

PUBLIC VERSION

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

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.

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

SETTLEMENT PROSPECTS

Counsel for Sprint and NCC anticipate that there may be additional settlement discussions and will contact Staff if they determine that a mediation session would be productive.

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 are 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 July 24, 2015. Trial on the contract claims and defenses is scheduled to begin on August 3, 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.

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4. Was NCC required to have a valid interstate access tariff to charge Sprint interstate access rates at or below the benchmark rate?
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)?

The Court has confirmed that the Commission should address all time periods covered by the Referral Order:

On March 16, 2015, the parties filed a joint statement regarding a question posed by the Federal Communications Commission. [Doc. No. 267.] At the request of the FCC, the parties seek guidance as to the time periods applicable to the court's referral questions. As stated during the hearing held April 30, 2015, the court agrees with Sprint that the FCC should address referral questions 2-4 and 6-9 for all time periods between 2006 and 2011 addressed in Sprint's FCC complaint.

Order Regarding FCC Referral and Telephonic Status Conference (May 1, 2015) (Dkt. No. 279).

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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.

Finally, to the extent the answers to the above questions turn on what entity was delivering calls to HFT (NCC or one of the NCC State Companies identified below), the Commission must address that fact.

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.¹

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.² (Compl. ¶ 24)

¹ 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.

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

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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 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.³ 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.⁴ (Compl. ¶ 36)

7. NCC is solely owned by Todd Lesser.⁵ (Compl. ¶ 37)

8. Mr. Lesser is the only director⁶ and **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** of NCC.⁷ (Compl. ¶ 38)

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

⁴ NCC’s Second Amended Complaint ¶ 4 (July 22, 2011) (Docket No. 56) (Ex. 32).

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

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

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

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

10. At some point in time, each regulatory agency in the states noted above in ¶ 9 of the Statement of Undisputed Facts issued the relevant company a certificate of public convenience and necessity (“CPCN”) to operate as a CLEC in the state.

11. HFT is a California corporation with its principal place of business in San Diego, California.⁸ (Compl. ¶ 40)

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

13. After NCC became a CLEC, it began providing HFT with what NCC claims is local exchange service.¹⁰ (Answer ¶ 9)

14. HFT’s sole owner and director is Todd Lesser.¹¹⁰ (Compl. ¶ 41)

15. HFT provided chat line services through 900 numbers, 800 numbers and traditional 10-digit calling numbers long before NCC existed.¹² (Answer ¶ 7)

16. All revenues of NCC and HFT are for the benefit of Mr. Lesser.¹³ (Compl. ¶ 42)

17. **[BEGIN CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]

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

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

¹⁰ See Lesser Dep., December 5, 2012, at 392-399 (Ex. 17). Sprint does not concede that NCC provided local exchange service to HFT at any time. See Compl. ¶¶ 209-255.

¹¹ *Id.* at 7:17-8:13 (Ex. 18).

¹² See copy of HFT advertisement from 1987 (Ex. NCC-2).

¹³ NCC made this statement in a case 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).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

20. Traffic delivered from Sprint to NCC and/or the NCC State Companies is “100 percent chat line traffic.”¹⁷ (Compl. ¶ 47)

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

22. NCC’s customers other than HFT [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]¹⁹ (Compl. ¶ 65)

23. HFT [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]²⁰ (Compl. ¶ 49)

24. NCC has not invoiced any customer other than HFT since at least 2001 for services that NCC claims are local exchange services.²¹ (Compl. ¶ 46)

25. Mr. Lesser has testified that accounting records are now kept separately for each of his affiliated companies; previously (at least six or seven years ago) Mr. Lesser kept accounting records in a system that integrated all of the financial information for all of his companies.²²

¹⁴ Supp. Response to Doc. Request 19 (Ex. 75).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Lesser Dep. June 11, 2012, at 77:20 (Ex. 15).

¹⁸ Lesser Dep. March 24, 2011, at 541:6-17 (Ex. 14).

¹⁹ Supp. Response to Doc. Request 19 (Ex. 75); *but see* NCC Answer ¶ 95.

²⁰ *Id.* at 548:20-549:1.

²¹ Lesser Dep. March 24, 2011, at 548:20-549:1 (Ex. 14).

