CROW CREEK SIOUX TRIBE	)	IN TRIBAL COURT
	)	
CROW CREEK SIOUX RESERVATION	)	
	)	
CROW CREEK SIOUX JURISDICTION	)	CIVIL DIVISION

* *

NATIVE AMERICAN TELECOM, LLC,

CIV. CASE 10-07-086

Petitioner/Plaintiff,

vs.

CIVIL COMPLAINT

SPRINT COMMUNICATIONS COMPANY L.P.,

Respondent/Defendant.

* *

Plaintiff, Native American Telecom, LLC, by and through its counsel, and for its Complaint against Defendant Sprint Communications Company L.P., states and alleges as follows:

INTRODUCTION

This is a collection action arising from Defendant Sprint Communications Company L.P.'s ("Defendant" or "Defendant Sprint") unlawful refusal to pay Plaintiff Native American Telecom, LLC ("Plaintiff" or "Plaintiff NAT") for completing and terminating Defendant Sprint's long distance traffic. At its core, this Complaint seeks to enforce Plaintiff NAT's well-established legal rights to collect compensation for terminating Defendant Sprint's telecommunications calls on the Crow Creek Sioux Tribe Reservation.

The charges for the work provided by Plaintiff NAT are known as "access charges." Plaintiff NAT is entitled to charge Defendant Sprint for these "access charges" for allowing Defendant Sprint to utilize Plaintiff NAT's local network services to complete long distance

calls. Defendant Sprint has deliberately ignored its legal obligations to compensate Plaintiff NAT for the services Plaintiff NAT has rendered for completing calls for Defendant Sprint and Defendant Sprint's customers. Defendant Sprint's obligation to compensate Plaintiff NAT is mandated by Plaintiff NAT's lawfully-filed tariffs, established case law, the Communications Act of 1934, as amended ("Communications Act" or "Act"), and the Federal Communications Commission's ("FCC" or "Commission") implementing rules and policies.

Defendant Sprint's self-help in refusing to pay Plaintiff NAT's tariffed rates violates the "filed rate doctrine" and FCC precedent, which require all customers who avail themselves of tariffed services to pay the rates contained in effective tribal and federal tariffs. Settled FCC orders prohibit carriers, such as Defendant Sprint, from engaging in self-help by refusing to pay tariffed rates.

Plaintiff NAT has performed its duties as a telecommunications carrier to allow Defendant Sprint to utilize Plaintiff NAT's network to terminate calls. However, Defendant Sprint refuses to pay Plaintiff NAT's lawfully assessed access charges for terminating the calls. Defendant Sprint's unlawful actions place Plaintiff NAT and its customers at risk, which the tariffs were intended to address and prohibit.

On or about March 29, 2010, the Crow Creek Sioux Tribe Utility Authority ("Tribal Utility Authority") issued an Order finding Defendant Sprint's "non-payment of Native American Telecom – Crow Creek's access tariff charges to be a violation of the laws of the Crow Creek Sioux Tribe" and a violation of the "filed rate doctrine."

THE PARTIES

1. Plaintiff NAT is a tribally-owned, limited liability company that provides telecommunications services exclusively on the Crow Creek Sioux Tribe reservation.

2. Upon information and belief, Defendant Sprint is a limited liability partnership with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas. Upon information and belief, Defendant Sprint is authorized to do business in South Dakota. Upon information and belief, Defendant Sprint is also an international communications corporation, providing interexchange service. In providing interexchange services, Defendant Sprint receives payments from its customers and then must compensate carriers, like Plaintiff NAT, to originate or terminate its customers' calls.

JURISDICTION

3. This Court has jurisdiction over the parties and subject matter of this action as the conduct alleged below occurred within the Crow Creek Sioux Reservation.

FACTUAL ALLEGATIONS

4. On or about October 28, 2008, the Tribal Utility Authority granted Plaintiff NAT "authority to provide telecommunications services on the Crow Creek reservation subject to the jurisdiction and laws of the Crow Creek Sioux Tribe." Plaintiff NAT is considered a competitive local exchange carrier ("CLEC") providing local, long distance, and access telephone service to customers on the Crow Creek reservation.

5. Historically, telephone service in the United States was largely provided by a single integrated company, known as AT&T. In 1984, AT&T was split into "local" and "long distance" or interexchange companies ("IXCs"). The local telephone companies, known as local exchange carriers ("LECs"), maintained exclusive franchises to provide telephone service within defined geographic service territories. By contrast, the long distance portion of AT&T was faced with competition from other IXCs, such as MCI, Sprint, and many others.

