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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF TC11-087  
NATIVE AMERICAN TELECOM, LLC FOR A  
CERTIFICATE OF AUTHORITY TO PROVIDE  
INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES AND LOCAL EXCHANGE SERVICES  
IN SOUTH DAKOTA

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Transcript of Proceedings  
September 24, 2013

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
GARY HANSON, CHAIRMAN  
CHRIS NELSON, VICE CHAIRMAN  
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Kristen Edwards  
Greg Rislov  
Brian Rounds  
Patrick Steffensen  
Brittany Mehlhaff  
Darren Kearney  
Eric Paulson  
Deb Gregg  
Sherry Dickerson

APPEARANCES

Scott Swier, Native American Telecom (by telephone)  
Jay Shultz, Native American Telecom (by telephone)  
Phil Schenkenberg, Sprint Communications (by telephone)

Reported By Cheri McComsey Wittler, RPR, CRR

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota State Capitol  
3 Building, 500 East Capitol Avenue, Pierre, South Dakota,  
4 on the 24th day of September, 2013, commencing at  
5 9:30 a.m.

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1           CHAIRMAN HANSON: TC11-087, In the Matter of the  
2 Application of Native American Telecom, LLC For a  
3 Certificate of Authority to Provide Interexchange  
4 Telecommunications Services and Local Exchange Services  
5 in South Dakota.

6           The questions before the Commission is shall the  
7 Commission grant Sprint's Amended Third Motion To Compel?  
8 That is somewhat lengthy. I'll let Sprint begin since  
9 it's their motion, let them start.

10           There are a number of items for us to look at,  
11 and we will take those somewhat in order of the  
12 Interrogatories first. And we'll just let Sprint form  
13 their foundation.

14           Sprint, you are up to bat. Mr. Schenkenberg, is  
15 this yours?

16           MR. SCHENKENBERG: Yes, it is. Thank you very  
17 much, Mr. Chairman, members of the Commission. This is  
18 Phil Schenkenberg for Sprint.

19           Sprint has moved to compel production of  
20 discovery responses in this case and then amended that  
21 motion after there was some production made by  
22 Native American Telecom.

23           This relates to discovery requests that were  
24 served following NAT's Amended Application which was  
25 filed right at the end of May, beginning of June. We

1 served these Discovery Requests on June 25 related to  
2 items, for the most part straight out of that application  
3 as we proceeded down towards -- well, with a hearing  
4 schedule that at that point was going to take us to  
5 hearing in October.

6 The responses were due on July 10. We didn't  
7 receive anything. And notably we did not receive any  
8 objections to those requests either. And as I'll come  
9 back to in a minute, if a party wants to make objections  
10 under the rules, those have to be made timely or else  
11 they're waived.

12 After we filed our first Motion To Compel, there  
13 were then some responses provided, some written responses  
14 and some documents. We had additional meet and confer  
15 sessions, and we filed an amendment to that motion just  
16 to make clear what was still outstanding, and that's why  
17 we have an Amended Third Motion To Compel.

18 Since that time we have received some additional  
19 documents. We received documents that were tied to our  
20 requests, Document Requests -- I'm sorry -- 62 to 64. We  
21 received some but not all. And then we received the  
22 docket requests related to Document Request 20 to 21.

23 With 20 to 21 we've sought bank records,  
24 et cetera, which had been amended by the time of our  
25 third motion to a 2013 general ledger and balance sheet.

1 Those have been produced. So 20 and 21 are off the  
2 table, and we have advised Ms. Cremer of that yesterday  
3 morning.

4 But the rest of the information we haven't had  
5 any -- we haven't had any information provided, and NAT  
6 hasn't responded in writing to this Commission as to why  
7 it hasn't.

8 I guess perhaps just to end this high-level  
9 overview, there are objections raised in the responses  
10 that we received and attached to my Amended Affidavit --  
11 or my Affidavit. And to the extent those -- NAT is  
12 making those objections, those are waived as a matter of  
13 state law.

14 Most particularly, NAT raises the tribal  
15 immunity jurisdiction, which I wanted to talk briefly  
16 about. As I understand it, they've taken the position at  
17 least in the boiler plate objection that the fact that  
18 they've reorganized as a tribal entity means they can't  
19 be required to produce discovery in this case.

20 And I think there are three -- if you're  
21 inclined to consider that at all, given that they have  
22 made this late and I think it's waived under state law,  
23 there are two reasons you could deny it.

24 You could deny it as insufficiency supported.  
25 The documents cited in that objection are not of record

1 in this case. You haven't been provided them. There  
2 hasn't been a legal argument made to explain why that  
3 would support a finding of sovereign immunity. And so  
4 there's just simply a lack of record support.