²² Report and Recommended Order Regarding Vaya Telecom Inc.’s Request for Monetary and

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26. NCC and HFT operate [BEGIN CONFIDENTIAL] [REDACTED]
[END CONFIDENTIAL]²³ (Compl. ¶ 50)

27. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]²⁴ (Compl. ¶ 51)

28. In some instances, Sprint Communications Company L.P. and Sprint Corporation's wireless entities share office space.

29. NCC has not actively marketed its services since at least 2007.²⁵ (Compl. ¶ 52)

30. NCC has not advertised its services since at least 2007 beyond a simple website that is largely unchanged since at least 2005.²⁶ (Compl. ¶ 53)

31. 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.²⁷ (Compl. ¶ 54)

32. Since approximately 2002, NCC has not [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL].

33. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL]²⁹ (Compl. ¶ 56)

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).

²³ *Id.* at 558:7-10.

²⁴ *Id.* at 612:24-25.

²⁵ Lesser Dep. June 12, 2012, at 220:3-21 (Ex. 16); *but see* NCC Answer ¶ 83.

²⁶ <http://www.nccom.com/>; see also <https://web.archive.org/web/20051201041144/http://www.nccom.com/> (showing [nccom.com](http://www.nccom.com/) website as of 2005); *but see* NCC Answer ¶ 84.

²⁷ 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.

²⁸ Lesser Dep. June 12, 2012, at 239:16-240:9 (Ex. 16); *but see* NCC Answer ¶ 86.

²⁹ Lesser Dep. March 24, 2011, at 459:4-16; 484:8-18 (Ex. 14).

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34. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]³⁰ (Compl. ¶ 57)

35. In some instances, the same computers are used to perform work for Sprint Communications Company L.P. and Sprint Corporation’s wireless entities.”

36. In some instances, Mr. Lesser has performed installations and technical work for both NCC and HFT; however, in other instances, NCC has hired subcontractors to perform technical work and installations.³¹

37. 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.³² (Compl. ¶ 62) The sanctions order has been appealed to the California Court of Appeal, Fourth Appellate District, Division One, Case No. D066629. (Answer ¶ 92)

38. NCC’s website states that NCC “provide[s] dial tone to thousands of residential and business customers throughout the U.S.”³³ (Compl. ¶ 63)

39. NCC’s website (and the various tabbed web pages accessible through the main page) includes many other statements about NCC’s business.³⁴ (Answer ¶ 93)

40. NCC [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]³⁵ (Compl. ¶ 64)

³⁰ Lesser Dep. March 23, 2011, at 225:9-16 (Ex. 13).

³¹ Lesser Dep. June 12, 2012, at 236:20-23 (Ex. 16); Lesser Dep., June 11, 2012, at 48-49 (Ex. 15).

³² *Id.* at 9.

³³ <http://www.nccom.com/index.html> (visited Aug. 26, 2014).

³⁴ See www.nccom.com (and the tabs available on the home page).

³⁵ Supp. Response to Interrogatory 6 (Ex. 75).

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41. As to business customers apart from HFT, NCC stated that it had [BEGIN CONFIDENTIAL] ██████████ [END CONFIDENTIAL] in Portland, Oregon, [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in Charleston, West Virginia, [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in San Diego, [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in Los Angeles, [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in Sacramento, [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in San Francisco, [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in Phoenix, and [BEGIN CONFIDENTIAL] █████ [END CONFIDENTIAL] in Tucson.³⁶ (Compl. ¶ 65)

42. In the past, Sprint's affiliates provided conference call services.

B. NCC'S INTERSTATE ACCESS TARIFFS.³⁷

43. 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."³⁸ (Compl. ¶ 66)

44. NCC's FCC Tariff No. 1 did not list any Concurring Carriers, Connecting Carriers, or Other Participating Carriers.³⁹ (Compl. ¶ 67)

45. 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."⁴⁰ (Compl. ¶ 68)

³⁶ *Id.*

³⁷ 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.

³⁸ North County Communications Corporation Tariff F.C.C. No. 1 ("NCC FCC Tariff No. 1") at Original Page 6 (Ex. 1).

³⁹ NCC FCC Tariff No. 1 at Original Page 4 (Ex. 1); Lesser Dep. June 11, 2012, at 144:10-23 (Ex. 15).

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46. 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.⁴¹ (Compl. ¶ 69)

47. 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.⁴² (Compl. ¶ 70)

48. 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, 2004.⁴³ (Compl. ¶ 71)

49. Section 5.2 stated that NCC “only provides such Switched Access Services for which it has established rates as specified in this tariff.”⁴⁴ (Compl. ¶ 72)

50. Sprint never disputed the terms of NCC’s Tariff FCC No. 1 until 2010.⁴⁵ (Answer ¶ 33)

51. On April 9, 2010, effective April 25, 2010, NCC issued a new tariff that imposes access charges on IXC’s even when the end user receiving the calls is not a subscriber to NCC’s services.⁴⁶ (Compl. ¶ 73)

⁴⁰ NCC FCC Tariff No. 1 at 3rd Revised Page 24 (Ex. 1).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Sprint began disputing NCC’s bills in 2008. Compl. ¶ 22.

