

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

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

Sprint Communications Company L.P.

Direct Testimony of Randy G. Farrar

Filed March 26, 2012

PUBLIC VERSION



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DIRECT TESTIMONY

I. Introduction

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

A. My name is Randy G. Farrar. My title is Senior Manager – Policy Support. I am employed by Sprint United Management Company, the management subsidiary of Sprint Nextel Corporation. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. What is your educational background?

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

Q. Please summarize your work experience.

A. I have worked for a subsidiary of Sprint Nextel Corporation (or a predecessor) since 1983 in the following capacities:

- 2011 to present: Regulatory Policy Manager. I provide financial, economic, and policy analysis concerning interconnection, switched

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

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

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

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

21 - 1987 to 1992: Manager - Local Exchange Costing. Within this time
22 frame I was a member of the United States Telephone Association’s

1 (USTA) New Services and Technologies Issues Subcommittee (1989
2 to 1992).

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

7 - 1983 to 1986: Manager - Rate of Return, which included presentation
8 of written and/or oral testimony before state public utilities
9 commissions in Iowa, Nebraska, South Carolina, and Oregon.

10

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

20

21 **Q. What are your responsibilities in your current position?**

22 A. I provide financial, economic, and analysis concerning policy,
23 interconnection, switched and special access, reciprocal compensation, and

1 other telecommunications issues at both the state and federal level. I
2 maintain a working understanding of the interconnection and intercarrier
3 compensation provisions of the Communications Act of 1934 as amended
4 most recently by the Telecommunications Act of 1996 ("the Act" or "the
5 1996 Act") and the resulting rules and regulations of the Federal
6 Communications Commission ("FCC").
7

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

9 A. Yes. In addition to my previously referenced testifying experience, since
10 1995 I have presented written or oral testimonies or affidavits before twenty-
11 seven state regulatory agencies (Illinois, Pennsylvania, New Jersey, Florida,
12 North Carolina, Nevada, Texas, Georgia, Arizona, New York, Oklahoma,
13 Missouri, Virginia, Iowa, Kentucky, Ohio, South Dakota, Tennessee,
14 Minnesota, Arkansas, Oregon, Colorado, Alabama, Louisiana, California,
15 Wisconsin, and Connecticut) and the FCC, concerning interconnection
16 issues, reciprocal compensation, access reform, universal service, the
17 avoided costs of resold services, local competition issues such as the cost
18 of unbundled network elements, and economic burden analyses in the
19 context of Incumbent Local Exchange Carrier ("ILEC")-claimed rural
20 exemptions.
21

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

2

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

4 A. I am testifying on behalf of Sprint Communications Company L.P. ("Sprint"),
5 a subsidiary of Sprint Nextel Corporation.

6

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

8 A. On October 11, 2011, Native American Telecom, LLC ("NAT-CC")¹ applied
9 to the South Dakota Public Utilities Commission ("Commission") for a state
10 Certificate of Authority to provide competitive local exchange service on the
11 Crow Creek Reservation. This is the second time that NAT-CC has applied
12 for such a Certificate, the first time being on September 8, 2008; but, that
13 application was voluntarily withdrawn after Sprint and other parties
14 intervened to oppose that application.

15

16 This hearing is to determine whether NAT-CC's second request should be
17 granted.

18

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

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

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

4
5 ~~First, as pointed out by the FCC in its recent Connect America Order,²~~
6 ~~"traffic pumping" is not in the public interest. As discussed in Section V.D,~~
7 ~~the FCC has taken deliberate steps to end the practice.~~

8
9 ~~Second, the Joint Venture Agreement³ between (1) the Crow Creek Sioux~~
10 ~~Tribe ("CCST"), (2) Native American Telecom Enterprise, LLC ("NATE"),~~
11 ~~and (3) WideVoice Communications, Inc. ("WideVoice" or "WVO"), is~~
12 ~~deliberately and intentionally designed for only one purpose – to promote~~
13 ~~NAT-CC's "traffic pumping" business and to enrich NATE and WideVoice.~~

14
15 ~~Third, the Service Agreement between NAT-CC and Free Conference is~~
16 ~~deliberately and intentionally designed for only one purpose – to promote~~
17 ~~NAT-CC's "traffic pumping" business and to enrich Free Conference.⁴~~

18

² ~~In the Matter of Connect America Fund, et al; WC Docket No. 10-90, et al; FCC 11-164; Report and Order and Further Notice of Proposed Rulemaking; Adopted October 27, 2011, Released November 18, 2011 (Connect America Order).~~

³ ~~Joint Venture Agreement, April 1, 2009, By And Between Crow Creek Sioux Tribe And Native American Telecom Enterprise, LLC And WideVoice Communications, Inc. ("Joint Venture Agreement"). See Exhibit RCF-1.~~

⁴ ~~Service Agreement By and Between: Native American Telecom – Crow Creek and Free Conferencing Corporation, effective July 1, 2009 – June 30, 2012 (Service Agreement). See Exhibit RCF-2.~~

1 ~~Fourth, NAT CC's "traffic pumping" business harms Sprint and Sprint's~~
2 ~~customers (many of whom live in South Dakota) by increasing its costs of~~
3 ~~doing business; e.g., forcing Sprint to augment its transport facilities, by~~
4 ~~increasing its legal and regulatory expenses, and by billing Sprint grossly~~
5 ~~inflated amounts of switched access traffic.~~

6
7 ~~Finally, and most importantly, NAT CC provides virtually no financial benefit~~
8 ~~to CCST. NAT CC exists to benefit only three entities: NATE, WideVoice,~~
9 ~~and Free Conference. Due to actions taken by the FCC in the Connect~~
10 ~~America Order, the NAT CC business model will be made unsustainable in~~
11 ~~four or five years. At that time, NAT CC will be forced to exit the South~~
12 ~~Dakota market, leaving CCST with negligible benefits and potentially,~~
13 ~~significant liabilities.~~

14
15 ~~III. NAT CC is Providing Service Without a Certificate~~

16
17 ~~Q. Does NAT CC have a Certificate of Authority to provide competitive~~
18 ~~local exchange service to non-tribal members on the Crow Creek~~
19 ~~Reservation?~~

20 ~~A. No, NAT CC does not have a Certificate of Authority to provide competitive~~
21 ~~local exchange service to non-tribal members on the Crow Creek~~
22 ~~Reservation.~~

1 Q. Has NAT-CC requested such a Certificate?

2 A. Yes, NAT-CC has request such a Certificate on two occasions. First, on
3 September 8, 2008, NAT-CC applied to the Commission for a Certificate.
4 However, on October 28, 2008, after NAT-CC obtained authorization from
5 the Tribal Utility Authority, NAT-CC withdrew its application from the
6 Commission.

7
8 Second, on October 11, 2011, NAT-CC reapplied to the Commission for a
9 Certificate. This hearing is a result of that second application.

