

**PUBLIC VERSION**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**In the Matter of**

**SPRINT COMMUNICATIONS COMPANY L.P.  
FRN: 0004-3728-27**

**Complainant,**

**File No. EB-14-MD-014**

**v.**

**NORTH COUNTY COMMUNICATIONS  
CORPORATION,**

**Defendant.**

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**JOINT STATEMENT OF SPRINT COMMUNICATIONS COMPANY L.P. AND  
NORTH COUNTY COMMUNICATIONS CORP.**

**SETTLEMENT PROSPECTS**

Counsel for Sprint and NCC have again discussed settlement and agree that no settlement is possible at this time.

**DISCOVERY**

NCC propounded interrogatories to Sprint concurrent with NCC's answer. Sprint objected to all of NCC's interrogatories. The parties agree that the Enforcement Bureau will have to decide whether Sprint will be obligated to respond under 47 C.F.R. § 1.729(d).

Sprint did not propound any interrogatories to NCC.

**SCHEDULE FOR ADDITIONAL PLEADINGS**

Sprint's position is that no additional pleadings or briefing is required and that the Commission has a full record to decide the facts and legal issues in dispute.

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NCC believes that additional facts like those addressed in NCC's interrogatories must be developed for the Commission to address properly whether NCC's actions and rates are just and reasonable. In addition, the disputed facts set forth in this Joint Statement should be developed prior to the Commission's addressing the referral questions from the District Court.

Furthermore, NCC believes that the expert testimony on which Sprint relies must be properly introduced by Sprint and must be subject to cross-examination and/or deposition. Moreover, NCC may seek to introduce rebuttal expert testimony (e.g., Harold Furchgott-Roth's July 26, 2012 Rebuttal Report).

### **DISTRICT COURT LITIGATION STATUS**

The parties are currently working on various pretrial submissions, and the final pretrial conference is scheduled for February 20, 2015.

### **LEGAL ISSUES IN DISPUTE**

The parties agree that the principal legal issues in dispute are the referral questions from the District Court. The parties stipulated earlier to remove two referral issues. The remaining referral issues are:

2. Whether, taking into account all the facts of this case, and in the absence of any applicable tariff rate or expressly agreed contract rate, NCC is entitled to receive any payment from Sprint for terminating interstate interexchange calls to a chat line operator owned and controlled by the same individual who owns and controls NCC.
3. If so, to what rate NCC is entitled.
4. Was NCC required to have a valid interstate access tariff to charge Sprint interstate access rates at or below the benchmark rate?

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6. Did NCC's alleged traffic pumping operations and billing practices violate 47 U.S.C. § 201(b)?
7. Between February 2006 and December 31, 2011, did NCC violate 47 U.S.C. § 203, and, if so, what damages did Sprint suffer as a result (taking into consideration NCC's defenses)?
8. Between February 2006 and December 31, 2011, did NCC's billings to Sprint violate 47 U.S.C. § 201(b), and, if so, what damages did Sprint suffer as a result (taking into consideration NCC's defenses)?
9. Between February 2006 and December 31, 2011, did NCC's alleged traffic pumping operations and billing practices constitute unjust and unreasonable practices in violation of 47 U.S.C. § 201(b), and, if so, what damages did Sprint suffer as a result (taking into consideration NCC's defenses)?

In addition, if not addressed on the referral issues, the Commission must determine whether Sprint has proven liability on its Counts I, II, and III. Damages are deferred to a subsequent phase.

Furthermore, NCC believes that the Commission must address NCC's affirmative defenses, including NCC's affirmative defense that Sprint's Complaint and request for damages back to 2006 is at least in part barred by the applicable statute of limitations.

With respect to the referral questions, it is NCC's position that the District Court's order that partially lifted the stay in the underlying proceeding and bifurcated the parties' contract-related claims, counterclaims and defenses revised the referral questions insofar as the Commission is only addressing periods of time following termination of the parties' contract, which termination was effective May 7, 2010. Contract-related claims, counterclaims and

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defenses are being addressed by the District Court in a bench trial to occur following the parties' final pretrial conference, which is currently scheduled for February 20, 2015.

**STATEMENT OF UNDISPUTED FACTS**

The following statement of undisputed facts contains factual assertions made by Sprint in its Complaint, and not disputed by NCC in NCC's answer.<sup>1</sup>

**PARTIES**

1. Sprint Communications Company L.P. is a Delaware limited partnership with its principal place of business in Overland Park, Kansas. Sprint provides interexchange telecommunications services to its customers around the country. (Compl. ¶ 23)

2. NCC is a California corporation that has its principal place of business in San Diego, California. NCC claims to be a competitive local exchange carrier ("CLEC"). NCC is solely owned by Todd Lesser. Mr. Lesser is also the only director and **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** NCC.<sup>2</sup> (Compl. ¶ 24)

**RELEVANT NON-PARTIES**

3. MCI Communications Services Inc. d/b/a Verizon ("Verizon") is a Delaware corporation with its principal place of business in Basking Ridge, New Jersey. Verizon is an IXC that, like Sprint, has delivered calls to NCC for termination to NCC. Verizon has a case pending

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<sup>1</sup> NCC disputes the materiality of many of the allegations in Sprint's Complaint. By agreeing that certain facts are undisputed, NCC is not agreeing that the facts are material or relevant with respect to the issues to be addressed by the Commission. Sprint likewise does not concede that certain of NCC's material fact assertions are in fact material even though Sprint does not dispute the truth of those factual assertions.

<sup>2</sup> Lesser Dep. June 11, 2012 at 48:20-22 (Ex. 15).

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in the District Court that has been designated a related case to the Sprint case. Verizon also has a primary jurisdiction referral from the District Court.<sup>3</sup> Verizon has indicated to Sprint that it intends to file an Informal Complaint based on Sprint's Formal Complaint. (Compl ¶ 25)

4. HFT, Inc., is a California corporation with its principal place of business in San Diego, California. HFT's sole owner and director is Todd Lesser. HFT provides chat line services. (Compl. ¶ 26)

5. North County Communications Corporation of Arizona, North County Communications Corporation of California, North County Communications Corporation of Illinois, and North County Communications Corporation of Oregon are all California corporations owned by Mr. Lesser that claim to offer telephone service in their respective states. (Compl. ¶ 27)

**A. NCC AND HFT.**

6. NCC claims to be a CLEC. NCC is incorporated in California, and has its principal place of business in San Diego, California.<sup>4</sup> (Compl. ¶ 36)

7. NCC is solely owned by Todd Lesser.<sup>5</sup> (Compl. ¶ 37)

8. Mr. Lesser is the only director<sup>6</sup> and **[BEGIN CONFIDENTIAL]**   
**[END CONFIDENTIAL]** of NCC.<sup>7</sup> (Compl. ¶ 38)

9. NCC and/or the NCC State Companies operate in Arizona, California, Illinois, and Oregon. (Compl. ¶ 39)

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<sup>3</sup>Order Staying Case and Referring Questions to the Federal Communications Commission (May 8, 2013) (Verizon Docket No. 244) (Ex. 43).

<sup>4</sup>NCC's Second Amended Complaint ¶ 4 (July 22, 2011) (Docket No. 56) (Ex. 32).

<sup>5</sup>Lesser Dep. June 11, 2012, at 13:10-16 (Ex. 15).

<sup>6</sup>Lesser Dep. Oct. 5, 2010, at 45:22-24 (Ex. 12).

<sup>7</sup>Lesser Dep. June 11, 2012, at 48:20-22 (Ex. 15).

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10. HFT is a California corporation with its principal place of business in San Diego, California.<sup>8</sup> (Compl. ¶ 40)

11. Before NCC existed, HFT obtained its local exchange services from AT&T, Verizon, USWest, and Hawaiian Tel.<sup>9</sup> (Answer ¶ 8)

12. HFT's sole owner and director is Todd Lesser.<sup>10</sup> (Compl. ¶ 41)

13. All revenues of NCC and HFT are for the benefit of Mr. Lesser.<sup>11</sup> (Compl. ¶ 42)

14. **[BEGIN CONFIDENTIAL]** [REDACTED]

15. [REDACTED]

16. [REDACTED]

**[END CONFIDENTIAL]**

17. NCC's traffic from Sprint is "100 percent chat line traffic."<sup>15</sup> (Compl. ¶ 47)

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<sup>8</sup>Lesser Dep. March 23, 2011, at 220:22-24 (Ex. 13).

