

**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.

Additional Supplemental Direct Testimony of Randy G. Farrar

Filed February 14, 2014

PUBLIC VERSION

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ADDITIONAL SUPPLEMENTAL DIRECT TESTIMONY

I. Introduction and Summary

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

A. My name is Randy G. Farrar. My title is Regulatory Policy Manager for Sprint United Management, the management subsidiary of Sprint Corporation. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. Did you previously file testimony in this proceeding?

A. Yes. I filed Direct Testimony on August 30, 2013, and Supplemental Direct Testimony on December 4, 2013.

Q. What is the purpose of this Additional Supplemental Direct Testimony?

A. I am providing rebuttal to the February 7, 2014 Direct Testimonies of Messrs. David Erickson, Gene DeJordy, and Carey Roesel, testifying on behalf of Native American Telecom ("NAT-CC").¹ Also, I am providing, and

¹ Consistent with my earlier testimonies, I am using the acronym "NAT-CC," i.e., NAT Crow Creek, as 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 wholly non-tribal entity that is a part owner of NAT CC.

1 commenting on, additional financial information provided by NAT-CC to
2 discovery in January 2014.

3

4 **Q. Please Summarize your Additional Supplemental Direct Testimony.**

5 A. First, NAT-CC's February 7, 2014 testimonies do not even attempt to refute
6 any of the facts and conclusions in my Direct and Supplemental Direct
7 Testimony; specifically, that NAT-CC at present is not a financially viable
8 company, is entirely dependent on its "traffic pumping" business with Free
9 Conferencing Corporation, and that the FCC *CAF Order*² has made the
10 current "traffic pumping" business model unsustainable.

11

12 Second, NAT-CC's February 7, 2014 testimonies misrepresent the clear
13 intent of the FCC *CAF Order*. A plain reading of the FCC *CAF Order* makes
14 it clear that "access stimulation," the FCC's term for "traffic pumping," is not
15 in the public interest. The *CAF Order* dedicates 46 paragraphs under a
16 subsection titled "Rules To Reduce Access Stimulation."

17

18 Third, just two weeks before the hearing dates, NAT-CC has presented a
19 new "business plan or financial model," which consists of nothing more than
20 a two and one-third page Excel worksheet, without out any written
21 documentation and with virtually no support information. Yet, NAT-CC

² *In the Matter of Connect America Fund, et al*; WC Docket No. 10-90, et al; FCC 11-161; Report and Order and Further Notice of Proposed Rulemaking; Adopted October 27, 2011, Released November 18, 2011 ("*CAF Order*").

1 presents this “business plan or financial model” as a cure-all for NAT-CC’s
2 financial difficulties. Most telling, however, is that this new “business plan or
3 financial model” still relies on “traffic pumping.”

4

5 Finally, NAT-CC has not provided any rebuttal to my argument that the
6 entire purpose of NAT-CC is to siphon cash directly to Free Conferencing
7 Corporation. To this end, NAT-CC has been very successful, having
8 delivered a total of **[Begin Confidential]** [REDACTED] **[End Confidential]** in
9 cash to Free Conferencing Corporation as of December 31, 2013.

10 NAT-CC’s February 7, 2014 testimonies do not even address this fact – it is
11 the “elephant in the living room” which NAT-CC hopes no one will notice.

12

13 **II. Rebuttal to the February 7, 2014 NAT-CC Direct Testimonies**

14

15 **A. Direct Testimony of Mr. DeJordy**

16

17 **Q. On page 11, last paragraph, Mr. DeJordy begins a lengthy discussion**
18 **of a new NAT-CC “business plan or financial model.” Please**
19 **comment.**

20 **A.** Mr. DeJordy’s and NAT-CC’s new “business plan or financial model”
21 consists of a two and one-third page Excel worksheet, which was first seen
22 by Sprint with the February 7, 2014 Direct Testimony. I have neither the
23 electronic worksheet nor the supporting information to perform any

1 meaningful analysis of this “business plan.” However, I do have the
2 following observations.

3
4 First, Sprint has no objection to any NAT-CC business plan that does not
5 involve “traffic pumping.” If NAT-CC is able to become a financially
6 successful company under this new “business plan,” but without “traffic
7 pumping,” so be it.

8
9 Second, and unfortunately, this does not appear to be the case. Given the
10 following statement by Mr. DeJordy, “NAT has implemented a well-
11 established business model based upon a combination of **access revenue**,
12 local services revenue, and new service revenue,”³ it is clear that this new
13 “business plan” still depends on revenue derived from “traffic pumping.”
14 Since the FCC *CAF Order* gradually eliminates all revenues associated with
15 traffic pumping, the financial outlook of this new “business plan” is
16 questionable.

17
18 Third, I have difficulty describing a two and one-third page Excel worksheet
19 as a “business plan or financial model.” There is no written plan, no market
20 analysis, no supporting documentation, and no information concerning most
21 of the numbers or assumptions contained in the worksheet.

³ *Direct Testimony of Gene DeJordy*, at page 14 (emphasis added).

