BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

DIRECT TESTIMONY OF

DAVID ERICKSON

ON BEHALF OF

NATIVE AMERICAN TELECOM, LLC

April 20, 2012

PURPOSE OF TESTIMONY

Q: Please state your name.

A: My name is David Erickson.

Q: What is the purpose of your testimony in this proceeding?

A: The purpose of my testimony is to respond to the Direct Testimony of William R. Easton (Qwest/CenturyLink) (filed with the Commission on March 26, 2012) and Direct Testimony of Randy G. Farrar (Sprint Communications Company, L.P.) (filed with the Commission on March 26, 2012).

Q: Have you previously filed testimony or appeared as an expert witness before a court, regulatory, or legislative body in South Dakota?

A: Yes, I have filed a declaration with the United States District Court (District of South Dakota) in *Sprint Communications Company L.P. v. Native American Telecom, LLC, and Crow Creek Sioux Tribal Court,* Case No. Civ. 10-4110-KES. This declaration was filed with the federal district court on April 18, 2012. I have never filed testimony or appeared as an expert witness before any other court, regulatory, or legislative body in South Dakota.

Q: Please summarize your background and experience.

A: I am the founder of FreeConferenceCall.com and the President of Free Conferencing Corporation. I pioneered a business model that eliminated the fees associated with consumers organizing and facilitating a conference call.

NAT'S LEGAL AND ORGANIZATIONAL STRUCTURE

Q: Please provide a description of NAT's legal and organizational structure.

A: NAT is a tribally-owned telecommunications company organized as a limited liability company under the laws of South Dakota.

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

Q: Please describe WideVoice Communications, Inc.

A: As stated above, Wide Voice Communications, Inc. is a 24% owner of NAT. WideVoice Communications, Inc. is a Nevada corporation. Wide Voice Communications, Inc. is a separate and distinct legal entity from Free Conferencing Corporation, and is operated as such. *Wide Voice Communications, Inc. does not have any ownership interest in or control over Free Conferencing Corporation. Free Conferencing Corporation has no ownership interest in or control over NAT.*

Q: Please describe Free Conferencing Corporation.

A: Toll conferencing has been around for years and is still a very popular way to conference call. When I started Free Conferencing Corporation and created FreeConferenceCall.com, there were generally two ways to make money from toll conferencing: (a) charge the consumer an organizer fee above and beyond their long distance cost (generally fifteen cents per minute more for each participant on the call); and/or (b) receive part of the long distance charged to the calling party by their long distance carrier, achieved by having a revenue-sharing arrangement with a Local Exchange

Carrier (LEC) where the calls terminate (where the conference bridge is located).

My business model eliminated the organizer fee, focusing instead on earning income through revenue-sharing agreements with Local Exchange Carriers. By eliminating the organizer fee, everything became easier for the consumer. For example, there were no separate conference call bills necessary; and since there is no bill, there is no need to get approval; which means there is no purchase order necessary; which means there is zero delay in impromptu conferencing with a group of associates or family members. In short, FreeConferenceCall.com removed barriers to collaboration, creating a better and cheaper way to conference.

Higher volumes of traffic were required, however, to offset the loss of the second revenue stream (organizer fees). Eventually, Free Conferencing Corporation achieved those higher volumes of traffic by delivering quality service and meeting the consumer's demand. Free Conferencing Corporation's customers literally engage in billions of minutes of conferencing each year that are terminated based on revenue sharing arrangements at locations across the United States and in other countries, including both rural and metro locations.

Free Conferencing Corporation's first revenue sharing arrangement was with a tier 2 carrier in a major metropolitan city, Boston. Shortly after that, I became aware that many smaller local exchange carriers in rural parts of the country were struggling to be profitable as more and more consumers abandoned their landline telephones in favor of mobile phones. These smaller carriers also received higher terminating access, which enhanced the revenue sharing opportunities.

Free Conferencing Corporation's decision to receive services from rural carriers has caused complaints from several large long-distance companies, such as CenturyLink and Sprint. These carriers complain that the increased traffic flow to rural areas is increasing their costs. Most long distance providers have decided to voluntarily offer consumers flat-rate billing plans, where consumers can make unlimited phone calls. Under these "unlimited" plans, carriers like CenturyLink and Sprint earn the most money when the customer makes no calls at all, because the carrier collects the same amount of money whether the customer makes one call or one hundred calls. The decision to offer these unlimited plans was and remains a business decision designed to capture customers, as the long distance carriers risk the downside in an attempt to price to the competition versus pricing to their cost and win the consumer. In making this choice, the long distance carriers knew that the regulated telecommunications market in the United States imposed incremental costs (in the form of access charges) on each and every long-distance call. Thus, they knew that some consumers would consume more minutes, or call more expensive locations, while others would cause the long-distance carriers to incur less incremental cost.

At no time have I understood my business model to be illegal. Indeed, I have spent the last six (6) years going back and forth to Washington, DC on a regular basis talking to FCC Commissioners and staff, as well as meeting with members of Congress, educating them about my business model and the benefits it provides to consumers.

At no point was I told to stop or that what I was doing was illegal or not allowed. In fact, many of the Congressmen and Senators were regular users of the service and were unaware that the "TRAFFIC PUMPING" or "ACCESS STIMULATION" issue included FreeConferenceCall.com and services like it.

In 2008, President Barrack Obama's campaign used over 5,000,000 minutes of Free Conferencing Corporation's services.