<sup>9</sup> See 30(b)(6) Deposition of HFT, Inc., December 5, 2012, at 28-30 (Ex. 18).

<sup>10</sup>*Id.* at 7:17-8:13 (Ex. 18).

<sup>11</sup>NCC made this statement in a case pending in California state court: "Vaya wants to prove revenue sharing between Mr. Lesser, NCC, and the free calling service company, HFT. The very fact that Mr. Lesser is the sole shareholder of NCC and HFT means that all revenues are for the benefit of Mr. Lesser." NCC Vaya Motion at 5 (Ex. 44).

<sup>12</sup>Supp. Response to Doc. Request 19 (Ex. 75).

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>Lesser Dep. June 11, 2012, at 77:20 (Ex. 15).

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18. Mr. Lesser testified that NCC has [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] customers on an “informal” basis [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>16</sup> (Compl. ¶ 48, *but see* Answer ¶ 81)

19. HFT [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>17</sup> (Compl. ¶ 49)

20. NCC and HFT operate [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>18</sup> (Compl. ¶ 50)

21. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>19</sup> (Compl. ¶ 51)

22. Mr. Lesser stated in a deposition that NCC has advertising brochures, but admitted that they were never distributed. When asked to provide a copy of one, he was unable to do so.<sup>20</sup> (Compl. ¶ 54)

23. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>21</sup> (Compl. ¶ 56)

24. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>22</sup> (Compl. ¶ 57)

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<sup>16</sup>Lesser Dep. March 24, 2011, at 541:6-17 (Ex. 14).

<sup>17</sup>*Id.* at 548:20-549:1.

<sup>18</sup>*Id.* at 558:7-10.

<sup>19</sup>*Id.* at 612:24-25.

<sup>20</sup>Response to Doc. Request 68 (Ex. 76)); Lesser Dep. Dec. 5, 2012 at 362 (Ex. 17). Sprint’s Complaint cited to the wrong deposition page. The correct citation is 362, not 392.

<sup>21</sup>Lesser Dep. March 24, 2011, at 459:4-16; 484:8-18 (Ex. 14).

<sup>22</sup>Lesser Dep. March 23, 2011, at 225:9-16 (Ex. 13).

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25. In a lawsuit against Vaya Telecom pending in state court in California, NCC was sanctioned \$92,966.45 for discovery violations, including violations of court orders to produce financial records involving transactions between NCC and HFT.<sup>23</sup> (Compl. ¶ 62) The sanctions order has been appealed to the California Court of Appeal, Fourth Appellate District, Division One, Case No. D066629. (Answer ¶ 92)

26. NCC’s website states that NCC “provide[s] dial tone to thousands of residential and business customers throughout the U.S.”<sup>24</sup> (Compl. ¶ 63)

27. NCC’s website (and the various tabbed web pages accessible through the main page) includes many other statements about NCC’s business.<sup>25</sup> (Answer ¶ 93)

28. NCC [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL]<sup>26</sup> (Compl. ¶ 64)

29. As to business customers apart from HFT, NCC stated that it had [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in Portland, Oregon, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in Charleston, West Virginia, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in San Diego, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in Los Angeles, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in Sacramento, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in San Francisco, [BEGIN CONFIDENTIAL] [REDACTED] [END

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<sup>23</sup> *Id.* at 9.

<sup>24</sup> <http://www.nccom.com/index.html> (visited Aug. 26, 2014).

<sup>25</sup> See [www.nccom.com](http://www.nccom.com) (and the tabs available on the home page).

<sup>26</sup> Supp. Response to Interrogatory 6 (Ex. 75).

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CONFIDENTIAL] in Phoenix, and [BEGIN CONFIDENTIAL] [REDACTED] [END  
CONFIDENTIAL] in Tucson.<sup>27</sup> (Compl. ¶ 65)

**B. NCC’S INTERSTATE ACCESS TARIFFS.**<sup>28</sup>

30. From January 17, 2003, through April 24, 2010, NCC’s filed interstate tariff was its Tariff FCC No. 1. This tariff stated that it contains “the regulations and rates applicable to the provision of telecommunications services within the United States, as defined, herein, by North County Communications Corporation.”<sup>29</sup> (Compl. ¶ 66)

31. NCC’s FCC Tariff No. 1 did not list any Concurring Carriers, Connecting Carriers, or Other Participating Carriers.<sup>30</sup> (Compl. ¶ 67)

32. Section 5.1 stated in relevant part that “carrier access services are applicable to the origination or termination of interstate and international calls from or to the Company’s end user subscribers over local exchange circuits furnished by the Company.”<sup>31</sup> (Compl. ¶ 68)

33. Section 5.2.2 of NCC FCC Tariff No. 1 set forth the rates for switched access services. The listed rates were distinguished geographically: the tariff sets forth a rate for “Leaf River, IL,” and a rate for “All Other” locations.<sup>32</sup> (Compl. ¶ 69)

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<sup>27</sup>*Id.*

<sup>28</sup> NCC disputes the relevance and materiality of the Tariff FCC No. 1 on the grounds that, during the time that Tariff FCC No. 1 was in effect, Sprint’s and NCC’s relationship was governed by the 2002 contract, which was terminated as of May 7, 2010.

<sup>29</sup>North County Communications Corporation Tariff F.C.C. No. 1 (“NCC FCC Tariff No. 1”) at Original Page 6 (Ex. 1).

<sup>30</sup>NCC FCC Tariff No. 1 at Original Page 4 (Ex. 1); Lesser Dep. June 11, 2012, at 144:10-23 (Ex. 15).

<sup>31</sup>NCC FCC Tariff No. 1 at 3<sup>rd</sup> Revised Page 24 (Ex. 1).

<sup>32</sup>*Id.*

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34. In Leaf River, Illinois, section 5.2.2 established a local switching rate of \$0.06894 per minute, without reference to any date other than the issue date and effective date of the tariff.<sup>33</sup> (Compl. ¶ 70)

35. The “All Other” locations section was further segregated by date. Rates were provided for the following specific time periods: June 20, 2001 to June 20, 2002; June 20, 2002, to June 20, 2003; and June 20, 2003, to June 20, 2004. The tariff listed no rate as applicable on any date for “All Other” locations after June 20, 2004.<sup>34</sup> (Compl. ¶ 71)

36. Section 5.2 stated that NCC “only provides such Switched Access Services for which it has established rates as specified in this tariff.”<sup>35</sup> (Compl. ¶ 72)

37. On April 9, 2010, effective April 25, 2010, NCC issued a new tariff that imposes access charges on IXCs even when the end user receiving the calls is not a subscriber to NCC’s services.<sup>36</sup> (Compl. ¶ 73)

### **C. THE PARTIES’ 2002 AGREEMENT.**

38. In 2001, Sprint began disputing NCC’s bills on the grounds that NCC’s rates were unjust and unreasonable because they did not match the rates of the competing ILEC.<sup>37</sup> (Compl. ¶ 74)

39. To resolve this dispute, Sprint and NCC entered into the 2002 Agreement effective Feb. 6, 2002.<sup>38</sup> (Compl. ¶ 75)

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<sup>33</sup>*Id.*

<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

<sup>36</sup>North County Communications Tariff F.C.C. No. 2 (“NCC FCC Tariff No. 2”) at Original Sheet 9 (Ex. 2).

<sup>37</sup>Letter from Dana Amacher to Todd Lesser (Jan. 23, 2001) (SP/NCC003477) (Ex. 61). NCC notes that the exhibit shows that Sprint agreed to pay NCC the corresponding ILEC rate.

