?

22 THE WITNESS: Yeah. From everything I've seen
23 from a technological viewpoint, yeah, I can't debate
24 that. I haven't tried to.

25 CHAIRMAN HANSON: So it's primarily from the

1 financial aspect that you're concerned with.

2 When Mr. Erickson testified you'll recall that
3 he stated that he was not about to allow NAT to fail.
4 And really it's obviously in his hands whether they
5 succeed or fail.

6 Would you, under all circumstances -- the way
7 his business model is set up it's very much in his own
8 personal interest to make sure that NAT does not fail.

9 Would you agree to that?

10 THE WITNESS: No. I don't believe that's true
11 at all. In fact, that's not what he said in his
12 deposition. And, again, I mean, I do agree -- I
13 understand. I've heard, you know, NAT is small potatoes
14 to Free Conferencing. But Free Conferencing is
15 everything to NAT. And, again, that's just not a good
16 business plan.

17 CHAIRMAN HANSON: No. It's not good to be in
18 that particular position for NAT. No. I agree.

19 But, nevertheless, it is a financial benefit to
20 Mr. Erickson to continue that business relationship.

21 THE WITNESS: Again, I don't -- I don't really
22 believe that. Again, he can take his -- he can take his
23 traffic anywhere. You know, and these guys do.
24 Conference companies move their traffic wherever they can
25 get a better deal. I have seen that myself.

1 It's common. It's easy to do. And it can
2 happen -- I don't know how long it takes, but it only
3 takes a very short period of time. I've seen it
4 happen.

5 CHAIRMAN HANSON: You stated -- a lot of your
6 testimony centered around your agreement with the FCC
7 that this type of LEC is not in the country's best
8 interest. However, you also stated that I know what
9 Free Conferencing -- Free Conferencing is doing is legal.
10 It just doesn't sound right.

11 Do you still agree to that statement you made?

12 THE WITNESS: Yes. And, again, the FCC has
13 never said it's illegal. It simply said it's not in the
14 public interest and, again, they put us on an eight-year
15 transition, which will do away with the financial -- it
16 won't necessarily do away with traffic pumping, but it
17 will do away with the financial arbitrage that right now
18 is the main source of revenue for this whole traffic
19 pumping business model.

20 CHAIRMAN HANSON: Okay. Thank you.

21 MS. AILTS WIEST: Any redirect?

22 MR. SCHENKENBERG: I do. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. SCHENKENBERG:

25 Q. Mr. Farrar, you were asked during the discussion

1 that Mr. Wald had with you about the CAF Order, and he
2 was pointing to some sections of the CAF Order that
3 described the rates, how rates would be set after the
4 CAF Order?

5 A. Yes.

6 Q. And he asked you a question during that discussion,
7 asked you to agree that NAT was in compliance with the
8 public policy of the United States in that respect.

9 Do you remember that?

10 A. Yes.

11 Q. And I think he asked you several follow-up questions
12 that used that phrase in compliance with public policy of
13 the United States. And I guess my question is were your
14 answers to those questions specific to rate levels, or
15 were you answering those questions more broadly with
16 respect to all practices of NAT and --

17 A. Oh, no. That conversation was strictly limited to
18 rate levels.

19 Q. You were asked some questions about Sprint's
20 practices of disputing NAT's bill. And I don't want you
21 to go beyond your personal knowledge.

22 But you understand that Sprint is disputing bills;
23 is that right?

24 A. Yes.

25 Q. And do you know whether Sprint is doing so under

1 terms of the tariffs?

2 A. Oh, yeah. I mean, every tariff that I'm aware of
3 has dispute provisions in it that they're extremely
4 common. That's the norm.

5 Q. Do you understand Sprint to be violating those
6 tariffs by disputing and awaiting resolution before
7 paying?

8 A. Oh, no. No. Not at all. That is the dispute
9 process.

10 Q. You were asked some questions about NAT compared to
11 other carriers receiving conference traffic.

12 Do you remember those questions?

13 A. Yes.

14 Q. And in your experience have you been involved in
15 cases in which traffic pumping LECs or we'll just say
16 LECs who are receiving free call traffic also have a
17 regular subscriber base?

18 A. Yes.

19 Q. And TechStar, for example, did TechStar have local
20 exchange customers on its own apart from its access
21 stimulation activities?