1 Finally, I find the timing of this new business model perplexing. Sprint has
2 sought any business plans from NAT-CC since its February 23, 2012 First
3 Set of Interrogatories.⁴ NAT-CC neither produced any such document in its
4 responses to Interrogatory No. 34, nor supplemented its response during
5 the two years that have elapsed since that time. But now, just two weeks
6 prior to the hearing date, NAT-CC provides a two and one-third page
7 “business plan or financial model” as an attachment to Mr. DeJordy’s Direct
8 Testimony. There are also some curious omissions. For example, the
9 HUBZone Program referred to by Mr. DeJordy has been in existence since
10 1998, yet NAT-CC did not make an application until January 9, 2014. I also
11 find it odd that Mr. DeJordy makes no reference to the Buy Indian Act, even
12 though Mr. Erickson criticizes my testimony for ignoring whatever
13 unidentified revenue source this might provide.⁵

14
15 **Q. On page 12, first paragraph, Mr. DeJordy mentions spectrum acquired**
16 **from Sprint. Please comment.**

17 A. While I was not aware of this transaction, I did visit the FCC’s Universal
18 Licensing System website concerning this transaction. I located the license
19 Mr. DeJordy referred to, and had the website map the license. Two
20 printouts associated with these websites are contained in Attachment RGF-
21 24. Reviewing a county map of South Dakota, it appears that this spectrum

⁴ See Interrogatory No. 34.

⁵ As I understand it, the Buy Indian Act is limited to the U.S. Bureau of Indian Affairs.

1 license covers the geographic boundary of Buffalo County, South Dakota.
2 Reviewing U.S. Census Bureau information for Buffalo County reveals very
3 low population, low population density, and low business count, all of which
4 would limit business opportunities. Reviewing a road map of Buffalo County
5 does not show any major interstate or state highways, which would limit
6 business opportunities for wireless roaming.

7

8 **B. Direct Testimony of Mr. Roesel**

9

10 **Q. On page 6, last paragraph, Mr. Roesel provides what he claims is the**
11 **FCC’s description of “access stimulation.” Is this correct?**

12 A. No. While he has correctly quoted a portion of the FCC *CAF Order*, ¶ 656,
13 this is not the actual FCC definition of “access stimulation.” The actual
14 definition can be found in ¶ 658 of the *CAF Order*, and is codified in C.F.R.
15 47 § 61.3 Definitions:

16 (bbb) *Access stimulation.*

17

18 (1) A rate-of-return local exchange carrier or a Competitive Local
19 Exchange Carrier engages in access stimulation when it satisfies
20 the following two conditions:

21

22 (i) Has an access revenue sharing agreement, whether
23 express, implied, written or oral, that, over the course of the
24 agreement, would directly or indirectly result in a net
25 payment to the other party (including affiliates) to the
26 agreement, in which payment by the rate-of-return local
27 exchange carrier or Competitive Local Exchange Carrier is
28 based on the billing or collection of access charges from
29 interexchange carriers or wireless carriers. When
30 determining whether there is a net payment under this rule,
31 all payments, discounts, credits, services, features,

1 functions, and other items of value, regardless of form,
2 provided by the rate-of-return local exchange carrier or
3 Competitive Local Exchange Carrier to the other party to the
4 agreement shall be taken into account; and
5

6 (ii) Has either an interstate terminating-to-originating traffic ratio
7 of at least 3:1 in a calendar month, or has had more than a
8 100 percent growth in interstate originating and/or
9 terminating switched access minutes of use in a month
10 compared to the same month in the preceding year.
11

12 (2) The local exchange carrier will continue to be engaging in access
13 stimulation until it terminates all revenue sharing arrangements
14 covered in paragraph (a)(1)(i) of this section. A local exchange
15 carrier engaging in access stimulation is subject to revised
16 interstate switched access charge rules under §61.38 and
17 §69.3(e)(12) of this chapter.
18

19 Per the FCC's definition, "access stimulation" consists of two components,

20 (1) "access revenue sharing" (a term for NAT-CC's kickbacks to Free
21 Conferencing Corporation), and (2) high terminating volumes (such as
22 NAT-CC's terminating traffic to Free Conferencing Corporation). NAT-CC is
23 clearly involved in "access stimulation" per the FCC definition.
24

25 The "access revenue sharing" component cannot be overemphasized. The
26 FCC explicitly stated that "excess revenues that are shared in access
27 stimulation schemes provide additional proof that the LEC's rates are above
28 cost."⁶ The fact that NAT-CC is willing and able to kickback 75% of its
29 access revenues to Free Conferencing Corporation is proof that its access

⁶ CAF Order, at (¶ 666).

1 rates are excessive. The total amount of this kickback, as of December 31,
2 2013, is [Begin Confidential] [REDACTED] [End Confidential].

3

4 **Q. On page 7, first paragraph, Mr. Roesel states, “Two things are**
5 **noteworthy about the FCC’s description. First, access stimulation is**
6 **always linked to ‘high switched access rates’.” Is this correct?**

7 A. No, in fact the FCC’s definition of “access stimulation” makes no reference
8 to “high switched access rates.” The FCC definition’s first component is
9 explicitly concerned with “revenue sharing,” not “high switched access
10 rates.”

