

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

---

IN RE:

Docket No. \_\_\_\_\_

SPRINT COMMUNICATIONS  
COMPANY L.P.,

Complainant,

**COMPLAINT**

v.

NATIVE AMERICAN TELECOM-PINE  
RIDGE, LLC,

Respondent.

---

**INTRODUCTION**

Sprint Communications Company L.P. ("Sprint") brings this action against Native American Telecom-Pine Ridge, LLC ("NAT-Pine Ridge") to bring to an end NAT-Pine Ridge's traffic pumping operations in South Dakota in violation of state law. NAT-Pine Ridge claims the right to charge Sprint terminating switched access services for calls allegedly made into the Pine Ridge Reservation under tariffs allegedly on file with the Oglala Sioux Tribe Utilities Commission (OSTUC) and with the Federal Communications Commission. NAT-Pine Ridge's claim that it provides competitive local exchange services to the Pine Ridge Reservation is a sham: all or virtually all of NAT-Pine Ridge's traffic billed to Sprint terminates to conference/chat lines operated by Free Conferencing Corporation, a non-tribal entity located in California. Nor does NAT-Pine Ridge have a tariff on file with the Public Utilities Commission ("Commission").

With this action, Sprint seeks a determination that NAT-Pine Ridge lacks authority to bill Sprint for switched access services without a certificate of authority and valid tariff on file with the Commission.

### **THE PARTIES**

1. Complainant Sprint is a limited partnership with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas. It is authorized to do business in South Dakota.

2. Respondent NAT-Pine Ridge is a limited liability company organized under the laws of South Dakota.

### **JURISDICTION**

3. The Commission has jurisdiction over this Complaint pursuant to SDCL 1-26-15, 49-13-1, 49-13-13 and 49-31-3, as well as ARSD 20:10:01 and 20:10:01:34.

### **BACKGROUND**

4. The Commission has issued Sprint a certificate to provide intrastate interexchange service within South Dakota. When providing intrastate interexchange services, Sprint purchases intrastate switched access services from originating carriers, intermediary carriers and terminating carriers in accordance with tariffs filed with and approved by the Commission.

5. The rates for intrastate switched access services are regulated by the Commission pursuant to SDCL Chapter 49-31 and ARSD Chapter 20:10:27.

6. Under South Dakota law, intrastate switched access charges can only be assessed pursuant to a filed and approved tariff. In the absence of tariff authority to bill

for a call, intrastate switched access charges cannot be billed, and no payment is due on any invoices illegally sent out by a local exchange carrier (LEC).

7. On September 9, 2008, an entity called Native American Telecom filed an application with the Commission for a certificate of authority to provide local exchange services on the Pine Ridge Indian Reservation. The Commission assigned this application docket number TC08-109. Native American Telecom moved to withdraw its application in TC08-109 on February 19, 2009, which the Commission granted in an order dated March 18, 2009.

8. On September 15, 2009, Gene DeJordy and Thomas Reiman, the same two people who formed Native American Telecom, filed papers with the South Dakota Secretary of State to form NAT-Pine Ridge.

9. NAT-Pine Ridge started invoicing Sprint for intrastate terminating access charges on September 2010. Through October, 2014, NAT-Pine Ridge has invoiced Sprint \$2,159.81 to intrastate terminating access services and seeks late fees and interest as well. Sprint has not paid any of NAT-Pine Ridge's invoices for intrastate services.

10. NAT-Pine Ridge has never applied for a certificate of authority from the Commission to provide local exchange services in South Dakota.

11. The South Dakota Legislature has mandated that a telecommunication company must have a certificate of authority from the Commission before it offers telecommunications services in this state. Under SDCL § 49-31-3, no one can operate as a local exchange carrier until it has a certificate of authority from the Commission. SDCL § 49-31-3 provides in relevant part:

Each telecommunications company that plans to offer or provide interexchange telecommunications service shall file an application for a certificate of authority with the commission pursuant to this section. . . . The commission shall have the exclusive authority to grant a certificate of authority.

12. NAT-Pine Ridge has no certificate of authority from the Commission to provide any service in this state and thus is operating illegally in this state. In SDCL § 49-31-3, the Legislature has made NAT's conduct a Class 1 misdemeanor:

The offering of such telecommunications services by a telecommunications company without a certificate of authority or inconsistent with this section is a Class 1 misdemeanor.

