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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

=====

Transcript of Proceedings  
Volume I, Pages 1-321  
February 24, 2014

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

COMMISSION STAFF  
Rolayne Ailts Wiest  
Karen Cremer  
Greg Rislov  
Patrick Steffensen  
Katlyn Gustafson  
Tina Douglas

APPEARANCES

Scott Swier, Native American Telecom  
Stephen Wald, Native American Telecom  
Phil Schenkenberg, Sprint Communications  
Tom Tobin, Sprint Communications  
Bret Lawson, Sprint Communications  
Diane Browning, Sprint Communications  
Rich Coit, SDTA  
Meredith Moore, Midstate Communications  
Tom Welk, CenturyLink

Reported By Cheri McComsey Wittler, RPR, CRR

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota Education  
3 Association Building, 411 East Capitol Avenue, Pierre,  
4 South Dakota, on the 24th and 25th days of February,  
5 2014, commencing at 9:00 a.m. on February 24, 2014.

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15 (Midstate/SDTA's Exhibits 1 through 5 are marked.)

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1           CHAIRMAN HANSON: Call the meeting to order.  
2           And there's a few announcements that I need to make prior  
3           to the start.

4           First of all, we have a sign-in sheet, and I'd  
5           appreciate everyone signing in, please, especially those  
6           who are going to be testifying.

7           These proceedings are being recorded so  
8           participants will need to use the microphone. Guests in  
9           this -- we are guests in this building so just a reminder  
10          to everyone. And we very much appreciate the  
11          hospitality. And so, please, be quiet when you're  
12          hallways.

13          If you're going to be making cell phone calls,  
14          please do that outside so that you're not disruptive.  
15          There might be a room that we are able to help with that  
16          as well.

17          We have a court reporter, Cheri Wittler, so  
18          please clearly state your name. That's another reason  
19          for the sign-in sheet. Please refrain from speaking like  
20          an auctioneer when you're reading into the record.  
21          That's also helpful. Additionally, do not speak over  
22          another person. Cheri is very good, but she cannot type  
23          two conversations at the very same time.

24          Please turn your cellphones off or to vibrate.  
25          We have a phone bridge available for each day. Please

1 mute your phone if you call in, unless you are speaking  
2 to us. Reminder to anyone calling in.

3 We are webcasting these proceedings, and we will  
4 need to go off the air when discussion becomes  
5 confidential. Wireless internet is available, and  
6 there's a password that you need to enter in order to  
7 accomplish that. If you wish to access confidential  
8 postings from the web docket, you'll need to do so via  
9 the Citrix.

10 We have some Staff persons who are here also to  
11 assist you if you have some additional questions.

12 We have some elected officials, I believe, here.  
13 Terry Mills of the Oglala Sioux Tribe, a Commissioner.  
14 Joe Red Cloud is a Commissioner with the Oglala Sioux  
15 Tribe. And I'm not sure if Paul White is an elected  
16 official or not, but welcome to you folks. Appreciate  
17 you being here.

18 The South Dakota Public Utilities Commission  
19 will begin the hearing in Docket TC11-087, In the Matter  
20 of the Application of Native American Telecom, LLC, for a  
21 Certificate of Authority. It is approximately 9:00 a.m.,  
22 February 24, 2014. The location of the hearing is the  
23 auditorium of the South Dakota Education Association  
24 Building, 411 East Capitol Avenue, Pierre, South Dakota.

25 I am Gary Hanson, Commission Chair.



1 Commissioners Chris Nelson and Kristie Fiegen are also  
2 present. I will preside over this meeting. This hearing  
3 was noticed pursuant to the Commission's Order for and  
4 Notice of Hearing issued on December 31, 2013.

5 The issue at this hearing is whether to grant  
6 NAT a Certificate of Authority. NAT has requested  
7 authority to provide intrastate interexchange access  
8 service for traffic that originates or terminates off of  
9 the Crow Creek Reservation within the State of South  
10 Dakota.

11 All parties have the right to be present and to  
12 be represented by an attorney. All persons testifying  
13 will be sworn in and subject to cross-examination by the  
14 parties. The Commission's final decision may be appealed  
15 by the parties to the State Circuit Court and State  
16 Supreme Court.

17 Rolayne Wiest, the Commission's counsel, will  
18 act as Hearing Examiner and will conduct the hearing  
19 subject to the Commission's oversight. She may provide  
20 recommended rulings on procedural and evidentiary  
21 matters. The Commission may overrule its counsel's  
22 preliminary rulings throughout the hearing. If not  
23 overruled, the preliminary rulings will become final  
24 rulings.

25 At this time I turn the meeting over to

1 Ms. Wiest to conduct the hearing.

2 Ms. Wiest.

3 MS. AILTS WIEST: At this time I'll take  
4 appearances of the parties.

5 NAT.

6 MR. SWIER: Scott Swier serving as counsel for  
7 NAT.

8 MR. WALD: Stephen Wald as co-counsel for NAT.

9 MS. AILTS WIEST: Sprint.

10 MR. SCHENKENBERG: Good morning. Phil  
11 Schenkenberg, counsel for Sprint. I'm joined at counsel  
12 table by Tom Tobin, Diane Browning, an in-house lawyer  
13 with Sprint who has made an appearance in this case,  
14 Mr. Bret Lawson, L-A-W-S-O-N, who's in-house counsel with  
15 Sprint, and Mr. Farrar who's sponsored testimony is here  
16 as well.

17 Thank you.

18 MS. AILTS WIEST: Midstate.

19 MS. MOORE: Good morning. Meredith Moore on  
20 behalf of Midstate Communications.

21 MS. AILTS WIEST: SDTA.

22 MR. COIT: Yes. Richard Coit appearing on  
23 behalf of the South Dakota Telecommunications  
24 Association.

25 MS. AILTS WIEST: CenturyLink. Mr. Welk, are

1 you on the phone?

2 MR. WELK: Yes, I am, Ms. Wiest. Tom Welk, I'm  
3 appearing on behalf of CenturyLink.

4 MS. AILTS WIEST: And Staff.

5 MS. CREMER: Thank you. This is Karen Cremer of  
6 Staff.

7 MS. AILTS WIEST: I believe the first thing we  
8 need to handle is the stipulation as to CenturyLink's  
9 withdrawal from the docket.

10 Would you care to go first, Mr. Welk?

11 MR. WELK: I can go ahead. I'm hearing a  
12 ringing of my voice. I'm hoping the ringing is not  
13 occurring in the hearing room.

14 MS. AILTS WIEST: No. It's fine.

15 MR. WELK: CenturyLink filed a Stipulation  
16 signed by the counsel for CenturyLink and counsel for NAT  
17 dated February 18, 2014. CenturyLink had previously  
18 filed an objection to the Commission granting the  
19 Certificate of Authority to NAT.

20 CenturyLink and NAT have agreed that in the  
21 event that the Commission does issue a Certificate of  
22 Authority to NAT, that the Commission would include a --  
23 as a term and condition that NAT would provide a direct  
24 connection available to CenturyLink at rates identical to  
25 those CenturyLink offers and under reasonable terms and

1 conditions.

2 This Stipulation also does not address any other  
3 disputes that might exist between the parties. In  
4 exchange for this Stipulation, CenturyLink agrees to  
5 withdraw its objection to the Application.

6 And that is the sum and substance of the  
7 Stipulation, Ms. Wiest. It's memorialized in a written  
8 Stipulation dated February 18, 2014.

9 I addressed this in the pretrial conference  
10 telephone call with all counsel. I asked if there was  
11 any objection by any of the parties. No party had any  
12 objection. I was told that we needed to memorialize this  
13 Stipulation and the fact that no party had an objection  
14 and to present it to the Commission at the commencement  
15 of the hearing, and that's what we're doing.

16 MS. AILTS WIEST: Are you seeking Commission  
17 approval of the Stipulation?

18 MR. WELK: Yes. I would ask the Commission's  
19 approval. Conditioned upon the decision of the  
20 Commission to grant a Certificate of Authority.  
21 Obviously, there's no agreement to in any way to impede  
22 what the Commission may do. But we would ask the  
23 Commission that in the event they do grant the  
24 certificate, that this be a term and condition of such  
25 approval.

1 MS. AILTS WIEST: NAT, any response?

2 MR. SWIER: No objection.

3 MS. AILTS WIEST: At this time I believe that  
4 the Commission could vote to approve the Stipulation.  
5 Oh, I'm sorry. Did you have a question?

6 COMMISSIONER NELSON: I was going to make a  
7 motion. Do you need a motion?

8 MS. AILTS WIEST: Go ahead.

9 I would move that the Commission approve the  
10 Stipulation as to CenturyLink's withdrawal from the  
11 docket.

12 CHAIRMAN HANSON: Any discussion on that motion?  
13 Hearing none, Commissioner Fiegen.

14 COMMISSIONER FIEGEN: Fiegen votes aye.

15 CHAIRMAN HANSON: Commissioner Nelson.

16 COMMISSIONER NELSON: Aye.

17 CHAIRMAN HANSON: Hanson votes aye.

18 The motion carries.

19 MR. WELK: Thank you, Ms. Wiest, and thank you,  
20 Commissioners. I'll sign off.

21 MS. AILTS WIEST: Thank you, Mr. Welk.

22 Next we do have an outstanding motion. Would  
23 the parties would like to take the Motion To Strike  
24 before --

25 MR. WALD: We have no -- yes, Ms. Wiest.

1 MS. AILTS WIEST: Are there any other motions in  
2 addition to the Motion To Strike?

3 If not, NAT.

4 MR. WALD: Good morning, Commissioners,  
5 Ms. Wiest.

6 We'd move to strike Mr. Farrar's testimony on  
7 the grounds that he's not qualified as an expert. In  
8 response, Sprint has said this about Mr. Farrar: They've  
9 said that Mr. Farrar is testifying as -- they said he  
10 "collects and assembles facts produced in discovery and  
11 presents the positions and opinions of Sprint, as well as  
12 his own, regarding matters relevant to this proceeding."  
13 And then they said he's never been really offered as an  
14 expert.

15 And they've also said that the Commissioners and  
16 the Commission has already kind of addressed these issues  
17 in summary judgment. And when the -- the Commission did  
18 say some nice things about Mr. Easton's testimony and  
19 addressed expert issues then.

20 But that was before we took his deposition. And  
21 he was quite frank about the things that he had to say  
22 and what his qualifications were.

23 During his deposition just on the issue of the  
24 subject matter of his testimony, I asked him this  
25 question: I said "Do you have any role in this matter

1 other than as testifying as an expert?" And he said  
2 "No." So he's only here to do that.

3 And so the issue is then since this Commission  
4 follows the Rules of Evidence with one limited exception,  
5 does he qualify? And the limited exception that Sprint  
6 has cited is if there's some need to ascertain facts, you  
7 can go beyond the regular Rules of Evidence. But he's  
8 not here to provide facts. He's here to provide an  
9 expert opinion. So the issue is whether he's qualified.

10 So if you go through what they say they want him  
11 to do just from the very first page of their  
12 presentation, is to assemble facts produced in discovery.  
13 Well, that's a lawyer's job; that's not an expert's job.  
14 To present positions and opinions of Sprint. That's a  
15 lawyer's job; that's not an expert's job. And then to  
16 present opinions of Sprint. Well, that's not an expert's  
17 job; that's a lawyer's job. And then to present his own  
18 opinions. Well, that's okay if he's an expert.

19 So then the issue is, is he an expert? So he  
20 wants to testify on basically three things. One, he  
21 wants to say that "access stimulation" is bad.

22 And so I asked him about that in his deposition,  
23 and he said "So let me ask you what is so bad about  
24 access stimulation?" And this is page 84 of his  
25 deposition, and I gave Ms. Cremer copies for the

1 Commission this morning.

2           On page 84 I asked him "So let me ask you what  
3 is so bad about access stimulation?" And he said "Well,  
4 again, the FCC has 50 paragraphs describing why it's  
5 bad." And then I asked him again "So as an expert saying  
6 that access stimulation is bad, do you have anything to  
7 say as to why it's bad other than to point to the  
8 document from the FCC?" His answer "I think that the  
9 50 paragraphs in the FCC sums it very up very, and I  
10 agree with everything that the FCC said."

11           So our point is really quite simple. We can all  
12 read the FCC Order. And he's referring to an Order of  
13 the Connect America Fund proceeding that was issued in  
14 November of 2011. So we can all read that Order, and we  
15 can all argue about what it says.

16           But if he's just going to point to you and say  
17 this is what it says, that's something I think the  
18 Commission actually is more qualified to do than he is.

19           You'll hear that information, and you'll hear  
20 those discussions all the time. And he doesn't have to  
21 say what it says. You can say -- you can see what it  
22 says.

23           If he was an expert on intercarrier compensation  
24 and you wanted to put that Order in the context of a lot  
25 of other things that have gone on in the world of



1 telecommunications, that would be one thing. But when  
2 he's asked about that, he just said I only can point to  
3 the Order. And because of that he has nothing to add on  
4 the subject.

5 The second thing he wants to -- and, thus, he's  
6 not qualified to testify, by really his own admission.  
7 He's just going to say look at the Order.

8 Second, he wants to say that access stimulation  
9 is bad for the consumer because it raises costs. He  
10 acknowledges, though, that he knows nothing about how  
11 prices for consumers are set. He doesn't know what the  
12 factors are. He doesn't even know what department within  
13 Sprint sets the prices. He acknowledges that there's no  
14 research or science about that.

15 So not only is he not an expert, he acknowledges  
16 that there's no expertise within Sprint about that. So  
17 on that subject he's not qualified, by his own  
18 acknowledgment.

19 Third, he says he wants to comment as a  
20 financial expert on the prospects of not going forward.  
21 And for that he says he's qualified for two reasons:  
22 One, he has a business degree. And, two, he has worked  
23 for Sprint for 25 -- 20 or 25 years.

24 And those two things might by themselves qualify  
25 one to comment about local exchange carriers' prospects

1 if he had worked for a local exchange carrier and if he  
2 had done business planning for a local exchange carrier,  
3 if he had done the kind of stuff that people working on  
4 local exchange carrier issues that I'm sure you people  
5 see all the time.

6 But that's not what he did for 20 years. And  
7 that's not what he did -- by his own admission. I'm not  
8 saying that he's protesting this. This is what he  
9 acknowledges in his deposition. He acknowledges that  
10 he's never done -- worked for a LEC. He's never really  
11 worked on an application like this. He's never done a  
12 business plan for a beginning local exchange carrier. He  
13 never really did any analysis of this particular one.

14 He looked at the actual financials and basically  
15 did a projection based on its current business  
16 activities. Not even looking at what it plans to do as  
17 stated in the Application.

18 So based on his own acknowledgment, he really  
19 has not done any of the work that an expert who is trying  
20 to give a picture of the prospects of the business would  
21 do.

22 And just one last comment, and that is -- two  
23 last comments. And that is on this financial planning  
24 stuff, Sprint could have afforded a real expert if they  
25 wanted. They obviously have the resources. There's many

1 business planners in every major accounting firm in  
2 America that could do this kind of work. They're just  
3 throwing this out there. And I think you should just  
4 consider that when you're thinking about this matter.

5           Lastly, they made the argument that Mr. Farrar,  
6 if he's excluded, the people that we have to testify  
7 should be excluded too. Well, first of all, there's a  
8 deadline for making these motions. But, more  
9 significantly, the people that we have testifying are  
10 testifying not based on just their opinions, they're  
11 testifying on what they're actually doing in a real  
12 company about their own experiences.

13           So they're not just experts. It turns out that  
14 they're also experts they actually have real law degrees.  
15 They're testifying about that. They're real consultants  
16 with hundreds of clients. They're testifying about that,  
17 about the stuff that they actually do.

18           Mr. Farrar is a very experienced person, just  
19 not in this area. And that's why we're seeking at this  
20 point to have him excluded.

21           MS. AILTS WIEST: Sprint.

22           MR. SCHENKENBERG: Thank you, Mr. Chairman,  
23 members of the Commission.

24           This is an extraordinary motion for a couple of  
25 reasons. It's extraordinary to be having this kind of

1 argument in a Commission proceeding. I've never seen one  
2 like this. I've never seen a motion in any State  
3 Commission asking the Commission to deny wholesale  
4 testimony that includes opinions, positions, collection  
5 of information from discovery in this context.

6 I've also never seen a motion like this in  
7 Federal Court asking to strike 100 percent of a witness's  
8 testimony. And if this motion is granted, this  
9 significantly exchanges how this hearing occurs. It  
10 significantly changes what needs to happen both with our  
11 witness and with NAT's witnesses, and it's going to  
12 significantly impact how cases are tried in the future  
13 before this Commission.

14 And so I need to take a little time and make  
15 sure we're expressing our argument and position well here  
16 this morning. And there were four points that I want to  
17 make.

18 And the first is we shouldn't be here this  
19 morning doing this. We're beyond this.

20 The second is this Commission has the discretion  
21 to take all the evidence in and to decide what it should  
22 give weight to and what it should not.

23 The third is that the rules themselves are not  
24 as represented by NAT, and there isn't simply expert  
25 testimony and everything else. There are various

1 categories of opinion testimony, and we need to look  
2 carefully at the testimony itself in conjunction with  
3 these rules.

4 And the fourth is that the analysis that is done  
5 and was done from a financial standpoint by Mr. Farrar is  
6 absolutely justified and appropriate and within his area  
7 of expertise.

8 So my first point that we are beyond this. It  
9 is true two years ago that NAT filed a Motion for Summary  
10 Judgment and said we shouldn't go to hearing.  
11 Mr. Farrar's testimony, as well as Mr. Easton's  
12 testimony, is filled with policy statements, and we  
13 shouldn't go to hearing, we should win this case now.

14 And this is just a second bite at that apple.  
15 It's a little bit -- framed a little bit differently, but  
16 it's an attempt to say, Commission, you shouldn't  
17 consider Mr. Farrar's testimony, and you should only  
18 accept our evidence.

19 And this Commission decided it wanted to have a  
20 hearing and it wanted to hear from the witnesses, and  
21 that's what we're here today to do.

22 I think we're beyond this. Because NAT has  
23 sponsored and is attempting today to introduce written  
24 testimony rebutting Mr. Farrar. How do you object to  
25 Mr. Farrar but then rebut Mr. Farrar? In Federal Court

1 you call that either waiving the objection or opening the  
2 door to the testimony.

3 If what NAT wanted to do was not have  
4 Mr. Farrar's testimony from last August in this case,  
5 that could have been addressed earlier, and then the  
6 written testimony wouldn't have addressed Mr. Farrar's  
7 statements and opinions.

8 But if we've got written testimony responding to  
9 Mr. Farrar and objecting to Mr. Farrar, we've got to have  
10 Mr. Farrar's testimony in as well.

11 And, third, this could have been heard before  
12 today so that we didn't have witnesses here and we're not  
13 in a position of having a witness travel here and not be  
14 heard and not be in a position of having us go through  
15 all of NAT's testimony, if an affirmative ruling is  
16 issued on this motion, to determine what is and what  
17 isn't within the scope of this ruling.

18 Rather than on the morning of hearing exclude  
19 testimony of our witness and have NAT's witnesses, you  
20 ought to take it all in, give it the weight that it  
21 deserves, and make your decisions.

22 The second point is that you can. You have the  
23 discretion. This Commission has the discretion to extend  
24 the strict limits of the Rules of Evidence and take in  
25 information it believes is helpful. And as a court -- as

1 a judge will do in a case without a jury very often, the  
2 judge will say, well, I'm going to take it all in, and I  
3 can either exclude it on admissibility -- find it  
4 inadmissible now or I can take it all in and if it's not  
5 admissible, I won't consider it when I'm issuing my  
6 decision.

7 And that's what this Commission ought to do; err  
8 on the side of making a record, and then you decide what  
9 you rely on. And that's the way that these kinds of  
10 proceedings that happen in this state before this  
11 Commission and are done nationwide.

12 I want to focus on the rules. And as I looked  
13 at this over the weekend I think maybe there was one  
14 point we didn't make as we could have and should have in  
15 our briefs.

16 Rule 702, it's SDCL 19-15-2. That's Rule of  
17 Evidence 702 called testimony by experts. And it --  
18 that's the motion -- that's the rule under which NAT  
19 moves. And it says if scientific, technical, or other  
20 specialized knowledge will assist the finder of fact, a  
21 witness who's qualified may testify in the form of an  
22 opinion, may provide an opinion. But it's got to be  
23 somebody who's qualified. It's got to be based on  
24 sufficient facts, review of facts, reliable  
25 methodology.

1           And this rule, the reason for this rule in  
2 courts is, you know, the best example is a jury is going  
3 to have to decide the cause of death. And the jury  
4 doesn't have any independent perspective, any independent  
5 knowledge, can't draw from its own experiences to  
6 determine whether the cause of death was a strike on the  
7 head or something else. And so an expert witness is  
8 going to have to be on the stand to give an opinion.

9           And the drafters of the rules wanted there to be  
10 requirements met for somebody to get on the stand and  
11 tell the jury what the right answer is. That person has  
12 to be qualified. That person has to have gone  
13 through sufficient -- have methodology applied and has to  
14 use reliable methods. And that's appropriate.

15           But there's another category of opinion  
16 testimony. Rule 19-15-1, which is Rule 701, says if this  
17 is not scientific, specialized, or technical testimony, a  
18 witness can provide opinions that are rationally based on  
19 the perception of the witness and helpful to a clear  
20 understanding of the testimony.

21           That applies, for example, when a witness might  
22 want to say on the stand in front of a jury I thought the  
23 car was going fast. And that's not an expert opinion.  
24 It's an opinion, but it's not an expert opinion. And the  
25 jury then is allowed to -- to understand what that means



1 and to draw from its own experiences.

2 So we need to look both at Rule 702 and 701 and  
3 really determine whether and which pieces of testimony  
4 could fall within 702 and be stricken under 702.

5 It's not correct to say -- and I apologize if we  
6 made it sound this way. We didn't mean to say that  
7 Mr. Farrar has never been identified as an expert. I  
8 think what we said in a footnote on the first page of our  
9 Brief is NAT introduced this concept by saying Sprint  
10 filed "expert testimony of Randy Farrar" and  
11 "supplemental expert testimony." And that's another  
12 misuse of quotes by NAT. We didn't call it that. We  
13 called it testimony of Mr. Farrar.

14 There are some things within his testimony where  
15 he provides opinions and some things where he doesn't  
16 provide opinions. And I'm going to ask you to look at  
17 Mr. Farrar's testimony from December of 2013. I can -- I  
18 can give you a number from our exhibit list if that would  
19 be helpful. This is supplemental direct testimony filed  
20 December 4, 2013.

21 And keep in mind NAT is asking to strike  
22 100 percent of this testimony. Well, he starts on page 1  
23 with his name. He goes to page 2, and he's asked  
24 "Shortly before you filed testimony NAT filed a notice  
25 that NAT had merged into another entity. Do you believe

1 it is clear who the Applicant is in this proceeding?"  
2 And he answers "We've seen some documents. It's not  
3 clear who's asking for what. I think this is an issue."

4 He's just identifying an issue. He's not  
5 asking the Commission to rely on his substantial  
6 expertise and take his word on that point. He's  
7 identifying an issue. That isn't testimony that is --  
8 could possibly be stricken under Rule 702. It's not  
9 presented as expert testimony.

10 He goes to the next page and says "In my  
11 opinion, a certificate should not be awarded when the  
12 identify of the Applicant is unclear." Okay. You could  
13 strike that testimony as opinion testimony. I don't  
14 think it's Rule 702. It's not technical, specialized.  
15 It's something this Commission has the ability to  
16 evaluate and can evaluate and will evaluate.

17 And we go through, and we find him identifying  
18 issues. We find him saying I've attached information  
19 received from discovery, which shows X, Y, and Z, and the  
20 attachment is going to be received by this Commission.  
21 We've stipulated beforehand that the attachments are  
22 going to be received. So the underlying information that  
23 he's collecting and presenting is going to be received,  
24 and that is commonly how a record is made in these kinds  
25 of cases.

1           We then get to page 7, and he's asked the  
2 question "If all interexchange carriers were currently  
3 paying NAT/CC's tariff rate of .006327, would NAT/CC be  
4 making a profit?"

5           Now what he does -- this is the financial  
6 analysis that's being attacked. What he does is he takes  
7 balance sheets provided by NAT, and he runs some math.  
8 Is that specialized, technical testimony that requires  
9 years of experience drafting business plans, or is  
10 somebody who's an M.B.A., has testified in rate cases,  
11 has offered expert testimony before a couple of dozen  
12 Commissions in cases like this and does this as part of  
13 his normal job, is that something that person can do?

14           Well, it's the latter. He is certainly  
15 qualified to take the information that has been received  
16 in discovery and run some math.

17           And that's what's done here. He's not asking  
18 again -- the Commission can run that math too. He's not  
19 asking the Commission to take his word for it because  
20 he's an expert.

21           That's an example, and we'll see that all  
22 through all three pieces of testimony. And I do think  
23 that if the motion is to be entertained, there would have  
24 to be a question-and-answer by question-and-answer  
25 analysis of all three pieces of testimony to determine

1 what is technical, specialized, expert testimony that  
2 you're not going to see.

3 I disagree significantly with the statement that  
4 the same analysis wouldn't be done as to testimony of  
5 NAT's witnesses. There was a motion deadline, but there  
6 was never a motion deadline for the exclusion of  
7 testimony.

8 We showed up today to talk about which exhibits  
9 and testimony would be stipulated to from an  
10 admissibility standpoint and which would not. These have  
11 not been received. They will be offered. And if the  
12 Commission issues a ruling on opinion testimony, that  
13 it's not going to take opinion testimony, then things  
14 like Mr. Roesel's testimony on financial capabilities,  
15 which was based on nothing more than what Mr. Farrar had,  
16 would be stricken.

17 Mr. DeJordy's testimony on what the law means  
18 would be stricken, as well as many other Q and As that  
19 suffer -- not to mention Mr. Roesel's long discussion of  
20 the same Order that Mr. Farrar is criticized for talking  
21 about.

22 The final point, and I mentioned it briefly, is  
23 related to financial analysis. And in addition to  
24 arguing that Mr. Farrar's not an expert, NAT says  
25 Mr. Farrar didn't rely on enough of the right things to

1 determine -- to render his opinion that NAT cannot be  
2 financially viable.

3 And what Mr. Farrar said is under the current  
4 business model they can't be financially viable, based on  
5 the financial information that shows 100 percent of the  
6 revenue sources is tied to Free Conferencing Corp and  
7 most of those revenue -- most of that revenue source is  
8 in the form of access charges which is being reduced to  
9 zero, and they're losing money today.

10 He's been criticized for not evaluating  
11 additional business plans of NAT. As Mr. Farrar  
12 indicated in his last round of testimony, we asked NAT I  
13 think in 2012 what are your business plans? They didn't  
14 tell us. We asked NAT after their Amended Application  
15 what are the new revenue sources that you reference in  
16 your application? And they didn't tell us anything.

17 There's no way Mr. Farrar can be criticized for  
18 assuming that NAT has told us what their business plans  
19 are and then getting it wrong when a few weeks before the  
20 hearing we're told there's plans to do something they had  
21 never disclosed before.

22 So substantively if we were to apply the letter  
23 of law in Federal Court, Mr. Farrar's testimony would not  
24 be stricken for failure to evaluate all the right kind of  
25 information.

1 Thank you very much.

2 MS. AILTS WIEST: Any of the other parties?

3 MS. MOORE: Thank you, Ms. Wiest. Neither  
4 Midstate Communications nor SDTA will take a position  
5 with regard to this motion.

6 MS. CREMER: Thank you. This is Karen Cremer of  
7 Staff.

8 Staff's position would be that the Commission  
9 has the discretion to hear it and give it the weight it  
10 deserves when they make its decision.

11 Thank you.

12 MS. AILTS WIEST: Mr. Wald.

13 MR. WALD: Just a few quick points.

14 First, Mr. Schenkenberg used the phrase  
15 "extraordinary" about the motion. The only thing that's  
16 really extraordinary here is that Sprint is even here.

17 They have -- according to Mr. Farrar, Sprint has  
18 never before contested an application for a local  
19 exchange carrier. Ever. In the history of Sprint. So  
20 that's the first extraordinary thing.

21 The second extraordinary thing is that they have  
22 four lawyers here doing it. The third extraordinary  
23 thing is they're doing it -- they're contesting their  
24 financial, managerial, and technical expertise of this  
25 company to operate a phone company when it's been doing

1 it for four years. All of those things are really  
2 extraordinary.

3 And they're doing it in connection with this  
4 tiny little phone company, which is also extraordinary.  
5 The reason is because they owe this tiny little phone  
6 company a great deal of money.

7 The other thing I think that everybody should  
8 keep in mind is that there's a lot of states that don't  
9 have the Rules of Evidence apply in administrative  
10 proceedings. And South Dakota does. And there's a  
11 reason. And they actually have the Rules of Civil  
12 Procedure apply. And there's a reason. So that -- this  
13 state is pretty stringent about that.

14 And then, lastly, Mr. Schenkenberg, you know,  
15 quotes these things from the testimony that are kind of  
16 made clear that Mr. Farrar is not really here as an  
17 expert. He's really here as an advocate and not to  
18 provide assistance of the type that an expert might be.

19 So he said things like, you know, the Commission  
20 can run the math too. Well, that's kind of the point.  
21 The Commission can run the math too; why do they need  
22 Mr. Farrar to do it. When he said that -- when  
23 Mr. Farrar says in my opinion the certificate should not  
24 be awarded when the identity of an Applicant is unclear.

25 Well, that's just an argument. Mr. Farrar

1 acknowledges he's not a lawyer. He's not an expert on  
2 these kinds of matters. So why is he even putting that  
3 in his testimony.

4 When he says things like, as I understand it,  
5 the Commission rule says so and so. His testimony is  
6 replete with things like that. Why is that in his  
7 testimony? It's in there only because he's here as an  
8 advocate summarizing Sprint's position, not as an  
9 expert.

10 And as you heard from Mr. Schenkenberg,  
11 Mr. Schenkenberg is well-qualified to summarize Sprint's  
12 position. He's an articulate advocate for Sprint's  
13 position, and that's a proper role for counsel.  
14 Mr. Farrar is not an expert qualified to give expert  
15 opinions, and that's why his testimony really is not  
16 properly admitted in this proceeding.

17 MS. AILTS WIEST: Thank you.

18 I am going to deny the Motion To Strike. I find  
19 that Mr. Farrar's testimony meets the requirements to  
20 testify as a witness before the PUC. In addition, the  
21 Commission does have the ability to independently  
22 determine the weight and credibility of all of our  
23 witnesses, and SDCL 1-26-19-1 does provide the Commission  
24 with additional discretion regarding the admission of  
25 evidence.



1           With that, is there any other motions before we  
2 begin the hearing?

3           And prior to opening statements, did the parties  
4 stipulate to any exhibits coming in? And it's a matter  
5 of timing. Did you want to go through -- if exhibits  
6 have been stipulated, would you like to go through that  
7 now or after the openings? I don't know if --

8           MR. SCHENKENBERG: I think we can do either. I  
9 think with the motion being denied there are a  
10 significantly higher number of exhibits on both sides  
11 that will be stipulated to.

12          MR. SWIER: Let's do openings and then do  
13 stipulations.

14          MS. AILTS WIEST: That's fine. With that, let's  
15 go to openings.

16          Mr. Swier.

17          MR. SWIER: Thank you, Ms. Wiest. Members of  
18 the Commission, good morning. My name is Scott Swier. I  
19 am one of the attorneys for Native American Telecom.

20                 Native American Telecom, LLC is a tribally owned  
21 limited liability company organized under the laws of the  
22 Crow Creek Sioux Tribe.

23                 In this proceeding NAT has asked the Commission  
24 for a Certificate of Authority to provide certain  
25 telecommunications services in South Dakota. There have

1     been some questions that have come up regarding the  
2     ownership structure of NAT. And it's actually very  
3     simple. But I want to put everybody on the same page  
4     with regard to that ownership structure.

5             In 2008 NAT was organized as a limited  
6     liability company under South Dakota Law by Gene DeJordy  
7     and Tom Reiman. NAT later became majority owned by the  
8     Crow Creek Sioux Tribe. All right. Still a South Dakota  
9     LLC.

10            In 2013, so almost five years after NAT was  
11     originally recognized as a state LLC, NAT was then  
12     reorganized under the corporate tribal laws of the Tribe.  
13     The Tribe had really never had any type of business  
14     corporation act. It had never had any type of limited  
15     liability company act.

16            From a business perspective, it simply made  
17     perfect sense to go ahead, now that the tools were in  
18     place, and shift NAT from a state authorized LLC to a  
19     tribal authorized LLC. And that was done.

20            Today NAT's ownership structure is this:  
21     51 percent of NAT, the majority, is owned by Crow Creek  
22     Holdings Company. Crow Creek Holdings is 100 percent  
23     owned by the Tribe.

24            So under this new tribal LLC, 51 percent of NAT  
25     continues to be held by the Tribe. The Tribe is the

1 majority owner through their holding company. You can  
2 see the sophistication -- companies just don't sit  
3 dormant for four or five years. They're always doing  
4 something. They're doing things different.

5 This company thought that it was a good idea at  
6 the time to move into a tribally owned, tribally  
7 recognized business entity, and that's what they did. So  
8 51 percent of NAT held by Crow Creek Holdings, which is  
9 the Tribe.

10 25 percent of NAT is held by a company called  
11 Native American Telecom Enterprise, LLC. That's a  
12 South Dakota recognized LLC. It's a business development  
13 company. So we don't get confused, we're going to hear  
14 about NAT, which is the entity we're here on today.  
15 Native American Telecom Enterprise is NATE. Okay.  
16 They're separate organizations.

17 The remaining 24 percent ownership interest in  
18 NAT is a company called Wide Voice Communications, Inc.  
19 Wide Voice Telecommunications, Inc. is simply a  
20 telecommunications company.

21 So those are the three owners of NAT: Crow  
22 Creek Holdings, which is the Tribe; Native American  
23 Enterprise, LLC; and Wide Voice Communications. NATE  
24 having 25 percent, Wide Voice Holding, 24, but, again,  
25 the majority of the LLC, 51 percent owned by the

1 Crow Creek Sioux Tribe.

2 I want to talk just briefly about NAT's  
3 authority to provide telecommunication services. In 1997  
4 the Crow Creek Sioux Tribe established its own Tribal  
5 Utility Authority. All right. That was put into place  
6 in 1997.

7 In October of 2008 that Tribal Utility Authority  
8 granted NAT the authority to provide telecommunications  
9 services on the reservation, which they were within their  
10 right to do. They have a valid Tribal Utility Authority  
11 who can issue orders granting licenses or certificates of  
12 authority for a company to provide services on the  
13 reservation.

14 All right. After that authority was gained by  
15 NAT, NAT then did what any other CLEC in the country  
16 would do. They filed access tariffs with the Federal  
17 Communications Commission. They filed access tariffs  
18 with the Tribal Utility Authority.

19 As soon as NAT filed its tariff with the FCC  
20 Sprint, Qwest, Verizon, AT&T all formally objected to  
21 NAT's tariff. They all said, oh, it's messed up for A,  
22 B, and C.

23 The FCC as they do a lot of times with these big  
24 companies said no. You're wrong. The tariff that NAT  
25 has filed absolutely meets the standards of the FCC.

1 It's a good, valid, reasonable tariff.

2 So since that time NAT has had a federal tariff  
3 in place. Tried to object. They lost. The tariff  
4 continues to move forward. Also, of course, the tribal  
5 utility tariff was filed.

6 NAT filed its tariffs. NAT then as a next step  
7 did what any CLEC would do. They entered into an  
8 Interconnection Agreement with Midstate Communications  
9 here in South Dakota.

10 So NAT has Tribal authority. They have a  
11 recognized FCC tariff. They have a Tribal tariff. They  
12 enter into an Interconnection Agreement with Midstate,  
13 which only a CLEC could do. They run the company exactly  
14 like any other CLEC would do in this state. The  
15 difference is it has a Tribal order of authority as  
16 opposed to an order from this Commission.

17 In this case NAT has the burden to demonstrate  
18 that it has sufficient, number one, managerial  
19 capabilities; number two, technical capabilities; and,  
20 number three, conditional capabilities, to offer the  
21 telecommunications services that it seeks through its  
22 application. So we have to show managerial, technical,  
23 financial capabilities.

24 All right. We have a unique situation here.  
25 I've gone back since 1997 to review every CLEC

1 application that's come before this Commission. Those  
2 are almost always, 99 percent, start-up companies who  
3 really have very little, if any, history of moving  
4 forward with the company.

5 Here you have NAT, very unique situation, has  
6 been running their own tribally owned telephone company  
7 since 2009. So you have four or five years of history to  
8 look back to see how this company has conducted itself  
9 and how it's run its business and provided services to  
10 its customers. Again, since 2009 NAT has provided these  
11 services to the members of the Crow Creek Reservation.

12 Let's talk briefly about the managerial  
13 capabilities. In the record there is a listing of the  
14 key management personnel of NAT. If you look at that,  
15 there is over 100 years of experience combined in the  
16 telecommunications industry for the various folks who are  
17 involved in this project. Over 100 years.

18 This isn't some entity that's being run out of  
19 some grandma's basement by people who are just maybe  
20 hoping to strike gold. These folks have been in the  
21 telecommunications industry, have been executives, have  
22 been technical expertise people for over 100 years.

23 They're experts in the telecommunications field.  
24 There is absolutely no question that NAT has sufficient  
25 managerial capabilities to provide the standard to

1 receive a license.

2 And I think even Sprint, if you read  
3 Mr. Farrar's testimony, they're not complaining about the  
4 managerial abilities of NAT. They know it's there. They  
5 know it's there. So that's a given.

6 The technical capabilities is our second prong  
7 that we have to provide -- or to show the burden. Since  
8 2009 NAT has had physical offices on the reservation.  
9 They've had telecommunications equipment on the  
10 reservation. They've had telecommunications towers on  
11 the reservation.

12 NAT uses what's called Wi-max technology,  
13 operating in the 3.65 GHz spectrum. I think an easy way  
14 to say that is they've got good stuff. They've got good  
15 technological, technical stuff that's being used out on  
16 that reservation. So the technical capabilities are  
17 there.

18 Here is what the members of the tribe are being  
19 provided by -- with by NAT. That NAT network provides  
20 tribal members on the reservation with -- number one,  
21 they have 4G technology out at Fort Thompson. They have  
22 high speed broadband services on the reservation. NAT  
23 provides voice service, data, and internet service,  
24 multimedia services, wireless internet protocol voice,  
25 and data communications. These are some of the services

1 that are being provided to the Tribe, most of which the  
2 Tribe and their members have never had any opportunity to  
3 take advantage of these technological I don't want to say  
4 gifts but technological advancements for the members of  
5 the Tribe. That's what NAT has provided.

6 NAT has over 150 residential, business, and  
7 tribal customers on the reservation. They provide the  
8 customers with 911 access, operator services,  
9 interexchange services, directory assistant,  
10 telecommunications relay services.

11 Before NAT, none of those services were out at  
12 the reservation in Fort Thompson. Or if they were, they  
13 would simply not be able to have been afforded by the  
14 great majority of the members.

15 NAT has built an internet and technological  
16 center on the reservation. They've provided Crow Creek  
17 Sioux Tribe residents with free internet and computer  
18 services.

19 In sum, there's no question that NAT also meets  
20 the second criteria. It meets the technical criteria.  
21 NAT has sufficient technical capabilities to run this  
22 phone company.

23 And, finally, the third prong is the financial  
24 capabilities. When the Commission reviews NAT's current  
25 financial documents along with the future projections



1 that NAT will provide, again, demonstrates sufficient  
2 financial capabilities to run this telephone company.

3 So I think it's going to be very clear,  
4 managerial, easily met, technical, easily met, financial,  
5 even though it will be debated, the financial prong is  
6 also met in this case.

7 Some of the financial issues that you have to  
8 take into consideration: Future revenue sources are a  
9 combination of access revenue, local services revenue,  
10 new service revenue. NAT has just been designated as a  
11 hub zone. The tribal contacts that are available. And  
12 the Native 8(a) programs. Those are six areas that when  
13 Sprint says once access goes away this company is going  
14 to fold their tent and go home.

15 I've just given you six areas that future  
16 revenues will continue to come in and keep this -- and  
17 keep this group not only viable but I think business on  
18 the reservation that can flourish.

19 So I think you need to take a good look at those  
20 future revenue sources. And, again, it all demonstrates  
21 that there is financial viability.

22 There's two reasons why we're here today. The  
23 first is Sprint. Sprint continues to use its  
24 longstanding strategy of just suing small, rural LECs and  
25 CLECS so they don't have to pay access service. They do

1 it all over the country. They've gotten smacked by other  
2 courts throughout the country because of this cost  
3 containment system that they have.