10
11 Q. ~~Is NAT-CC providing service to a non-tribal member without a~~
12 ~~Certificate?~~

13 A. ~~Yes, NAT-CC has been providing service to Free Conference, a non-tribal~~
14 ~~member, without a Certificate since approximately December 2000.⁵ Note~~
15 ~~that NAT-CC affirmed that Free Conference is not a tribal member.⁶ Also,~~
16 ~~NAT-CC contends that it does not have to determine whether its services~~
17 ~~are being provided to non-tribal members or to customers of CCST.⁷~~
18
19 ~~In NAT-CC's current application, it is essentially asking the Commission for~~
20 ~~permission to continue doing what it has been doing, without permission, for~~
21 ~~more than two years.~~

⁵ ~~It is Sprint's position that Free Conference is not an end user.~~

⁶ ~~See NAT-CC's response to Sprint Request For Admission No. 2, Exhibit RGF-3.~~

⁷ ~~NAT-CC's Response to Sprint's Discovery Requests Nos. 1 and 3, and Request for Admission No. 1, Exhibit RGF-3.~~

1

2 Q. ~~Does NAT-CC require a Certificate in order to provide service to a~~
3 ~~non-tribal member?~~

4 A. ~~Sprint has taken the position that NAT-CC needs a Certificate to provide~~
5 ~~service to non-tribal members. Ultimately, that is a legal question that~~
6 ~~Sprint's attorneys will brief. However, apparently NAT-CC now believes it~~
7 ~~needs such a Certificate why else would NAT-CC make the application?~~

8

9 Q. ~~Do you believe it is in the public interest to give a Certificate to a~~
10 ~~company that has been willfully operating, perhaps illegally, without a~~
11 ~~certificate for over two years?~~

12 A. ~~No, I do not believe it is in the public interest to give a Certificate to a~~
13 ~~company that has been willfully operating, perhaps illegally, without a~~
14 ~~certificate for over two years.~~

15

16 **~~IV. NAT-CC is a Sham Entity~~**

17

18 Q. Please describe the creation of NAT-CC and the *Joint Venture*
19 *Agreement*.

20 A. On August 26, 2008, NAT-CC was organized under the laws of South
21 Dakota by the Los Angeles office of Legalzoom.com Inc. Per the NAT-CC
22 Articles of Incorporation, its two founders were Gene DeJordy and Tom

1 Reiman, who are non-tribal members. Thus, NAT-CC was initially created
2 without any involvement by the CCST.⁸

3
4 On September 8, 2008, NAT-CC applied to the Commission for a state
5 Certificate of Authority to provide competitive local exchange service on the
6 Crow Creek Reservation. That application described NAT-CC as “a joint
7 venture with the Crow Creek Sioux Tribe ... to provide service only within
8 the exterior boundaries of the Crow Creek Indian Reservation.”

9
10 On October 28, 2008, NAT-CC obtained authorization from the Tribal Utility
11 Authority to provide LEC services within the Crow Creek Indian Reservation.
12 NAT-CC then withdrew its application for a certificate from the Commission.

13
14 On April 1, 2009, the NAT-CC *Joint Venture Agreement* was signed by
15 CCST, NATE, and WideVoice.

16
17 In April/May 2009, NAT-CC and Free Conference signed a *Service*
18 *Agreement* making Free Conference the sole provider of conferencing
19 service for NAT-CC.⁹

20

⁸ Preliminary Injunction Transcript, Sprint Communications Company L.P. v. Native American Telecom, U.S. Court Dist. Of S.D., Case 10-4110, (Oct. 14, 2010) (“Oct. 24, 2010 Tr.”), Exhibit RGF-4. See also NAT Articles of Organization, Exhibit RGF-5.

⁹ *Service Agreement*, paragraph 6.

1 On October 11, 2011, for the second time NAT-CC applied to the
2 Commission for a state Certificate of Authority to provide competitive local
3 exchange service on the Crow Creek Reservation.
4

5 ~~Q. The Direct Testimonies of Jeff Holoubek and Carey Roessel on behalf of~~
6 ~~NAT-CC both describe the benefits to the CCST provided by NAT-CC.~~
7 ~~Do you agree with the conclusion of their testimonies?~~

8 A. ~~No. I believe that NAT-CC has brought very little benefit to the CCST, at too~~
9 ~~high of a cost. NAT-CC has, however, provided significant financial benefit~~
10 ~~to NATE, WideVoice, Free Conference. In fact, it would appear from the~~
11 ~~terms of the Joint Venture Agreement, that the sole purpose of NAT-CC is~~
12 ~~to enrich NATE, WideVoice, and Free Conference.~~

13
14 Q. Please describe the ownership interest in Native American Telecom
15 ("NAT-CC").

16 A. Per the *Joint Venture Agreement* dated April 1, 2009. NAT-CC has the
17 following legal ownership:

- 18 • CCST owns 51% of NAT-CC,
- 19 • NATE, which is owned by non-tribal members Tom Reiman and
20 Gene DeJordy, owns 25% of NAT-CC, and
- 21 • WideVoice, which is a Nevada corporation that operates an end
22 office switch in California, owns 24% of NAT-CC. It is owned by

1 non-tribal members including Dave Erickson (who also owns Free
2 Conference, the sole provider of conferencing services for NAT-CC).

3
4 ~~However, as discussed below, CCST's 51% ownership results in little~~
5 ~~meaningful control over NAT-CC, and has resulted in no financial benefit.~~

6
7 ~~a. Does CCST receive any meaningful financial benefit from NAT-CC~~
8 ~~under the terms of the Joint Venture Agreement?~~

9 A. ~~No. While the terms of the Joint Venture Agreement assigns 51%~~
10 ~~ownership to CCST, in reality CCST receives no financial benefit.~~

11
12 ~~First, NATE & WideVoice got to skim off 15% of "Gross Revenues" before~~
13 ~~CCST sees a dime. Specifically, the Joint Venture Agreement states:~~

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

23
24 ~~Second, NAT-CC has agreed to pay up to 95% of the switched access~~
25 ~~revenue it receives directly to Free Conference, which is owned and~~
26 ~~controlled by the same parties as WideVoice. Specifically, the Service~~
27 ~~Agreement states:~~

1 ~~9. Marketing Fee and Payment Terms. NAT CC shall pay FCC a~~
2 ~~marketing fee at a rate per minute of IXC traffic terminating on FCC's~~
3 ~~equipment in accordance with the schedule set forth on Exhibit B.~~

4
5 ~~**Exhibit B – Marketing Fee Schedule**~~

6

Minutes Per Month	Rate per Minute
0 – 15,000,000	(75% of Gross Tariff)
15,000,001 – 25,000,000	(85% of Gross Tariff)
25,000,001 and above	(95% of Gross Tariff)

7
8
9
10

11 ~~Third, it is not clear if CCST receives any of the switched access revenues~~
12 ~~not paid directly to Free Conference. CCST is only allowed its share of~~
13 ~~predefined “Net Profits,” which are narrowly defined by the Joint Venture~~
14 ~~Agreement. Specifically, the Joint Venture Agreement states.~~

15 ~~**Section 6.04 Net Profits.**~~

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

27 ~~In addition, CCST may be denied any “end user” revenue which Free~~
28 ~~Conference, a “third party business, may pay to NAT CC.~~

1 ~~It also appears that CCST may not be able to realize any ongoing financial~~
2 ~~benefit from end-user revenues generated from tribal members living on the~~
3 ~~reservations because tribal members receive service at no charge.¹⁰~~

