

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

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

Sprint Communications Company L.P.

Supplemental Direct Testimony of Randy G. Farrar

Filed December 4, 2013

PUBLIC VERSION

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1 **SUPPLEMENTAL DIRECT TESTIMONY**

2

3 **I. Introduction**

4

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

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

10

11 **Q. Did you previously file testimony in this proceeding?**

12 A. Yes. I filed Direct Testimony on August 30, 2013.

13

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

15 A. Since I filed testimony on August 30, Native American Telecom (NAT-CC)
16 has provided additional information in discovery. In addition, Sprint's
17 attorney conducted depositions of Mr. Erickson and Mr. Holoubek on
18 November 25, 2013. In this Supplemental Direct Testimony, I am providing,
19 and commenting on, some of this additional information.

20

1 **II. NAT-CC Application**

2

3 **Q. Shortly before you filed testimony, NAT-CC filed a notice that NAT-CC**
4 **had merged into another entity, Crow Creek Telecom, LLC (“CCT”).**
5 **Do you believe it is clear who the applicant is in this proceeding?**

6 A. No. This action has further confused an already confusing situation. As
7 discussed in my Direct Testimony, there have been three applications made
8 in this proceeding, and it is still not clear who is asking for what. NAT-CC is
9 the applicant of record, and the entity named in the 2013 Amended
10 Application. Yet, NAT-CC has failed to file any testimony explaining this or
11 indicating whether the Certificate should be awarded to NAT-CC or some
12 other entity.

13

14 As I understand it, Commission Rule 20:10:32:03(5) requires an applicant to
15 provide “A copy of its certificate of authority to transact business in South
16 Dakota from the secretary of state.” Exhibit RGF-18 is a printout from the
17 Secretary of State that shows Native American Telecom, LLC to be inactive.
18 Exhibit RGF-19 is a document filed with the Secretary of State indicating
19 that the surviving entity has not registered to do business in South Dakota.
20 And Exhibit RGF-20 is a search result showing that the entity “Crow Creek
21 Telecom” is not on record with that agency.

22

1 In my opinion, a Certificate should not be awarded when the identity of the
2 applicant is unclear, and when it has not met the requirement to be
3 authorized to do business in the State.

4

5 **Q. In your Direct Testimony you discussed the fact that NAT-CC had not**
6 **clearly identified what it is seeking authority to do in this case. Is that**
7 **now clear to you?**

8 A. No. Even Mr. Holoubek, NAT-CC's acting president, does not seem to
9 know the purpose of the application. In the deposition, he stated:

10

[BEGIN CONFIDENTIAL]

11

Q.

12

A.

13

14

Q.

15

16

A.

17

[END CONFIDENTIAL]

18

I recommend that the Commission decline to award a Certificate to an
19 applicant that does not know the scope of its own request.

20

21 **Q. On page 7, line 10 of your Direct Testimony, you mentioned that Sprint**
22 **had not received a copy of the revised *Joint Venture Agreement***
23 **between the Crow Creek Sioux Tribe, Native American Telecom**
24 **Enterprise, LLC, and WideVoice Communications, Inc. Does such**
25 **document actually exist?**

¹ Exhibit RGF-21, Holoubek Dep. at 51.

1 A. No. Despite NAT-CC's references to such a document, Mr. Holoubek
2 stated in his deposition that such a document does not actually exist.²

3

4 **III. Traffic Pumping is Not in the Public Interest**

5

6 **Q. In your Direct Testimony, you concluded that NAT-CC is operating as a**
7 **traffic pumper to benefit Mr. Erickson and companies with which he is**
8 **associated. Have you seen additional information that supports that**
9 **conclusion?**

10 A. Yes. **[BEGIN CONFIDENTIAL]** [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. [REDACTED]

18 [REDACTED]

19 A. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q. [REDACTED]

26 A. [REDACTED]

27 [REDACTED]

² Exhibit RGF-21, Holoubek Dep. at 155.

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[END CONFIDENTIAL]

20

21 It is clear that NAT-CC has been more focused on running a traffic pumping
22 business than on running a competitive telecommunications business,
23 which is contrary to the public interest.