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40. The 2002 Agreement applied to geographic areas “in which North County directly or through an affiliate ... provides local exchange service ... and switched access.”<sup>39</sup> (Compl. ¶ 76)

41. “Switched Access Service” is specifically defined in the 2002 Agreement. (Answer ¶ 18)

42. Section B.3.A of the 2002 Agreement stated that Sprint “will pay for Switched Access Service...for all traffic SPRINT terminates to [NCC].” (Answer ¶ 100).

43. For interstate services, the 2002 Agreement capped the rates NCC would charge Sprint for access services at the rates charged by the competing ILEC under the *Seventh Report and Order*.<sup>40</sup> (Compl. ¶ 77)

44. As NCC told the District Court judge, “the [2002 Agreement] between the parties sets rates by incorporating tariff rates by reference. Therefore, the tariffs are clearly part of the contract between the parties, they are even plead as such being characterized as ‘service agreement between the parties [] dated January 1, 2002, and the associated NCC Tariffs [sic.]”<sup>41</sup> (Compl. ¶ 78)

45. NCC also described the 2002 Agreement as “the contract to which the tariff rates are expressly incorporated.”<sup>42</sup> (Compl. ¶ 79)

46. The 2002 Agreement explicitly refers to tariffs only twice: Section B.7 states that (1) NCC would not alter the terms and conditions of the Agreement by filing any tariff or tariff

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<sup>38</sup>2002 Agreement (Ex. 62).

<sup>39</sup>*Id.* at ¶ 2.

<sup>40</sup>*Id.* at Schedule A ¶ 1; *In re Access Charge Reform*, Seventh Report & Order & Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9931 (2001).

<sup>41</sup>NCC’s Definite Statement Response Mem. at 2 (Docket No. 14) (Ex. 29).

<sup>42</sup>*Id.*

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revisions altering the “terms and conditions, or pricing” of the Agreement and (2) “[i]n the event of a conflict between the terms of this Agreement and the terms of [NCC]’s tariff, this Agreement shall control.” (Answer ¶ 101)

47. Sprint terminated the 2002 Agreement on Jan. 7, 2010, effective May 7, 2010.”<sup>43</sup>  
(Compl. ¶ 80)

**D. NCC’S AND HFT’S OPERATIONS.**

48. In the four states at issue in this dispute, NCC’s State Companies have switches in eight locations: Phoenix and Tucson, Arizona; Los Angeles, Sacramento, San Diego, and San Francisco, California; DeKalb, Illinois; and Portland, Oregon.<sup>44</sup> (Compl. ¶ 81)

49. In each location, HFT’s chat-line equipment is [BEGIN CONFIDENTIAL]  
[REDACTED]  
[END CONFIDENTIAL]<sup>45</sup> (Compl. ¶ 82)

50. In Illinois and Phoenix, HFT [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED] [END CONFIDENTIAL]<sup>46</sup> (Compl. ¶ 83)

51. In San Diego, [BEGIN CONFIDENTIAL] [REDACTED]  
[REDACTED] [END CONFIDENTIAL]<sup>47</sup> (Compl. ¶  
84)

<sup>43</sup>Letter from Regina Roach to Todd Lesser (Jan. 7, 2010) (Ex. 63).

<sup>44</sup>Lesser Dep. June 12, 2012, at 222:8-9 (Arizona); 208:13-15 (California); 225:18-20 (Oregon); 177:2-4 (Illinois) (Ex. 16).

<sup>45</sup>Lesser Dep. June 12, 2012, at 187:18-22 (DeKalb); 212:16-18 (Los Angeles); 217:6-7 (Sacramento); 228:14-15 (Portland) (Ex. 16).

<sup>46</sup>30(b)(6) Deposition of HFT, Inc., by Todd Lesser, Dec. 5, 2012, at 101:7-24 (Ex. 18).

<sup>47</sup>*Id.* at 105:5-15.



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59. [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]<sup>55</sup> (Compl. ¶ 94)

**E. NCC'S INVOICES TO HFT.**

**1. Invoice Creation.**

60. Mr. Lesser testified in the Verizon matter that he created the invoices to HFT

[BEGIN CONFIDENTIAL] [REDACTED] [END

CONFIDENTIAL]<sup>56</sup> (Compl. ¶ 95 *but see* Answer ¶ 111)

61. Mr. Lesser testified in the Sprint matter that he created the invoices on a monthly basis in custom software that he wrote himself.<sup>57</sup> (Compl. ¶ 96; *but see* Answer ¶ 111)

62. Mr. Lesser told Verizon [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]<sup>59</sup> (Compl. ¶ 97)

63. NCC has only ever produced invoices in discovery dated July 2009 through August 2010.<sup>60</sup> (Compl. ¶ 99)

64. Mr. Lesser stopped creating invoices after August 2010.<sup>61</sup> (Compl. ¶ 100)

65. HFT had been paying NCC an unvarying rate each month for services since 2005.<sup>62</sup> (Compl. ¶ 101)

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<sup>55</sup>30(b)(6) Deposition of HFT, Inc., by Todd Lesser, Dec. 5, 2012, at 99:20-23 (Ex. 18).

<sup>56</sup>Lesser Dep. Oct. 5, 2010, at 106:18-25 (Ex. 12).

<sup>57</sup>Lesser Dep. June 12, 2012, at 296:1-6 (Ex. 16); Lesser Dep. Dec. 5, 2012, at 336:20-23 (Ex. 17).

<sup>58</sup>Lesser Dep. March 24, 2011, at 517:16-21 (Ex. 14).

<sup>59</sup>Lesser Dep. Oct. 5, 2010, at 107:16-108:4 (Ex. 12).

<sup>60</sup>NCC Bates 000746-000829 (Ex. 65).

<sup>61</sup>Lesser Dep. June 12, 2012, at 243:14-21 (Ex. 16).

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### 2. Forensic Examination and Adverse Jury Instructions.

66. After NCC produced the invoices, Verizon obtained an order directing NCC to produce all computer drives it used to create, modify, or manipulate those invoices so that a court-appointed expert could test whether the HFT invoices were, as in *Farmers II*, backdated.<sup>63</sup> The neutral forensic expert appointed by the District Court examined the two drives Mr. Lesser produced – an Apple iBook G-4 laptop hard drive (“Mac Computer”) and a removable USB flash drive (“Thumb Drive”).<sup>64</sup> (Compl. ¶ 102; *but see* Answer ¶ 115)

67. According to the Stephens Forensic Report, the Mac Computer did not contain any files related to invoicing in either the active data or the unallocated portion of the hard drive.”<sup>65</sup> (Compl. ¶ 103)

68. According to the Stephens Forensic Report, the Thumb Drive contained no evidence of any software program used to generate invoices from these text files.<sup>66</sup> (Compl. ¶ 104)

69. Lesser erased the log of commands that had been run on the Mac Computer.<sup>67</sup> (Compl. ¶ 106)

70. Lesser admitted to deleting the bash history file on the Mac Computer.<sup>68</sup> (Compl. ¶ 107)

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<sup>62</sup>See, e.g., NCC Bates 000700-000745 (Ex. 64); Lesser Dep. Oct. 5, 2010, at 146:21-147:10 (Ex. 12).

<sup>63</sup> Order Setting Forensic Examination Protocol ¶¶ 2-4 (June 20, 2011) (Docket 163) (Ex. 41).

<sup>64</sup>Stephens Forensic Report at 3 (Ex. 24).

<sup>65</sup>*Id.* at 6.

<sup>66</sup>*Id.*

<sup>67</sup>Report and Recommendation on Defendant’s Motion for Terminating Sanctions (“Sanctions Report”) at 19-22 (Undocketed) (July 16, 2013) (Ex. 38); Wunsch Report at 3-4 (Ex. 25).

<sup>68</sup>Lesser Dep. Dec. 5, 2012, at 359:5-7 (Ex. 17).