Like most of the business owners, nonprofits, and religious institutions that utilize Free Conferencing Corporation's services, President Obama was not a "traffic pumper," rather his campaign was minimizing its costs by leveraging the unlimited long distance plans that they had purchased, and making it easier for their staff and supporters to connect and collaborate.

While I believe that CenturyLink's and Sprint's preferred "traffic pumping" terminology is pejorative, I am not opposed to the term "access stimulation," which has been adopted by the FCC in its *Connect America* Order, which was released in November 2011.

My free conferencing model stimulates access because it stimulates the efficiencies of talking to multiple people simultaneously, which ultimately saves the consumer money and time on the phone. It is the consumer's choice to use FreeConferenceCall.com, and use it they do. Consumers love the service. Carriers who offer competing conferencing offerings and unlimited long distance plans tend not to like the service.

It is important to understand that if a consumer used standard toll conferencing (as compared to "toll free" conferencing that is provided by some services), which existed before and after my creation of FreeConferenceCall.com, that consumer would still be using their long distance and the terminating carrier would still be receiving terminating access fees on that traffic. I didn't create or change that.

In other words, I didn't add terminating access fees to conferencing, I merely took away organizer fees. The result was that I achieved the high traffic volumes needed to make my company a success -- 500,000,000 minutes per month and growing because I made the cost of conferencing go down for consumers.

Companies like Sprint have usage policies that purport to ban wireless consumers from calling "free" conferencing services. For example, under Sprint's terms of service, Sprint has a section titled "Illegal or Harmful Use." *See* http://www.sprint.com/legal/agreement.html. In this section, Sprint states:

> You may access and use our Website and Network only for lawful purposes. You are responsible for any transmission you send, receive, post, access, or store via our Network, including the content of any communication. Transmitting, distributing, or storing any material that violates any applicable law is prohibited. Additionally, the following non-exhaustive list details the kinds of illegal or harmful conduct that is prohibited:

* * *

> Traffic Pumping/Access Stimulation: Using the Network to dial telephone numbers associated with free conference calls, free chat lines, or similar services that are used for traffic pumping/access stimulation. Traffic pumping/access stimulation, for this purpose, is defined as any and all activities that are designed to generate traffic to increase the intercarrier compensation billed to Sprint.

Therefore, it is clear that Sprint knows that telephone calls to numbers associated with free conference calls are designed to generate traffic, which, in turn, increases intercarrier compensation billed to Sprint. Sprint's advocacy before this Commission obfuscates this fundamental point.

It is my understanding that Sprint charges consumers for using anytime minutes for calls terminating to conferencing services (sometimes those fees are as high as 45 cents per minute). Sprint does not enforce its ban on calling "free" conferencing services, knowing that it would draw ire from its customers. Instead, Sprint takes the service from the terminating carrier and refuses to pay.

It has been over five (5) years now since Sprint and CenturyLink instituted their policies of refusing to pay terminating access on calls related to Free Conferencing Corporation's services. These two companies tried unsuccessfully to have the FCC "ban" my business model, but the FCC rejected all these recommendations when the Commission adopted its recent Order. *See generally In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking,* WC Docket No. 10-90, 26 FCC Rcd. 17663, ¶¶ 656-701 (2011) ("*CAF Order*").

I agree with the FCC on access stimulation, and I intend to fully comply with its new Order. If a CLEC has a revenue share agreement with an access stimulator (like Free Conferencing Corporation), that CLEC must reflect the rate of the lowest price cap carrier in the state in which the CLEC operates, once relevant triggers are met. The FCC's Order is very clear on access stimulation and I have been actively working to help enforce this Order in places where Free Conferencing Corporation operates.

Q: Please describe the agreement between Free Conferencing Corporation and NAT.

A: In or about May 2009, Free Conferencing Corporation entered into an Agreement with NAT. This Agreement provides that Free Conferencing Corporation will provide conferencing traffic and services on the Reservation. NAT, in turn, will provide telecommunications service and colocation space.

There is a clause in this Agreement that provides that Free Conferencing will not be charged for colocation space and other facilities charges. However, the parties subsequently agreed that Free Conferencing would pay line charges and other facilities charges according to NAT's tariff. NAT pays a Universal Service Fund contribution on those charges.

Free Conferencing Corporation's equipment is and has been collocated at NAT's central office at Fort Thompson, South Dakota. When calls directed to Free Conferencing Corporation are received by NAT, they are directed to Free Conferencing Corporation's equipment. Unlike calls to other parts of the Reservation, Free Conferencing Corporation's calls are not transmitted through NAT's WiMax equipment.

CenturyLink and Sprint have tried to make it appear as though there is something nefarious about the fact that the Agreement provides that NAT will share 75% of the access revenues collected on calls terminating to Free Conferencing Corporation's bridges. I respectfully submit that this revenue sharing arrangement is very fair for NAT. In fact, the Commission should consider these three critical issues:

(a) The revenue share is based on *gross* revenue, *before* Free

Conferencing Corporation's expenses incurred to obtain the customer's business.

(b) Free Conferencing Corporation tenders a separate payment to NAT for providing the telecommunications services.

(c) 75% is a common revenue share for Free Conferencing Corporation. Indeed, Free Conferencing Corporation has no agreements in place in which it receives less than a 50% revenue share and generally receives between 60% to 80% of gross revenue.

Finally, it is important to emphasize that at this time, NAT operates very close to the break-even point. However, if CenturyLink and Sprint, the two primary carriers that continue to refuse to pay NAT for its services, begin to remit payment, NAT would become profitable.

Q: Does this conclude your testimony?

A: Yes, it does.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 18, 2012

David Erickson