5 The second is just from a common sense  
6 standpoint they've come to you in this application, asked  
7 for authority, and if you decide that it's necessary for  
8 them to provide information for you to make that  
9 decision, they have to do that. And if they want to come  
10 and get authority from you, they need to play by your  
11 rules. And if they choose not to play by your rules,  
12 then they ought to withdraw their application.

13 That's kind of an introductory, Mr. Chairman.  
14 You indicated you might want to take these one by one.  
15 What would you like to do right now?

16 CHAIRMAN HANSON: We will be taking the  
17 Interrogatories in order then. We will take the document  
18 requests.

19 But I would like you to repeat, is it Document  
20 Request 20 and 21 that are off the table that have been  
21 resolved?

22 MR. SCHENKENBERG: Yes.

23 CHAIRMAN HANSON: Are there any others that have  
24 been resolved at this point?

25 MR. SCHENKENBERG: No.

1           CHAIRMAN HANSON: All right. Then I would like  
2 to have Mr. Swier give his 30,000-foot explanation, and  
3 then would like to have you go through each one of the  
4 items and we will have you -- Sprint go first and then  
5 NAT.

6           Mr. Swier, it appears that you have not  
7 responded to any of these, other than the sovereign  
8 immunity argument. Is that correct? And do you wish to  
9 respond at this time?

10          MR. SWIER: Yeah. Mr. Chair, we believe that we  
11 have responded to the various Interrogatories through our  
12 answers.

13          Regarding the sovereign immunity argument, NAT  
14 is not alleging at this point sovereign immunity. NAT  
15 wants to comply with the Commission's rules and  
16 procedures.

17          What we've done in that objection is we've  
18 simply informed the Commission and the Interveners that  
19 we have indeed created a new tribally created entity.  
20 However, at this time we are not raising any sovereign  
21 immunity defense because we do want to comply with these  
22 procedures the Commission has. So that was done for  
23 notice that there is a new entity.

24          Next is, again, regarding the objections,  
25 Mr. Shultz and Mr. Schenkenberg and I have had multiple

1 conversations about these Interrogatories. We have  
2 provided Sprint with hundreds and hundreds and hundreds  
3 of pages of discovery materials.

4 They have all NAT's finances. The level of  
5 depth that we're going into in this CLEC application is  
6 just incredible. And yet we have abided by the rules and  
7 provided that information.

8 It's my understanding that the only issues that  
9 we have today are Interrogatories 55, 56, 59, and then 62  
10 to 64. And then we have Production Requests 16 and 17.  
11 So the issues before the Commission today are much more  
12 narrowed than in Sprint's filings.

13 And with that, we are prepared to talk about our  
14 objections to those six Interrogatories and two  
15 Production Requests.

16 CHAIRMAN HANSON: Thank you.

17 Mr. Shultz, are you on the line with us?

18 MR. SHULTZ: I am, Commissioner Hanson. Thank  
19 you.

20 CHAIRMAN HANSON: Thank you.

21 We will then go to Interrogatory No. 55 and  
22 would like to hear from Sprint, first of all.

23 MR. SCHENKENBERG: Thank you, Mr. Chairman.

24 55 is -- and a few of these are in the nature  
25 of questions one might ask in a deposition, but you can



1 certainly ask an Interrogatory. Fairly  
2 straightforward, and we're just not sure why we haven't  
3 had an answer.

4 In its application on page 9 NAT provided  
5 information as required by statute about how it would  
6 provide 911 and E-911 and route 911 calls to a PSAP,  
7 public service answering point. And they provided a  
8 response which didn't make it clear whether they were  
9 actually sending calls to a PSAP.

10 And so we just asked that very specifically, are  
11 these calls, these 911 calls that you claim to be  
12 providing to your subscribers, are they being delivered  
13 to a PSAP? And if so, what's the PSAP ID number on file  
14 with the FCC? We just want to evaluate what they're  
15 doing.

16 And that information hasn't been provided. It  
17 goes to the validity of their application and their  
18 managerial and technical capabilities to provide the  
19 services for which they seek a certificate.

20 Thank you.

21 CHAIRMAN HANSON: Thank you. And Mr. Shultz or  
22 Mr. Swier, who will be handling this?

23 MR. SWIER: Mr. Chair, this is Mr. Swier. I  
24 will be.

25 CHAIRMAN HANSON: Okay. Please go ahead.

1 MR. SWIER: Thank you.

2 Mr. Chair, if you look at the answer that NAT  
3 provided to Interrogatory No. 55, we have very  
4 consistently said that Crow Creek Telecom, LLC, or NAT,  
5 routes their 911 calls through the Crow Creek Sioux  
6 Tribal Public Safety and Police authorities.

7 On the reservation that is who receives all 911  
8 calls of customers providing service on the reservation.  
9 Now are we -- we're here today on a PSAP number that I  
10 believe is publicly available to NAT just as it is to  
11 Sprint.