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71. The District Court sanctioned NCC for evidence destruction and issued a jury instruction that allows the fact-finder in this dispute to presume that the evidence on Mr. Lesser's computer about the invoices from NCC to HFT would have been unfavorable to NCC.<sup>69</sup> (Compl. ¶ 108)

### F. HFT'S SERVICES FROM NCC.

72. NCC's invoices to HFT do not itemize the services provided by NCC to HFT. They merely state "Monthly Charges" and give an amount. For example, the July 4, 2009, Invoice in Illinois states "Monthly Charges" of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], "State and Local Surcharges & Taxes" of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for a total amount due of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].<sup>70</sup> (Compl. ¶ 109)

73. Mr. Lesser testified that the number of lines multiplied by the cost of each line should equal the "Monthly Charges" amount on each invoice.<sup>71</sup> (Compl. ¶ 111)

74. Mr. Lesser was unable to determine during the depositions what quantity of services NCC provided to HFT based upon his review of the invoices from NCC to HFT.<sup>72</sup> (Compl. ¶ 112)

75. In a response to written discovery, where Mr. Lesser was unable to itemize the invoices based on rates and quantities of services.<sup>73</sup> (Compl. ¶ 113)

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<sup>69</sup>Sanctions Report at 31 (Ex. 38).

<sup>70</sup>NCC Bates 000816 (Ex. 65).

<sup>71</sup>Lesser Dep. March 23, 2011, at 325:5-9 (Ex. 13).

<sup>72</sup>*See generally id.* at 310-337 (Ex. 13).

<sup>73</sup>Supp. Response to Interrogatory 4 (Ex. 77).

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### 1. Illinois.

76. NCC's Application for Certificate to Become a Telecommunications Carrier filed with the Illinois Commerce Commission in 2001 states that NCC sought certification in Illinois for a service territory excluding rural areas.<sup>74</sup> (Compl. ¶ 114)

77. In that application, Mr. Lesser submitted prefiled testimony that NCC "does not intend to offer services in the rural areas" and stated that NCC would seek additional authority to operate in rural areas only upon a successful exemption application under 47 U.S.C. § 251(f).<sup>75</sup> (Compl. ¶ 115)

78. NCC never sought such authority.<sup>76</sup> (Compl. ¶ 116)

79. NCC submitted an application in 2007 to transfer Illinois authority to its affiliate North County Communications Corporation of Illinois ("NCC-IL"). That application was later withdrawn.<sup>77</sup> (Compl. ¶ 117)

80. NCC-IL subsequently submitted its own application to become a telecommunications carrier. NCC-IL stated in this application that it intended to "to provide resold and facilities-based telecommunications services throughout the State of Illinois, excluding rural service areas."<sup>78</sup> (Compl. ¶ 118)

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<sup>74</sup> North County Communications Corporation Application for a Certificate of Local Authority, Illinois Commerce Commission Docket No. 00-0818 (Dec. 20, 2000) (Ex. 54).

<sup>75</sup> Prefiled Testimony of Todd Lesser on Behalf of North County Communications Corporation, Docket No. 00-0818, ¶ 11 (Jan. 19, 2001) (Ex. 55).

<sup>76</sup> <http://www.icc.illinois.gov/utility/profile.aspx?id=3142>;  
<http://www.icc.illinois.gov/utility/profile.aspx?id=2340> (docket sheets that do not show any request for such authority).

<sup>77</sup> Joint Application for Approval of Transfer of Certificates of Service Authority, Illinois Commerce Commission Docket No. 07-0403 (Sept. 27, 2007) (Ex. 56).

<sup>78</sup> Application for Certificate to Become a Telecommunications Carrier, North County Communications Corporation of Illinois, Illinois Commerce Commission (Dec. 14, 2007) (Ex. 57).

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81. In a hearing on NCC-IL's application, its attorney reiterated that NCC-IL "has no intention of providing service in the rural service areas; but, otherwise, the rest of the state."<sup>79</sup>

(Compl. ¶ 119)

82. What NCC produced in discovery and claims is its local exchange service tariff has an issue date of December 22, 2000.<sup>80</sup> (Compl. ¶ 120)

83. Section 1, Original page 2 of the tariff states that "this tariff sets forth the regulations and rates applicable to services provided by North County Communications Corporation." Section 1.1.1 goes on to define NCC's service territory and the scope of its offerings: "North County Communications Corporation will provide service in areas located in the State of Illinois serviced by Illinois Bell and GTE North, whose services it will resell."

(Compl. ¶ 121)

84. NCC is not reselling any Illinois Bell (AT&T) or GTE North (later Verizon, and now Frontier) services.<sup>81</sup> (Compl. ¶ 122)

85. NCC-IL filed a tariff on Aug. 11, 2011.<sup>82</sup> NCC has not produced a copy of that tariff to Sprint, nor is it available on the Illinois Commerce Commission website. (Compl. ¶ 123)

86. Leaf River Telephone Company is a rural ILEC, and its service territory is a rural area.<sup>83</sup> (Compl. ¶ 124)

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<sup>79</sup>Transcript, In the Matter of North County Communications Corporation of Illinois, Application for a Certificate of Local and Interexchange Authority, Illinois Commerce Commission Docket No. 08-0003, at 18:9-11 (Feb. 28, 2008) (Ex. 58).

<sup>80</sup>North County Communications Corporation, I.C.C. No. 1, Section 1 Original Page 2 (Issued Dec. 22, 2000) (Ex. 9).

<sup>81</sup>Lesser Dep. March 23, 2011, at 355:6-12 (Ex. 13).

<sup>82</sup><http://www.icc.illinois.gov/utility/profile.aspx?id=3142> (noting tariff filing but not providing a link to the tariff itself).

<sup>83</sup>Lesser Dep. June 12, 2012, at 170:23-24 (Ex. 16).

**PUBLIC VERSION**

87. Leaf River Telephone Company has participated since 2005 in NECA’s FCC No. 5 tariff.<sup>84</sup> (Compl. ¶ 125)

88. Leaf River Telephone’s rates for local switching varied between 2005 and 2010 from a low of \$0.008027 to a high of \$0.033045 per minute of use.<sup>85</sup> (Compl. ¶ 126)

89. NCC’s equipment is physically located in DeKalb, Illinois. **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** (Compl. ¶ 127)

90. Leaf River and DeKalb are not in the same local calling area.<sup>87</sup> (Compl. ¶ 128)

91. In Illinois, NCC has stated that it provides **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** lines to HFT.<sup>88</sup> (Compl. ¶ 129)

92. Each month, NCC alleges that HFT has paid NCC **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** (plus State and Local Surcharges & Taxes) for telephone service in Illinois.<sup>89</sup> (Compl. ¶ 130)

93. NCC’s Illinois tariff lists a rate of \$15.00 per month per line for Message Rate Basic Business Line Service.<sup>90</sup> (Compl. ¶ 131)

**2. Arizona.**

94. A local exchange tariff in the name of “North County Communications Corporation of Arizona” became effective March 28, 2001, and “contains effective rates and

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<sup>84</sup>NECA Tariff F.C.C. No. 5 at 46<sup>th</sup> Revised Title Page 33 (Ex. 10).

<sup>85</sup>Excerpts from NECA Tariff showing rates (Ex. 10).

<sup>86</sup>Lesser Dep. June 12, 2012, at 177:2-4; 178:24-179:1; 184:15-17 (Ex. 16); Resp. to Amended RFA 8 (Ex. 78).

<sup>87</sup>Lesser Dep. June 12, 2012, at 182:23-25 (Ex. 16).

<sup>88</sup>Supp. Response to Interrogatory 4 (Ex. 77).

<sup>89</sup>Lesser Dep. March 23, 2011, at 371:1-25 (Ex. 13).

<sup>90</sup>Original Page 7, Section 6, I.C.C. No. 1, BATES 001405 (Ex. 9).

