

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

IN THE MATTER OF THE COMPLAINT)	
FILED BY SPRINT COMMUNICATIONS)	
COMPANY, LP AGAINST NATIVE)	Docket No. TC10-026
AMERICAN TELECOM, LLC)	
REGARDING TELECOMMUNICATIONS)	
SERVICES)	

AFFIDAVIT OF GENE DEJORDY

Gene DeJordy, being first duly sworn upon his oath deposes and states as follows:

1. I am the Chief Executive Officer of Native American Telecom Enterprise, LLC (NAT ENTERPRISE), a limited liability company organized under the laws of the State of South Dakota.
2. Native American Telecom, LLC (NAT) is a full-service, tribally-owned limited liability company organized under the laws of the State of South Dakota. NAT's ownership structure consists of the Crow Creek Sioux Tribe (51%) (Tribe), NAT ENTERPRISE (25%), and WideVoice Communications, Inc. (24%) (WideVoice).
3. NAT ENTERPRISE is a telecommunications development company and is a *separate and distinct entity* from NAT. WideVoice is a Competitive Local Exchange Carrier (CLEC).
4. NAT provides high-speed Internet access, basic telephone, and long-distance services on and within the Crow Creek Sioux Tribe Reservation (Reservation). NAT's services take place exclusively within the exterior boundaries of the Reservation. NAT *does not* provide services within the State of South Dakota outside the exterior

boundaries of the Reservation. As a result of its efforts, NAT has created jobs and provided much-needed economic opportunities on the Reservation.

5. In 1997, the Crow Creek Sioux Tribal Council established the Crow Creek Sioux Tribe Utility Authority (Tribal Utility Authority) for the purpose of planning and overseeing utility services on the Reservation and to promote the use of these services “to improve the health and welfare of the residents.”
6. On August 19, 2008, the Tribe issued its “Crow Creek Indian Reservation – Telecommunications Plan to Further Business, Economic, Social, and Educational Development.”
7. On October 28, 2008, the Tribal Utility Authority entered its “Order Granting Approval to Provide Telecommunications Service” (Approval Order). Under this Approval Order, NAT was “granted authority to provide telecommunications service on the Crow Creek Reservation subject to the jurisdiction of the laws of the Crow Creek Sioux Tribe.”
8. As a result of the Approval Order, NAT properly filed two Access Service Tariffs (Access Tariff) governing termination of telephone traffic on the Reservation. One Access Tariff was filed with the Federal Communications Commission (FCC) for interstate traffic. A second Access Tariff was filed with the Tribal Utility Authority. The Approval Order requires that the basic telephone service offered by NAT must be “consistent with the federal universal service requirements of 47 U.S.C. § 214(e) and the rules of the Federal Communications Commission.” NAT has always complied with this portion of the Approval Order.

9. In September 2009, pursuant to the Approval Order, and after over one year of planning and infrastructure development, NAT launched one of the first new tribally-owned telephone systems in the United States. NAT provides telephone and advanced broadband service to residential and business customers on the Reservation.
10. NAT has physical offices, telecommunications equipment, and telecommunications towers on the Reservation. NAT also provides a computer training facility with free Internet and telephone service to tribal members. In September 2010, NAT will be opening a new stand-alone Internet Library and Training Facility, which will include Internet stations and educational facilities for classes.
11. NAT has never applied for, nor received, federal stimulus funding, Universal Service Funds (USF), or any other federal or state funding mechanisms relating to its tribally-owned telephone company.
12. The telephone and advanced broadband network system on the Reservation enables the Tribe to pursue new economic development opportunities. The Tribe describes its advanced telecommunications system as a vehicle for “paving the way for much-needed business, economic, social and educational development on the Crow Creek Reservation.” Specifically, the broadband network supports high-speed broadband services, voice service, data and Internet access, and multimedia.
13. The broadband network uses WiMax (Worldwide Interoperability for Microwave Access) technology operating in the 3.65 GHZ licensed spectrum, providing service to residential, small business, hospitality, and public safety customers. WiMax is a Broadband Wireless Access technology based on the IEEE 802.16 standard that enables the delivery of high-speed personal, business, and enterprise class broadband

services to subscribers anytime, anywhere. Through the use of advanced antenna and radio technology with OFDM/OFDMA (Orthogonal Frequency Division Multiplexing), NAT delivers wireless IP (Internet Protocol) voice and data communications. WiMax was selected because this technology offers flexible, scalable, and economically viable solutions that are key components to deploying in vast rural environments, such as the Reservation.

14. Shortly after NAT launched its tribally-owned telephone system, Sprint Communications Company L.P. (Sprint) improperly refused to pay NAT's lawfully-imposed Access Tariff.
15. Sprint is a limited partnership that provides interexchange services on the Reservation. It should be noted that Sprint initially paid NAT its lawfully-imposed Access Tariffs. However, shortly after making these initial payments, Sprint engaged in the improper "self-help" actions that have resulted in this (and other) lawsuits.
16. In March 2010, NAT filed a complaint with the Tribal Utility Authority seeking enforcement of its Access Tariff. Specifically, NAT alleged that Sprint was not paying the required Access Tariff for services NAT rendered on the Reservation. Sprint has taken the position, despite its earlier Access Tariff payments and the applicability of lawful tariffs in effect, that the termination of traffic by NAT on the Reservation is not subject to compensation, even though NAT incurs costs to terminate Sprint's traffic.
17. On March 29, 2010, the Tribal Utility Authority entered an Order agreeing with NAT and finding that Sprint's "self-help" in refusing to pay NAT's Access Tariff violated the "filed rate doctrine." Specifically, the Tribal Utility Authority found that

“[Sprint’s] self-help actions could jeopardize the ability of a carrier, like [NAT], to serve the essential telecommunications needs of the residents of the Crow Creek reservation.” The Tribal Utility Authority also held “[NAT] commenced providing essential telecommunications services . . . to the residents of the Crow Creek reservation pursuant to [the Tribal Utility Authority’s Approval Order]. . . . It is also a matter of public record that [NAT] has commenced offering new and critically needed services on the reservation.”

18. The Tribal Utility Authority’s Order concluded by stating “The Crow Creek reservation is a rural, high-cost service area. Access service revenue has historically been a critically important source of revenue for rural carriers, like [NAT], to support operations. . . . If carriers, like Sprint, are able to take self-help actions and not pay for services rendered subject to a lawful tariff, it would not only put at risk the continued operation of carries like [NAT], but would also put at risk the services relied upon by, and in some cases essential to[,] the health and safety of . . . consumers.” As such, the Tribal Utility Authority found “Sprint’s non-payment of

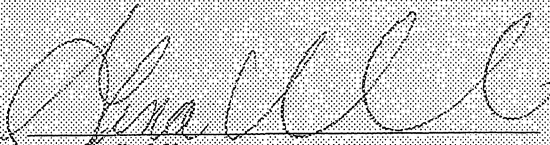
[NAT's] access tariff charges to be a violation of the laws of the Crow Creek Sioux Tribe."

19. The Tribal Utility Authority's Order also provided Sprint with an invitation to address Sprint's concerns. However, Sprint has also entirely ignored this part of the Order.
20. As of today's date, Sprint continues to entirely ignore this Order and refuses to pay the Tribal Utility Authority's lawfully-imposed Access Tariff.

Dated this 3 day of September, 2010.


Gene DeJordy

Subscribed and sworn to before me this 3 day of September, 2010.


Notary Public

(SEAL)

GINA VOLPACCHIO
Notary Public

My Commission Expires: My Commission Expires Feb. 28, 2011