11

12 **Q. On page 7, first paragraph, Mr. Roesel states, “Two things are**
13 **noteworthy about the FCC’s description. ... Second, the ‘stimulation’**
14 **describes access minute demand that is *shifted* to a particular LEC,**
15 **much more than an increase in overall access minute demand.” Is this**
16 **correct?**

17 A. No. Again, the FCC’s definition of “access stimulation” makes no reference
18 to “access minute demand that is *shifted* to a particular LEC.” The FCC
19 definition’s second component is explicitly concerned with excessive access
20 minute demand of a particular LEC, not “access minute demand that is
21 *shifted* to a particular LEC.”

22

1 Q. On page 7, last paragraph, Mr. Roesel answers the question, “Is
2 access stimulation inherently bad?”, with the answer “No.” Please
3 comment.

4 A. I find Mr. Roesel’s answer at complete odds with the plain intent of the FCC
5 *CAF Order* and the explicit statements by the FCC in that order. As
6 discussed in my Direct Testimony, the FCC has an entire section titled
7 “Rules To Reduce Access Stimulation.” The FCC dedicates 46 paragraphs
8 specifically to develop “Rules To Reduce Access Stimulation.”

9

10 The FCC *CAF Order* specifically recognizes the harmful effects of “access
11 stimulation,” the FCC’s term for “traffic pumping.” For example, the FCC
12 explicitly states:

13 We conclude that these revised interstate access rules are narrowly
14 tailored to minimize the costs of the rule revisions on the industry,
15 while reducing the **adverse effects of access stimulation** (¶ 660)

16

17 The record confirms the need for prompt Commission action to
18 address the **adverse effects of access stimulation** (¶ 662)

19

20 **Access stimulation imposes undue costs on consumers,**
21 inefficiently diverting capital away from more productive uses such as
22 broadband deployment. (¶ 663)

23

24 The record indicates that a significant amount of access traffic is going
25 to LECs engaging in access stimulation. ... When carriers pay more
26 access charges as a result of access stimulation schemes, **the**
27 **amount of capital available to invest in broadband deployment**
28 **and other network investments that would benefit consumers is**
29 **substantially reduced.** (¶ 664)

30

31 **Access stimulation also harms competition** by giving companies
32 that offer a “free” calling service a competitive advantage over
33 companies that charge their customers for the service. (¶ 665)

34

1 ... excess revenues that are shared in access stimulation schemes
2 provide additional **proof that the LEC's rates are above cost.**
3 (**¶ 666**)

4
5 (Bold emphases added.)
6

7 Yet, Mr. Roesel would have us believe that the FCC does not believe that
8 "access stimulation" is "inherently bad."
9

10 **Q. On page 8, top paragraph, Mr. Roesel states, "Importantly, the Connect**
11 **America Order addresses access stimulation under a section titled**
12 **'Measures to Address Arbitrage'. Arbitrage is about exploiting price**
13 **disparities. By eliminating the price disparities, the Connect America**
14 **Order – in a single step – eliminated the host of alleged access**
15 **stimulation evils." Is this correct?**

16 **A.** No. This statement is absolutely false, and deliberately misstates the FCC's
17 treatment of "access stimulation" in the *CAF Order*. First, Mr. Roesel states
18 that the *CAF Order* "addresses access stimulation under a section titled
19 'Measures to Address Arbitrage'." He conveniently fails to read the very
20 next line in the *CAF Order* – a section subtitled "Rules to Reduce Access
21 Stimulation." The purpose of the next 46 paragraphs is to produce "Rules to
22 Reduce Access Stimulation," not to merely address "arbitrage," as Mr.
23 Roesel implies.
24

25 Second, Mr. Roesel's claim that "[b]y eliminating the price disparities, the
26 Connect America Order – in a single step – eliminated the host of alleged

1 access stimulation evils” is a grotesque misrepresentation of the FCC CAF
2 Order. There is no “single step.” Mr. Roesel ignores the FCC’s actual
3 eight-step transition period for price cap carriers.⁷ At the end of this eight-
4 step process, all price cap carriers and NAT-CC will have transitioned to a
5 Bill-and-Keep arrangement. Only at the end of this eight-step process will
6 the FCC’s “Rules to Reduce Access Stimulation” be fully implemented.

7
8 Mr. Roesel is making the argument that since NAT-CC has reduced its
9 access rate elements to the CenturyLink rate levels, everything is just fine
10 and that “access stimulation” is not even occurring. There is simply no
11 basis for such an argument.

12
13 **Q. On page 9, first paragraph, Mr. Roesel states, “In a post-Connect**
14 **America Order world, access stimulation does not increase costs to**
15 **consumers” Is this consistent with the FCC’s view of “access**
16 **stimulation?”**

17 A. No. The FCC explicitly stated, “Access stimulation imposes undue costs on
18 consumers, inefficiently diverting capital away from more productive uses
19 such as broadband deployment.”⁸

20

⁷ CAF Order, at ¶ 801. It is a ten-step transition for rate-of-return carriers.