## PUBLIC VERSION

rules together with information relating to and applicable to intrastate local exchange service provided by the Company in Arizona.” (Compl. ¶ 132)

95. North County Communications Corporation of Arizona (“NCC-AZ”) was organized on Oct. 12, 2006. NCC filed a petition to transfer the CLEC certificate from NCC to NCC-AZ in 2007. NCC and NCC-AZ submitted a request to change the transfer request to a name change on June 17, 2008.<sup>91</sup> That petition remains pending.<sup>92</sup> (Compl. ¶133)

96. In Arizona, NCC’s local exchange tariff lists a varying rate of \$5 to \$50 per line per month.<sup>93</sup> (Compl. ¶ 134)

97. NCC was suspended by the Arizona Corporation Commission from August 6, 2009, through June 22, 2012, for failure to file an annual report.<sup>94</sup> (Compl. ¶ 135)

98. Mr. Lesser does not recall what rate is charged per line, and cannot determine the rate by looking at NCC-AZ’s tariff or invoices.<sup>95</sup> Mr. Lesser later provided an interrogatory response stating that NCC provides **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** lines to HFT in Arizona.<sup>96</sup> (Compl. ¶ 136)

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<sup>91</sup>Memorandum from Steven M. Olea to Docket Control, Arizona Corporation Commission Docket No. T-03335A-07-0410 (Sept. 18, 2009) (Ex. 49) (summary of NCC’s transfer to NCC-AZ).

<sup>92</sup>Docket status page, Arizona Corporation Commission Docket No. T-03335A-07-0410 (Ex. 51).

<sup>93</sup>Arizona Local Tariff No. 1-T of North County Communications Corporation of Arizona Sheet No. v (issued Feb. 27, 2001) (Bates 001066) (Ex. 5).

<sup>94</sup>Certificate of Revocation, Aug. 6, 2009 (Ex. 48); Reinstatement of June 22, 2012, detailed on Arizona Corporation Commission website (Ex. 50).

<sup>95</sup>Lesser Dep. June 12, 2012, at 264:7-265:17 (Ex. 16).

<sup>96</sup>Supp. Response to Interrogatory 4 (Ex. 77).

## PUBLIC VERSION

99. NCC stated in its USF filings to Arizona that it provides [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines in the state.<sup>97</sup> (Compl. ¶ 137)

100. Each voice grade line is capable of transmitting a maximum of 43,200 minutes per month: 60 minutes/hour x 24 hours/day x 30 days/month = 43,200 minutes per month. The total capacity of all [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines is equal to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] multiplied by 43,200, or [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] minutes per month.<sup>98</sup> (Compl. ¶ 139; *but see* Answer ¶ 135)

### 3. California.

101. NCC ceased to be a CLEC in California on January 14, 2008. On that date, the California Public Utility Commission accepted NCC's request to transfer its CLEC certificate, its equipment, and its customers to North County Communications Corporation of California ("NCC-CA").<sup>99</sup> (Compl. ¶ 142)

102. NCC-CA filed a local exchange tariff effective January 15, 2008, that "contains effective rates and rules together with information relating to and applicable to intrastate local exchange service provided by the Company in California."<sup>100</sup> (Compl. ¶ 143)

103. NCC-CA's local exchange tariff imposes detailed requirements for language on end-user bills regarding billing disputes and itemizing surcharges.<sup>101</sup> (Compl. ¶ 145)

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<sup>97</sup>Arizona Universal Service Fund, Carrier Remittance Worksheets for 2005-10 (Bates 000885-000896) (Ex. 66).

<sup>98</sup> Lesser Dep. June 12, 2012, at 200 (Ex. 16).

<sup>99</sup>NCC's Transfer Application and CPUC's Acceptance (Ex. 53).

<sup>100</sup>Tariff Schedules Applicable to California Local Exchange Telephone Services of North County Communications Corporation of California (Jan. 14, 2008) (001110-001209) (Ex. 7).

<sup>101</sup>*See* Wood Report ¶¶ 66-73 (Ex. 20).

## PUBLIC VERSION

104. NCC-CA's local exchange tariff requires that oral service orders be followed by a written confirmation from NCC-CA.<sup>102</sup> (Compl. ¶ 147)

### 4. Oregon.

105. NCC transferred its certificate and equipment in Oregon to North County Communications Corporation of Oregon ("NCC-OR") on June 8, 2007.<sup>103</sup> The Oregon Public Utility Commission accepted NCC and NCC-OR's petition for the transfer on August 8, 2007.<sup>104</sup> (Compl. ¶ 149)

106. The Oregon PUC accepts voluntary price lists for local exchange services, which can serve the purpose of informing a potential customer of the rates that a CLEC will charge for these services. NCC has not produced a local exchange service price list or tariff for Oregon, and Mr. Lesser states that he is unsure whether NCC has such a price list on file with the Oregon PUC.<sup>105</sup> (Compl. ¶ 150)

107. In Oregon, Mr. Lesser was unable to itemize the charges to HFT for the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] lines it claims to provide.<sup>106</sup> (Compl. ¶ 151)

### G. NCC'S INVOICES TO SPRINT.

108. In all four states in dispute and for every month from November 2005 through May 2010, NCC billed Sprint at rates that exceeded the rates charged by the competing ILEC. (Compl. ¶ 154)

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<sup>102</sup>NCC's 1st Revised Cal. P.U.C. Sheet No. 4 (Bates 001168) (Ex. 7).

<sup>103</sup>Application for Transfer of Certificate of Authority to Provide Competitive Telecommunications Services in Oregon (July 2, 2007) (Ex. 59).

<sup>104</sup>CP1376, Application Granted (Aug. 2, 2007) (Ex. 60).

<sup>105</sup>Lesser Dep. June 12, 2012, at 231:23-232:1 (Ex. 16).

<sup>106</sup>*Id.* at 248:23-249:9.

**PUBLIC VERSION**

109. For Arizona, Mr. Lesser testified that NCC's interstate rate was capped at \$0.002985 per minute.<sup>107</sup> (Compl. ¶ 155)

110. For Arizona, NCC billed Sprint \$0.005803 per minute during every month between November 2005 and June 2010.<sup>108</sup> (Compl. ¶ 156)

111. For Oregon, Mr. Lesser testified that NCC's interstate rate should have been \$0.002985 per minute.<sup>109</sup> (Compl. ¶ 157)

112. For Oregon, NCC billed Sprint \$0.005803 per minute during every month between September 2006 and June 2010.<sup>110</sup> (Compl. ¶ 158)

113. For California, Mr. Lesser testified that NCC's interstate rate was capped at \$0.007504 per minute.<sup>111</sup> (Compl. ¶ 159)

114. For California, NCC billed Sprint \$0.00954698 per minute during every month between September 2006 and May 2010.<sup>112</sup> (Compl. ¶ 160)

115. For Illinois, NCC's Tariff No. 1 asserted a rate of \$0.06894 for local switching in the Leaf River area. (Compl. ¶ 161)

116. Leaf River Telephone Company's rates for local switching varied between 2005 and 2010 from a low of \$0.008027 to a high of \$0.033045 per minute of use.<sup>113</sup> (Compl. ¶ 163)

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<sup>107</sup>Lesser Dep. June 11, 2012, at 110:3-12 (Ex. 15).

<sup>108</sup>*Id.* (Ex. 15). *See also* Affidavit of Regina Roach ¶ 14 (Docket 42-2) (Feb. 28, 2011) (Ex. 70) and Sprint's Analysis of NCC's Billed Rates and Lesser's Revisions (Docket 42-3) (Ex. 71) (Arizona spreadsheet reflects billed rates in excess of the \$0.002985 rate cap).

<sup>109</sup>Lesser Dep. June 11, 2012, at 136:11-20 (Ex. 15).

<sup>110</sup>*See also* Affidavit of Regina Roach ¶ 14 (Docket 42-2) (Feb. 28, 2011) (Ex. 70) and Sprint's Analysis of NCC's Billed Rates and Lesser's Revisions (Docket 42-3) (Ex. 71) (Oregon spreadsheet reflects billed rates in excess of the \$0.002985 rate cap).

<sup>111</sup>Lesser Dep. June 11, 2012, at 121:11 (Ex. 15).