24

25 **Q. Has NAT-CC’s preoccupation with meeting the *Farmers* test led it to**
26 **take actions that raise questions about the credibility and honesty of**
27 **its managers?**

28 A. Yes. My previously filed Exhibit RGF-14 contains copies of bills provided to
29 Sprint in discovery. They appear to be bills sent by NAT-CC to Free
30 Conferencing Corporation – something the FCC found to be important in the
31 *Farmers* case. **[BEGIN CONFIDENTIAL]**

³ Exhibit RGF-21, Holoubek Dep. at 122-123.

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[REDACTED]

Q. [REDACTED]
A. [REDACTED]
Q. [REDACTED]
A. [REDACTED]

[END CONFIDENTIAL]

My recommendation continues to be that the Commission not give a Certificate to a traffic pumper.

IV. Financial Analysis of NAT-CC

Q. Has NAT-CC provided any additional information in supplemental data responses that has allowed you to update the financial analysis you performed in your Direct Testimony?

⁴ [BEGIN CONFIDENTIAL] See Exhibit RGF-22, Holoubek Dep. at 128:

Q. [REDACTED]
A. [REDACTED] [END
CONFIDENTIAL]

⁵ Exhibit RGF-21, Holoubek Dep. at 138-39.

1 A. Yes. In response to Sprint's Interrogatory No. 56, NAT-CC indicated that its
2 actual total number of minutes of use was **[Begin Confidential]**
3 **[Redacted]** **[End Confidential]** minutes for the first ten (10) months of
4 2013.⁶ This is an annualized rate of **[Begin Confidential]** **[Redacted]**
5 (**[Redacted]** / 10 * 12) **[End Confidential]** minutes.

6

7 **Q. How does this compare with the estimate you used in your Direct**
8 **Testimony?**

9 A. This is 18% less than my estimate of **[Begin Confidential]** **[Redacted]**
10 **[End Confidential]** minutes used in Tables 4 and 5 of my Direct Testimony.
11 Table 4 estimated NAT-CC's 2013 income statement assuming all carriers
12 actually paid the tariffed rate of \$0.006327.

13

14 The result of fewer minutes is fewer revenues and less net income than I
15 had originally forecast. Below are Tables 4 and 5 revised for this new
16 information.

17

18 **Q. If all IXCs were currently paying NAT-CC's tariffed rate of \$0.006327,**
19 **would NAT-CC be making a profit?**

20 A. No, even if all IXCs were currently paying NAT-CC's tariffed rate of
21 \$0.006327, it would not be making a profit. Table 4 (Revised) restates
22 NAT-CC's 2013 Income Statement assuming all IXCs pay the tariffed rate of

⁶ Exhibit RGF-23.

1 \$0.006327 for all terminating minutes. As can be seen, even if all IXCs
 2 were currently paying NAT-CC's current tariffed rate, it would have Net
 3 Income of **[Begin Confidential]** [REDACTED] **[End Confidential]**.

4
 5 Simply put, NAT-CC's business model is already failing.

7 **Table 4 (Revised)**
 8 **NAT-CC 2013 Income Statement**
 9 **Restated for July 2013 Tariffed Rate of \$0.006327**

10 **[Begin Confidential]**

| A | B | C | D | E | F |
|-----|----------------------|-----------------------|------------|-------------------------------|----------------------|
| Row | Description | 2013 Income Statement | | Restated At \$0.006327 (1) | Assumptions |
| | | Actual | | | |
| | | Q1 + Q2 | Annualized | | |
| 1 | Minutes | [REDACTED] | | | |
| 2 | Sprint | [REDACTED] | | | |
| 3 | Total Industry | [REDACTED] | | | Interrogatory No. 56 |
| 4 | Rate | [REDACTED] | | | Tariff |
| 5 | | [REDACTED] | | | |
| 6 | Revenues | [REDACTED] | | | |
| 7 | Terminating Access | [REDACTED] | | | Cell E3 * E4 |
| 8 | End User Fees | [REDACTED] | | | 2013 Actual |
| 9 | Total | [REDACTED] | | | Row 7 + Row 8 |
| 10 | | [REDACTED] | | | |
| 11 | Expenses | [REDACTED] | | | |
| 12 | Marketing Fees | [REDACTED] | | | Cell D8 * 75% |
| 13 | Other Operating Exp. | [REDACTED] | | | 2013 Actual |
| 14 | Total Expenses | [REDACTED] | | | Row 12 + Row 13 |
| 15 | | [REDACTED] | | | |
| 16 | Net Income | [REDACTED] | | | Row 9 - Row 14 |

12 (1) Assumes all carriers pay tariffed rate on all terminating minutes.