4 It's a lot easier to spend 20, 30, 40, \$50,000  
5 in attorney fees than it is to have to pay 1 or  
6 \$2 million to those small rural companies out in the  
7 sticks in South Dakota. So we're here over money that  
8 Sprint doesn't want to pay, number one.

9 The second reason, and the reason that I think  
10 puts the PUC in a very precarious position, is that the  
11 primary reason Sprint is here is because they want to  
12 further its public policy position against access  
13 stimulation. And it's a battle that they've lost.

14 The FCC rejected Sprint's public policy position  
15 regarding access stimulation. If you read the CAF Order,  
16 Sprint wanted immediate -- revenue sharing and access  
17 stimulation to be gone immediately.

18 The FCC said, no, that's not good public policy.  
19 We're going to do a sliding scale, bill and keep. So  
20 they went to the FCC. Public policy: Lost.

21 Let's try it again. We'll try the South Dakota  
22 Legislature. We'll come out to Pierre, and we'll talk  
23 the legislators into finding that access stimulation is  
24 against public policy in South Dakota. They lost. They  
25 didn't lose -- they lost in 2010 badly. They lost in

1 2011 badly.

2           The South Dakota Legislature made a very  
3 distinct -- they took a stand. They said we are the body  
4 that sets public policy in the State of South Dakota.  
5 Sprint, the public policy that you think we should adopt,  
6 we disagree. You ran it up the flag pole twice. You got  
7 beat. You got crushed twice.

8           So the FCC wouldn't agree. The South Dakota  
9 Legislature twice rejected this public policy. So Sprint  
10 now puts this Commission in an unfair position. They now  
11 want you to say that access stimulation is not in the  
12 public policy interests of South Dakota. They're taking  
13 a third run at this. And that's why we're here today.  
14 We're here for access stimulation. Despite the fact that  
15 access stimulation occurs every single day with other  
16 LECs in South Dakota. It happens every single day.

17           Our LECs in South Dakota are engaged in access  
18 stimulation. And what does Sprint do? They pay those  
19 other companies.

20           MR. SCHENKENBERG: I'm going to object to that.  
21 That is not in the record. Nor should it be. There's no  
22 testimony on this. This is supposed to be a summary  
23 of --

24           MR. SWIER: I'm not testifying.

25           MS. AILTS WIEST: I don't believe it was in the

1 underlying testimony, though.

2 Sustained.

3 MR. SWIER: Sprint pays access stimulation to  
4 Northern Valley.

5 MR. SCHENKENBERG: Same objection.

6 MS. AILTS WIEST: As I recall, I don't believe  
7 that was discussed in the --

8 MR. SWIER: It's in Mr. Holoubek's deposition.  
9 He was questioned about it by Mr. Schenkenberg  
10 extensively, and that's in the record.

11 MR. SCHENKENBERG: I disagree. And I wonder --  
12 I think Mr. Swier is also publicly potentially at risk of  
13 saying things that have been marked as confidential and  
14 should be treated as confidential.

15 So I don't believe that it's in the -- that is  
16 in the testimony of Mr. Holoubek who has any personal  
17 knowledge of that anyway. Nor do I believe it's anywhere  
18 else in the record. And I'm just very hesitant to have  
19 any further down this road, knowing there's been some  
20 things we've designated as confidential.

21 MS. AILTS WIEST: I'll sustain it at this point  
22 unless you can show me at some other point that it was in  
23 there, Mr. Swier.

24 MR. SWIER: Well, it's in there. If he wants to  
25 cross-examine Mr. Holoubek on that, he certainly can.

1 It's in the record. I should be able to comment on it,  
2 with all due respect.

3 MS. AILTS WIEST: Right. Can you just tell me  
4 where it is?

5 If you want to just give me a page number.

6 MR. SWIER: Could we just go ahead and continue  
7 while we're finding it?

8 MS. AILTS WIEST: Go ahead.

9 MR. SWIER: It's interesting to note that Sprint  
10 now stands alone in this proceeding. CenturyLink has  
11 withdrawn its objections. Midstate and SDTA no longer  
12 object to the application. AT&T has not filed any  
13 evidence or taken any type of an active role in this  
14 case. It's simply come down to Sprint trying to push  
15 their access stimulation public policy.

16 NAT has sufficient managerial, technical, and  
17 financial capabilities to offer the telecommunications  
18 services it seeks to under its application.

19 Over the next few days you'll hear a lot of  
20 testimony, but when it comes down to it, NAT easily meets  
21 the criteria for a Certificate of Authority to provide  
22 telecommunications services. And we look forward to  
23 working with you over the next few days to show that  
24 those three standards are easily met.

25 Thank you.

1 MS. AILTS WIEST: Thank you.

2 Sprint.

3 MR. SCHENKENBERG: Thank you, Mr. Chair, members  
4 of the Commission.

5 To begin, I objected a few minutes ago to  
6 something Mr. Swier said as being beyond the record in  
7 this case. That was not the only time he did that. And  
8 I didn't object to every time. But his testimony of  
9 sorts about the corporate reorganization you're not going  
10 to find in any witness's testimony. Sprint coming to the  
11 legislature, that's not in anybody's testimony.

12 So I just -- I guess I would request that the  
13 Commission rely on the evidence that's submitted and  
14 received as opposed to necessarily relying on everything  
15 Mr. Swier said in his opening statement.

16 He did say several times the words "like any  
17 other CLEC." And if this were any other CLEC -- if this  
18 were a CLEC like any other, we probably wouldn't be here.  
19 This is not a CLEC like any other.

20 As Mr. Farrar said in his rebuttal testimony, if  
21 this were a company that had a business plan to generate  
22 economic development, provide phone service in  
23 South Dakota on the reservation or off, without doing it  
24 through sham entities and being engaged traffic pumping,  
25 by all means, Sprint would certainly not be opposing

1 that.

2 But when it's done the way it's done here,  
3 through sham entities, based on a traffic pumping  
4 business model, and in a way that really doesn't fit the  
5 rules of this Commission and raises more questions than  
6 it answers, Sprint is here.

7 NAT filed its application under two rules,  
8 Commission Rule 10:20:30:02, which relates to exchange  
9 service and 24:02 regarding interexchange service. A  
10 certificate under 32:02 allows a company to provide local  
11 exchange service to consumers, to people that pick up the  
12 telephone and want to have local exchange service.  
13 Telecommunications service within a local area under the  
14 jurisdiction of the Commission.

15 The evidence will show that NAT is not asking  
16 for that authority. They don't believe they need the  
17 Commission's authority to provide local exchange service  
18 to consumers. They don't want it. In fact, they  
19 strongly believe the Commission can't do anything,  
20 exercise any jurisdiction over NAT with respect to such  
21 services. Even if it involves telecommunication services  
22 being provided to nontribal entities such as Free  
23 Conferencing Corporation. So that rule doesn't really  
24 give the Commission the authority to grant the  
25 certificate.

1           Rule 24:02 is similar. It allows the company --  
2 a certificate under that rule allows the company to  
3 provide intrastate long distance service to a consumer  
4 when it picks up the phone and wants to make an  
5 intrastate long distance call. But, again, NAT doesn't  
6 believe the Commission can exercise any authority when it  
7 allows individuals or businesses, tribal members or  
8 otherwise, to pick up the phone and make an intrastate  
9 call. So that rule doesn't really apply.

10           What they've asked for, I think, is the ability  
11 to charge long distance customers on intrastate long  
12 distance calls, either going on or coming off the  
13 reservation. But there is no rule that allows that.  
14 That authority is tied to the local authority, which they  
15 don't think they need a certificate for. So we just  
16 don't think the rules apply.

17           Now if the rules apply, the standards and the  
18 rules need to be followed, if you're going to go down  
19 that path. And they don't meet the standards under the  
20 rules. The evidence is going to show that there is no  
21 authority -- NAT has no authority to do business in the  
22 state issued by Secretary of State. That's a  
23 prerequisite to a certificate.

24           Is the Applicant proposing to provide specific  
25 functionalities and services subject to the Commission's



1 jurisdiction? I think the record is unclear -- and maybe  
2 we'll know more after this is done -- about what NAT  
3 believes the Commission has the authority to regulate.

4 But we don't have a list of specific services.  
5 We don't have proposed rates, terms, and conditions. We  
6 don't have a tariff. The application just does not fit  
7 the rules.

8 Managerial fitness is an issue because this is a  
9 company that for four years has done -- pursued a  
10 business plan of bringing dollars in through access  
11 stimulation and sending those dollars out to California,  
12 at a loss to the business. It's set up in a way to do  
13 just that. It's set up in a way so that access fees,  
14 which NAT believed would be the vast, vast majority, and  
15 at the beginning the only revenue source of the entity,  
16 none of that could go through and be distributed to the  
17 Tribe. That's the way this was set up from the start.

18 And so managerial fitness, given the way this is  
19 set up, the way this was run, that this was set up to be  
20 a traffic pumping entity, that the nontraffic pumping  
21 part of this business is minimal and pretextual and not  
22 going to be successful long-term. That's important to  
23 managerial fitness.

24 I'd invite you to ask the question why is NAT  
25 here? What does it want? Why does it want a certificate

1 from the Commission if it doesn't really think it needs  
2 it? And I think the answer -- we think the answer is  
3 this is something that will allow them to collect -- they  
4 think, to collect access charges. That's what this is  
5 about.

6 And that bears poorly on managerial fitness. It  
7 certainly isn't an entity that wants to provide  
8 competitive VoIP service in this area. It's not been run  
9 that way, and there aren't any concrete plans to run it  
10 that way in the future.

11 There will be some documents admitted into the  
12 record about the corporate reorganization this summer.  
13 As I mentioned, we don't have any testimony on that, but  
14 the documents will be before you. The entity that now  
15 exists and wants a certificate is not the entity that  
16 filed the application. We think that will become clear  
17 as the days go by here. And if it's not the same -- if  
18 it's not the same entity that filed the application, how  
19 can you grant it a certificate?

20 And, finally, financial viability. Sprint has  
21 been saying for three years now that NAT is really just  
22 trying to keep this thing going so it can continue to  
23 bring access revenue in and send most of it out,  
24 75 percent of it out, to Mr. Erickson and his  
25 companies.

1           We certainly disagree -- although this is not an  
2 issue for the Commission to decide, we disagree that  
3 Sprint owes any money to NAT. There isn't any Commission  
4 or court that's ever ordered an interexchange carrier to  
5 pay access charges for calls going into Free  
6 Conferencing. It's never happened. Sprint's got a  
7 dispute pending, and it hasn't been resolved.

8           And, again, fortunately, this Commission does  
9 not need to resolve that this week. But Sprint doesn't  
10 apologize for disputing access charges under these  
11 circumstances.

12           NAT's only going to go deeper in the hole.  
13 Long-term this is not sustainable, and you're going to be  
14 left with an entity with a certificate that isn't able to  
15 provide services.

16           The latest what's called business plan we  
17 received a few weeks ago is preliminary, doesn't appear  
18 to have any financing attached to it, isn't well  
19 explained, and certainly isn't something the bank would  
20 give a loan on. This is speculative, and we think it was  
21 done for the purpose of presenting something new at the  
22 hearing, and it doesn't demonstrate that there are solid  
23 plans to change what they're doing now. And what they're  
24 doing now is not sustainable.

25           Thank you very much.

1 MS. AILTS WIEST: Ms. Moore.

2 MS. MOORE: Thank you. Good morning,  
3 Commissioners and Staff. My name is Meredith Moore. I  
4 appear before you this morning on behalf of Midstate  
5 Telecommunications Company.

6 Midstate presently offers local exchange service  
7 in 10 different exchange areas throughout the state, one  
8 of which is particularly implicated in this particular  
9 proceeding. And that's the Fort Thompson exchange.

10 That being said, Midstate's involvement in this  
11 particular proceeding should be fairly limited. And it  
12 should be fairly limited because of the fact that in  
13 March of 2012 Midstate, SDTA, and NAT entered into a  
14 Stipulation in this particular case. And the point of  
15 that particular Stipulation was to clarify and confirm  
16 the particular exchange area or territory in which NAT  
17 intends to provide service.

18 NAT, SDTA, and Midstate conferred, discussed  
19 NAT's plans, and NAT agreed that it would only provide  
20 services in the Fort Thompson exchange, which, of course,  
21 is located on the Crow Creek Reservation.

22 Because of that particular Stipulation, Midstate  
23 and SDTA agreed that so long as NAT confined its offering  
24 of services to the Fort Thompson exchange, Midstate and  
25 SDTA would not object to NAT's request for a waiver of

1 the requirements of Administrative Rule 20:10:32:15. And  
2 that's the particular rule which requires that a party  
3 petitioning for a Certificate of Authority provide  
4 services throughout the entirety of exchange area. And  
5 so it was because of that Stipulation that we agreed that  
6 would we not object to NAT's request for a waiver.

7 Now this Stipulation is very significant to  
8 Midstate for a number of reasons. And I want to outline  
9 all of those here for you this morning. But what you  
10 should be aware of is that that Stipulation ultimately  
11 protects Midstate's eligibility to federal funding under  
12 the FCC's CAF Order.

13 It alleviates concerns of cream skimming and  
14 cherry picking that otherwise exist when a company does  
15 not serve the entirety of a particular exchange area. It  
16 also ensures in this particular case that we have a  
17 narrowly tailored Certificate of Authority, assuming the  
18 Commission issues one, that will allow Midstate to come  
19 back before this Commission in the future if NAT seeks to  
20 expand its local exchange service offerings.

21 It allows Midstate an opportunity to continue to  
22 protect its own services, its own needs, and its own  
23 service territory in this particular case.

24 Midstate has relied upon this particular  
25 Stipulation since March of 2012. Obviously, NAT has

1 submitted some revised applications for certificates of  
2 authority since that time. However, Midstate and SDTA  
3 have sought out and confirmed the assurances of NAT that  
4 it intends to honor the terms of that particular  
5 Stipulation.

6 And it's in reliance upon the assurances of NAT  
7 that Midstate and SDTA have not offered any prefiled  
8 testimony to this Commission. We have not brought any  
9 witnesses with us today. And, in fact, we only intend to  
10 submit a handful of exhibits to this Commission in this  
11 hearing, one of which is that particular Stipulation, as  
12 well as other documents which ultimately continue to  
13 support that particular Stipulation.

14 As such, it can't be overstated that if NAT were  
15 to disavow that Stipulation in whole or in part, that  
16 Midstate and SDTA would be significantly prejudiced as it  
17 relates to their respective abilities to advance any  
18 arguments or to protect what needs to be protected when  
19 we're talking about a carrier such as Midstate that has  
20 carrier of last resort obligations, other rural  
21 exemptions, those sorts of things that ultimately are  
22 critical to Midstate's ability to provide services.

23 And it's for that reason that I would be remiss  
24 if I didn't raise the issue at this Commission at this  
25 time and make you aware of the fact that if that

1 Stipulation isn't honored, we would need to request some  
2 sort of extraordinary relief from this Commission during  
3 this hearing. Whether that be a request that NAT be  
4 bound to the Stipulation, whether it be a request that we  
5 be allowed to provide some sort of supplemental testimony  
6 or other argument in order to ensure that Midstate's  
7 interests as well as other LECs around the state's  
8 interests are ultimately protected.

9 I have no reason to believe that NAT is going to  
10 disavow that Stipulation here. I have received no  
11 indication of that. But I simply want to make the  
12 Commission aware that Midstate and SDTA's offerings in  
13 this particular hearing will be limited so long as that  
14 limitation is justified by the evidence and the testimony  
15 presented by the parties.

16 Midstate ultimately acknowledges that the  
17 Stipulation that's been entered into here has no bearing  
18 on the Commission's analysis of the applicable  
19 Administrative Rules and whether the requirements for  
20 issuance of the Certificate of Authority are met, we  
21 obviously defer to the Commission in making those  
22 particular determinations.

23 What we would ask, however, is is that if the  
24 Commission does determine that a Certificate of Authority  
25 should be issued, that the terms of that certificate are

1 consistent with the Stipulation that was entered into by  
2 and between NAT, Midstate, and SDTA in this particular  
3 case and that the service territory be ultimately limited  
4 to that of the Fort Thompson exchange.

5 Thank you.

6 MR. COIT: May I?

7 Good morning, Mr. Chairman, Commissioners and  
8 Staff. As SDTA's counsel in this proceeding I would just  
9 like to note for the record our agreement with and  
10 support of Ms. Moore's comments.

11 We are also obviously an executing party  
12 relative to the Stipulation. We would obviously like to  
13 ensure today that, you know, the Stipulation is continued  
14 in terms of affirmation by NAT.

15 One thing that I would like to note in addition,  
16 as the Commission looks at that Stipulation and as it  
17 considers the testimony today and throughout the rest of  
18 this proceeding, there is a reference in the Amended  
19 Application of request for authority extending to  
20 intrastate interexchange access services. When the  
21 Commission looks at that statement or reference I would  
22 ask that the Commission also look at a couple of statutes  
23 that I think are relevant.

24 First, under the Federal Code, 47 U.S.C.  
25 Section 153(16), which is the definition of exchange



1 access. The term exchange access means the offering of  
2 access to telephone exchange services or facilities for  
3 the purpose of the origination or termination of  
4 telephone toll services.

5 Then if you go to the State Statutes, you go to  
6 49 -- it's in the definitions sections in 49-31 and  
7 Subsection 27. There's a definition of switched access.  
8 And specifically under state law that includes "any  
9 exchange access service purchased for the origination and  
10 termination of interexchange telecommunications services,  
11 which includes central office switching and signaling,  
12 local loop facility or local transport."

13 Those three services that fall into the category  
14 of switched access are all local in nature. And so when  
15 you look at local service as a category of service it  
16 includes from SDTA's perspective exchange access  
17 services.

18 That's all I have. Thank you.

19 MS. CREMER: Thank you. This is Karen Cremer of  
20 Staff. And we have no comment.

21 MS. AILTS WIEST: Thank you. At this time have  
22 there been any stipulations to any of the exhibits before  
23 we get to witness testimony?

24 MR. SCHENKENBERG: Can we confer just briefly?

25 MS. AILTS WIEST: Go ahead.

1 (Discussion off the record)

2 MR. SCHENKENBERG: I can begin with NAT's  
3 exhibits. The only exhibit that we had a -- an objection  
4 to the admission of is NAT 13. We have no objection to  
5 the admission of the others. And I guess my only -- with  
6 respect to written testimony, we have no objection so  
7 long as there's a witness to adopt the prefiled testimony  
8 and be subject to cross, which I understand to be the  
9 case for all of the witnesses, all of the testimony on  
10 the exhibits.

11 MS. AILTS WIEST: Mr. Swier.

12 MR. SWIER: The only objections we have are to  
13 Sprint's Exhibit 7, which is Exhibit RGF-5. That's a  
14 South Dakota District Court transcript on a motion  
15 hearing. We think that's irrelevant.

16 Sprint Exhibit No. 13, which is a press release  
17 regarding a matter that went on in the State of Iowa. We  
18 would also object to No. 14, which is a Bankruptcy  
19 Petition. It was a Bankruptcy Petition for a company  
20 called Global Conference Partners. We find that to be  
21 irrelevant. And also Exhibit 18, which is RGF-16, which  
22 are some 499 filing materials. We feel that those are  
23 also irrelevant.

24 MS. AILTS WIEST: Excuse me. What was that  
25 exhibit number again?

1 MR. SWIER: Exhibit No. 18.

2 MS. AILTS WIEST: 18?

3 MR. SWIER: Yes. That would be the end of our  
4 objections.

5 MS. AILTS WIEST: Anything from the other  
6 parties?

7 MS. MOORE: Ms. Wiest, neither Midstate nor SDTA  
8 has any objections to either Sprint's or NAT's exhibits  
9 in this particular case.

10 Midstate and SDTA jointly offered Exhibits 1  
11 through 5, and it's my understanding that neither of the  
12 other parties have any objection to those, and those  
13 have been presented to the court reporter here this  
14 morning.

15 MS. AILTS WIEST: Since Midstate does not have a  
16 witness, I think we'll look at their exhibits at this  
17 time.

18 MR. SCHENKENBERG: May I ask a question,  
19 Ms. Wiest?

20 MS. AILTS WIEST: Yes.

21 MR. SCHENKENBERG: Did you say 1 through 5? So  
22 3 was withdrawn. Did you move your other ones up? I  
23 thought 6 was going to be the exchange boundary and map.

24 MS. MOORE: Yes. And I filed an amended joint  
25 exhibit list. And so 3 was the duplicate of the NAT

1 Revised Application. I inserted the map of Midstate  
2 Communication, Inc. Study Area Boundary as well as the  
3 Commission Order certifying those boundaries as  
4 Exhibit 3.

5 So 1, 2, 4, and 5 are identical to the first  
6 listing.

7 MR. SCHENKENBERG: Thank you. I apologize for  
8 needing to catch up.

9 MS. AILTS WIEST: So Midstate's Exhibits 1, 2,  
10 3, 4, and 5. Are there any objections then to those  
11 being admitted into evidence at this time?

12 MR. SWIER: NAT has no objections.

13 MR. SCHENKENBERG: Sprint has no objection.

14 MS. CREMER: Staff has no objection.

15 MS. AILTS WIEST: Okay. Those exhibits have  
16 been offered and are admitted. Then I think to the  
17 extent that there are objections to a few of the other  
18 exhibits, we'll take those when they're offered. We'll  
19 hear those objections when those exhibits are offered.

20 At this time I believe we're ready for the first  
21 witness. Mr. Swier.

22 MR. SWIER: Thank you. NAT would call  
23 Brandon Sazue.

24

25

1                                    BRANDON SAZUE,  
2 called as a witness, being first duly sworn in the above  
3 cause, testified under oath as follows:

4                                    DIRECT EXAMINATION

5                    BY MR. SWIER:

6            Q.     Brandon, good morning.

7            A.     Good morning.

8            Q.     Would you please introduce yourself to the  
9 Commission.

10          A.     My name is Brandon Sazue, Senior. I'm Chairman of  
11 the Crow Creek Sioux Tribe.

12          Q.     What's your address, Brandon?

13          A.     Fort Thompson, South Dakota.

14          Q.     Share with the Commission real briefly your  
15 educational background.

16          A.     I graduated Crow Creek Tribal High School in 1997.  
17 I was currently Tribal Chairman from 2008 to 2010. I ran  
18 unsuccessful in 2010 to 2012. And I got elected in May  
19 of 2012 to 2014. And current Tribal Chairman.

20          Q.     So this is your second term as Tribal Chairman?

21          A.     Yes.

22          Q.     All right. Brandon, how long are the Tribal  
23 Chairman terms at Crow Creek?

24          A.     Two years.

25          Q.     When are you up for election again?

1 A. Next month.

2 Q. All right. Brandon, share with the Commission, what  
3 is your role as the Chairman of the Crow Creek Sioux  
4 Tribe?

5 MR. SCHENKENBERG: I'm going to -- I'd like to  
6 object to this question. And we did talk about this in  
7 one prehearing conference, but I was under the impression  
8 that we have prefiled testimony and the witness would be  
9 asked to identify him or herself and asked if he was  
10 sponsoring his prefiled testimony and then we'd move to  
11 cross. This sounds like a -- an additional direct  
12 examination.

13 MS. AILTS WIEST: Mr. Swier.

14 MR. SWIER: I guess we were told the burden is  
15 on us and that we have to present our case in the way  
16 that we best feel a case needs to be presented. And this  
17 is what we're doing.

18 MS. AILTS WIEST: Generally when we do have  
19 prefiled testimony like what has been filed, the point of  
20 the prefiled testimony is that the parties do not have to  
21 go through the entire prefiled testimony.

22 Generally the -- first what happens is the party  
23 states that his prefiled testimony is still true and  
24 correct, and it's offered into -- but then the Commission  
25 has allowed short summaries of that prefiled testimony at

1 that time if you'd like to proceed.

2 Q. Brandon, you filed previous testimony in this case;  
3 correct? Written testimony?

4 A. Yes.

5 Q. All right. And that testimony that you filed  
6 previously with the Commission, you affirm the  
7 truthfulness of that testimony?

8 A. Yes.

9 Q. All right. Brandon, are you testifying here today  
10 as in your role as the Tribal Chairman of the Crow Creek  
11 Sioux Tribe?

12 A. Yes, sir.

13 Q. All right. Do you serve on the Board of Directors  
14 for Native American Telecom?

15 A. No, I don't.

16 Q. All right. Why is that?

17 A. Because I'm Chairman of the Crow Creek Sioux Tribe.

18 Q. You have enough to do?

19 A. I have enough to do, yes. I'm like the president of  
20 a country within a country.

21 Q. Brandon, are you involved at all in the day-to-day  
22 operations of NAT?

23 A. No.

24 MR. SCHENKENBERG: I've got the same objection  
25 that I did before. I'm now -- I don't know if there was

1 a ruling issued on that objection. I think we're back  
2 into direct testimony instead of witness summaries.

3 MS. AILTS WIEST: Generally, like I stated, once  
4 the exhibit and the testimony has been admitted the  
5 parties can do a general summary.

6 My point, Mr. Swier, is we usually don't need to  
7 go through, you know, all of the questions that have  
8 already been asked within the summary.

9 MR. SWIER: And I don't think -- like his  
10 day-to-day involvement, I don't think that was asked or  
11 taken up in the summary. I don't think the summary says  
12 the extent of his day-to-day operations.

13 MS. AILTS WIEST: Go ahead.

14 Q. Brandon, you're not involved in the day-to-day  
15 operations of NAT; is that correct?

16 A. Yes. I'm not.

17 Q. Okay. All right. Brandon, describe for us your  
18 tribe. How many members of the Crow Creek Sioux Tribe?

19 A. Currently estimated about 3,000.

20 Q. And of those 3,000 members, how many actually live  
21 within the boundaries of the reservation in Crow Creek?

22 A. I believe a little over 1,200.

23 Q. And the reservation is located where?

24 A. Central South Dakota, right in the middle of  
25 South Dakota.



1 Q. Describe for the Commission the economic development  
2 efforts at the reservation. Is it easy to bring in  
3 economic development? Is it not? Share your experience  
4 in economic development out there.

5 MR. SCHENKENBERG: I'm going to object again.  
6 And I apologize. Maybe I need to understand that there's  
7 a clear ruling. I thought a summary would be ask the  
8 witness to spend a few minutes summarizing what's been  
9 written and filed and then the witness can do that in his  
10 own words and then we move on to cross.

11 But, again, it sounds like we're doing direct  
12 examination, and I object to this.

13 MS. AILTS WIEST: Yes. The summary is to be a  
14 summarization of the testimony that he's already filed,  
15 Mr. Swier.

16 MR. SWIER: When we had this issue before, I  
17 think that the direction we had was we have the burden,  
18 try your case the best way possible.

19 There are some things in Mr. Sazue's written  
20 testimony that are not -- that I want to ask about  
21 because they're not in there. I think I should have the  
22 leeway that if I have a witness here and I want to ask  
23 him some questions, he should be able to answer the  
24 questions.

25 I mean, otherwise, we're just going to plop the

1 written testimony down and say is this your testimony?  
2 Yep. Okay. You're done. And then cross-examination  
3 comes in?

4 I guess I think it would be helpful for the  
5 Commission to hear at least a little bit -- we'll parse  
6 it down, but I think it would be helpful to hear from the  
7 people who are on the front lines of this every day.

8 And I'm not going to go question after question,  
9 but there are some things that are important here that  
10 are not contained in the written testimony.

11 MS. AILTS WIEST: Mr. Schenkenberg.

12 MR. SCHENKENBERG: I would have expected that  
13 anything important would have been put in the written  
14 testimony. And I would have read the Commission's Order  
15 setting prefiled testimony dates as compelling that.

16 MS. AILTS WIEST: Any of the other parties?  
17 Commissioners, did you want to listen to  
18 anything outside?

19 CHAIRMAN HANSON: If it's pertinent. Excuse me.  
20 Standard operating procedure for us is to have  
21 accomplished items the way that Ms. Wiest explained.

22 From my personal perspective, notwithstanding  
23 what the other Commissioners would like to pursue, I am  
24 interested in specific information that bears upon this  
25 case. I don't want to -- Mr. Swier, you've had a history

1 with this Commission of providing a lot more information  
2 than we need to and rearguing items that we don't need to  
3 argue, and I don't want to get into that.

4           Additionally, there's somewhat of a fairness  
5 issue here from the standpoint of providing information,  
6 written testimony, that's the entire purpose of written  
7 testimony so that both sides or every side has the  
8 opportunity to review that information ahead of time,  
9 know what the specifics are so that they have the ability  
10 to do whatever research is necessary.

11           So it places us in a difficult situation as  
12 Commissioners because we do want to know what the  
13 specifics are so that we can make a learned decision.

14           At the same time, it prolongs the hearing  
15 because then you've put us in a position where we need to  
16 give Sprint additional opportunity to research. And so I  
17 really feel we need to go by the standard operating  
18 procedures of the -- of how we always have operated the  
19 Commission, and that is the purpose of written testimony  
20 is to provide the information that you believe that is  
21 important to making the decision.

22           And you do, in essence, ask if there are any  
23 changes. One question you didn't ask him that I would  
24 have probably asked him, and that is is there any changes  
25 to your written testimony at this time that you wish to

1 make? And that may give you a little bit of a window to  
2 accomplish that. But generally changes are is there  
3 something factual in your information that is not  
4 accurate that you need to correct at this time.

5 MS. AILTS WIEST: So to the extent any questions  
6 go to pointing out certain testimony that's already been  
7 put in the written testimony, there can be short  
8 summaries of that. I believe he did talk about economic  
9 development in part of his testimony.

10 Q. Brandon, provide a short summary as to what Native  
11 American has provided to your Tribe and Tribal members.

12 A. Okay. Native American Telecom has provided possibly  
13 a third world country within the United States and  
14 poverty levels reaching the 80 to 90 percent new  
15 technologies that can bring us into the new world.

16 I mean, we're so out there we have -- the  
17 Fort Thompson district we have 14 miles to the east we  
18 have the Crow Creek District, which is a housing area.  
19 We have the Big Bend District, which is halfway in  
20 between Pierre and Fort Thompson. So we would like to  
21 also reach those areas where our people can be educated.

22 What Native American Telecom has brought to Crow  
23 Creek is has brought internet. Has brought the world to  
24 our Tribe, where most of our members are poor, and  
25 there's not enough jobs for everyone. It's brought

1 technology to the new Technology Center, whereas we have  
2 a place called Hunkpati Investments, which I believe --  
3 don't quote me on that, but I believe is a 501(c)(3) or  
4 however you say that. Excuse me.

5 But this organization helps our people with small  
6 businesses to get up and running, to home ownership, to  
7 building credit. Now where Hunkpati Investments goes is  
8 over to the new Technology Center. And what the Crow  
9 Creek Sioux Tribe has done is to have all of our  
10 employees of the Crow Creek Sioux Tribe attend those.

11 And we will be issuing a press release in the next  
12 week or two. How many members have received a  
13 certificate from that organization using the new  
14 Technology Center? Over 200. Over 200 people. That in  
15 my mind is astounding. By teamwork, Crow Creek Sioux  
16 Tribe, Native American Telecom, bringing technology to  
17 our people, that that can be done in an educational sense  
18 to move us forward. We have been in a poverty stricken  
19 tribe because we cannot bring in economic development.

20 And to also offer phone service to those that cannot  
21 afford phone service. To call 911 in emergency  
22 situations to help our people. Versus if they didn't  
23 have the technology, how far would they have to walk to  
24 go find a phone?

25 So Native American Telecom has brought a lot to the

1 Crow Creek Sioux Tribe. Our Crow Creek Tribal Schools is  
2 located 12 miles to the north of Fort Thompson. How can  
3 we reach those areas to better educate our kids, to  
4 better have broadband, to better have internet?

5 There is, I believe, currently between 4 and 500  
6 students K through 12. We just built a new high school  
7 in the last couple of years. We're 30 to \$40 million out  
8 of the RO funds. So it is very imperative that the Crow  
9 Creek -- Crow Creek Sioux Tribe and Native American  
10 Telecom keep going into the direction that they're  
11 going.

12 We can't afford not to because we want to come out  
13 of the dark ages, so to speak. Where we are centrally  
14 located, location is everything.

15 That's just a little bit about what I want to say  
16 that Native American Telecom has brought to the Crow  
17 Creek Sioux Reservation and its members.

18 Thank you.

19 Q. Brandon, before Native American Telecom, had any  
20 other entity provided any of those services for your  
21 Tribe?

22 A. No, they have not.

23 Q. Share with the Commission, for instance, the 911  
24 emergency services. Were those services there for your  
25 tribal members before NAT?

1 A. I'm not sure about that question.

2 Q. Have the 911 services taken -- been taken to a  
3 different level because of NAT's provision of services?

4 A. I believe it can be.

5 Q. Yeah. All right. From a technological standpoint,  
6 what happens if these technological innovations that NAT  
7 has brought in, what happens if those go away?

8 A. If those go away, we'll be right back where we  
9 started. With nothing.

10 We also -- there's a community college across the  
11 river from us located in Lower Brule, South Dakota where  
12 we have members going to college over there. Where would  
13 they use their computers if they have to pay for gas to  
14 go over there, they have to pay for lunch, they have to  
15 pay for other services when they can't afford --  
16 computers are expensive.

17 Q. Describe for the Commission the internet  
18 technological library that you have.

19 A. Well, first it was located right in the tribal  
20 building, the headquarters of the Crow Creek Sioux Tribe  
21 in a small room with about five computers, maybe one or  
22 two printers. Now it's in a new Technology Center right  
23 across the street to the north to the Crow Creek Sioux  
24 Tribal headquarters where it holds a lot more computers,  
25 a classroom, a kitchen, and more access.

1 Q. Brandon, how many computers are in that facility?  
2 Do you know?

3 A. Right now I'd have to say probably 10 or 12. I  
4 haven't been over there for a little while so --

5 Q. And all 10 or 12 of those computers, those have been  
6 provided through NAT?

7 A. Yes.

8 Q. The internet access provided by NAT?

9 A. Yes.

10 Q. Do your tribal members also receive free or  
11 subsidized phone services?

12 A. Yes, they do.

13 Q. Describe that, please.

14 A. Well, probably about 150 tribal members get free  
15 access to internet, free access to phone usage, which  
16 wouldn't have happened without Native American Telecom.

17 Q. You said it wouldn't have happened without Native  
18 American Telecom. Do you have any other service  
19 providers who are on the reservation or maybe who were  
20 either not there or the price of their -- the price of  
21 theirs offerings is simply too expensive?

22 A. I believe it's Midstate.

23 Q. Okay.

24 A. Yeah. Well, those services are very good. It's  
25 just for those who can afford it, who have jobs. The



1 ones who don't have jobs are probably provided more  
2 economically in a sense of there's probably more -- I'm  
3 just guessing.

4 Q. As the Tribal Chairman, how important are these  
5 services being provided by NAT -- how important are they  
6 to you and your tribal members?

7 A. It's very important for the future of the Crow Creek  
8 Sioux Tribe. Last -- if I may say, last week on the 18th  
9 of February we just put in for a BIA grant on wind  
10 energy. We're one of the only tribes in South Dakota  
11 with wind energy data. So we are -- we are advancing in  
12 wind energy. And when we put the equipment on the ground  
13 we're going to need this. If it goes away, it's going to  
14 cost us just that much more.

15 Q. Brandon, talk about some of the activities that go  
16 on in the Technology Center that NAT provided.

17 A. Can you be more specific there?

18 Q. Well, you indicated the business -- the business  
19 planning, those type of different classes?

20 A. Yes.

21 Q. Yeah. What else goes on over there? Do you know?

22 A. Well, for the business and our local members can go  
23 over there and get on the internet any time they want to  
24 get on the internet.

25 Q. Was that something that was there before NAT?

1 A. No.

2 Q. Okay. Before NAT describe the Tribe's technological  
3 infrastructure.

4 A. There's nothing to describe because that's exactly  
5 what it was. Nothing. Short to nothing.

6 Q. And from the time before NAT to now, how would you  
7 describe what NAT has done for you and the Tribe as far  
8 as bridging that gap?

9 A. Astronomical. Absolutely astronomical.

10 Q. Brandon, you're familiar with the legal documents  
11 that create NAT and the different partners and things  
12 like that; is that right?

13 A. To some extent.

14 MR. SCHENKENBERG: Ms. Wiest, I'm going to  
15 object. This is a question -- I don't want to burden the  
16 record with a number of objections. I think we're back  
17 to direct testimony. But I think this question in  
18 particular is -- goes beyond the testimony that's been  
19 filed by Mr. Sazue.

20 MS. AILTS WIEST: Mr. Swier.

21 MR. SWIER: I can rephrase the question.

22 Q. Brandon, talk about your relationship -- talk about  
23 the Tribe's relationships with your partners in NAT.

24 MR. SCHENKENBERG: I have the same objection as  
25 to continuing direct testimony. And if the objection is

1 denied and the record reflects I have a continuing  
2 objection, then that's fine. I just -- I don't want to  
3 burden the record, but I also don't want to fail to  
4 object if I should.

5 MS. AILTS WIEST: Yes. Again, Mr. Swier, I  
6 would state that his testimony is his direct testimony  
7 that was placed in the record right now. And so -- and  
8 what we have allowed is a short summary but not a number  
9 of questions that go outside that testimony.

10 MR. SWIER: On opening Mr. Schenkenberg used the  
11 term "sham organization" as it's been done throughout  
12 these proceedings. I want to ask Mr. Sazue about if the  
13 Crow Creek Sioux Tribe thinks that this is a sham  
14 organization.

15 And I think he should be allowed to talk about  
16 the fact that in the Tribe's view is it or is it not a  
17 sham? They brought it up in opening. They opened the  
18 door.

19 MS. AILTS WIEST: Mr. Schenkenberg.

20 MR. SCHENKENBERG: I have the same objection.  
21 It's not a question of opening the door. It's a question  
22 of whether it could have been and should have been  
23 submitted as part of his direct case before today.

24 MS. AILTS WIEST: I believe after Sprint has put  
25 in its witness, then NAT will have the opportunity to do

1 rebuttal at that time.

2 Q. Brandon, what has NAT done for your Tribe?

3 MR. SCHENKENBERG: I have the same objection as  
4 to continuing direct.

5 MS. AILTS WIEST: Again, I think that question  
6 has probably been gone through before. To the extent  
7 that he is providing -- I would like him to go through  
8 his testimony only to the extent that he is providing a  
9 summary of his testimony.

10 MR. SWIER: I have no further questions.

11 MS. AILTS WIEST: Are you offering his  
12 testimony?

13 MR. SWIER: Yes.

14 MS. AILTS WIEST: And what exhibit number is  
15 that? Is it 12?

16 MR. SWIER: It is 12. His written testimony of  
17 7-26-2013.

18 MR. SCHENKENBERG: Sprint has no objection.

19 MS. AILTS WIEST: If there has no objection,  
20 NAT's Exhibit 12 has been admitted.

21 Do you have any cross, Mr. Schenkenberg?

22 MR. SCHENKENBERG: I do. Thank you.

23 CROSS-EXAMINATION

24 BY MR. SCHENKENBERG:

25 Q. Good morning, Mr. Sazue.

1 A. Good morning.

2 Q. It's a pleasure to meet you.

3 A. Thank you.

4 Q. You indicated you are not on NAT's board of  
5 directors; is that correct?

6 A. No, I am not.

7 Q. So you do not attend board meetings?

8 A. No.

9 Q. You're not here today as a representative of NAT?

10 A. No.

11 Q. And you haven't been privy to the internal --  
12 internal information about how NAT is run; is that  
13 correct?

14 A. Not on a daily basis, no.

15 Q. You indicated that the Tribe is benefiting from  
16 NAT's provision of phone service and from operating of  
17 the internet library; is that correct?

18 A. Yes.

19 Q. And is the phone service being provided free of  
20 charge to tribal members?

21 A. Yes.

22 Q. And the internet library?

23 A. Yes.

24 Q. And so the benefits that are being realized are  
25 being realized because NAT is able to provide those

1 without charge to the tribal members; correct?

2 A. Yes.

3 Q. And that can only be provided by NAT without charge  
4 as long as NAT is in business and generating revenue that  
5 allows it to give that service away for free. Is that a  
6 fair statement?

7 A. Yes.

8 Q. And you'd agree, would you not, that if NAT were to  
9 go out of business in 2015, 2016, that that would be bad  
10 for the Tribe?

11 A. Yes.

12 MR. SWIER: Objection. Speculative.

13 MS. AILTS WIEST: Overruled.

14 Q. You mentioned something in response to a question  
15 from Mr. Swier about 200 new certificate holders?

16 A. Yes.

17 Q. I don't believe that was in your direct testimony.  
18 I was wondering if you could just explain to me a little  
19 bit what that is, what you meant by that.