<sup>112</sup>*Id.* at 121:3-10 (Ex. 15). *See also* Affidavit of Regina Roach ¶ 14 (Docket 42-2) (Feb. 28, 2011) (Ex. 70) and Sprint's Analysis of NCC's Billed Rates and Lesser's Revisions (Docket 42-3) (Ex. 71) (California spreadsheet reflects billed rates in excess of the \$0.007504 rate cap).

## PUBLIC VERSION

117. NCC claims to have billed a rate of \$0.036899 each month in Leaf River from February 2008 through January 2011.<sup>114</sup> (Compl. ¶ 164)

118. NCC actually billed rates ranging from \$0.024435 through \$0.033045 in Illinois from February 2008 through June 2010.<sup>115</sup> (Compl. ¶ 165)

### H. SPRINT'S TRANSMISSION OF CALLS TO NCC.

119. Sprint pays tandem switched access charges to the tandem providers, such as AT&T and Verizon, for their intermediary transmission of calls to NCC.<sup>116</sup> (Answer ¶ 23)

120. By joint stipulation filed with the district court on November 11, 2011, Sprint and NCC agreed to the number of intrastate and interstate minutes transmitted by Sprint to NCC through June 2011.<sup>117</sup> (Answer ¶ 24)

## DISPUTED FACTS

### Sprint Factual Assertions Disputed by NCC

1. NCC does not actively market its services.<sup>118</sup> (Compl. ¶ 52)
2. NCC does not advertise its services beyond a simple website that is largely unchanged since at least 2005.<sup>119</sup> (Compl. ¶ 53)

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<sup>113</sup>Excerpts from NECA Tariff showing rates (Ex. 10).

<sup>114</sup>NCC's Spreadsheet (Ex. C to NCC's Motion for Writ of Attachment) (Docket 38-7) (February 4, 2011) (Ex. 69).

<sup>115</sup>See also Affidavit of Regina Roach ¶ 14 (Docket 42-2) (Feb. 28, 2011) (Ex. 70) and Sprint's Analysis of NCC's Billed Rates and Lesser's Revisions (Docket 42-3) (Ex. 71).

<sup>116</sup>See Regina Roach Decl., Sept. 27, 2011 (Ex. NCC-5).

<sup>117</sup>See Ex. 33.

<sup>118</sup>Lesser Dep. June 12, 2012, at 220:3-21 (Ex. 16); *but see* NCC Answer ¶ 83.

**PUBLIC VERSION**

3. Mr. Lesser performed technical services for both companies; he testified that when installing service, he did all the work for both entities.<sup>120</sup> (Compl. ¶ 58)

4. NCC has engaged subcontractors to perform some technical work and installations.<sup>121</sup> (Answer ¶ 88).

5. **[BEGIN CONFIDENTIAL]** [REDACTED]  
**[END CONFIDENTIAL]**<sup>122</sup> (Compl. ¶ 60)

6. Up until five or six years ago, Mr. Lesser maintained joint accounting books for NCC and HFT.<sup>123</sup> (Compl. ¶ 61)

7. NCC's lines to HFT are **[BEGIN CONFIDENTIAL]** [REDACTED]  
[REDACTED] **[END CONFIDENTIAL]** (Compl. ¶ 88)

8. Mr. Lesser testified that there had been **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** calls to the 900 numbers in **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** years.<sup>124</sup> (Compl. ¶ 92)

9. The invoice files were all created within a period of two and a half minutes.<sup>125</sup> (Compl. ¶ 105)

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<sup>119</sup><http://www.nccom.com/>; see also <https://web.archive.org/web/20051201041144/http://www.nccom.com/> (showing ncccom.com website as of 2005); *but see* NCC Answer ¶ 84.

<sup>120</sup>Lesser Dep. June 12, 2012, at 236:20-23 (Ex. 16); *but see* NCC Answer ¶ 88.

<sup>121</sup>Lesser Dep., June 11, 2012, at 48-49 (Ex. 15).

<sup>122</sup>Lesser Dep. March 24, 2011, at 436:3-10 (Ex. 14); *but see* NCC Answer ¶ 90.

<sup>123</sup>Report and Recommended Order Regarding Vaya Telecom Inc.'s Request for Monetary and Terminating Sanctions, for Misuse of the Discovery Process, and Failure to Produce Accounting Records Compelled by the Court, No. 37-2011-00083845-CU-BC-CTL at 5 (Sup. Ct. of Cal., County of San Diego, Central Division, July 15, 2014) ("Vaya Sanctions Order") (Ex. 45); *but see* NCC Answer ¶ 91.

<sup>124</sup>Lesser Dep. March 24, 2011, at 441:18-442:8 (Ex. 14); *but see* NCC Answer ¶ 109.

**PUBLIC VERSION**

10. In no state does the NCC invoice to HFT reflect an application of the tariffed rates multiplied by the number of lines in service that equals the amount charged on the invoice.<sup>126</sup>

(Compl. ¶ 110)

11. The assets of NCC in Arizona were transferred to NCC-AZ on June 8, 2007.

(Compl. ¶ 135)

12. NCC-AZ's tariff identifies information that is required to be placed on bills to customers, and NCC's bills to HFT do not in fact contain.<sup>127</sup> (Compl. ¶ 138)

13. In two separate months, NCC's bills to Sprint in Arizona for interstate and intrastate access calls exceeded the maximum theoretical capacity of the circuits. In October 2009, for example, NCC billed Sprint a total of 10,069,354 minutes of use for interstate and intrastate access combined.<sup>128</sup> This exceeds the theoretical capacity of the [BEGIN

CONFIDENTIAL] [END CONFIDENTIAL] lines by [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent. (Compl. ¶ 140)<sup>129</sup>

14. Sprint's position is reinforced by documents filed by Qwest (now CenturyLink) in Arizona in a billing dispute between CenturyLink and NCC. For example, in June 2008,

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<sup>125</sup>Declaration of Jeremy D. Wunsch ("Wunsch Report") at 6 (Jan. 7, 2013) (Ex. 25); *but see* NCC Answer ¶ 117.

<sup>126</sup>Report of Don J. Wood, Aug. 8, 2012 ("Wood Report") ¶ 102 (Ex. 20); Supplemental Report of Don J. Wood, Oct. 17, 2012 ("Oct. 17, 2012 Supp. Wood Report") ¶¶ 18-25 (Ex. 21); *but see* NCC Answer ¶ 121.

<sup>127</sup>Wood Report ¶¶ 75-76 (Ex. 20); *but see* NCC Answer ¶ 133.

<sup>128</sup>Further Supplemental Report of Don J. Wood, December 28, 2012 ("Dec. 28, 2012 Supp. Wood Report") ¶¶ 7-13 (Ex. 22). NCC and Sprint stipulated as to the number of minutes billed each month in a Stipulation of Facts Regarding Minutes of Use (Docket 82) (Ex. 33); *but see* NCC Answer ¶ 135.

<sup>129</sup> *But see* NCC Answer ¶ 135.

## PUBLIC VERSION

CenturyLink routed 37,435,557 minutes in Arizona to NCC.<sup>130</sup> It is unclear whether this is in addition to the 6,748,842 minutes billed by NCC to Sprint that month or whether those minutes are included in the total. Nevertheless, the 37 million minutes vastly exceeds NCC's claimed capacity of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] minutes per month on the circuits. (Compl. ¶141)<sup>131</sup>

15. NCC's bills to HFT for California do not contain the information required by NCC-CA's tariff.<sup>132</sup> (Compl. ¶ 146)

16. In Oregon in February 2012, NCC billed Sprint for 722,134 minutes for NCC to HFT traffic that NCC stated was delivered over the equivalent of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] voice grade circuits that have a capacity of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] minutes per month.<sup>133</sup> (Compl. ¶ 152)

17. During the relevant time period, Sprint's share of the wireless market was approximately 17 percent.<sup>134</sup> Extrapolating from Sprint's market share shows that the aggregate long-distance, local, and wireless calls from all carriers to HFT likely exceeded the capacity of the circuits provided by NCC to HFT. (Compl. ¶ 153)<sup>135</sup>

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<sup>130</sup>Centurylink-QC's Answer, Affirmative Defenses, and Counterclaims, Docket No. T-03335A-12-3068, Spreadsheet Page 2 of 6 (Sept. 10, 2012) (Ex. 52); *but see* NCC Answer ¶ 135.

