

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

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

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**SUPPLEMENTAL TESTIMONY OF**

**WILLIAM R. EASTON**

**ON BEHALF OF**

**QWEST COMMUNICATIONS COMPANY, LLC**

**AUGUST 30, 2013**

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH**  
3 **QWEST.**

4 A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle  
5 Washington. I am employed as Wholesale Staff Director. I am testifying on behalf of  
6 Qwest Communications Company, LLC (“Qwest”), doing business as CenturyLink.

7  
8 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS DOCKET?**

9 A. Yes. I submitted Direct Testimony on March 26, 2012.

10  
11 **II. PURPOSE OF TESTIMONY**

12  
13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my supplemental testimony is to address issues raised in the April 20, 2012  
15 and July 26, 2013 testimony of Native American Telecom (“NAT”) witnesses.  
16 Specifically, I will be addressing issues raised in the April 20, 2012 and July 26, 2013  
17 testimony of Jeff Holoubek and the April 20, 2012 testimony of David Erickson. I will  
18 also discuss Qwest’s efforts to explore a direct trunking arrangement with NAT. I will  
19 conclude by discussing the public policy concerns related to the NAT request for  
20 certification, a subject largely ignored in the testimony of Mr. Holoubek and Mr. Erickson.

21

1                                   **III. RESPONSE TO TESTIMONY OF JEFF HOLOUBEK**

2  
3   **Q. MR. HOLOUBEK SPENDS A GREAT DEAL OF TIME DETAILING THE**  
4   **BENEFITS THAT NAT HAS PROVIDED TO THE CROW CREEK TRIBE AND**  
5   **RESERVATION AND ARGUES THAT SPRINT AND QCC HAVE**  
6   **CONVENIENTLY IGNORED THESE BENEFITS.<sup>1</sup> PLEASE COMMENT.**

7   A. The benefits Mr. Holoubek claims fail to justify the fact that NAT's entire business plan  
8   appears to be based on an access stimulation scheme. As I discussed in my Direct  
9   Testimony, the FCC rejected this very argument as a justification for access stimulation in  
10   its Connect America order, stating:

11                   Several parties claim that access stimulation offers economic development  
12                   benefits, including the expansion of broadband services to rural  
13                   communities and tribal lands. Although expanding broadband services in  
14                   rural and Tribal lands is important, we agree with other commenters that  
15                   how access revenues are used is not relevant in determining whether  
16                   switched access rates are just and reasonable in accordance with section  
17                   201(b). In addition, excess revenues that are shared in access stimulation  
18                   schemes provide additional proof that the LEC's rates are above cost.  
19                   Moreover, Congress created an explicit universal service fund to spur  
20                   investment and deployment in rural, high cost, and insular areas, and the  
21                   Commission is taking action here and in other proceedings to facilitate  
22                   such deployment.<sup>2</sup> (Footnotes omitted).

23  
24                   Taking the economic, social and educational impacts on the Crow Creek Reservation out of  
25                   the equation, it is far from clear that NAT's providing service to free conference calling  
26                   companies does anything to serve the public interest.

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<sup>1</sup> Holoubek April 20, 2012 Testimony at pp. 3-5.

<sup>2</sup> In the Matter of Connect America Fund, "Report and Order and Further Notice of Proposed Rulemaking," FCC 11-161 (released November 18, 2011), at ¶ 666.

1 **Q. DO YOU AGREE WITH MR. HOLOUBEK CLAIMS THAT THE FCC**  
2 **REAFFIRMED THE LEGALITY OF ACCESS STIMULATION IN ITS CONNECT**  
3 **AMERICA ORDER?**<sup>3</sup>

4 A. No. Mr. Holoubek fails to acknowledge that the FCC has in past cases found that access  
5 stimulation traffic did not constitute legitimate switched access traffic.<sup>4</sup> The FCC has also  
6 previously issued rulings analyzing the policy harms associated with access stimulation.  
7 As I discussed in my Direct Testimony, in its February 8, 2011, Connect America Fund  
8 Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking, the FCC  
9 found that:

10 “Access stimulation imposes undue costs on consumers, inefficiently  
11 diverting the flow of capital away from more productive uses such as  
12 broadband deployment, and harms competition. Although long distance  
13 carriers are billed for and pay for minutes associated with access  
14 stimulation schemes, all customers of these long distance providers bear  
15 these costs and, in essence, ultimately support businesses designed to take  
16 advantage of today’s above-cost intercarrier compensation system.  
17 Projections indicate that the annual impact to the industry from access  
18 stimulators is significant.” (par. 637); and

19  
20 “Moreover, access stimulation harms competition by giving companies  
21 that offer a “free” service a competitive advantage over companies that  
22 charge their customers for the service. As a result, “free” conferencing  
23 providers that leverage arbitrage opportunities can put other companies  
24 that charge consumers for services at a distinct competitive disadvantage.”  
25 (par. 638).  
26

27 As I also discussed in my Direct Testimony, in the November 18, 2011 Connect America  
28 order, while the FCC did not find that access stimulation per se was illegal, it clearly did  
29 not find the practice to be in the public interest. In fact, the overriding intent of the access

<sup>3</sup> Holoubek April 20, 2012 Testimony at p. 6.

<sup>4</sup> Qwest Comm’cns Corp. v. Farmers & Merchants Mutual Tel. Co. (“Farmers II”), 24 FCC Rcd. 14801 (2009), 2009 WL 4073944 (F.C.C.); In the Matter of Qwest Communications Company, LLC, v. Northern Valley Communications, LLC; File No. EB-11-MD-001; Memorandum Opinion and Order; Released June 7, 2011.

1 stimulation rules promulgated in the order is to reduce access stimulation by the  
2 elimination of access stimulation and arbitrage incentives. The Connect America Order  
3 was in no way an endorsement of access stimulation.

4  
5 **Q. MR. HOLOUBEK CLAIMS THAT AN FCC COMMISSIONER WAS**  
6 **“CONSULTED AS TO THE BEST WAY TO IMPACT THE MOST POSITIVE**  
7 **CHANGE IN INDIAN COUNTRY REGARDING THE EXPANSION OF MODERN**  
8 **TELECOMMUNICATIONS TO THOSE AREAS.”<sup>5</sup> PLEASE COMMENT.**

9 A. Mr. Holoubek fails to tell us what advice the FCC Commissioner may have provided.  
10 However, as I noted in my Direct Testimony, the FCC does not believe access stimulation  
11 is justified by tribal economic development arguments. The FCC rejected this very  
12 argument as a justification for access stimulation in its Connect America order, stating:

13 Several parties claim that access stimulation offers economic development  
14 benefits, including the expansion of broadband services to rural  
15 communities and tribal lands. Although expanding broadband services in  
16 rural and Tribal lands is important, we agree with other commenters that  
17 how access revenues are used is not relevant in determining whether  
18 switched access rates are just and reasonable in accordance with section  
19 201(b). In addition, excess revenues that are shared in access stimulation  
20 schemes provide additional proof that the LEC’s rates are above cost.  
21 Moreover, Congress created an explicit universal service fund to spur  
22 investment and deployment in rural, high cost, and insular areas, and the  
23 Commission is taking action here and in other proceedings to facilitate  
24 such deployment.<sup>6</sup> (Footnotes omitted).

25  

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<sup>5</sup> Holoubek April 20, 2012 Testimony at p. 7.

<sup>6</sup> In the Matter of Connect America Fund, “Report and Order and Further Notice of Proposed Rulemaking,” FCC 11-161 (released November 18, 2011), at ¶ 666.

1 **Q. HOW DOES MR. HOLOUBEK RESPOND TO CRITICISM THAT THE**  
2 **LANGUAGE IN THE PARTNERSHIP AGREEMENTS APPEARS TO BE**  
3 **DETRIMENTAL TO THE TRIBE?**

4 A. In his April 20, 2012 testimony, Mr. Holoubek attempts to address these criticisms by  
5 claiming that, “there are parts of the original agreement that have never been enforced due  
6 to the ever changing legal and business environment.”<sup>7</sup> I have no way of knowing whether  
7 Mr. Holoubek’s claims are true, but regardless, the existence of the language in the original  
8 partnership agreement, granting Free Conferencing Corporation the lion’s share of the  
9 access revenues, reveals the intent of NAT Enterprise and Wide Voice at the time the  
10 partnership was formed, and clearly the partnership was not intended to be a partnership of  
11 equals.