⁸ CAF Order, at ¶ 663.

1 **Q. On page 12, first paragraph, Mr. Roesel states, “NAT is not mileage**
 2 **pumping. NAT’s mileage charges are the same as what the LEC**
 3 **servicing the same area would charge (except at much lower**
 4 **CenturyLink rates).” Is this correct?**

5 **A.** No, NAT-CC and its business partner Free Conferencing Corporation are
 6 absolutely engaged in “mileage pumping.” NAT-CC’s composite interstate
 7 rate of \$0.006327 includes 137 miles of transport, as shown in Table 6.⁹ In
 8 fact, transport mileage charges make up an incredible 65% of total switched
 9 access billings. Both NAT-CC and its business partner Free Conferencing
 10 Corporation are well aware of this fact. If Free Conferencing Corporation’s
 11 conference bridges were located, for example, in a CenturyLink tandem
 12 office, the billed rate would likely be reduced by 65%. NAT-CC’s remote
 13 location and 137 miles of transport make it an ideal “traffic pumping” and
 14 “mileage pumping” business partner for Free Conferencing Corporation.

15 **Table 6**
 16 **NAT-CC’s Composite Interstate Switched Access Rate**
 17

Rate Element	Element Rate	Miles	Composite Rate	
			Amount	% Total
EO - Local Switching	\$ 0.001974		\$ 0.001974	31.2%
Transport Facility Mileage Sensitive	0.000030	137.1	0.004113	65.0%
Transport Termination (Fixed)	0.000240		0.000240	3.8%
Total			\$ 0.006327	100.0%

18
 19
⁹ NAT-CC bills Sprint a single composite rate of \$0.006327. I determined the underlying mileage by applying the known individual rate elements, as shown in Table 6.

1 Q. On page 15, top paragraph, Mr. Roesel states, “However, assuming
2 arguendo that NAT is unable to continue operations in a bill and keep
3 environment, the Crow Creek customers will be no worse off than they
4 were *before* NAT came into the picture.” Please comment.

5 A. While this may be bluntly correct in an impersonal manner, it is also true
6 that if (or when) NAT-CC does discontinue operations, the CCST¹⁰
7 members will be left with no service for some interim period. The CCST will
8 also be left with some amount of abandoned equipment, including tower(s),
9 and it will be the majority owner of a defunct company that is unable to pay
10 its debt. This, of course, will be after Free Conferencing Corporation has
11 siphoned off at least [Begin Confidential] ██████████ [End Confidential]
12 from NAT-CC. While I cannot speak for the CCST, it would seem to me that
13 the CCST members would be much better off with a financially sound
14 enterprise with the business purpose of benefitting the CCST, rather than
15 Free Conferencing Corporation.

16
17 Finally, I believe the Commission has an obligation to determine whether
18 NAT-CC is a financially viable entity as part of this proceeding.

19

¹⁰ Crow Creek Sioux Tribe.

1 **C. Direct Testimony of Mr. Erickson**

2

3 **Q. Do you have any overall comments concerning the Direct Testimony**
4 **of Mr. Erickson?**

5 A. Yes. Throughout his Direct Testimony, Mr. Erickson repeatedly misstates
6 and incorrectly paraphrases my testimony. I will provide several examples.

7

8 **Q. On page 2, last paragraph, Mr. Erickson provides examples of**
9 **organizations using free conferencing services. Please comment.**

10 A. The list of out-of-state agencies that have utilized conference bridges in
11 South Dakota is actually evidence of the problem with the entire “traffic
12 pumping” business model and why the FCC *CAF Order* finds it not in the
13 public interest. The very fact that traffic originating from agencies as far
14 away as Washington D.C. and North Carolina is being transported over
15 1,000 miles to South Dakota, just to create a revenue stream for Free
16 Conferencing Corporation, is evidence of the market inefficiencies created
17 by “traffic pumping.” This is precisely why the *CAF Order* concluded that
18 “access stimulation imposes undue costs on consumers, inefficiently
19 diverting capital away from more productive uses such as broadband
20 deployment.”¹¹

21

¹¹ *CAF Order*, at ¶ 663.

1 **Q. On page 5, first paragraph, Mr. Erickson states, " Mr. Farrar**
2 **erroneously asserts that once 'terminating access' is reduced to 'bill**
3 **and keep,' NAT's business opportunities will evaporate." Please**
4 **comment.**

5 A. Mr. Erickson does not provide either a quote or cite to my testimony to this
6 "erroneous assert[tion]," because none exists. As already discussed above,
7 my testimony discusses the failure of NAT-CC's current business model
8 which is entirely dependent on "traffic pumping" with its business partner
9 Free Conferencing Corporation. I never discussed other business
10 opportunities, much less predicted that they would "evaporate."