4
5 ~~These financial restrictions on CCST are particularly important in light of the~~
6 ~~ongoing disputes between NAT-CC and the IXCs. In its 2011 FCC Form~~
7 ~~499-A (which contains 2010 revenue information), NAT-CC reports~~
8 ~~"Uncollectible revenue" of \$3,930,146 in 2010.¹¹ This is undoubtedly billed,~~
9 ~~but uncollected charges to the IXCs in 2010. In the unlikely scenario that~~
10 ~~NAT-CC collects any of these charges,¹² it is not clear whether CCST would~~
11 ~~receive any of this revenue per the terms of the Joint Venture Agreement.~~

12
13 Q. ~~Does CCST have any meaningful decision making or operational~~
14 ~~control over NAT-CC, or ability to influence financial decisions?~~

15 A. ~~No. CCST has virtually no meaningful control over NAT-CC, despite its~~
16 ~~51% legal ownership.~~

17

¹⁰ Preliminary Injunction Transcript, *Sprint Communications Company L.P. v. Native American Telecom*; U.S. District Court, District of South Dakota, Case 10-4110, March 3, 2011 ("Mar. 3, 2011 Tr.") Tr. P. 150, Exhibit RGF-6.

¹¹ NAT-CC's 2011 FCC Form 499-A, Line 421: Uncollectible revenue/bad debt expense associated with gross billed revenues amounts shown on Line 419 [See Instructions], Exhibit RGF-7.

¹² The FCC's *Connect America Order* does not address retroactive payments.

1 ~~First, despite 51% ownership, the terms of the Joint Venture Agreement~~
2 ~~give CCST only three of the nine seats on the Board of Directors.~~

3 ~~Specifically, the Joint Venture Agreement states:~~

4 ~~**Section 8.01 Board of Directors.**~~

5 ~~The Board of Directors shall consist of Nine (9) members. Three (3)~~
6 ~~members of NAT-CC's Board of Directors shall be designated by~~
7 ~~CCST~~
8

9 ~~Second, CCST has no control over the day to day operations of the~~
10 ~~NAT-CC network, even when it directly affects the Crow Creek Indian~~
11 ~~Reservation and its Citizens. This control is reserved solely in the hands of~~
12 ~~NATE. If a dispute arises on this issue, CCST has only three of nine votes.~~

13 ~~Specifically, the Joint Venture Agreement states:~~

14 ~~**Section 6.07 Voting Rights.**~~

15 ~~(b) Regarding decisions affecting the regular and ordinary operations~~
16 ~~of the CLEC and the CLEC network, NATE shall have the authority~~
17 ~~to make decisions concerning the regular and ordinary~~
18 ~~operations of the CLEC and CLEC Network as it affects the Crow~~
19 ~~Creek Indian Reservation, its Citizens and Customers. Where~~
20 ~~disagreements, disputes or conflicts arise regarding the operations of~~
21 ~~the CLEC and CLEC Network, resolution will be accomplished through~~
22 ~~a Majority Rule vote of the designated Board of Directors, each director~~
23 ~~having one equally weighted vote. (Bold emphasis added - except~~
24 ~~title)~~
25

26 ~~Third, CCST has no control over the technical aspects of the NAT-CC~~
27 ~~network, including "traffic pumping." This control is reserved solely in the~~
28 ~~hands of WideVoice. If a dispute arises on this issue, CCST has only three~~
29 ~~of nine votes. Specifically, the Joint Venture Agreement states:~~

30 ~~**Section 6.07 Voting Rights.**~~

31 ~~(c) WVC shall have authority over the normal operations of NAT-CC as~~
32 ~~it affects the technical aspects of NAT-CC including but not limited to~~

1 ~~traffic flow over the Network. Where disagreements, disputes or~~
2 ~~conflicts arise regarding the operations of the CLEC and CLEC~~
3 ~~Network, resolution will be accomplished through a Majority Rule vote~~
4 ~~of the designated Board of Directors, each director having one equally~~
5 ~~weighted vote. (Bold emphasis added - except title.)~~
6

7 ~~Note that the reference to "traffic flow over the Network" includes NAT-CC's~~
8 ~~"traffic pumping" business, in which NATE and WideVoice maintain total~~
9 ~~operational and financial control under the terms of the Joint Venture~~
10 ~~Agreement.~~
11

12 ~~Finally, CCST only has 51% voting rights in matters that deal directly with~~
13 ~~tribal matters. Specifically, the Joint Venture Agreement states.~~

14 ~~**Section 6.07 Voting Rights.**~~

15 ~~(a) Regarding decisions affecting the physical health and financial~~
16 ~~success and wellbeing of the Crow Creek Indians Reservation and~~
17 ~~its Citizens, CCST shall have 51%~~
18

19 ~~However, given the previous limitations of CCST's involvement in NAT-CC's~~
20 ~~operations, this "right" is essentially meaningless.~~
21

22 Q. ~~What is your conclusion concerning the terms of the Joint Venture~~
23 ~~Agreement and the testimonies of Jeff Holoubek and Garey Roesel on~~
24 ~~behalf of NAT-CC?~~

25 A. ~~Despite NAT-CC being described as a joint, tribally-owned venture,~~
26 ~~designed to bring financial benefits to CCST, the Joint Venture Agreement~~
27 ~~is, in fact, deliberately and intentionally designed to leave all meaningful~~
28 ~~control in the hands of NATE and WideVoice.~~

1

2

~~More importantly, the Joint Venture Agreement is deliberately and~~

3

~~intentionally designed to leave all financial benefit in the hands of NATE,~~

4

~~WideVoice, and Free Conference.~~

5

6

~~Q. Please discuss the role of Free Conference in NAT-CC.~~

7

~~A. The role of Free Conference cannot be understated and is key to~~

8

~~understanding how and why NAT-CC was created.~~

9

~~• Per the Service Agreement, Free Conference is the sole provider of~~

10

~~conferencing services for NAT-CC.¹³~~

11

~~• Free Conference, which provides the "free" conferencing services~~

12

~~essential to "traffic pumping," is owned and controlled by Dave~~

13

~~Erickson.¹⁴~~

14

~~• Dave Erickson owns and controls WideVoice, which in turn means that~~

15

~~Dave Erickson owns and controls a significant portion of NAT-CC.¹⁵~~

16

~~• In July 2010, Mr. Carlos Cestero, an employee of Free Conferencing,~~

17

~~took over as controller for NAT-CC. He acts as controller for NAT-CC,~~

18

~~Free Conferencing, WideVoice, and three other entities owned by~~

19

~~Dave Erickson.¹⁶ He is not being paid by NAT-CC.¹⁷ Mr. Cestero~~

¹³ Service Agreement, paragraph 6.

¹⁴ Mar. 3, 2011 Tr. p. 67.

¹⁵ Mar. 3, 2011 Tr. p. 67.

¹⁶ Mar. 3, 2011 Tr. p. 13-16, 20-21.

¹⁷ Mar. 3, 2011 Tr. p. 20.