12  
13 **Q. IN HIS JULY 26, 2013 TESTIMONY MR. HOLOUBEK CLAIMS THAT QWEST**  
14 **HAS MISINTERPRETED THE SHARING ARRANGEMENT AND EXPLAINS**  
15 **THE RATIONALE BEHIND THE 75% -95% SHARING PERCENTAGE.<sup>8</sup> DOES**  
16 **HIS EXPLANATION CHANGE IN ANY WAY YOUR PREVIOUS TESTIMONY**  
17 **ON THE SHARING PERCENTAGE?**

18 A. No. Although Mr. Holoubek claims that my testimony and that of Sprint are “self-serving  
19 manipulations of contract terms mutually adopted by the parties,” my March 26, 2012  
20 testimony merely stated that the percentage split, which grants a higher percentage to the  
21 free service calling company than I have seen in other cases, demonstrates that a significant

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<sup>7</sup> Holoubek April 20, 2012 Testimony at p. 8.

<sup>8</sup> Holoubek July 26, 2013 Testimony at pp. 18-19.

1 portion of access revenues will be directed toward an entity that is not providing the access  
2 service itself. Nothing in Mr. Holoubek's explanation changes my opinion of the nature of  
3 the split.

4  
5 **Q. MR. HOLOUBEK STATES THAT THE 75%-95% SHARING ARRANGEMENT**  
6 **WAS IN A PRIOR AGREEMENT AND IS NO LONGER VALID.<sup>9</sup> IS THAT YOUR**  
7 **UNDERSTANDING AS WELL?**

8 A. I am not sure. In Sprint's request for production of documents No. 6, Sprint asked NAT for  
9 all documents reflecting NAT's contract with Free Conferencing. In response to the  
10 request, NAT produced two documents. One was a copy of an agreement signed by the  
11 parties in late November/early December 2012 which contained a sliding scale for sharing  
12 of 75%-95%. Nat also produced an unsigned redlined agreement which struck the 75% -  
13 95% language and replaced it with "FCC Shall Receive 75% of Collected Gross Revenues  
14 of all FCC Traffic." Regardless of which language is actually in effect, the majority of the  
15 access revenues will be directed toward an entity that is not providing the access service  
16 itself.

17  
18 **Q. THROUGHTOUT HIS TESTIMONY MR. HOLOUBEK BLAMES QWEST AND**  
19 **SPRINT FOR NAT'S BUSINESS PROBLEMS. IS THIS A FAIR CRITICISM?**

20 A. No. What Mr. Holoubek fails to consider is that it is NAT's business plan itself that is  
21 flawed. If NAT is not viable now as a result of IXCs withholding payments in a legitimate

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<sup>9</sup> Holoubek July 26 2013 Testimony at p. 18.



1 billing dispute, it is hard to see that it will ever be viable in the coming bill and keep  
2 termination regime detailed in the Connect America order.

3  
4 **IV. RESPONSE TO TESTIMONY OF DAVID ERICKSON**

5  
6 **Q. MR. ERICKSON IMPLIES FREE CONFERENCING IS INVOLVED IN NAT**  
7 **BECAUSE IT WANTS TO HELP STRUGGLING SMALL LOCAL EXCHANGE**  
8 **CARRIERS IN RURAL AREAS.<sup>10</sup> DOES THAT APPEAR TO BE HIS TRUE**  
9 **MOTIVATION IN CHOOSING TO OPERATE IN RURAL AREAS?**

10 A. No. In the same paragraph where he discusses struggling rural carriers, he notes that these  
11 carriers received high terminating access charges which “enhanced the revenue sharing  
12 opportunities.” As I discussed in my Direct Testimony, companies engaged in traffic  
13 pumping abuse the regulatory structure underlying switched access rates in rural  
14 exchanges. Historically, switched access rates in rural areas have been set at rates  
15 significantly higher than in non-rural areas in order to provide support to a rural carrier  
16 providing essential, basic services in high cost areas. The traffic pumping LECs abuse this  
17 laudable structure by placing the conference calling equipment in rural exchanges,  
18 generating exponentially higher traffic volumes to the exchange, which combined with  
19 their high rural switched access rates lead to increasingly large invoices to IXCs. Thus, the  
20 public interest component of higher switched access rates in rural areas – to support basic  
21 services to rural residences and businesses – is abused by traffic pumping. In addition,

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<sup>10</sup> Erickson April 20, 2012 Testimony at p. 6.