20 A. Okay. What I meant by that is we have tribal  
21 employees who work for the Tribe from laborers on up to  
22 executive positions, administration positions. Out of  
23 those employees from the administrative, the top, to the  
24 bottom guy, the Tribe took it upon themselves to make it  
25 mandatory for our employees to go and take classes such

1 as home ownership, building your credit, classes to --  
2 what is the other one? Small business. And made it  
3 mandatory for our employees to attend those classes.

4 And out of those employees and just the normal  
5 members that come in and want to attend those classes,  
6 200 of them are receiving certificates on those -- on  
7 those points, going over to the Technology Center, having  
8 a place to go and to accomplish that.

9 Q. Okay. I think I'm following you. So these are  
10 online classes taken at the internet lab that NAT is  
11 providing; is that right?

12 A. Well, I don't believe it's online. I believe it's  
13 using the classroom.

14 Q. Oh, I see. Okay.

15 A. Yeah. The extra space provided.

16 Q. The space provided. So within the space provided in  
17 the NAT facility, there are classes being taken live?

18 A. Yes.

19 Q. Okay. Thank you. Do you know how NAT generates  
20 revenue?

21 A. No, I don't.

22 Q. Would it surprise you to find out that 100 percent  
23 of NAT's revenue comes from its relationship with Free  
24 Conferencing Corporation?

25 A. Wouldn't surprise me.

1 Q. Does it concern you?

2 A. Doesn't concern me.

3 Q. It does not concern you to have an entity that's  
4 100 percent tied to a different entity?

5 A. No.

6 Q. Are you concerned about what could happen if Free  
7 Conferencing decided to terminate its relationship with  
8 NAT?

9 A. Can you be more specific? I'm like the president.

10 Q. I understand.

11 A. And the people below me handle them kinds of  
12 situations so --

13 Q. Sure. Sure. From a business perspective, in the  
14 interests of the Tribe, would you be concerned if Free  
15 Conferencing were to pick up and leave for some reason?

16 A. Well, I guess I can't answer your question until  
17 that happened.

18 Q. Are you aware -- have you seen the Joint Venture  
19 Agreement that was signed among the Tribe and Wide Voice  
20 and NAT -- I'm sorry. Yes. And NAT?

21 A. I can't directly tell you if I have or haven't.

22 Q. Do you know what that agreement says about NAT's --  
23 I'm sorry. About the Tribe's right to obtain revenue  
24 passthroughs from this venture?

25 A. I don't know.



1 Q. Okay.

2 A. I don't know.

3 Q. Do you know what access charges are?

4 A. No, I don't.

5 Q. Do you know what NAT's income levels were in 2010,  
6 for example?

7 A. No.

8 Q. For any year do you know that?

9 A. No.

10 Q. Are you aware that NAT lost money in 2013?

11 A. No.

12 Q. Are you aware that there had been a determination  
13 made that in 2010 one of the founders, Mr. Reiman -- do  
14 you know that name?

15 A. Yes.

16 Q. Are you aware that in 2010 there was a determination  
17 made that Mr. Reiman was using --

18 MR. SWIER: Object as beyond the scope. Also  
19 irrelevant.

20 MS. AILTS WIEST: Do you have a response to that  
21 objection, Mr. Schenkenberg?

22 MR. SCHENKENBERG: As beyond the scope?

23 Mr. Sazue has testified that this entity has done good  
24 things for the Tribe, and I'm asking him if he knows a  
25 fact that is in the record, will be in the record, about

1 misuse of funds by one of NATE's principals.

2 MS. AILTS WIEST: Objection overruled.

3 Q. Are you aware that in 2010 there was a decision made  
4 that Mr. Reiman had used funds for things -- had used NAT  
5 funds for things that were not NAT expenses?

6 A. Can you be more specific, please.

7 Q. Sure. There was a decision made that there was  
8 about \$12,000 of cash advances Mr. Reiman made that were  
9 not for NAT business expenses. Are you aware of that?

10 A. No.

11 MR. SWIER: I'll object as that's a misstatement  
12 of the facts.

13 MS. AILTS WIEST: Overruled.

14 Q. I'm sorry. Your answer was no?

15 A. No.

16 Q. You were asked some questions about whether NAT is  
17 the only entity -- or about other entities providing  
18 service or not providing service on the reservation. And  
19 you mentioned Midstate.

20 A. Yes.

21 Q. Midstate does offer service on the reservation; is  
22 that correct?

23 A. Yes, they do.

24 Q. And Midstate also provides tribal lifeline and  
25 link-up discounts; is that correct?

1 A. I believe they do.

2 Q. And do you know what that is?

3 A. Well, it's -- as I understand it, it's at a cost but  
4 not at a high cost.

5 Q. It's under \$10 a month for voice service subsidized  
6 through this program?

7 A. Yes.

8 Q. Is it a dollar a month in some cases?

9 A. It could be.

10 Q. AT&T Wireless also provides service on the  
11 reservation; is that correct?

12 A. Yes.

13 Q. And AT&T Wireless also offers those tribal lifeline  
14 and link-up discounts?

15 A. Yeah. Considering what you would want out of it,  
16 texting, calling, I mean, that sort of thing. Anywhere  
17 from \$7 to 20. I had one myself, but I couldn't afford  
18 it.

19 MR. SWIER: At this point I'm going to ask that  
20 that entire line be stricken. AT&T is not an ETC. It's  
21 an improper question. It's a misstatement of the facts.

22 MR. SCHENKENBERG: I believe the witness said  
23 yes.

24 MR. SWIER: The witness answered based on  
25 information that's clearly incorrect.

1 MS. AILTS WIEST: Objection overruled.

2 Q. And both Midstate and AT&T Wireless offer access to  
3 911 service?

4 A. That, I don't know.

5 Q. Could you -- if you had an AT&T Wireless phone,  
6 could you dial 911?

7 A. I'm sure you can.

8 Q. You never had occasion to do it?

9 A. Not myself personally, no.

10 MR. SCHENKENBERG: May I approach?

11 MS. AILTS WIEST: Yes.

12 (Sprint Exhibit No. 31 is marked for identification)

13 Q. I'm showing you a document that has been marked on  
14 your copy as Sprint 31. Is this a printout from the  
15 Crow Creek Connections website?

16 A. Yes.

17 Q. What is the Crow Creek Connections website?

18 A. You're reading it.

19 Q. Is this maintained by the Tribe?

20 A. Crow Creek Connections? You kind of caught me off  
21 guard here.

22 Q. This is a website you're familiar with, though?

23 A. Yes.

24 Q. And it's got businesses, a number of businesses on  
25 the reservation?

1 A. Yes.

2 Q. Or in the area. And as you scroll through this, do  
3 those businesses look familiar to you?

4 A. Yes.

5 Q. Are there -- these businesses have got phone  
6 numbers, and if you turn to page 2 and you start looking  
7 at phone numbers, (605)245, those are Midstate numbers;  
8 is that correct?

9 A. Be more specific with Midstate numbers.

10 Q. Yeah. I'm sorry. So area code (605), if you look  
11 under the Crow Creek Sioux Tribe, for example, that has  
12 your name there, phone number (605)245-2221. That's a  
13 Midstate telephone number?

14 A. I was never aware that they were Midstate telephone  
15 numbers. All I was aware is that 245 is the Fort  
16 Thompson area.

17 Q. Okay. Well, do you know what exchange -- and when I  
18 say the middle three digits in the telephone number, do  
19 you know what NAT has, what three-number code NAT has?

20 A. 4 something, I believe.

21 Q. 477?

22 A. Yeah. I believe, yeah.

23 Q. So that (605)245, that's not a NAT number?

24 A. No. If that's what you're getting at.

25 Q. And AT&T Wireless is (605)730; is that right? Do

1 you know?

2 A. Again, sir. I do not know these numbers.

3 Q. Okay. But if you look at Hawk Tire Service, for  
4 example, (605)730, this is on the right-hand side at the  
5 top?

6 A. Yes.

7 Q. That's not an NAT number, to your knowledge?

8 A. Again, sir, I do not know these numbers.

9 Q. Okay.

10 A. Or where they derive from.

11 Q. Well, the reason I'm asking you is if you look  
12 through these, I don't see any businesses listed in this  
13 that have a 477 number except Native American Telecom.  
14 And I was going to ask you why, if you know, businesses  
15 in this area haven't taken service from NAT?

16 A. People choose what they want to choose. It's up to  
17 them to choose. We ain't forcing nothing on our  
18 members.

19 MR. SCHENKENBERG: Thank you. I'd offer  
20 Sprint 31.

21 MS. AILTS WIEST: Any objection?

22 MR. SWIER: No objection.

23 MR. COIT: No objection.

24 MS. MOORE: No objection.

25 MS. AILTS WIEST: Sprint 31 is offered and

1 received.

2 Q. Mr. Sazue, do you know how many businesses there are  
3 on the reservation?

4 A. Can you define businesses? Small, big, medium?

5 Q. Small, big, medium, any of them?

6 A. Well, as you can see, these are small businesses.  
7 Our main business is our Crow Creek Sioux Tribe, Lode  
8 Star Casino, Lynn's Dakotamart, Crow Creek Tribal  
9 Schools.

10 Q. And I wasn't asking you --

11 A. So I've never counted them before, no.

12 Q. I mean, is it -- are there more than -- are there  
13 more than 200 businesses?

14 A. Depending on how you define them.

15 Q. Okay. More than 500?

16 A. I wouldn't -- no. Not even close.

17 Q. I'm sorry. You wouldn't know or you wouldn't think  
18 so?

19 A. I said not even close.

20 Q. Do you -- you were Tribal Chairman in 2008; is that  
21 correct?

22 A. Yes.

23 Q. And there was a Tribal Certificate that was signed  
24 by yourself; is that correct? Do you remember that?

25 A. Tribal Certificate for what?

1 Q. For NAT to operate.

2 A. May have been. I couldn't answer that question  
3 correctly because that was four years ago. Well,  
4 probably more than that. Six years ago.

5 MR. SCHENKENBERG: That's NAT Exhibit 2. I  
6 wonder if you have a copy I can show the witness. I'm  
7 not sure this has been formally offered, but this was one  
8 of the ones we did stipulate to.

9 Does it need to be offered and received, or are  
10 all of those stipulated documents received?

11 MS. AILTS WIEST: Well, we can discuss this at  
12 this time. Would the parties -- to the extent the party  
13 has objected to an exhibit, which you've already stated  
14 which ones you're objecting to, do the other exhibits  
15 have -- do the parties agree to stipulate to the  
16 admission as to all of the other ones at this time?

17 MR. SCHENKENBERG: Yes.

18 MR. SWIER: The other ones we do, other than the  
19 ones we objected to.

20 MS. MOORE: Yes.

21 MR. COIT: Yes.

22 MS. AILTS WIEST: Thank you.

23 Q. Do you see that document I placed in front of you?

24 A. Yes.

25 Q. And is that your signature?



1 A. Yes.

2 Q. And for the record this is NAT Exhibit 2.

3 A. Yes.

4 Q. Do you remember signing that document?

5 A. October 28 is my boys' birthday so I can remember  
6 that.

7 Q. So, yes, you remember signing it?

8 A. No. I don't remember signing it.

9 Q. Okay. Do you know who drafted that document?

10 A. Like I said, that was six years ago.

11 Q. I understand. The Tribal Utility Authority, there  
12 were three members. At one point there were three  
13 members on the Tribal Utility Authority; is that  
14 correct?

15 A. Like I said, that was six years ago.

16 Q. Okay. Well, and I -- there was testimony -- do you  
17 know Mr. Lekig [phonetic]?

18 A. Mr. Lekig? Yes.

19 Q. And I believe he testified that the members of that  
20 tribal authority were appointed in September of 2010?

21 A. Well, I wouldn't know that. Mr. Lekig took office  
22 in 2010 and 2012. I was not in office.

23 Q. You were Tribal Chairman and then you were not for a  
24 spell?

25 A. Yes.

1 Q. Okay.

2 A. For two years.

3 Q. Mr. Sazue, there have been -- there were some  
4 resolutions, tribal resolutions, that were very recently  
5 adopted that -- in 2014 that have been made part of this  
6 case.

7 Are you familiar with those resolutions?

8 A. If you show them to me.

9 Q. I believe it's NAT 14. I'm sorry. Yeah. NAT 14  
10 and 37. Do you have the official copies? Are they in  
11 there?

12 MR. SCHENKENBERG: I'm sorry. I think it's 37.

13 Q. This is NAT 30.

14 MR. SCHENKENBERG: I apologize.

15 Q. Can you turn to 30 and see if you recognize that.

16 A. Yes.

17 Q. And that's a Resolution that adopted a tribal  
18 utility code; is that correct?

19 A. Motion adopting the Crow Creek Sioux Tribe Utilities  
20 Code, yes.

21 Q. And do you know why that was done, what purpose the  
22 Tribe had in doing that?

23 A. I'll have to read it. Give me a second. Or a  
24 minute.

25 (Witness examines document)

1 A. Adopting a utilities code for the Tribe.

2 MR. SCHENKENBERG: May I approach?

3 MS. AILTS WIEST: Yes.

4 (Sprint Exhibit No. 32 is marked for identification)

5 Q. Showing you what's been marked as Sprint 32. Do you  
6 recognize this?

7 A. Yes.

8 Q. Is that your signature?

9 A. Yes, it is.

10 Q. And I want to ask you on the first page where it  
11 says "Now therefore be it resolved"?

12 A. Yes.

13 Q. And it says the assessment -- and this is starting  
14 toward the end of the third line. "The assessment and  
15 collection of taxes and fees on the Crow Creek  
16 Reservation should be limited to those specifically  
17 required by applicable laws, and if tribally owned, the  
18 entity should not be subject to any state taxes and  
19 fees."

20 Do you understand this to apply to Native American  
21 Telecom?

22 MR. SWIER: I'll object. He's asking for a  
23 legal conclusion.

24 MR. SCHENKENBERG: He signed the document.

25 MS. AILTS WIEST: Overruled. To the extent you

1 know.

2 A. I guess you're catching me off guard an awful lot  
3 there. And I'm not a lawyer. So you got me on that  
4 one.

5 Q. Okay. Well, I -- what's your understanding about  
6 why this Resolution was adopted? And if you have to look  
7 at the second page, which is a letter you signed to  
8 NAT --

9 A. Exactly what it says. Assessment and collection of  
10 taxes and fees on the Crow Creek Reservation.

11 Q. And so the State Commission then would not have any  
12 authority to assess any fees or taxes on anything Native  
13 American Telecom does if this were the law?

14 MR. SWIER: Objection. Asks for a legal  
15 conclusion.

16 A. Like I said, I'm not a lawyer.

17 MS. AILTS WIEST: Overruled.

18 Q. Thank you. You can set that aside.

19 MR. SCHENKENBERG: I'll move the admission of  
20 Sprint 32.

21 MS. AILTS WIEST: Any objection to Sprint 32?

22 MR. SWIER: No objection.

23 MR. COIT: No objection.

24 MS. MOORE: No objection.

25 MS. CREMER: No objection.

1 MS. AILTS WIEST: Sprint 32 has been offered and  
2 admitted.

3 Q. Mr. Sazue, I asked you if you knew NAT's revenue for  
4 certain. And I understand you don't know that.

5 Do you know how much of NAT's revenue has gone to  
6 Free Conferencing Corporation?

7 A. No.

8 MR. SCHENKENBERG: I have no further questions  
9 of this witness. Thank you.

10 MS. AILTS WIEST: At this time I believe the  
11 court reporter needs a break. We'll take 10 minutes.

12 (A short recess is taken)

13 MS. AILTS WIEST: I'll ask the other parties if  
14 they have any cross for Mr. Sazue.

15 Ms. Moore?

16 MS. MOORE: Neither Midstate nor SDTA have any  
17 cross. Thank you.

18 MS. AILTS WIEST: Ms. Cremer.

19 MS. CREMER: Staff does not have any.

20 MS. AILTS WIEST: Do any of the Commissioners  
21 have questions?

22 COMMISSIONER NELSON: I do. Good morning.  
23 Thank you for coming here to help us sort this out. I've  
24 just got a few questions for you.

25 The first is this: This book contains Title 49,

1 which is all the rules and laws that guide what the PUC  
2 does and what utilities have to do in this state. And if  
3 I were to try to sum up that whole chapter or title of  
4 law, it's really about it gives the PUC the  
5 responsibility of protecting utility consumers in the  
6 State of South Dakota.

7 And so the first question I've got for you is  
8 would it be your opinion that this PUC has that  
9 responsibility of protecting utility consumers that are  
10 tribal members on the Crow Creek Reservation, or is that  
11 a responsibility of Tribal Government?

12 THE WITNESS: Wow. That's a great question. I  
13 think that's what we're here to probably decide. Do we  
14 want to set the stage with the Public Utilities  
15 Commission, or do we want to set the stage with Tribal  
16 Public Utilities Commission. That is a good question. I  
17 don't believe I can answer that.

18 COMMISSIONER NELSON: So, in your opinion, you  
19 don't have an opinion on which is correct? Is that my  
20 understanding?

21 THE WITNESS: I do not have an opinion.

22 COMMISSIONER NELSON: Thank you. The second  
23 question that I've got, and I'm looking at your direct  
24 testimony and the very first -- I should say the second  
25 question after your name it asks about your position with

1 the Tribe and how you're affiliated with Native American  
2 Telecom, LLC. And I'm going to quote. You say "Under my  
3 leadership the Tribe established Native American Telecom,  
4 LLC."

5 Is that correct?

6 THE WITNESS: Yes.

7 COMMISSIONER NELSON: I'm going to also read  
8 something that you probably haven't seen, and this is  
9 from Randy Farrar's direct testimony. And we're going to  
10 hear from him later.

11 But in his direct testimony he says that, and  
12 I'm going to quote, "NAT/CC was initially created without  
13 any involvement by the CCST."

14 Which is correct?

15 THE WITNESS: I don't believe that statement is  
16 correct.

17 COMMISSIONER NELSON: Thank you. I'm intrigued  
18 with what you've talked about today and the fact that  
19 you've got about 150 tribal members that are getting free  
20 telephone and free broadband service from NAT.

21 Who qualifies for that free service, and who  
22 determines who gets that free service?

23 THE WITNESS: If you are a tribal member, you  
24 qualify.

25 COMMISSIONER NELSON: So if I were a tribal

1 member of a different tribe but living on Crow Creek,  
2 would I qualify or not?

3 THE WITNESS: No.

4 COMMISSIONER NELSON: What percentage of the  
5 telephones are served by NAT versus Midstate on the  
6 reservation?

7 THE WITNESS: That's another good question.

8 COMMISSIONER NELSON: So if -- and I guess what  
9 I'm getting at is if any tribal member would qualify for  
10 this service free, would there be any reason that anybody  
11 wouldn't want to sign up for an IT service?

12 THE WITNESS: I would say there wouldn't be no  
13 reason at all.

14 COMMISSIONER NELSON: This morning you talked  
15 about the fact that NAT had brought this technology to  
16 the reservation. You talked some different areas of the  
17 reservation. And one that you talked about was the  
18 Crow Creek School area which is, you know, north of  
19 Fort Thompson.

20 Does NAT serve that area?

21 THE WITNESS: No.

22 COMMISSIONER NELSON: Do you believe they ever  
23 will?

24 THE WITNESS: If this keeps going on, probably  
25 not, no.



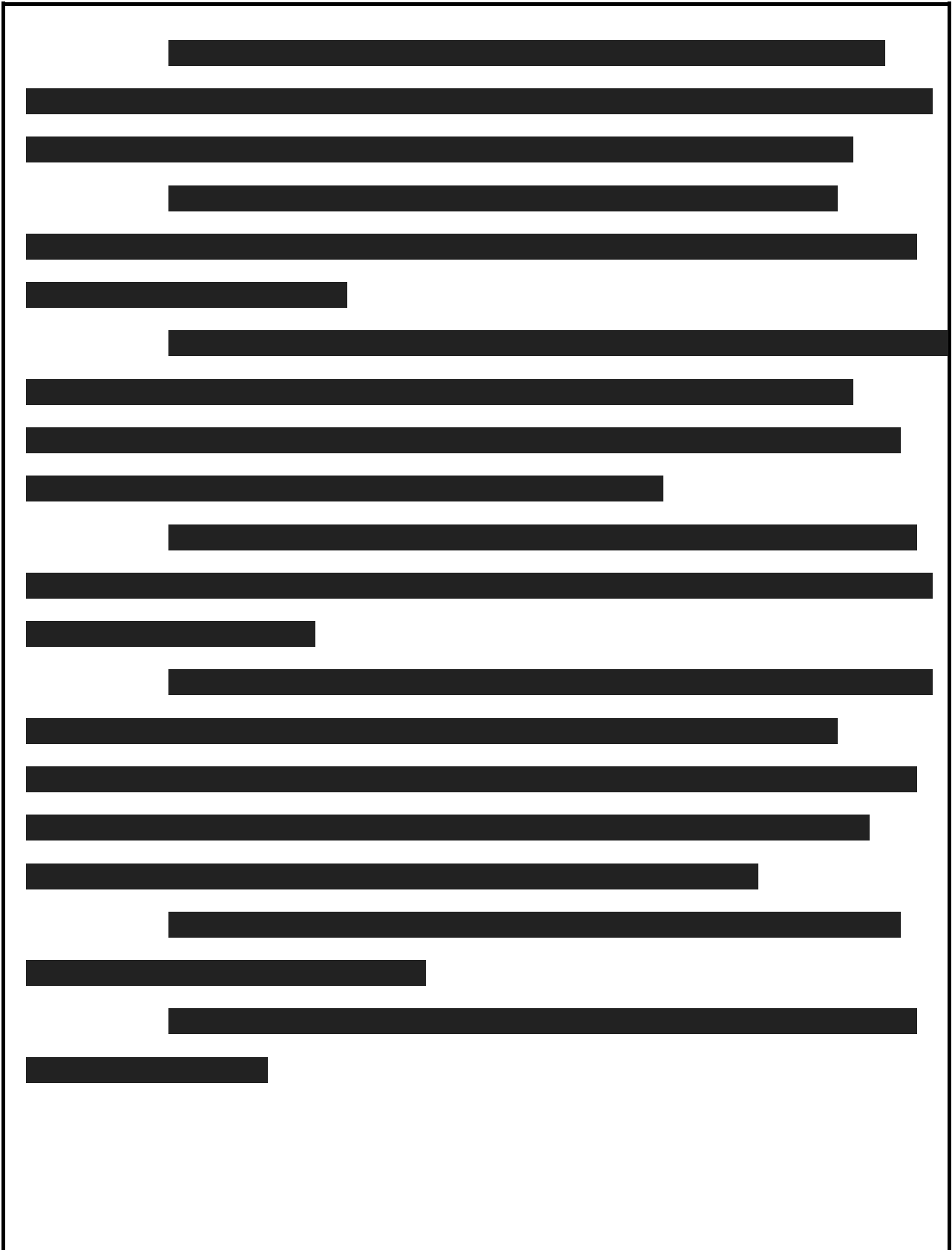
1           COMMISSIONER NELSON: Okay. The last question  
2 I've got for you involves confidential information. And  
3 I apologize, but it's a question I do need to ask. Can  
4 we --

5           CHAIRMAN HANSON: Any person who is not a party  
6 to this docket who has signed a confidentiality agreement  
7 would need to leave the room at this time. Only those  
8 persons who are -- such as attorneys or witnesses who  
9 have actually signed the statement saying that they have  
10 a confidentiality relationship.

11           And if you just want to wait in the hall, we'd  
12 ask you to please keep the noise down. And as soon as  
13 we -- Commissioner Nelson has stated that it will be a  
14 short question. We don't know if the answer will be  
15 short.

16           (Beginning of confidential portion of the transcript.)  
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1 (End of confidential portion of the transcript.)

2 CHAIRMAN HANSON: Mr. Chairman, thank you very  
3 much for travelling here today. We appreciate the  
4 opportunity to chat with you.

5 One question that I'm curious about, your  
6 written testimony was -- was succinct, gave us a lot of  
7 information. I'm curious if there's any part of your  
8 written testimony that you would change at this time,  
9 given the fact that it's been about a half a year now, a  
10 little longer, since it was submitted.

11 We're all smarter now than we were back then.  
12 Is there anything that's occurred to you that you need to  
13 change in there?

14 THE WITNESS: Well, that would probably take  
15 some more time for me to look at because it's been a  
16 while so --

17 CHAIRMAN HANSON: You haven't reviewed it just  
18 recently?

19 THE WITNESS: No.

20 CHAIRMAN HANSON: Okay. Thank you. I'll wait  
21 for someone else then to ask the other questions I have.  
22 Thank you very much for traveling.

23 THE WITNESS: Thank you. Thank you. Like I  
24 said before, I got so many things going on. Thank you.

25 MS. AILTS WIEST: Any other questions from the

1 Commissioners?

2 If not, Mr. Swier, do you have any redirect?

3 MR. SWIER: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. SWIER:

6 Q. Brandon, you were asked a question by  
7 Mr. Schenkenberg about Tom Reiman. As the Chairperson of  
8 the Tribe, do you trust Mr. Reiman?

9 A. I do.

10 Q. Do you think that his efforts on the reservation  
11 have been commendable?

12 A. I do.

13 Q. Brandon, are you aware that -- Free Conferencing, of  
14 course, has had money transferred to it. I'm not going  
15 to say the amount, but you're aware of that?

16 A. I'm aware of that.

17 Q. As the Chairman of the Tribe, do you have any  
18 trouble with the financial relationship between NAT and  
19 Free Conferencing Corporation?

20 A. I don't.

21 Q. Do you trust your partners that you're dealing with  
22 in this situation?

23 A. I do.

24 Q. If Sprint would be paying their bill, would NAT be  
25 in a better financial position?

1 A. I believe we would.

2 MR. SCHENKENBERG: Objection. Lack of personal  
3 knowledge.

4 MS. AILTS WIEST: Do you want to put in  
5 foundation for that question? Do you have any personal  
6 knowledge of that?

7 THE WITNESS: Please restate the question,  
8 please.

9 Q. Brandon, do you have any personal knowledge that,  
10 first of all, Sprint is not paying their bills to NAT?

11 A. That's probably one reason why we're here.

12 Q. And are you aware that NAT's financial situation  
13 would be different if Sprint were paying its bills?

14 A. Yes, I would.

15 MR. SCHENKENBERG: Objection. Leading and still  
16 no foundation.

17 MS. AILTS WIEST: Overruled.

18 Q. You can answer, Brandon.

19 A. Yes, I would.

20 CHAIRMAN HANSON: I believe we should sustain  
21 that. I don't think there's enough foundation. Because  
22 he said probably in his answer. He's not certain.

23 MS. AILTS WIEST: Other Commissioners? I need a  
24 vote on that.

25 COMMISSIONER NELSON: Okay. And your vote is

1 to --

2 CHAIRMAN HANSON: Sustain the objection.

3 Because the foundation was not laid when he asked the  
4 question. The Chairman stated that's probably why we are  
5 here, which is not enough foundation for answering the  
6 questions.

7 Q. Brandon, are you aware that Sprint is not paying its  
8 bills to NAT?

9 A. Yes.

10 Q. And based on your personal knowledge, is that a  
11 reason that NAT is in the financial position it's in  
12 right now?

13 A. Yes.

14 Q. Brandon, you're aware that there is a Joint Venture  
15 Agreement between NAT and Free Conferencing Corporation;  
16 correct?

17 A. Yes.

18 Q. All right. Did you have -- did the Tribe have an  
19 attorney review that Joint Venture Agreement before it  
20 was signed?

21 MR. SCHENKENBERG: I'm going to object to this  
22 as beyond the scope of cross-examination.

23 MR. SWIER: They asked about the Joint Venture  
24 Agreement.

25 MR. SCHENKENBERG: I asked if he was familiar

1 with it, and I think he said no.

2 MR. SWIER: I'm not asking for details. I'm  
3 asking is he familiar that there is an agreement signed.

4 MS. AILTS WIEST: Overruled.

5 Q. Brandon, are you aware of the Joint Venture  
6 Agreement between NAT and Free Conferencing Corporation?

7 A. Well, now I'm just plain confused.

8 Q. Okay. Are you aware that NAT and Free Conferencing  
9 Corporation have a relationship?

10 A. Can you restate that question, please.

11 Q. Sure. NAT and Free Conferencing Corporation have a  
12 business relationship; correct?

13 A. I believe they do.

14 Q. Yeah. And there's money that's going from NAT to  
15 Free Conferencing Corporation; correct?

16 A. I believe so.

17 Q. And you indicated earlier that as the Tribal  
18 Chairman, knowing the agreement, you don't have any  
19 trouble with how the money's flowing so far, do you?

20 A. No, I don't.

21 Q. Okay. Do you trust Free Conferencing Corporation?

22 A. I do.

23 Q. Do you trust Native American Telecom Enterprises?

24 A. I do.

25 Q. Do you trust Wide Voice?

1 A. I do.

2 Q. Do you trust your partners?

3 A. I do.

4 Q. Okay. Did you have -- did the Tribe have an  
5 independent attorney review the legal documents between  
6 NAT and Free Conferencing Corporation?

7 A. What year is this?

8 Q. Probably would have been about '08 or '09.

9 A. I couldn't tell you whether we did or not. That  
10 was --

11 Q. Okay.

12 A. -- a long time ago.

13 Q. All right. Well, in earlier testimony Sprint  
14 alleges that the Tribe has been duped by Free  
15 Conferencing Corporation.

16 Do you think that's accurate?

17 MR. SCHENKENBERG: Objection. Mischaracterizes  
18 the testimony. I don't believe that word was used.

19 MS. AILTS WIEST: Can you rephrase that?

20 Q. Sprint has indicated that this is a one-sided  
21 agreement between Free Conferencing and NAT and that NAT  
22 receives nothing and Free Conferencing receives  
23 everything.

24 Do you think that's an accurate picture of your  
25 contractual relationship?



1 A. I would have to say no.

2 Q. Okay. All right. Are you pleased with how things  
3 are going between NAT and Free Conferencing?

4 A. Yes.

5 Q. Any reason whatsoever that you've had any  
6 displeasure with how things are going?

7 A. No.

8 MR. SWIER: No further questions.

9 MS. AILTS WIEST: Do you have any further cross  
10 based on the redirect, Mr. Schenkenberg?

11 MR. SCHENKENBERG: I do. Thank you.

12 REXCROSS-EXAMINATION

13 BY MR. SCHENKENBERG:

14 Q. Mr. Sazue, you were asked and answered a few  
15 questions about the position you think the Tribe would be  
16 in if Sprint paid amounts billed by NAT to Sprint.

17 Do you remember those questions?

18 A. I would have to say yes.

19 Q. Okay. Can you turn to NAT -- this is Sprint's  
20 Exhibit 1. I'm sorry. It's Sprint's Exhibit RGF-1,  
21 which is Sprint Exhibit 3. So this was Exhibit 3. And I  
22 just want you to look at that document.

23 That's a Joint Venture Agreement. You were just  
24 asked whether you knew this was the case -- I'm sorry.  
25 Whether you knew this document existed.

1           And I apologize for doing this, but I'm going to  
2 have you go to page 14.

3           MS. AILTS WIEST: Could you state the exhibit  
4 number again.

5           MR. SCHENKENBERG: Sprint 3. RGF-1. Sprint 3.

6 Q. And maybe before we look specifically at the  
7 language here, do you know what this Agreement says --  
8 well, let me start over.

9           Sprint's received a bill from NAT or bills from NAT;  
10 is that correct? Is that your understanding?

11 A. That's my understanding.

12 Q. Do you know what the charges are designated as --

13 A. No.

14 Q. -- what is the service?

15           Okay. So you don't know what Sprint's been billed,  
16 and you don't know why Sprint's been billed; right?

17 A. Confusing again. Like I said, I'm Chairman of the  
18 Tribe. I don't know all the particulars. I'm not a  
19 lawyer.

20 Q. If Sprint were to pay the amount billed and let's  
21 assume that is \$10 -- it's not, but let's just say \$10.

22 Okay. Under this document something happens to that  
23 money. Do you know what that is?

24 A. No, I don't.

25 Q. Would it surprise you to find out that those dollars

1 are not allowed to go to the Tribe under this document?

2 MR. SWIER: Objection. Misstatement of the  
3 document.

4 A. Wouldn't surprise me.

5 MR. SWIER: Asks for a legal conclusion.

6 MS. AILTS WIEST: He said he doesn't know -- has  
7 not read the document.

8 Objection sustained.

9 Q. Okay. So you're not in a position to testify that  
10 Sprint's payment of amounts billed by NAT would pass  
11 through to the Tribe; right?

12 A. So I'm not in a position to testify today or just on  
13 that question?

14 Q. On that question.

15 A. Well, all I know is Sprint's not paying.

16 Q. And you don't know what would happen to the money if  
17 Sprint did pay?

18 A. I don't know.

19 MR. SCHENKENBERG: Okay. I have no further  
20 questions.

21 MS. AILTS WIEST: Any further questions of the  
22 witness?

23 MR. SWIER: None from us.

24 MS. AILTS WIEST: If not, thank you,  
25 Mr. Chairman.

1 THE WITNESS: Thank you.

2 MS. AILTS WIEST: Who is your next witness?

3 MR. SWIER: Mr. DeJordy.

4 MS. AILTS WIEST: So we can keep track, I  
5 believe we will try to break for lunch at 12:30. Does  
6 anyone have any objection to that?

7 Thank you.

8 GENE DEJORDY,  
9 called as a witness, being first duly sworn in the above  
10 cause, testified under oath as follows:

11 DIRECT EXAMINATION

12 BY MR. SWIER:

13 Q. Mr. DeJordy, please introduce yourself to the  
14 Commission.

15 A. Yes. My name is Gene DeJordy.

16 Q. What's your business address?

17 A. My business address is 36 Sasco Hill Terrace,  
18 Fairfield, Connecticut.

19 Q. Mr. DeJordy, you filed written testimony with the  
20 Commission on February 7 of 2014 and February 19 of 2014;  
21 is that correct?

22 A. That is correct.

23 Q. Would you please provide the Commission -- first of  
24 all, do you affirm that those two sets of written  
25 testimony are true and correct?

1 A. Yes, I do.

2 Q. And are there any changes that you would like to  
3 make to that written testimony at this time?

4 A. The only change is a typo I think that was on one of  
5 the pages.

6 Yeah. On page 12 of my direct testimony I reference  
7 a date of September 2014. It was 2013. And then also  
8 October 2014 should be 2013.

9 Q. So just to clarify, your testimony on February 7 of  
10 2014, on page 12 of that testimony it references the year  
11 2014, and that's incorrect. It should actually be 2013?

12 A. That is correct.

13 Q. Okay. Are there any other changes to your  
14 testimony, Mr. DeJordy?

15 A. No, there is not.

16 Q. All right. Will you please provide the Commission  
17 with a summary of both sets of your written testimony.

18 A. Yes, I will.

19 First of all, my background I won't go into details  
20 because it is part of the record. But I have presented  
21 testimony before this Commission on interconnection  
22 matters as well as ETC matters, and I think both of those  
23 matters were cases of first impression before the  
24 Commission. And I've also testified before probably  
25 30 other State Commissions as well as the United States

1 Congress.

2 My experience runs from being a lawyer with the  
3 Federal Communications Commission to being in-house  
4 counsel responsible for legal regulatory affairs to today  
5 where I am a consultant that provides legal regulatory  
6 and business development and consulting to a diverse set  
7 of clients that include national telecommunications  
8 companies as well as tribal governments.

9 I also have established a business, Native American  
10 Telecom Enterprise, which is a business development  
11 company, and that company is the company that assisted  
12 the Crow Creek Sioux Tribe in establishing its tribally  
13 owned telephone company.

14 So that's just briefly my background. In terms of  
15 my testimony, Native American Telecom was established in  
16 2008, I believe. I'm not sure of the precise date. But  
17 when that company was established it was established by  
18 myself, and it was established as a telephone company  
19 that was going to focus on providing service in rural  
20 areas of South Dakota.

21 It was my experience at the time based upon working  
22 with Western Wireless and other companies that if you had  
23 a singular focus on providing service in rural areas,  
24 that you would be able to provide services that are more  
25 tailored to the needs of those consumers. That's what

1 previously Western Wireless did when I worked for them,  
2 and it is what we envisioned for Native American Telecom  
3 in South Dakota.

4       Once we established the company, we took a closer  
5 look at the areas that we specifically wanted to serve,  
6 and we -- at the same time we had developed a close  
7 relationship with the Crow Creek Sioux Tribe. That led  
8 to the reorganization of Native American Telecom from a  
9 company that I owned to a company that was owned majority  
10 by the Crow Creek Sioux Tribe and also had as partners  
11 Wide Voice Communications, Inc.

12       And the key to that partnership was, you know, the  
13 tribal involvement in the business. We felt that it was  
14 very important to have a company that was going to be one  
15 focused on the Crow Creek Sioux Tribe Reservation but  
16 also to address their needs. And many of the needs are  
17 pretty well documented.

18       But what's not addressed is how do you address those  
19 needs? And that's what Native American Telecom's purpose  
20 was is how to address those needs. And so the  
21 partnership consisted of the Crow Creek Sioux Tribe,  
22 51 percent, a company that I established to have its  
23 ownership interest in that company, which was  
24 Native American Telecom Enterprise, and Wide Voice  
25 Communications.

1           When we originally filed -- taking a step back,  
2 Native American Telecom before it became a tribally owned  
3 telephone company, as you may recall, filed an  
4 application before this Commission to provide competitive  
5 local exchange service. And then after it filed that  
6 application, that's when the company started to redefine  
7 its service area, how it was going to provide service,  
8 who the partners were going to be, and that led to a  
9 company asking for dismissal of the CLEC application,  
10 which the Commission granted.

11           And that also -- one of the reasons for that was the  
12 Tribal Utility Authority granted us authority to provide  
13 service on the reservation. And the focus again was to  
14 provide service just within the exterior boundaries of  
15 the reservation and primarily to tribal members.

16           When we obtained the authority to provide local  
17 exchange services on the reservation, as you know several  
18 things are triggered by that. One is you need an  
19 Interconnection Agreement. We established an  
20 Interconnection Agreement with Midstate based upon our  
21 Tribal CLEC authority. We obtained local numbers from  
22 the North American Numbering Plan Administrator. We  
23 filed tariffs with the FCC. And in all instances those  
24 institutions or entities recognized the Tribal CLEC  
25 authority.



1           The company once it was established began to build  
2 out our network facilities. The facilities on the  
3 reservation, you know, consist of an antenna tower, an  
4 equipment hut with a lot of different equipment to  
5 provide service to consumers. It includes equipment at  
6 customer locations that serves approximately 150  
7 locations.

8           The service area is primarily -- or exclusively  
9 right now in Fort Thompson. And part of the reason for  
10 that is that the spectrum that we're using is the Wi-max  
11 spectrum. As you may know, the propagation of Wi-max  
12 spectrum is extensive, as some of the other spectrum like  
13 cellular and PCS. But also because of these ongoing  
14 litigation that has drained some of the resources of the  
15 company in order to expand its network facilities.

16           The services that are offered on the reservation are  
17 local telephone service and internet service. These  
18 services aren't generally available on the reservation.  
19 And the -- again, when we went and established Native  
20 American Telecom it wasn't so much that none of these  
21 services were available. But I think as most people  
22 recognized, it's one thing for the services to be  
23 available, it's a whole nother thing for consumers to be  
24 able to obtain those services.

25           And when you're dealing with tribal areas -- and,

1 again, I have a lot of experience there in the tribal  
2 areas of Pine Ridge and many of the other reservations --  
3 you really need a service that's tailored to their needs.  
4 And their needs usually revolve around affordability.  
5 And it revolves around the terms and conditions of  
6 service.

7 And a good example of that is Western Wireless had  
8 over 5,000 lifeline customers on Pine Ridge alone,  
9 another 5,000 throughout the state. And that's all a  
10 matter of public record in the USAC reports.

11 Currently today the only lifeline provider is AT&T  
12 on Pine Ridge. And, again, a matter of public record,  
13 they have less than 100 lifeline customers. They went  
14 from 5,000 to 100. Why? The network's exactly the same.  
15 The reason is because they don't have a focus on  
16 providing service to tribal areas. They don't consider  
17 the issues of affordability.

18 Even though you say a dollar is a dollar, a dollar  
19 may be a lot more than the dollar because there's  
20 charges. There's other fees. There's early termination  
21 fees. There's different things that prohibit that  
22 service from being affordable. And, again, so Native  
23 American Telecom's focus is to make those types of  
24 services affordable by working closely with the Tribe.