13. NAT-Pine Ridge apparently received authorization in June 2009 from the OSTUC to provide telecommunications service as a competitive local exchange carrier (CLEC). In a September 24, 2014, order involving AT&T, docket T-3-2014, the OSTUC asserted NAT-Pine Ridge has a tariff on file with OSTUC, but none is available on the OSTUC website.

14. OSTUC's putative authorization to NAT-Pine Ridge to provide CLEC services within the Pine Ridge reservation does not permit NAT-Pine Ridge to operate without a certificate of authority from the Commission. In its Final Decision and Order in *In Re Application of Native American Telecom LLC for a Certificate of Authority*, TC11-087, the Commission ruled that the applicant in that case had to have a certificate of authority from the Commission to, at the minimum, lawfully provide service to non-tribal members. The Commission in the proceeding ruled it did not have primary jurisdiction over service to tribal members because the applicant was formed under the laws of the Crow Creek Sioux Tribe. NAT-Pine Ridge LLC, however, is organized

under the laws of South Dakota, and consequently the Commission can assert primary jurisdiction in all respects over NAT–Pine Ridge’s intrastate services.

15. NAT–Pine Ridge purports to provide local exchange services, but this is untrue. Sprint has determined that in August, 2014, 99.987% of the Sprint calls terminated to a NAT–Pine Ridge number were to conference calling services, and nearly all of those calls were to a number specifically identified as FreeConferenceCall.com.

16. Free Conferencing Corporation operates through the FreeConferenceCall.com URL to provide allegedly “free” conference calling services. Free Conferencing Corporation is a non-tribal entity based in Long Beach, California. Free Conferencing Corporation locates its conference call equipment in rural areas to exploit the higher terminating access charges local exchange carriers charge. Free Conferencing Corporation’s business modus operandi is to contract with the local exchange carriers like NAT–Pine Ridge to capture from 75% to 90% of the terminating access charges the local exchange carrier receives from interexchange carriers.

17. NAT–Pine Ridge has tried to exploit the regulatory process by designing a tariff allegedly on file with the OSTUC in an effort to legitimize its scheme with Free Conferencing Corporation. In order to operate within the Pine Ridge Reservation, NAT–Pine Ridge must have a certificate of authority from the Commission and a tariff on file with the Commission.

18. OSTUC also mistakenly claims jurisdiction to regulate Sprint’s services. As the United States Supreme Court recently reaffirmed in *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316 (2008), tribes lack jurisdiction to

regulate the activities of non-members within a reservation absent the non-members' consent, and Sprint has not consented to that jurisdiction. The two narrow exceptions to this sound rule of law, set out in *Montana v. United States*, 450 U.S. 544 (1980), do not apply here. Accordingly, OSTUC lacks any jurisdiction over Sprint or Sprint's operations as an interexchange carrier.

**COUNT I  
DECLARATORY RULING**

19. Sprint restates and realleges its prior allegations.

20. There is an actual controversy between Sprint and NAT-Pine Ridge with respect to whether NAT-Pine Ridge legitimately provides intrastate switched access services for calls to Free Conferencing Corporation. The resolution of this controversy is necessary to determine whether NAT-Pine Ridge has properly billed intrastate switched access charges for those calls.

21. Sprint is entitled to a declaration pursuant to ARSD 20:10:01:34 and SDCL 21-24-1 that NAT cannot assess intrastate switched access charges unless it has a certificate of authority from the Commission and valid tariffs on file with the Commission and therefore, Sprint has no access charge liability to NAT.

**PRAYER FOR RELIEF**

For the foregoing reasons, Sprint is entitled to judgment:

1. Declaring that NAT-Pine Ridge must seek a certificate of authority from the Commission and file a lawful tariff with the Commission before it can assess charges for switched access service; and

2. Awarding Sprint such other and further relief as the Commission deems just and equitable.

Dated: November 6, 2014.

**TOBIN LAW OFFICES**

By 

Tom D. Tobin

P.O. Box 730  
422 Main Street  
Winner, South Dakota 57580  
Telephone: (605) 842-2500  
Email: [tobinlaw@gwtc.net](mailto:tobinlaw@gwtc.net)

**OF COUNSEL:**

Scott G. Knudson  
Philip R. Schenkenberg  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2157  
Telephone: (612) 977-8400  
Email: [sknudson@briggs.com](mailto:sknudson@briggs.com)  
[pschenkenberg@briggs.com](mailto:pschenkenberg@briggs.com)

**Attorneys for Sprint Communications  
Company L.P.**