1 NAT's traffic pumping creates no jobs on the reservation, or in South Dakota, and the vast  
2 majority of the associated revenues leave the state.

3

4 **Q. MR. ERICKSON ARGUES THAT, TO THE EXTENT IXCS HAVE BEEN**  
5 **ADVERSELY IMPACTED BY TRAFFIC PUMPING, IT IS THE RESULT OF THE**  
6 **IXCS' DECISIONS TO OFFER UNLIMITED CALLING PLANS.<sup>11</sup> PLEASE**  
7 **COMMENT.**

8 A. Mr. Erickson's attempt to blame the IXCs for the financial impacts of access stimulation is  
9 unpersuasive. IXCs like Sprint and Qwest made the decision to offer unlimited calling  
10 plans with the full understanding that rural rates were higher, but also with the assumption  
11 that the minutes terminating to rural areas would correspond to the actual number of rural  
12 customers. Under access stimulation schemes, areas that previously had hundreds or  
13 thousands of access minutes suddenly have millions. It is the traffic pumping LECs and  
14 their free conference calling partners who are abusing the regulatory structure underlying  
15 switched access rates in rural exchanges, not the IXCs.

16

17 **Q. MR. ERICKSON MAINTAINS THAT AT NO TIME HAS HE UNDERSTOOD HIS**  
18 **BUSINESS MODEL TO BE ILLEGAL.<sup>12</sup> IS THE LEGALITY OF TRAFFIC**  
19 **PUMPING AT ISSUE IN THIS PROCEEDING?**

20 A. No. The issue in this docket is not the legality of traffic pumping, but is instead whether  
21 such a practice is in the public interest. Other regulatory bodies who have looked at it have

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<sup>11</sup> Erickson April 20, 2012 Testimony at pp. 6-7.

<sup>12</sup> Erickson April 20, 2012 Testimony at p. 7.

1 failed to find traffic pumping to be in the public interest. As I discussed in my Direct  
2 Testimony, the Iowa Board found the practice to be an “abuse” in the Board’s Final Order  
3 in FCU-07-2 and the FCC has expressed grave concerns about traffic pumping and has  
4 established rules intended to remove the financial incentives for engaging in this form of  
5 arbitrage.

6  
7 **Q. MR. ERICKSON ARGUES THAT “I DIDN’T ADD TERMINATING ACCESS**  
8 **FEES TO CONFERENCING, I MERELY TOOK AWAY ORGANIZER FEES.”<sup>13</sup>**  
9 **IS THAT THE ASPECT OF MR. ERICKSON’S BUSINESS MODEL THAT THE**  
10 **IXCS FIND OBJECTIONABLE?**

11 A. No. What the IXC’s find objectionable is the fact that his model calls for the IXC’s to bear  
12 the entire cost of his free conference calling service. The service may be free to some  
13 consumers, but is clearly not free when the IXC’s costs are taken into account. Ultimately,  
14 all customers will bear the increased cost with higher rates per minute. While Mr. Erickson  
15 may talk at length about the benefits to consumers, the FCC has already opined on the  
16 undesirability of this arbitrage scheme.

17  
18 **Q. MR. ERICKSON CLAIMS THAT HIS REVENUE SHARING PLAN IS VERY**  
19 **FAIR TO NAT.<sup>14</sup> PLEASE COMMENT.**

20 A. I believe Sprint’s witness, Mr. Farrar, will discuss the degree to which the tribe has  
21 benefited, or not benefited, from the joint venture. I will leave it to the Commission to

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<sup>13</sup> Erickson April 20, 2012 Testimony at p. 9.

<sup>14</sup> Erickson April 20, 2012 Testimony at p. 12.