25 And the decision was made by the company that we

1 were going to provide service at least initially at no  
2 cost to the consumer. And the reason for that is, again,  
3 affordability issues, it was a terms and conditions  
4 issue. It's an issue where the Tribe wanted to not  
5 necessarily make as much money as it could possibly.  
6 What it wanted to do is provide service to its members.

7 And that's what Native American Telecom is doing  
8 through the services it offers, as well as through the  
9 internet library that it has, has provided free computers  
10 and internet accesses services to consumers.

11 Recently Native American Telecom, me specifically,  
12 negotiated with Sprint for a agreement to purchase  
13 spectrum from them, which may actually come surprising.  
14 Why would Sprint negotiate with us to sell us spectrum?  
15 But they did. And they did provide us 10 megahertz of  
16 spectrum in the PCS band.

17 As I mentioned previously, we had Wi-max spectrum,  
18 which is fairly limited because of its propagation. PCS  
19 spectrum is broad. You can serve really the entire  
20 reservation with a few cell sites. Whereas, with Wi-max  
21 you might need, you know, 20 to 30 cell sites.

22 So it's a huge difference, a huge benefit. It was  
23 negotiated with Sprint with the express purpose of  
24 providing -- continuing to provide local exchange  
25 services on the reservation.

1           That spectrum was acquired in October of 2013. It  
2 was approved by the FCC in November of 2013. And that  
3 led to discussions with equipment providers that use that  
4 spectrum. There's a lot of equipment out there, but you  
5 need to have equipment that operates on the PCS spectrum.

6           We entered into an agreement with Tazca-Connects.  
7 And Tazca-Connects is a multinational company that  
8 provides equipment and technology solutions in rural  
9 areas specifically. And in that agreement with  
10 Tazca-Connect we identified how we were going to build  
11 out the network throughout the reservation. And we have  
12 taken steps to do that.

13           And part of that analysis was let's take a fresh  
14 look at how we're going to provide service, what type of  
15 revenues can we obtain from those services. And that led  
16 to the establishment of a Financial Projection, which is  
17 part of my testimony.

18           And in that Financial Projection we identify not the  
19 revenue from access. Because we know what the revenue  
20 from access is. At least today. That projection was to  
21 identify how can we run the business even without access?  
22 How can we run the business with local telephone service  
23 revenue, local telephone broadband, as well as new  
24 services like roaming.

25           And so that projection was put together specifically

1 because of the negotiations with Tazca and the network  
2 facilities that they would make available to Native  
3 American Telecom and by using the spectrum that we  
4 obtained from Sprint.

5 And, again, that spectrum not only allows us to  
6 provide the PIC services that are provided today and  
7 expand that throughout the reservation, but it also  
8 allows us to provide new and exciting services like  
9 roaming.

10 In that area of the state, as you well know, there's  
11 very little coverage. You can pick up some coverage from  
12 Verizon, some coverage from AT&T. There's no coverage  
13 from Sprint, no coverage from T-Mobile. There's a lot of  
14 consumers that go through that area and are not able to  
15 obtain service. But with Native American Telecom  
16 building out a network using the Sprint spectrum, you  
17 know, we'll be able to provide roaming services.

18 So the financial model that was attached to my  
19 testimony projected the revenue from local services  
20 revenue and roaming revenue. And it wasn't intended to  
21 be a business plan that I take to the bank. It was  
22 intended to identify the revenue opportunities from the  
23 business arrangement that we would have with  
24 Tazca-Connect.

25 Just one further point. The company has been

1 looking at for several years how it can take advantage of  
2 its unique status. And as you know, the company is  
3 located in a very rural area. There's not much economic  
4 development in that area. And probably for good reasons.  
5 But there's also plenty of opportunities in that area  
6 that national companies do not focus in on.

7 A national company is not going to look at does the  
8 Crow Creek Sioux Tribe qualify as a hub zone. They have  
9 no interest in that. The interest is broad, and it's not  
10 specific to an area.

11 So Native American Telecom and the Crow Creek Sioux  
12 Tribe filed a -- Crow Creek Sioux Tribe filed a hub zone  
13 application, which is under review. And what that does  
14 is it provides the company and the Tribe with the  
15 opportunity to do a Government contracting.

16 And these contract opportunities were specifically  
17 developed by the Federal Government to spur economic  
18 development on the reservations. The Tribal 8(a)  
19 application which was filed also does that. The Buy  
20 Indian Act, all of these are opportunities that are only  
21 available in very rural areas such as the Crow Creek  
22 Sioux Tribe.

23 So unlike I think many companies that take a broad  
24 look at things and say I want to serve Sioux Falls, I  
25 want to serve New York, Boston, we took a look at and

1 said no, we want to serve rural areas and how best can  
2 you serve rural areas. And the way you do it is you take  
3 advantage of opportunities that are presented in those  
4 rural areas.

5 And some of those opportunities are these Government  
6 contracting. Other opportunities are to have  
7 arrangements with companies like Free Conferencing  
8 Corporation. They stepped forward and was a critical  
9 partner in the business formation. But we've been --  
10 we've been contacted by numerous companies that want to  
11 locate in rural areas of the state, be customers of  
12 Native American Telecom.

13 As hard as that is to understand, I think you do  
14 understand that, you know, when you build out network and  
15 you have a platform in a rural area and this platform  
16 allows for access to broadband services, you don't have  
17 to be located in Sioux Falls, New York. You can be  
18 located on Crow Creek.

19 And our efforts on Crow Creek and providing people  
20 on Crow Creek with access to broadband has already  
21 translated in people establishing businesses. They're  
22 selling their wares on the internet. They're doing  
23 different things that just was not possible before.

24 And, yes, broadband might have been able before, but  
25 it wasn't affordable or it wasn't tailored to their

1 needs. And that's what Native American Telecom has done  
2 and will continue to do.

3 And that concludes my summary.

4 MS. AILTS WIEST: Thank you. Cross by  
5 Mr. Schenkenberg?

6 MR. SCHENKENBERG: Thank you.

7 CROSS-EXAMINATION

8 BY MR. SCHENKENBERG:

9 Q. Good morning, Mr. DeJordy.

10 A. Good morning.

11 Q. You're a lawyer; correct?

12 A. Correct.

13 Q. Are you counsel -- are you counsel to Native  
14 American Telecom?

15 A. No.

16 Q. Are you counsel to the Tribe?

17 A. Yes, I am.

18 Q. How long have you been counsel to the Tribe?

19 A. In an official capacity since, I believe, November  
20 of 2013.

21 Q. And so when negotiated the spectrum sale you were  
22 doing that for NAT?

23 A. I was doing that for NAT.

24 Q. So you were serving as NAT's lawyer in that -- in  
25 those negotiations; right?



1 A. I was just serving as their consultant and not  
2 officially their lawyer but their consultant. We had  
3 lawyers reviewing contracts.

4 Q. Your counsel to Crow Creek Holdings; is that  
5 correct?

6 A. I'm counsel to the Crow Creek Sioux Tribe, and that  
7 would include its companies that it has an ownership  
8 interest. But, I mean, my representation of Crow Creek  
9 Sioux Tribe, if they want me to represent Crow Creek  
10 Holdings, I would.

11 Q. Okay. And Crow Creek Holdings is the entity that  
12 owns the majority interest in Native American Telecom as  
13 it's situated today?

14 A. That's correct.

15 Q. Are you also counsel to the Tribe in Pine Ridge?

16 A. I'm counsel to the Oglala Sioux Tribal Utilities  
17 Commission on Pine Ridge.

18 Q. And have you ever any time been NAT's lawyer?

19 A. I've never been officially their lawyer.

20 Q. Have you ever provided legal services or given legal  
21 advice to NAT?

22 A. I give advice. I'm not sure if I'd classify it as  
23 legal advice or not. I'd classify it as just advice.  
24 I'm not serving in a legal capacity.

25 Q. You indicated in your summary that you were --

1 you've formed NAT way back in the beginning; is that  
2 right?

3 A. Correct.

4 Q. And did you hear Commissioner Nelson's question to  
5 Mr. Sazue earlier?

6 A. I imagine I did. What question was that, though?

7 Q. Well, the question about what Mr. Farrar said in his  
8 testimony about NAT being initially formed without tribal  
9 involvement versus Mr. Sazue indicating that NAT was -- I  
10 don't remember if formed was used but formed under his  
11 leadership.

12 A. Right.

13 Q. I just want to make sure we're kind of clear of  
14 record. Initially you and Mr. Reiman formed NAT without  
15 tribal involvement; correct?

16 A. That is correct. It was not a tribally owned  
17 business at that time. Once the Tribe obtained its  
18 ownership interest and we redefined the ownership of the  
19 company, that's when the Tribe had a direct involvement  
20 in the formation of the company as well as, you know, the  
21 ownership.

22 Q. And that ownership came via the Joint Venture  
23 Agreement?

24 A. I'm not sure if I understand the question.

25 Q. Well, the Joint Venture Agreement said Wide Voice,

1 the Tribe, and NAT -- I'm sorry. And Native American  
2 Telecom Enterprise will jointly run Native American  
3 Telecom and set the rules for how that would happen;  
4 right?

5 A. Okay. It's been a little while since I've looked at  
6 the agreement, but if that's what you say it says.

7 Q. It's Sprint Exhibit 3. Would it help to look at it?

8 A. Sure. Okay. I have it in front of me.

9 Q. So it's an agreement by and between the Tribe,  
10 Native American Telecom Enterprise, which was an entity  
11 you and Mr. Reiman owned; right?

12 A. That's correct.

13 Q. And then Wide Voice Communications. And it was  
14 effective April 1 of '09?

15 A. Okay.

16 Q. Right? And it's this document, is it not, that  
17 provides the Tribe with 51 percent ownership of NAT?

18 A. You know, to tell you the truth, I'm not sure if  
19 this is the sole document that determines that ownership  
20 or if this is just -- like you said, it's a Joint Venture  
21 Agreement.

22 Q. Okay. You indicated in one of your answers that  
23 after it was formed the Tribe acquired ownership, and  
24 then it was run as it was then for a period of time with  
25 the Tribe owning 51 percent.

1 A. Correct.

2 Q. And I was trying to get to what the date was that  
3 the Tribe acquired ownership. Is there any other date  
4 besides the formation date -- I'm sorry. The execution  
5 date for the Joint Venture Agreement?

6 A. You know, I'm not sure.

7 Q. Okay. Originally the certificate, it was filed  
8 before this Commission by yourself. The Application in  
9 2008.

10 A. Right.

11 Q. Do you remember in that Application representing  
12 that NAT was then a joint venture with the Tribe?

13 A. I don't recall.

14 Q. Was it -- was it at that point a joint venture of  
15 the Tribe, or was it not until the next spring?

16 A. What time are you referring to?

17 Q. September of 2008.

18 A. Yeah. Again, I'm not sure what you're even  
19 referring to, to say yes or no to it.

20 Q. Okay.

21 A. Can you provide me a document that says what you're  
22 saying it says?

23 Q. That Application, as you indicated, was withdrawn;  
24 right?

25 A. That's correct.

1 Q. And then you approached -- or you went to the Tribe,  
2 and the Tribal Utility Authority awarded a certificate;  
3 is that right?

4 A. That's correct.

5 Q. And did you draft that document?

6 A. I provided what our commitments to the Tribe would  
7 be. And I think one of the commitments was that Native  
8 American Telecom was going to provide service consistent  
9 with the universal service definition in the FCC rules.

10 Q. I'm not sure if you answered my question or not.  
11 Did you draft the document?

12 A. I drafted what our commitment was. The Tribe  
13 finalized the document and approved it.

14 Q. And did you prepare the initial federal tariff for  
15 NAT?

16 A. No.

17 Q. You were involved significantly with NAT until about  
18 mid-2010 in your role for NATE -- and I'm sorry. Let me  
19 withdraw that question. That's a bad question.

20 Do you recall that under the Joint Venture Agreement  
21 NATE had responsibility for day-to-day operations of the  
22 company.

23 A. Okay.

24 Q. Is that right?

25 A. That's correct.

1 Q. So you and Mr. Reiman were performing those  
2 functions until about mid-2010, early 2010; is that  
3 right?

4 A. I don't know anything that happened in mid-2010 that  
5 said -- that changed, that you're referring to. Native  
6 American Telecom Enterprise, like the other partners in  
7 the -- NATE, provided services to the company. Just like  
8 Wide Voice provided services to the company, Native  
9 American Telecom Enterprise provided services, and the  
10 Tribe provided services. It was kind of together the  
11 three partners provided services to the company, as they  
12 do today.

13 Q. But at some point Mr. Holoubek was installed as  
14 president of NAT; is that right?

15 A. That's correct.

16 Q. And that was not consistent with the Joint Venture  
17 Agreement; right?

18 A. I wouldn't say that. Why would you say it's  
19 inconsistent with the Joint Venture Agreement?

20 Q. Is Mr. Holoubek part of NATE?

21 A. No, they are not. He is not.

22 Q. So if the Joint Venture Agreement says NATE will be  
23 responsible for day-to-day operations, you don't think  
24 it's a change to have Mr. Holoubek who's a Free  
25 Conferencing employee taking over day-to-day operations

1 of the company?

2 A. No, not at all.

3 Q. Do you have a recollection as to why Mr. Holoubek  
4 took over in that position?

5 A. Why? Because the board of directors of the company  
6 decided that he should be the president.

7 Q. And did that have something to do with the decision  
8 that Mr. Reiman had improperly spent funds of NAT?

9 A. No. It had nothing to do with that.

10 Q. Do you recall that that, in fact, did happen, that  
11 Mr. Reiman spent about \$12,000 he shouldn't have spent of  
12 NAT money?

13 A. I wouldn't categorize it as that. Mr. Reiman was  
14 responsible for the day-to-day operations on the  
15 reservation that include purchasing different products  
16 and services that was needed.

17 What you're referring to is the company took a look  
18 at things, and it made a decision that some of the --  
19 some of the expenditures of Tom Reiman should not be  
20 classified as Native American Telecom specific  
21 expenditures.

22 They were related to Native American Telecom in some  
23 instances, but the company as a whole decided, no, let's  
24 reclassify those expenditures as not Native American  
25 Telecom specifically and that's why he was -- he refunded

1 those funds.

2 Q. But you don't dispute that there was about -- there  
3 was over \$12,000 of expenses and cash withdrawals that  
4 was disallowed and traded essentially as a shareholder  
5 distribution to NATE; right?

6 A. I'd say that the board of directors decided to take  
7 the course that I just explained, that it wasn't  
8 necessarily a question that it was improper or wrong. It  
9 was just a decision that companies make all the time of  
10 allocating or assigning revenue to proper categories.

11 And we felt that as part of our overall scrutiny of  
12 expenditures -- I mean, this is a good example of how  
13 closely we scrutinize expenditures to make sure that no  
14 expenditures are being assigned to Native American  
15 Telecom, the tribal entity, that are of any question.

16 So we decided that we would reallocate those  
17 expenditures to be specifically shareholder distribution  
18 and assign them to Tom as opposed to assigning them to  
19 the broader company, which we -- that's what we ended up  
20 deciding to do.

21 Q. You don't think Mr. Reiman's actions bear in any way  
22 on his credibility?

23 A. No. Not at all.

24 (Sprint Exhibit No. 33 is marked for identification)

25 MR. SCHENKENBERG: May I approach?



1 MS. AILTS WIEST: Yes.

2 MR. SCHENKENBERG: I'll let Mr. Swier look at  
3 this for a minute. This is an interrogatory response on  
4 this topic and then the supporting documents as Bates by  
5 NAT.

6 I note that there are some documents stamped as  
7 confidential attached. And I don't intend to ask  
8 Mr. DeJordy questions about this. I'd just like it to be  
9 received as part of a complete record. It's NAT's  
10 response, its own explanation in discovery, on this  
11 incident.

12 MS. AILTS WIEST: Are you offering this?

13 MR. SCHENKENBERG: I am offering this. Yes, I'm  
14 sorry.

15 MS. AILTS WIEST: What number would this be?

16 MR. SCHENKENBERG: 33. I'm sorry.

17 MS. AILTS WIEST: Do you have any objection?

18 MR. SWIER: I need to still read it first for a  
19 moment.

20 MS. AILTS WIEST: Go ahead.

21 (Mr. Swier examines document.)

22 MR. SWIER: We don't object to Bates stamps 311  
23 through 315. We do object, however, to the remaining  
24 portions of the document.

25 MS. AILTS WIEST: And what is the basis for that

1 objection?

2 MR. SWIER: The Interrogatory Answers go beyond  
3 what is referenced in the Bates stamped documents.

4 MR. SCHENKENBERG: If I may, I think Document  
5 Request 5 and 6, which are pages 9 and 10, are probably  
6 unnecessary. I don't mind if they're stricken. They're  
7 included just to show pagination extending from page 6  
8 through the verification of Mr. Holoubek.

9 MS. AILTS WIEST: With the exclusion of 9 and  
10 10, do you have any objection, Mr. Swier?

11 MR. SWIER: No.

12 MS. AILTS WIEST: I assume no one else has any  
13 objection.

14 Sprint's Exhibit 33 has been admitted with  
15 pages 9 and 10 excluded, not in there.

16 MR. SCHENKENBERG: May I just rip those two  
17 pages out?

18 MS. AILTS WIEST: Yes.

19 MR. SCHENKENBERG: Just so we don't have any  
20 confusion.

21 Q. Mr. DeJordy, I don't have any questions for you on  
22 that document, but just a couple more questions on this  
23 topic.

24 These expenditures that we've talked about were in  
25 2010; right? And I suppose you can look at the response

1 if you don't know.

2 A. To tell you the truth, I mean, I don't know when  
3 they were from. It doesn't say here. The date isn't --

4 Q. And that's fine. Do you know when the distribution  
5 was deemed to have been made by NATE or to NATE to fix  
6 this?

7 A. The precise date of when that took place?

8 Q. It wasn't until 2012, was it?

9 A. To tell you the truth, I don't know.

10 Q. Were you ever asked to repay any amounts or to  
11 accept the distribution to offset expenses as Mr. Reiman  
12 was?

13 A. I'm not sure if I understand the question.

14 Q. Sure. Mr. Reiman was told he was deemed to have  
15 taken a distribution from NAT to offset expenses that  
16 were deemed not to be -- I don't remember how you put  
17 it -- NAT business expenses.

18 A. Okay.

19 Q. Did you have the same situation? Were there any  
20 expenses of yours that were questioned?

21 A. No. Not that I'm aware of.

22 Q. You mentioned hub zone, the hub zone application?

23 A. Yes.

24 Q. Was that filed in the name of Crow Creek Holdings?

25 A. Yes, it was.

1 Q. But not NAT?

2 A. Well, it was filed in the name of Crow Creek  
3 Holdings, but as part of the Application it was -- you  
4 have to demonstrate operational experience. And Crow  
5 Creek Holdings demonstrated its operational experience  
6 through its subsidiary, Native American Telecom.

7 So the name on the application is Crow Creek  
8 Holdings, but the eligibility of the company will be  
9 determined based upon Crow Creek Holdings as well as  
10 Native American Telecom.

11 Q. You mentioned in your testimony, and I think this is  
12 page 16 of your first testimony, sole source Government  
13 contracts.

14 A. Correct.

15 Q. Is that a contract that the Government determines  
16 only has one logical provider?

17 A. Well, it could be that. Or it could be that based  
18 upon a specific area of the country, that they're  
19 awarding sole source contracts to specific areas of the  
20 country. For example, in the hub zone those contracts  
21 are specific to the hub zone.

22 Q. But sole source means there's really only one  
23 logical contracting partner for the Government, and you  
24 don't have to go through the same process that you have  
25 to when there are multiple potential --

1 A. That's generally true.

2 MR. SCHENKENBERG: I understand we're about to  
3 break.

4 MS. AILTS WIEST: Do you have a lot of cross  
5 left for Mr. DeJordy?

6 MR. SCHENKENBERG: I do. And I have a section  
7 that relates to the -- his Exhibit E, to his first  
8 testimony that we probably ought to do in closed session.  
9 And I wonder if maybe we'd do that first thing after we  
10 come back.

11 MS. AILTS WIEST: If that's okay with the  
12 parties.

13 MR. SWIER: That's fine.

14 MS. AILTS WIEST: We will break now. I was  
15 going to suggest an hour and 15 minutes. Is that  
16 sufficient for people?

17 Okay. An hour and 15 minutes. Does that work  
18 for everyone?

19 Okay. We'll be back in one hour and 15 minutes.

20 (A lunch recess is taken)

21 MS. AILTS WIEST: We'll go back on the record.  
22 We'll go back with cross-examination of Mr. DeJordy.

23 At this time, Mr. Schenkenberg, did you state  
24 that you needed to go into confidential session?

25 MR. SCHENKENBERG: I can do it at any time, but

1 if this is okay for the Commission.

2 MS. AILTS WIEST: It works for us however it  
3 works for you.

4 MR. SCHENKENBERG: Let's do that.

5 MS. AILTS WIEST: So go into confidential right  
6 at this moment?

7 MR. SCHENKENBERG: Yes.

8 MS. AILTS WIEST: Again, I'm sorry. We'll have  
9 to clear the room of anyone who has not signed the  
10 confidentiality agreement.

11 (Beginning of confidential portion of the transcript.)

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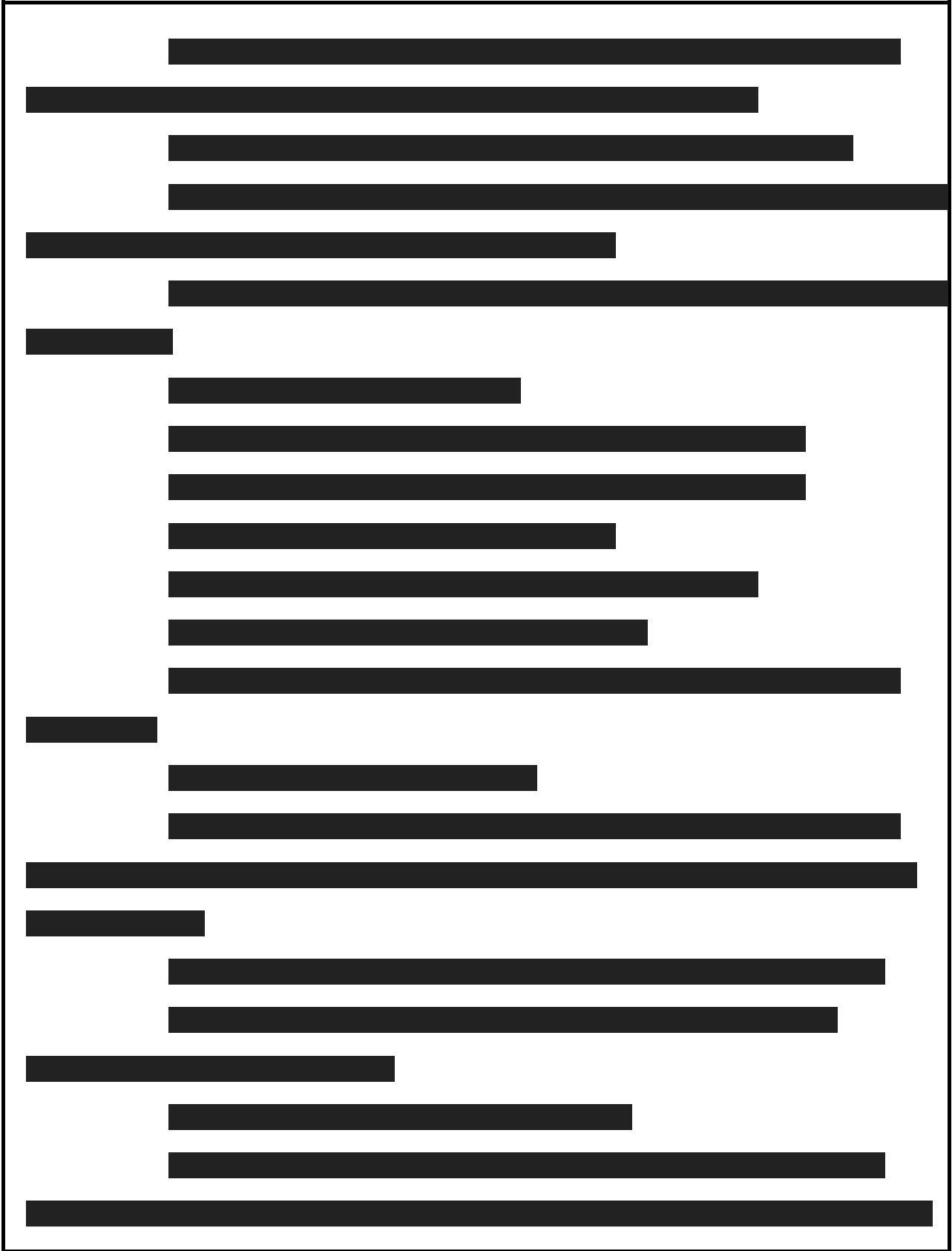
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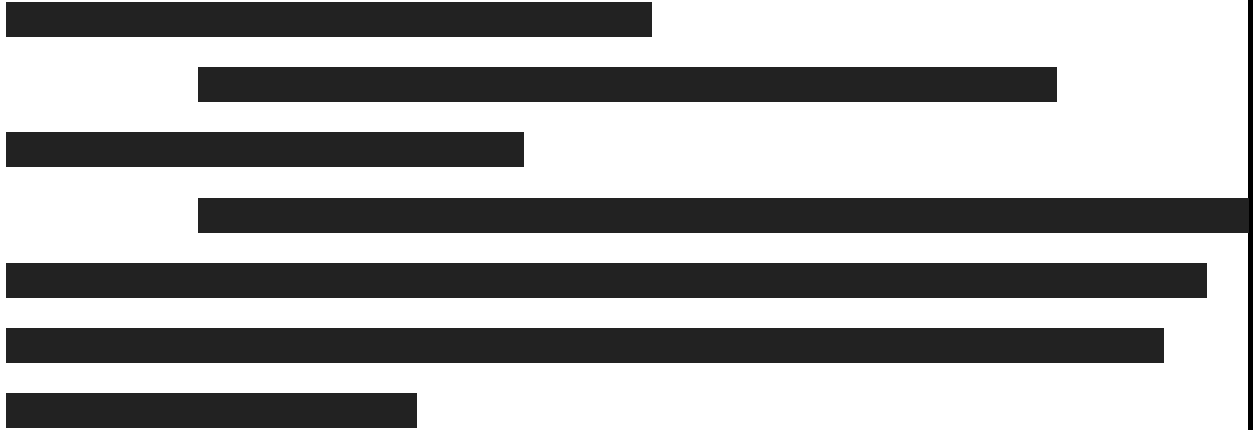
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1 (End of confidential portion of the transcript.)

2 CHAIRMAN HANSON: All of our official actions  
3 need to be in open meetings.

4 COMMISSIONER NELSON: I move that the Sprint  
5 Spectrum Sale Agreement, which is a confidential  
6 document, be ordered to be submitted as an exhibit.

7 CHAIRMAN HANSON: Is there any discussion on the  
8 motion?

9 Hearing none, Commissioner Fiegen.

10 COMMISSIONER FIEGEN: Fiegen votes aye.

11 CHAIRMAN HANSON: Commissioner Nelson.

12 COMMISSIONER NELSON: Aye.

13 CHAIRMAN HANSON: Hanson votes aye.

14 Motion carries. So ordered.

15 MS. AILTS WIEST: And, therefore, Exhibit 3-B is  
16 part of the record.

17 Mr. Schenkenberg.

18 MR. SCHENKENBERG: Thank you.

19 Q. (BY MR. SCHENKENBERG) Mr. DeJordy, you're familiar  
20 with NAT's Application; is that correct?

21 A. Correct.

22 Q. I believe it's NAT Exhibit 1. Do you have it there  
23 in front of you?

24 A. Yes, I do.

25 Q. On the first page -- I want to ask you some

1 questions about the scope of NAT's application, what it's  
2 seeking permission for. And in this document the end of  
3 the first paragraph it asks for authority from the  
4 Commission to provide intrastate interexchange access  
5 service for traffic that originates and terminates off  
6 the Crow Creek Reservation.

7 Do you see that?

8 A. Yes, I do.

9 Q. Now access service is a service provided to  
10 interexchange carriers; is that correct?

11 A. Correct.

12 Q. And to the extent NAT is providing voice service to  
13 tribal members on the reservation, is it NAT's position  
14 that that is not subject to the Commission's  
15 jurisdiction?

16 A. That's correct. We have an Order from the Crow  
17 Creek Sioux Tribal Authority that allows us to provide  
18 service exclusively on the reservation.

19 Q. And so that that would extend also to voice service  
20 provided to a nontribal member; is that correct? Like  
21 Free Conferencing?

22 A. It extends to tribal members, and then it extends to  
23 entities that agree to be subject to the Tribe's  
24 jurisdiction.

25 Q. So nontribal members on the reservation?



1 A. That agree to be subject to the Tribe's  
2 jurisdiction, yes.

3 Q. Okay. And so NAT's position is the provision of any  
4 communication service to Free Conferencing on the  
5 reservation would be off limits to the Commission?

6 A. No. That's not what I'm saying. I'm saying any  
7 entity that agrees to be subject to the Tribe's  
8 jurisdiction, Native American Telecom would provide  
9 service to that entity.

10 Q. And has Free Conferencing agreed?

11 A. Yes, it has.

12 Q. Okay. And so is there any communication service  
13 that NAT is providing or could provide to Free  
14 Conferencing that the Commission has any jurisdiction  
15 over, in NAT's opinion?

16 A. If the service is being provided exclusively on the  
17 reservation and exclusively to an entity that is subject  
18 to the Tribe's jurisdiction, then the answer would be  
19 that would fall under the Tribe's jurisdiction.

20 Q. And so today are you familiar with how Free  
21 Conferencing receives service from NAT?

22 A. Yes.

23 Q. Calls come into NAT's switch and then are switched  
24 and delivered in internet protocol to Free Conferencing's  
25 bridge; is that correct?

1 A. Basically.

2 Q. And the switch and the bridge are located on the  
3 reservation?

4 A. Correct.

5 Q. And NAT takes the position that Free Conferencing  
6 has consented to the Tribe's jurisdiction; right?

7 A. It doesn't really take that position. Free  
8 Conferencing did --

9 Q. Did consent?

10 A. -- consent to the Tribe's jurisdiction.

11 Q. And so as it's situated today, the relationship  
12 between Free Conferencing and NAT is subject to sole  
13 jurisdiction, in NAT's opinion, of the Tribe and the  
14 Tribal Utility Authority and not at all the jurisdiction  
15 of the State Commission?

16 A. Well, I'm not sure I understand. I mean, there's  
17 certain traffic that would originate off reservation in  
18 the State of South Dakota that would be going to a Free  
19 Conferencing -- going through a Free Conferencing bridge.

20 That service -- based upon this Amended Application,  
21 we're saying that this application were to cover that  
22 traffic. So that traffic is coming off reservation, on  
23 reservation, through NAT, to Free Conferencing.

24 Q. But the service that you're seeking authority for is  
25 the service provided to interexchange carrier in that

1 situation, not Free Conferencing.

2 A. That's right. It's service that -- it would be the  
3 access service that we're providing. But the access  
4 service, I mean, you can't necessarily look at it as one  
5 leg. I mean, there's multiple legs in the jurisdictional  
6 analysis of traffic.

7 Traffic can begin with the State of Massachusetts  
8 having jurisdiction, and then it could transfer to the  
9 State of South Dakota before it goes to the Crow Creek  
10 Sioux Tribe.

11 Q. I just -- just want to make sure the record's clear  
12 that there isn't anything that NAT is asking the  
13 Commission for that would authorize it to provide service  
14 to Free Conferencing.

15 Your belief is that that's already been taken care  
16 of by Tribal certificate?

17 A. Well, I think you have to define the service  
18 provided to Free Conferencing. Right now Native American  
19 Telecom provides a service to Free Conferencing that  
20 allows Free Conferencing to collocate its equipment in  
21 our facility. It also allows for a connection from  
22 off-network facilities over to their network.

23 So those services being provided right now are  
24 provided exclusively on the reservation in Fort Thompson.  
25 So if you're talking about those specific services, those

1 services right now would be governed under the Tribal  
2 authority.

3 Q. And let's assume for a second that you were off --  
4 we're not on the reservation.

5 A. Uh-huh.

6 Q. Does NAT take the position that those calls are  
7 interconnected VoIP calls, Voice over IP calls and,  
8 therefore, not communication services at all?

9 A. I don't follow you.

10 Q. You understand that there's a question about whether  
11 State Commissions have jurisdiction and authority over  
12 Voice over Internet Protocol calls?

13 A. Uh-huh.

14 Q. And does NAT have a position on that?

15 A. I don't think we've taken a position on that.

16 Q. So if -- those are either communications calls or  
17 information service calls? But if they're communications  
18 calls, they're subject only to the jurisdiction of the  
19 Tribe because of sovereignty issues, in NAT's opinion?

20 A. Again, I'm not sure if I follow the complete line of  
21 questioning. But, again, if the call is -- originates  
22 and terminates on the reservation, is subject to the  
23 Tribe's jurisdiction. If it originates on reservation  
24 and terminates off reservation in the State of South  
25 Dakota, that's where we felt if there is a question of

1 who has jurisdiction, the best course of action was to  
2 present an application before the Commission and allow  
3 the Commission to make a determination on that. So  
4 that's what we did.

5 Q. But the leg, when you talk about the leg, if there's  
6 a leg from somewhere else in South Dakota on to the  
7 reservation and the leg from the originating caller to --  
8 through the IXC and the IXC handing it off to NAT, that's  
9 the leg that you would believe is subject to State  
10 regulation. And then NAT delivering it in to Free  
11 Conferencing or a tribal member is not subject to State  
12 regulation?

13 MR. SWIER: I'm going to object based on a  
14 compound question. There's about three questions in  
15 there.

16 MS. AILTS WIEST: Can you break it down?

17 MR. SCHENKENBERG: Sure.

18 Q. You said, Mr. DeJordy, a call could have legs?

19 A. Right.

20 Q. And I just want to make sure we're clear, and then  
21 I'll move on.

22 In the example you gave with the intrastate call  
23 from off the reservation to on the reservation the last  
24 piece of that leg, which is NAT hands to Free  
25 Conferencing, you don't believe there's any state

1 authority over that; it's the other piece of that call,  
2 the other leg from the originating caller through the  
3 interexchange carrier and then on to NAT, that would be  
4 the piece you'd want regulation on?

5 MR. SWIER: Same objection. Compound question.

6 MS. AILTS WIEST: Can you just break -- ask him  
7 that first part, and then have him answer it.

8 A. I would just say I'm not sure if I'm asking for any  
9 regulation. Ideally there would be no regulation. But,  
10 you know, I think a call that originates off reservation  
11 in the State of South Dakota and comes on to the  
12 reservation, what we're saying here in our application is  
13 to the extent State jurisdiction does apply there, then  
14 we're seeking authority from the State to terminate that  
15 call.

16 Because currently a (605) call that originates off  
17 reservation and then goes on reservation we're not even  
18 carrying that call. So that's conflict of business.

19 Whether that authority is necessary I think is  
20 potentially a matter of question. You know, I think in  
21 many circumstances there is tribally owned telephone  
22 companies in New Mexico and Arizona. None of those  
23 telephone companies have Tribal authority plus State  
24 authority plus Federal. They basically have Tribal  
25 authority and Federal authority. There's not like an

1 additional State authority. Because the determination  
2 was made at least in those states that there's really no  
3 State authority necessary for calls that originate off  
4 reservation and terminate on reservation or vice versa.

5 It's almost similar to, you know, between states.  
6 If someone's making a call from North Dakota to  
7 South Dakota, they're not -- the carrier serving  
8 South Dakota isn't going to North Dakota and asking for  
9 authority to terminate that call. So this is a similar  
10 analysis.

11 But that said, we did file the Application. We've  
12 filed it with the intent of allowing the State Commission  
13 to rule on the Application, and to the extent that the  
14 State Commission felt that they did have jurisdiction  
15 over that piece of the traffic, then the State would have  
16 jurisdiction. It would be governed by access tariffs,  
17 much like the access tariffs that we file at the Federal  
18 level and the Tribal level.

19 If this authority's necessary at the State level, we  
20 would file an access tariff with the State. You can see  
21 that our access rate mirror the lowest there is in the  
22 state. We've filed access tariffs that have mirrored the  
23 lowest rate in the state from day one, even though  
24 arguably we could have had a state tariff that was a -- a  
25 couple of years ago I think it was sometimes 5 cents,

1 10 cents a minute.

2 We did not do that. We had an intrastate access  
3 tariff filed at the Tribal Utility Commission that  
4 mirrored the federal tariff.

5 Long winded response, but I think there is a role  
6 for the State to play to the extent they assume  
7 jurisdiction over that traffic, and that would be  
8 governed by an access tariff that we would file with the  
9 State.

10 Q. Well, and you say assumed jurisdiction. But on  
11 page 7 of your testimony that you filed on the 7th of  
12 February, you were asked the question "Are tribally owned  
13 telecommunications carriers operating exclusively on  
14 reservations subject to Federal and Tribal regulation and  
15 not State regulation?"

16 A. Uh-huh.

17 Q. And you answered "Yes." And you explain in your  
18 opinion why the State Commission I think could not assume  
19 any jurisdiction over NAT.

20 Now you agree, do you not, that that's a legal  
21 question?

22 A. I agree.

23 Q. And you're testifying -- you're a consultant for  
24 NAT; right?

25 A. I'm a consultant, yes.



1 Q. And you're part -- you have an ownership interest in  
2 the entity; right?

3 A. Correct.

4 Q. And you're also counsel for the Tribe?

5 A. Correct.

6 Q. So that ought to all be taken into consideration  
7 when the Commission weighs your opinion on legal issues  
8 expressed in your testimony?

9 A. That's up to the Commission to decide.

10 Q. And you're familiar, are you not, with the Pine  
11 Ridge ETC decision?

12 A. Yes.

13 Q. And in that decision the FCC was asked to determine  
14 whether the FCC or the State Commission should be  
15 designating your company, Western Wireless, as a eligible  
16 telecommunications carrier for the purposes of serving on  
17 the reservation; is that correct?

18 A. Correct.

19 Q. And the FCC ultimately decided that the FCC should  
20 do the designation to the extent Western Wireless was  
21 serving tribal members on the reservation; is that  
22 correct?

23 A. That's correct.

24 Q. And that the State Commission should designate for  
25 the purposes of nontribal members on the reservation; is

1 that right?

2 A. I'm not sure if they went -- if they ended up saying  
3 that portion. They did say state that with respect to  
4 tribal members. But more recently in the Standing Rock  
5 decision by the FCC, the FCC determined that there wasn't  
6 a distinction between tribal members and nontribal  
7 members for the purposes of designation.

8 That designation applied on the Standing Rock  
9 Reservation for all residents there, whether they're  
10 tribal members or nontribal members.

11 Q. And what state did that decision come out of?

12 A. That was North -- well, that was the FCC decision,  
13 but it impacted South Dakota and North Dakota.

14 Q. It impacted South Dakota?

15 A. Correct.

16 Q. And I don't have that decision to show to you, but  
17 if we step back to Pine Ridge at least, your statement  
18 that the Commission cannot regulate service provided by a  
19 tribal entity to a nontribal member on the reservation is  
20 not entirely consistent with the FCC's Pine Ridge Order;  
21 is that fair?

22 A. You know, I hesitate just because I know what you're  
23 saying with respect to the Pine Ridge Order. And the FCC  
24 did at a time state in the Pine Ridge case, which was in  
25 2001, that the designation was limited to Western

1 Wireless providing universal service to tribal members.  
2 So that is what the designation was for.

3 I don't recall what they said with respect to  
4 nontribal members, what happens to them. It was kind of  
5 a quirky order, to tell you the truth, to have an order  
6 that says you can provide service to tribal members but  
7 not nontribal members. And I think the FCC corrected  
8 that when they did the Standing Rock decision more  
9 recently.

10 Q. Thank you. Is it your belief that NAT was operating  
11 unlawfully without a -- let me say it differently.

12 Is it your belief that NAT for some period of time  
13 was providing service without a certificate that it  
14 needed a certificate to provide?

15 A. No. I've always felt that we did not need a State  
16 certificate. And I maintain that position, even though  
17 Native American Telecom did file the amended CLEC  
18 Application.

19 Q. And so your position on that intrastate access  
20 service for a call from off the reservation to on, you  
21 still don't believe that there's a certificate that's  
22 necessary?

