

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION**

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SPRINT COMMUNICATIONS  
COMPANY L.P.,

CIV. NO. 10-4110

Plaintiff,

vs.

THERESA MAULE, in her official  
capacity as Judge of Tribal Court,  
CROW CREEK SIOUX TRIBAL  
COURT, and NATIVE AMERICAN  
TELECOM, LLC,

Defendants.

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**NATIVE AMERICAN TELECOM, LLC's ANSWER**

Defendant Native American Telecom, LLC ("Defendant NAT"), by and through the undersigned counsel, answers Plaintiff Sprint Communications Company L.P.'s ("Sprint") Complaint as follows:

**INTRODUCTION**

1. Defendant NAT admits that it is a South Dakota limited liability company.  
Defendant NAT admits that Defendant NAT has brought suit against Sprint in Crow Creek Tribal Court. The remaining allegations in this paragraph are Sprint's characterization of its claims to which no response is required. To the extent a response is deemed required, denied.
2. The allegations in this paragraph are Sprint's characterization of its claims to which no response is required. To the extent a response is deemed required, denied.

3. The allegations in this paragraph do not relate to Defendant NAT, and/or are legal conclusions, and therefore, in either case, no response is required, but if a response is deemed required, denied.
4. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
5. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
6. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
7. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
8. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
9. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

10. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
11. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied. Defendant NAT admits that Sprint has initiated an action against Defendant NAT before the South Dakota Public Utilities Commission. Defendant NAT also admits that it has initiated an action against Sprint in Crow Creek Tribal Court seeking damages.

**THE PARTIES**

12. The allegations in this paragraph do not relate to Defendant NAT and therefore no response is required, but if a response is deemed required, denied. The remaining allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
13. Defendant NAT admits that it is a South Dakota limited liability company. Defendant NAT admits that neither Thomas Reiman nor Gene DeJordy are enrolled members of the Crow Creek Sioux Tribe. The remaining allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
14. The allegations in this paragraph do not relate to Defendant NAT and therefore no response is required.
15. The allegations in this paragraph do not relate to Defendant NAT and therefore no response is required.

**JURISDICTION**

16. The allegations in this paragraph are legal conclusions to which no response is required.

**VENUE**

17. The allegations in this paragraph are legal conclusions to which no response is required.

**BACKGROUND**

18. The allegations in this paragraph do not relate to Defendant NAT, are Sprint's characterizations of its claims, and/or are legal conclusions, and therefore, in either case, no response is required, but if a response is deemed required, denied.

19. The allegations in this paragraph do not relate to Defendant NAT, are Sprint's characterizations of its claims, and/or are legal conclusions, and therefore, in either case, no response is required, but if a response is deemed required, denied.

20. The allegations in this paragraph do not relate to Defendant NAT, are Sprint's characterizations of its claims, and/or are legal conclusions, and therefore, in either case, no response is required, but if a response is deemed required, denied.

21. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied. Defendant NAT admits that it has billed Sprint for legally-imposed services under Defendant NAT's tariffs.

22. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

23. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
24. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
25. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
26. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
27. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
28. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
29. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
30. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed

required, denied. Defendant NAT admits that Sprint has initiated a complaint with the South Dakota Public Utilities Commission.

31. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied. Defendant NAT admits that it has initiated a lawsuit against Sprint in Crow Creek Tribal Court.
32. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
33. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
34. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
35. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
36. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

37. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

**COUNT ONE**

**Breach of Federal Tariff Obligation and Communications Act  
(Defendant NAT)**

38. Defendant NAT incorporates its responses to each of the allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

40. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

41. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

42. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

43. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

44. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

45. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

### **COUNT TWO**

#### **Unjust Enrichment (Defendant NAT)**

46. Defendant NAT incorporates its responses to each of the allegations contained in paragraphs 1 through 45 as if fully set forth herein.

47. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

48. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

49. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

### **COUNT THREE**

#### **Declaratory and Injunctive Relief (Defendants Crow Creek Sioux Tribal Court and the Honorable Theresa Maule)**

50. Defendant NAT incorporates its responses to each of the allegations contained in paragraphs 1 through 49 as if fully set forth herein.



51. Defendant NAT admits that it has sued Sprint in Crow Creek Tribal Court.
52. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
53. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
54. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
55. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.
56. The allegations in this paragraph are Sprint's characterization of its claims, and/or legal conclusions, and therefore, no response is required, but if a response is deemed required, denied.

**PRAYER FOR RELIEF**

This clause contains no factual allegations, and therefore requires no answer by Defendant NAT, but if a response is deemed required, Defendant NAT denies that Sprint is entitled to any relief on its claims.