1 determine the 'fairness' of the agreement between the parties to the joint venture, but, as I  
2 noted earlier, the agreement provides that the majority of access revenues will be directed  
3 toward an entity that is not providing the access service itself.  
4

5 **Q. MR. ERICKSON CLAIMS THAT NAT OPERATES CLOSE TO A BREAK-EVEN**  
6 **POINT AND WOULD BE PROFITABLE IF CENTURYLINK AND SPRINT PAID**  
7 **FOR THE ACCESS STIMULATION TRAFFIC.<sup>15</sup> DOES HIS STATEMENT GIVE**  
8 **YOU ANY CONFIDENCE AS TO NAT'S FINANCIAL VIABILITY?**

9 A. No. In fact, Mr. Erickson's claims are a clear demonstration that NAT's business plan is  
10 not viable in the longer term. If NAT is not profitable now, when CenturyLink and Sprint  
11 refuse to pay access charges for traffic which they do not believe is legitimate switched  
12 access traffic, clearly it will not be profitable when terminating switched access charges go  
13 to zero under the FCC's Connect America order. NAT has failed to demonstrate that it has  
14 the financial capabilities to warrant certification.  
15

16 **V. DIRECT TRUNKING ARRANGEMENTS WITH NAT**  
17

18 **Q. HAS QWEST ATTEMPTED TO EXPLORE THE POSSIBILITY OF DIRECT**  
19 **TRUNKING TO NAT'S END OFFICE?**

20 A. Yes. In an attempt to settle Qwest's concerns in this docket, the parties exchanged e-mails  
21 regarding direct trunking arrangements. Although NAT now claims that the discussions

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<sup>15</sup> Erickson April 20, 2012 Testimony at p. 13.

1 came to an end with “the abrupt departure”<sup>16</sup> of Qwest’s former attorney Todd Lundy, the  
2 last correspondence Qwest has a record of is an August 27, 2012 letter from Mr. Lundy to  
3 NAT attorney Scott Swier requesting additional information about the rates and terms  
4 which would apply to the direct trunking. (See Exhibit WRE-7). Qwest received no  
5 response to this request. In response to NAT’s claims that it was Mr. Lundy’s departure  
6 that caused the discussions to halt, on June 5, 2013 Qwest sent an e-mail to Mr. Swier  
7 asking for any response that NAT may have sent in response to the August 27 e-mail. (See  
8 Exhibit WRE-8). To date Qwest has not heard back from Mr. Swier. As Mr. Lundy’s  
9 August 27<sup>th</sup> letter indicates, Qwest is still attempting to understand what NAT proposes  
10 with regard to direct trunking. To date, NAT has indicated that it will provide direct  
11 trunking, but has not been willing to specify the terms or rates. Instead, NAT has referred  
12 Qwest to the NAT tariff, which, as I indicated in my Direct Testimony, states that, “All  
13 elements of Direct-Trunked Transport are priced on an Individual Case Basis (ICB).” In  
14 order to more fully understand NAT’s position, on August 8<sup>th</sup> Qwest served discovery  
15 requests asking, among other things, for more information on a direct trunking option.  
16 Even though responses were due August 22,, Qwest did not receive timely responses to this  
17 discovery. Qwest followed up with email notifications on August 27 and August 29 in an  
18 effort to obtain discovery responses prior to this testimony being filed. As this testimony is  
19 being filed on August 29, Qwest has received neither a response nor any explanation of  
20 NAT’s failure to respond.

21  

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<sup>16</sup> NAT Response to Staff Data Request 2-9.

1                                    **VI. PUBLIC INTEREST CONSIDERATIONS**

2

3    **Q. PLEASE DISCUSS THE PUBLIC INTEREST CONCERNS QWEST HAS WITH**  
4    **REGARD TO NAT'S CERTIFICATION REQUEST.**

5    A. Although a necessary condition of granting a certificate is that it be in the public interest,  
6    the NAT witnesses devote little, if any, time to discussing why granting a certificate to a  
7    carrier whose primary business is access stimulation, as opposed to providing traditional  
8    local exchange service, is truly in the public interest. Mr. Holoubek and Mr. Erickson talk  
9    at length about the legality of access stimulation and how Qwest and Sprint are trying to  
10    destroy their business but are largely silent as to why it is in the public interest to grant  
11    NAT a certificate.

