

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

| | | |
|--|----------------------------|---------------------|
| In the Matter of the Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service within the Study Area of Midstate Communications, Inc. |)))))) | Docket No. TC11-087 |
|--|----------------------------|---------------------|

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

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

CENTURYLINK'S STATEMENT OF MATERIAL FACTS

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

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

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

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

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

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

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

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

59. Qwest recommends that this Commission, if it should grant NAT's certificate, condition its certificate upon the requirement that NAT provide DTT to any requesting IXC at reasonable rates, terms and conditions. Easton Direct at 21.
60. NAT's tariff does not provide a rate for DTT. Easton Direct at 22.
61. Section 3.8.1 B.1 of NAT's access tariff states that "All elements of Direct-Trunked Transport are priced on an Individual Case Basis (ICB)." Easton Direct at 22.
62. The FCC in the Connect America order required LECs engaging in access stimulation to apply the access rates of the price cap carrier, which in South Dakota is Qwest Corporation. Easton Direct at 22.
63. Qwest's rates for DTT include only a non-recurring charge, a fixed monthly rate, and a rate that varies by the distance between points of interconnection. Easton Direct at 23.
64. Qwest does not charge a usage based, per minute charge for DTT, and thus the arbitrage dangers of mileage pumping will be avoided. Easton Direct at 23.
65. Qwest proposes that its DTT rates should apply to any LEC engaging in access stimulation in this state. Easton Direct at 22-23.

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

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: CenturyLink does not dispute that NAT is owned in part by the Crow Creek Sioux Tribe, but it notes that Sprint has filed testimony in support of its position that NAT is a sham entity. Farrar Direct, pp. 9-19.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

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

23. WideVoice is a telecommunications engineering company.

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

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

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

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

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

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

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

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

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

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

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

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

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

CENTURYLINK RESPONSE: See Response to Number 14, above.

45. In 1997, the Crow Creek Sioux Tribal Council established the Crow Creek Sioux Tribe Utility Authority ("Tribal Utility Authority") for the purpose of planning and overseeing utility services on the Reservation and to promote the use of these services "to improve the health and welfare of the residents." (Revised Application, page 4; Holoubek Testimony, page 5).

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

47. Under this Approval Order, NAT was "granted authority to provide telecommunications service on the . . . Reservation subject to the jurisdiction of the laws of the Crow Creek Sioux Tribe." (Revised Application, page 4; Holoubek Testimony, pages 5-6).

CENTURYLINK RESPONSE: Undisputed

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

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

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Disputed on the basis of Sprint's evidence that the computer training facility has not opened. Farrar Direct, Ex. 4, p. 159.

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

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

stimulation" activities in the area in which it seeks certification, and that the intended goal of such schemes is to obtain inflated access revenues from IXCs such as CenturyLink. See Easton Direct, pp. 4-5, 16.

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

CENTURYLINK RESPONSE: Undisputed.

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

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

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

CENTURYLINK RESPONSE: Undisputed.

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

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

Dated: April 11, 2012.

Respectfully submitted,

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

And

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

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of CenturyLink's Brief in Opposition to NAT's Motion for Summary Judgment, CenturyLink's Statement of Material Facts and Response to NAT's Statement of Undisputed Facts, Affidavit of Todd L. Lundy in Support of CenturyLink's Opposition to NAT's Motion for Summary Judgment and Affidavit of William R. Easton in Support of CenturyLink's Brief in Opposition to NAT's Motion for Summary Judgment were delivered via e-mail on this 11th day of April, 2012, to the following parties:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us
(605) 773-3201 - voice
(866) 757-6031 - fax

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
karen.cremer@state.sd.us
(605) 773-3201 - voice
(866) 757-6031 - fax

Mr. Chris Daugaard
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
chris.daugaard@state.sd.us
(605) 773-3201- voice
(866) 757-6031 - fax

Mr. Scott R. Swier - Representing: Native American Telecom, LLC
Attorney at Law
Swier Law Firm, Prof. LLC
202 N. Main St.
PO Box 256
Avon, SD 57315
scott@swierlaw.com
(605) 286-3218 - voice
(605) 286-3219 - fax

Mr. William VanCamp - Representing: AT&T Communications of the Midwest, Inc.
Attorney
Olinger, Lovald, McCahren & Reimers, P.C.
117 East Capitol
PO Box 66
Pierre, SD 57501-0066
bvancamp@olingerlaw.net
(605) 224-8851 - voice

Mr. Richard D. Coit
SDTA
PO Box 57
Pierre, SD 57501-0057
richcoit@sdtaonline.com
(605) 224-7629 - voice
(605) 224-1637 - fax

Ms. Meredith A. Moore - Representing: Midstate Communications, Inc.
Attorney
Cutler & Donahoe, LLP
100 N. Phillips Ave., 9th Floor
Sioux Falls, SD 57104-6725
meredithm@cutlerlawfirm.com
(605) 335-4950 - voice
(605) 335-4961 - fax

Mr. Scott G. Knudson - Representing: Sprint Communications Company, LP
Attorney
Briggs and Morgan, PA.
80 S. Eighth St.
2200 IDS Center
Minneapolis, MN 55402
sknudson@briggs.com
(612) 977-8400 - voice
(612) 977-8650 - fax

Mr. Phillip Schenkenberg - Representing: Sprint Communications Company, LP
Attorney
Briggs and Morgan, PA.
80 South Eighth Street, 2200 IDS Center
Minneapolis, MN 55402
pschenkenberg@briggs.com
(612) 977-8400 - voice
(612) 977-8650 - fax

Mr. Stanley E. Whiting - Representing: Sprint Communications Company, LP
Attorney
142 E. Third St.
Winner, SD 57580
swhiting@gwtc.net
(605) 842-3313 - voice

/s/ Todd Lundy

Todd Lundy