⁴⁶ North County Communications Tariff F.C.C. No. 2 (“NCC FCC Tariff No. 2”) at Original Sheet 9 (Ex. 2).

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C. THE PARTIES' 2002 AGREEMENT.

52. 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.⁴⁷ (Compl. ¶ 74)

53. To resolve this dispute, Sprint and NCC entered into the 2002 Agreement effective Feb. 6, 2002.⁴⁸ (Compl. ¶ 75)

54. The 2002 Agreement applied to geographic areas "in which North County directly or through an affiliate ... provides local exchange service ... and switched access."⁴⁹ (Compl. ¶ 76)

55. "Switched Access Service" is specifically defined in the 2002 Agreement. (Answer ¶ 18)

56. 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).

57. 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*.⁵⁰ (Compl. ¶ 77)

⁴⁷ 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.

⁴⁸ 2002 Agreement (Ex. 62).

⁴⁹ *Id.* at ¶ 2.

⁵⁰ *Id.* at Schedule A ¶ 1; *In re Access Charge Reform*, Seventh Report & Order & Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9931 (2001).

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58. 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.]”⁵¹ (Compl. ¶ 78)

59. NCC also described the 2002 Agreement as “the contract to which the tariff rates are expressly incorporated.”⁵² (Compl. ¶ 79)

60. The 2002 Agreement explicitly refers to tariffs only in the following locations: (1) the Whereas clause defining the dispute at issue (“WHEREAS, prior to January 1, 2002 North County issued invoices to SPRINT for switched access services at the rates set forth in North County’s switched access services tariffs”; (2) Section B.7 states that NCC would not alter the terms and conditions of the Agreement by filing “any tariff or tariff revisions that materially alter the terms and conditions, or pricing” of the Agreement; and (3) Section B.7 also states that “[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)

61. Sprint terminated the 2002 Agreement on Jan. 7, 2010, effective May 7, 2010.”⁵³ (Compl. ¶ 80)

⁵¹ NCC’s Definite Statement Response Mem. at 2 (Docket No. 14) (Ex. 29).

⁵² *Id.*

⁵³ Letter from Regina Roach to Todd Lesser (Jan. 7, 2010) (Ex. 63).

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D. NCC'S AND HFT'S OPERATIONS.

62. 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.⁵⁴ (Compl. ¶ 81)

63. In each location, HFT's chat-line equipment is [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]⁵⁵ (Compl. ¶ 82)

64. NCC's lines to HFT were [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] (Compl. ¶ 88)

65. In Illinois and Phoenix, HFT [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]⁵⁶ (Compl. ¶ 83)

66. In San Diego, [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]⁵⁷ (Compl. ¶ 84)

67. In Tucson, Sacramento, and Portland, [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]⁵⁸ (Compl. ¶ 85)

68. HFT's lines are [BEGIN CONFIDENTIAL] [END

CONFIDENTIAL]; HFT has no ability [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]⁵⁹ (Compl. ¶ 86, *but see* Answer ¶ 104)

⁵⁴ Lesser Dep. June 12, 2012, at 222:8-9 (Arizona); 208:13-15 (California); 225:18-20 (Oregon); 177:2-4 (Illinois) (Ex. 16).

⁵⁵ 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).

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

⁵⁷ *Id.* at 105:5-15.

⁵⁸ *Id.* at 105:19-107:12.

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E. NCC'S INVOICES TO HFT.

1. Invoice Creation.

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

[BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]⁶⁸

(Compl. ¶ 95 *but see* Answer ¶ 111)

78. Mr. Lesser testified in the Sprint matter that he created the invoices on a monthly basis in custom software that he wrote himself.⁶⁹ (Compl. ¶ 96; *but see* Answer ¶ 111)

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

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [END CONFIDENTIAL]⁷¹ (Compl. ¶ 97)

80. NCC has only ever produced invoices in discovery dated July 2009 through August 2010.⁷² (Compl. ¶ 99)

81. Mr. Lesser stopped creating invoices after August 2010.⁷³ (Compl. ¶ 100)

82. HFT had been paying NCC an unvarying rate each month for services since 2005.⁷⁴ (Compl. ¶ 101)

2. Forensic Examination and Adverse Jury Instructions.

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

⁶⁸ Lesser Dep. Oct. 5, 2010, at 106:18-25 (Ex. 12).

⁶⁹ Lesser Dep. June 12, 2012, at 296:1-6 (Ex. 16); Lesser Dep. Dec. 5, 2012, at 336:20-23 (Ex. 17).