12

13   **Q. ARE THERE CONCERNS BEYOND WHETHER ACCESS STIMULATION IS IN**  
14   **THE PUBLIC INTEREST?**

15   A. Yes. The first concern goes directly to the requirements in the South Dakota statutes and  
16   administrative rules that the company requesting certification demonstrate that it has  
17   sufficient technical, financial, and managerial capabilities to provide the local exchange  
18   services applied for.<sup>17</sup> NAT's near total reliance on access stimulation revenues raises  
19   serious questions about its financial viability. During the United States District Court  
20   hearing I discussed in my Direct Testimony, it was revealed that NAT's finances are in a  
21   rather precarious state due to Sprint withholding payment. In fact, NAT's counsel stated at  
22   the hearing that if Sprint does not pay NAT, it is likely to either file bankruptcy or go out of

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<sup>17</sup> SDCL 49-31-37 and ARSD 20:10:32:05.

1 business.<sup>18</sup> The future appears even less promising as NAT's access stimulation scheme  
2 becomes increasingly unviable as IXC's insist that access stimulators comply with the  
3 terms and conditions in their tariffs and as the FCC's intercarrier compensation rates  
4 transition to a bill and keep basis. In light of these developments, it is far from clear that  
5 NAT possesses the financial capability necessary for approval of its certification request.  
6

7 **Q. WHAT IS QWEST'S SECOND CONCERN?**

8 A. Qwest's second concern is whether it is in the public interest to grant a certificate to a  
9 company whose business plan is based on ongoing participation in a scheme to stimulate  
10 access billing to interexchange carriers ("IXC") such as Qwest. It is far from clear that  
11 NAT's providing service to free conference calling companies does anything to serve the  
12 public interest of South Dakota.  
13

14 **Q. HAVE OTHER STATE COMMISSIONS CONSIDERED SIMILAR ISSUES WHEN**  
15 **DECIDING WHETHER TO ISSUE A CERTIFICATE?**

16 A. Yes. In 2010 the Utah Commission considered whether traffic pumping activities satisfy  
17 the public interest standard in the context of a certification proceeding.<sup>19</sup> In Utah, a traffic  
18 pumping LEC known as All-American applied for an amendment to its certificate. After a  
19 review by the Commission and its staff, the docket was converted into an inquiry of

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<sup>18</sup> Civ 10-4110 United States District Court, District of South Dakota, Southern Division. SPRINT COMMUNICATIONS COMPANY, L.P., Plaintiff,-vs-NATIVE AMERICAN TELECOM, LLC; B.J. JONES, in his official capacity as Special Judge of Tribal Court; and CROW CREEK SIOUX TRIBAL COURT, Defendants. Transcript of Motion Hearing. March 3, 2011 pages 206, 208.

<sup>19</sup> In the Matter of the Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American to Operate as a Competitive Local Exchange Carrier within the State of Utah, Docket No. 08-2469-01, Issued April 26, 2010, affirmed on Reconsideration, issued July 6, 2010.

1 whether All-American should be certificated at all. The Utah Commission revoked All-  
2 American's certificate. Granted, there was a multitude of reasons and misconduct  
3 supporting the revocation, but among them was the Commission's consideration of All-  
4 American's operating model, by which it was delivering calls to a free service calling  
5 company and attempting to charge switched access to IXCs - a classic traffic pumping  
6 scheme. The Utah Commission determined that "[All-American's] services, if anything,  
7 increases (sic) the cost of telecommunications to the customers of interexchange (IXC)  
8 carriers in the state and provide no significant benefit."<sup>20</sup> With the increased traffic coming  
9 through on the free conference calling lines, the traffic results in a higher per minute cost to  
10 Qwest and other IXC's to terminate traffic to or carry traffic out of [the ILEC's] service  
11 territory. All-American admitted to the Commission, as all traffic pumping LECs must,  
12 that, ultimately, the "free" conference calling service it claims to provide, is not free at all,  
13 but is paid for by the IXC's, whose customers are the general ratepayers in Utah. The Utah  
14 Commission ruled that "these increased costs to Utahns produce no significant benefit, if  
15 any benefit at all", and that "the traffic pumping arrangement increases costs to Utah  
16 ratepayers while funneling money out of the state or into the hands of only a few, without  
17 promoting true competition or technological improvement, or serving any other public  
18 interest."<sup>21</sup> The Utah Commission concluded that: "There is little or no benefit served  
19 through [All-American's] operation and nothing that furthers Utah's public policies or  
20 public interest without countervailing detriments."<sup>22</sup>