12 We have told them specifically how the routing  
13 works. We've actually gone into more detail than what  
14 the question actually asks for.

15 Now regarding the PSAP ID, again that's publicly  
16 available information, and that is an objection that  
17 Sprint has used throughout these proceedings to thwart  
18 NAT's discovery efforts.

19 So, again, we think that we have complied with  
20 that. We've told Sprint exactly the route and how it  
21 works on the reservation, and we think we have complied  
22 with that.

23 Also under 15-6-26(b)(1) this is a CLEC  
24 application, and we're looking at managerial, technical,  
25 and financial criteria. I guess NAT fails to see how a

1 PSAP ID number is relevant or reasonably calculated to  
2 lead to the discovery of admissible evidence. We have  
3 explained the routing.

4 I think, again, this is just an example of delay  
5 tactics and issues that simply are not relevant to this  
6 CLEC application. But yet we answered the question. We  
7 provided them with the information. What they're asking  
8 for with a PSAP, it's my understanding that's publicly  
9 available.

10 MR. SCHENKENBERG: May I respond very briefly?

11 CHAIRMAN HANSON: I have a question first.

12 Mr. Swier, if it's publicly available, why not  
13 just provide that to them?

14 MR. SWIER: Mr. Chair, throughout these  
15 proceedings Sprint has relied on that exact same  
16 objection and has been -- it's been okayed by the  
17 Commission that these are publicly available. The rules  
18 of -- or the rules of discovery don't require us to  
19 provide that.

20 We're simply playing the game by the same rules  
21 Sprint has here.

22 CHAIRMAN HANSON: Thank you.

23 Commissioner Schenkenberg.

24 MR. SCHENKENBERG: Commissioner? Wow.

25 CHAIRMAN HANSON: Were you ever a Commissioner?

1           MR. SCHENKENBERG:  If this were publicly  
2 available and I could confirm this were PSAP and that  
3 entity had a PSAP ID, we wouldn't be here.  I can't  
4 confirm that.  From my research I think this isn't a  
5 PSAP.  These calls are not being delivered to PSAP.

6           And so I've given NAT the opportunity to say  
7 this is a PSAP and here's the ID number.  I just don't  
8 think it's true.  And if it were publicly available, I  
9 wouldn't have moved.

10          CHAIRMAN HANSON:  Well, that's an interesting  
11 argument.

12          Does Staff know whether this is public or not?  
13 Staff is shaking their head no, they don't know.

14          Well, Mr. -- excuse me.  I better call you  
15 Senator Swier since I called him Commissioner  
16 Schenkenberg.

17          Mr. Swier, if you're saying that it is public,  
18 would you be so kind as to provide that information as to  
19 how they can obtain it?

20          I'm very curious.  You know, we don't want to  
21 have a stalemate here over something as superfluous as  
22 whether it's public or isn't public.  You know, this  
23 docket goes into a lot more important items than to be  
24 bogged down in things that -- semantics and questions of  
25 this nature.

1 I'd really appreciate your cooperation in  
2 providing that. And I believe we're going to have to  
3 order it just because of the question that is involved  
4 here.

5 Is there anyone on Staff who has any comments on  
6 this item?

7 Seeing none, are there any questions by the  
8 Commissioners?

9 Is there a motion on Interrogatory No. 55?  
10 Commissioner Nelson.

11 COMMISSIONER NELSON: On Interrogatory No. 55 I  
12 move to grant Sprint's Motion To Compel.

13 CHAIRMAN HANSON: Thank you. And discussion on  
14 the motion?

15 From my perspective, we can't -- as I said, we  
16 can't get bogged down in questions of this nature,  
17 whether it is or whether it isn't. So if it is, in fact,  
18 one, we'll be interested in seeing that, and we will  
19 appreciate the cooperation from NAT.

20 COMMISSIONER NELSON: Mr. Chairman, if I could  
21 just echo that, I mean, this is really a pretty simple  
22 question.

23 And, you know, to the party that's being  
24 compelled here, assuming the motion passes, you either  
25 need to provide this very simple information or an

1 admission that it's not going to a PSAP, one of the two.  
2 But we need to move past this.

3 Thank you.

4 CHAIRMAN HANSON: Thank you.

5 Any further discussion?

6 Commissioner Fiegen.

7 COMMISSIONER FIEGEN: Fiegen votes aye.

8 CHAIRMAN HANSON: Commissioner Nelson.

9 COMMISSIONER NELSON: Aye.

10 CHAIRMAN HANSON: Hanson votes aye.

11 Motion carries on Interrogatory No. 55.

12 Interrogatory No. 56, identify NAT's total  
13 number of minutes of use by carrier for each month from  
14 January 2012 to the present.