6. IXCs generally utilized their own lines to carry calls across a state or across the country. They did not, however, own the telephone lines within the local exchange. Rather, those lines were owned by the LECs. To enable long distance competition, the FCC required LECs to allow IXCs to use their local lines for purposes of "originating" and "terminating" telephone calls. For example, when a consumer made a long distance call, the consumer's LEC would "originate" the call and hand it off to the IXC. The IXC would carry the call across its network and deliver it to a LEC to "terminate" the call to the dialed customer. Without this requirement, LECs could have frustrated long distance competition by refusing to allow IXCs to use the local exchange network for routing long distance calls.

7. To compensate LECs for the use of their networks, the FCC required IXCs to pay "access charges" for "originating" and "terminating" long distance telephone calls. These access charges were set forth in regulated price lists, known as tariffs, filed with the FCC, state, or tribal utility authorities. These tariffs ensured that IXCs were treated fairly by making like-service offerings available to all IXCs.

8. In 1996, Congress amended the United States' telecommunications laws by enacting the Telecommunications Act ("1996 Act"). As part of the 1996 Act, Congress eliminated the four (4) exclusive franchises possessed by Incumbent LECs ("ILECs") and preempted state "statute[s]," "regulation [s]," and other "legal requirement[s]" that "prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services." 47 U.S.C. § 253(a). The effect of this section was to compel all states to open their local telecommunications market to competition from new entrants, known as competitive local exchange carriers ("CLECs").

9. Congress also required all telecommunications carriers - local and long distance carriers - to interconnect their networks "directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a). Interconnection ensures that all consumers can place calls to, and receive calls from, consumers that are served by a different telecommunications carrier. Without an interconnection requirement, consumers that purchase service from one carrier would have no assurance of their ability to place calls to consumers served by other carriers.

10. Federal, state, and tribal regulators have jurisdiction over the access charges that apply to any given interexchange call, depending upon whether the call is interstate, intrastate, or terminates on tribal lands. If the call originates in one state and terminates in another state, the access charges that apply fall exclusively under the FCC's jurisdiction. The access charges that are the subject of this Complaint reflect both interstate and tribal traffic. As is the case for all LECs, the CLECs generally file tariffs with the FCC, state, or tribal utility authorities describing their terms and conditions of service. Under FCC regulations, CLECs are generally entitled to charge the same rates as ILECs for providing originating and terminating access charges for interstate calls.

11. Prior to 2001, the FCC did not regulate CLEC access charges. In 2001, however, in its *CLEC Access Charge Order*, the Commission modified its rules to regulate CLEC access rates by more closely aligning CLEC access rates with those of the Incumbent LECs. The FCC established a "benchmark" or "safe harbor" at or under which CLEC access rates are presumed just and reasonable as a matter of law. *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923, ¶¶3, 40-63 (2001) ("*CLEC Access Charge Order I*"). *See also* 47 C.F.R. §61.26. Specifically, the Commission concluded that:

> [A]n IXC that refused payment of tariffed rates within the safe harbor would be subject to suit on the tariff in the appropriate federal district court, without the impediment of a primary jurisdiction referral to the Commission to determine the reasonableness of the rate. Similarly, because of the presumptive conclusion of reasonableness that we will accord to tariffed rates at or below the benchmark, a CLEC with qualifying rates will not be subject to a section 208 complaint challenging its rates. *Access Charge Reform Seventh Report and Order* at ¶60.

12. The FCC initially set the benchmark at 2.5 cents per minute, or the competing incumbent's rate, whichever was higher. *Id.* at ¶45. Under the FCC's plan, the benchmark declined over a three-year period until it reached the competing Incumbent LEC's rate. *Id.* The benchmark rate is the rate of the competing Incumbent LEC in the area served by the CLEC.

13. Since 2009, Plaintiff NAT has had on file an interstate tariff filed with the FCC and an intrastate/tribal tariff filed with the Utility Authority, both of which fully comply with the FCC's rules.

14. The filed rate doctrine (also known as the filed tariff doctrine) is a common law construct that originated in judicial and regulatory interpretations of the Interstate Commerce Act, and was later applied to the Communications Act. It has been applied consistently to a variety of regulated industries for almost a century. The filed rate doctrine stands for the proposition that a validly filed tariff has the force of law, and may not be challenged in the courts for unreasonableness, except upon direct review of an agency's endorsement of the rate. *See e.g., Maislin Industries, U.S. v. Primary Steel, Inc.*, 497 U.S. 116, 117 (1990); *Telecom International America, Ltd. v. AT&T Corp.*, 67 F. Supp. 2d 189, 216-17 (S.D.N.Y.1999); *MCI Telecommunications Corp. v. Dominican Communications Corp.*, 984 F.Supp.185, 189 (S.D.N.Y.1997).