1 ~~opened two new NAT-CC bank accounts, for which only WideVoice~~
2 ~~employees have access (and NATE employees do not).¹⁸~~
3 • ~~In 2010, Mr. Jeff Holoubek, the Director of Legal and Finance for Free~~
4 ~~Conferencing, became President of NAT-CC without even a vote taken~~
5 ~~by the NAT-CC Board of Directors.¹⁹~~
6 • ~~In 2010 and 2011, WideVoice made loans to NAT-CC in order to pay~~
7 ~~for day-to-day operations.²⁰ When AT&T made a large payment to~~
8 ~~NAT-CC in January 2011, Mr. Holoubek simply directed Mr. Cestero to~~
9 ~~use most of that payment to payback some of the WideVoice loans.²¹~~
10 ~~This is not in accordance with the Service Agreement that requires that~~
11 ~~75%-95% of this amount be paid to Free Conference, and the~~
12 ~~balance retained by NAT-CC.~~
13 • ~~Free Conference is the only conference calling company with which~~
14 ~~NAT-CC is in business. In fact, the Service Agreement prohibits~~
15 ~~NAT-CC from doing business with any other conference calling~~
16 ~~company.²² In 2010 and 2011, NAT-CC paid Free Conference [Begin~~
17 ~~Confidential] \$ [REDACTED] in "Marketing Fees,"²³ which is actually a~~
18 ~~sharing of switched access revenues [End Confidential].~~
19

¹⁸ ~~Mar. 3, 2011 Tr. p. 70.~~

¹⁹ ~~Mar. 3, 2011 Tr. p. 68.~~

²⁰ ~~March 3, 2011 Tr. Exh. 26.~~

²¹ ~~March 3, 2011 Tr. p. 98.~~

²² ~~Service Agreement, paragraph 6.~~

²³ ~~NAT-CC's 2010 and 2011 Financial Statements, Exhibit RGF-8.~~

1 Q. ~~What other evidence is there that NAT CC was established as a sham~~
2 ~~entity for the purpose of billing Sprint and other IXCs as part of its~~
3 ~~traffic pumping scheme?~~

4 A. ~~As referenced above, NAT CC does not charge traditional end users for~~
5 ~~service. Also, according to the Service Agreement, NAT CC is not charging~~
6 ~~anything for services and connectivity it provides to Free Conference.²⁴~~

7 ~~NAT CC's business plan is to rely on the billing of access charges to IXCs.~~

8 ~~Mr. Reiman testified on this point. Specifically, he stated:~~

9 ~~[w]e bill [the IXCs], and that's how this whole big picture works. That's~~
10 ~~how [sic] the business model is based on.²⁵~~
11

12 ~~Mr. DeJordy also has commented on the point that the business was~~

13 ~~established for the purpose of billing access charges. Specifically, he~~

14 ~~stated:~~

15 ~~[the] business model is largely dependent on the use of~~
16 ~~FreeConferenceCall and other services that use its networks to~~
17 ~~terminate calls.²⁶~~
18

19 V. Financial Analysis

20

21 A. CCST Profitability

22

23 Q. Have you reviewed the financial statements for NAT CC?

²⁴ Service Agreement, at paragraph 22.

²⁵ Oct. 14, 2010 Tr. p. 66.

²⁶ <http://blog.freeconferencecall.com/?paged=7>.

1 ~~A. Yes. I have reviewed the Balance Sheet and Income Statement (Profit &~~
2 ~~Loss) for NAT-CC for 2010 and 2011. I have concluded that, consistent~~
3 ~~with the terms of the Joint Venture Agreement, CCST has not financially~~
4 ~~benefitted from its ownership in NAT-CC, while NATE, WideVoice, and Free~~
5 ~~Conference are reaping significant windfalls from NAT-CC.~~

6
7 ~~Q. What percent ownership does the CCST have in NAT2.~~

8 ~~A. As discussed above, the CCST owns 51% of NAT-CC. I will use this 51%~~
9 ~~ownership in the following analysis.~~

10
11 ~~4. Balance Sheet~~

12
13 ~~Q. Analyzing NAT-CC's Balance Sheet as of December 31, 2011, has the~~
14 ~~CCST financially benefitted from its ownership position in NAT-CC?~~

15 ~~A. No. Through December 31, 2011, the CCST has not financially benefitted~~
16 ~~from its ownership in NAT-CC. In fact, the CCST has lost substantial value~~
17 ~~from this business. As of December 31, 2011.~~

18 [Begin Confidential]

- 19 • ~~CCST's share of equity investment is \$[REDACTED] due~~
20 ~~primarily to [REDACTED] in 2010 and 2011,~~
21 • ~~CCST's share of an outstanding long term debt to WideVoice~~
22 ~~Communications is \$[REDACTED] and~~
23 • ~~CCST's share of "Total Assets" is only \$[REDACTED].~~

1 [End Confidential]

2

3 Thus, as summarized in Table 1, in just two years CCST has experienced a
4 total loss in value of [Begin Confidential] \$ [redacted] [End Confidential].

5 [Begin Confidential]

6 Table 1

7 CCST 2010 and 2011 Change in Value

8

A	B	C
Row	Description	Amount
1	Equity Investment	[redacted]
2	Loan from WVC	[redacted]
3	Total Assets	[redacted]
4	Total Value	[redacted]

9

10

11

[End Confidential]

12 Q How did you arrive at these figures?

13 A As of December 31, 2011, NAT CC reports cumulative "Retained Earnings"

14 of [Begin Confidential] [redacted] \$ [redacted], "Net Income" in 2011 of

15 [redacted] \$ [redacted], and "Shareholder Distributions" of [redacted] \$ [redacted],

16 which adds to "Total Equity" of [redacted] \$ [redacted]. Thus, CCST's 51%

17 ownership means that CCST's cumulative "Total Equity" investment in

18 NAT-CC is worth [redacted] \$ [redacted] (\$ [redacted] * 51%) [End

19 Confidential].

20

21 As of December 31, 2011, NAT CC also reports an outstanding loan from

22 WideVoice [Begin Confidential] \$ [redacted]. Thus, CCST's share of this

23 long term liability is \$ [redacted] (\$ [redacted] * 51%) [End Confidential]

24

1 Finally, NAT-CC reports "Total Assets" of [Begin Confidential] \$ [REDACTED].

2 Thus, CCST's share of "Total Assets" is only \$ [REDACTED] [\$ [REDACTED] * 51%]

3 [End Confidential].