15 Sprint.

16 MR. SCHENKENBERG: Thank you, Mr. Chairman.

17 This information was requested as far as  
18 Mr. Farrar's, Sprint's expert witness, evaluation of the  
19 statements made in the application and testimony that NAT  
20 was financially strong and had the ability going forward  
21 to have income and a positive business plan.

22 Mr. Farrar's testimony, particularly page 41,  
23 analyzes this. The information that he has and one of  
24 the things he tried to do was take total minute of use  
25 information for 2013 going forward and determine what

1 total revenues were and determine what costs were and  
2 make an evaluation and come to an opinion, express his  
3 opinion on whether this was a venture that could succeed  
4 financially, given the business plan.

5 The information -- he made some estimates.  
6 Without having the information, he made some estimates  
7 about what total minutes were. But what he preferred to  
8 do was use the actual numbers. And he originally did  
9 request information from January of '12.

10 This certainly could be, if nothing else,  
11 January 2013 forward. So, again, he can take that  
12 information, make it more accurate than the estimates  
13 that he did in his testimony, and address the claims by  
14 NAT that they are in a business model that is financially  
15 viable going forward.

16 CHAIRMAN HANSON: Thank you.

17 Mr. Swier.

18 MR. SWIER: Thank you.

19 Mr. Chair and Commission, as you know, this is  
20 an intrastate CLEC application. What Sprint is asking  
21 for here is really NAT's playbook. This question was  
22 asked of the Federal Court in the Federal Court action in  
23 front of Judge Schreier.

24 Judge Schreier found that the minutes of use,  
25 who the customers are, and that type of information is

1 proprietary, confidential business information.

2 So Sprint is trying to take a second bite at the  
3 apple after the Federal Court has denied this exact  
4 question. These are confidential proprietary business  
5 records. And here's why:

6 Sprint participates in what's called the  
7 wholesale market for this type of traffic. In fact,  
8 Sprint bids to carry this traffic for other long distance  
9 providers and then delivers the traffic to Crow Creek,  
10 and then Sprint doesn't pay Crow Creek.

11 So what this Interrogatory does -- and this is  
12 an important Interrogatory. What this does is it's  
13 asking the Commission to do something the Federal Court  
14 has already said Sprint does not need nor can they have  
15 access to.

16 They're simply trying to use this Commission to  
17 continue the cycle of delivering this traffic, bidding to  
18 deliver this traffic, delivering it to Crow Creek, and  
19 then not paying for it.

20 Who NAT uses as a carrier, their minutes of use,  
21 and this type of information, you are turning over NAT's  
22 entire customer playbook to a company that competes with  
23 them in the wholesale market. And, again, by giving up  
24 this information, you may as well just give Sprint the  
25 entire playbook for this company.



1           And, again, it's been rejected by Judge Schreier  
2 in the Federal Court for those very purposes. And we  
3 simply don't see how on an intrastate CLEC application  
4 this complies with 15-6-26(b)(1).

5           It's not relevant to the CLEC application. It's  
6 not reasonably calculated to lead to the discovery of  
7 admissible evidence. It's done in order to circumvent  
8 what the Federal Court has already found here is not  
9 relevant.

10           And, again, to give this information up when  
11 we're talking interstate minutes would be absolutely  
12 potentially devastating to this company. And this is  
13 probably the most important Interrogatory that has been  
14 asked of NAT, and it simply does not believe that this  
15 information should have to be given up in this intrastate  
16 CLEC application proceeding.

17           CHAIRMAN HANSON: Thank you.

18           Ms. Cremer, did you have anything?

19           Mr. Steffensen, I know that you're the analyst  
20 on this. If you have something to -- I won't be calling  
21 on you, but just catch my attention if you have  
22 something.

23           Thank you.

24           Any other Staff with an item on this?

25           If not, are there questions?

1 I'm wrestling with whether to have Sprint  
2 explain then from their standpoint.

3 Commissioner Nelson indicated he has a question.  
4 We'll continue with that.

5 COMMISSIONER NELSON: I guess my question would  
6 be for Mr. Schenkenberg.

7 I understand why it would be appropriate to  
8 grant this so far as the total number of terminating  
9 minutes of use. But based on Mr. Swier's argument, I am  
10 struggling with why you would need it by carrier.

11 Can you explain why you would need it by carrier  
12 as opposed to a total number?

13 MR. SCHENKENBERG: I can. There are different  
14 rates paid by different carriers, and different carriers  
15 have different arrangements. And my understanding is our  
16 witness would take that into consideration.

17 CHAIRMAN HANSON: Any further questions?

18 Commissioner Fiegen.

19 COMMISSIONER FIEGEN: So if I can make a follow  
20 up on that. So, Sprint, why couldn't they just black out  
21 the carrier, yet show the different rates?