13 **[End Confidential]**

14
 15 Table 4 (Revised) makes the following assumptions:

- 16 • Based on NAT-CC's supplemental response to Interrogatory No.
- 17 56, I estimated NAT-CC's total annual minutes to be **[Begin**
- 18 **Confidential]** [REDACTED] **[End Confidential]**,

- All IXCs pay the \$0.006327 rate on every terminating minute,
- NAT-CC pays a 75% “Marketing Fee” to Free Conferencing Corporation, per terms of the *2012 Service Agreement*, and
- All other Revenues and Operating Expenses remain unchanged.

Q. What effect will a rate of \$0.0007 have on NAT-CC’s financials?

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

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

[Begin Confidential]

| Row | Description | 2013 Income Statement | | | Assumptions |
|-----|----------------------|-----------------------|------------|-----------------------------|----------------------|
| | | Actual | | Restated At \$0.0007 (1) | |
| | | Q1 + Q2 | Annualized | | |
| 1 | Minutes | | | | |
| 2 | Sprint | | | | |
| 3 | Total Industry | | | | Interrogatory No. 56 |
| 4 | Rate | | | | July 2016 rate |
| 5 | | | | | |
| 6 | Revenues | | | | |
| 7 | Terminating Access | | | | Cell E3 * E4 |
| 8 | End User Fees | | | | 2013 Actual |
| 9 | Total | | | | Row 7 + Row 8 |
| 10 | | | | | |
| 11 | Expenses | | | | |
| 12 | Marketing Fees | | | | Cell D8 * 75% |
| 13 | Other Operating Exp. | | | | 2013 Actual |
| 14 | Total Expenses | | | | Row 12 + Row 13 |
| 15 | | | | | |
| 16 | Net Income | | | | Row 9 - Row 14 |

(1) Assumes all carriers pay tariffed rate on all terminating minutes.

[End Confidential]

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

4
5 Again, beginning July 1, 2017, all traffic will be exchanged on a Bill-and-
6 Keep basis, without monetary compensation, assuring the failure of
7 NAT-CC's business model.

8

9 **V. Summary and Conclusion**

10

11 **Q. Please summarize your Supplemental Direct Testimony.**

12 A. My conclusions are unchanged from my Direct Testimony. NAT-CC's sole
13 purpose for existence is to be a "traffic pumper." NAT-CC's business model
14 is already failing, and will continue to worsen with a further rate reduction to
15 \$0.0007 in 2016, and the adoption of a Bill-and-Keep arrangement without
16 monetary compensation in 2017.

17

18 However, from 2010 through 2Q 2013, Free Conferencing Corporation has
19 siphoned off a total of **[Begin Confidential]** [REDACTED] **[End**
20 **Confidential]** of "Marketing Fees" from NAT-CC. This cannot be good
21 public policy for South Dakota.

22

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

1 A. Yes. It is important to stress the one-sided relationship between NAT-CC
2 and Free Conference Corporation. Virtually 100% of NAT-CC's revenues
3 derive from its business relationship with Free Conferencing Corporation.
4 This exposes NAT-CC to an extreme amount of business risk – any
5 corporation which receives virtually 100% of its revenue from one source
6 exhibits an extreme degree of business risk. NAT-CC is absolutely
7 financially dependent on Free Conferencing Corporation for its very
8 existence.

9
10 However, Free Conferencing Corporation is not dependent upon NAT-CC in
11 any manner. Free Conferencing Corporation is willing and able to take its
12 conferencing business to another LEC whenever it can get a better “deal” –
13 whenever it so chooses – leaving NAT-CC with virtually no other source of
14 revenue. This is exactly what happened to Aventure Communications, the
15 former traffic pumping LEC I referred to in my Direct Testimony.

16

17 **Q. Did Dave Erickson, owner of Free Conferencing Corporation and**
18 **WideVoice, confirm this extreme business risk to NAT-CC?**

19 A. Yes. In his deposition, Mr. Erickson stated:

20

[BEGIN CONFIDENTIAL]

21

Q.

22

A.

23

Q.

24

25

26

A.

27

Q.

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A. [REDACTED]
Q. [REDACTED]
A. [REDACTED]
[END CONFIDENTIAL]

6 **Q. Does this conclude your Supplemental Direct Testimony?**

7 A. Yes, it does.

8

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⁷ Exhibit RGF-22, Erickson Dep. at 110-111.