11

12 **Q. On page 5, first paragraph, Mr. Erickson states, " Thus if 'free'**
13 **conferencing services are no longer available, there would be even**
14 **more revenue to share between FreeConferenceCall.com and**
15 **companies like NAT." Is this true?**

16 A. No, Mr. Erickson is not correct. Free Conferencing Corporation provides the
17 conferencing service, not NAT-CC. NAT-CC only provides the terminating
18 call function. The *2009/2012 Service Agreements* are one-sided documents
19 that require NAT-CC to deliver 75% of its terminating revenue to Free
20 Conferencing Corporation. But, there is no such obligation for Free
21 Conferencing Corporation to share any of its conferencing revenue with
22 NAT-CC. In other words, Free Conferencing keeps 100% of the revenue

1 associated with “pay” conferencing services, with absolutely no sharing of
2 this revenue with NAT-CC.

3

4 **Q. On page 6, first paragraph, Mr. Erickson states, “Mr. Farrar**
5 **erroneously asserts that FreeConferenceCall.com’s business model is**
6 **somehow ‘illegal.’” Please comment.**

7 A. Again, Mr. Erickson is unable to provide either a quote or cite to my
8 testimony to this “erroneous assert[tion],” because none exists. Nowhere in
9 my testimony do I claim that anyone is doing anything illegal. My testimony
10 does demonstrate that “traffic pumping” is not in the public interest, per the
11 FCC *CAF Order*.

12

13 **Q. On page 7, first paragraph, Mr. Erickson states, “Mr. Farrar submits**
14 **that NAT’s Second Revised Application should be denied because**
15 **access stimulation is not in the ‘public interest.’ However, Mr. Farrar**
16 **fails to provide any justification for this submission.” Please**
17 **comment.**

18 A. As already discussed, I have provided ample evidence that “access
19 stimulation is not in the ‘public interest’ – specifically the FCC *CAF Order*.

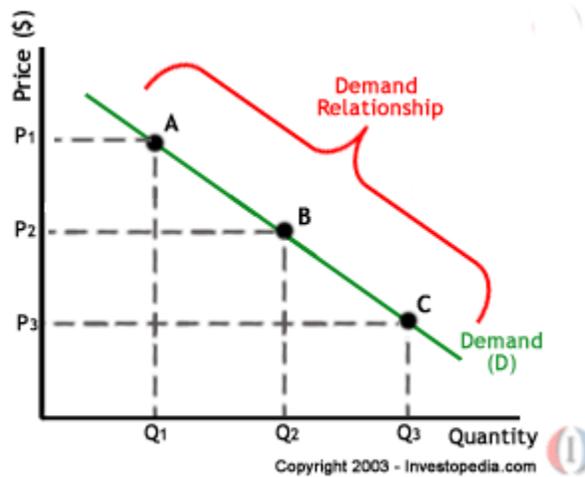
20

21 **Q. On page 7, last paragraph, Mr. Erickson states, Mr. Farrar makes the**
22 **incorrect assumption that people call more because the service is**
23 **‘free.’” Please comment.**

1 A. I find Mr. Erickson's criticism very perplexing. One of the most basic
2 tenants of economics is the "Law of Demand" – as price falls demand will
3 increase, all else equal. For example:

4 A. The Law of Demand

5
6 The law of demand states that, if all other factors remain equal, the
7 higher the price of a good, the less people will demand that good. In
8 other words, the higher the price, the lower the quantity demanded.
9 The amount of a good that buyers purchase at a higher price is less
10 because as the price of a good goes up, so does the opportunity cost
11 of buying that good. As a result, people will naturally avoid buying a
12 product that will force them to forgo the consumption of something else
13 they value more. The chart below shows that the curve is a downward
14 slope.



15

16 A, B and C are points on the demand curve. Each point on the curve
17 reflects a direct correlation between quantity demanded (Q) and price
18 (P). So, at point A, the quantity demanded will be Q1 and the price will
19 be P1, and so on. The demand relationship curve illustrates the
20 negative relationship between price and quantity demanded. The
21 higher the price of a good the lower the quantity demanded (A), and
22 the lower the price, the more the good will be in demand (C).¹²

23

¹² *Economics Basics: Supply and Demand*, by Reem Heikal. Found at www.investopedia.com/university/economics/economic3.asp.

1 The lowest price economically possible is “free” (other than paying someone
2 to use a product or service); therefore, under the Law of Demand, consumer
3 demand will be greater for free service than for service that costs money. I
4 am baffled as to why Mr. Erickson believes that the “Law of Demand” does
5 not apply to conferencing services.

6

7 **Q. On page 8, first paragraph, Mr. Erickson states, “In creating the CAF**
8 **Order, the FCC had a full understanding of the free conferencing**
9 **business model.” Please comment.**

10 A. Mr. Erickson uses this statement to make it appear as if the FCC has
11 condoned “traffic pumping” or “access stimulation.” I agree wholeheartedly
12 that “the FCC had a full understanding of the free conferencing business
13 model” – this is precisely why the FCC has made it clear that “access
14 stimulation” is not in the public interest, and why the FCC devoted 46
15 paragraphs specifically to develop “Rules To Reduce Access Stimulation.”