22 MR. SCHENKENBERG: If they did that -- I don't  
23 think we asked -- yeah. I think we didn't ask for rates.  
24 If they wanted to do that by numbers with rates, black  
25 out carrier, I think that would get us there.

1           COMMISSIONER FIEGEN: So to follow up, the  
2 carrier's name would not be in the discovery?

3           MR. SCHENKENBERG: I think that would be -- if  
4 the rates are, I think that would serve our purposes.  
5 And this will be marked, I assume, as confidential so  
6 that the only nonbusiness person -- I'm sorry. The only  
7 nonlawyer, the only business people eligible to receive  
8 that are the individuals who have signed the protective  
9 order and are not in decision-making positions with  
10 respect to any wholesale pricing.

11           And I don't agree with what Mr. Swier says  
12 about wholesale pricing, but none of the information  
13 could get to those people in the event that it were true  
14 anyway.

15           CHAIRMAN HANSON: Thank you.

16           Commissioner Nelson.

17           COMMISSIONER NELSON: Again, Mr. Schenkenberg,  
18 I don't see anything in this Interrogatory that asks  
19 for rates. Now you're bringing rates into the  
20 discussion.

21           Can you explain that?

22           MR. SCHENKENBERG: I agree. And we do know --  
23 we do know rates. We've had other information provided  
24 to us that tells us rates and who's paying and who's not  
25 paying. So we didn't ask for rates. We just asked for

1 minutes by carrier.

2 We will take -- whatever information we have,  
3 we'll use. If we have total information, Mr. Farrar will  
4 use it and use it to the best of his ability. What we  
5 don't want to have happen is order that we can't get the  
6 information and then told Mr. Farrar's testimony is  
7 deficient because it doesn't contain the information we  
8 weren't allowed to get.

9 CHAIRMAN HANSON: Thank you.

10 Any further questions?

11 MS. AILTS WIEST: I have one.

12 CHAIRMAN HANSON: Ms. Wiest.

13 MS. AILTS WIEST: Mr. Schenkenberg, did you say  
14 you were willing to limit this from January 2013 to  
15 present or what -- I didn't quite get your statement  
16 there.

17 MR. SCHENKENBERG: I think it would be  
18 acceptable to limit it from January '13 to present to tie  
19 to what Mr. Farrar said in his testimony was -- he was  
20 using estimates for.

21 MS. AILTS WIEST: Thank you.

22 CHAIRMAN HANSON: Further questions?

23 Discussion?

24 Is there a motion?

25 Commissioner Nelson.

1           COMMISSIONER NELSON: I would move for  
2 Interrogatory No. 56 that we grant the Motion To Compel  
3 but limit it to terminating minutes of use from  
4 January 2013 to present, and those do not need to be  
5 identified by carrier.

6           CHAIRMAN HANSON: Discussion on the motion?  
7 Commissioner Fiegen.

8           COMMISSIONER FIEGEN: Fiegen votes aye.

9           CHAIRMAN HANSON: Commissioner Nelson.

10          COMMISSIONER NELSON: Aye.

11          CHAIRMAN HANSON: Hanson votes aye.

12          The motion carries.

13          That brings us to Interrogatory No. 59 with  
14 respect to supplemental response to Sprint's IR 15.

15          And it appears that much of this is going to  
16 necessitate some confidential discussion. However, we  
17 will see if it gets into that.

18          Mr. Schenkenberg, can you --

19          MR. SCHENKENBERG: I will talk around the edges  
20 of this. And I guess I'll defer to Mr. Swier to the  
21 extent of which he does consider this confidential.

22          But the question originally came from  
23 information that we had received under seal so we wanted  
24 to be careful on that.

25          As you can see from the question, the unredacted

1 question, I hope, we're trying to understand the timing  
2 of payments and the application of payments that would  
3 suggest to us that what was done here was something  
4 like -- something very similar to what the FCC has in  
5 other cases found to represent sham relationships, which  
6 is part of what Mr. Farrar's opinion is based on.

7 And, with that, I'll leave it at that to avoid  
8 any confidential discussion but can answer questions if  
9 you'd like.

10 CHAIRMAN HANSON: Mr. Swier.

11 MR. SWIER: Thank you.

12 Again, we are talking about here we simply don't  
13 think this is relevant to this CLEC application. Number  
14 one is this, again, covers interstate activities, which,  
15 again, the Commission does not have jurisdiction over  
16 interstate activities.

17 Second, we can't answer this question because  
18 what it does is it takes the information that NAT's  
19 provided, and it misstates what that information actually  
20 is. So what they're asking us to do is they're asking us  
21 to answer a question that's based on the premise of a  
22 misstatement of the facts.

23 There's no way that we can answer this question  
24 based on how it's worded. It's a misstatement of the  
25 facts. If they want to pursue that in some type of

1 cross-examination, that's fine. But the way that  
2 question is worded right now they have misstated the  
3 information that we've provided.