4
5 ~~2. Income Statement (Profit & Loss)~~

6
7 Q ~~Analyzing NAT-CC's Income Statements (Profit & Loss) for 2010 and~~
8 ~~2011, has the CCST financially benefitted from its ownership position~~
9 ~~in NAT-CC?~~

10 A. ~~No, CCST has not financially benefitted from its ownership in NAT-CC. In~~
11 ~~fact, the CCST [Begin Confidential] [REDACTED] in~~
12 ~~both 2010 and 2011 [End Confidential].~~

13
14 ~~Even if NAT-CC was to report an operating profit, it is doubtful that CCST~~
15 ~~would realize any significant financial benefit. As already discussed in~~
16 ~~Section IV, under the terms of the Service Agreement, NAT-CC pays 75%-~~
17 ~~95% of its access revenues directly to Free Conference.~~

18
19 ~~In addition, per the unreasonable terms of its Joint Venture Agreement,~~
20 ~~CCST is entitled to share only a small part of NAT-CC's total revenue~~
21 ~~sources.~~

1 ~~Specifically, the Joint Venture Agreement states that CCST is allowed only~~
2 ~~a share of narrowly defined "Net Profits."~~

3 ~~**Section 6.04 Net Profits**~~

4 ~~Net Profits is defined as: (1) revenue generated from the provision of~~
5 ~~service to end user customers, including payments and universal~~
6 ~~service support, but does not include other sources of revenue, such~~
7 ~~as access charges related to services provided by third party~~
8 ~~businesses to locate on the reservation unless separately identified as~~
9 ~~NAT-CC revenue in an arrangement with third party businesses; minus~~
10 ~~(2) costs associated with the build out, operation, and maintenance of~~
11 ~~the telecommunications network on the Crow Creek reservation,~~
12 ~~including repayment of debt, interest, taxes, and maintenance and~~
13 ~~operations expenses.~~
14

15 ~~Q Looking at NAT-CC's 2010 and 2011 Income Statements, is there any~~
16 ~~"Net Profits" attributable to CCST?~~

17 ~~A NAT-CC financials indicate "End User Fee Income" of [Begin Confidential]~~
18 ~~\$[REDACTED] in 2010 and \$[REDACTED] in 2011 [End Confidential]. Setting aside the~~
19 ~~limitations on sharing "Net Profits" under the Joint Venture Agreement,~~
20 ~~business expenses would have to be paid before CCST would receive its~~
21 ~~51% share of its "Net Profits." Potential CCST "Net Profits" are further~~
22 ~~limited because less than 10% of tribal members receive telephone service~~
23 ~~from CCST,²⁷ and they receive that telephone service for free.²⁸ This is~~
24 ~~supported by the fact that in March 2011, Peter Lengkeek, the Treasurer of~~
25 ~~CCST, testified that CCST had received no money from NAT-CC.²⁹~~

²⁷ See Mar. 2, 2011 Tr. pp. 151 and 154, where Mr. Lengkeek testified that there were approximately 115 installations of service. Compare that to the 2000 Census Data, included as Exhibit RGF-10, that shows a total Native American population on the CCST reservation of 1,936.

²⁸ Mar. 3, 2011 Tr. p. 150.

²⁹ Mar. 3, 2011 Tr. p. 171. "Q. My question to you was, isn't it true the Tribe has received no money from NAT. Isn't that correct? A: Yes."

1

2 ~~B. NATE, WideVoice, and Free Conference Profitability~~

3

4 ~~Q. Have NATE, WideVoice, and Free Conference financially benefitted~~
5 ~~from its ownership position in NAT-CC?~~

6 A. ~~Yes, NATE, WideVoice, and Free Conference have profited from their~~
7 ~~investment in NAT-CC. The terms of the Joint Venture Agreement and~~
8 ~~Service Agreement virtually guarantees that NATE, WideVoice, and Free~~
9 ~~Conference will profit from NAT-CC. Using reasonable assumptions, I~~
10 ~~estimate that in 2010 and 2011 alone, NATE, WideVoice, and Free~~
11 ~~Conference collectively have realized a positive cash flow of approximately~~
12 ~~[Begin Confidential] \$ [REDACTED] [End Confidential].~~

13

14 ~~Q. How did you arrive at these figures?~~

15 ~~A. There are at least four sources of income for NATE, WideVoice, and Free~~
16 ~~Conference. First, per the terms of the unreasonable Joint Venture~~
17 ~~Agreement, NATE and WideVoice get to skim off 15% of "Gross Revenues"~~
18 ~~before CCST sees a dime. Specifically, the Joint Venture Agreement~~
19 ~~states.~~

~~Section 6.06 WVC and NATE Cost Passthrough Escrow for On-Going Operation and Maintenance Costs.~~

~~NATE and WVC will incur expenses related to the operation and maintenance of the Crow Creek telecommunications network that may not be readily segregated from the other operation and maintenance expenses incurred by NATE and WVC. To cover such expenses, 15% of gross revenues of NAT-CC shall be set aside and placed in an escrow account for the benefit of NATE and WVC.~~

~~NAT-CC reported "Total Income" of [Begin Confidential] \$ [REDACTED] in~~

~~2010 and \$ [REDACTED] in 2011, or a two-year total of \$ [REDACTED]. Note that (1)~~

~~NAT-CC reports "Total Income" rather than the typical "Total Revenue," and~~

~~(2) no "escrow amount" appears on the "Income Statement." Thus, it~~

~~appears that the NAT-CC reported "Total Income" is likely calculated after~~

~~the 15% escrow has been deducted from "Gross Revenue." The NATE and~~

~~WideVoice escrow amount for 2010 and 2011 is approximately \$ [REDACTED]~~

~~(\$ [REDACTED] / (1 - 15%)) = [REDACTED] [End Confidential].~~

~~Second, the majority of NAT-CC's operational expenses are, in fact, the~~

~~result of services provided by WideVoice, and Free Conference. Thus,~~

~~these expenses are, as a result, direct revenue sources to WideVoice, and~~

~~Free Conference. NAT-CC's two-year "Marketing Expense" of [Begin~~

~~Confidential] \$ [REDACTED] is, in fact, a revenue sharing arrangement paid~~

~~directly to the Free Conference, which is owned by Dave Erickson, who also~~

~~is an owner of WideVoice. In fact, [REDACTED]% of all NAT's access revenues in~~

~~2010 and 2011 were paid directly to Free Conference Call [End~~

~~Confidential]~~

1
2 ~~Third, NAT-CC's two-year "Repair and Maintenance" of [Begin~~
3 ~~Confidential] \$ [REDACTED] is most likely paid directly to NATE and WideVoice~~
4 ~~per terms of the Joint Venture Agreement³⁰ [End Confidential]. In its~~
5 ~~responses to Sprint's Discovery Requests, NAT-CC refused to provide~~
6 ~~information on this expense item. I will assume 100% of this expense item~~
7 ~~was paid directly to NATE and WideVoice.~~

8
9 ~~Fourth, according to the 2011 NAT-CC's "Balance Sheet," NAT-CC has paid~~
10 ~~a total of [Begin Confidential] \$ [REDACTED] of "Shareholder Distributions," i.e.,~~
11 ~~dividends paid to the owners. At least \$ [REDACTED] of this "Shareholder~~
12 ~~Distribution" was paid directly to Mr. Reiman and Mr. DeJordy, the owners~~
13 ~~of WideVoice.³¹ [End Confidential].~~

14
15 ~~In addition, I suspect that some portion of NAT-CC's two-year "Professional~~
16 ~~Fees" of [Begin Confidential] \$ [REDACTED] and "Consulting Fees" of \$ [REDACTED]~~
17 ~~is most likely paid directly to NATE and WideVoice per terms of the Joint~~
18 ~~Venture Agreement³² [End Confidential]. However, in its responses to~~
19 ~~Sprint's Discovery Requests, NAT-CC refused to provide information on~~
20 ~~these expense items. Without further information, I have not included any of~~
21 ~~these amounts in this analysis, which makes my estimate conservative.~~