16

17 **Q. On page 8, second paragraph, Mr. Erickson states, “The FCC’s CAF**
18 **Order created the policy of the United States in the area of ‘access**
19 **stimulation.’ That policy expressly rejects the proposals and positions**
20 **of companies like Sprint, which repeatedly represented to the FCC that**
21 **free conferencing was ‘bad’ and not in the ‘public interest.’” Please**
22 **comment.**

1 A. Mr. Erickson uses this statement to make it appear as if the FCC has
2 condoned “traffic pumping.” Again, Mr. Erickson cannot provide any quote
3 or cite from the FCC *CAF Order* to support his statement that the FCC
4 “expressly rejects the proposals and positions of companies like Sprint.”
5 Also, the FCC devoted 46 paragraphs specifically to develop “Rules To
6 Reduce Access Stimulation.”

7

8 **III. Financial Analysis of NAT-CC**

9

10 **Q. Has NAT-CC provided any additional information in supplemental data**
11 **responses that has allowed you to update the financial analysis you**
12 **performed in your Direct and Supplemental Direct Testimonies?**

13 A. Yes. In January 2014, NAT-CC provided a Profit and Loss Statement
14 (Income Statement), Balance Sheet, and General Ledger Detail for all of
15 2013. (In my Supplemental Direct Testimony I only had data through 2Q
16 2013.) As a result of this new information, I have

- 17 • Updated Table 1, “NAT-CC Profit and Loss Statements – 2010 –
18 2013 Summary,” in my Direct Testimony;
- 19 • Updated Table 4 (Revised), “NAT CC 2013 Income Statement
20 Restated for 2013 Tariffed Rate of \$0.006327,” in my Supplemental
21 Direct Testimony; and

1 A. No, NAT-CC's financial condition is actually much worse than reported.
2 After reviewing the 2013 General Ledger Detail, it became obvious that
3 NAT-CC was not reporting "Marketing Expenses" paid to Free Conferencing
4 Corporation consistent with the terms of the 2009 or 2012 Service
5 Agreements, which require a minimum "Marketing Fee" of at least 75% of all
6 access revenue.

7

8 If NAT-CC had actually been paying "Marketing Fees" of 75% per the terms
9 of the Service Agreements, NAT-CC would have had cumulated Net Income
10 of **[Begin Confidential]** [REDACTED] **[End Confidential]**, as also
11 shown on Table 1 (Revised).

12

13 **Q. Has there been a pattern to the payment record of NAT-CC's payment**
14 **of "Marketing Fees" to Free Conferencing Corporation?**

15 A. Yes. Reviewing NAT-CC's General Ledger Detail indicated that there have
16 been four distinct periods during which the pattern of payments to Free
17 Conferencing Corporation dramatically changes.

- 18 • January 2010 – February 2012: NAT-CC pays up to 75%.
- 19 • February 2012 – December 2012: NAT-CC pays 0% (except for one
20 small payment in January 2013 that appears to cover this time
21 period). In December 2012, NAT-CC did pay 75% of a one-time
22 settlement.
- 23 • January 2013 – July 2013: NAT-CC pays 75%.

- 1 • August 2013 – December 2013: NAT-CC pays 0%.

2

3 The following Table 7 summarizes this pattern.

4

Table 7

5

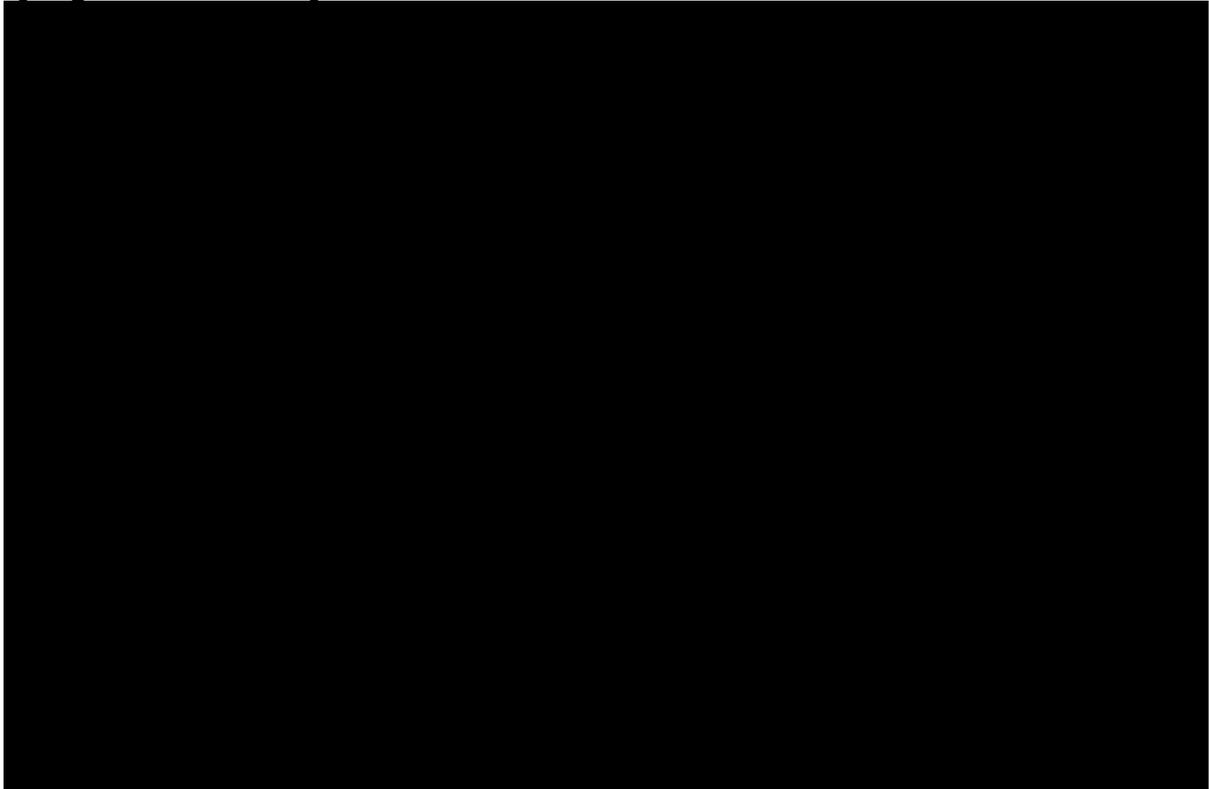
**Pattern of NAT-CC Payments to Free Conferencing Corporation
2010 – 2013 Summary**