4 Sprint knows that there originally was a netting  
5 relationship between NAT and Free Conferencing  
6 Corporation. They know that. We've been over this in a  
7 dozen cases throughout the country.

8 So, again, they've taken information -- if they  
9 would reask their question in a way that we think we can  
10 fairly answer, then we can take a look at it. But that  
11 is an absolute misstatement of what was provided. That's  
12 why we can't answer the question.

13 CHAIRMAN HANSON: Mr. Schenkenberg, would you  
14 like to respond to that?

15 MR. SCHENKENBERG: I would.

16 I believe this to be quite accurate. I'm  
17 wondering whether Mr. Swier might be willing to promise  
18 the Commission and Sprint that it will have a witness at  
19 the hearing able to answer these questions on cross as  
20 perhaps an alternative. Because that's where this is  
21 likely to get fleshed out.

22 But I believe the information -- right up with  
23 an Affidavit to the effect -- to the effect that the  
24 information we've received supports the factual  
25 statements in my request. And Mr. Swier hadn't responded

1 to that, other than to tell you here, without reference  
2 to any documents, that it's not accurate. I think it is  
3 accurate.

4 MR. SWIER: Well, and if I may, Mr. Chair, right  
5 in our objection we say that we object as being vague and  
6 a misstatement of the information provided. Again, so,  
7 again, I don't know how we can answer this question the  
8 way it's based.

9 And, obviously, you know, if a question is asked  
10 that's a fair question, they can ask that on  
11 cross-examination. But they shouldn't be allowed to ask  
12 a question that simply misstates the facts.

13 CHAIRMAN HANSON: However, your answer would  
14 correct that.

15 Ms. Cremer, do you have anything?

16 Ms. Wiest?

17 MS. AILTS WIEST: So, Mr. Swier, will NAT have a  
18 witness that would be able to address the issues that  
19 were raised here?

20 MR. SWIER: I would guess that we would have a  
21 witness to talk about those issues. But, of course, if  
22 we're asked a question that's based on a misstatement of  
23 facts, it's going to be hard for my witness to answer  
24 that.

25 MS. AILTS WIEST: Is that sufficient for you,



1 Mr. Schenkenberg, if he has a witness that should be  
2 knowledgeable at least about what you're talking about  
3 here?

4 MR. SCHENKENBERG: If he has a witness who  
5 will -- if he can commit that he's got a witness that  
6 will be able to answer questions about the payment  
7 history between Free Conferencing and NAT, the  
8 application of payments made to bills issued and its  
9 interplay with the agreement that was in effect between  
10 NAT and Free Conferencing, then we should be able to  
11 address that at the hearing.

12 MS. AILTS WIEST: And will you have such a  
13 witness, Mr. Swier?

14 MR. SWIER: I'm sorry, Ms. Wiest. Could you  
15 repeat that, please.

16 MS. AILTS WIEST: And would you have such a  
17 witness? He said a witness that would be able to answer  
18 questions related to payment history, application of  
19 payments, those issues.

20 MR. SWIER: Yes, we would.

21 CHAIRMAN HANSON: And all of the other issues  
22 that Mr. Schenkenberg stated, not just the ones that  
23 Ms. Wiest stated; correct?

24 MR. SCHENKENBERG: I think the third one was and  
25 the interplay between the payments and the billing and

1 the contract that was in effect at the time.

2 CHAIRMAN HANSON: Mr. Swier.

3 MR. SWIER: Yes. We will be able to provide one  
4 of those witnesses.

5 CHAIRMAN HANSON: Thank you.

6 Ms. Wiest.

7 MS. AILTS WIEST: And then you would be  
8 satisfied that you could withdraw this one,  
9 Mr. Schenkenberg?

10 MR. SCHENKENBERG: Based on that, I would.

11 MS. AILTS WIEST: Okay. Thank you.

12 CHAIRMAN HANSON: Thank you for the cooperation  
13 between the two of you.

14 MR. SCHENKENBERG: May I request that that be  
15 reflected in the Order just so we don't have a question  
16 later on as to whether it happened?

17 MS. AILTS WIEST: Yes.

18 CHAIRMAN HANSON: It will be part of the Order.

19 Interrogatory No. 62, 63, 64. Sprint has been  
20 provided with two different -- well, rather than reading  
21 the lengthy portions of these, we'll just move to Sprint.  
22 Interrogatories 62 through 64.

23 MR. SCHENKENBERG: This is a very limited  
24 request. We have some information about filings made at  
25 the Federal universal Service Company related to

1 universal service fees paid which relates to NAT's  
2 designation of various kinds of revenue in the various  
3 categories and allows us to understand at least what NAT  
4 over these reporting periods believed it was and wasn't  
5 providing as a regulatory matter.