**GENERAL DENIAL**

All allegations set forth by Sprint not specifically admitted above are denied.

**FIRST AFFIRMATIVE DEFENSE**

1. This Court lacks subject matter jurisdiction over Sprint's claims.

**SECOND AFFIRMATIVE DEFENSE**

2. Sprint's claims fail to state a claim for which relief may be granted.

**THIRD AFFIRMATIVE DEFENSE**

3. Sprint's claims are barred by its own breaches of contract.

**FOURTH AFFIRMATIVE DEFENSE**

4. Sprint's claims are barred by Federal Communications Commission precedent.

**FIFTH AFFIRMATIVE DEFENSE**

5. Sprint's claims are barred by the doctrines of waiver, estoppels, and/or acquiescence.

**SIXTH AFFIRMATIVE DEFENSE**

6. Sprint's claims are barred by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Sprint's claims are barred by the doctrine of primary jurisdiction.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Sprint's claims are barred to the extent Sprint failed to mitigate its damages.

**NINTH AFFIRMATIVE DEFENSE**

9. Sprint's claims are barred by the doctrine of standing.

**TENTH AFFIRMATIVE DEFENSE**

10. Sprint's claims and requests for damages are barred, in whole or in part, by its election of remedies and its decision to adjudicate certain claims before the South Dakota Public Utilities Commission.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. The telecommunications industry is of vital importance to the economy of the Crow Creek Sioux Tribe.

- A. On July 7, 2010, Defendant NAT filed a Civil Complaint against Sprint in Crow Creek Tribal Court (Crow Creek Tribal Civ. Case No. 10-07-086).
- B. The Crow Creek Tribal Court has jurisdiction over Defendant NAT's claims against Sprint in the Crow Creek Tribal Court action as a matter of both tribal and federal law.
- C. In this Court, the subject matter of Sprint's Complaint is identical to and duplicative of Defendant NAT's pending (and earlier-filed) Crow Creek Tribal Court action.
- D. Pursuant to the "tribal exhaustion doctrine" set forth in *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987), and *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985), Defendant NAT intends to submit a motion asserting that this federal court action should be stayed until Sprint exhausts all available remedies in the courts of the Crow Creek Sioux Tribe to challenge the jurisdiction of the Crow Creek Tribal Court. Until Sprint exhausts its tribal court remedies, further proceedings in this action would unlawfully interfere with the sovereignty and right to self-government of the Crow Creek Sioux Tribe.
- E. Under the "tribal exhaustion doctrine," if the courts of the Crow Creek Sioux Tribe do not uphold the jurisdiction of the Crow Creek Tribal Court, this Court could proceed to adjudicate the merits of Sprint's claims.
- F. Alternatively, under the "tribal exhaustion doctrine," if the courts of the Crow Creek Sioux Tribe uphold the jurisdiction of the Crow Creek Tribal Court, this Court could not proceed until the courts of the Crow Creek Sioux Tribe

have adjudicated the merits of Defendant NAT's Complaint. In that event, and in the event Sprint in fact exhausts all remedies available in the courts of the Crow Creek Sioux Tribe, this Court could then review the Crow Creek Tribal Court's jurisdictional determination. If this Court were to affirm the finding of jurisdiction as a matter of federal law, the "tribal exhaustion doctrine" would require it to defer to the Crow Creek Tribal Court's determination regarding the merits of Defendant NAT's Complaint. If, on the other hand, this Court were to find that the courts of the Crow Creek Sioux Tribe are without jurisdiction as a matter of federal law, it could then proceed to adjudicate the merits of Sprint's claim.

**WHEREFORE**, Defendant NAT respectfully requests that this Court:

1. Dismiss Sprint's Complaint and all claims therein with prejudice.
2. Award Defendant NAT its costs, expenses and attorneys' fees.
3. Provide Defendant NAT such further relief as this Court may deem appropriate.

Dated this 6<sup>th</sup> day of September, 2010.

SWIER LAW FIRM, PROF. LLC

/s/ Scott R. Swier

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*Attorney for Defendant Native American  
Telecom, LLC*

**DEMAND FOR JURY TRIAL**

Defendant NAT hereby demands a Jury Trial on all matters of fact triable to a jury.

Dated this 6<sup>th</sup> day of September, 2010.

SWIER LAW FIRM, PROF. LLC

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*Attorney for Defendant Native American  
Telecom, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on *September 6<sup>th</sup>, 2010*, the foregoing *Native American Telecom, LLC's Answer* was filed and served on all counsel of record via the Court's CM/ECF system.

/s/ Scott R. Swier