22 A. Yeah. I think this is public information. TechStar
23 certainly has traditional customers, if you will.

24 Q. And have you also seen carriers who only have
25 conference call companies who are receiving calls and

1 aren't really in the business of providing a common
2 carrier telecommunications service to residential and
3 business subscribers?

4 A. Well, I guess I've seen other ones like -- I'm not
5 sure I've seen any other carrier -- or any carrier that
6 doesn't have any --

7 Well, take that back. I probably have seen -- yeah.
8 I actually have seen, come to think about it, carriers
9 that only do traffic pumping and don't have any
10 residential customers. Yeah. I have seen those.

11 Q. And in your mind is a carrier like that that has a
12 single paying customer or paying customers that are only
13 conference call companies differently situated than a
14 carrier like TechStar or Northern Valley that also has a
15 customer base?

16 A. Well, sure. I mean, the broader your customer base
17 is, you know, the less business risk you're facing.

18 Q. Mr. Wald asked you if you had considered universal
19 service subsidiaries in rendering your opinion on NAT's
20 expected financial liability. And you have not; is that
21 correct?

22 A. Correct.

23 Q. And has Sprint asked NAT to identify during this
24 case sources of potential revenue?

25 A. Yes, we have.

1 Q. And, to your knowledge, has NAT ever told Sprint
2 that it -- prior to when you filed your testimony that
3 there were such potential revenue sources?

4 A. Not that I'm aware of.

5 Q. And how about the 8(a) program? Is that something
6 that was -- we were provided with specifics of back in
7 the summer of 2013, for example? To your recollection?

8 A. I guess I don't really remember that. I don't
9 remember that.

10 Q. And would you -- did you analyze everything that was
11 provided to you in making your -- in rendering your
12 decision -- your opinions?

13 A. Yes, I did.

14 Q. There was a hypothetical situation that was
15 discussed that involved a large telecommunications
16 carrier and an affiliated entity.

17 Did you understand that hypothetical situation to
18 involve (800) numbers or not?

19 A. No. I guess I didn't really understand the
20 hypothetical much at all.

21 Q. Do you know whether calls to (800) numbers that are
22 made for conferencing purposes generate terminating
23 access bills in the same way that calls to non-(800)
24 numbers do?

25 A. As I understand it, no, they do not.

1 Q. And just, lastly, following up on a question from
2 Commissioner Nelson, you answered a question he asked by
3 indicating that the rate without the transport would be
4 less than the rate with the transport?

5 A. Yes.

6 Q. And was that number in your testimony after you
7 corrected it today 53 percent?

8 A. Yes.

9 Q. So that rate would be 53 percent lower without the
10 transport?

11 A. It would be -- let's see the way that works. It
12 would be -- yeah. It would be -- yeah. It would be
13 53 percent lower. Yes.

14 MR. SCHENKENBERG: I have no further questions.

15 MR. WALD: I just have a few follow-ups to
16 Commissioner Hanson's testimony.

17 RE CROSS-EXAMINATION

18 BY MR. WALD:

19 Q. You said that the past experience might be a
20 predictor of future experience?

21 A. Well, I was pretty -- I said it might be. No
22 guarantee, of course.

23 Q. Certainly with a new business that's not the case;
24 right?

25 A. Of course.

1 Q. Okay. And Sprint itself was near bankruptcy a few
2 times, was it not?

3 A. I know we were in deep financial troubles. I don't
4 know about the word "bankruptcy," but we certainly had
5 financial problems.

6 Q. In fact, it was so bad it carried forward that cost
7 reduction plan that we talked about earlier; right? It
8 stopped paying its bills?

9 MR. SCHENKENBERG: Objection. Facts not in
10 evidence. Personal knowledge.

11 Q. Now about the management --

12 MS. AILTS WIEST: Sustained.

13 Q. About the management, you said there's something
14 inherently wrong with the management structure.

15 Now generally with corporate Government, tell me if
16 you agree, the thing that's important is that there be
17 full disclosure among people that own businesses and that
18 people abide by the agreements that they make?

19 A. Again, I'm not aware of the corporate governance
20 laws, but what you say sounds reasonable.

21 Q. And in this situation is there any indication
22 that people, the three parties, namely Mr. DeJordy's
23 24 percent, the Wide Voice 25 percent, and the Tribe's
24 51 percent, aren't fully open and honest with each other
25 about what's going on?