6 And we received several different versions of  
7 each year's filing, and we were just trying to unscramble  
8 what was filed when.

9 Really all we want right now is signature pages  
10 and/or electronic filing receipts. We know that there  
11 were amendments made, but things aren't dated. They're  
12 not signed. We don't know what was the last one filed.  
13 And without knowing that, we don't really know what NAT's  
14 final word was to these reporting years and where these  
15 various categories went in.

16 You know, you may hear from Mr. Swier that this  
17 relates to interstate matters, but what this does is it  
18 reflects NAT's belief back in these reporting years to  
19 what it was doing and whether it was providing  
20 intrastate service or in what categories various revenues  
21 were. And allows us to test this allegation that it's  
22 been providing local service under tribal law and  
23 interstate service under its interstate tariff over these  
24 number of years where we think it's been operating  
25 unlawfully.

1           CHAIRMAN HANSON: Mr. Swier, is it possible that  
2 you can help Sprint get their papers in order?

3           MR. SWIER: It would be, Mr. Commissioner. If  
4 you look at Interrogatories 62, 63, and 64, they want us  
5 to explain the facts regarding these documents.

6           Mr. Roesel from TMI, who is NAT's consultant,  
7 went into detail about why there were two documents. It  
8 goes into more detail than really what the question  
9 asks.

10           So, again, we're dealing -- now we're dealing  
11 with a 499-A filing, which, again, we don't see how it  
12 has any bearing on managerial, financial, or technical  
13 expertise.

14           But the fact is is what I'm told by Mr. Roesel  
15 is is that these 499s are E-filed so they don't have any  
16 ink signatures. Also I'm not aware of any receipts that  
17 the filing Commission here gives to the filers.

18           If there are receipts, I will certainly get  
19 them. But, again, I just don't see how on a CLEC  
20 application these 499-As are relevant whatsoever.

21           But I think it's also that Sprint has a misnomer  
22 of what exactly and how these are filed. There is no ink  
23 signature. They're E-filed, they're accepted, end of  
24 story. So they're asking us to produce documents which  
25 it's my understanding don't exist.

1           CHAIRMAN HANSON: To the extent that they exist,  
2 you can provide them?

3           MR. SWIER: To the extent that they -- yeah. If  
4 the Commission believes these are relevant, you know,  
5 we'll abide by what the Commission wants there.

6           CHAIRMAN HANSON: Any questions?  
7 Commissioner Fiegen.

8           COMMISSIONER FIEGEN: I just have a quick  
9 question on you talked about the ink signature. Is there  
10 an electronic signature on there?

11          MR. SWIER: The documents that we provided to  
12 Sprint are the documents that were E-filed. Now I don't  
13 know if there's an electronic signature or not because I  
14 don't have the documents in front of me. But what we  
15 provided in these 499-As are an exact copy of what was  
16 provided by NAT to the FCC.

17          So, I mean, that's what they have, and they have  
18 these things.

19          CHAIRMAN HANSON: Sprint? Mr. Schenkenberg?

20          MR. SCHENKENBERG: If they exist, they should be  
21 provided. We asked for either ink or filing receipts,  
22 understanding the process.

23          We have been provided, I think, with at least  
24 one filing receipt. USAC does send e-mail receipt  
25 confirmations back just as Amazon.com does when you buy

1 something, and certainly for an important regulatory  
2 matter, Universal Service Administrative Company sends  
3 you an acknowledgment that they received your mandatory  
4 filing.

5 So if they exist, we ought to get them. If they  
6 don't exist, we may take the position that these aren't  
7 legitimate filings and they weren't ever filed, and I  
8 think we should be allowed to.

9 CHAIRMAN HANSON: Thank you.

10 Questions by the Commissioners?

11 Is there a motion?

12 COMMISSIONER FIEGEN: Mr. Chairman, in 62  
13 through 64, move that we grant the Motion To Compel.

14 CHAIRMAN HANSON: Discussion on that motion?  
15 Commissioner Fiegen.

16 COMMISSIONER FIEGEN: Fiegen votes aye.

17 CHAIRMAN HANSON: Commissioner Nelson.

18 COMMISSIONER NELSON: Aye.

19 CHAIRMAN HANSON: Hanson votes aye.

20 The motion carries.

21 Document requests 13 through 16.

22 Mr. Schenkenberg.

23 MR. SCHENKENBERG: Thank you.

24 These have been limited. We did receive mid  
25 last week, I think, a number of documents related to the

1 corporate reorganization. I should say all of the  
2 Requests, 13, 14, and 15, relate to the corporate  
3 reorganization that NAT has alluded to in various  
4 filings.