³⁰ ~~Joint Venture Agreement, Articles III and IV.~~

³¹ ~~Mar. 3, 2011 Tr. p. 76-77.~~

³² ~~Joint Venture Agreement, Articles III and IV.~~

1
2 The following Table 2 summarizes the estimated total positive cash flow of
3 ~~[Begin Confidential]~~ \$ [REDACTED] that has been realized by NATE,
4 ~~WideVoice, and Free Conference [End Confidential]~~

5 ~~[Begin Confidential]~~
6 ~~Table 2~~
7 ~~NATE, WideVoice, and Free Conference~~
8 ~~2010 and 2011 Cash Flows~~
9

A	B	C
Row	Description	Amount
1	Escrow	
2	Marketing Fee	
3	Repair & Maintenance	
4	Shareholder Distribution	
5	Total	

10
11 ~~[End Confidential]~~
12

13 ~~C. CCST Vs. NATE, WideVoice, and Free Conference~~

14
15 Q. ~~What do you conclude about the financial relationship between CCST~~
16 ~~and NATE & WideVoice?~~

17 A. ~~As discussed in Section IV, the Joint Venture Agreement and Service~~
18 ~~Agreement are intentionally designed to enrich NATE, WideVoice, and Free~~
19 ~~Conference, while leaving CCST with little financial benefit. Even worse,~~
20 ~~these contracts will likely leave CCST with a significant liability. Specifically,~~
21 ~~I have estimated that in 2010 and 2011 NATE, WideVoice, and Free~~
22 ~~Conference have realized a positive cash flow of approximately [Begin~~
23 ~~Confidential] \$ [REDACTED], as summarized in Table 2 [End Confidential].~~
24 ~~This cash has gone directly to entities such as Free Conference and Wide~~

1 ~~Voice located or operating in California and Nevada. None of this cash will~~
2 ~~ever benefit the CCST.~~

3
4 ~~In contrast, CCST has accumulated value of [Begin Confidential] [REDACTED]~~
5 ~~\$ [REDACTED], as summarized in Table 1 [End Confidential].~~

6
7 ~~**D. Future Financial Viability of NAT CC**~~

8
9 ~~**Q. Do you believe that NAT CC is a financially viable entity in the future?**~~

10 ~~**A.** No, I do not believe that NAT CC is a financially viable entity in the future.~~

11 ~~As already discussed, NAT CC was established for one reason only, "traffic~~
12 ~~pumping." In recent FCC decisions, the FCC has specifically targeted~~
13 ~~"access stimulation," its term for "traffic pumping."~~

14
15 ~~**Q. How has the FCC targeted "traffic pumping?"**~~

16 ~~**A.** In the FCC's recent *Connect America Order*, the FCC has an entire section~~
17 ~~titled "Rules To Reduce Access Stimulation." In this Order, the FCC~~
18 ~~recognizes the harmful effects of traffic pumping. For example, the FCC~~
19 ~~explicitly states:~~

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

22
23 ~~Access stimulation imposes undue costs on consumers, inefficiently~~
24 ~~diverting capital away from more productive uses such as broadband~~
25 ~~deployment. (¶ 663)~~
26

1 ~~The record indicates that a significant amount of access traffic is going~~
2 ~~to LECs engaging in access stimulation. ... When carriers pay more~~
3 ~~access charges as a result of access stimulation schemes, the amount~~
4 ~~of capital available to invest in broadband deployment and other~~
5 ~~network investments that would benefit consumers is substantially~~
6 ~~reduced. (¶ 664)~~

7
8 ~~Access stimulation also harms competition by giving companies that~~
9 ~~offer a "free" calling service a competitive advantage over companies~~
10 ~~that charge their customers for the service. (¶ 665)~~

11
12 ~~... excess revenues that are shared in access stimulation schemes~~
13 ~~provide additional proof that the LEC's rates are above cost. (¶ 666)~~
14

15 ~~Q. Has the FCC explicitly rejected NAT-CC's premise that assisting Tribal~~
16 ~~lands somehow justifies "traffic pumping?"~~

17 ~~A. Yes. NAT CC's premise is essentially a "Robin Hood" defense it's alright~~
18 ~~to "rob the bank" as long as the stolen funds are put to good use. However,~~
19 ~~the FCC has explicitly rejected NAT CC's premise that assisting Tribal lands~~
20 ~~somehow justifies "traffic pumping." Explicitly, the FCC stated.~~

21 ~~Several parties claim that access stimulation offers economic~~
22 ~~development benefits, including the expansion of broadband services~~
23 ~~to rural communities and tribal lands. Although expanding broadband~~
24 ~~services in rural and Tribal lands is important, we agree with other~~
25 ~~commenters that how access revenues are used is not relevant in~~
26 ~~determining whether switched access rates are just and reasonable in~~
27 ~~accordance with section 201(h). Moreover, Congress created an~~
28 ~~explicit universal service fund to spur investment and deployment in~~
29 ~~rural, high cost, and insular areas, and the Commission is taking~~
30 ~~action here and in other proceedings to facilitate such deployment.~~
31 ~~(¶ 666)~~
32

33 ~~For example, the Connect America Order has set aside \$50 million of the~~

34 ~~Phase I Mobility Fund in 2012 specifically for tribal areas, and \$100 million~~

1 ~~of the Phase II Mobility Fund annual budget in future years specifically for~~
2 ~~tribal areas.~~

3

4 ~~Q How has the FCC addressed the problem of "traffic pumping?"~~

5 ~~A The FCC established a process where traffic pumping CLECs such as~~
6 ~~NAT-CC will have to reduce their rates on all intrastate and interstate traffic.~~
7 ~~In just over four years from now, by July 1, 2016, NAT-CC will have to~~
8 ~~reduce its rates for all interstate traffic, including "traffic pumping," to~~
9 ~~\$0.0007. By July 1, 2017, all traffic will be exchanged on a Bill and Keep~~
10 ~~basis, essentially a \$0.0000 rate.³³~~

11

12 ~~Q What effect will a rate of \$0.0007 have on NAT-CC's financials?~~

13 ~~A At a rate of \$0.0007, NAT-CC's business model will almost certainly fail.~~
14 ~~Table 3, below, restates NAT-CC's 2011 Income Statement assuming all~~
15 ~~IXCs pay the 2016 rate of \$0.0007.~~

³³ ~~Under a Bill and Keep arrangement, carriers do not bill each other for terminating the other~~
~~carrier's traffic. In other words, two carriers exchange each other's traffic without compensation~~
~~from the other carrier. Instead, all compensation is received from each carrier's own end-users.~~

~~[Begin Confidential]~~

~~Table 3~~

~~NAT CC 2011 Income Statement~~
~~Restated for July 2016 Rate of \$0.0007~~

Row	Description	2011 Income Statement		Assumptions
		Actual	At \$0.0007	
1	Minutes			
2	Sprint			13% of IXC total
3	Total Industry			Cell D2 / 13%
4	Rate		\$ 0.0007	July 2016 rate
5				
6	Gross Revenues			Cell D3 * D4
7	15% Escrow			Cell D6 * 15%
8	Revenues			Cell D6 - D7
9				
10	Expenses			
11	Marketing			Cell D8 * 75%
12	All Other Operating Exp.			
13	Total Expenses			
14				
15	Net Income		\$ (327,032)	