<sup>131</sup> *But see* NCC Answer ¶ 135.

<sup>132</sup>*Id.*; NCC Invoices to HFT for California (000802-000815) (Ex. 65); Response to Verizon RFA 20-22 (Ex. 73); *but see* NCC Answer ¶ 140.

<sup>133</sup>Dec. 28, 2012 Supp. Wood Report ¶¶ 7-13 (Ex. 22). NCC and Sprint stipulated as to the number of minutes billed each month. Stipulation of Facts Regarding Minutes of Use (Docket 82) (Ex. 33); Lesser Dep. Dec. 5, 2012, at 424:9-12 (Ex. 17); *but see* NCC Answer ¶ 144.

<sup>134</sup>The *Fourteenth Report* in WT Docket No. 09-66 (FCC 10-81, released May 20, 2010) includes (p. 9) a table showing wireless carrier market share as of the end of 2009. According to Commission data, Sprint had a market share of approximately 17% at year-end 2009.

<sup>135</sup> *But see* NCC Answer ¶ 145.

**PUBLIC VERSION**

18. If NCC had operated in Leaf River, Illinois, the competing ILEC would have been Leaf River Telephone Company. (Compl. ¶ 162)<sup>136</sup>

19. The competing ILEC in Illinois to which NCC should have benchmarked its rates was Verizon North Inc., later Frontier. Both of those companies charged a rate of \$0.0019653 for local switching for interstate access calls from 2006 through 2011.<sup>137</sup> (Compl. ¶ 166)

20. NCC and HFT have never had a written contract.<sup>138</sup> (Compl. ¶ 59)<sup>139</sup>

21. NCC's customers other than HFT [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]<sup>140</sup> (Compl. ¶ 65)<sup>141</sup>

22. NCC has stated that HFT is [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END

CONFIDENTIAL]<sup>142</sup> (Compl. ¶ 46)

23. NCC has no [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]<sup>143</sup> (Compl. ¶ 55)

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<sup>136</sup> *But see* NCC Answer ¶ 154.

<sup>137</sup> Frontier North Inc. Ill. C.C. No. 15 Tariff, Original Sheet No. 16.5, available at <http://carrier.frontiercorp.com/crtf/tariffs/u/254/IL/access/ILIGA15.pdf>; Verizon North Tariff Excerpts (Ex. 11); *but see* NCC Answer ¶ 157.

<sup>138</sup> *Id.* at 231:2-7; Lesser Dep. March 24, 2011, at 438:17-23 (Ex. 14); *but see* NCC Answer ¶ 89.

<sup>139</sup> Sprint posits that this fact is undisputed because there is no contradictory evidence, and NCC's objection is based on its unsupported denial of a fact testified to by Mr. Lesser.

<sup>140</sup> Supp. Response to Doc. Request 19 (Ex. 75); *but see* NCC Answer ¶ 95.

<sup>141</sup> Sprint posits that the Commission should consider this fact undisputed because NCC stipulated to it and incorporated it into a written discovery responses, and should not be able to rely on later deposition testimony to undermine its stipulation.

<sup>142</sup> Lesser Dep. March 24, 2011, at 548:20-549:1 (Ex. 14); *but see* NCC Answer ¶ 79.

<sup>143</sup> Lesser Dep. June 12, 2012, at 239:16-240:9 (Ex. 16); *but see* NCC Answer ¶ 86.

**PUBLIC VERSION**

24. After subsequently producing a USB thumb drive to Verizon pursuant to the Court's order on forensic discovery, Mr. Lesser contradicted his testimony, telling Sprint that the invoices [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]<sup>144</sup> (Compl. ¶ 98)

25. In California, NCC-CA's tariffs provide for a rate of \$10.32 per month per line.<sup>145</sup> This does not match up with the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines claimed by NCC<sup>146</sup> and the monthly bills of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL],<sup>147</sup> as the bills should be for [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] x \$10.32 = [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]), for local service alone. (Compl. ¶ 144)<sup>148</sup>

26. Mr. Lesser gave conflicting testimony about whether HFT ever submitted service orders to NCC or whether NCC ever provided written confirmation, telling [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]<sup>149</sup> but telling Sprint that HFT did create service orders but that they no longer exist.<sup>150</sup> (Compl. ¶ 148)<sup>151</sup>

**NCC Factual Assertions Disputed by Sprint**

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<sup>144</sup>Lesser Dep. Dec. 5, 2012, at 341:5-8; 350:3-5 (Ex. 17); *but see* NCC Answer ¶ 113.

<sup>145</sup>*Id.* at 1<sup>st</sup> Revised Cal. P.U.C. Sheet 1 (Bates 001119) (Ex. 7).

<sup>146</sup>Supp. Response to Interrogatory No. 4 (Ex. 77); Lesser Dep. Dec. 5, 2012, at 403:15-17 (Ex. 17).

<sup>147</sup>NCC Invoices to HFT (Bates 000802 – 000815) (Ex. 65).

<sup>148</sup>*But see* NCC Answer ¶ 138.

<sup>149</sup>Lesser Dep. March 23, 2011, at 260:2-6; 262:15-23 (Ex. 13).

<sup>150</sup>Lesser Dep. June 12, 2012, at 239:16-22 (Ex. 16).

<sup>151</sup>*But see* NCC Answer ¶ 142.

## PUBLIC VERSION

1. Each regulatory agency in the states noted above in ¶ 9 of the Statement of Undisputed Facts has issued the relevant company a certificate of public convenience and necessity (“CPCN”) to operate as a CLEC in the state.<sup>152</sup>
2. HFT provided chat line services through 900 numbers, 800 numbers and traditional 10-digit calling numbers long before NCC existed.<sup>153</sup> (Answer ¶ 7)
3. After NCC became a CLEC, it began providing local exchange service to HFT and unaffiliated entities.<sup>154</sup> (Answer ¶ 9)
4. Prior to receiving local exchange service from NCC, HFT had a revenue-sharing agreement with Sprint.<sup>155</sup> (Answer ¶ 10)
5. Historically, Sprint approved 900 ads that included free chat lines associated with the ads and chat line providers.<sup>156</sup> (Answer ¶ 11)

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<sup>152</sup> Sprint’s position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>153</sup> See copy of HFT advertisement from 1987 (Ex. NCC-2). Sprint’s position is that NCC has provided no admissible evidence from the record to support this assertion. The exhibit NCC references does not refer to HFT.

<sup>154</sup> See Lesser Dep., December 5, 2012, at 392-399 (Ex. 17). Sprint’s position is that NCC did not provide local exchange service to HFT. See Compl. ¶¶ 209-255.

<sup>155</sup> See copy of Sprint-HFT revenue sharing agreement (Ex. NCC-3). Sprint’s position is that NCC has provided no admissible evidence from the record to support this assertion. The agreement NCC attached is not signed by Sprint, and Sprint has been unable to locate a copy of this agreement in its files.

<sup>156</sup> See copy chat line advertisement approved by Sprint (Ex. NCC-4). Sprint’s position is that NCC has provided no admissible evidence from the record to support this assertion. There is nothing in this exhibit to show that this advertisement is for HFT or that it was approved by Sprint.