23 A. Well, if you're asking me my personal --

24 Q. I am?

25 A. -- belief as opposed to what Native American

1 Telecom's belief is because I'm testifying on behalf of  
2 Native American Telecom, you know, personally I think  
3 that it doesn't -- the Tribe has the authority to  
4 determine especially with respect to a tribally owned  
5 entity that's providing services exclusively on the  
6 reservation, they have jurisdiction over that entity and  
7 the provision of service by that entity both for services  
8 as well as access services.

9 But, you know, Native American Telecom has taken a  
10 position and -- of seeking State authority. And it's  
11 not -- I really don't take a specific position with  
12 respect to that.

13 Q. Can you -- if it's there, find Sprint Exhibit 32?  
14 This would have been a loose exhibit that was marked  
15 earlier today.

16 Do you recognize that document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's a Resolution that was recently approved by the  
20 Crow Creek Sioux Tribe with respect to assessment and  
21 collection of taxes and fees by entities operating and  
22 providing services on the Crow Creek Reservation.

23 Q. And did you have involvement with respect to this  
24 Tribal Resolution?

25 A. I provided the Tribe some counsel on this

1 Resolution, yes.

2 Q. And is this intended to lead to a result whereby NAT  
3 would be subject to no State taxes or assessments with  
4 respect to its provision of services on the reservation?

5 A. Not necessarily. You know, looking at the -- the  
6 Resolution says that the residents of the Crow Creek --  
7 I'll read the whole thing.

8 "The motion authorizes and approves and declares  
9 that it is in the best interest of the Tribe, its  
10 members, and residents of the Crow Creek Reservation that  
11 the assessment and collection of taxes and the fees on  
12 the Crow Creek Reservation should be limited to those  
13 specifically required by applicable laws, in that  
14 tribally owned entities should not be subject to any  
15 state taxes and fees."

16 Q. Do you have NAT Exhibit 29 in front of you? 29 will  
17 be in a binder.

18 A. Yes, I do.

19 Q. I understand this to be a utilities code that was  
20 just recently adopted. Is that correct?

21 A. That's correct.

22 Q. And at the bottom of the first page can you just  
23 read the first two sentences of Section 1, paragraph 3 --  
24 or Subsection 3.

25 A. You want me to read where it begins utility

1 regulation?

2 Q. The State of South Dakota. This is on page 1.

3 A. Oh, okay.

4 Q. Just read those first two sentences out loud.

5 A. "The State of South Dakota lacks jurisdiction to  
6 regulate utilities within the boundaries of the Crow  
7 Creek Reservation."

8 Q. And then the next sentence?

9 A. "State regulation of such utilities providing  
10 service on the Crow Creek Reservation interferes with the  
11 right of the Crow Creek Sioux Tribe to govern economic  
12 and business affairs of the Crow Creek Reservation."

13 Q. And, again, I guess my question is are these  
14 documents, the Code, the Resolutions designed to  
15 essentially wall NAT off from any jurisdiction of the  
16 State Commission with respect to what it does on the  
17 reservation?

18 A. I don't think so. I think, you know, to the extent  
19 State regulation and jurisdiction applies, when looking  
20 at the Resolution that you asked me to read from, it  
21 specifically references applicable laws.

22 So the intent isn't to change the laws that exist in  
23 the State of South Dakota to the extent those laws  
24 subject to NAT or any other entity that provides service  
25 on the Crow Creek Reservation to certain laws and

1 requirements, those certain laws and requirements would  
2 apply.

3 Q. And with respect, for example, to a call, a local  
4 call, between a NAT VoIP customer and a Midstate VoIP  
5 customer, what is NAT's view on the Commission's ability  
6 to regulate portions of that call?

7 A. From NAT on the reservation to a Midstate customer  
8 on the reservation?

9 Q. Yes.

10 A. Then that would be a local call that originates and  
11 terminates on the reservation and would be subject to the  
12 Tribe's jurisdiction.

13 Q. By filing this application is NAT consenting to any  
14 jurisdiction of the Commission that doesn't otherwise  
15 exist?

16 A. I don't think so. I mean, again, the company  
17 decided to file this application and intends to work with  
18 the State Commission to address the issue that was  
19 presented in the application.

20 So the company isn't intending to try to circumvent  
21 any laws. In fact, it's probably going out of its way to  
22 ensure that it complies with not only every law but any  
23 expectation that may be out there.

24 Q. But it's not consenting to jurisdiction.

25 A. I'm not sure what that means.

1 Q. Is NAT voluntarily agreeing to be subject to  
2 Commission jurisdiction and oversight with respect to  
3 delivery of local services or 911 or slamming or  
4 cramming, for example?

5 A. Well, the company is agreeing to be subject to the  
6 Commission's jurisdiction as I mentioned in my testimony.  
7 To the extent that jurisdiction applies for that traffic  
8 that originates on reservation and terminates off  
9 reservation and vice versa.

10 And so by filing the Application, you know, the  
11 company actually would be subject to -- you know, if the  
12 Commission approves the Application, would be subject to  
13 the Commission's jurisdiction and authority with respect  
14 to those calls.

15 Q. But only with respect to the service that NAT is  
16 providing to interexchange carriers; right?

17 A. Yeah. When you say interexchange carrier it may not  
18 be an interexchange carrier. It could be another local  
19 carrier. It would be subject to jurisdiction of calls  
20 that again originate on reservation and terminate off  
21 reservation and vice versa. Those calls could be handled  
22 by so-called interexchange carriers, or it could be  
23 handled by local carriers.

24 Q. You understand the nature of the Stipulation that --  
25 by which Qwest and NAT agreed that Qwest would withdraw



1 from this proceeding?

2 A. Yes. Generally.

3 Q. And, as I understand it, the parties stipulated that  
4 there would be an order -- in the order if there was an  
5 order issued, NAT would be required to provide direct  
6 interconnection on reasonable terms; is that correct?

7 A. We've always felt that we would provide direct  
8 connection on reasonable terms. That's not a change in  
9 company policy. We've been willing to do that from day  
10 one.

11 Q. So would that happen on the reservation?

12 A. It would happen wherever the bodies agree the best  
13 place is to directly connect. It could happen -- you  
14 know, in today's telecom area, arena, everything isn't  
15 necessarily done, you know, at a specific local level.

16 Some carriers interconnect at a central point within  
17 a state. Some carriers interconnect, you know, in a  
18 different state to deliver their traffic to South Dakota.  
19 It's very just how the carriers decide the best way is to  
20 interconnect.

21 So my understanding of that agreement is that we're  
22 willing to directly connect with CenturyLink as well as  
23 we would with Sprint at a point that's determined by both  
24 carriers.

25 Q. But if that point were to be on the reservation,

1 isn't it your position that the State Commission can't  
2 exercise any jurisdiction on the reservation?

3 A. If that connection happens on reservation?

4 Q. Your belief is the Commission can't order NAT to  
5 connect on the reservation because that's on the  
6 reservation.

7 A. I'm not sure if I understand that question.

8 MR. SWIER: I'm going to object. That's an  
9 ambiguous question.

10 MS. AILTS WIEST: Overruled.

11 Q. Do you know, Mr. DeJordy, if on one of those calls  
12 that's on reservation to off reservation, intrastate,  
13 technically how is that called delivered?

14 A. You know, I don't know specifically.

15 MR. SCHENKENBERG: Sprint has no further  
16 questions for this witness.

17 MS. AILTS WIEST: Ms. Moore.

18 MS. MOORE: No questions for Midstate. Thank  
19 you.

20 MR. COIT: And no questions for SDTA.

21 MS. AILTS WIEST: Ms. Cremer.

22 MS. CREMER: Thank you.

23 CROSS-EXAMINATION

24 BY MS. CREMER:

25 Q. This is Karen Cremer of Staff. I just want to

1 clarify. Maybe I misunderstood what you were saying.  
2 Midstate has customers on the reservation. Would you  
3 agree?

4 A. Excuse me. Could you repeat that.

5 Q. Midstate Communications has customers on the  
6 reservation?

7 A. Yes, they do.

8 Q. And NAT has customers, subscribers?

9 A. Yes, they do.

10 Q. So if a Midstate customer calls an NAT customer and  
11 it's all on the reservation, the PUC, the South Dakota  
12 PUC, has jurisdiction; is that correct?

13 A. Well, I think you have Midstate is subject to the  
14 Commission's jurisdiction. So, you know, as a utility  
15 subject to the Commission's jurisdiction, I think  
16 Midstate's services would be subject to the Commission's  
17 jurisdiction.

18 Whether anything changes because it's just on the  
19 reservation, I'm not sure. But, you know, I know  
20 Midstate is subject to the PUC's jurisdiction. So  
21 presumably if they did something unlawful or against  
22 certain rules, then it would be subject to the  
23 Commission's oversight.

24 Q. Okay.

25 MS. CREMER: Thank you.

1 MS. AILTS WIEST: Commissioners?

2 COMMISSIONER NELSON: Just a few questions.

3 Looking back again at the Sprint 32, the Tribal  
4 Resolution, given the language of this Resolution, will  
5 NAT remit 911 fees for their 150 subscribers?

6 THE WITNESS: The only reason I pause is because  
7 I'm trying to remember exactly how the 911 fees apply. I  
8 think if -- 911 fees for Crow Creek I believe goes to the  
9 county PSAP. The county PSAP serves not only Crow Creek  
10 but serves off reservation.

11 To the extent that the calls are going to the  
12 county PSAP, that we would be paying those 911 fees. I  
13 think there's also efforts either underway or maybe  
14 they've already been completed where some 911 calls or  
15 maybe all of them go directly to the tribal PSAP.

16 I'm not sure exactly how the 911 calls are  
17 routed. But, you know, I would say if it is going to the  
18 county PSAP and 911 fees apply, we would pay the 911  
19 fees.

20 COMMISSIONER NELSON: I think we need to spend  
21 just a little bit of time talking about this. When the  
22 Chairman was testifying this morning he spent a great  
23 deal of time and emphasis talking about how important the  
24 free service was to tribal members.

25 And yet in most of your testimony we're talking

1 about changing the business plan, and you use the words  
2 at least "initially" that it's free. Your business plan  
3 is talking about now going to a charged service. You  
4 talk about local service revenue.

5 So what is the plan? When does this stop  
6 becoming free for those 150 tribal members?

7 THE WITNESS: The intent is to -- to charge for  
8 the service, and that's what the -- you know, the  
9 business plan addresses. It is also the intent of the  
10 Crow Creek Sioux Tribe to provide services to consumers  
11 that would be affordable for them.

12 And affordable may mean continuing to provide it  
13 for free. As you know, under the lifeline rules, you can  
14 provide services essentially for free with the lifeline  
15 subsidiary. Native American Telecom isn't a lifeline ETC  
16 so it doesn't have the ability to maintain that federal  
17 funding to discount its services to essentially free  
18 service that exists with many of these other carriers  
19 that offer free services.

20 So the Tribe had decided collectively with us  
21 that they would offer the service to the tribal members  
22 for free initially. But the plan is to provide the  
23 service to tribal members as well as residents, that who  
24 can afford it they pay for it. If you can't afford it,  
25 then the Tribe would essentially subsidize that service.

1           So although the intent is to provide the  
2 service, you know, at the prices identified in the  
3 spreadsheet, it is recognized that some tribal members  
4 won't be able to afford it, in which case the Tribe would  
5 essentially subsidize that service for the entity.

6           COMMISSIONER NELSON: And going back to the  
7 question I asked, at what point do you begin charging the  
8 150?

9           THE WITNESS: Well, we would charge the 150 as  
10 soon as we implement this new network solution is really  
11 the plan. So when we implement this Tazca network we  
12 would start charging for the service. And at the same  
13 time the Tribe would implement a program that would allow  
14 some members to get the service for free if they meet  
15 certain income qualifications.

16           COMMISSIONER NELSON: And at what point will you  
17 be implementing this new technology and begin charging  
18 the fee?

19           THE WITNESS: Well, we have negotiated  
20 essentially the agreement with Tazca-Connect. We have a  
21 MRO outstanding with them, and we're going to finalize  
22 that contract. We obtained a spectrum. That was a big  
23 factor in implementing this. Having licensed spectrum is  
24 critically important because it provides NAT a level of  
25 liability to a service. So that was important to have in

1 place. We have that in place. We have the Tazca-Connect  
2 agreement in place.

3 So the intent was to begin providing that  
4 service probably this spring or -- probably this summer  
5 by the time we implement the network. We already have  
6 the cell site in place ready to implement it. What we  
7 need to do is put in the equipment at the south side  
8 location, the customer location, and that would be done  
9 in the summer.

10 COMMISSIONER NELSON: So sometime in the next  
11 six months you will begin charging the 150, and they will  
12 either pay or the Tribe will pay; is that correct?

13 THE WITNESS: Correct.

14 COMMISSIONER NELSON: The next question -- I'm  
15 hearing two different stories here. When you were  
16 talking about new technology and going with the new  
17 technology you said, and I quote, "This is how we are  
18 going to build out on the reservation."

19 And then you've also said that you're going to  
20 support and maintain the Stipulation with Midstate.  
21 Which is it? Are you building out on the reservation,  
22 or are you maintaining the Stipulation to only serve  
23 Fort Thompson?

24 THE WITNESS: Well, the Stipulation is for the  
25 Fort Thompson exchange, and the Fort Thompson exchange

1 serves much, if not all, of the reservation. I don't  
2 know exactly the boundaries. I seen it at one point, but  
3 I don't recall exactly what it is.

4 So the Fort Thompson exchange that the  
5 Stipulation governs includes much more than the town of  
6 Fort Thompson. It includes an area throughout much of  
7 the reservation. So, yes, we're going to build out that  
8 full Fort Thompson exchange.

9 COMMISSIONER NELSON: But not beyond that on the  
10 reservation?

11 THE WITNESS: Pursuant to the Stipulation, no.

12 COMMISSIONER NELSON: Okay. I want to talk just  
13 a little bit about the roaming charges that you think  
14 you're going to generate.

15 And you've testified that Verizon has very  
16 little cell coverage. I've got to tell you I travel  
17 through Fort Thompson at least twice a month, if not  
18 more, and Verizon has got, frankly, really good service  
19 through Highway 34.

20 THE WITNESS: Uh-huh.

21 COMMISSIONER NELSON: And so I know that for a  
22 fact. And yet you're telling me that there's an  
23 opportunity to collect roaming fees.

24 THE WITNESS: Uh-huh.

25 COMMISSIONER NELSON: And so I'm trying to



1 resolve those two facts. And the question I have is does  
2 the Tribe plan to put any barriers in front of existing  
3 carriers to make it more difficult for them to use their  
4 own towers in order to shift traffic to NAT's towers?

5 THE WITNESS: That's a good question. Because I  
6 think, you know, if none of the carriers had any towers  
7 on the reservation, the ability of the Tribe to collect  
8 roaming revenue would be far greater. I mean, if they  
9 basically prevented anyone from operating on the  
10 reservation, then they could collect all the roaming  
11 revenue instead of the carriers doing it.

12 But no. The Tribe doesn't intend -- it already  
13 has a cell site via AT&T. And to the extent that Verizon  
14 or anyone else wanted to put a cell site on the  
15 reservation, they would allow that to happen.

16 That does cut against the roaming revenue. As  
17 you mentioned, you know, there is a balance there. So if  
18 the Tribe allows cell sites on the reservation, it  
19 would -- it would lessen the roaming revenue opportunity.  
20 But at the same time, it provides, I think, a better  
21 benefit to the consumers on the reservation and off  
22 reservation because in the end the consumer wants a  
23 ubiquitous service. And if Verizon can provide that, I  
24 think that outweighs the Tribe's interests in collecting  
25 more revenue.

1           So it is a balance act, and the roaming revenue  
2 is a projection. Whether we realize that projection it's  
3 not entirely clear right now. Because, like you said,  
4 there's a lot of different factors that go into it.

5           I can tell you it was a fairly conservative  
6 number. But, you know, if Verizon builds another cell  
7 site or maybe they have enough coverage where a customer  
8 wouldn't end up roaming on the NAT network, then  
9 potentially the roaming revenue would come from just  
10 Sprint's customers.

11           If that's the case, then maybe the company  
12 reconsiders the opportunity for roaming, and maybe it  
13 deploys the GSM network, you know, to take advantage of  
14 that opportunity as opposed to CDMA.

15           COMMISSIONER NELSON: Last question. I think  
16 last question. Have you reviewed Mr. Holoubek's  
17 deposition, any portion of that?

18           THE WITNESS: I've seen parts of it. I haven't  
19 seen the whole thing.

20           COMMISSIONER NELSON: Are you familiar with this  
21 particular exhibit? It's some drawings from  
22 Mr. Schenkenberg.

23           THE WITNESS: Let me put my glasses on.

24           COMMISSIONER NELSON: And it's my understanding  
25 that this is different examples of where calls may

1 originate and may terminate. And in the Holoubek  
2 deposition, Mr. Holoubek was asked to explain some of  
3 these circumstances and was really, frankly, unable to.

4 THE WITNESS: Uh-huh.

5 COMMISSIONER NELSON: Can you answer some of  
6 these questions, or is there going to be another witness  
7 that can answer those questions?

8 MR. SWIER: There will be another witness,  
9 Mr. Nelson.

10 COMMISSIONER NELSON: Thank you. That is all I  
11 need. And those are questions -- just so that it's very  
12 clear, I need to have these questions answered before  
13 we're done with this proceeding, and that's why I wanted  
14 to make sure that there would be a witness.

15 MR. SWIER: Those questions will probably be  
16 directed towards Mr. Roesel.

17 COMMISSIONER NELSON: Very good. That's all the  
18 questions I've got.

19 COMMISSIONER FIEGEN: I have just a couple quick  
20 clarifying questions for you. Since you came all the way  
21 to South Dakota and we have this snow for you. Welcome.

22 On page 5 of your testimony, of your direct, I  
23 guess, from February 7. On page 5 you were asked the  
24 question originally did you own NAT? And you talked  
25 about your purpose of owning NAT is to provide

1 telecommunication services in the rural area of  
2 South Dakota.

3 THE WITNESS: Correct.

4 COMMISSIONER FIEGEN: That was your intent.

5 THE WITNESS: That was the original intent. And  
6 it really goes back to, you know, when I worked for a  
7 company, Western Wireless, that company provided services  
8 in just rural areas. And then I worked for Alltel, and  
9 that provided service primarily in rural areas but then  
10 some urban areas. And I saw a much less focus on serving  
11 the needs of rural states like South Dakota.

12 And then when that network was purchased by  
13 Verizon I saw another drastic reduction in -- not the  
14 capabilities because Verizon, obviously, is a very  
15 capable company. But at the same time they don't have a  
16 very strong interest in serving very rural areas,  
17 especially the unique needs of consumers in rural areas.

18 So the example I gave was with AT&T. Western  
19 Wireless had a lifeline designation on Pine Ridge and had  
20 over 5,000 lifeline customers. AT&T today has less than  
21 100, I believe. There's really no explanation for that,  
22 especially because AT&T has much more resources than  
23 Western Wireless. It has the same network. In fact, it  
24 has one more additional cell site.

25 So you look at that and say how can that

1 possibly be? How can you go from 5,000 to 100? And the  
2 reason is that AT&T doesn't have the strong interest of  
3 serving the unique needs that are on a reservation.

4 So based upon that, you know, as an example of  
5 my experience, I felt that there was a need for a local  
6 provider. There used to be a lot of local provides, as  
7 you know, in South Dakota, local wireless providers. Now  
8 I don't think there's any.

9 I think they're all national carriers. And even  
10 national carriers like Sprint, you know, where do they  
11 provide service? Maybe on the highways, and that's it.  
12 So, you know, based upon that experience, I felt that  
13 there was a need to serve rural areas of the state, and  
14 that's what the original purpose of NAT was.

15 COMMISSIONER FIEGEN: Could you explain what you  
16 mean by unique needs on reservations?

17 THE WITNESS: Sure. You look at it today and,  
18 you know, like a lot of times the question is is it  
19 affordable? And so the FCC developed a lifeline program,  
20 and they reduced the service down to in many cases a  
21 dollar a month. It could be zero.

22 But that dollar a month comes with certain  
23 conditions. Some of the conditions are there's  
24 additional services and fees that apply. And also  
25 there's a lot of disconnect issues. So a lot of tribal

1 members their credit may not allow them to obtain service  
2 through one of these national carriers without putting a  
3 significant down payment on them. So what happens is  
4 they can't obtain the service.

5 So even though it may seem like it's attractive  
6 at \$1 a month, it ends up not being attractive because of  
7 the terms and conditions.

8 So what NAT does and what a local provider would  
9 do is they would tailor the service to members of the  
10 reservation to address that issue.

11 Another example is when Western Wireless  
12 provided service on Pine Ridge it had two or three stores  
13 on the reservation. Most of the transactions that take  
14 place on reservation are person-to-person transactions.  
15 The national carriers don't understand that. Or if they  
16 did understand it, they don't really care. They're not  
17 going to put a store on a reservation.

18 Native American Telecom has a place on the  
19 reservation. So those are the types of things that I  
20 think are unique to a local provider by NAT.

21 COMMISSIONER FIEGEN: So it appears you  
22 certainly have a passion for rural South Dakota and  
23 unique needs.

24 When you started your company what did your  
25 business model and your strategic plan and your financing

1 look like?

2 THE WITNESS: Well, it probably didn't look too  
3 good in some sense. Because I remember I went to work  
4 for a company Western Wireless in 1995. And at that time  
5 there was really no service in rural areas of the  
6 country.

7 And John Stanton, who ran that company, was  
8 purchasing all of these rural licenses because nobody  
9 wanted them. People felt at that time no one was going  
10 to get wireless service in rural areas. Nobody wanted it  
11 for some reason.

12 So, you know, I have an appreciation for the  
13 fact that, you know, if you -- if you provide a service  
14 that's specifically tailored to the needs of people that  
15 you're trying to serve, then they're going to want the  
16 service that you have.

17 So, you know, with that in mind, when we started  
18 Native American Telecom, it was funded primarily by  
19 myself. And then -- and then we were working with  
20 different entities like Wide Voice who had shared our  
21 vision of serving rural areas. And many entities didn't  
22 have that vision.

23 I mean, I was approached by numerous carriers  
24 that wanted to deliver traffic to us but not bill it out  
25 and provide service in rural areas. They just wanted to

1 deliver the traffic and collect the money. That was not  
2 our vision, and it wasn't the vision that we wanted our  
3 partners to have.

4 So when we partnered with Wide Voice they  
5 provided the funding to help build out the network.

6 COMMISSIONER FIEGEN: I have a couple more  
7 questions.

8 On page 9 of your testimony prefiled on  
9 February 7 you have the question of "Please describe the  
10 current services provided by NAT." You talk about  
11 full-service communications, and then you talk about to  
12 serve all the customers on the Crow Creek Reservation.  
13 Is that the current service? You can serve all the  
14 customers on the Crow Creek? Or am I not reading that  
15 properly?

16 THE WITNESS: Today, I mean, technically we  
17 could serve all the customers, but we don't because  
18 network facilities only reach the Fort Thompson area.

19 COMMISSIONER FIEGEN: Okay. And on page 11 --  
20 oh, you talk about roaming.

21 THE WITNESS: Uh-huh.

22 COMMISSIONER FIEGEN: So this is just for my  
23 technical -- try to get some more technical information  
24 here.

25 The spectrum that you bought and the roaming, is



1 that only for like Buffalo County and population --

2 THE WITNESS: It is.

3 COMMISSIONER FIEGEN: Which is relatively a low  
4 population there.

5 THE WITNESS: If the roaming for this  
6 service -- for the spectrum we purchased from Sprint is  
7 for Buffalo County. When we purchased the spectrum from  
8 Sprint, Sprint had 30 megahertz of spectrum. We  
9 purchased 10 megahertz of spectrum from them. And that  
10 10 megahertz of spectrum is for Buffalo County.

11 There is an opportunity -- at least there was  
12 before this hearing -- to go back to Sprint and talk to  
13 them further about purchasing additional spectrum. So  
14 we'll see how that goes.

15 COMMISSIONER FIEGEN: I'm still perplexed,  
16 especially about our confidential session. And we looked  
17 at all the numbers. And this morning how the Chairman  
18 really talked about the services to the 150 current  
19 people and how important it is for them to have that  
20 free. And then when we went into confidential session we  
21 looked at your numbers, and I am perplexed with those  
22 numbers and how they can change that dramatically in that  
23 small amount of time and what that will do to the tribal  
24 members.

25 THE WITNESS: Uh-huh. Well, you know, the -- I

1 can tell you, you know, I -- I mean, the decision of how  
2 we charge for the services is not my decision. It's  
3 going to be a decision by the board and the Crow Creek  
4 Sioux Tribe.

5 I think their intent is to provide the service  
6 at a discount, if not free, for the members. So if that  
7 continues to be their position, even though the  
8 spreadsheet says that, you know, we'll charge for the  
9 service, then we will implement a program where they will  
10 be able to get discounted, if not free, service.

11 But that will be -- it will be essentially a  
12 subsidiary that the Tribe provides for continuing to  
13 provide the service for free.

14 Now I think that there's a lot of -- there's a  
15 lot of individuals out there that don't necessarily need  
16 free service. They may want free service. But I don't  
17 think the -- the program that we would implement would be  
18 that if you really need the free service because you  
19 can't afford it, essentially like a lifeline type  
20 program, then that would be made available to them.

21 COMMISSIONER FIEGEN: When you talk about the  
22 Tribe providing maybe a subsidiary and that that will be  
23 certainly up to them, does that mean that the  
24 spreadsheets that we looked at in confidential session,  
25 they will still be the same, there will just be a revenue

1 line from the Tribe that pays for all the subsidies?

2 THE WITNESS: Exactly. That's kind of how I  
3 envision it anyways is that, you know, that decision  
4 would be made and you would see a line item that shows  
5 what that subsidy --

6 There's other opportunities too. I mean, the --  
7 you know, Native American Telecom could become a lifeline  
8 provider and obtain the subsidy from the Federal  
9 Government. So there is that opportunity too that I  
10 didn't even address. But there is that opportunity there  
11 as well.

12 COMMISSIONER FIEGEN: Thank you. I'll keep on  
13 studying that confidential spreadsheet.

14 CHAIRMAN HANSON: Sir, you were here for the  
15 opening remarks by Mr. Swier; correct?

16 THE WITNESS: Yes, I was.

17 CHAIRMAN HANSON: Mr. Swier I'm sure will  
18 correct me if I'm wrong, how I quote him or paraphrase  
19 him. He stated that there are over 100 years of  
20 experience in NAT.

21 Do you know how many years of experience  
22 Wide Voice has in that collection of years, that  
23 100 years.

24 THE WITNESS: I think it's quite a bit. You  
25 know, the main principal within Wide Voice is Pat Chicas,

1 and he's owned and developed companies in the past, and  
2 he's -- I think he has like 20 plus years of experience  
3 himself. So I think Wide Voice probably accounts for at  
4 least 20 years of that experience.

5 CHAIRMAN HANSON: And would you include yourself  
6 in that?

7 THE WITNESS: I'm probably in the NATE category,  
8 NATE. And together, myself and Tom Reiman probably --  
9 you know, I have 20 years of experience, and Tom has  
10 close to the same. And then, you know, there's  
11 additional members of the Wide Voice team that help out  
12 with the technology and the management of the network.

13 CHAIRMAN HANSON: So three persons that you  
14 mentioned having approximately 60 years?

15 THE WITNESS: Yes.

16 CHAIRMAN HANSON: He also mentioned the 4G and  
17 broadband that exists at the present time. Obviously,  
18 that's not ubiquitous throughout the entire exchange.  
19 How much of an area percentagewise would you say it  
20 covers?

21 THE WITNESS: Right now it's probably like -- I  
22 think we're probably like a 2- or 3-mile radius of an  
23 antenna tower that's located in the middle of  
24 Fort Thompson.

25 CHAIRMAN HANSON: So there's basically one tower

1 with several antennas on it or one, two antennas.

2 THE WITNESS: That's right. One tower, several  
3 antennas.

4 CHAIRMAN HANSON: Okay. And would that include  
5 WiFi as well?

6 THE WITNESS: WiFi -- the way we implemented  
7 WiFi is is that we would bring essentially the Wi-max  
8 signal to a certain location; for example, to the  
9 internet library location. And then we would have a WiFi  
10 router in that location.

11 So not only would people be able to go there and  
12 use the computer at a hard wire into the network, but  
13 anyone around the internet library would have WiFi  
14 service as well.

15 CHAIRMAN HANSON: You have a -- NAT stipulated  
16 in an agreement with SDTA and Midstate that they would  
17 only provide service in the Fort Thompson exchange. And  
18 you interpret the Fort Thompson exchange as the entire  
19 reservation; correct?

20 THE WITNESS: I don't think it's -- the  
21 boundaries match up perfectly. I'd have to -- I was  
22 wondering that myself just because I know it's close  
23 to -- I think it's close to the same, but it's -- I  
24 suspect it's not exactly the same.

25 CHAIRMAN HANSON: Okay. So that's not open for

1 interpretation. That's a factual territorial area that's  
2 described; correct? Or not?

3 THE WITNESS: Well, I think our commitment would  
4 be that we're going to serve just the Fort Thompson  
5 exchange. I guess the issue that would arise is if  
6 there was an area on reservation but outside of the  
7 Fort Thompson exchange, you know, what do we do about  
8 that area?

9 We haven't come across that point because we  
10 have a long ways to go before we can complete the  
11 build-out of the Fort Thompson exchange. But when that  
12 issue -- if and when that issue arises, we'll have to  
13 address it with Midstate.

14 CHAIRMAN HANSON: Then I'd direct the question  
15 to either Mr. Coit or Ms. Moore or both. Is that  
16 territorial area ambiguous to you?

17 MS. MOORE: At the outset of this particular  
18 proceeding Midstate did propound discovery requests to  
19 NAT, and a map was produced in response to those  
20 requests. We specifically inquired as to what it  
21 considered to be the boundaries of the reservation.

22 And I think there has been some discussion since  
23 then that the map originally produced by NAT in response  
24 to discovery, and Mr. Holoubek can correct me if I'm  
25 wrong, but that those boundaries may not have been

1 exactly correct, which is why in this particular  
2 proceeding Midstate has offered as Exhibit 3, which is  
3 the specific boundaries of Midstate's service territory  
4 as it relates to this.

5 Because I think that's what we would consider to  
6 be critically important in this particular case and to  
7 use the map and the exchange boundaries that were  
8 previously ordered -- or, excuse me, approved by this  
9 Commission's Order in 2013.

10 And so this is a very long winded answer to your  
11 question, Mr. Chairman, but the answer would be I'm not  
12 100 percent certain what exactly the reservation  
13 boundaries look like, which is why we offered that map.  
14 Because I think that is ultimately what forms Midstate's  
15 assumptions in this particular case as to NAT's ultimate  
16 service territory.

17 CHAIRMAN HANSON: If we were to recognize that  
18 Stipulation in that Order, if it comes to that, then  
19 we'll certainly want to make certain that we refer to  
20 proper documents to make certain there's no ambiguity in  
21 the future.

22 Appreciate that. Thank you.

23 MS. MOORE: Yes. Thank you.

24 CHAIRMAN HANSON: Another statement that I was  
25 curious about. And I don't know if I got it correct or

1 not.

2 In Mr. Swier's opening statement was that  
3 everyone is engaged in access stimulation. It's  
4 happening every day. Does that mean that NAT is engaged  
5 in access stimulation?

6 THE WITNESS: Yeah, you know, I stated in my --  
7 I don't know if it's called rebuttal testimony or reply  
8 testimony or what, but, you know, there's a lot of terms  
9 that are kind of thrown out there.

10 I think Sprint kind of calls it traffic pumping  
11 and, you know, we've heard references to traffic  
12 stimulation. I guess I don't really view it that way.

13 You know, Free Conferencing has located their  
14 equipment and provides services on the reservation. It's  
15 not necessarily traffic stimulation. This is just  
16 traffic that's coming into a Free Conferencing bridge.  
17 And that traffic, if it didn't come to the Free  
18 Conferencing bridge in Fort Thompson, it would go to a  
19 Free Conferencing bridge in L.A., and, you know, the L.A.  
20 area would get the benefit of it.

21 So I'm not sure if I answered the question.  
22 But, you know, we don't view it as traffic stimulation.  
23 We view it kind of as a partnership with a company that  
24 wanted to locate its business in Fort Thompson. But, you  
25 know, I know there's -- there's a lot of different



1 providers out there that are conferencing providers as  
2 well as other providers.

3 It could even be a call center that has hundreds  
4 of people and all that traffic is coming into the call  
5 center. I don't know if they call that traffic  
6 stimulation. It's really just traffic that's going to  
7 the call center. I kind of view what we are doing on  
8 Crow Creek similarly.

9 You know, we've established a business  
10 enterprise that generates that traffic, and that traffic  
11 is coming to Crow Creek. I know there is traffic,  
12 similar traffic, that's going to other areas of  
13 South Dakota and is being terminated by telephone  
14 companies in competitive carriers in South Dakota, much  
15 like in a lot of states that's happening.

16 And with the reform that the FCC implemented in  
17 2011 it's actually less attractive probably for many of  
18 these companies to bring their traffic to Fort Thompson  
19 and to rural areas. It's probably more attractive to  
20 them to bring the traffic to Sioux Falls or to L.A. or  
21 someplace like that because the rate's the same.

22 You know, why bring the traffic all the way to  
23 Fort Thompson if you can bring the traffic to Sioux Falls  
24 or L.A. and pay the same rate?

25 So, you know, I think the traffic is going all

1 over the country, like Mr. Swier said, and Free  
2 Conferencing has entered into a business relationship  
3 that allows some of that traffic to go to Crow Creek.

4 CHAIRMAN HANSON: Without expanding the  
5 definition of access stimulation to the point of breaking  
6 the rubber band or popping the envelope, you have --  
7 you're certainly familiar with access stimulation and how  
8 it is -- what it means.

9 THE WITNESS: Yes.

10 CHAIRMAN HANSON: How it's defined. And  
11 certainly Mr. Swier is familiar with that as well. You  
12 have many, many years of experience and understand this  
13 industry very well.

14 So the question again, is NAT engaged in access  
15 stimulation if that is, in fact, what has been stated?

16 MR. SWIER: I guess at this time I would object  
17 because I think we've got Mr. Roesel who could probably  
18 provide a better answer to that question. But defer to  
19 the Commission.

20 CHAIRMAN HANSON: I would submit that we have a  
21 gentleman who is an expert and recognized as an expert in  
22 many arenas. And he's -- he's been present for the -- we  
23 can certainly hear the other answer from the other  
24 gentleman, Mr. Roesel, later. But I think he's perfectly  
25 capable of answering the question.

1           He has hedged a little bit on answering, gave  
2 us a long one previously. I'd like to hear a direct  
3 answer.

4           THE WITNESS: I would say it's not access  
5 stimulation. I guess my definition of access stimulation  
6 is you're doing something to artificially stimulate  
7 traffic going to a location. And I don't think what  
8 we're doing is very artificial.

9           I think we've established a business that brings  
10 that traffic to Crow Creek and, again, that traffic if it  
11 didn't go to Crow Creek, it would go someplace else.  
12 Hopefully, that answers your question. I don't think  
13 it's -- I don't define it as access stimulation. I  
14 define it as just, you know, a high volume of traffic  
15 based upon the type of services that were provided to  
16 Free Conferencing.

17           CHAIRMAN HANSON: What would those services be  
18 outside the reservation?

19           THE WITNESS: What would those services be  
20 outside the reservation?

21           CHAIRMAN HANSON: Yeah. That would stimulate  
22 it.

23           THE WITNESS: Well, you know, I mean, I think  
24 there's -- I mean, there's all different types of what  
25 could potentially be access stimulation.

1           For example, you've heard of different porn  
2 lines. You've heard of different types of businesses  
3 that, you know, isn't -- that I think is more trying to  
4 stimulate usage. I think conferencing traffic isn't  
5 necessarily stimulating usage.

6           I think there's a need for conferencing traffic,  
7 and that need exists regardless of whether Native  
8 American Telecom is terminating the traffic or someone at  
9 L.A. is terminating the traffic. That need is out there.  
10 It exists. People are using it. If we go away, it just  
11 means that the Tribe doesn't get the benefit of the  
12 services that we provide, and those benefits will go  
13 someplace else.

14           CHAIRMAN HANSON: I appreciate your attempt to  
15 answer the question.

16           MS. AILTS WIEST: Any other questions from  
17 Commissioners?

18           Do you have any redirect, Mr. Swier?

19           MR. SWIER: No.

20           MS. AILTS WIEST: Okay. Thank you. I think we  
21 should take a break right now. 10 minutes.

22           (A short recess is taken)

23           MS. AILTS WIEST: We'll go back on the record.

24           Mr. Swier, would you like to call your next  
25 witness, please.

1 MR. SWIER: Yes. We would call Jeff Holoubek.

2 JEFF HOLOUBEK,

3 called as a witness, being first duly sworn in the above  
4 cause, testified under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. WALD:

7 Q. Mr. Holoubek, could you state your name and address.

8 A. Jeff Holoubek, 87 Alondra, Rancho Santa Margarita,  
9 California 92688.

10 Q. You filed the prefilled testimony which were  
11 Exhibits 6, 8, 10, and 11. Do you affirm your testimony  
12 in that?

13 A. Yes.

14 Q. Are you currently employed?

15 A. I am.

16 Q. By what company?

17 A. By Free Conferencing Corporation.

18 Q. And what's your title with that company?

19 A. Director of legal and finance.

20 Q. Could you explain to the Commission how you came to  
21 be involved with NAT?

22 A. Well, in 2009 Gene DeJordy and Tom Reiman had  
23 contacted us. And it was through an attorney  
24 relationship that we had. And the idea was that they  
25 were going to be serving Indian tribes in South Dakota.

1 And they knew that Free Conferencing Corporation had a  
2 lot of traffic, a lot of conferencing traffic, and asked  
3 us if we would direct some of that traffic to the  
4 location on the Indian reservations.

5 And at that time the feeling was that, well, the  
6 administration was really pushing service and expansion  
7 of services, modern telecommunications, tribal lands so  
8 that we thought it was a good idea from that perspective.

9 It looked like a good business opportunity for  
10 Free Conferencing Corporation. It looked like we would  
11 be able to do something that actually we felt really good  
12 about as well, as far as bringing services to other  
13 people that needed them as opposed to simply having  
14 traffic go to other locations where perhaps it didn't  
15 have as much of an impact.

16 Q. At that time was there a plan for more than one  
17 tribe to be served?

18 A. Yeah. There was. So we had a meeting. Gene and  
19 Tom came out. We had a meeting. And the idea was, well,  
20 look. We don't want to just serve one tribe. We want  
21 you to go out and get 10 tribes. We want to set up a  
22 Native American network, if you will, telecommunications  
23 network. And this would be better for Free Conferencing  
24 because it would provide diversity.

25 We didn't simply want to send, for example,

1 100 million minutes out to a location and we didn't think  
2 that that would -- for a number of reasons. One is from  
3 a diversification standpoint it's not a good idea. From  
4 a fairness standpoint it probably wouldn't be viewed as a  
5 good idea. And so that was primarily why we wanted more  
6 than one location.

7 And Tom and Gene agreed to that. And we had  
8 meetings and we came out to South Dakota and we met with  
9 some gentlemen from Rosebud and from Lower Brule. And  
10 but the first companies we started doing business with  
11 was Crow Creek, and Pine Ridge came shortly thereafter.

12 And as we were planning to expand further, that's  
13 when all the litigation started, and it sort of put a  
14 hold on everything. But that was the general plan. And  
15 that's how it all started.

16 Q. Okay. So were you involved with the -- so there  
17 ended up only being a deal with one reservation?

18 A. Well, initially, yes. It was Crow Creek. And  
19 Pine Ridge followed shortly thereafter.

20 Q. Okay. And so does Free Conferencing also send  
21 traffic to other locations in South Dakota besides the  
22 Indian reservations?

23 A. Yes, it does. It sends --

24 MR. SCHENKENBERG: I would like to object to  
25 this question and continuing questions of this nature for

1 the reasons we discussed earlier.

2 This again sounds like live direct testimony,  
3 not a summary. And I would note that Mr. Holoubek chose  
4 not to file updated supplemental testimony in February as  
5 other witnesses did. And I think these questions go  
6 beyond the written testimony and do not qualify as  
7 summary.

8 MS. AILTS WIEST: The questions appear to go  
9 beyond what was in his prefiled written testimony.

10 Mr. Wald.

11 MR. WALD: We filed his prefiled testimony  
12 including all the questions that Mr. Schenkenberg asked  
13 him in his deposition. So we filed -- that is his  
14 prefiled testimony in addition to the direct that we  
15 included. So we wanted to make sure that the Commission  
16 had in front of it all the things that were of concern to  
17 Sprint.

