

3. On October 23, 2013, the Commission entered its “Order Granting NAT’s Motion for Leave to Take Deposition of [Sprint’s expert witness] Randy J. Farrar” (“Order”).¹

4. Specifically, this Order provides:

The Commission voted unanimously to grant [NAT’s] Motion for Leave to Take Deposition of Sprint’s Expert Randy Farrar. In addition, the Commission voted to set [Farrar’s] compensation at \$100 per hour, limited to the time spent attending the deposition (Commissioner Fiegen, dissenting). The Commission voted unanimously to deny Sprint’s request to limit the scope of the deposition to Mr. Farrar’s August 30, 2013 testimony or to limit the length of the deposition to 3.5 hours. The Commission finds these are unnecessary limitations.

5. After the Commission’s October 9, 2013 hearing, NAT and Sprint agreed that NAT would take Randy Farrar’s deposition on Thursday, December 5, 2013, in Overland Park, Kansas.

6. In addition to scheduling Randy Farrar’s December 5, 2013 deposition, NAT and Sprint also agreed that Sprint would be allowed to take the depositions of two of NAT’s potential witnesses - Jeff Holoubek and David Erickson. It was agreed that the Holoubek and Erickson depositions would be held on Monday, November 25, 2013, in Los Angeles, California.

¹ The Commission’s hearing regarding “NAT’s Motion for Leave to Take Deposition of Randy Farrar” was held in Pierre, South Dakota on October 9, 2013.

7. Over the next several weeks, representatives from NAT and Sprint held multiple telephone conferences in an attempt to reach a settlement in this matter. During these telephone conferences, NAT's counsel and Sprint's counsel confirmed the locations and dates of the Holoubek/Erickson depositions and the Farrar deposition. At no time did Sprint ever indicate any objections to NAT taking Randy Farrar's deposition on December 5, 2013 in Overland Park, Kansas.

8. Pursuant to the parties' agreement, Sprint conducted the depositions of Mr. Holoubek and Mr. Erickson on Monday, November 25, 2013, in Los Angeles, California.

9. On November 27, 2013, NAT electronically served a "Notice of Taking Deposition of Randy Farrar" to document the parties' long-standing agreement that NAT would conduct Randy Farrar's deposition on Thursday, December 5, 2013. A formal notice was not necessary as the Commission had already overruled Sprint's objections and ordered that Mr. Farrar's deposition take place. The deposition was to begin at 9:00 a.m. and be held at the law offices of Foulston Siefkin, LLP, 32 Corporate Woods, Suite 600, 9225 Indian Creek Parkway, Overland Park, Kansas 66210.

10. Within two (2) hours of receiving NAT's Notice of Deposition, Sprint's counsel emailed NAT's counsel the following response:

Scott,

I just received this notice, which asks Randy Farrar to appear for a deposition next Thursday. We had talked about this date a month ago, but since you never sent a notice, Sprint assumed that you didn't intend to go forward. We are now in a holiday week, the witness is getting on a plane, and we are just a few days short of the date in the notice. Mr. Farrar is tied up with other obligations to the Company next week and is not available to appear.

11. Immediately thereafter, NAT's counsel replied:

Phil:

*First of all, you know that we've discussed on **numerous occasions** that we were taking Mr. Farrar's deposition on December 5, 2013. **I've never indicated otherwise.** If you are not going to honor our explicit agreement and make Farrar available during the date/time we agreed upon, please let me know immediately and I will request Commission intervention. (emphasis in original).*

12. Sprint's counsel then replied:

*The last record I have of a conversation about the deposition was on 10/29, when I indicated that date would work. I don't believe we have talked since on that topic. It is not our obligation to send a notice and thereby save a date, it is NAT's. **We will not appear next Thursday.** (emphasis added).*

13. Sprint's counsel's email confirms that over one month earlier, the parties reached an agreement to take Randy Farrar's deposition on December 5, 2013, in Overland Park, Kansas.

14. Additionally, the Commission has **ordered** Sprint to make Randy Farrar available for a deposition in this matter. Sprint's last-minute refusal to make Randy Farrar available for a deposition is in direct conflict with the parties' agreement regarding the date of his appearance. More importantly, however, is that Sprint's last-minute refusal to make Randy Farrar available for a deposition **directly disobeys** the Commission's explicit Order.

15. Mr. Farrar is a full-time employee of Sprint. He is not an independent expert that could have an engagement with another client that could conflict with the deposition ordered by the Commission on the date agreed to by Sprint.

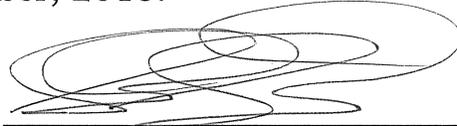
16. Sprint has refused to provide NAT with any justification for its willful disobedience of the parties' long-standing agreement and the Commission's Order. Instead, Sprint has simply indicated that Randy Farrar (a Sprint employee) is "*tied up with other obligations to the Company next week and is not available to appear.*"

17. NAT has shown the importance of conducting Randy Farrar's pre-hearing deposition. The Commission unanimously agreed with NAT's position and ordered that Sprint make Randy Farrar available for a deposition.

18. Sprint's refusal to abide by the parties' explicit agreement and the Commission's Order simply serves to perpetuate the "gamesmanship" that Sprint has employed since the beginning of this matter.

19. As a result of Sprint's intentional and improper actions in refusing to abide by the parties' explicit agreement and the Commission's Order, NAT has been denied the ability to fairly and fully prepare its case in this matter. As such, the Commission should continue the contested case hearing scheduled in this matter for December 11-12, 2013 and reschedule the hearing for a later date.

Dated this 3rd day of December, 2013.



Scott R. Swier

Subscribed and sworn to before me
on this 3rd day of December, 2013.



Notary Public, State of South Dakota

My Commission Expires: 2-15-18

(SEAL)