⁷⁰ Lesser Dep. March 24, 2011, at 517:16-21 (Ex. 14).

⁷¹ Lesser Dep. Oct. 5, 2010, at 107:16-108:4 (Ex. 12).

⁷² NCC Bates 000746-000829 (Ex. 65).

⁷³ Lesser Dep. June 12, 2012, at 243:14-21 (Ex. 16).

⁷⁴ *See, e.g.*, NCC Bates 000700-000745 (Ex. 64); Lesser Dep. Oct. 5, 2010, at 146:21-147:10 (Ex. 12).

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83. 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.⁷⁵ 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”).⁷⁶ (Compl. ¶ 102; *but see* Answer ¶ 115)

84. 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.”⁷⁷ (Compl. ¶ 103)

85. According to the Stephens Forensic Report, the Thumb Drive contained no evidence of any software program used to generate invoices from these text files.⁷⁸ (Compl. ¶ 104)

86. Lesser erased the log of commands that had been run on the Mac Computer.⁷⁹ (Compl. ¶ 106)

87. Lesser admitted to deleting the bash history file on the Mac Computer.⁸⁰ (Compl. ¶ 107)

⁷⁵ Order Setting Forensic Examination Protocol ¶¶ 2-4 (June 20, 2011) (Docket 163) (Ex. 41).

⁷⁶ Stephens Forensic Report at 3 (Ex. 24).

⁷⁷ *Id.* at 6.

⁷⁸ *Id.*

⁷⁹ 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).

⁸⁰ Lesser Dep. Dec. 5, 2012, at 359:5-7 (Ex. 17).

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88. 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.⁸¹ (Compl. ¶ 108)

F. HFT'S SERVICES FROM NCC.

89. 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]⁸² (Compl. ¶ 109)

90. Mr. Lesser testified that the number of lines multiplied by the cost of each line should equal the "Monthly Charges" amount on each invoice.⁸³ (Compl. ¶ 111)

91. Mr. Lesser was unable to determine during the depositions what quantity of services were provided to HFT based upon his review of the invoices from NCC to HFT.⁸⁴ (Compl. ¶ 112)

92. In a response to written discovery, where Mr. Lesser was unable to itemize the invoices based on rates and quantities of services.⁸⁵ (Compl. ¶ 113)

1. Illinois.

⁸¹ Sanctions Report at 31 (Ex. 38).

⁸² NCC Bates 000816 (Ex. 65).

⁸³ Lesser Dep. March 23, 2011, at 325:5-9 (Ex. 13).

⁸⁴ *See generally id.* at 310-337 (Ex. 13).

⁸⁵ Supp. Response to Interrogatory 4 (Ex. 77).

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93. 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.⁸⁶ (Compl. ¶ 114)

94. 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).⁸⁷ (Compl. ¶ 115)

95. NCC never sought such authority.⁸⁸ (Compl. ¶ 116)

96. 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.⁸⁹ (Compl. ¶ 117)

97. 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."⁹⁰ (Compl. ¶ 118)

⁸⁶ North County Communications Corporation Application for a Certificate of Local Authority, Illinois Commerce Commission Docket No. 00-0818 (Dec. 20, 2000) (Ex. 54).

⁸⁷ Prefiled Testimony of Todd Lesser on Behalf of North County Communications Corporation, Docket No. 00-0818, ¶ 11 (Jan. 19, 2001) (Ex. 55).

⁸⁸ <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).

⁸⁹ Joint Application for Approval of Transfer of Certificates of Service Authority, Illinois Commerce Commission Docket No. 07-0403 (Sept. 27, 2007) (Ex. 56).

⁹⁰ Application for Certificate to Become a Telecommunications Carrier, North County Communications Corporation of Illinois, Illinois Commerce Commission (Dec. 14, 2007) (Ex. 57).

PUBLIC VERSION

98. 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."⁹¹
(Compl. ¶ 119)

99. What NCC produced in discovery and claims is its local exchange service tariff has an issue date of December 22, 2000.⁹² (Compl. ¶ 120)

100. 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)

101. NCC is not reselling any Illinois Bell (AT&T) or GTE North (later Verizon, and now Frontier) services.⁹³ (Compl. ¶ 122)

102. NCC-IL filed a tariff on Aug. 11, 2011.⁹⁴ NCC has not produced a copy of that tariff to Sprint, nor is it available on the Illinois Commerce Commission website. (Compl. ¶ 123)

103. Leaf River Telephone Company is a rural ILEC, and its service territory is a rural area.⁹⁵ (Compl. ¶ 124)

104. The competing ILEC in Leaf River is Leaf River Telephone Company. (Compl. ¶ 162)

⁹¹ 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).