15. The filed rate doctrine is motivated by two principles – (1) to prevent carriers from engaging in price discrimination between ratepayers; and (2) to preserve the exclusive role of federal agencies in approving "reasonable" rates for telecommunications services by keeping courts out of the rate-making process. *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2nd Cir. 1998). Thus, if a carrier acquires services under a filed tariff, only the rate contained in the tariff for that service will apply. The filed rate doctrine is applied strictly, and it requires a party that receives tariffed services to pay the filed rates, even if that party is dissatisfied with the rates or alleges fraud. *Marcus*, 138 F.3d at 58-59. A party seeking to challenge a tariffed rate must pay the rate in the tariff and then file a complaint with the FCC challenging the rate.

16. The FCC reaffirmed the filed rate doctrine and expressly applied it to CLEC access charges in its *CLEC Access Charge Order I*, explaining that "[t]ariffs require IXCs to pay the published rate for tariffed C[ompetitive] LEC access services, absent an agreement to the contrary or a finding by the Commission that the rate is unreasonable." 16 FCC Rcd 9923 ¶28.

17. Despite the FCC's unequivocal statement of the law and its policies prohibiting self-help refusals to pay access charges, Defendant Sprint has illegally withheld access charge payments from Plaintiff NAT.

18. Plaintiff NAT provides interstate exchange access and other services on the Crow Creek reservation under federal and tribal tariffs. These tariffs are validly filed and consistent with Section 203 of the Act, 47 U.S.C. § 203.

19. Plaintiff NAT's tariffs have been in full force and effect during the time that it has been providing access services to Defendant Sprint.

20. Pursuant to its tariffs, Plaintiff NAT has submitted invoices to Defendant Sprint for access charges associated with the access services provided to Defendant Sprint.

21. Defendant Sprint continues to take access services from Plaintiff NAT, while withholding payment for the services it provides.

22. Plaintiff NAT has provided exchange access and other services to Defendant Sprint under a lawful tribal tariff. Plaintiff NAT's tariffed access rates are fully compliant with the FCC's regulations governing CLEC access charges.

23. Plaintiff NAT has been providing access service to Defendant Sprint since October of 2009, as prescribed in Plaintiff NAT's access tariffs filed with the Tribal Utility Authority and the FCC.

24. Prior to March 2010, Defendant Sprint paid Plaintiff NAT's invoices at the tariffed rates.

25. Beginning in March 2010, Defendant Sprint ceased paying for the access services it took from Plaintiff NAT.

26. On March 22, 2010, Defendant Sprint provided the following explanation for its refusal to pay Plaintiff NAT's invoices:

> Sprint objects to the nature of certain traffic for which Cabs Agents/Native American Telecom is billing access charges and Sprint disputes the terminating charges in full. It is Sprint's position that traffic volumes associated with, but not limited to; artificially stimulated usage, chat lines, free conferencing, and revenue sharing are not subject to access charges. If you have any questions please call Julie Walker at 913-762-6442 or email at julie.a.walker@sprint.com.

27. On March 26, 2010, Plaintiff NAT provided the Tribal Utility Authority with a copy of the billing dispute with Defendant Sprint.

28. On March 29, 2010, the Tribal Utility Authority issued an Order finding:

> Sprint's non-payment of Native American Telecom – Crow Creek's access tariff charges [are] a violation of the laws of the Crow Creek Sioux Tribe. This finding applies to both the

> intrastate access services subject to the tariff in effect at this Utility Authority and the interstate access services subject to the tariff in effect at the FCC. To the extent Sprint believes that Native American Telecom – Crow Creek's access rates are unreasonable or not applicable, it should file a Complaint with this Utility Authority and not take matters into its own hands by not paying for services provided by Native American Telecom – Crow Creek.

29. By failing to pay the full amount invoiced by Plaintiff NAT, Defendant Sprint has breached its obligations under Plaintiff NAT's lawful tariffs.

30. Because of Defendant Sprint's refusal to pay its bills, Plaintiff NAT has thus far been damaged in the amount of approximately $199,016.59, including interstate and intrastate charges. Additional damages are accruing daily as Defendant Sprint continues to withhold amounts due for interstate and intrastate access services rendered by Plaintiff NAT.