18 MS. AILTS WIEST: Yes. We have all the  
19 testimony before. So at this point does he have a  
20 summary?

21 MR. WALD: Well, I'm trying to get to the points  
22 that are of most import to the issues raised by Sprint  
23 and the issues already raised by the Commission. I'm not  
24 trying to go over the things you people have already  
25 read.



1           But, obviously, people have raised questions  
2 about Free Conferencing's role. Questions have already  
3 been directed to the Tribe to Mr. DeJordy about Free  
4 Conferencing's role. And it seems to make sense to ask  
5 Mr. Holoubek --

6           Mr. Holoubek's the president of Native American  
7 Telecom. And it seems to make sense to ask him how he  
8 came to be the president and what the role is in this --  
9 that's just what I'm trying to get to here.

10           And certainly Mr. Schenkenberg asked him  
11 questions at length about that in his deposition that's  
12 been filed as part of his testimony.

13           MS. AILTS WIEST: Anything further,  
14 Mr. Schenkenberg?

15           MR. SCHENKENBERG: Thank you. I heard Mr. Wald  
16 say that NAT filed as part of its prefiled testimony the  
17 questions and answers in the deposition.

18           I think what was submitted was a hearing exhibit  
19 that consisted of the deposition transcript in its  
20 entirety. We did not object to having that be received,  
21 and it's now been received.

22           If what is being suggested is some of those  
23 questions should again be asked live, I think that would  
24 be inappropriate and a waste of time. Certainly a  
25 summary can be given. I don't think submitting the

1 deposition transcript is the same as submitting prefiled  
2 testimony. I think those are two different things. But  
3 I think a summary could be done and ought to be done in  
4 lieu of direct testimony.

5 MS. AILTS WIEST: So can you limit this to a  
6 summary of his direct?

7 MR. WALD: I'll try. Yes.

8 Q. So going back to Free Conferencing has other  
9 business locations in South Dakota?

10 A. Yes. And perhaps it's helpful to explain. So I  
11 serve a dual role. I was employed with Free Conferencing  
12 Corporation. I still am. And at some point, I'm sure  
13 that we'll get to this, I became acting president of  
14 Native American Telecom.

15 And so I'm looking at things from a perspective of  
16 Free Conferencing as well as Native American Telecom.  
17 And I'm going to try and answer questions for you  
18 regarding both.

19 I'd like to say that Free Conferencing -- so it's  
20 probably the second largest conferencing corporation in  
21 the world with upwards of 30 million users a month. And  
22 providing services to, you know, 56 other countries and  
23 receiving service from over 160 other countries. And  
24 they have facilities throughout the United States, and so  
25 it's not as though Free Conferencing's focus is just

1 South Dakota.

2 And when Gene and Tom came to us and asked us if we  
3 could send some traffic that way, we were already in  
4 South Dakota. We had been doing business in the past  
5 with Sancom and Split Rock and Northern Valley. And  
6 there's a lot of conferencing that was in South Dakota.  
7 And so they were just merely asking us to direct some of  
8 it over to this other exchange.

9 And it sounded like a good business plan. And it  
10 sounded like a good idea for everyone involved. And  
11 that's the reason why initially why we did that.

12 And we started down that path. And, frankly, we  
13 thought that we were engaging in a business that  
14 South Dakota wanted as well. And at the time we were  
15 being courted in a sense to come bring business  
16 operations to South Dakota.

17 I met personally with the Department of Commerce and  
18 was invited to the big event with Mitt Romney, and they  
19 set me up with a real estate agent to go look for  
20 property for the idea that Free Conferencing would move a  
21 facility out here. And we really thought that we were  
22 going to be doing a lot more in South Dakota, you know,  
23 before this litigation really started gaining steam and  
24 we weren't absolutely sure if South Dakota wanted us  
25 anymore.

1           But that being said, we had made a commitment to the  
2 Crow Creek Tribe and later to the Pine Ridge Tribe and  
3 decided that, you know, we were going to see that  
4 through.

5 Q.    So were you involved in the preparation of the  
6 Joint Venture Agreement?

7 A.    I was.

8 Q.    Okay.  What was your involvement?

9 A.    Well --

10           MR. SCHENKENBERG:  Objection.

11           MR. WALD:  This came up in the morning, which is  
12 why I asked him about it.

13           MR. SCHENKENBERG:  I guess I'd just like to know  
14 what we were going to do.  I thought we were going to go  
15 to a summary, and now we're back to direct questions.  
16 Again, I don't want to burden the record with objections.

17           MR. WALD:  At the same time, it seems to me we  
18 should be able to ask the witness about issues that have  
19 come up already in the hearing when Mr. Schenkenberg has  
20 asked the question and not gotten an answer.

21           The next witness it seems should be able to  
22 answer the questions.  Just like Mr. Commissioner Nelson  
23 has asked there's certain things he wants entertained by  
24 a witness.  I think we should be able to ask that.

25           MS. AILTS WIEST:  My point is is that in the

1 direct testimony we generally focus on what has been  
2 filed as direct testimony. You certainly will have an  
3 opportunity to put up your witnesses for rebuttal  
4 testimony.

5 THE WITNESS: I could probably do a summary.

6 Q. Go ahead.

7 A. So we set up the Joint Venture Agreement. I know  
8 that for a fact that Native American -- I'm sorry. That  
9 the Crow Creek Tribe had an outside attorney because I  
10 worked extensively with that person. Her name escapes me  
11 at the moment, but I could get that.

12 So we worked at great length going through all the  
13 terms, explaining what it was that everybody wanted. And  
14 it was a joint effort putting it all together.

15 And there were a number of things that we put into  
16 the agreement that were never ended up being enforced  
17 because circumstances would change. And because,  
18 frankly, we just didn't know how everything was going to  
19 unfold with the business. We thought we had a good idea  
20 of what we wanted to do. But the business has been  
21 continuously evolving over the last four years.

22 So in the agreement, for example, we had a revenue  
23 scale for Free Conferencing, and that revenue scale said  
24 that revenues would be paid to Free Conferencing between  
25 75 percent up to as much as 95 percent. We've since --

1 and what I'm talking about right now is the agreement  
2 with Free Conference Call. And so we revised that  
3 agreement later on because we were getting a lot of blow  
4 back on that because there was a misunderstanding of what  
5 that clause, for example, was all about.

6 And, by the way, Free Conferencing has never  
7 collected more than 75 percent of the revenues. The idea  
8 behind that whole thing was that Gene and Tom were  
9 supposed to go out and bring in 10 Indian reservations.  
10 And they were a 25 percent owner of Native American  
11 Telecom. And if they failed to bring in --

12 Let's say they only went out and got one Indian  
13 reservation. Well, then that wouldn't give Free  
14 Conferencing what they wanted, which was diversity and  
15 the ability to serve many people. And so it was put in  
16 there as a deterrent, if you will, or an incentive for  
17 them to go out and get more reservations. Because if  
18 they didn't, then they would only collect their profits  
19 based on a certain amount of traffic. And after that it  
20 would diminish. So we thought that it was a good idea.

21 But because we didn't go out and get anymore Indian  
22 reservations beyond Pine Ridge, that was something that  
23 was never enforced. And so there were a number of things  
24 that had to do with both joint venture and the agreement  
25 with Free Conferencing that had never come to pass.

1           And so I'll just say that to begin with about those  
2 agreements.

3           So when we started the company one of the first  
4 things we did was we hired Arent Fox, our attorney at the  
5 time, to draft the tariff for us, our first tariff. And  
6 we were told that because of the rule exemption -- and  
7 I'm talking on behalf of Native American Telecom now. We  
8 were told that we were able to charge upwards of 11 cents  
9 a minute.

10          Well, knowing -- the decision together with  
11 everybody involved was that that wasn't going to go over  
12 too well, and we should be looking towards, you know, the  
13 fairness of the IXCs, everybody else involved. So we  
14 decided to adopt the next rate instead, which was around  
15 5 and a half cents at the time.

16          And shortly thereafter we had some payment issues.  
17 Sprint brought the lawsuit. And so we went to Sprint,  
18 and we said, look, drop the lawsuits and we will charge  
19 you a penny a minute. And, by the way, this wasn't a  
20 settlement discussion or anything like that. It was just  
21 an open letter that we sent to Sprint.

22          And we said, look, we're not looking to take  
23 advantage of you. We'll also change our tariff. Which  
24 we did. We changed it to what we called a high volume  
25 access tariff, which means as volume of traffic goes up,

1 well, then the tariff rate comes down.

2 And at the same time things were sort of evolving at  
3 the FCC. They had taken up an NPRM, Notice of Proposed  
4 Rule Making, to discuss intercarrier compensation. And  
5 Free Conferencing Corporation was going to Washington  
6 quite a bit to speak with Commissioners and so forth to  
7 find out exactly what it was that the FCC wanted, that  
8 carriers wanted, that everybody involved wanted. Because  
9 the last thing we want to be doing is be mired in these  
10 lawsuits. All we want to do is conduct business.

11 So with that, that's why we developed the high  
12 volume access tariff. Because we recognized that they  
13 believed that as traffic volumes went up the rates should  
14 be coming down. So we tried to accommodate them.

15 Then a while later Northern Valley was involved in  
16 a -- I don't know if they had asked for a declaratory  
17 ruling from the FCC or if there was a challenge to their  
18 tariff at the time, but a decision was that the high  
19 volume access tariff wasn't going to work. And that was  
20 a decision that came from the FCC. And the FCC also said  
21 that their definition of end user was improper.

22 Well, we had had the same attorney draft our tariff  
23 as the attorney that drafted Northern Valley's. And so  
24 what we did was we tried to be proactive, and we filed a  
25 new tariff to fix those things.



1           And then a little while later upon gaining more  
2 knowledge about what we thought the FCC wanted we decided  
3 to file a new tariff and drop our rate all the way down  
4 to the rate of the lowest price cap carrier in the state.  
5 At the time we considered it to be the RBOC rate.  
6 Because we didn't know what the language was going to be  
7 in the order at the time, but we just thought let's drop  
8 it down to that of the RBOC rate because who can complain  
9 about that.

10           Because Sprint was still complaining. And there was  
11 still nonpayment issues. And we thought nobody can  
12 complain about this rate. It's the lowest rate in the  
13 state. It matches everybody else's.

14           As it turns out, that's what the FCC ended up  
15 adopting. Our rate went into effect around the middle of  
16 August, August 18, I believe, in 2011. The CAF Order  
17 wasn't effective until January of 2012. So we had  
18 essentially dropped our rates long before that.

19           And then as far as the intrastate rates go, we had  
20 matched the intrastate rate to our interstate rate about  
21 a year and a half before that. So we had already done  
22 what the FCC eventually moved towards. And so we thought  
23 that we were trying to be accommodative to everybody. We  
24 really were trying to make things work.

25           Now at the same time we were being accused of being

1 a sham operation by Sprint. We didn't believe how they  
2 could say that we were a sham. We were genuinely  
3 sincerely trying to serve the needs of the Crow Creek  
4 Reservation.

5 We were building out facilities there. It was -- it  
6 wasn't cheap to set up service to individual households.  
7 Because, you know, there's receivers for each household.  
8 There's installation costs.

9 So a lot of the funds that we were earning at the  
10 time at NAT were being plowed right back into the  
11 company. Sprint still maintained that we were somehow a  
12 sham. I'm still not sure what they mean by that.

13 Is it only because we had access stimulation traffic  
14 there at the time of what would be considered to be  
15 access stimulation traffic or conferencing traffic? Is  
16 it because they thought that this was a Free Conference  
17 Call sham organization, that it was run solely by Free  
18 Conference Call for the benefit of Free Conference Call?

19 Well, I can tell you that Free Conference Call  
20 earned more money in other locations, but, I mean, you  
21 don't always go to the highest paying location. But put  
22 it this way: We started down a path, and we decided to  
23 see it through.

24 The rates being earned in comparison to what it cost  
25 to set everything up wasn't that great. And when you

1 hear Sprint, for example, go on and on about 75 percent  
2 is being siphoned off to Free Conference Call, you  
3 know -- so Free Conference Call is a company with upwards  
4 of 60 employees or more, facilities nationwide and  
5 worldwide. We have offices in other places. Very high  
6 expenses.

7         Generating a minute of traffic is not necessarily  
8 a cheap endeavor. Staying up with technology demands  
9 is not necessarily cheap. The way we see it is that  
10 25 percent of the gross was going to Native American  
11 Telecom. And that's 25 percent of the gross with zero  
12 risk and zero investment. I mean, who can say that  
13 anywhere? I don't know this for a fact, but I bet Sprint  
14 can't say that they receive a 25 percent operating  
15 profit.

16         So we didn't look at it as though we were somehow  
17 trying to take advantage of Native American Telecom. If  
18 you look at the financial statements, which I'm sure that  
19 we'll go over at some point in time, if you calculate  
20 what would be earned if everybody was paying the  
21 tariff -- and I'm not just talking about the old tariff  
22 rates, the 5 and a half cents, but I'm talking about the  
23 .006327, the six-tenths of a percent per minute, and you  
24 run that back to minute one, NAT would definitely be  
25 profitable.

1           If you remove the variable costs of legal expense,  
2 NAT would be even more profitable. If we could start  
3 taking service from other companies that, frankly, want  
4 to send traffic, we would be even more profitable.

5           I think it was Gene mentioned that there were other  
6 companies that want to use our service. I have e-mails.  
7 I brought some. We didn't enter them into the record  
8 because at the time I didn't know where we were going to  
9 go with this. But for years now companies have been  
10 reaching out to me through our website and through  
11 telephone calls.

12           But my response has always been that we have this  
13 proceeding taking place with the Public Utilities  
14 Commission, and as soon as that's cleared up we'll be  
15 happy to look at this business proposal that you're  
16 putting forward. We just don't think that it would be  
17 prudent at this time to do that. For a number of  
18 reasons.

19           One of which is we don't want to upset the  
20 Commission. We've always tried to be accommodative. As  
21 Gene said, we really didn't think that we needed a  
22 Certificate of Authority from the Commission. But others  
23 thought we needed it. The Commission indicated that they  
24 thought we needed it. And we thought, well, let's take  
25 the path of least resistance. Let's just get that.

1           At the time Sprint was making a really big deal  
2 about not being subject to the jurisdiction of the Tribe.  
3 And we kept saying this is going to solve your problem.  
4 If we have CLEC authority, well, then you won't  
5 necessarily be subject to the jurisdiction of the  
6 Tribe.

7           Now that being said, I'm not talking about  
8 everything Sprint does because, frankly, I don't have  
9 that authority. That's the Tribe's decision who they  
10 have jurisdiction over for people who are doing business,  
11 you know, within their borders.

12           But I thought at the time that that would be the  
13 best solution for everybody. Let's get CLEC  
14 authorization. Now Sprint can say that it's acting under  
15 the authority of the State rather than the Tribe. We can  
16 put all these lawsuits behind us. We can run a telephone  
17 company. We can provide services for the tribes. And it  
18 would be a good deal for everybody.

19           So, again, we've always tried to be accommodative in  
20 everything that we have done. And, you know, a lot of  
21 our story has been spun in a really negative way. And to  
22 this day I can't figure it out. To this day aside from  
23 the money that Sprint owes, I can't figure out why  
24 they're pushing so hard down this path.

25           Even if they were successful in shutting Native

1 American Telecom down, the traffic goes somewhere else,  
2 might even stay in South Dakota at a higher rate where  
3 Sprint's already agreed to pay. It just doesn't even  
4 make sense. I would love to have answers to those  
5 questions.

6 MR. SCHENKENBERG: I'm going to object and move  
7 to strike that last statement based on lack of personal  
8 knowledge. Foundation.

9 MR. WALD: I'd be happy to follow up with some  
10 foundation questions.

11 MR. SCHENKENBERG: Well, I'd like --

12 MR. WALD: If those are your objections.

13 MR. SCHENKENBERG: Well, I think the objection  
14 ought to be sustained then, and I can object to any  
15 further questions.

16 MS. AILTS WIEST: I believe the objection is  
17 sustained, yes.

18 Q. Have you asked Sprint why they're doing this?

19 A. I have.

20 Q. And what do they say?

21 A. They said --

22 MR. SCHENKENBERG: I'm going to object on --  
23 well, may I ask a question? I want to make sure we're  
24 not into settlement discussions.

25 MS. AILTS WIEST: Yes.

1 MR. SCHENKENBERG: Mr. Holoubek, the  
2 conversations that you've had with Sprint, have you  
3 talked about settlement of pending disputes?

4 THE WITNESS: I'm sorry. Ask that question  
5 again.

6 MR. SCHENKENBERG: Have you had conversations  
7 with Sprint about settlement of the parties' disputes?

8 THE WITNESS: Yes, we have.

9 MR. SCHENKENBERG: And are you intending to talk  
10 about any of those conversations today in response to  
11 questions from your lawyer?

12 THE WITNESS: Not in response to this question.  
13 I'm not saying that it won't come up later. I mean, so  
14 settlement discussions that we had, as cursory as they  
15 were, were subject to Rules of Evidence but not  
16 necessarily -- it doesn't mean that I can't necessarily  
17 answer a question, the substance of which we were talking  
18 about anyway.

19 Q. My question was just did you ask them and what did  
20 they tell you as to why they're doing this? Did that  
21 come up in a settlement conversation?

22 A. Well, they said they didn't like -- they had a  
23 policy against access stimulation essentially. That they  
24 didn't want to pay for the traffic. So that was the gist  
25 of it, that -- and I won't go into details of any

1 settlement discussions. I'll just say that generally --  
2 and, I mean, that's a well -- that was a well-known  
3 thing, that Sprint had a position against paying for  
4 access stimulation.

5 They were outspoken opponents during the whole NPRM  
6 proceeding with the FCC. I mean, ultimately obviously it  
7 was decided that the FCC would impose rules around  
8 conferencing traffic and that it would be priced at a  
9 certain rate, and we thought that at that point that all  
10 of the long distance carriers would start paying.

11 Of course, they didn't. But -- and we were  
12 scrutinized very heavily. And without going into the  
13 details of the settlements with various companies, I'll  
14 just say that Level 3 and Verizon both after, you know,  
15 scrutinizing us very -- well, they wanted everything,  
16 let's just say. And then they made a determination to  
17 pay.

18 And, well, of course, we know that CenturyLink had a  
19 different agenda. They wanted to make sure that they  
20 could do direct net, which we've never had an opposition  
21 to. We've been talking to them about that for years it  
22 seemed like. But ultimately we came to terms there.

23 Without speaking about -- well, I'll just say that  
24 AT&T has reached out and seems to be looking for a  
25 solution to all of this. I would hope that we can find a



1 solution with Sprint too.

2 We believe this is a good service for everybody  
3 involved. Again, the traffic's not going to go away. It  
4 just goes somewhere else. And I don't know. Maybe a  
5 higher paying location even. So --

6 Q. If you could look at Exhibit 13, this is one of  
7 the -- I think the only exhibit that might have been  
8 objected to.

9 Oh, I think this is a confidential document.

10 MS. AILTS WIEST: Yes. If you're trying to  
11 admit it -- to the extent you don't need to state any  
12 numbers, or is that the purpose that you're going to --

13 MR. WALD: I'll try and do it without stating  
14 anything that's confidential.

15 MS. AILTS WIEST: If that's not possible, that's  
16 fine, and we'll go into confidential session.

17 MR. WALD: Why don't we go as far as we can and  
18 we'll see.

19 MR. SCHENKENBERG: I'm sorry. Is the purpose of  
20 this to lay foundation to overcome the objection?

21 MR. WALD: Yes.

22 Q. So I believe the first and second page there's no  
23 objection to. If you could look at the third page, and  
24 could you explain for the Commission what that is?

25 A. This is a pro forma statement showing projections

1 from 2010 through 2013 if Native American Telecom were  
2 receiving payment at the current tariff rate for all its  
3 minutes at the various locations. And if they were  
4 paying the marketing expense on all of that traffic.

5 And there's also a notation here about separating  
6 out professional or legal expenses. And the purpose of  
7 that was to show that if you remove those legal expenses,  
8 that is absent the litigation that we have, the vast  
9 majority of those legal expenses wouldn't exist.

10 MR. SCHENKENBERG: And I'm sorry. If I can  
11 ask -- and I apologize. I need to find the document.  
12 But the objection that we have to this is that this was  
13 presented in deposition. It was shown to Mr. Farrar,  
14 hadn't been previously produced, this document.

15 He was asked a bunch of questions on it. He was  
16 asked a bunch of questions on it. And we served the  
17 discovery request the next day saying provide us the  
18 information on who prepared this and provide us the  
19 backup for it, and we never got a response. And I  
20 followed up again, and we never got a response. And then  
21 it showed up on the exhibit list, and we objected to it.

22 And I apologize. I just need a minute to put my  
23 hands on this. I don't want the witness to testify to  
24 the contents of the document we have an objection to  
25 before we have the ability to determine its

1 admissibility.

2 MS. AILTS WIEST: Can you address his points?

3 MR. WALD: Sure. It was indeed shown to  
4 Mr. Farrar during his deposition. It contains the data  
5 that was produced to Mr. Schenkenberg, the actual data,  
6 with adjustments. And the only adjustments that have  
7 been made are the ones that are actually noted on the  
8 spreadsheet in the highlighted columns that Mr. Holoubek  
9 has identified.

10 So the financial information that backs up the  
11 spreadsheet for 2010, '11, and '12 had been produced in  
12 the ordinary course. In fact, they were produced  
13 attached to the applications.

14 2013 was not a full year, and that was  
15 produced -- I don't know the exact date, but that it was  
16 received. And then the only adjustments to these  
17 numbers were the ones that were actually shown on the --  
18 you know, with the notes that you see on the gray boxes  
19 in the last column that Mr. Holoubek's prepared to  
20 explain. So other than that, there is no additional  
21 information that backs it up.

22 MS. AILTS WIEST: Well, what about  
23 Mr. Schenkenberg's statement that he specifically  
24 requested this and you didn't produce it?

25 MR. WALD: Well, there wasn't any additional

1 information to produce besides what was on the  
2 spreadsheet. There was already a document -- if he  
3 thought there was, he should have moved to compel.

4 THE WITNESS: Well, may I --

5 MS. AILTS WIEST: No. I'm not sure what was  
6 shown to Mr. Farrar. This exact document?

7 MR. WALD: Yes.

8 MS. AILTS WIEST: And you're stating that the  
9 underlying numbers in here had been provided to Sprint  
10 previously?

11 MR. WALD: Yes. And the only changes to the  
12 underlying documents are the adjustments that are  
13 actually reflected on the document itself. I think  
14 that's what Mr. Holoubek will testify to.

15 MS. AILTS WIEST: And the reason for not  
16 producing it when requested was what?

17 MR. WALD: It hadn't been requested. This was  
18 a -- this was a demonstrative exhibit that was shown to  
19 Mr. Farrar to discuss his testimony during his  
20 deposition. So all it was was saying, okay, these are  
21 the actual financials. This is what happens if you take  
22 out the attorneys fees, this is what happens if you -- if  
23 all the carriers had paid. This is what happens if  
24 you -- if you -- obviously, if the carriers are paid,  
25 then you have to take out the expense of the marketing

1 fees.

2 So those are the adjustments that were made to  
3 the actuals. So all it's trying to do is show what the  
4 picture would have looked like had Sprint not led the way  
5 to nonpayment and we not had the litigation expenses that  
6 were related to it.

7 But I don't think there's any actual data that's  
8 being withheld. Mr. Holoubek can clarify that if  
9 Mr. Schenkenberg has questions for him about the backup  
10 data. I would welcome the questions.

11 MS. AILTS WIEST: I'll allow the exhibit.  
12 Exhibit 13 is admitted.

13 MR. WALD: That's all I have for Mr. Holoubek's  
14 summary.

15 MS. AILTS WIEST: Is he ready for  
16 cross-examination then?

17 MR. WALD: Yes.

18 THE WITNESS: I was going to finish with my  
19 summary.

20 MR. WALD: I'm sorry.

21 Q. Go ahead.

22 A. So regarding this particular document, it was just  
23 meant to show -- it was a simple document. There's  
24 nothing that's difficult to understand about it. It's  
25 just a compilation of income statements and simply

1 showing that -- just highlighting those particular  
2 expenses and revenues and showing that if we were in a  
3 different situation, if we weren't in this litigation  
4 with Sprint, if we had -- if the long distance companies  
5 were paying, that we would indeed be profitable, that it  
6 wasn't as though some plan was put in place that was  
7 doomed to fail, that it was always designed to be a  
8 profitable business plan.

9 So now I also wanted to speak briefly about why I  
10 became president, you know, at the time. I know those  
11 questions have been asked and why I took on the role as  
12 acting president.

13 And there were a number of things that were taking  
14 place at the time. And one of which was that there was  
15 an outside accountant. The expenses and all the  
16 managerial stuff on that end were being handled by Gene  
17 and Tom. Litigation had begun. We were under great  
18 public scrutiny. We were being accused of a number of  
19 things that we never did or never intended to do.

20 And when the issue came up, for example, about  
21 Tom Reiman and the expenses and stuff, I was the one that  
22 dealt with all of that at the time. And what happened  
23 was we happened to be at a hearing, and they brought  
24 up -- they started questioning some of the expenses that  
25 Tom had. And I hadn't seen those financial statements

1 because they went to another accountant. And so I saw  
2 that stuff for the first time.

3 And afterwards I talked to Tom about it. And I  
4 said, you know -- and he explained what it was all about.  
5 And it all made sense. I just said, you know, we're  
6 under the public scrutiny right now. And he said, well,  
7 you know, I'm one of the owners of the company and I'm  
8 doing all of this traveling and I'm the feet on the  
9 ground and we're doing all of these installations and I  
10 have to have some money for expenses. We don't get  
11 paychecks. And I said I know. We just need a proper  
12 procedure for it.

13 That's when we went back as a board. We looked at  
14 all the expenses. We decided, you know what, we're going  
15 to approve these. The others we're going to treat as a  
16 distribution, and we're going to book it as a  
17 distribution. So you don't have to come up with the  
18 money immediately, but we're going to book it that way.

19 And I immediately went and spoke with -- the Tribal  
20 Chairman right after Brandon. I'll think of his name in  
21 a second because I've had a number of discussions with  
22 him in the past. And we sat down, and we had a talk  
23 about it. And I told him exactly what was going on from  
24 that end so that he understood. So that was the first  
25 thing that we did.

1           And we decided that we would take it to the board  
2 and see what everybody decided they wanted to do. And  
3 the idea was you know what, I will become acting  
4 president. The lawsuits were really heating up and  
5 stuff, and we needed more of a management role in that  
6 regard anyway.

7           And Carlos Histero [phonetic] over at Free  
8 Conferencing would handle the accounting. So we would  
9 reduce the accounting expense, the outside accounting  
10 expense, and we would have our eyes on the books all the  
11 time. I'm the guy that's dealing with a whole lot of the  
12 litigation stuff. So now I have a firm grasp of what's  
13 going on so that at least I can see things that are  
14 taking place on a daily basis with the company. And  
15 that's how it all started that I took over.

16           And it was never intended that I would hold this job  
17 for as long as I have or do as much work as I have or  
18 spend as many hours as I have. It just turned out that  
19 way. And we hope to turn everything over to the Crow  
20 Creek Sioux Tribe as soon as we can get past all of this  
21 stuff. Because it was never intended that we would be  
22 sole managers either of this company.

23           So with that, I guess I'll end my summary.

24                   MS. AILTS WIEST: Mr. Schenkenberg.

25



CROSS-EXAMINATION

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BY MR. SCHENKENBERG:

Q. Let's just start with the exhibit that we discussed a few minutes ago, NAT 13 and that third page. And I guess I want to ask you terminating access income, the second row, do you see that?

A. Yes.

Q. And in 2013 you've got a number there that I'm not going to read of income. Do you see that?

A. I do.

Q. And you -- and that says -- that's all minutes of use by your rate, which is .006327? Yes?

A. Yes.

Q. Where did that minute of use number come from?

A. So that's January through November. And those were the total minutes for January through November.

Q. Just --

A. I'm sorry. It was based on the total minutes times that rate.

MS. AILTS WIEST: Excuse me, Mr. Schenkenberg. Is your intent to not go into any confidential?

MR. SCHENKENBERG: I'm going to try not to go into confidential.

Q. And so if one divided that dollar number by the rate, you get a number of minutes?

1 A. Yes. That would provide you with a minute count.

2 Q. Okay. And are you aware that NAT did provide a  
3 number of minutes to Sprint in discovery that Mr. Farrar  
4 included in his testimony that doesn't match up with the  
5 math that you have to do?

6 A. For January through November?

7 Q. For the year 2013.

8 A. I'm asking for January through November? I don't  
9 know what the time period was for the minute count that  
10 Mr. Farrar is using.

11 I do know that I've looked at Mr. Farrar's  
12 documents, and there are so many errors that I don't know  
13 where to start. So I wouldn't begin to say that it's  
14 accurate.

15 Q. Well, if his number came from NAT's interrogatory  
16 response -- it was January -- late in the fall NAT  
17 provided us total minutes of use number for January  
18 through October, which then he extrapolated in his  
19 December testimony for all of 2013. He's got a number of  
20 minutes that's on page 24 of his February 14, 2014,  
21 testimony.

22 It's a confidential number. But it's a number of  
23 minutes that's far fewer than you get if you divided the  
24 dollar number on this row with the rate.

25 Are you aware of that?

1 MR. WALD: Objection. That's a compound  
2 question.

3 A. I'm not even --

4 MS. AILTS WIEST: Overruled. You can answer.

5 A. I'm not even aware that what you're saying is  
6 correct. What I'm saying is that this is reflective of  
7 January through November minutes at Native American  
8 Telecom.

9 So are you saying that your numbers are -- you said  
10 his December testimony, I think. But if it's supposed to  
11 be January through all of December, I don't think that  
12 could have been possible at that time. But --

13 Q. Let me just ask you this: If one does that math and  
14 divides the number -- the dollar number by the rate and  
15 generates a number of minutes, should that match up to  
16 what you provided to us in discovery annualized? Do the  
17 annualized number match up? I'm trying not to do this  
18 without doing any numbers.

19 A. Yeah. You know, the difficulty I'm having -- I want  
20 to answer your question. The difficulty I'm having is  
21 this was just January through November minutes. And I  
22 don't know how -- well, it's just January through  
23 November.

24 So if yours is the full year, then I would expect  
25 there to be a difference. If it was -- are you saying

1 the numbers that you have are January through November  
2 and --

3 Q. January through October and then annualized, and the  
4 number is significantly different than the number you get  
5 doing the math here on your sheet.

6 A. You know, without knowing what went into that, I  
7 really can't answer for sure. I'm just here to tell you  
8 that, you know, I think that you had asked did I prepare  
9 myself to answer questions on this because Carlos Histero  
10 had family obligations and couldn't make the trip out.

11 We genuinely tried to bring everybody who could  
12 possibly be asked a question except Carlos Histero. And  
13 I said I would field these questions. And these  
14 documents -- I mean, I had a pretty clear understanding  
15 of what it was. And but now you're telling me there's a  
16 difference from the numbers you have --

17 Q. I understand. For the Commission's benefit, this is  
18 why we asked for backup, and we didn't get any backup.  
19 We will address this with Mr. Farrar, and he can explain  
20 this.

21 Okay. Mr. Holoubek, you indicated that you're  
22 president of NAT, and you took over that position in  
23 2010; is that correct?

24 A. Yes, it is.

25 Q. Now I heard you testify and actually in your written

1 testimony as well you testified about things that  
2 happened in 2008 and 2009. But that was before your time  
3 doing any work for NAT; is that correct?

4 A. I think I testified about 2009, not 2008.

5 Q. In your testimony you talk about the Tribal Utility  
6 Authority entering its Order in 2008, but that was before  
7 your time with NAT; right?

8 A. Yes, it was.

9 Q. And you said we hired Arent Fox to do our first  
10 tariff. But that was before your time formally with NAT;  
11 is that correct?

12 A. No. Because I was -- okay. I understand what the  
13 difficulty here is. NATE, the company that's now NATE,  
14 didn't approach Free Conferencing until -- well, they may  
15 have approached them in 2008. I'm not sure.

16 Frankly, I wasn't with Free Conferencing at the time  
17 in 2008. I didn't start until 2009. So but I know that  
18 the joint venture or none of the other details really got  
19 hammered out until 2009. So although Gene and Tom may  
20 have had an idea of what they wanted to do out in  
21 South Dakota and with, you know, rural tribal America,  
22 Indian Country and so forth, that idea -- the first I  
23 heard about it was in 2009.

24 Q. My question was about the first tariff that was  
25 filed.

1 A. Uh-huh.

2 Q. And I think Mr. DeJordy testified was filed in 2008  
3 or perhaps early 2009?

4 A. Early 2009. Yes.

5 Q. And you said we hired Arent Fox, but that was before  
6 your time.

7 A. You know what? I'm not even going to say it was  
8 early 2009. It was probably around the middle of 2009  
9 now that I think about it.

10 Q. But you weren't part of NAT until 2010?

11 A. No. That's not true. I was -- well, yeah. If  
12 you're splitting hairs. I was working at Free  
13 Conferencing Corporation. I was involved in those  
14 discussions. I was involved in helping to come up with  
15 the ideas around setting up the joint venture -- or, I'm  
16 sorry, the agreement with Free Conferencing. And later  
17 the joint venture -- you know, I guess I'll ask you to  
18 think about it in terms of how a business idea comes to  
19 pass.

20 You know, first you have people getting together and  
21 just talking about ideas, and that's how it all started.  
22 And then we started drafting documents around that. And  
23 it was a collaborative effort to do that. So the tariff  
24 wasn't filed until after there was a joint venture and  
25 all those other pieces were put into place.

1 Q. Okay. So in your role as director of legal and  
2 policy for Free Conferencing, you were part of the "we"  
3 that hired Arent Fox to draft NAT's federal tariff?

4 A. Yes.

5 Q. How many telephone companies did you run before  
6 taking on this role with NAT?

7 A. None.

8 Q. And how many telephone companies did you work for  
9 prior to taking on this role for NAT?

10 A. None.

11 Q. And I think after the conversations we had in your  
12 deposition I think you'll admit that you're not strong on  
13 the technical side of the phone business; is that  
14 correct?

15 A. That's a broad statement. I would say that when  
16 you're talking about network topology and how everything  
17 is set up and how everything works and then I start  
18 breaking it down even further, yeah, the deeper you go  
19 the weaker my knowledge becomes.

20 I'm more of a management guy. I have extensive  
21 business background and, you know, working as a business  
22 consultant for quite some time, having a master's in  
23 finance, a law degree, all of those things.

24 Q. When I asked you if you understood how calls were  
25 delivered through the network through NAT's equipment to

1 Free Conferencing, you told me you didn't really know and  
2 you wanted to defer to somebody else?

3 A. Yeah. What I was saying is there was somebody that  
4 could answer those questions a lot better than I could.  
5 I really didn't handle --

6 Q. You've answered --

7 A. -- that end of the business.

8 Q. You've answered my question. You don't know what a  
9 PRI is? Or at least you didn't in November?

10 A. So I know vaguely, but in reviewing -- you know,  
11 after my testimony, my deposition testimony, and I said  
12 that I was uncertain, that I thought I had an  
13 understanding, my understanding of what it was wasn't  
14 exactly what I thought. But I told you that at the  
15 time.

16 Q. And you don't -- do you know what kind of switch NAT  
17 uses?

18 A. Well, so it's a Gen Ben switch, if that's what  
19 you're asking. But if you're asking me about how it's  
20 configured and all of that stuff, then I would say, no, I  
21 don't. Because we have very skilled and experienced  
22 people handling that end of the business.

23 So where you have a business that has specialization  
24 of labor, you wouldn't necessarily have to be a  
25 jack-of-all-trades, if you will.



1 Q. Do you know what TRF stands for?

2 A. Yeah. I know what it's for, and it's for the  
3 hearing impaired and so forth.

4 Q. Did you have an understanding of the state and  
5 federal obligations that are imposed on voice providers  
6 relative to telephone relay service or TRFs?

7 A. I have an understanding that there are those  
8 obligations. And I'm also of the understanding that we  
9 fulfill those obligations and that we've hired probably  
10 the premier consultant in the country to handle all of  
11 that stuff for us.

12 But all the intricacies of handling those regulatory  
13 issues are not in any sense simple.

14 Q. Do you know -- well, you understand that Midstate  
15 provides service on the reservation; is that correct?

16 A. I know that we take service from Midstate.

17 Q. Your company takes service from Midstate. And so  
18 but beyond that do you know anything about Midstate's  
19 provision of service on the reservation?

20 A. I'm not sure. Do you have a specific question for  
21 me?

22 Q. Do you know what their local voice products consist  
23 of?

24 A. What Midstate's?

25 Q. Yeah.

1 A. No, I don't. But if somebody talked to me about it,  
2 it might ring a bell and I might say, oh, yeah, I  
3 understand what you're talking about now.

4 Q. And yet you're the president of a telephone company  
5 that purports to compete with Midstate?

6 A. I didn't say that we purport to compete with  
7 Midstate.

8 Q. You don't consider yourself --

9 A. And much of the -- like I said, I mean, I don't  
10 know -- I have a pretty vast understanding of business.  
11 And I also understand that part of running a company or  
12 helping to direct a company isn't about knowing every  
13 aspect of every single job. That's why you hire  
14 professionals. That's why you hire people who specialize  
15 in that.

16 So, for example, earlier we were talking about, you  
17 know, what the qualifications were and the experience and  
18 how many years and a guy like Pat Chicas who actually has  
19 34 years building phone companies, a guy like -- or a  
20 person like Dema or Tandy or Keith or all the other  
21 people that we have working with us that specialize in  
22 networks and providing these services, why would I go out  
23 and try and be an expert in all of that?

24 All I have to do is try and manage, together with a  
25 board of directors, and help direct things and do the

1 best job that we can. And as I have told you many times,  
2 the reason -- one of the main reasons I took on that job  
3 was because of all the litigation that was taking place.

4 So I managed the litigation for Free Conferencing,  
5 for example. And many of these suits and stuff are  
6 similar in some ways. So it made sense for me to oversee  
7 what was going on with these things.

8 Q. Do you know if Midstate offers lifeline service?

9 A. If Midstate does?

10 Q. Yes.

11 A. No.

12 Q. You don't know? I just want to make sure I  
13 understand your answer. You're saying you don't know?

14 A. My answer was no. Yes, I don't know.

15 Q. Okay. Do you know what tribal lifeline discounts  
16 are available for an eligible telecommunications carrier  
17 on the reservation?

18 A. Well, so I'm not even certain that it is available  
19 any longer. Because I know that at one time Verizon was  
20 an eligible telecommunications carrier and then they were  
21 allowed to withdraw and I don't know that those services  
22 are available.

23 I think that a good person to ask would be  
24 Gene DeJordy. I think that perhaps Carey Roesel would be  
25 a good person to ask.

1 Q. And is it true that you're not being compensated by  
2 NAT?

3 A. That's true.

4 Q. And so you draw a paycheck from Free Conferencing,  
5 and you consider yourself -- I'm sorry. You draw a  
6 paycheck from Free Conferencing Corp?

7 A. I do.

8 Q. And you understand to be -- you are doing this job  
9 for NAT as part of your work for Free Conferencing?

10 A. I don't see it that way. Okay. And we went through  
11 this during my deposition, and I can go through it with  
12 you again and say that maybe when I first started -- it  
13 was supposed to be a real interim thing. And I was going  
14 to help manage some of this, and we were hoping to get  
15 through this fairly quickly, all the issues that we had.  
16 And so I volunteered to do it. Carlos volunteered to do  
17 it.

18       Once we started doing the job and there was nobody  
19 else really to do it because, frankly, it would cost a  
20 lot of money to pay somebody to do what we were doing, we  
21 just continued to take on the job. And it's not as  
22 though I felt that I could or wanted to simply walk away  
23 from an obligation that I take on.

24 Q. And I think in your deposition you said you believed  
25 you were doing this out of the goodness of your heart

1       rather than because you were being paid to do it by  
2       Free Conferencing?

3       A.    Well, actually those were your words, but I was not  
4       being paid by Free Conferencing to do this job and I was  
5       not being paid by Native American Telecom to do this job.  
6       And I have never taken a single penny from Native  
7       American Telecom.

8       Q.    As Commissioner Nelson indicated, there were some  
9       questions that I asked you in your deposition about what  
10       NAT believes it needs a certificate to do. I'm not  
11       inclined to ask you those questions again today because  
12       Mr. Roesel's going to be on the stand.

13            Is it best to ask him those questions?

14       A.    You know, I think it is. So I have limited  
15       knowledge. I've had discussions with people about it.  
16       But I'm not the best person to ask those questions.