⁹² North County Communications Corporation, I.C.C. No. 1, Section 1 Original Page 2 (Issued Dec. 22, 2000) (Ex. 9).

⁹³ Lesser Dep. March 23, 2011, at 355:6-12 (Ex. 13).

⁹⁴ <http://www.icc.illinois.gov/utility/profile.aspx?id=3142> (noting tariff filing but not providing a link to the tariff itself).

⁹⁵ Lesser Dep. June 12, 2012, at 170:23-24 (Ex. 16).

PUBLIC VERSION

105. Leaf River Telephone Company has participated since 2005 in NECA's FCC No. 5 tariff.⁹⁶ (Compl. ¶ 125)

106. 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.⁹⁷ (Compl. ¶ 126)

107. NCC's equipment (and/or the NCC State Companies' equipment) is physically located in DeKalb, Illinois. [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED] [END CONFIDENTIAL] (Compl. ¶ 127)

108. Leaf River and DeKalb are not in the same local calling area.⁹⁹ (Compl. ¶ 128)

109. The competing ILEC in De Kalb is Verizon North Inc., later Frontier. Both Verizon North Inc. and Frontier charged a rate of \$0.0019653 for local switching for interstate access calls from 2006 through 2011.¹⁰⁰ (Compl. ¶ 166)

110. In Illinois, NCC has stated that it provides [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines to HFT.¹⁰¹ (Compl. ¶ 129)

111. 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.¹⁰² (Compl. ¶ 130)

112. NCC's Illinois tariff lists a rate of \$15.00 per month per line for Message Rate Basic Business Line Service.¹⁰³ (Compl. ¶ 131)

⁹⁶ NECA Tariff F.C.C. No. 5 at 46th Revised Title Page 33 (Ex. 10).

⁹⁷ Excerpts from NECA Tariff showing rates (Ex. 10).

⁹⁸ 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).

⁹⁹ Lesser Dep. June 12, 2012, at 182:23-25 (Ex. 16).

¹⁰⁰ 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).

¹⁰¹ Supp. Response to Interrogatory 4 (Ex. 77).

¹⁰² Lesser Dep. March 23, 2011, at 371:1-25 (Ex. 13).

PUBLIC VERSION

2. Arizona.

113. A local exchange tariff in the name of “North County Communications Corporation of Arizona” became effective March 28, 2001, and “contains effective rates and rules together with information relating to and applicable to intrastate local exchange service provided by the Company in Arizona.” (Compl. ¶ 132)

114. 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, 2008.¹⁰⁴ That petition remains open.¹⁰⁵ (Compl. ¶133)

115. In Arizona, NCC’s local exchange tariff lists a varying rate of \$5 to \$50 per line per month.¹⁰⁶ (Compl. ¶ 134)

116. NCC was suspended by the Arizona Corporation Commission from August 6, 2009, through June 22, 2012, for failure to file an annual report.¹⁰⁷ (Compl. ¶ 135)

117. 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.¹⁰⁸ Mr. Lesser later provided an interrogatory response stating that NCC provides [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] lines to HFT in Arizona.¹⁰⁹ (Compl. ¶ 136)

¹⁰³ Original Page 7, Section 6, I.C.C. No. 1, BATES 001405 (Ex. 9).

¹⁰⁴ 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).

¹⁰⁵ Docket status page, Arizona Corporation Commission Docket No. T-03335A-07-0410 (Ex. 51).

¹⁰⁶ Arizona Local Tariff No. 1-T of North County Communications Corporation of Arizona Sheet No. v (issued Feb. 27, 2001) (Bates 001066) (Ex. 5).

¹⁰⁷ Certificate of Revocation, Aug. 6, 2009 (Ex. 48); Reinstatement of June 22, 2012, detailed on Arizona Corporation Commission website (Ex. 50).

¹⁰⁸ Lesser Dep. June 12, 2012, at 264:7-265:17 (Ex. 16).

¹⁰⁹ Supp. Response to Interrogatory 4 (Ex. 77).

PUBLIC VERSION

118. NCC stated in its USF filings to Arizona that it provides [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines in the state.¹¹⁰ (Compl. ¶ 137)

119. 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.¹¹¹ (Compl. ¶ 139; *but see* Answer ¶ 135)

120. The monthly totals invoiced by NCC to HFT do not equal the number of lines in service multiplied by the particular state tariffed rates for local exchange service.¹¹² (Compl. ¶ 110)

121. NCC-AZ's tariff identifies information to be placed on bills to customers, and NCC's bills to HFT do not in fact contain that information.¹¹³ (Compl. ¶ 138)

¹¹⁰ Arizona Universal Service Fund, Carrier Remittance Worksheets for 2005-10 (Bates 000885-000896) (Ex. 66).