COUNT I

Breach of Contract/Collection Action Pursuant to Federal Tariffs

31. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

32. Plaintiff NAT has provided interstate switched access services to Defendant Sprint. Defendant Sprint is required to pay Plaintiff NAT's access charges as set forth in Plaintiff NAT's federal tariffs.

33. Defendant Sprint has failed to pay the access charges that Defendant Sprint owes under the tariffs and associated late fees, thus constituting a breach of the applicable tariffs and therefore a breach of contract.

34. Plaintiff NAT has been, and continues to be, damaged by Defendant Sprint's refusal to pay the access charges it owes, plus late fees as provided in the tariffs. Plaintiff NAT is entitled to recover these amounts, or such other damages as may be established at trial.

COUNT II

Breach of Implied Contract Resulting From Violation of Federal and Tribal Tariffs

35. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

36. Plaintiff NAT has validly filed tariffs with both the FCC and the Tribal Utility Authority.

37. Plaintiff NAT has supplied services and submitted invoices to Defendant Sprint pursuant to Plaintiff NAT's filed tariffs for services provided, which constitutes an implied contract.

38. Defendant Sprint has refused to pay the invoices. Defendant Sprint's actions constitute a material uncured breach of the tariffs and of the implied contract among the parties resulting from the filed tariffs.

COUNT III

Violation of Section 201 of the Communications Act, 47 U.S.C. § 201

39. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

40. Defendant Sprint is required to pay Plaintiff NAT's switched access charges as set forth in Plaintiff NAT's federal tariffs.

41. Defendant Sprint has failed to pay the access charges Defendant Sprint owes under the tariffs and associated late fees.

42. Section 201(b) of the Communications Act (47 U.S.C. § 201) imposes upon common carriers the duty that their practices in connection with communication services be "just and reasonable," and provides that all unjust and unreasonable practices are unlawful.

43. Defendant Sprint has engaged in unreasonable, unjustified, and unlawful self-help by refusing to pay to Plaintiff NAT the access charges that Defendant Sprint lawfully owes.

44. Defendant Sprint's refusal to pay the lawful access charges associated with services it has taken, and continues to take, from Plaintiff NAT constitutes an unreasonable practice in violation of Section 201(b) of the Act and the FCC's implementing decisions.

45. As a result of Defendant Sprint's unreasonable practice of refusing to pay for lawfully-tariffed services, Plaintiff NAT has been damaged in the amount previously set forth or such other damages as may be established at trial.

46. Because Defendant Sprint's conduct constitutes a violation of Section 201(b) of the Act, Plaintiff NAT is entitled to recover its reasonable attorneys' fees pursuant to Section 206 of the Act, 47 U.S.C. § 206.

COUNT IV

Violation of Section 203 of the Communications Act, 47 U.S.C. § 203

47. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

48. Defendant Sprint is required to pay Plaintiff NAT's switched access charges as set forth in Plaintiff NAT's federal tariffs.

49. Defendant Sprint has failed to pay the access charges Defendant Sprint owes under the tariffs and associated late fees.

50. Section 203 of the Communications Act (47 U.S.C. § 203) imposes upon common carriers the duty to file tariffed rates for regulated communications services and to pay the tariffed rates for such services. Section 203(c) states that no carrier shall "charge, demand, collect, or receive a greater or less compensation, for such communication [than the tariffed rate]."

51. Defendant Sprint has engaged in an unreasonable practice of refusing to pay Plaintiff NAT its tariffed rates for the access services it has utilized, thereby "demanding" and

"receiving" a rate less than the tariffed rate, in violation of Section 203(c) of the Act and the FCC's implementing decisions such as *MCI Telecommunications Corporation, American Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company*, 62 F.C.C.2d 703 (1976).

52. As a result of Defendant Sprint's unreasonable practice of refusing to pay for lawfully-tariffed services, Plaintiff NAT has been damaged in the amounts set forth above or such other damages as may be proved at trial.

53. Because Defendant Sprint's conduct is willful, malicious, and includes, *inter alia*, an intentional refusal to abide by filed tariffs, disregard of controlling orders of the FCC, and illegal self-help, Plaintiff NAT is entitled to an award of punitive damages.

54. Because Defendant Sprint's conduct constitutes a violation of Section 203(c) of the Act, Plaintiff NAT is entitled to recover their reasonable attorneys' fees, pursuant to Section 206 of the Act, 47 U.S.C. § 206.