1 A. Well, with one exception. And, again, I found it
2 interesting that the one tribal member was not aware --
3 who testified who was not aware of this big number that
4 we aren't talking about. And that strikes me as odd that
5 as far as I can tell no tribal member is aware of that
6 number. I think that's interesting.

7 Q. Well, he was actually just the president of the
8 Tribal Council. He wasn't one of the three directors
9 that was on the board of NAT.

10 Were you aware of that?

11 A. No, I wasn't. But, again, like I said, to my
12 knowledge, you know, they're not aware of that number.

13 Q. Right. But the important thing, you would agree,
14 would be that the governance provisions of the LLC be
15 followed. If they were followed, that certainly would be
16 an okay management structure, would it not?

17 A. Well, again, as I've always said, I'm not accusing
18 anyone of doing anything illegal.

19 Q. Now in terms of the management competence, you would
20 agree, would you not, that Mr. DeJordy has many, many
21 years of success in the telecommunications business?

22 A. Well, not when it comes to NAT.

23 Q. Okay. And Mr. -- and the directors who serve on the
24 NAT board with respect to Wide Voice, Mr. Holoubek,
25 Mr. Erickson, they have many years of success as

1 businessmen, they're certainly well-qualified to serve as
2 directors and participate in management?

3 A. Except when it comes to NAT.

4 Q. Okay. What experience did you have managing a small
5 business?

6 A. I have never managed a small business.

7 Q. But you have -- nevertheless, you think you're
8 qualified to comment on the managers of other small
9 businesses?

10 A. I can read an income statement, and I can read a
11 balance sheet.

12 Q. Now let's ask about that. During these four years
13 you have some issues about Mr. Erickson's staying power.
14 During these four years he's stayed, has he not?

15 A. Yes, he has.

16 Q. And these were some difficult four years because a
17 bunch of carriers weren't paying; right?

18 A. That's correct.

19 Q. So during the hard times Mr. Erickson stayed even
20 though he didn't have to?

21 A. That's correct.

22 Q. Mr. Holoubek stayed even though he wasn't getting
23 paid.

24 A. He wasn't getting paid by NAT.

25 Q. Right. Mr. DeJordy wasn't getting paid. He

1 stayed?

2 A. He was getting paid but wasn't getting paid by NAT.

3 Q. He was getting paid by his other company; right?

4 A. Yes.

5 Q. Okay. And the Tribe is devoting human resources to
6 the endeavor?

7 A. Yes.

8 Q. And Wide Voice was devoting resources to the
9 endeavor, and they were just putting money in which they
10 hadn't gotten paid back?

11 A. Well, they've gotten some of their investment back.
12 But, yes, they've put money into it.

13 Q. And none of this sounds like management that's not
14 committed to the enterprise, does it?

15 A. Well, it depends what the enterprise is. And, as I
16 have said many, many times, I think the enterprise is
17 shipping cash to California.

18 Q. And they've done this in a very challenging
19 environment, would you agree? That's maybe not a fair
20 statement.

21 The Crow Creek Sioux Indian Reservation is a
22 challenging economic environment to make a small business
23 successful?

24 A. I will accept that.

25 Q. Especially challenging to make a high technology

1 small business successful?

2 A. I'll accept that.

3 Q. And so these people that you characterize as bad
4 managers, they've persevered through four large
5 telecommunication companies not paying their bills and
6 they've persevered and they're still here; isn't that
7 true?

8 A. Yes. They're still here.

9 Q. Then finally you said that they -- Verizon -- I
10 mean, that --

11 Oh, and in that interim period there's been some
12 progress because Verizon is now paying; right?

13 A. They're paying something.

14 Q. And another carrier is now paying; right?

15 A. They're paying something.

16 Q. And CenturyLink has withdrawn its opposition; right?

17 A. But my understanding is they're not paying.

18 Q. Not yet, but they've signaled some lowering of the
19 tension.

20 A. I do not know.

21 Q. Now you said finally with respect to
22 Mr. Schenkenberg's question that Sprint is disputing the
23 tariff and awaiting a resolution. That's kind of their
24 practice, is it not?

25 They dispute the tariff, ask for a discount, pay a

1 discount, and then move on to the next dispute. Isn't
2 that what Sprint does?