6

7

8

[Begin Confidential]



9

[End Confidential]

10

11

12 **Q. What is the significance of this variation in payouts from NAT-CC to**
13 **Free conferencing Corporation?**

14 A. If NAT-CC had been consistently paying Free Conferencing Corporation per
15 the actual terms of the *Service Agreements*, NAT-CC's financial condition
16 would be even worse. It appears that, in order to make NAT-CC's appear to

1 be on the verge of financial solvency, Free Conferencing Corporation
2 merely forgoes a portion of its "Marketing Fee." None of this unpaid
3 "Marketing Fee" appears as a liability in NAT-CC's financial statements.
4 This allows NAT-CC to claim that if only Sprint and Qwest would pay,
5 NAT-CC's financial problems would disappear. This is further evidence that
6 NAT-CC and Free Conferencing Corporation are business partners in a
7 traffic pumping scheme, rather than in a business-customer relationship.
8

9 **Q. In your Supplemental Direct Testimony, you stated that even if all IXCs**
10 **were currently paying NAT-CC's tariffed rate of \$0.006327, NAT-CC**
11 **would not be profitable. Is this still correct?**

12 A. Yes, even if all IXCs were currently paying NAT-CC's tariffed rate of
13 \$0.006327, it would not be making a profit. In my Supplemental Direct
14 Testimony, I only had data for the first six months of 2013. Therefore, I
15 have provided a second update of Table 4 and Table 5. (I am still using the
16 most recent MOU information as discussed in my December 4, 2013
17 Supplemental Direct Testimony.)

18
19 Table 4 (2nd Revised) restates NAT-CC's 2013 Income Statement assuming
20 all IXCs pay the tariffed rate of \$0.006327 for all terminating minutes. As
21 can be seen, even if all IXCs were currently paying NAT-CC's current

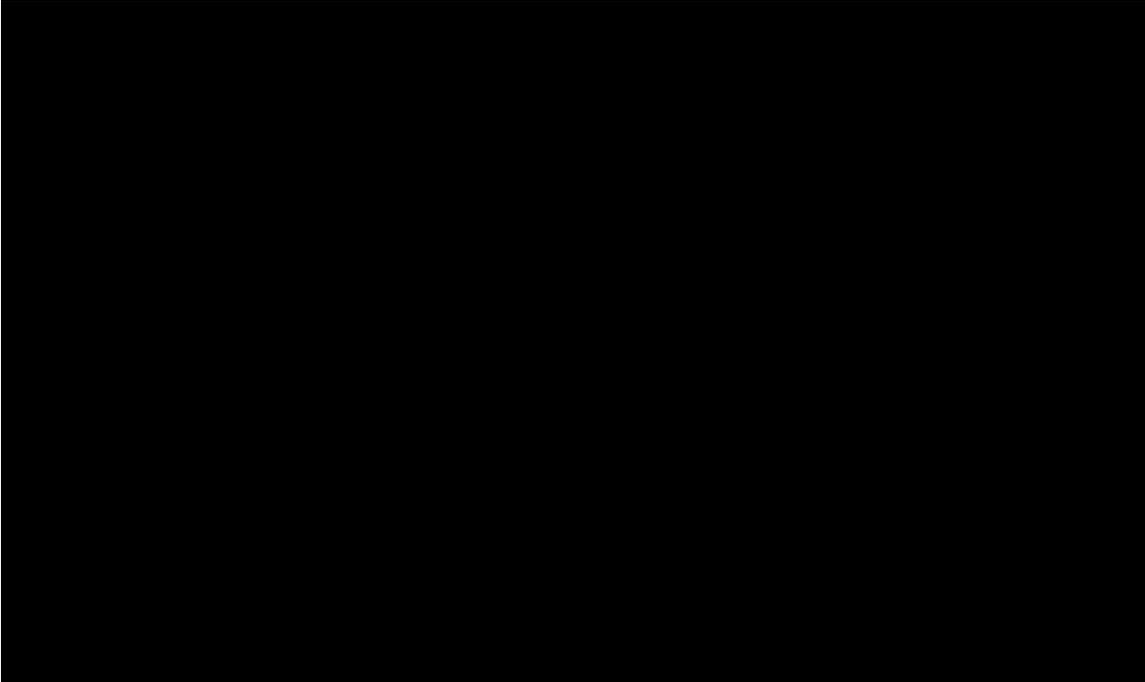
- 1 • Based on NAT-CC’s supplemental response to Interrogatory No.
2 56, I estimated NAT-CC’s total annual minutes to be **[Begin**
3 **Confidential]** ██████████ **[End Confidential]**,
4 • All IXCs pay the \$0.006327 rate on every terminating minute,
5 • NAT-CC pays a 75% “Marketing Fee” to Free Conferencing
6 Corporation, per terms of the *2012 Service Agreement*, and
7 • All other Revenues and Operating Expenses remain unchanged.
8