## PUBLIC VERSION

6. NCC has received revenue from other sources, including, but not limited to, residential and business long distance customers, toll-free services, ISPs, telemarketing companies and other business customers.<sup>157</sup> (Answer ¶ 78)

7. In some instances, Sprint's separate wireline and wireless businesses operate out of the same building.<sup>158</sup>

8. In some instances, Sprint's employees use the same computer to perform work for Sprint's separate wireline and wireless businesses.<sup>159</sup>

9. Sprint never disputed the terms of NCC's Tariff FCC No. 1 until 2010.<sup>160</sup>  
(Answer ¶ 33)

10. The Illinois Commerce Commission's grant of operating authority to NCC included authority to operate throughout the State of Illinois without restrictions regarding rural areas.<sup>161</sup> (Answer ¶ 124)

11. The Illinois Commerce Commission's grant of operating authority to NCC-IL included authority to operate throughout the State of Illinois without restrictions regarding rural areas.<sup>162</sup> (Answer ¶ 124)

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<sup>157</sup> Lesser Dep. December 5, 2012 at 392-399 (Ex. 17). Sprint's position is that this assertion of fact violates NCC's stipulation at the District Court that it only had three sources of revenue. *See* Supp. Response to Doc. Request 19 (Ex. 75).

<sup>158</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion. Sprint is defined in the Answer as Sprint Communications Company L.P., and that entity does not provide wireless services.

<sup>159</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion. Sprint is defined in the Answer as Sprint Communications Company L.P., and that entity does not provide wireless services.

<sup>160</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion. Sprint began disputing NCC's bills in 2008. Compl. ¶ 22.

<sup>161</sup> ICC Order, Docket No. 00-0818 (Ex. NCC-7). Sprint's position is that the order granted NCC's application, which was limited to non-rural areas, and the order did not authorize NCC to provide services in areas outside the scope of NCC's application.

**PUBLIC VERSION**

12. The Arizona Corporation Commission reinstated NCC's status retroactively without any lapse in operating authority.<sup>163</sup> (Answer ¶ 131)

13. In the district court proceeding, Sprint admitted that it carries almost no traffic originated by its own end users.<sup>164</sup> (Answer ¶ 21)

14. More than 99 percent of the traffic that Sprint transmits to NCC's network is originated by calling parties who are the customers of carriers other than Sprint.<sup>165</sup> (Answer ¶ 21)

15. Sprint stopped routing its non-Sprint Communications Co. L.P. traffic to NCC for a period in the past.<sup>166</sup> (Answer ¶ 22)<sup>167</sup>

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<sup>162</sup> ICC Order, Docket No. 08-0003 (Ex. NCC-7). Sprint's position is that the order granted NCC's application, which was limited to non-rural areas, and the order did not authorize NCC to provide services in areas outside the scope of NCC's application.

<sup>163</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>164</sup> See Regina Roach Decl., Sept. 27, 2011, ¶¶ 4-12 (Ex. NCC-5). Sprint's position is that the record is clear that 99.5 percent of the traffic originated from the customers of Sprint and its affiliated CLEC and wireless entities. See Regina Roach Decl., Sept. 27, 2011 ¶ 10 (Ex. NCC-5). See Sprint Reply ¶ 60.

<sup>165</sup> NCC notes that Sprint refers to its arrangement with Sprint Wireless as governed by "an intercompany service arrangement." See Regina Roach Decl., Sept. 27, 2011, ¶ 5 (Ex. NCC-5). It must be noted that Sprint has never produced a copy of any such multi-billion dollar agreement, contract or arrangement. Indeed, Sprint later explained that no such written agreement exists.

Sprint's position is that the record is clear that 99.5 percent of the traffic originated from the customers of Sprint and its affiliated CLEC and wireless entities. See Regina Roach Decl., Sept. 27, 2011 ¶ 10 (Ex. NCC-5). Sprint also notes that NCC provides no citation to its assertion that it requested a copy of the agreement and that Sprint stated that "no such written agreement exists."

<sup>166</sup> See Todd Lesser Decl., Sept. 13, 2011, ¶¶ 8-11 (Ex. NCC-8).

<sup>167</sup> But see Roach Decl. Sept. 27, 2011, ¶¶ 13-18 (Ex. NCC-5) (responding to Mr. Lesser's assertions).

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16. Sprint has acknowledged that it ceased routing traffic to NCC for a period of time after NCC filed its complaint with the district court.<sup>168</sup> (Answer ¶ 22)

17. Sprint later resumed routing its traffic to NCC.<sup>169</sup> (Answer ¶ 22)

18. Sprint's 30(b)(6) representative testified on May 23, 2012, that Sprint has known about overbillings and under-billings by NCC since at least 2004 but elected to seek only credits for overbillings despite calculating the under-billings on a monthly basis.<sup>170</sup> (Answer ¶ 32)

19. Sprint provides conference call services.<sup>171</sup>

20. Sprint's LEC affiliates do not charge the Sprint conference call affiliate for local phone service, but Sprint's LEC affiliates charge terminating access fees to other carriers for terminating the conference calls.<sup>172</sup>

21. Sprint derives revenue from wholesaling access to NCC's network.<sup>173</sup>

22. Sprint and its affiliated entities provide each other with collocation at no charge.<sup>174</sup>

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<sup>168</sup> See Regina Roach Decl., Sept. 27, 2011, ¶¶ 13, 14 (Ex. NCC-5).

<sup>169</sup> NCC states that starting to transmit traffic again was simply Sprint's anticompetitive effort to impose on NCC's network and make money by transmitting calls to NCC without paying any compensation to NCC. *But see* Roach Decl. Sept. 27, 2011, ¶¶ 13-18 (Ex. NCC-5) (responding to Mr. Lesser's assertions).

<sup>170</sup> See May 23, 2012 Regina Roach Depo. at 171:3-176:15 (Ex. NCC-6). Sprint's position is that NCC's alleged underbilling relates to intrastate charges that are not part of this Formal Complaint and that the District Court rejected NCC's claim that it underbilled Sprint. *See* Sprint Reply ¶ 12.

<sup>171</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>172</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion. *See* Sprint Reply ¶ 60.

<sup>173</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

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23. Sprint has revenue sharing agreements for sharing revenue related to 800 services.<sup>175</sup>
24. Sprint monitors the switched access tariffs of CLECs that submit switched access invoices to Sprint.<sup>176</sup>
25. In many instances, Sprint has paid terminating switched access charges to CLECs where Sprint has alleged that the carrier has no valid tariff and/or no valid tariffed rate for terminating switched access.<sup>177</sup>
26. HFT has paid and continues to pay NCC for the services as evidenced by the cancelled checks that NCC produced to Sprint in discovery.<sup>178</sup> (Answer ¶ 13)
27. In addition, in the district court proceeding, NCC provided Sprint with copies of NCC's FCC and state regulatory filings that show NCC paid into universal service funds based on charges paid by HFT to NCC.<sup>179</sup> (Answer ¶ 13).
28. If HFT were not receiving service from NCC, it would be receiving service from another LEC, and Sprint would owe access charges to that LEC for terminating calls to HFT.<sup>180</sup> (Answer ¶ 14)

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<sup>174</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>175</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>176</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>177</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

<sup>178</sup> See Compl. ¶ 227. Sprint's position is that NCC has provided no admissible evidence from the record to support the assertion that HFT has paid NCC since April 2010. NCC has not produced any checks or other proof of payment dated after April 2010. See Ex. 64 to Compl.

<sup>179</sup><sup>179</sup> See, e.g., Compl. Ex. 66. Sprint admits that NCC provided documentation of some regulatory filings but disputes that they show that "NCC paid into universal service funds based on charges paid by HFT to NCC."

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29. Sprint itself engages in access revenue sharing with its affiliates and other parties.

For example, Sprint charges originating access fees for toll-free traffic that originates on Sprint's wireless network.<sup>181</sup> (Answer ¶ 35)

Respectfully submitted,

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<sup>180</sup> Sprint's position is that NCC and HFT's business model would fall apart if NCC did not provide free and reduced price services to HFT. *See* Sprint Reply fn. 22.

<sup>181</sup> Sprint's position is that NCC has provided no admissible evidence from the record to support this assertion.

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Dated: January 23, 2015

*Counsel for North County Communications  
Corporation*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 23, 2015, copies of the foregoing Joint Statement were served via the method specified below to the following:

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