3 MR. SCHENKENBERG: Objection. Asked and
4 answered.

5 MS. AILTS WIEST: Overruled.

6 A. I'm sorry. Can I have the question again, please.

7 Q. Yeah. Isn't what Sprint does is it disputes the
8 tariff on a frivolous basis, protracts the matter, then
9 settles the dispute for a lower amount, and then moves on
10 to the next dispute?

11 A. Well, I can't agree with that. I can't agree with
12 that question the way you have presented it. It's true
13 that we dispute -- we have tariff disputes and we do
14 dispute per terms of the tariff. And those are facts.

15 Q. Could you tell us what the legitimate bona fide
16 dispute is with respect to the payments that are due to
17 NAT?

18 A. Again, I am not intimately familiar with, you know,
19 the lawsuits themselves. I just don't have personal
20 knowledge of the issues involved in those lawsuits.

21 Q. Could you just give us a reference to the basis of
22 it? Is there any basis that you understand?

23 A. Not. I just told you I don't have anything to do
24 with those disputes.

25 Q. So one last question then. Why if, as you've

1 acknowledged, NAT's tariff complies with the FCC Order,
2 is Sprint not paying?

3 MR. SCHENKENBERG: Objection. That's the same
4 question this witness. Just said he didn't know the
5 answer to.

6 Q. Is it true that you don't know the answer to that
7 question?

8 MS. AILTS WIEST: Overruled. You may answer.

9 A. Yes. I don't know.

10 MR. WALD: That's all I have. Thank you.

11 MR. COIT: I have a couple.

12 CROSS-EXAMINATION

13 BY MR. COIT:

14 Q. I have a couple of follow-up questions. The CAF
15 Order that you reference, what we're really talking about
16 I guess more specifically is the FCC's intercarrier
17 compensation USF Reform Order; is that correct?

18 A. Correct.

19 Q. And is Sprint involved in the court proceedings that
20 are pending in 10th Circuit U.S. Court of Appeals in
21 challenging that order?

22 A. I don't think so, but I really don't know.

23 Q. So you don't know if Sprint is legally challenging
24 the intercarrier comp reform that's described in the
25 Order and implemented via new rules?

1 A. I don't know that we are.

2 Q. So you don't know specifically whether they're
3 testing the new rules that dictate the interstate and
4 intrastate access reductions?

5 A. No, I don't.

6 Q. As a follow up to the questions relative to the
7 tariff, and I know you said you don't know, but typically
8 wouldn't you need a legal basis to claim legitimately
9 that you don't owe a charge?

10 A. I'm not a lawyer, but I would imagine you would need
11 some legal basis.

12 Q. And you don't know what that legal basis is in this
13 situation?

14 A. No.

15 Q. In terms of the -- in terms of the billings from
16 NAT?

17 A. No, I don't.

18 MR. COIT: That's all I have.

19 MS. AILTS WIEST: Any further cross? Any
20 redirect?

21 Thank you.

22 MR. SCHENKENBERG: Sprint has no further
23 witnesses to present.

24 MS. AILTS WIEST: My understanding is, Mr. Coit,
25 you do not have any witnesses?

1 MR. COIT: We have no witnesses, no.

2 MS. AILTS WIEST: Midstate has no witnesses?

3 MS. MOORE: We have no witnesses.

4 We would offer our exhibits at this particular
5 time. We have identified five for the record.

6 MR. SCHENKENBERG: I understood those had
7 already been received, but we have no objection.

8 MS. MOORE: And we had stipulated to
9 admissibility, but we had not formally offered those. So
10 I simply wanted to do that for the purposes of clarifying
11 the record.

12 MS. AILTS WIEST: Yeah. I have them as
13 admitted, but for the purposes of clarification I will
14 state that -- again, that Midstate Exhibits 1 through 5
15 have been admitted.

16 MS. MOORE: Thank you very much.

17 MS. AILTS WIEST: Ms. Cremer, you didn't have a
18 witness?

19 MS. CREMER: Well, even though Patrick has
20 begged me to put him on, and Commissioner Nelson has
21 requested that he be put on, I will not be calling any
22 witnesses.

23 Thank you.

24 MS. AILTS WIEST: Do you have any rebuttal
25 witnesses, NAT?

1 MR. SWIER: Just to be clear also so we have the
2 bookkeeping taken care of, we would like to, of course,
3 confirm that NAT's Exhibits 1 through 31 have been
4 offered and received.