~~[End Confidential]~~

~~As can be seen, at the 2016 rate of \$0.0007, and at current demand and~~

~~expense levels, NAT CC will almost certainly lose over \$300,000 per year~~

~~under the following assumptions:~~

- ~~Sprint's actual interstate and intrastate minutes terminated to~~

~~NAT CC in 2011 were [Begin Confidential] [End~~

~~Confidential]~~

- ~~Sprint's minutes are equal to 13% of the total IXC industry,³⁴~~

- ~~All IXCs pay the \$0.0007 rate on every minute,~~

³⁴ ~~Sprint Communications Company, L.P., Plaintiff, vs. Native American Telecom, LLC, and Crow Creek Sioux Tribal Court, Defendants, United States District Court, District of South Dakota, Southern Division; Civ. 10-4110 KEC; Order Denying Defendant Native American Telecom's Motion for a Preliminary Injunction; May 31, 2011, at page 14, Exhibit KOF-9.~~

- ~~NAT-CC pays Free Conference a 75% "Marketing Fee" to Free Conference, which is equal to lowest end of the 75% - 95% payout range called for in the NAT-CC - Free Conference Service Agreement, and~~
- ~~All Other Operating Expenses remain unchanged.~~

~~Q How does this analysis conclude concerning transport rates under the FCC's Connect America Order?~~

~~A This analysis assumes that by 2016, transport will not be a significant source of revenue for NAT-CC under the Connect America Order. While the FCC did not address transport rate elements, it did ask for comments and suggestions as part of the FNPRM.~~

~~In addition to "traffic pumping," NAT-CC is also engaged in "mileage pumping," a deceptive practice of placing the conference calling company owned conference bridge equipment as far away as possible from a tandem switch for the sole purpose of inflating transport billings to the IXCs. In other words, rather than designing its network in the most efficient manner possible, as does any rational company, "mileage pumpers" such as NAT-CC intentionally and deliberately design their networks in as inefficient manner as possible - just to inflate the transport billings. South Dakota's geography is ideal for "mileage pumping."~~

1 ~~It is clear that the FCC wants to discourage the deceptive practice of~~
2 ~~"mileage pumping." Specifically, in the Connect America Order, the FCC~~
3 ~~states:~~

4
5 ~~Ultimately, we agree with concerns raised by commenters that the~~
6 ~~continuation of transport charges in perpetuity would be~~
7 ~~problematic. For example, the record contains allegations of~~
8 ~~"mileage pumping," where service providers designate distant~~
9 ~~points of interconnection to inflate the mileage used to compute~~
10 ~~the transport charges. Further, Sprint alleges that current incumbent~~
11 ~~LEC tariffed charges for transport are "very high and constitute a~~
12 ~~sizeable proportion of the total terminating access charges ILECs~~
13 ~~impose on carriers today." ... As a result, commenters suggest that~~
14 ~~perpetuating high transport rates could undermine the~~
15 ~~Commission's reform effort and lead to anticompetitive behavior~~
16 ~~or regulatory arbitrage such as access stimulation. We therefore~~
17 ~~seek comment on the appropriate treatment of, and transition for, all~~
18 ~~tandem switching and transport rates in the ENPRM. (¶ 820) (Bold,~~
19 ~~emphasis added.)~~
20

21 ~~Based on this comment, it would be unreasonable to allow "traffic pumping"~~
22 ~~and "mileage pumping" LECs such as NAT CC to continue to bill IXCs~~
23 ~~outrageous amounts for transport across vast distances for the sole purpose~~
24 ~~of inflating access billings.~~

25
26 ~~Assuming the FCC follows through on its intentions to eliminate "mileage~~
27 ~~pumping" by 2016, transport will not be a significant source of revenue for~~
28 ~~"traffic pumping" and "mileage pumping" LECs such as NAT CC.~~

29
30 ~~Q What do you conclude?~~

1 ~~A. As already discussed, NAT-CC's sole purpose for existence is to be a~~
2 ~~"traffic pump." Even in the best of conditions, i.e., if NAT-CC is somehow~~
3 ~~able to convince regulatory and legal authorities to require the IXC's to pay~~
4 ~~NAT-CC's past and current billings, the business model will begin to~~
5 ~~deteriorate immediately due to the forced rate reductions required by the~~
6 ~~ECC's Connect America Order. The NAT-CC business model will almost~~
7 ~~certainly fail by 2016 at a rate of \$0.0007, and will certainly fail by 2017~~
8 ~~under Bill-and-Keep. However, regardless of the authoritative decisions,~~
9 ~~NATE, WideVoice, and Free Conference will continue to siphon off at least~~
10 ~~[Begin Confidential] \$ [REDACTED] per year (one-half of the two-year estimate~~
11 ~~of \$ [REDACTED] from Table 2) from NAT-CC's operations [End Confidential].~~
12 ~~To the extent IXC's actually have to pay, and at a higher rate, NATE,~~
13 ~~WideVoice, and Free Conference's windfall will be significantly greater.~~
14
15 ~~However, once the NAT-CC business model inevitably fails, NATE,~~
16 ~~WideVoice, and Free Conference will exit the market, taking their~~
17 ~~accumulated windfall with them, leaving CDOT responsible for 51% of~~
18 ~~accumulated losses.~~

19
20 ~~**VI. Summary and Conclusion**~~

21
22 ~~**Q Should NAT-CC be granted certification in South Dakota?**~~

1 ~~A. No. First, for the reasons set forth in this testimony, the Commission should~~
2 ~~deny NAT CO's request for a Certificate, and should prohibit further~~
3 ~~provision of service by NAT CO to non-tribal members in the state.~~

4
5 ~~Second, if the Commission is inclined to grant certification, it should only do~~
6 ~~so after imposing conditions that address the issues raised in this testimony.~~

7
8 ~~Finally, before the Commission grants a Certificate to companies that are~~
9 ~~established for the purpose of operating an "access pumping" scheme, the~~
10 ~~Commission should consider establishing rules applicable to such~~
11 ~~operations, including ways to address "mileage pumping" and the intrastate~~
12 ~~rates that apply to this traffic. It is my opinion that high mileage and high~~
13 ~~rates are the primary reason that "access pumping" is occurring in rural~~
14 ~~states such as South Dakota.~~

15
16 **Q. Does this conclude your Direct Testimony?**

17 **A. Yes, it does.**

18
4561942v1

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

**SPRINT COMMUNICATIONS
COMPANY L.P.'S RESPONSE TO
NATIVE AMERICAN TELECOM,
LLC'S STATEMENT OF
UNDISPUTED FACTS**

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

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint 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 put forth facts showing that David Erickson is also one of NAT's key management personnel. See Direct Testimony of Randy Farrar ("Farrar Direct"), pp. 9-19 (NAT is a sham entity being run for the benefit of David Erickson and his companies).~~

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

SPRINT'S RESPONSE: Sprint does not dispute that Exhibit C to NAT's Revised Application contains certain confidential financial information that NAT represents as

being accurate and complete. ~~However, as explained in Sprint's Memorandum in Support of its Motion to Compel, and as described by Mr. Farrar, the information is neither complete nor accurate, and NAT has refused to provide discovery with respect to its representations regarding its financial qualifications. Sprint's Mem. in Supp. of Motion to Compel, pp. 11-17; 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).