5 I've provided Mr. Swier yesterday morning with  
6 three documents that we thought were referred to in other  
7 documents or in other testimony but not produced. So we  
8 have reviewed the universe of what we got and found three  
9 things, a Crow Creek Limited Liability Ordinance, which  
10 is referred to but we didn't see in our production, and  
11 two Tribal Resolutions, CC-1307293 and CC-1307296.

12 I haven't heard back from Mr. Swier about  
13 whether he's confirmed with his clients that those exist  
14 and need to be provided. But that's what this has been  
15 limited to at this point, those three documents.

16 CHAIRMAN HANSON: Mr. Swier, you stated you'd  
17 provide these. Is there a challenge?

18 MR. SWIER: No. I got Mr. Schenkenberg's e-mail  
19 yesterday. I have provided his e-mail to my clients as  
20 to what they think is missing, and if they exist, I will  
21 provide those immediately.

22 CHAIRMAN HANSON: Thank you. Do you have  
23 anything further on this?

24 MR. SWIER: No.

25 CHAIRMAN HANSON: All right. Then as long as

1 you're promising anyway, I'll make the motion to --  
2 Motion To Compel and move to compel on Documents 13, 14,  
3 15, and 16.

4 Is there a discussion on the motion?

5 Commissioner Fiegen.

6 COMMISSIONER FIEGEN: Fiegen votes aye.

7 CHAIRMAN HANSON: Commissioner Nelson.

8 COMMISSIONER NELSON: Aye.

9 CHAIRMAN HANSON: Hanson votes aye.

10 The motion carries.

11 Item 6, Document Request 17.

12 Mr. Schenkenberg.

13 MR. SCHENKENBERG: Yeah. This is -- Mr. Chair,  
14 members of the Commission, this is -- you know, we  
15 continue to be the recipient of allegations that we're  
16 delaying this docket.

17 This is a document that was referred to when  
18 they filed their Amended Application at the end of June.  
19 It's an Amended Joint Venture Agreement, and they  
20 responded to Staff's data request saying this document  
21 has been amended, and it's awaiting ratification.

22 This is the document that governs the  
23 relationship among NAT, Wide Voice, and NATE, Native  
24 American Telecom Enterprise, how it's going to do  
25 business, how it's going to run the venture.



1           And we've asked them a number of times for the  
2 document. We still haven't gotten it. NAT's response is  
3 we've given it to you, but I've got an Affidavit in  
4 saying we've looked at everything twice; we can't find  
5 it. Mr. Farrar says in his testimony we can't find it.  
6 We just want the document.

7           CHAIRMAN HANSON: Thank you.

8           Mr. Swier.

9           MR. SWIER: Yep. This one's my fault,  
10 Mr. Commissioner, because I thought in the slough of  
11 documents that we provided last week that I also provided  
12 this Amended Joint Venture Agreement.

13           I will have that to Mr. Schenkenberg today via  
14 e-mail. So I apologize for that. I thought it was in  
15 the mountain of information we provided last week.

16           CHAIRMAN HANSON: Thank you.

17           Is there a motion on Document Request 17?

18           COMMISSIONER NELSON: I move on Document  
19 Request 17 that we grant Sprint's Motion To Compel.

20           CHAIRMAN HANSON: Discussion?

21           Commissioner Fiegen.

22           COMMISSIONER FIEGEN: Fiegen votes aye.

23           CHAIRMAN HANSON: Commissioner Nelson.

24           COMMISSIONER NELSON: Aye.

25           CHAIRMAN HANSON: Hanson votes aye.

1           The motion carries.

2           I believe that deals with all of the items for  
3 this docket at this time.

4                       (Discussion off the record)

5           CHAIRMAN HANSON: There is one more item. There  
6 was a request for fees from Sprint. And occasionally  
7 fees are granted when there isn't any reason why the  
8 other party should not have complied.

9                       However, I don't know that the PUC has ever  
10 granted fees. Does anyone know of that?

11           MS. AILTS WIEST: Not aware of it.

12           CHAIRMAN HANSON: No one's aware of that. And  
13 there seem to have been some reasonable arguments on some  
14 of these items, even though we granted all of the Motions  
15 To Compel.

16                       Now that I've biased my position on it, is there  
17 any desire to grant fees?

18                       Do I hear a motion?

19                       If not, Commissioner Nelson.

20           COMMISSIONER NELSON: I would move that we deny  
21 Sprint's request for fees at this time.

22           CHAIRMAN HANSON: Discussion?

23                       Commissioner Fiegen.

24           COMMISSIONER FIEGEN: Fiegen votes aye.

25           CHAIRMAN HANSON: Commissioner Nelson.

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COMMISSIONER NELSON: Aye.

CHAIRMAN HANSON: Hanson votes aye. The motion carries.

(The proceeding is concluded.)

1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 24th day of  
11 September, 2013, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 1st day of  
14 October, 2013.

15

16

17

18

Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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