5 Were there any others that you had on your list
6 that we hadn't admitted? You're the one who asked us to
7 do this.

8 MS. AILTS WIEST: 1 through 31? Am I looking at
9 the wrong list?

10 MR. SCHENKENBERG: My notes indicate 1 through
11 31 received with a note on NAT 3 that Exhibit B, which
12 was not prefiled, was received in confidential form here
13 during the hearing.

14 MR. SWIER: And that's correct.

15 MS. AILTS WIEST: Yes. So we will state that
16 again for the record that NAT's Exhibits 1 through 31
17 have been received, with that clarification that you
18 made.

19 And then why don't we go and clarify Sprint's.
20 On your exhibit list I have Exhibits 1 through 30. And
21 they have been received except for Exhibit 13 and
22 Exhibit 7 pages will be removed in Exhibit 7. And with
23 Exhibit 18 that will be supplemented at a later date.

24 And then for additional exhibits I have
25 Exhibit 31 of Sprint was received. I have Exhibit 32 was

1 admitted. 31, 32, 33, 34 were admitted. I don't have
2 that 35 was ever offered.

3 MR. SCHENKENBERG: Okay. I thought I had
4 offered it. I thought you had received it, but I could
5 be wrong.

6 MS. AILTS WIEST: I think what happened there is
7 that when you first started talking about the exhibit
8 there was an objection, but I don't recall that -- and I
9 overruled the objection, but I don't recall that the
10 exhibit itself was offered.

11 MR. SCHENKENBERG: I would offer 35. And I was,
12 I guess, understanding that 35 was received subject to
13 NAT's ability to have a late filed exhibit showing Free
14 Conferencing was authorized by the Secretary of State,
15 which we don't object to.

16 MS. AILTS WIEST: Is there any objection to
17 that?

18 MR. SWIER: What was 35?

19 MS. AILTS WIEST: Oh, 35 was the Secretary of
20 State pages.

21 MR. WALD: Oh, I also recall that my objection
22 was overruled, and so I think it should be admitted.

23 MS. AILTS WIEST: Okay. We'll admit 35.

24 And then I have Sprint Exhibit 36, 37, and 38 as
25 all being admitted.

1 MR. SCHENKENBERG: And then the only other is
2 34 is going to be modified so that the one-page
3 Service Agreement will be replaced with the full color
4 version.

5 Is that right?

6 MS. AILTS WIEST: Yes. And is it my
7 understanding that all of those exhibits are marked for
8 the record, and they will be left here?

9 MR. SCHENKENBERG: Yes.

10 MS. AILTS WIEST: Even the additional exhibits
11 that have been offered and received?

12 MR. SCHENKENBERG: Those all have stickers on
13 them. Sprint's do. I will remove the exhibit that was
14 not received and the pages from the other exhibit that
15 need to be removed before we leave today.

16 MS. AILTS WIEST: And NAT's exhibits, have they
17 all been marked for our record?

18 MR. SWIER: They are marked pursuant to the
19 binder, but we can simply go and put the stickers on them
20 to make it easier for everyone.

21 MS. AILTS WIEST: Oh, okay. With that then, is
22 there anything else that needs to come before the
23 Commission at this time?

24 Oh, I know what needs to. Do the parties want
25 to brief this matter?

1 MR. SCHENKENBERG: We were thinking we'd
2 probably need six rounds.

3 MS. AILTS WIEST: At least.

4 Generally, I would just say that generally what
5 happens is that in a -- in some cases is that the parties
6 waive closing statements and briefing is done.

7 MR. SCHENKENBERG: I think that was a discussion
8 we had before.

9 MS. AILTS WIEST: Right. In our preconference
10 call.

11 MR. WALD: I don't think closings would be
12 necessary. Or helpful. But if the Commission thinks
13 that briefs would be helpful, we'd be delighted to submit
14 them.

15 MS. CREMER: This is Karen with Staff. And I
16 can work with the parties, and we can come up with a time
17 frame if that would work, rather than trying to sit here
18 today and do it with calendars.

19 We can talk to Cheri about transcripts.

20 MS. AILTS WIEST: Okay. Anything else?

21 If not, I believe that will close the hearing.

22 Thank you.

23 (The hearing is concluded at 5:05 p.m.)

24

25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 24th and 25th
11 days of February, 2014, and that the attached is a true
12 and correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 17th day of
14 March, 2014.

15

16

17

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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