¹¹¹ Lesser Dep. June 12, 2012, at 200 (Ex. 16).

¹¹² 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.

¹¹³ Wood Report ¶¶ 75-76 (Ex. 20); *but see* NCC Answer ¶ 133.

PUBLIC VERSION

3. California.

122. 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").¹¹⁴ (Compl. ¶ 142)

123. 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."¹¹⁵ (Compl. ¶ 143)

124. NCC-CA's local exchange tariff imposes detailed requirements for language on end-user bills regarding billing disputes and itemizing surcharges.¹¹⁶ (Compl. ¶ 145)

125. NCC-CA's local exchange tariff requires that oral service orders be followed by a written confirmation from NCC-CA.¹¹⁷ (Compl. ¶ 147)

126. NCC-CA's tariff identifies information to be placed on bills to customers, and NCC's bills to HFT do not in fact contain that information.¹¹⁸ (Compl. ¶ 146)

¹¹⁴ NCC's Transfer Application and CPUC's Acceptance (Ex. 53).

¹¹⁵ Tariff Schedules Applicable to California Local Exchange Telephone Services of North County Communications Corporation of California (Jan. 14, 2008) (001110-001209) (Ex. 7).

¹¹⁶ See Wood Report ¶¶ 66-73 (Ex. 20).

¹¹⁷ NCC's 1st Revised Cal. P.U.C. Sheet No. 4 (Bates 001168) (Ex. 7).

¹¹⁸ *Id.*; NCC Invoices to HFT for California (000802-000815) (Ex. 65); Response to Verizon RFA 20-22 (Ex. 73); *but see* NCC Answer ¶ 140.

PUBLIC VERSION

127. In California, NCC-CA's tariffs provide for a rate of \$10.32 per month per line.¹¹⁹ This does not match up with the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines claimed by NCC¹²⁰ and the monthly bills of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL],¹²¹ 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)

4. Oregon.

128. NCC transferred its certificate and equipment in Oregon to North County Communications Corporation of Oregon ("NCC-OR") on June 8, 2007.¹²² The Oregon Public Utility Commission accepted NCC and NCC-OR's petition for the transfer on August 8, 2007.¹²³ (Compl. ¶ 149)

129. 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.¹²⁴ (Compl. ¶ 150)

130. In Oregon, Mr. Lesser was unable to itemize the charges to HFT for the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines it claims to provide.¹²⁵ (Compl. ¶ 151)

¹¹⁹ *Id.* at 1st Revised Cal. P.U.C. Sheet 1 (Bates 001119) (Ex. 7).

¹²⁰ Supp. Response to Interrogatory No. 4 (Ex. 77); Lesser Dep. Dec. 5, 2012, at 403:15-17 (Ex. 17).

¹²¹ NCC Invoices to HFT (Bates 000802 – 000815) (Ex. 65).

¹²² Application for Transfer of Certificate of Authority to Provide Competitive Telecommunications Services in Oregon (July 2, 2007) (Ex. 59).

¹²³ CP1376, Application Granted (Aug. 2, 2007) (Ex. 60).

¹²⁴ Lesser Dep. June 12, 2012, at 231:23-232:1 (Ex. 16).

¹²⁵ *Id.* at 248:23-249:9.

PUBLIC VERSION

131. In Oregon in February 2012, NCC billed Sprint for 722,134 minutes for HFT traffic that NCC stated was delivered over the equivalent of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] voice grade circuits that have a capacity of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] minutes per month.¹²⁶ (Compl. ¶ 152)

G. NCC'S INVOICES TO SPRINT.

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

133. For Arizona, Mr. Lesser testified that the interstate rate was capped at \$0.002985 per minute.¹²⁷ (Compl. ¶ 155)

134. For Arizona, NCC and/or NCC-AZ billed Sprint \$0.005803 per minute during every month between November 2005 and June 2010.¹²⁸ (Compl. ¶ 156)

135. For Oregon, Mr. Lesser testified that the interstate rate should have been \$0.002985 per minute.¹²⁹ (Compl. ¶ 157)

136. For Oregon, NCC and/or NCC-OR billed Sprint \$0.005803 per minute during every month between September 2006 and June 2010.¹³⁰ (Compl. ¶ 158)

137. For California, Mr. Lesser testified that the interstate rate was capped at \$0.007504 per minute.¹³¹ (Compl. ¶ 159)

¹²⁶ 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).