COUNT V

Breach of Contract/Collection Action Pursuant to Tribal Tariff

55. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

56. Plaintiff NAT has provided intrastate switched access services to Defendant Sprint. Defendant Sprint is required to pay Plaintiff NAT's access charges as set forth in its tribal tariff.

57. Defendant Sprint has failed to pay the access charges that it owes under Plaintiff NAT's tribal tariff and associated late fees.

58. Plaintiff NAT has been and continues to be damaged by Defendant Sprint's refusal to pay the access charges it owes, plus late fees as provided by the tariff.

59. Plaintiff NAT is entitled to recover these amounts, or such other damages as may be established at trial.

COUNT VI

Quantum Meruit

60. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

61. Count VI is pleaded in the alternative to the previous counts, in the event that the court does not find the existence of a valid contractual obligation.

62. Plaintiff NAT has provided, and continues to provide, valuable switched access services to Defendant Sprint.

63. Defendant Sprint accepted, used, and enjoyed the access services that Plaintiff NAT has provided, and continues to provide, to Defendant Sprint.

64. It was at all times foreseeable that Plaintiff NAT expected to be paid for the access services it provided to Defendant Sprint.

65. The reasonable and fair market value of the services for which Defendant Sprint has refused to pay is established by Plaintiff NAT's tariffed switched access charge rates.

66. Defendant Sprint has been, and will continue to be, unjustly enriched unless it is required to pay to use Plaintiff NAT's access services.

COUNT VII

Declaratory Judgment

67. Plaintiff NAT re-alleges and incorporates by reference the foregoing paragraphs.

68. A present, actionable, and justiciable controversy exists with respect to the legal rights between the parties. Such controversy arises under the Federal Communications Act, 47

U.S.C. §§ 201, *et seq.*, and under the laws of the United States. Litigation between the parties is unavoidable.

69. Defendant Sprint's refusal to pay interstate and intrastate access charges for its use of Plaintiff NAT's switched access services and Defendant Sprint's refusal to pay associated late fees are ongoing and repeated practices.

70. On information and belief, absent a declaratory judgment, Defendant Sprint will continue its wrongful practices of refusing to pay interstate and intrastate access charges and late fees for these services from which Defendant Sprint benefits.

71. It would be unduly burdensome and inefficient for Plaintiff NAT to bring new actions for damages each time Defendant Sprint wrongfully refuses to pay an invoice.

72. Accordingly, Plaintiff NAT is entitled to a declaratory judgment and such further relief based upon that declaratory judgment as the Court deems proper, pursuant to 28 U.S.C. §§ 2201 and 2202, determining that Plaintiff NAT:

(a) Has lawfully charged Defendant Sprint for services rendered in the provision of interstate and intrastate access services, either pursuant to Plaintiff NAT's duly filed federal and tribal tariffs, or in accordance with the principles of equity.

(b) Defendant Sprint has breached the express contracts between it and Plaintiff NAT by refusing and failing to pay interstate access charges and associated late fees, either as set forth in Plaintiff NAT's federal and tribal tariffs, or as established as a matter of equity.

(c) Plaintiff NAT has been damaged by Defendant Sprint's breach of the express contracts between the parties; and

(d) Defendant Sprint is contractually and equitably obligated to make timely payment of these charges and late fees as said charges become due.

WHEREFORE, Plaintiff NAT demands judgment against Defendant Sprint as follows:

(a) For all lawful damages incurred by Plaintiff NAT, in an amount to be determined at trial, but no less than the access charges that Defendant Sprint owes Plaintiff NAT, together with associated tariffed late fees and prejudgment interest;

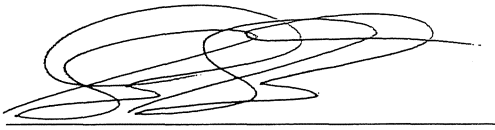
(b) For Plaintiff NAT's damages, reasonable attorneys' fees, and the costs of this action, pursuant to 47 U.S.C. § 206;

(c) For a declaratory judgment in favor of Plaintiff NAT; and

(d) For such other and further relief as the Court deems just, proper, and reasonable in this matter.

Dated this 7th day of July, 2010.

SWIER LAW FIRM, PROF. LLC



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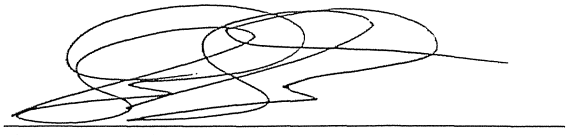
DEMAND FOR JURY TRIAL

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

Dated this 7th day of July, 2010.



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