9 **Q. In your Supplemental Direct Testimony, you stated that even if all IXCs**
10 **were to pay the July 2016 rate of \$0.0007, NAT-CC would further**
11 **deteriorate financially. Is this still correct?**

12 A. Yes. At the July 2016 rate of \$0.0007, NAT-CC’s already failing business
13 model will fail at an accelerated rate. Table 5 (2nd Revised) restates
14 NAT-CC’s 2013 Income Statement assuming all IXCs pay the 2016 rate of
15 \$0.0007 for all terminating minutes.

1 **Table 5 (2nd Revised)**
2 **NAT-CC 2013 Income Statement**
3 **Restated for July 2016 Rate of \$0.0007**
4

5 **[Begin Confidential]**



6
7 **[End Confidential]**
8

9 As can be seen, at the 2016 rate of \$0.0007, and at current 2013 demand
10 and expense levels, NAT-CC would have Net Income of **[Begin**
11 **Confidential]**  **[End Confidential]**.

12
13 Again, beginning July 1, 2017, all traffic will be exchanged on a Bill-and-
14 Keep basis, without monetary compensation, assuring the failure of
15 NAT-CC's current business model.
16

1 **IV. Summary and Conclusion**

2

3 **Q. Please summarize your Additional Supplemental Direct Testimony.**

4 A. My conclusions are unchanged from my Direct and Supplemental Direct
5 Testimonies. NAT-CC's sole purpose for existence currently is to be a
6 "traffic pumper" – to generate revenue for Free Conferencing Corporation.
7 NAT-CC's current business model is already failing, and will continue to
8 worsen with a further rate reduction to \$0.0007 in 2016, and the adoption of
9 a Bill-and-Keep arrangement without monetary compensation in 2017.

10

11 If NAT-CC can become a profitable enterprise with a new business plan,
12 without "traffic pumping," Sprint has no objection. Unfortunately, NAT-CC
13 testimony makes it clear that this new business plan still depends on "traffic
14 pumping."

15

16 Finally, from 2010 through 2013, Free Conferencing Corporation has
17 siphoned off a total of **[Begin Confidential]** [REDACTED] **[End Confidential]**
18 of "Marketing Fees" from NAT-CC – simply a kickback to Free Conferencing
19 Corporation. This is proof of the true purpose of NAT-CC. This cannot be
20 good public policy for South Dakota.

21

22 **Q. Do you have a final fact for the Commission to consider?**

1 A. Yes. As I already discussed in my December 4, 2013 Supplemental Direct
2 Testimony, the current business relationship between NAT-CC and Free
3 Conference Corporation is one-sided. Virtually 100% of NAT-CC's current
4 revenues derive from its current business relationship with Free
5 Conferencing Corporation. This exposes NAT-CC to an extreme amount of
6 business risk – any corporation which receives virtually 100% of its revenue
7 from one source exhibits an extreme degree of business risk. Under its
8 current business model, NAT-CC is absolutely financially dependent on
9 Free Conferencing Corporation for its very existence.

10

11 However, Free Conferencing Corporation is not dependent upon NAT-CC in
12 any manner. As confirmed by Dave Erickson, the owner, Free
13 Conferencing Corporation is willing and able to take its conferencing
14 business to another LEC whenever it can get a better “deal” – whenever it
15 so chooses – leaving NAT-CC with virtually no other source of revenue.¹⁴

16 This is exactly what happened to Aventure Communications, the former
17 traffic pumping LEC I referred to in my Direct Testimony.

18

19 Finally, Sprint would have no objection to NAT-CC's Application if it wished
20 to operate as a traditional local exchange carrier. There are approximately
21 1,400 such carriers in the U.S., and Sprint exchanges traffic with the vast
22 majority of them on a daily basis without any regulatory or legal difficulties.

¹⁴ Exhibit RGF-22, Erickson Dep. at 110-111.

1

2 **Q. Does this conclude your Additional Supplemental Direct Testimony?**

3 A. Yes, it does.

4

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