17            I thought that Gene DeJordy did a good job of  
18       explaining what all of our position is. And I know that  
19       there's been some confusion around the jurisdictional  
20       issues.

21       Q.    Let me just ask you a question about one of the  
22       issues that was taken up in the Application, which is  
23       NAT's intent and ability to serve today throughout its  
24       requested designated certification area.

25            So NAT is asking for a certificate in a certain

1 geographic area on the reservation but inside Midstate's  
2 exchange? Is that correct?

3 A. Yes.

4 Q. And I thought I understood from some discovery  
5 responses to Staff's requests that NAT said that it could  
6 serve that whole area with existing tower and radio  
7 technology? And I heard Mr. DeJordy say that it would  
8 take many more towers than we have today to serve all of  
9 that geographic area.

10 Do you know which is correct?

11 A. I think so. I think I can help straighten that  
12 out.

13 So under the current Wi-max technology that we have  
14 it only serves a certain area, you know, a certain radius  
15 from that tower. And the homes and businesses have  
16 receivers to receive that signal and receive that  
17 service.

18 Now if you want to extend out beyond that range,  
19 then you need other towers or repeaters and things like  
20 that. So there's an additional expense involved with  
21 serving those people.

22 It's part of the reason why we have 100 -- I believe  
23 it's 154 customers today that we're providing services  
24 to. I think that we have many more that want the  
25 service. We haven't provided that service because we

1 haven't built that whole network out further.

2 And one of the benefits of using spectrum and using  
3 this other type of service is that we can reach much  
4 further with which much less capital investment. So now  
5 you don't need repeaters going out every so far or -- and  
6 it's not as difficult to work around, I guess, various  
7 terrains and topology.

8 This is the way it's generally been explained to me.  
9 So I'm not the expert on that either, but I think that if  
10 that helps you as to why, for example, we're only serving  
11 154 and subscribers today and why that number could be  
12 much larger if we had a different system in place and  
13 so --

14 Q. Thank you.

15 A. I was just going to say so I don't think the take  
16 rate of the service has anything to do with the desire of  
17 people on the Crow Creek Reservation to use the service.  
18 I think there's many more that want the service. It's  
19 just that at this point in time we're unable to provide  
20 it.

21 Q. Thank you. Native American Telecom is the entity  
22 that filed the Amended Application in June of 2013; is  
23 that correct? Native American Telecom, LLC?

24 A. I believe so.

25 Q. And at that point Native American Telecom, LLC was

1 an entity formed under South Dakota Law, certified and  
2 authorized to provide -- or to do business in the State  
3 of South Dakota; is that correct?

4 A. That's correct.

5 Q. And there were some transactions that resulted in a  
6 new entity being formed under tribal law; correct?

7 A. Yes.

8 Q. Which took assignment of certain liabilities and  
9 assets of the first entity; right?

10 A. Yes.

11 Q. And then changed its name to NAT -- Native American  
12 Telecom, LLC; right?

13 A. No. Not exactly. So the way it happened was we --  
14 so we had questions about whether or not we needed to  
15 file a brand new application under this new company. And  
16 the thought was are we supposed to file a brand new CLEC  
17 application and start all over again, or can we explain  
18 what's going on and the fact that none of the parties and  
19 interests are changing and that there's nothing changing  
20 except the way the company is organized, that is tribal  
21 instead of --

22 MR. SCHENKENBERG: I'd like to object. I think  
23 it's possible for the witness to answer my question and  
24 then allow his lawyer on redirect to elicit additional  
25 information about the process.



1           MR. WALD: I think he was answering the  
2 question.

3           MS. AILTS WIEST: That's overruled. I think he  
4 was trying to answer the question.

5           MR. SCHENKENBERG: My apologies.

6 A. So we reached out for guidance on this to find out  
7 what we should do. Do we have to start the process  
8 over?

9           And it was determined that, no, we should just  
10 explain what we're doing to the Commission. And that's  
11 why in that Application we said this is exactly what's  
12 going on. And we tried to lay it out for everybody.  
13 And that the parties and interests are going to be the  
14 same.

15           And so briefly -- I think where you made an error in  
16 your statement was that you said Native American Telecom  
17 became Native American Telecom, LLC. And what actually  
18 happened was when the change took place Native American  
19 Telecom briefly became Crow Creek Telephone.

20           And that was at the advice of counsel because they  
21 said this is going to create confusion for the Secretary  
22 of State's office. And then as soon as that transition  
23 took place the name was changed right back to Native  
24 American Telecom. And so all of this happened almost  
25 simultaneously.

1 Q. And so I guess my point is, and I think you'll agree  
2 with me, that there was -- the entity that filed the  
3 Application is a different entity than is the one asking  
4 for the certificate today. Even though the names are the  
5 same, it's really a different entity?

6 A. Well, it assumed all the assets, all the  
7 liabilities, and became that entity. Now if you want to  
8 say now because it's -- because it's formed under tribal  
9 law and that's the change that you're identifying, I'd  
10 say you're absolutely correct, that that change took  
11 place. But, like I said, we cleared it before we did it.

12 Q. And the new entity is not authorized to do business  
13 in the State of South Dakota; right?

14 A. You mean, did we file with the Secretary of State  
15 for a -- for authority?

16 Q. Yes.

17 A. No, we did not.

18 Q. And so the -- the certificate that's attached as  
19 Exhibit B to the Amended Application is not a certificate  
20 that's still in effect?

21 A. Although I don't know if this matters, we did pay  
22 the State fees with the Secretary of State.

23 Q. Is the answer to my question yes?

24 A. I'm sorry. Ask that question again.

25 Q. Sure. That the certificate -- I'm sorry. The

1 authorization to do business in the State of South  
2 Dakota, which is Attachment Exhibit B to the Amended  
3 Application, is no longer in effect.

4 A. That's right. I think that was withdrawn.

5 Q. And is it your position that the Federal and State  
6 Tax ID No., for example, of the old entity become the  
7 Federal and State Tax ID No. of the new entity?

8 A. So I'm not certain about the State Tax ID Nos.,  
9 but I believe there's a new Federal ID No. that was  
10 issued.

11 You know, I'd have to check on that. I'm not  
12 absolutely certain now that I think about it. It would  
13 make sense that it were, except it's a tribally organized  
14 company now. So to the extent that there could be a  
15 difference with the requirements, I'm not absolutely  
16 certain.

17 Q. Are you -- do you believe it's common for a CLEC to  
18 have one paying customer?

19 A. I don't know how common that is. I'll just say that  
20 that's not the intention.

21 Q. And is it common in your experience for a CLEC that  
22 has one paying customer to be run in conjunction with its  
23 one paying customer?

24 A. You know, I think that everything about what's going  
25 on here is uncommon. So if you're simply -- I really

1 want to answer your question, but I don't think that it's  
2 unusual or unseemingly or wrong simply because it's taken  
3 place that way.

4 I think that many companies start off with one big  
5 anchor customer. You know, sometimes that's what gives  
6 them the toehold they need to get going. Sometimes whole  
7 companies just form out of one potential customer.

8 And I will say that that is the way that this  
9 company started in that Gene and Tom, as I have said,  
10 came to Free Conferencing and thought this is the type of  
11 customer that we would need in order to make this a  
12 successful enterprise. And from that standpoint I think  
13 that was a good management decision on their part.

14 Q. But you don't dispute that NAT is being run in  
15 conjunction with Free Conferencing and Wide Voice, do  
16 you?

17 A. I have a problem with your inference as far as run  
18 it in conjunction. Because everything is kept totally  
19 separate. All the books are separate. We have separate  
20 meetings. We have -- it's not as though we are all being  
21 run together. Each company is run separately and with  
22 different principals involved.

23 Q. NAT is governed by a formal Joint Venture Agreement;  
24 right? That's being run together. The parties have  
25 gotten together to run NAT; right?

1 A. Well, I beg your pardon. So to the extent of the  
2 Joint Venture Agreement, yes. So when we have, for  
3 example, you know, meetings and so forth there's usually  
4 representatives of each group that are involved. You  
5 know, not always.

6 Sometimes it's just me and Gene. Sometimes it's me  
7 and Gene and Tom and Carlos. It just depends on the sort  
8 of subject matter we're covering at the time and the  
9 things that we need to accomplish.

10 Sometimes those meetings take place with just our  
11 attorneys if we're discussing, you know, legal affairs.  
12 But whatever key decisions need to be made we involve  
13 everybody from the joint venture.

14 Q. And you have dual roles. You're president of NAT  
15 and you're on the board and you're employed by and paid  
16 for Free Conferencing?

17 A. That's correct.

18 Q. And there are many other situations like that.  
19 Mr. Erickson is on the board and runs Free Conferencing;  
20 right?

21 A. That's true.

22 Q. And Mr. Chicas is on the board and involved in  
23 running that and is the principal owner of Wide Voice;  
24 right?

25 A. He's the principal owner of Wide Voice, but I

1 wouldn't go so far to say as he's running that. So he  
2 runs -- he's in charge of like network operations and  
3 things like that.

4 Q. He has some responsibility?

5 A. So yeah. So he handles stuff like network  
6 operations. I handle more of, you know, the legal part  
7 of it. We have other people that are involved with the  
8 day-to-day running of the network or monitoring the  
9 minute or doing quality control or -- for example, Tom  
10 and Gene handle more of the customer service aspect of  
11 it. So there really is a division of labor there among  
12 all the parties.

13 Q. But you've helped to make decisions for NAT about  
14 NAT's relationship with Free Conferencing; right?

15 A. Yes, I have.

16 Q. And you don't see any conflict of interest in doing  
17 that because these are being run as a joint venture?

18 A. I didn't say that I was making those decisions  
19 solely. You said did I have a role in helping. Yes, I  
20 had a role in helping. I don't think that I can -- but I  
21 like to think of myself as being objective all the time  
22 also.

23 And these decisions don't get made unilaterally.  
24 They get made -- you know, the really important  
25 decisions, for example, that involve -- well, like if a

1 company wanted to be -- not be subject to the Tribe's  
2 jurisdiction, that wouldn't be a decision that I would be  
3 involved in at all. I would have a conversation with  
4 certain individuals, say, at the Tribe, but ultimately  
5 it's their decision.

6 There might be other decisions that involve Native  
7 American Telecom as a company. Those decisions would  
8 generally be put before the board for a vote.

9 By the way, I'd like to say this, that, you know, we  
10 have never had a vote that wasn't unanimous. I mean,  
11 everybody is on the same page with everything that we're  
12 doing. Everything about the financials is shared with  
13 everybody. Just because we don't put -- just because the  
14 appropriate person that's on the stand at the time isn't  
15 being asked those questions, doesn't mean that everybody  
16 doesn't know what's taking place. So --

17 Q. Thank you. I think my question was you don't see a  
18 conflict of interest there. And I think the answer to  
19 that question was that you do not see a conflict of  
20 interest?

21 A. That's right.

22 Q. Thank you. And is it fair to say that you have  
23 spent time over the course of your -- in your role with  
24 NAT trying to better set up the relationship between NAT  
25 and Free Conferencing to meet the FCC's Farmers test?

1 A. I'm sorry. Could you ask that question again.

2 MR. WALD: Objection. Relevance.

3 MS. AILTS WIEST: Objection overruled.

4 Q. Do you know what the Farmers test is?

5 A. Yes.

6 Q. It's a test -- well, what's your understanding of  
7 what the Farmers test is?

8 A. I'm trying to think of where to begin with this. So  
9 the whole idea behind the Farmers test was testing to see  
10 if a particular customer of a local exchange carrier  
11 would be considered to be an end user customer in  
12 compliance with their tariff.

13 And so it's not that there was an absolute specific  
14 test, in my understanding, that was laid out in Farmers.  
15 It's just that there are certain things that, if present,  
16 may affect whether or not you are considered to be  
17 operating in compliance with the local exchange carrier's  
18 tariff. And --

19 Q. And that affects whether or not access charges are  
20 due; right?

21 A. Not necessarily whether or not access charges are  
22 due or not, but it certainly affects a long distance  
23 carrier's ability to use self-help and not pay or at  
24 least claim certain things.

25 Q. Well, the FCC has issued the Farmers Order and a



1 couple of other orders applying those factors and  
2 determining that tariffed access charges were not due  
3 because certain facts existed; right?

4 A. Right. So I believe it was around 2009 or so, you  
5 know, when the Farmers Order was just rolling out. And  
6 people -- and local exchange carriers -- I won't say  
7 Free Conferencing providers because this has more to do  
8 with the tariffs of local exchange carriers. But there  
9 was a lot of confusion in the industry.

10 So the companies at the time thought that netting  
11 arrangements -- so, for example, if I'm offering services  
12 and you're not necessarily sending me an invoice for  
13 those services but if there's a net payment going back to  
14 the free service provider, some people might say, well,  
15 that a netting relationship is sufficient.

16 But to the extent that there wasn't some  
17 relationship that could be identified or that was  
18 different or -- so that if some customers were being  
19 treated differently, well, then it might be determined  
20 that they would not be subject or operating in compliance  
21 with the tariff or that the LEC wasn't operating or  
22 treating the customer in compliance with the tariff.

23 And so after that I can tell you that you there was  
24 an industry wide change that took place where then  
25 instead of having netting relationships, what started

1 taking place is all local exchange carriers, including  
2 all of them in South Dakota, started redesigning their  
3 agreements so that they could identify those tariff  
4 charges going back and forth. So anybody looking at it  
5 would be better able to identify those charges.

6 And that's what was taking place around the time --  
7 you know, when we were moving forward with Native  
8 American Telecom, we were very aware of the Farmers  
9 Decision. We were very aware and looking to comply with  
10 that Decision because we certainly wouldn't want to give  
11 a long distance carrier a reason not to pay us or a  
12 reason to hold out.

13 And, frankly, it didn't make sense not to comply.  
14 Because nothing really changed except that the way that  
15 those costs were identified.

16 Q. And so, for example, when the NAT and Free  
17 Conferencing signed their original agreement NAT was  
18 promising to provide services to Free Conferencing  
19 without charge; right?

20 A. Yes. In the original agreement --

21 Q. You've answered my question. Is the answer yes?

22 A. I'd change my answer to no then if you don't like  
23 the explanation.

24 Q. So no? The answer is no that in the original  
25 agreement it did not provide that NAT would offer

1 services without charge for Free Conferencing?

2 A. It kind of goes back to the explanation that I just  
3 made, that it went from a netting relationship to one  
4 where it was more specific later in that relationship.

5 But I'd just say this as well, that it's not  
6 necessary for a LEC to even charge end user fees. What's  
7 necessary is that those end user fees are paid to USAC.  
8 Or that the tax on the end user fees are paid to USAC.  
9 So it's not necessary that they collect, for example, in  
10 this case from Free Conferencing.

11 And in that agreement it was never anticipated that  
12 Native American Telecom would be receiving free services,  
13 for example, from SDN or Midstate or that they -- we know  
14 that there's costs involved. So if you're laying out the  
15 elements of a contract and saying -- and trying to  
16 identify how the payments are going to go back and forth,  
17 you might say, okay, so this is how the payments are  
18 going to get paid in one instance and we're not going to  
19 charge for these payments over here because it's all  
20 being netted out in the relationship. Okay.

21 But later when it became clear from Farmers, as you  
22 brought up, we decided that you know what? It's probably  
23 a good idea to change that policy and go a different  
24 route. Which is what took place. So --

25 MR. SCHENKENBERG: I'm not finished with my

1 cross. I see we're right about 5:00. I don't know what  
2 the Commission's pleasure is.

3 MS. AILTS WIEST: How much cross do you have  
4 left?

5 MR. SCHENKENBERG: I have a bit.

6 MS. AILTS WIEST: Do you have a time estimate at  
7 all? We won't hold you to it.

8 MR. SCHENKENBERG: 45 minutes.

9 MS. AILTS WIEST: I would ask the Commissioners  
10 and Cheri.

11 MR. SCHENKENBERG: It kind of depends on the  
12 answers.

13 (Discussion off the record)

14 (A short recess is taken)

15 MS. AILTS WIEST: Back on the record.

16 Mr. Schenkenberg, are you ready to come back?

17 MR. SCHENKENBERG: I am. I am. Thank you.

18 Q. (BY MR. SCHENKENBERG) We were talking about the  
19 Farmers test and business practices. And I want to show  
20 you a number of pages that are from various places in the  
21 record. If I can mark this as Sprint 34?

22 (Sprint Exhibit 34 is marked for identification)

23 MR. SCHENKENBERG: May I approach?

24 MS. AILTS WIEST: Yes.

25 MR. SCHENKENBERG: This does contain

1 confidential information.

2 Just as a housekeeping measure, I know that the  
3 spectrum agreement earlier was received, and we  
4 identified it. I think we talked about it as being  
5 confidential, and it's stamped Confidential on there. I  
6 assume it will be treated as confidential by the  
7 Commission?

8 MS. AILTS WIEST: Yes. Yes, it will.

9 Q. Okay. And these are questions being asked of  
10 Mr. Holoubek pursuant to an Order that was issued by the  
11 Commission on a Motion To Compel last fall where we  
12 withdrew a certain question or sets of questions based on  
13 a representation that there would be somebody at the  
14 hearing that could testify as to the billing practices  
15 between Free Conferencing and NAT.

16 So this first page --

17 MS. AILTS WIEST: I'm sorry to interrupt,  
18 Mr. Schenkenberg.

19 MR. SCHENKENBERG: Yes.

20 MS. AILTS WIEST: But, again, we don't need to  
21 go into confidential session? Are you going to try to do  
22 this without doing that?

23 MR. SCHENKENBERG: I'm going to try. And if we  
24 need -- I'm going to try.

25 MS. AILTS WIEST: Okay.

1 MR. SCHENKENBERG: And if NAT decides -- I want  
2 to focus, just as an example, on January of 2010. And if  
3 these numbers that I've highlighted, January of 2010, are  
4 not confidential and can be read into the record, then  
5 NAT can let me know.

6 But if they are confidential, remain  
7 confidential, and I need to say them out loud, I will  
8 notify the Commission before doing so.

9 Q. Mr. Holoubek, NAT began delivering calls into Free  
10 Conferencing in Fort Thompson in September of 2009; is  
11 that correct?

12 A. I believe so.

13 Q. Okay. And do you recognize page 1?

14 A. Yes, I do.

15 Q. Okay. And this is within Exhibit RGF-8. And we can  
16 cross-reference it, but this was something that was  
17 attached to a discovery response that asked about the  
18 charges assessed and bills issued to Free Conferencing.

19 Would you like to look at RGF-11 to confirm where  
20 this came from?

21 MR. SCHENKENBERG: And I did provide this  
22 exhibit to NAT last week in advance of the hearing. And  
23 it's just the first page. The other pages don't  
24 necessarily flow from the first.

25 A. I guess it just depends on the questions that you're

1 going to ask. But why don't we go ahead, and I'll do my  
2 best to --

3 Q. Will you accept, subject to check, that this was a  
4 discovery response that we received from you signed by  
5 you, just the first page, in 2011, end of 2011?

6 A. I believe so. It looks generally familiar so --

7 Q. And for the record it's part of RGF-8, which is  
8 Sprint Exhibit 10. Sprint Exhibit 10.

9 Okay. So at the point of -- if you look at what  
10 I've highlighted, January of 2010, that shows a certain  
11 number of ports. Do you see that number?

12 A. Yes.

13 Q. And a rate per port, which comes out of your tariff;  
14 right?

15 A. I believe so.

16 Q. That's not a confidential number?

17 A. No, it's not.

18 Q. \$6.45. And then a total port cost, which is those  
19 two first numbers multiplied by each other?

20 A. Uh-huh.

21 Q. What does one get when one buys a port?

22 A. Essentially a line.

23 Q. A line. That's a rate out of the federal interstate  
24 access tariff; is that right?

25 A. Yes.

1 Q. So that is essentially the subscriber line charge?

2 A. Yes. But I'm not certain it doesn't include  
3 something more. So at the time when we were -- there was  
4 a lot of confusion around what to charge as far as end  
5 user fees, which these constitute and what the title  
6 talks about.

7 And we hired TMI, Carey, to help us with all of  
8 this. Because, frankly, we weren't -- there was a lot of  
9 confusion about what to charge. So I don't want to just  
10 go on a diatribe, but I can explain to you what was going  
11 on around that time and how these numbers -- where they  
12 came from and how they came to pass. And then you may be  
13 better off asking Carey some of the questions.

14 Q. Okay. And then it shows a PRI count. And do you  
15 know what a PRI is?

16 A. You know, so I still don't know how it -- I know  
17 that it's five times the port rate. And I know that --  
18 and it was my understanding, as I told you during the  
19 deposition, that these corresponded to the subscriber  
20 services that were being offered on the reservation as  
21 opposed to end user customer charges.

22 But Carey has informed me that that's not  
23 necessarily the case. And so that's why I say that you  
24 may want to defer to him on some of this. They came up  
25 with the amounts, and then the accounting department used



1 their number counts to come up with this Excel  
2 spreadsheet.

3 So, for example, ports used would reflect the high  
4 water mark during the month, the total number of ports  
5 being used by in this case Free Conferencing Corporation.

6 So where you have the number -- well, I won't say  
7 the number just because it's a confidential document.  
8 It's not that big of a deal. But that was the high water  
9 mark usage. And so rather than try and figure out, say,  
10 for example, a lower cost to charge Free Conferencing, we  
11 erred on the side of caution and charged the maximum.

12 Q. When you say "charged," you weren't actually issuing  
13 a bill for these amounts at this time; right? When I say  
14 "this time" I mean in January of 2010.

15 A. No bill was issued in January of 2010.

16 Q. Okay. And so you've got an applicable revenue  
17 number and then a percentage of revenue that is  
18 reflective of the universal service assessment that needs  
19 to be collected; is that right?

20 A. Yes.

21 Q. And then total USF charges.

22 Do you know, if you go back to the PRI count, what  
23 one gets when one buys a PRI?

24 A. No. It's the equivalent of 23 lines. Really 24,  
25 but 23 voice channels. So to that extent I know. But --

1 Q. Okay. And is everything on this row attributable to  
2 Free Conferencing?

3 A. Yes. So I'm not certain of that. When you say the  
4 entire row for January 10 all the way across?

5 Q. I thought I asked you at deposition and you weren't  
6 sure whether some of these numbers were attributable to  
7 tribal numbers receiving Wi-max service?

8 A. That's right. And I haven't gone back and, you  
9 know, for example, updated my knowledge on that. My  
10 answer remains the same.

11 Q. Well, Wi-max customers aren't receiving PRIs, are  
12 they?

13 A. I don't know.

14 Q. Okay. Was your intent when you signed this --  
15 produced this in December of 2011 to indicate that Free  
16 Conferencing had provided those number of ports and that  
17 number of PRIs in January of 2010?

18 A. That would be my understanding. Or, well, at least  
19 regarding the ports.

20 Q. And, again, in January of 2010 the contract that was  
21 in place, the written contract, said without charge. Is  
22 that true?

23 A. Yeah. I think I've explained that.

24 Q. And so there wasn't -- and you did say there wasn't  
25 a bill issued with any amounts on it from Free

1 Conferencing in January of 2010?

2 A. That's correct.

3 Q. And what TMI did is to calculate if these amounts  
4 had been billed to Free Conferencing, what would have  
5 been collected? And based on what would have been  
6 collected, what would be remitted to the federal fund.

7 A. That's partially true. So, I mean, we hired TMI for  
8 that purpose. We knew that end user fees needed to be  
9 paid. And, like I explained earlier, you know, following  
10 the Farmers Decision there was no reason for anybody not  
11 to follow that. It's not as though things were changing  
12 that significantly.

13 And we recognized that. And it was probably  
14 memorialized in meetings with a number of different  
15 witnesses and board members where we talked about opinion  
16 of end user fees, what would have to be paid, whether or  
17 not they actually had to be paid or simply collected,  
18 whether or not because of the de minimus rules of USAC  
19 they had to be collected and paid, whether or not if we  
20 are providing services to the residents on the  
21 reservation and not actually collecting money from them  
22 whether or not there's still an imputed end user fee that  
23 we should be charging.

24 I mean, there were all of these questions at the  
25 time, and, frankly, we didn't have the answers to it.

1 It's not that we were trying to avoid making payments or  
2 so forth. It just took a while to get it all figured  
3 out.

4 And even after we got it figured out it got done  
5 improperly. And we ended up overpaying by \$10,000 and  
6 got a big credit back from USAC.

7 So there were efforts taking place to figure all of  
8 this out because of the unique situation that we have  
9 here at Crow Creek.

10 Q. And so pursuant to those discussions and in the  
11 interest of following Farmers, Free Conferencing if you  
12 turn to the next page, which is the General Ledger, Bates  
13 No. 283, I've got a highlighted number.

14 Free Conferencing made a payment on a certain date,  
15 and that's the first time Free Conferencing had made  
16 payment to NAT; is that right?

17 A. You know, I don't know that for certain, but I'm not  
18 going to deny it either. I'm not going to try and make  
19 it look like it was something other than that.

20 Q. I think all of the General Ledger for 2009 -- 2010  
21 and '11 are all in the record someplace.

22 A. Okay.

23 Q. And then if you turn the page, in November --  
24 November there's another payment made, a very large  
25 number. Do you see that?

1 A. I do.

2 Q. And that was intended to pay in arrears; is that  
3 correct?

4 A. So in 2011 you make payments for 2010. So I'm not  
5 100 percent certain, but I think what this was would have  
6 been payments for 2010. In other words, I don't know  
7 that it was for all of 2010 and 2011 or if it was just  
8 2010.

9 Q. Okay.

10 A. Or --

11 Q. But it was payment in arrears. It was payment for  
12 prior periods where no bills had been issued?

13 A. Yes.

14 Q. Including for time periods in which no amount was  
15 due under the contract.

16 A. I'm not sure what you mean by when no payments were  
17 due.

18 Q. The contract said without charge.

19 A. Yeah. You know, so I've tried to explain this over  
20 and over that things have been evolving at a very fast  
21 rate. And we haven't made changes to the agreement every  
22 single time that we thought that a change needed to be  
23 made.

24 The agreement was struck and drafted in 2009. It  
25 was also 2009 around that same time that the Farmers

1 Decision came out. It was about that time that all of a  
2 sudden like a bright light goes off and everybody, all  
3 the local exchange carriers realize that what the FCC  
4 really wants to see are accountings for this type of  
5 thing.

6 And so everybody changed their procedures at that  
7 time, including us. So instead of netting, we went to a  
8 situation where we thought we need to account for this  
9 stuff on a month-by-month basis.

10 And so that's what we attempted to do. And that's  
11 why -- one of the reasons why we hired TMI.

12 Q. So if you turn the page to No. 505 -- and the full  
13 production is within one of Mr. Farrar's exhibits. I can  
14 identify it for the record if need be. But there were a  
15 series of bills that were produced to us in discovery in  
16 2013. Now this is a bill that's for January 2010 end  
17 user fees. And it's dated February 1 of 2010.

18 This document wasn't created in 2010, was it?

19 A. No. So following the deposition you had asked me  
20 that question I said I didn't think that it had, but I  
21 really didn't know. And I think that one of your  
22 requests was that we go back and verify that.

23 And so I spoke with Carlos Histero. And he said  
24 that following the production of this spreadsheet when we  
25 finally had the fees and we knew what everything was that

1 he accounted for each month and created an invoice for  
2 each month, and that's what was put into our files. And  
3 through a discovery request, you know, when we're  
4 producing everything that Sprint wanted, all of these got  
5 produced.

6 Q. And so if you turn to the last page of this exhibit,  
7 this is the kind of revised spreadsheet. We had asked  
8 you to do a revised spreadsheet, page 000547. And you  
9 look at January, and it's the number of ports are the  
10 same. But now there's no PRI charge. Whereas, on the  
11 first one there was a PRI charge and a PRI cost. So it  
12 looks like --

13 A. I'm going to ask --

14 Q. Go ahead.

15 A. I'm going to ask that you direct that question at  
16 the time to Carey because he can probably answer that for  
17 you. My answer would be a guess as to what Carlos was  
18 doing. But I think that -- I think for some reason it  
19 wasn't necessary to charge that.

20 Q. But you don't know why the PRI charge would have  
21 applied?

22 A. No.

23 Q. Once --

24 A. I don't even know that it wasn't paid or that it  
25 wasn't remitted and maybe it was a decision by USAC. So

1 this graphic was updated to reflect that.

2 So like I said, we made all these payments, and it  
3 was determined that we overpaid.

4 Q. Okay.

5 A. And so when those credits were made there were  
6 certain things that we weren't going to be paying for any  
7 longer. I believe that that's what this is all about.

8 Q. But you don't know?

9 A. I don't.

10 Q. Okay. Is it possible that the PRI charges have  
11 nothing to do with federal service, aren't interstate  
12 charges, and so wouldn't have anything to do with USAC?

13 A. Well, given the way you've led me down that path, I  
14 would say that kind of makes sense, you know, that maybe  
15 that's what it is. But I don't know. My answer's the  
16 same.

17 Q. Thank you. And so if you turn to the second to the  
18 last page of the exhibit, this is the -- what I  
19 understand to be the Amended Service Agreement between  
20 Free Conferencing Corporation and NAT, which was signed  
21 in 2012 but backdated to July 1 of 2009.

22 Was that done so that the bills that had been  
23 created in 2013 for prior time periods would match up?

24 A. No. Absolutely not. This had nothing to do with  
25 it. And I'm not sure that this document reflects all of



1 the changes accurately. Either the -- so what we were  
2 trying to do at the time was update the document  
3 completely because so many things had changed.

4 So, for example, where in the very beginning there  
5 was an exclusivity issue in there and there's a reason  
6 why that was put in there in the beginning but later  
7 after -- when had the Farmers Decision came out it became  
8 clear that that wasn't something that the FCC wanted to  
9 see, and it wasn't -- so we removed that.

10 We changed things such as the payment scale that I  
11 talked about earlier. We changed a lot of things in this  
12 document. And it had nothing to do with what was going  
13 on with USAC. And the reason why -- most of these  
14 changes, in fact, all of these changes, were of a benefit  
15 to Native American -- I'm sorry. To the Crow Creek  
16 Sioux Tribe.

17 And so where normally they always had attorneys  
18 review all the documents that we would send to them. And  
19 for whatever reason they didn't have an attorney  
20 available to review this document at the time so rather  
21 than send them a completely new document, we sent them  
22 the old document with all of the changes so that you  
23 could see all of the red line changes in it. So that  
24 anybody reading this document could go through it and see  
25 exactly what had changed.

1           By the way, you don't have to take my word for it.  
2 This was explained to everybody at the time, including  
3 the tribal members. Everybody agreed this was the best  
4 way to do it. So we sent it out for signature that way  
5 for their benefit. But I'm not sure this photocopy  
6 reflects -- it might, but I'm not sure it reflects all  
7 the changes because of the highlighting.

8 Q.    But that's what's been produced to us; right? In  
9 discovery?

10 A.    I'm not sure if you got a color copy. I'm not sure  
11 if you got a black-and-white copy.

12           Am I allowed to look at a document that I have on  
13 the desk right here just to compare? Because I think  
14 it's the same document.

15 Q.    Sure. Because I have no objection.

16 A.    Hey, the way I see it, it's my one opportunity to  
17 get to the truth and to tell my story. So, you know, to  
18 the extent that I can, I want it out there.

19           THE WITNESS: May I? This is what I'm talking  
20 about.

21           MR. WALD: Let's talk into the microphone.

22           MR. SCHENKENBERG: Maybe I can ask a couple of  
23 questions.

24           MR. WALD: Why doesn't Mr. Holoubek explain what  
25 he was going to say in front of the microphone, and why

1 don't you identify the document.

2 A. So on a black-and-white copy it doesn't necessarily  
3 show part of the highlighted part. It just says that a  
4 segment was deleted. It doesn't show the time, and it  
5 doesn't necessarily show what was deleted. So I wanted  
6 to give him something that he could see that was more  
7 instructive, I guess.

8 MR. SCHENKENBERG: Okay. And I'd like it -- I  
9 guess I'd request that NAT be asked to file this as a  
10 late filed exhibit or else scan it in color or bring  
11 colored copies tomorrow. Because we haven't seen this in  
12 color.

13 And it does show some information that we don't  
14 have previously. I don't know that it's relevant or not,  
15 but we ought to make it part of the record?

16 MS. AILTS WIEST: Yes. Can NAT do that?

17 MR. WALD: Absolutely. We might be technically  
18 challenged with the color, but we'll do everything we  
19 can.

20 MR. SCHENKENBERG: We'll give this back to  
21 Mr. Holoubek.

22 Q. Getting back to where -- and I appreciate that. But  
23 it is true that you've kind of gone back and if we look  
24 at the documents that are in place now, we've got a  
25 contract that says it's effective July 1 of '09. You've

1 got bills that are dated from 2009 and 2010. We've got  
2 Government records that indicate payments were made for  
3 amounts received. But yet at the time it was happening  
4 there wasn't -- those contracts, payments were all  
5 different.

6 And I apologize that's not a very good question.  
7 Maybe I can start over. Should I start over? I  
8 apologize. It's late.

9 Let's just stick with this contract. Right now you  
10 have a contract in place that says effective July 1 of  
11 2009. But there were things that were happening in '09  
12 and '10 and '11 that were not consistent with what this  
13 contract says.

14 A. Yes. That's correct.

15 Q. Okay. And this \$6.45 per port, as I understand it,  
16 that is all that Free Conferencing is being charged for  
17 services it is getting from NAT today?

18 A. I'm not certain of that.

19 Q. Well, the bills that have been issued have a number  
20 of ports times \$6.45 per port. Is that not your  
21 understanding?

22 A. I would prefer that you ask Carey that question.  
23 Because he's the one that -- or it's his company that he  
24 works for that puts all of that together for us.

25 Q. Okay. Let me just ask you this then: For that

1 charge is it your understanding that Free Conferencing  
2 receives the ability to receive phone calls and space and  
3 power and internet access? Is that correct?

4 A. Yes.

5 Q. And anything else? Maintenance?

6 A. You know, as I think about it right now, I can't  
7 think of anything else. But --

8 Q. And do you consider that to be a market rate?

9 A. Could you define "market rate" for me in the context  
10 you're using it?

11 Q. Is that a rate that you would find in an arms-length  
12 agreement between a carrier and a customer that are not  
13 being run together?

14 A. Oh. Absolutely. I mean, we've gone out of our way  
15 to not provide preferential treatment to Free Conference  
16 Corporation. Free Conference Corporation, like I said,  
17 is paying the high water mark. It's the highest amount.

18 So if one day in the month they use let's say 1,000  
19 ports and every other day during the month they never hit  
20 500, they're charged for 1,000 ports for the entire  
21 month. So there is no averaging or anything like that  
22 that takes place.

23 Q. In your testimony, and this is your testimony dated  
24 April 20 of 2012 on pages 5 and 6, you criticize Sprint  
25 for "bringing multiple lawsuits against NAT."

1 Do you remember that testimony?

2 A. Not specifically, but I don't deny it.

3 Q. If you'd like, we can turn to that and just  
4 confirm --

5 MR. SWIER: Phil, what exhibit is that?

6 MR. SCHENKENBERG: This is the April 20, 2012.  
7 NAT Exhibit 9. Pages 5 and 6.

8 A. Okay.

9 MR. SWIER: That would be Exhibit 10, wouldn't  
10 it? 9 is Erickson.

11 MR. SCHENKENBERG: I'm sure you're right. I'm  
12 sorry.

13 Q. Right at the end of page 5, "Sprint brought multiple  
14 lawsuits designed to suppress NAT's development and  
15 growth."

16 A. Yeah. I believed that then. I believe it now.

17 Q. The first lawsuit between Sprint and NAT was filed  
18 by NAT; is that correct?

19 A. For the --

20 Q. NAT sued Sprint in Tribal Court; right?

21 A. Yes.

22 Q. And that was the first lawsuit between the parties;  
23 is that right?

24 A. Yes.

25 Q. And so NAT initiated the litigation. Yes or no?

1 A. That litigation, yes.

2 Q. Okay. And so Sprint then brought an action in  
3 Federal Court in which the Federal Court decided that the  
4 Tribal Court lacked jurisdiction and authority to  
5 proceed; is that correct?

6 A. I hesitate because I'm not sure that it was the  
7 Federal Court that said that.

8 I believe that that's true.

9 Q. And then NAT brought a counter action in that same  
10 federal suit asking to get paid under its tariff;  
11 right?

12 A. Right.

13 Q. And in 2012 the federal judge said the FCC should  
14 decide that issue; right?

15 A. I don't think that's what the Federal Court said,  
16 to decide that issue of whether or not they should get  
17 paid.

18 From what I remember is Sprint had an issue with the  
19 tariff and they wanted clarification and you asked the  
20 FCC for guidance on that and that's where it went. I  
21 think that's the way that happened.

22 Q. Let me say it a little bit differently. Did the  
23 Federal Court stay the federal case and refer it to the  
24 FCC?

25 A. They referred one issue to the FCC.

1 Q. And what's happened at the FCC since then is Sprint  
2 has proposed a Stipulation of Facts so we can proceed,  
3 and NAT has failed to respond to that proposal for nearly  
4 a year and a half; right?

5 A. I don't mind saying that we haven't responded yet to  
6 it, but there's a lot of reasons why that is. And a lot  
7 has to do with the fact that, in our opinion, Sprint's  
8 statement of the facts was highly inaccurate and  
9 under-inclusive, and things have been evolving at such a  
10 fast rate that the facts, you know, keep changing.

11 And so it had to do with trying to sort out some of  
12 these other issues first. It seemed to make more sense  
13 than trying to litigate on multiple fronts the same  
14 issues that kept changing.

15 MR. SCHENKENBERG: I would like to offer Sprint  
16 Exhibit 34, and I do not have any further questions of  
17 this witness.

18 MS. AILTS WIEST: Is there any objection to  
19 Sprint Exhibit 34?

20 MR. WALD: We would object to page -- the second  
21 to the last page, which would be Bates No. 327, because  
22 that's not the complete version of the document.

23 We'll submit the complete version of the  
24 document tomorrow.

25 MS. AILTS WIEST: Right. Is there any objection



1 from Sprint to have that replaced with a complete one?

2 MR. SCHENKENBERG: No.

3 MS. AILTS WIEST: And with that, I will admit  
4 the exhibit.

5 MR. SCHENKENBERG: No further questions of this  
6 witness.

7 MS. AILTS WIEST: Ms. Moore, do you have any  
8 questions?

9 MS. MOORE: Nothing from Midstate or SDTA.  
10 Thank you.

11 MS. AILTS WIEST: Ms. Cremer, do you have any  
12 questions?

13 CROSS-EXAMINATION

14 BY MS. CREMER:

15 Q. Good afternoon. I'm going to refer you to NAT's  
16 Exhibit 1. And then page 2.

17 Do you see that 949 telephone number on there up  
18 near the top?

19 A. I do.

20 Q. Okay. So my question is whose phone number is that?  
21 Who answers it? For what purpose?

22 A. That's my phone number, and I answer it.

23 Q. Okay. Like a cell phone number, a landline?

24 A. Yes.

25 Q. Okay. And then I would refer you to -- and I think

1 it's in Sprint's Exhibit 15. Is that in front of you?  
2 It's Sprint, not NAT.

3 And then page 2 of that.

4 MS. AILTS WIEST: What was that number again,  
5 Ms. Cremer?

6 MS. CREMER: Sprint Exhibit 15, page 2.

7 MR. SCHENKENBERG: RGF-13.

8 MS. CREMER: Yeah. Just go by the actual  
9 exhibit number.

10 MR. SCHENKENBERG: I know. But I confused him.

11 MS. CREMER: I know.

12 THE WITNESS: Okay. Thank you.

13 Q. All right. Did you go to the second page of that?  
14 And it says -- it's really not that hard. It's the small  
15 letter b, and it starts out "Pursuant to ARSD," that  
16 question.

17 Do you see that up near the top of the page?

18 A. Yes.

19 Q. Okay. And the answer is Gina Howe and then  
20 Casey Kirkie are on-site. And it gives two more phone  
21 numbers there. I'm not -- or the 477 number. Do you see  
22 that one?

23 Whose number is that, and who answers that?

24 A. So I'm not certain, but the reason is is because we  
25 have numbers that go to Tom Reiman because he's our feet

1 on the ground, and we have numbers that go directly to my  
2 office.

3 So I'm not sure where that number gets routed  
4 without calling it first, which we could probably do  
5 but --

6 Q. Okay. And then the other phone number that NAT has  
7 provided Staff -- we've asked the question multiple times  
8 what's the phone number for your customer service,  
9 customer complaints, and the other number we've been  
10 given is an (866) number, 508-9061. Does that ring a  
11 bell?

12 It's not on there. It's actually in NAT's response  
13 to Staff's Data Request 3, which is not in the record,  
14 but I can put it in the record if anybody wants me to.  
15 But does that number ring a bell with you? I can say it  
16 again, (866)508-9061.