¹²⁷ Lesser Dep. June 11, 2012, at 110:3-12 (Ex. 15).

¹²⁸ *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).

¹²⁹ Lesser Dep. June 11, 2012, at 136:11-20 (Ex. 15).

¹³⁰ *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).

PUBLIC VERSION

138. For California, NCC and/or NCC-CA billed Sprint \$0.00954698 per minute during every month between September 2006 and May 2010.¹³² (Compl. ¶ 160)

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

140. 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.¹³³ (Compl. ¶ 163)

141. NCC claims to have billed a rate of \$0.036899 each month in Leaf River from February 2008 through January 2011.¹³⁴ (Compl. ¶ 164)

142. NCC actually billed rates ranging from \$0.024435 through \$0.033045 in Illinois from February 2008 through June 2010.¹³⁵ (Compl. ¶ 165)

H. SPRINT'S TRANSMISSION OF CALLS TO NCC AND/OR THE NCC STATE COMPANIES.

143. Sprint pays tandem switched access charges to the tandem providers, such as AT&T and Verizon, for their intermediary transmission of calls to NCC and/or the NCC State Companies.¹³⁶ (Answer ¶ 23)

144. 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's telephone numbers through June 2011.¹³⁷ (Answer ¶ 24)

¹³¹ Lesser Dep. June 11, 2012, at 121:11 (Ex. 15).

¹³² *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 423) (Ex. 71) (California spreadsheet reflects billed rates in excess of the \$0.007504 rate cap).

¹³³ Excerpts from NECA Tariff showing rates (Ex. 10).

¹³⁴ NCC's Spreadsheet (Ex. C to NCC's Motion for Writ of Attachment) (Docket 38-7) (February 4, 2011) (Ex. 69).

¹³⁵ *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).

¹³⁶ *See* Regina Roach Decl., Sept. 27, 2011 (Ex. NCC-5).

¹³⁷ *See* Ex. 33.

PUBLIC VERSION

DISPUTED FACTS

Sprint Factual Assertions Disputed by NCC

1. The invoice files were all created within a period of two and a half minutes.¹³⁸

(Compl. ¶ 105)

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

(Compl. ¶ 135)

3. NCC-AZ took over the Arizona CLEC operations in 2008.¹³⁹

4. In two separate months, NCC or NCC-AZ'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 or NCC-AZ billed Sprint a total of 10,069,354 minutes of use for interstate and intrastate access combined.¹⁴⁰ This exceeds the theoretical capacity of the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] lines by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] percent. (Compl. ¶ 140)¹⁴¹

¹³⁸ Declaration of Jeremy D. Wunsch ("Wunsch Report") at 6 (Jan. 7, 2013) (Ex. 25); *but see* NCC Answer ¶ 117.

¹³⁹ Memorandum of Points and Authorities in Support of Sprint Communications Company L.P.'s Motion to Dismiss Plaintiff's Complaint for Lack of Subject Matter Jurisdiction, at 6-9, and Exhibits attached to publicly-filed Schenkenberg Declaration in Support (March 27, 2015) (Ex. 80).

¹⁴⁰ 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.

¹⁴¹ *But see* NCC Answer ¶ 135.

PUBLIC VERSION

9. 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]**¹⁴⁹ but telling Sprint that HFT did create service orders but that they no longer exist.¹⁵⁰ (Compl. ¶ 148)¹⁵¹

NCC Factual Assertions Disputed by Sprint

10. Prior to receiving local exchange service from NCC, HFT had a revenue-sharing agreement with Sprint.¹⁵² (Answer ¶ 10)

11. Historically, Sprint approved 900 ads that included free chat lines associated with the ads and chat line providers.¹⁵³ (Answer ¶ 11)

12. 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.¹⁵⁴ (Answer ¶ 78)

13. 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.¹⁵⁵ (Answer ¶ 124)

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

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

¹⁵¹ *But see* NCC Answer ¶ 142.

¹⁵² *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.

¹⁵³ *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.

¹⁵⁴ 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).

PUBLIC VERSION

14. 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.¹⁵⁶ (Answer ¶ 124)

15. The Arizona Corporation Commission reinstated NCC's status retroactively without any lapse in operating authority.¹⁵⁷ (Answer ¶ 131)

16. In the district court proceeding, Sprint admitted that it carries almost no traffic originated by its own end users.¹⁵⁸ (Answer ¶ 21)

17. 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.¹⁵⁹ (Answer ¶ 21)

18. Sprint stopped routing its non-Sprint Communications Co. L.P. traffic to NCC for a period in the past.¹⁶⁰ (Answer ¶ 22)¹⁶¹

¹⁵⁵ 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.