SPRINT'S 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).

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed. Sprint notes that these responses are not part of the record as they were not filed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT's Revised Application was deemed complete by Staff, ~~and the matter sent to hearing, but denies the information contained therein is true, complete or accurate, for the reasons described by Mr. Farrar in his Direct Testimony and in Sprint's Motion to Compel. Farrar Direct, pp. 9-19, 26, Sprint's Mem. in Supp. of Motion to Compel, pp. 7-11, 11-17, 17-23. Sprint also disputes this statement as inconsistent with the rule governing summary judgment, which requires each material fact to be in a separate paragraph. SDCL § 15-6-56(e)(1). NAT's paragraph 11 is the equivalent of dozens of factual representations not identified with particularity. In addition, Sprint disputes this statement because it is not supported by "an appropriate citation to the record." SDCL § 15-6-26(e). None of the facts in the Revised Application were verified, and many were not addressed in testimony. They lack an "appropriate citation to the record," and the record lacks evidence that those statements are true. SDCL § 15-6-56(e)(1).~~

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).

SPRINT'S 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 -").

SPRINT'S 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).

SPRINT'S RESPONSE: Sprint does not dispute that NAT is owned in part by the Crow Creek Sioux Tribe, ~~but claims NAT is a sham entity being operated for the purpose of benefiting Dave Erickson and his companies. See 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).

SPRINT'S 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).

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S 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).

SPRINT'S RESPONSE: Sprint does not dispute this is the ownership structure set forth in the joint venture agreement, ~~but denies that the Tribe is effectively an "owner" exercising the rights normally held by one with 51% ownership. See Farrar Direct, pp. 9-10~~

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: This statement of fact is not verified or otherwise supported by sworn testimony. It therefore lacks "an appropriate citation to the record" and does not establish an undisputed fact for purposes of summary judgment. SDCL § 15-6-56(c)(1).

23. WideVoice is a telecommunications engineering company.

SPRINT'S RESPONSE: This statement of fact is not verified or otherwise supported by sworn testimony. It therefore lacks "an appropriate citation to the record" and does not establish 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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement. Sprint has proffered evidence that NAT was established and is being operated as a traffic pumping entity, and does not intend to provide facilities-based telephone service to compliment its advanced~~

~~broadband services. See Farrar Direct, pp. 9-19; Sprint's Mem. in Supp. of Motion to Compel, pp. 7-11.~~

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT claims it will provide service through its own facilities. ~~However, NAT has refused to provide discovery with respect to these representations. See Sprint's Mem. in Supp. of Motion to Compel, pp. 17-23 (Interrogatories 5, 6, 7, 18, 24, 43 and 44). In addition, NAT has failed to identify how it will provide intrastate interexchange service, and has not identified any facilities that would be used to do so. See Revised Application, pp. 2-12 (providing information called for by ARSD 20:10:32:03, but not ARSD 20:10:24:02).~~

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT is currently interconnected with Midstate. ~~Sprint denies that NAT is currently connected to "other carriers" based on NAT's refusal to identify such other carriers. See Sprint's Mem. in Supp. of Motion to Compel, p. 20 (Interrogatory No. 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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, p. 21 (Interrogatory No. 24).~~

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

SPRINT'S RESPONSE: ~~Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).~~

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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).~~

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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement based on NAT's refusal to provide discovery. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).~~

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).

SPRINT'S 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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement because it is not supported by "an appropriate citation to the record" SDCI § 15-6-26(c)(1). The Revised Application was not verified. Sprint also disputes this statement because NAT's response to Staff Request 1-3 (Exhibit A hereto) indicates that NAT cannot provide Enhanced 911 in compliance with all rules and regulations, and cannot currently offer TRS.~~

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).

SPRINT'S RESPONSE: Sprint has no basis to dispute NAT's representation that it will, in the future, target its direct marketing efforts to only those individuals and organizations within the Reservation. ~~However, the entity receiving the most calls through NAT is not an individual or organization within the Reservation, and Sprint expects this will continue.~~

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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).

SPRINT'S 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).

SPRINT'S RESPONSE: Sprint has no basis to dispute that NAT intends to post its rates, terms and conditions.

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: ~~Disputed. See supra ¶ 14 (regarding NAT's statement that it is a Tribally-owned telecommunications carrier. Sprint does not dispute that NAT is currently providing service on the Reservation.~~

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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement because Jeff Holoubek has failed to establish he has personal knowledge of the statement made and thus there is no "appropriate citations to the record." SDCL § 15-6-56(e)(1). Mr. Holoubek is not a member of the Tribe and was not associated in any way, to Sprint's knowledge, with the Tribe in 1997 or 2008. Nor has NAT produced any documentation to support this assertion.~~

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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to the operations of the Tribal Utility Authority. See Sprint's Mem. in Support of Motion to Compel p. 8 (Interrogatory No. 22).~~

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).

SPRINT'S RESPONSE: Sprint does not dispute that the order contains those words, ~~but denies the statement on the basis that NAT has refused to provide Sprint discovery with respect to the operations of the Tribal Utility Authority. See Sprint's Mem. in Support of Motion to Compel, p. 8 (Interrogatory No. 22).~~

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

SPRINT'S RESPONSE: Sprint does not dispute that NAT currently provides service on the Reservation. ~~Sprint denies that this is pursuant to the Approval Order on the basis that NAT has refused to provide Sprint discovery with respect to the operations of the Tribal Utility Authority. See Sprint's Mem. in Support of Motion to Compel, p. 8 (Interrogatory No. 22).~~

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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: ~~Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to the identification and location of telecommunications equipment and telecommunications towers. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).~~

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

SPRINT'S RESPONSE: ~~Disputed. NAT's representative testified in March 2011 that the training facility (the Learning Center) was not yet opened. See Farrar Direct, Ex. 4 p. 159. Sprint asked NAT in discovery when it opened its training facility and NAT refused to answer. NAT's Response to Sprint's Interrogatory no. 32.~~

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).

SPRINT'S RESPONSE: ~~Sprint denies this statement on the basis that NAT has refused to provide Sprint discovery with respect to these alleged residential and business users. See Sprint's Mem. in Support of Motion to Compel, pp. 18-19, 22-23 (Interrogatory Nos. 5-7, 43-44).~~

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).

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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).

SPRINT'S RESPONSE: Sprint does not dispute this statement, but notes that this is not supported by "an appropriate citation to the record." SDCL § 15-6-26(c)(1). The Application was not verified and this statement is not found in any sworn testimony.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S 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).

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: Undisputed.

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

SPRINT'S RESPONSE: ~~Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to its finances. See Sprint's Mem. in Support of Motion to Compel, pp. 11-17.~~

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).

SPRINT'S RESPONSE: ~~Sprint disputes this statement on the basis that NAT has refused to provide Sprint discovery with respect to its finances. See Sprint's Mem. in Support of Motion to Compel, pp. 11-17.~~

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

SPRINT'S RESPONSE: ~~Sprint denies this statement on the basis that NAT has refused to provide Sprint discovery with respect to its ability to obtain additional financing. See Sprint's Mem. in Support of Motion to Compel, p. 16 (Document Request No. 2).~~

Dated: April 11, 2012

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