17 A. I'm betting that that's the toll-free number that  
18 would go to Tom Reiman, but I'm not 100 percent certain  
19 of that.

20 Q. Okay. So my bottom line question here is which  
21 number do customers call if they have a customer service  
22 issue or a complaint?

23 A. They would be calling, I believe, the (866) number,  
24 if that is Tom Reiman. All those calls get routed to  
25 him. And I can tell you that there have been a couple

1 customer service calls in the past when there have been  
2 outages or something. But there's never been a single  
3 complaint.

4 Q. Okay. So -- but yeah. We just need to know for  
5 Staff's purposes there's a number that's answered. And  
6 you believe it to be that (866) number?

7 A. Yes. I can find out for certain for you and give  
8 you that tomorrow if you'd like. But I'm absolutely  
9 100 percent certain that we do have customer service  
10 numbers that go directly to my office and some that go  
11 directly to Tom.

12 MS. CREMER: Okay. Thank you.

13 MS. AILTS WIEST: Did the Commissioners want to  
14 start with questions, or do you want to wait until  
15 tomorrow?

16 CHAIRMAN HANSON: I think we can do it now.

17 MS. AILTS WIEST: Commissioner questions.

18 CHAIRMAN HANSON: Go ahead.

19 COMMISSIONER NELSON: This morning Mr. Wald  
20 described NAT as a "tiny little phone company." And  
21 you're the president of the tiny little phone company;  
22 correct?

23 THE WITNESS: Yes.

24 COMMISSIONER NELSON: And you described yourself  
25 this afternoon as a management guy; is that correct?

1 THE WITNESS: Yes. More so than a technical  
2 guy.

3 COMMISSIONER NELSON: In your deposition on  
4 page 23 you were asked who the manager was of NAT, and  
5 you said you didn't know the name of the manager of NAT,  
6 but you knew it was a Native American; is that correct?

7 THE WITNESS: Yes. What I was referring to is  
8 the manager on the reservation at the facility at the --  
9 at the center.

10 So, for example, I know that on Pine Ridge  
11 Joe Red Cloud's the manager. But on Crow Creek the name  
12 escaped me.

13 COMMISSIONER NELSON: And so you're the  
14 management guy, you're the president, and you have no  
15 idea who the Native American manager is on the ground.  
16 Is that what you're telling us?

17 THE WITNESS: I'm just saying that I didn't have  
18 the name available to me. At one point.

19 COMMISSIONER NELSON: Do you know who that is  
20 today?

21 THE WITNESS: I don't remember the person's name  
22 off the top of my head. So that would be Tom Reiman that  
23 manages those people directly and Tom would answer to me  
24 and he's in charge of managing those people and the  
25 hiring and firing of employees. I don't do any of that.

1           So, yes, I manage the company, mostly manage the  
2 legal affairs and so forth, but it doesn't mean that I'm  
3 managing every aspect of the company all the way down to  
4 the last employee and, you know, their paychecks and all  
5 of that stuff.

6           COMMISSIONER NELSON: So help me understand. As  
7 was stated this morning, there's three aspects that we  
8 have to look at here. And one of those is management  
9 capability.

10           And what I'm gathering from you as I've listened  
11 to you this afternoon is the top dog, the president,  
12 really doesn't have to know anything as long as you're  
13 able to hire people that do. Is that accurate?

14           THE WITNESS: You know, I don't think it is.  
15 And I don't think it's a fair statement either. That's  
16 really not the way that things were set up there.

17           Like I said, I'm acting president right now  
18 managing primarily the legal affairs. We have weekly  
19 meetings where all the various parties that are handling  
20 various aspects of the company get together and discuss  
21 issues, things that we need to tackle, things that need  
22 to be taken care of.

23           And everything has ran smoothly without one flaw  
24 in the management of the company. No complaints  
25 whatsoever. People love the service. Everything's going

1 really well except to the extent that -- you know, that  
2 Sprint is -- we're still embattled with Sprint.

3 If we could put that behind us, I'm sure that  
4 everything would be fine. But I don't think it's a fair  
5 characterization about the management of the company.

6 COMMISSIONER NELSON: The last question I've  
7 got, and I think it was -- maybe it was Mr. DeJordy. As  
8 it was -- the question was asked when a call comes in to  
9 NAT's switch that's going to Free Conferencing, and so it  
10 goes from NAT's switch to Free Conferencing's bridge,  
11 what happens to the call at that point?

12 And the reason I ask this is early on in this  
13 there was some reference to the call then going from  
14 NAT's bridge out to a Free Conferencing switch in  
15 California and coming back. Is that what happens?

16 Can you tell me what happens to that call once  
17 it hits the bridge that's at Fort Thompson?

18 THE WITNESS: I'm not certain that I can answer  
19 your question the way that you want. But I know what  
20 you're referring to as far as in the past the way calls  
21 would have been routed at a specific point in time.

22 And feeling like you may have questions about  
23 that, we brought somebody in to answer those questions.  
24 And so we will be able to provide somebody that knows --  
25 basically the guy that set up the entire topology of the

1 system and knows about the changes that have taken place  
2 and how calls get routed exactly.

3 COMMISSIONER NELSON: And that is.

4 THE WITNESS: Keith Williams.

5 COMMISSIONER NELSON: Will he be testifying?

6 THE WITNESS: We didn't include him on our  
7 witness list, but we brought him in case we had  
8 questions. Because we didn't have direct testimony on  
9 that for him.

10 COMMISSIONER NELSON: I guess I'm not sure --  
11 we'll let it go at that point. At some point I'd like to  
12 know how that all works. And if you can't answer it, I  
13 guess just tell me you can't answer it.

14 THE WITNESS: I think we'd be willing to provide  
15 him as a rebuttal witness or something and allow him to  
16 answer questions. Or perhaps Dave Erickson is on the  
17 list, and Dave Erickson might be able to answer those  
18 questions.

19 COMMISSIONER NELSON: Thank you.

20 MS. AILTS WIEST: Any other questions from  
21 Commissioners?

22 CHAIRMAN HANSON: Mr. Holoubek, I just need some  
23 clarification. In reading the direct testimonies and in  
24 listening to some of the questions that took place, I'm  
25 curious if -- it's my understanding that NAT is a



1 tribally owned telecom company organized as an LLC under  
2 the laws of South Dakota. Is that correct?

3 THE WITNESS: No.

4 CHAIRMAN HANSON: That was your testimony on  
5 direct of 2-17-12. Has that changed?

6 THE WITNESS: Yes. That's changed.

7 CHAIRMAN HANSON: Okay. That's what I  
8 understood from your testimony that you filed later and  
9 your reasons for that.

10 And you had also in your direct testimony had an  
11 exhibit and showing a COA from the Secretary of State's  
12 office, and that's no longer the case as well; is that  
13 correct?

14 THE WITNESS: Yes. As I said, you know, it's  
15 kind of an odd thing. The fees got paid, but then we  
16 withdrew the -- once the company was organized under the  
17 tribal law, we were advised to withdraw that from -- our  
18 counsel advised us.

19 CHAIRMAN HANSON: In looking at the exhibits  
20 that were provided to us from Sprint, and you don't need  
21 to refer to those but Sprint 31 -- and, as a matter of  
22 fact, some of your testimony regarding -- that was  
23 brought up by Ms. Cremer regarding telephone numbers,  
24 does NAT have any business customers other than tribally  
25 owned businesses?

1 THE WITNESS: Have any -- I'm sorry.

2 CHAIRMAN HANSON: Do you have any commercial,  
3 any business customers, anyone who uses your 477 other  
4 than tribally owned businesses?

5 THE WITNESS: Besides Free Conferencing  
6 Corporation, you mean?

7 CHAIRMAN HANSON: That's fine. You have  
8 customers.

9 THE WITNESS: Yes.

10 CHAIRMAN HANSON: Residential customers.

11 THE WITNESS: Yes.

12 CHAIRMAN HANSON: Free customers. Do you have  
13 any business customers, anyone who -- forgive me if it  
14 was ambiguous. Anyone who uses your services?

15 THE WITNESS: Yes.

16 CHAIRMAN HANSON: Okay. Could you provide us a  
17 list of those sometime?

18 THE WITNESS: I think --

19 CHAIRMAN HANSON: Are there very many?

20 THE WITNESS: I think we can. I don't know for  
21 certain exactly how many business customers there are.

22 So, for example, like let's just say for example  
23 the casino or the hotel, they use some of the services.  
24 So if others are using the number individually as a  
25 business -- because, for example, through the service a

1 number of people have started their own businesses and so  
2 forth through internet businesses. And if you would  
3 classify that as a business as well, I need to get a  
4 break down from Tom on that.

5 CHAIRMAN HANSON: A number is fine of  
6 businesses. And forgive me when I said business  
7 customers it sounds as if you do business with -- buying  
8 paper from people. I don't mean that it. I mean, how  
9 many people are paying you in order to have your service.  
10 I want that from a standpoint of understanding  
11 viability of your business. And having been in business  
12 for a period of time, how many paying customers do you  
13 actually have? That's what I'm curious about.

14 THE WITNESS: I'm sorry. I may have  
15 misunderstood your question, Mr. Chairman.

16 They're not paying. It's a subsidized service.  
17 So they're not taking money out of their pocket and  
18 paying. Those customers would be tribally owned  
19 companies which are subsidized.

20 CHAIRMAN HANSON: So you have no one paying for  
21 any services?

22 THE WITNESS: I guess part of it depends on the  
23 way you look at it. You know, it's a tribal decision for  
24 one thing as to who's going to pay and who's not. And I  
25 know that Gene was trying to get at that as well in

1 fielding some questions.

2 It's difficult because it's not necessarily our  
3 decision as to who's going to be paying for service and  
4 who isn't. And in this case right now no one's paying  
5 for service. But that was part of the benefit that the  
6 Tribe wanted when we entered into the argument to begin  
7 with.

8 And if later they say that other customers, that  
9 they would like for them to pay, then I'm sure they will.  
10 And if the option was, hey, you guys have to pay  
11 something or we shut the doors, I'm sure that the choice  
12 would be offer them to pay something before you shut the  
13 doors.

14 So it's a difficult question to answer because  
15 it's not just, for example, us making the decision.

16 CHAIRMAN HANSON: So your business model is, in  
17 essence, if I were living there and wanted to open up a  
18 Gary's Garage, I would have free telephone service.

19 THE WITNESS: If you're a tribal member, yes.

20 CHAIRMAN HANSON: Okay.

21 THE WITNESS: And as of right now -- I would  
22 like to also say that, you know, end user fees are being  
23 collected. Even if things go to bill and keep, I mean,  
24 those aren't going away. And there's a lot more  
25 customers that want to use our service, that, I mean, I

1 said that I have actual e-mails and I can identify at  
2 least four other large companies. One that customers  
3 said, you know, we have 2 billion minutes, and we need  
4 services and stuff and are reaching out to us.

5 There's companies that want to do business with  
6 us. And this isn't me making something up for the  
7 benefit of you guys today. If I showed you these  
8 e-mails, you would see that they're from 2010, 2011, 2012  
9 where I've been talking about the fact that until we get  
10 this litigation stuff worked out, all settled out, I just  
11 don't think that it's a good idea for us to enter into a  
12 relationship like that.

13 And I don't think that -- and a lot of that was  
14 out of respect for the Commission and for your view of --  
15 that we need to have a CLEC authority first.

16 CHAIRMAN HANSON: How do you define access  
17 stimulation?

18 THE WITNESS: Well, so I would define access  
19 stimulation as a high volume of traffic being sent to a  
20 location with an unreasonably high tariff in order to  
21 take advantage of the regulatory arbitrage involved in  
22 that high tariff.

23 And I think that that's pretty close to the way  
24 that the FCC has defined it because I've looked at that  
25 stuff a lot.

1           CHAIRMAN HANSON: Thank you. You listened to  
2 the opening remarks from Mr. Swier that everyone is  
3 engaged in access stimulation, referring to telecom  
4 companies, and it's happening every day.

5           I noticed you have a philosophy degree so I  
6 assume you're familiar with Aristotle's arguments on  
7 logic, valid and -- valid arguments?

8           You have a philosophy degree; correct?

9           THE WITNESS: Yes, I do.

10          CHAIRMAN HANSON: All right. So if one were to  
11 say, for instance, all entities engaged in access  
12 stimulation -- are engaged in access stimulation, NAT is  
13 one of those telecom entities; therefore, NAT is engaged  
14 in access stimulation.

15          THE WITNESS: Well, that's just like when I  
16 started I said there were actually a couple of ways to  
17 look at it.

18          So if -- for example, Sprint has been referring  
19 to access stimulation as in reference to the service  
20 itself. Like, for example, if it's a Free Conferencing  
21 service and all of that traffic's being directed to one  
22 location, that's access stimulation or that's traffic  
23 pumping, however they want to reference it.

24          I don't necessarily agree with that example.  
25 But if we're responding to a Sprint question or a Sprint

1 statement where they've used access stimulation in that  
2 regard, I don't know if it's helpful for us to try and  
3 split hairs and say, well, if there really isn't  
4 arbitrage involved, well, then it's not truly access  
5 stimulation because the FCC took care of that through the  
6 CAF Order. So I don't know if that's helpful or not.

7 Yes. I understand Aristotle's principle that  
8 you laid out for me there. And I understand what you're  
9 trying to say as far as the fact that Scott said  
10 everyone's involved in access stimulation or that a lot  
11 of it's going on.

12 My view's a little bit different, just in the  
13 sense that I think that the FCC has taken actions to deal  
14 with access stimulation. I mean, I don't know. When  
15 AT&T sends all of their conferencing to Teleport  
16 Communications Group and it all gets sent to one location  
17 like that, is that access stimulation?

18 Under some people's definition it would be. But  
19 I wouldn't necessarily say that -- say that that's what  
20 you're talking about.

21 CHAIRMAN HANSON: Let me help you out. Under  
22 your definition that you gave us just moments ago, is NAT  
23 engaged in access stimulation? Or has it been during  
24 your tenure as president?

25 THE WITNESS: Yes. It has been since my tenure

1 as president. And that's why we believe that we're in  
2 compliance with the federal rules on that. And that's,  
3 you know, our tariff rate is -- we matched it to  
4 CenturyLink's rate, which is what we were instructed to  
5 do. Not just by our consultants, but by the FCC.

6 CHAIRMAN HANSON: So those billions of minutes  
7 that you are referring to, would those be access  
8 stimulation minutes?

9 THE WITNESS: I don't know. I don't know what  
10 kind of customer they were. I didn't pursue it in that  
11 regard. But that being said, my guess would be it would  
12 be if they were planning on directing all of those  
13 minutes there.

14 But that's not what it said. He just said that  
15 we're a potential customer, we have 2 billion minutes of  
16 traffic. I think what they're trying to do is say, look,  
17 we're a big customer, and we could be a good source of  
18 revenue for you.

19 But I don't want to mislead you and say that  
20 we're going to be getting paid on 2 billion minutes worth  
21 of traffic because I don't know that for a fact without  
22 speaking with him and finding out exactly what their plan  
23 was.

24 CHAIRMAN HANSON: Would Sprint be -- or would  
25 another carrier be a captured carrier under those types



1 of situations where they would have -- well, do you  
2 understand what I would mean by captured carrier? A  
3 carrier that has no choice other than to provide the  
4 switched access support and incur costs without receiving  
5 income, commensurate with the expense?

6 THE WITNESS: I'm sorry. Will you please just  
7 rephrase that a little bit?

8 CHAIRMAN HANSON: Certainly. Could Sprint or  
9 another carrier, another provider, excuse me, be placed  
10 in a situation where they would provide services to NAT  
11 at their expense where NAT would receive funds for  
12 switching, and the carrier -- in this case I'll use  
13 Sprint as an example -- would be paying for that switched  
14 access and not compensated to the extent of their  
15 expenses?

16 THE WITNESS: I'm going to answer your question,  
17 and I want to. I'm hesitant because for one thing I  
18 don't want to offend you by splitting hairs.

19 I'm sitting up here right now, and I'm thinking  
20 to myself Sprint does get compensated. The customer pays  
21 their bill. And Sprint is being compensated for that.  
22 And there's been other studies through other lawsuits  
23 and stuff that show they make a lot of money on these  
24 calls.

25 So simply because -- that's the part that I take

1 issue with. But, generally speaking, if it were -- and I  
2 hope I'm not confusing matters when I say if it were,  
3 generally speaking, an access stimulation situation so,  
4 you know, there's a revenue sharing arrangement and,  
5 therefore, it falls under access stimulation rules that  
6 were set down by the FCC.

7 It doesn't mean that it's necessarily an access  
8 stim. any longer if it's following those rules. But  
9 under that circumstance I think it would be similar to  
10 the Free Conferencing situation.

11 CHAIRMAN HANSON: You spoke of arbitrage in your  
12 definition. And that's what I'm concerned with. A  
13 situation where a carrier would be captured into a  
14 situation where they would be paying more to another  
15 entity, NAT, than they are receiving from the customer.  
16 And --

17 THE WITNESS: You know, I --

18 CHAIRMAN HANSON: And they would have no choice  
19 in continually working in the red.

20 THE WITNESS: I see your dilemma. Or your  
21 question on that.

22 So, first of all, I don't think that that  
23 situation would happen. One is because we're operating  
24 at, you know, the .006327, that lower rate. Second of  
25 all, it's Sprint's customers that are choosing to call.

1 And, again, I don't know what service we're even talking  
2 about right now.

3 But it's a Sprint customer that's choosing to  
4 make the call to begin with. And it's up to Sprint to  
5 price appropriately with their customers, although I  
6 believe that they are, like I said, from other studies  
7 for other cases and so forth that I've read in the past.  
8 And I believe that they make quite a bit of profit on  
9 these.

10 But the difficult part that we have, both you  
11 and I, is trying to determine exactly how much profit for  
12 a particular customer is because Sprint doesn't meter its  
13 calls or charge that way. So because they offer  
14 unlimited plans where people can essentially call in and  
15 use as much of the service as they would like to, I think  
16 it's difficult to measure exactly on a  
17 customer-to-customer basis what that actually would turn  
18 out to be, how much profit or -- you know, or the  
19 scenario you were saying, or loss that that could turn  
20 out to be in that instance.

21 But I don't think that Sprint loses money on any  
22 of the customers. And I've actually read some of  
23 Sprint's plans as well. And they have in their plans,  
24 for example, for conferencing services that they reserve  
25 the right to charge more for those particular calls. So

1 they've put in safeguards in place to prevent them from  
2 losing money on services of this type.

3 So I really don't think that that's something  
4 that would come to pass. I believe that.

5 CHAIRMAN HANSON: I was going to ask you to  
6 anticipate or define to your best what was meant by  
7 Sprint's allegation of a sham organization, but don't you  
8 think that that is the -- well, we'll wait until Sprint  
9 has the opportunity to make a presentation to do that.  
10 But I would anticipate through all of the direct  
11 testimony that that's --

12 THE WITNESS: I would like to respond the best I  
13 can.

14 CHAIRMAN HANSON: Certainly.

15 THE WITNESS: The first time that stands out in  
16 my mind that I remember this taking place was a couple of  
17 years ago. It was a hearing before the Commission. And  
18 it was -- and there was a discussion going on, and, you  
19 know, we had no tribal representatives there at the time.  
20 And Sprint was calling us a sham.

21 And the Commission and if I remember correctly  
22 and forgive me if I don't, but I believe it was you,  
23 Chairman Hanson, that said, hey, if someone was calling  
24 me a sham, I'd want to stand up from the mountain top and  
25 explain why it's not true. And I was seething at the

1 time. I mean, not at you, but because I didn't have the  
2 opportunity to stand up and tell my story.

3 And you might recognize that I don't answer any  
4 questions like a lawyer would or like you would be  
5 instructed to answer ordinarily if a lawyer were advising  
6 you, which is a yes, no, or avoid -- I'm trying  
7 everything I can to get every little bit of the story in  
8 wherever I can. Not because I'm making things up, but  
9 because it's the truth.

10 And I've been trying to get it out from the  
11 beginning. And it's hard as heck going up against three  
12 of the largest public companies in the world with  
13 unlimited resources that are constantly beating you over  
14 the head. You can't beat them in the press. You can't  
15 beat them anywhere. All I can do is come and tell the  
16 story the best I can.

17 So regarding the sham, I think that they're  
18 trying to say that this was all designed around Free  
19 Conference Call, that it's all for the benefit of  
20 Dave Erickson and Free Conference Call and that there is  
21 no benefit to the Tribe and there is no benefit to the  
22 State of South Dakota and that there is no benefit to  
23 anyone else other than Dave Erickson.

24 But really that's all they have to hang their  
25 hat on. Because if they didn't say something like

1 that --

2 CHAIRMAN HANSON: Okay. Thank you.

3 THE WITNESS: Okay.

4 MS. AILTS WIEST: Any other Commission  
5 questions?

6 CHAIRMAN HANSON: You're right. You do have a  
7 challenge with the yes and no answers. That might be to  
8 your favor.

9 Thank you.

10 MS. AILTS WIEST: I see no other Commissioner  
11 questions.

12 Did you have redirect, Mr. Wald?

13 MR. WALD: I think we will have redirect.

14 MS. AILTS WIEST: Was it very long?

15 MR. WALD: I think it would be more than a  
16 half-hour.

17 MS. AILTS WIEST: Did the Commissioners like to  
18 stop here? Do you think it's about a half-hour or it's  
19 hard to predict?

20 MR. WALD: I think it's hard to predict.

21 REDIRECT EXAMINATION

22 BY MR. WALD:

23 Q. There was a question about whether businesses use  
24 the service. And I think there was an earlier exhibit  
25 that was exhibit -- I'm sorry. Exhibit 31 that had a

1 list. It was a Crow Creek internet page that had a list  
2 of businesses.

3 Is there a problem for businesses that might want to  
4 use the NAT service?

5 A. Well, yes. So those businesses as of right now  
6 can't use the Native American Telecom numbers to call  
7 somewhere else in South Dakota, you know, off the  
8 reservation. And so that's why they wouldn't be using  
9 those numbers today.

10 Q. So if you were, for example, the Habitat For  
11 Humanity on the second page and you had to call a  
12 lumberyard off the reservation, you couldn't use the NAT  
13 service?

14 A. That's right. And part of that issue was and around  
15 the time that we were doing, I think, our revised  
16 application -- I don't know if Ms. Cremer called me or  
17 had a written question or what it was, but there was a  
18 question that we had about intrastate interexchange  
19 services. You know, because prior to that time those  
20 calls would have been completed.

21 And we had a discussion about it. And there was a  
22 lot of confusion around it. But one of the things that  
23 was made clear to me at the time was that the Commission  
24 had a real concern over if -- not the people that were  
25 calling each other within the boundaries of the

1 reservation but the people that were calling outside the  
2 boundaries of the reservation because -- and I think the  
3 way it was put to me was isn't that person, you know,  
4 under the protection and regulation of this State as  
5 opposed to Crow Creek?

6 Because I'll tell you, up to that point we were  
7 pretty convinced in our minds that -- that we had the  
8 authority for everything that we were doing. And at that  
9 point we had a discussion about it.

10 And I said, you know, I still am not sure what the  
11 facts are, what the truth is about that. I don't know  
12 what the resolution's going to be. I know the way  
13 Arizona and New Mexico will handle it. But I don't know  
14 the way South Dakota's going to handle it. But out of  
15 deference to the Commission we ought to stop connecting  
16 those calls because they haven't provided that CLEC  
17 authorization.

18 And I swear to you that's the way the discussion  
19 went down. And it's the reason why we stopped providing  
20 the service like that. At a big detriment to the people  
21 living on the reservation there.

22 It was shortly thereafter that we came with a  
23 motion, you know, to permit us to provide those services.  
24 Because we thought that that would be the most respectful  
25 and best way to go about doing this, trying to take



1 everybody's viewpoint into account.

2 But that's the reason why these businesses today  
3 can't make calls off the reservation into South Dakota,  
4 and it's one really good reason why they wouldn't be  
5 utilizing our numbers.

6 Q. So if you get this CLEC authority that you're  
7 requesting, those businesses would be available to NAT as  
8 customers?

9 A. Yes.

10 Q. Now questions were raised about management resources  
11 of NAT. Could you just describe briefly what those are,  
12 what resources NAT uses?

13 You mentioned consultants, and you mentioned -- what  
14 consultants does NAT use?

15 A. Well, NAT has hired TMI.

16 Q. What is TMI?

17 A. They're a telecommunications management and  
18 consulting company. And so they manage all of our  
19 regulatory affairs, down to the state filings. If we're  
20 required, they would be doing that. They file all the  
21 499 forms, the Qs, the As, all of that. Any tariff  
22 revisions that need to be done, they handle that.

23 We've used them to answer questions for the  
24 Commission, for example, in this proceeding. Because,  
25 well --

1 Q. How often do you speak to TMI?

2 A. Every week.

3 Q. Is there a regularly scheduled call?

4 A. There is.

5 Q. And who participates on the call?

6 A. Well, I participate. My assistant participates.  
7 Part of it depends on the specific issue that we'll be  
8 discussing that week. All of the Wide Voice people  
9 usually participate. Because sometimes they handle at a  
10 preliminary -- well, they help in the regulatory stuff as  
11 well. So they will often participate.

12 Q. Now in terms of the technical resources, who are the  
13 technical resources that NAT relies on?

14 A. Primarily Wide Voice Communications and their  
15 people. So when I say that I mean people like  
16 Tandy Decosta, Demetri Bongar [phonetic], Pat Chicas,  
17 Keith Williams.

18 Q. And what does Wide Voice Communications do besides  
19 have the interest in NAT?

20 A. Wide Voice Communications is an engineering and  
21 consulting company.

22 Q. And what does it do?

23 A. Well, besides -- they manage the network.

24 Q. Okay. And other than managing NAT's network, what  
25 else does it do?

1 A. It provides -- well, managing the network is kind of  
2 a broad explanation of the whole traffic delivery  
3 maintenance, all of that stuff, that end. So they would  
4 be --

5 Q. Now --

6 A. They also provide advice when asked.

7 Q. Now there's some questions about the -- raised about  
8 the governance of NAT. Now there are three different  
9 ownership entities? There's Wide Voice. There's  
10 Mr. DeJordy's entity, NAT enterprises; right? And then  
11 there's the Tribe; right?

12 A. Yes.

13 Q. And then do each one of those entities have  
14 directors?

15 A. Yes.

16 Q. And how many directors does each have?

17 A. Three from each entity.

18 Q. Okay. And there was also an issue raised about the  
19 new spectrum and -- currently how much of the current  
20 equipment reaches how many houses? Do you know?

21 A. Well, 154 houses and businesses right now.

22 Q. Okay. And is that 100 percent of the houses that  
23 could be reached with the current equipment?

24 A. No.

25 Q. Okay. Do you know how much penetration they have of

1 the available --

2 A. I'm guessing it's not. What I'm saying is there  
3 might be others that live within that radius that want  
4 service that haven't been provided service yet. So I  
5 don't know for a fact, but my guess would be no.

6 But beyond that radius --

7 Q. Yeah.

8 A. -- we're kind of stuck, unless we want to make  
9 another big capital investment and another big capital  
10 investment as we continue to grow out the whole  
11 reservation.

12 Q. Do you know what percentage of the available  
13 households have been reached in the area that can  
14 technically be reached so far?

15 A. You know, I'm sorry. I don't know that. But I was  
16 told that on Crow Creek there were approximately 2,000  
17 households.

18 Q. Right.

19 A. That was at one point in time. But I'm going to ask  
20 you to not hold me to that --

21 Q. My question was bad.

22 A. -- number.

23 Q. Has Native American Telecom reached most of the  
24 people that they can reach with the current network  
25 capability?

1 A. No.

2 Q. Okay. Now there's been a lot of discussion about  
3 Free Conferencing making money. Does anybody else make  
4 money besides Free Conferencing on the traffic that gets  
5 delivered to Native American Telecom?

6 A. Yes. So, well, Midstate would make money because we  
7 purchase services from Midstate. And we appreciate it.  
8 Not saying anything bad about that.

9 SDN makes a great deal of money. Now I would  
10 venture a guess that it's probably a good deal more than  
11 what Free Conference Call makes. So -- because they're  
12 handling tandem operations and so forth. So to the  
13 extent they're charging their rates and getting paid on  
14 the same traffic, they're making a great deal of money on  
15 it.

16 Q. Are they an access stimulator too?

17 A. Well, companies have argued that. I think Sprint's  
18 argued that before.

19 Q. Now there's been some discussion about the CAF  
20 Order. And I think Mr. Schenkenberg asked you about the  
21 CAF Order and the litigation. Does the CAF Order provide  
22 anything about self-help?

23 And does it provide anything about whether carriers  
24 like Sprint and interexchange carriers are allowed to  
25 withhold payments?

1 A. Well, yes, it does. And it says that essentially  
2 they're against self-help, and they admonish those  
3 companies that would use self-help and not follow the  
4 FCC's rules.

5 Q. What's happening -- I just want to get a sense of  
6 what's happening right now.

7 A. And I believe that might be paragraph 700. I could  
8 be wrong about that.

9 Q. So right now Sprint has customers that it has  
10 unlimited plans with for its services; right?

11 MR. SCHENKENBERG: Objection. Foundation.

12 Q. Do you know, is Sprint currently connecting calls to  
13 NAT?

14 A. Yes.

15 Q. So it's connecting calls. And it's connecting those  
16 calls without paying.

17 A. That's correct.

18 Q. And it's announced to you it has no intention to pay  
19 for them until a judge makes them pay for them?

20 A. That's correct.

21 Q. And it's still connecting the calls anyway?

22 A. That's right. Yes. That's correct.

23 Q. And how long has it been doing that?

24 A. Since 2009.

25 Q. And how much money does it owe you?

1 A. Over \$2 million.

2 Q. It's Sprint 34, which was this document. It's the  
3 document that has the usage period and the number of  
4 ports?

5 A. Yes.

6 Q. You said you could explain generally what was going  
7 on. Is there an issue that kind of arose about  
8 uncertainty because of the meeting situation with the  
9 Tribe? About the PRI account and how you would pay --  
10 how you would calculate applicable revenue?

11 A. Well, yes. To the extent that -- so if the Tribe is  
12 subsidizing the cost for their members, okay -- there was  
13 an issue about can't an argument be made that those fees  
14 are really being paid -- sort of like any relationship  
15 what we were talking about with end user fees, I mean,  
16 this was my thought process with it that --

17 So if the value of that service is \$35 per customer  
18 and those fees aren't getting paid to Native American  
19 Telecom, well, then, Native American Telecom isn't paying  
20 USF their percentage that they would want to get from  
21 those end user fees.

22 So in a sense a netting relationship like that  
23 wouldn't be absolutely fair to USAC. This was kind of my  
24 thought process the whole time the Farmers Decision was  
25 going down and so many people thought it was so unfair.

1 And I was trying to see both sides of it.

2 And I'm thinking, well, if they're not collecting  
3 the end user fees, I could see how that could be  
4 detrimental to the system that's in place.

5 So it's that same thought process that we were using  
6 regarding customers that were being subsidized. Because,  
7 in essence, what's going on, it's not just NAT that's  
8 choosing not to collect fees from people. This is a  
9 tribally owned company, and they don't want to charge  
10 their members or their people for the services.

11 So in a sense the fees are being paid, but they're  
12 just not being accounted for. They're kind of being  
13 netted.

14 Now we had a real question about that. And so we  
15 reached out to USAC. And we had already paid because we  
16 wanted to be compliant. And we reached out to USAC about  
17 that. And they said, no, we don't want you to pay those.  
18 And that's when it went back, and they said you're a  
19 de minimis filer so you don't owe anything for 2010.

20 And, you know, there was a question then, well,  
21 Free Conferencing made a contribution based on this. Are  
22 we required to refund that money to Free Conferencing,  
23 which would have been close to \$10,000, let's say? And  
24 after talking about it we decided not to refund the money  
25 to Free Conferencing.



1           But these are the sorts of questions that arise, you  
2 know, when you're dealing with this sort of unique  
3 circumstances that we have in this particular phone  
4 company.

5           But what -- if I get nothing else across, I'd really  
6 like to stress the point that we have tried from the  
7 beginning to comply at every step of this organization.  
8 It doesn't make sense not to. Everything's above board.  
9 There's nothing that's done below board or that isn't  
10 available for your inspection or for anything that you  
11 want to see.

12           And we're happy to comply with -- excuse me. I'm  
13 losing my voice a little. We're happy to comply with  
14 sharing everything with you guys, the books, the whatever  
15 it is you want to see. We're here to show you.

16           And in the end I guess it will either make sense or  
17 not. But we're hoping that we get the message across,  
18 that --

19 Q.   So it's getting late so I just want to go through  
20 some of these things quickly. You mentioned the Revised  
21 Service Agreement, and you mentioned something I just  
22 wanted to get clarified.

23           You said there was a change in the original Service  
24 Agreement so that now there's not an exclusive  
25 arrangement with Free Conferencing. Could you explain

1 that?

2 A. Yes. Well, I'm kind of getting in the weeds here,  
3 but I'll explain a little bit from the side of Free  
4 Conferencing. We're putting the whole agreement  
5 together, you know, Free Conferencing is doing business  
6 at various locations. And Free Conferencing from a  
7 customer standpoint is huge and growing at breakneck  
8 speed, signing up upwards of 120,000 new users every  
9 single month.

10 And when we go and put a bridge at a location and  
11 start handing out numbers and using services, that local  
12 exchange carrier has to order trunks and stuff to  
13 accommodate us. But if we're growing really fast and if  
14 those trunks are being shared and that capacity is being  
15 shared, we find that we end up having quality issues.  
16 That is Free Conferencing.

17 So people will call up and get either dead air or  
18 busy signals because these calls aren't getting through  
19 because there's a choke point at the trunks.

20 And we wouldn't know about it. We wouldn't know how  
21 to plan for that. And this actually came out of  
22 something that was going on at Sancom years and years ago  
23 where supposedly at that time there was -- thank you very  
24 much --

25 So at that time there was an issue where we thought

1 we had all this capacity and we're sending traffic over  
2 to them and calls are falling on the floor and customers  
3 are calling us. And we're losing customers. It's  
4 detrimental to our reputation, our service. We really  
5 pride ourselves on having the highest quality service  
6 available. And it was really detrimental.

7 And come to find out what was going on they had  
8 other companies there that were sharing these trunks and  
9 they weren't dedicated for us and we didn't know that and  
10 they said that they were.

11 So after that when we went places and we tried to  
12 say, look, if we're going to come to you and send you a  
13 great deal of conferencing traffic, we want to be your  
14 only conferencing customer, or there were other ways of  
15 doing it later, which is making sure that we contracted  
16 for like dedicated trunks and stuff like that.

17 And we thought that was okay. We didn't see  
18 anything wrong with it at the time. But then during  
19 that -- in Iowa during the whole, you know, Farmers  
20 discussion and stuff it was -- one of the arguments that  
21 was made was that, well, you can't have services like  
22 that. You have to provide, you know, ubiquitous service  
23 for everybody that asks for it. And you can't say that  
24 one customer can do one thing and another customer can't  
25 necessarily. At least not through tariffed services and

1 stuff.

2 And so we recognized that that was a downfall for us  
3 or a weak spot in our business model. And so we stopped  
4 including that. So that's one of the reasons why it was  
5 taken out of the contract.

6 But that gives you the whole history and the thought  
7 process behind it.

8 MR. WALD: That's all I have.

9 MS. AILTS WIEST: Any further cross,  
10 Mr. Schenkenberg?

11 MR. SCHENKENBERG: Very briefly.

12 RE-CROSS-EXAMINATION

13 BY MR. SCHENKENBERG:

14 Q. You were asked a question on self-help relating to  
15 the CAF Order?

16 A. Yes.

17 Q. And you referenced paragraph 700. Isn't it true  
18 that what the FCC said in that paragraph was that it does  
19 not support or endorse withholding of funds outside of  
20 tariff dispute processes?

21 A. So I was paraphrasing and now you're paraphrasing  
22 and we can read it into the record. It does mention  
23 tariffs in there. But I'm not so -- I'm not certain that  
24 your --

25 Q. We can all read it.

1 A. Right.

2 Q. But it is true, is it not, that Sprint has  
3 disputed -- has followed the dispute provisions in the  
4 tariff and disputed the bills and has exercised its right  
5 to do so pending a decision by a court or a regulatory  
6 body that it has to pay?

7 A. And ultimately we might have to go there if we can't  
8 come to terms with Sprint on it. I'll just say that  
9 Sprint objected to it, and the FCC looked at Sprint's  
10 objections and approved it anyway. And we are using TMI  
11 as a guide for not only drafting the tariff but for  
12 following the tariff. And they have told us that we're  
13 following it to the letter of the law.

14 And so we truly believe that we are. We think  
15 that Sprint's disingenuous. Okay? That's our point of  
16 view.

17 Q. When you say the FCC looked at it, you're talking  
18 about the FCC reviewed the tariff. The FCC did not issue  
19 an order disallowing the tariff after it was filed?

20 A. That's true, yes.

21 Q. The FCC hasn't ever decided that access charges are  
22 due under the federal tariff on calls for Free  
23 Conferencing; right?

24 A. They haven't made that opinion. They haven't issued  
25 an opinion on that, I would say.

1 Q. And no court and no regulatory agency has ever  
2 issued an opinion saying that interexchange carrier has  
3 to pay access charges on calls delivered through to  
4 Free Conferencing; isn't that true?

5 A. Say that again. Because I don't think it is true.

6 Q. Has any court -- any court ever issued an order  
7 saying an interexchange carrier is obligated to pay  
8 access charges on calls that are delivered through to  
9 Free Conferencing?

10 A. So the court in Farmers, for example, said that  
11 these service fees are compensable. They just said that  
12 it wasn't compensable in accordance with the rules of the  
13 tariff. So I don't know if you're splitting hairs on  
14 that.

15 I know that Free Conferencing gets paid by a lot of  
16 companies, and if they didn't have to pay, I don't  
17 understand why they would.

18 Q. The closest thing you have to a legal victory is  
19 Farmers? Is that what you're telling us?

20 A. So Free Conferencing doesn't go out and sue for  
21 fees. I don't know if you just misunderstand the way the  
22 process works. But it's the local exchange carrier that  
23 comes to Free Conferencing and says, you know, we have  
24 numbers and stuff. We want to do business with you. And  
25 Free Conferencing will make an evaluation as to whether

1 or not to do that.

2 Free Conferencing is not subject to any tariffs or  
3 anything like that. It's the LEC that needs to follow  
4 their tariff. And if the LEC has a payment problem, then  
5 oftentimes Free Conferencing doesn't get paid. But  
6 Free Conferencing doesn't go around the LEC to try and  
7 sue Sprint, for example, for payment.

8 MR. SCHENKENBERG: Nothing further.

9 MS. AILTS WIEST: Anything further?

10 CROSS-EXAMINATION

11 BY MR. COIT:

12 Q. Mr. Holoubek, good evening. I just have one  
13 question in regards to your comments relating to SDN.

14 Do you know, does NAT lease transport facilities all  
15 the way to the SDN tandem from SDN?

16 A. I'm sorry. Say that again.

17 Q. Do they lease transport facilities from Midstate,  
18 SDN combined to get to Sioux Falls?

19 A. Yes. I believe they do.

20 Q. All right. And is it your understanding then that  
21 NAT actually charges per minute charges relative to that  
22 facility as an access charge, so to speak?

23 In other words, SDN doesn't actually assess for  
24 that transport facility to interexchange carriers. NAT  
25 does.

1 A. Well, I believe that SDN -- you know, where I'm  
2 getting hung up here is I'm not absolutely certain with  
3 the local services that Midstate is providing if in that  
4 instance if SDN is collecting revenues.

5 But from what I understand, SDN is the tandem that  
6 acts in the middle and gets paid for that service.

7 Q. So they get paid for the tandem switch?

8 A. That's correct.

9 Q. Correct. Thank you.

10 MS. AILTS WIEST: Any other questions? Thank  
11 you.

12 Before we leave for the evening, what time do  
13 the Commissioners want to start tomorrow morning?

14 CHAIRMAN HANSON: Do the parties need some time  
15 to organize prior to tomorrow morning? Does 8:30 work  
16 for people?

17 MR. SWIER: 8:30 is fine with us.

18 MR. SCHENKENBERG: 8:30 works for our team.

19 MS. AILTS WIEST: Okay. We'll start at 8:30.

20 (The hearing is in recess at 6:42 p.m.)  
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STATE OF SOUTH DAKOTA)  
  
COUNTY OF SULLY )

:SS CERTIFICATE

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 24th day of February, 2014, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 17th day of March, 2014.

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