¹⁵⁶ 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.

¹⁵⁷ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit, and that the statement is incorrect as a matter of fact and law.

¹⁵⁸ *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.

¹⁵⁹ 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 asserts that it produced applicable documentation. In addition, it appears that NCC had no network following its transfer of operations to NCC state entities in 2007-2008. 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."

¹⁶⁰ *See* Todd Lesser Decl., Sept. 13, 2011, ¶¶ 8-11 (Ex. NCC-8).

PUBLIC VERSION

19. Sprint has acknowledged that it ceased routing traffic to NCC for a period of time after NCC filed its complaint with the district court.¹⁶² (Answer ¶ 22)

20. Sprint later resumed routing its traffic to NCC.¹⁶³ (Answer ¶ 22)

21. 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.¹⁶⁴ (Answer ¶ 32)

22. When Sprint provided conference call services, Sprint's LEC affiliates did not charge the Sprint conference call affiliate for local phone service, but Sprint's LEC affiliates charged terminating access fees to other carriers for terminating the conference calls."¹⁶⁵

23. Sprint derives revenue from wholesaling access to NCC's network.¹⁶⁶

24. Sprint and its affiliated entities provide each other with collocation at no charge.¹⁶⁷

25. Sprint has revenue sharing agreements for sharing revenue related to 800 services.¹⁶⁸

¹⁶¹ *But see* Roach Decl. Sept. 27, 2011, ¶¶ 13-.18 (Ex. NCC-5) (responding to Mr. Lesser's assertions).

¹⁶² *See* Regina Roach Decl., Sept. 27, 2011, ¶¶ 13, 14 (Ex. NCC-5).

¹⁶³ 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).

¹⁶⁴ *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.

¹⁶⁵ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit, and that the first half of the sentence is untrue. *See* Sprint Reply ¶ 60.

¹⁶⁶ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit, and that less than 0.5% of calls are associated with the provision of wholesale services to third party long distance carriers.

¹⁶⁷ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit, and that such alleged arrangements would conflict with company policy.

PUBLIC VERSION

26. Sprint monitors the switched access tariffs of CLECs that submit switched access invoices to Sprint.¹⁶⁹

27. 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.¹⁷⁰

28. HFT has paid and continues to pay NCC for the services as evidenced by the cancelled checks that NCC produced to Sprint in discovery.¹⁷¹ (Answer ¶ 13)

29. 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.¹⁷² (Answer ¶ 13).

30. 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.¹⁷³ (Answer ¶ 14)

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

¹⁶⁸ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit.

¹⁶⁹ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit, and that it is not true in all cases.

¹⁷⁰ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit.

¹⁷¹ See Compl. ¶ 227. Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit. There is no evidence 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.

¹⁷² 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."

¹⁷³ Sprint's position is that NCC and HFT's business model would fall apart if NCC and/or an NCC State Company did not provide free and reduced price services to HFT. See Sprint Reply fn. 22.

PUBLIC VERSION

32. Sprint charges originating access fees for toll-free traffic that originates on Sprint's wireless network.¹⁷⁴ (Answer ¶ 35)

Respectfully submitted,

/s Keith Buell

Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Keith Buell
12502 Sunrise Valley Drive
VARESA0209
Reston, VA 20196
(703) 592-2560
Fax: (703) 433-4804
Keith.Buell@sprint.com

William Lawson
6450 Sprint Parkway
Mailstop KSOPHN0304
Overland Park, KS 66251
(913) 315-9405
(913) 523-1685 (fax)
William.lawson@sprint.com

*Counsel for Sprint Communications
Company L.P.*

R. Dale Dixon, Jr.
Law Offices of Dale Dixon
402 W. Broadway, Suite 1500
San Diego, CA 92101
(619) 770-1884
Fax: (888) 677-5598
dale@daledixonlaw.com

Dated: June 9, 2015

*Counsel for North County Communications
Corporation*

¹⁷⁴ Sprint's position is that this statement does not meet the requirement of Commission Rule 1.720(c) that facts be supported by relevant documentation or an affidavit.

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2015, copies of the foregoing Joint Statement were served
via the method specified below to the following:

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
Via ECFS
Public hard copy version by U.S. Mail

A.J. DeLaurentis
Rosemary McEnery
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street S.W., Room 5A-848
Washington, D.C. 20554
Courtesy copy of confidential and public versions via e-mail

Dale Dixon
Counsel for North County Communications Corp.
Law Offices of Dale Dixon
1155 Camino Del Mar, #497
Del Mar, CA 92014
Fax: (888) 677-5598
Via ECFS and e-mail

Jo-Ann Monroe