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<sup>20</sup> *Id* at p. 30.

<sup>21</sup> *Id* at p. 31.

<sup>22</sup> *Id* at pp. 31-32.



1 **VII. QWEST'S RECOMMENDATIONS**

2  
3 **Q. WHAT IS QWEST RECOMMENDING THAT THIS COMMISSION DO WITH**  
4 **REGARD TO NAT'S CERTIFICATION REQUEST?**

5 A. For all of the reasons cited previously, Qwest believes it is in the public interest for the  
6 Commission to deny NAT's request. Such a denial would send a clear message that  
7 certification is to be granted only to provide legitimate local exchange service, not to  
8 engage in arbitrage schemes such as access stimulation.

9  
10 **Q. ARE THERE OTHER OPTIONS AVAILABLE TO THE COMMISSION?**

11 A. Yes. As I noted in my Direct Testimony, the applicable South Dakota regulations offer one  
12 such option. ARSD 20:10:32:07 states:

13  
14 **ARSD 20:10:32:07. Certification subject to commission imposed**  
15 **terms and conditions.** In addition to the requirements imposed by this  
16 chapter on providers of local exchange services, the commission, in  
17 granting a certificate of authority to provide local exchange services, may  
18 impose additional terms and conditions, on a competitively neutral basis,  
19 that it finds necessary to preserve and advance universal service, protect  
20 the public safety and welfare, ensure the continued quality of service, and  
21 safeguard the rights of consumers. The preservation and advancement of  
22 universal service shall be a primary concern.  
23

24 Using ARSD 20:10:32:07 as its underlying authority, if the Commission chooses to grant  
25 NAT a certificate, then, for the reasons stated above, Qwest recommends that it be  
26 conditioned upon the requirement that NAT offers DTT connections at the nearest feasible  
27 point to its end office to any requesting IXC at the same rates, terms and conditions that

1 Qwest Corporation offers in South Dakota in order to prevent NAT from engaging in any  
2 form of mileage pumping scheme.

3  
4 As I also noted in my Direct Testimony, this condition would be consistent with the FCC's  
5 ruling in the PrairieWave case. In that case, after stating that CLECs have the ability to  
6 charge for tandem switching under certain circumstances, the FCC stated that this ability is  
7 premised upon allowing IXCs to interconnect through DTT. The FCC stated as follows:

8 Our decision here is premised on the assumption that a competitive LEC  
9 will permit an IXC to install direct trunking from the IXC's point of  
10 presence to the competitive LEC's end office, thereby bypassing any  
11 tandem function. So long as an IXC may elect to direct trunk to the  
12 competitive LEC end offices, and thereby avoid the tandem switching  
13 function and associated charges, there should be limited incentive for  
14 competitive LECs to route calls unnecessarily through multiple switches,  
15 as suggested by AT&T.<sup>23</sup>  
16

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 **A.** Yes it does. Thank you.


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<sup>23</sup> In the Matter of Access Charge Reform; PrairieWave Telecommunications, Inc Petition for Waiver of Sections 61.26(b) and (c) or in the Alternative Section 61.26(a)(6) of the Commission's Rules, CC Docket No. 96-262, Released February 14, 2008, at ¶ 27.

**VERIFICATION**

I, William R. Easton, Wholesale Staff Director for Qwest Communications Company LLC, dba CenturyLink, state that I have first-hand knowledge of the matters set forth above and hereby verify that, to the best of my knowledge and belief, the allegations and statements contained herein are true and correct.

Dated: August 30, 2013

  
\_\_\_\_\_  
William R. Easton