UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

SPRINT COMMUNICATIONS COMPANY L.P.,

Plaintiff,

v.

THERESA MAULE IN HER OFFICIAL CAPACITY AS JUDGE OF TRIBAL COURT, CROW CREEK SIOUX TRIBAL COURT, AND NATIVE AMERICAN TELECOM, LLC.,

Defendants.

Civil No.10- 4110

COMPLAINT

INTRODUCTION

1. Sprint Communications Company L.P. ("Sprint") brings this action against Native American Telecom, LLC ("NAT") to bring to an end NAT's efforts to establish traffic pumping operations on the Crow Creek Sioux Reservation ("Reservation") in South Dakota in violation of federal and state law. NAT is a South Dakota limited liability company based in Sioux Falls. NAT is suing Sprint for hundreds of thousands of dollars in Crow Creek Tribal Court.

2. Traffic pumping is a scheme where a local exchange carrier ("LEC"), *i.e.*, local phone company, partners with free conference call centers or chat rooms to artificially stimulate telephone call volume. NAT purports to operate local exchange carrier operations on the Reservation but in reality exists only to engage in traffic pumping.

3. Sprint is a telecommunications company that provides telecommunications services nationwide and is known under the telecommunications regulatory framework as an interexchange carrier ("IXC"). Sprint is qualified to do business within the State of South Dakota and is certificated by the South Dakota Public Utilities Commission to provide intrastate interexchange services in South Dakota, and is authorized by the FCC to provide interstate interexchange services.

4. As an IXC, Sprint delivers long distance telecommunication calls to LECs. In simplest terms, when a customer places a long distance call, the call is routed to the customer's designated IXC (like Sprint), who carries the call (either directly or through a third party carrier) to the terminating LEC for connection to the recipient of the call. When done in compliance with law and tariff, this last step involves the provision of terminating switched access service by the LEC to the IXC. NAT has purported to establish itself as a LEC for the Crow Creek Reservation.

5. As a matter of state and federal law, switched access charges can only be assessed pursuant to an effective tariff on file with the state public utilities commission (for intrastate services) and with the Federal Communications Commission ("FCC") for interstate services. In the absence of tariff authority to bill for a call, switched access charges cannot be assessed, and no payment is due on any invoices illegally sent out by a LEC.

6. NAT has two tariffs it purports to enforce in tribal court. One is NAT's tariff it filed with the FCC on September 14, 2009, with an effective date of September 15, 2009. A copy of NAT's FCC tariff is attached as Exhibit A to this Complaint. NAT

also claims a tariff it filed with the Crow Creek Sioux Tribal Utility Authority ("Tribal Utility Authority") on September 1, 2009, ostensibly effective that very day. A copy of NAT's tribal tariff is attached to this Complaint as Exhibit B.

7. On September 8, 2008, NAT also applied with the South Dakota Public Utilities Commission ("SD PUC") for a Certificate of Authority to provide competitive local exchange service on the Crow Creek Reservation pursuant to ARSD 20:10:32:03 and 20:10:32:15. On October 28, 2008, the Tribal Utility Authority authorized NAT to provide LEC services with the Crow Creek Reservation. In response, on December 1, 2008, NAT moved to dismiss its application pending before the SD PUC, which the agency granted on February 5, 2009. As a result NAT is operating within the State of South Dakota, purportedly as a LEC, and seeking to assess switched access charges *without* a Certificate of Authority from the SD PUC.

8. This specific dispute began in December 2009, when NAT began wrongly invoicing Sprint for allegedly providing switched access services to Sprint. NAT did not invoice Sprint directly but used a third party, called CABS Agent, to bill Sprint with CABS Agent as the payee. Sprint mistakenly paid two of CABS Agent's invoices; the third invoice from NAT's billing service was for an amount several times larger than the previous month. Sprint then investigated the invoices and determined that NAT was operating an illegal traffic pumping scheme.

9. As noted above, traffic pumping occurs when a LEC partners with a second company ("Call Connection Company") that has established free or nearly free conference calling, chat-line, or similar services that callers use to connect to other callers

or recordings. The Call Connection Company generates large call volumes to numbers assigned to the LEC. The LEC in turn unlawfully bills those calls to the IXCs as if they are subject to switched access charges, hoping that IXCs unwittingly pay those bills. If the IXC does so, the LEC and Call Connection Company share the revenues.

10. NAT claims the right to charge Sprint for terminating switched access service for calls made to the Crow Creek Reservation under tariffs on file with the Tribal Utility Authority and the FCC. NAT's claim that it provides competitive local exchange services to the Reservation is a sham: for all practical purposes NAT's traffic billed to Sprint terminates to conference bridge lines operated by non-tribal members. NAT has engaged in secret, *ex parte* communications with the Tribal Utility Authority, which has wrongfully attempted to assert jurisdiction over Sprint and ordered it to pay NAT pursuant to NAT's tariff on file with that entity.

11. Sprint has initiated an action against NAT before the SD PUC to stop NAT's scheme. NAT refuses to acknowledge the SD PUC's jurisdiction over NAT even though at one time NAT had a tariff on file with the SD PUC. NAT has also sued Sprint in Crow Creek Tribal Court for hundreds of thousands of dollars in damages. NAT is also bringing a claim for punitive damages in that forum. Because the tribal court is without jurisdiction, Sprint is seeking injunctive relief from this Court to prevent NAT and the tribal court from proceeding further with NAT's action in tribal court.

THE PARTIES

12. Sprint is a Delaware limited partnership with its principal place of business in Overland Park, Kansas. None of Sprint's partners are citizens of South Dakota or have their principal places of business in this state.

13. NAT is a South Dakota limited liability company. According to information on file with the South Dakota Secretary of State, NAT's principal office is in Sioux Falls and the members responsible for NAT's debts pursuant to SDCL § 47-34A 303(c) are Thomas Reiman and Gene DeJordy, who, on information and belief, are citizens of South Dakota and Arkansas, respectively. On information and belief, neither Reiman nor DeJordy are enrolled members of the Crow Creek Sioux Tribe or any other tribe.

14. The Crow Creek Tribal Court is the tribal court for the Crow Creek Sioux Tribe and has its chambers in Fort Thompson, South Dakota.

15. The Honorable Theresa Maule is the Judge of the Crow Creek Tribal Court.

JURISDICTION

16. This Court has jurisdiction over this case under 28 U.S.C. § 1331, because several of Sprint's claims arise under the Communications Act of 1934, 47 U.S.C. § 151 *et seq*. and 47 U.S.C. § 207. Jurisdiction also exists under 28 U.S.C. § 1332, as Sprint and the defendants are citizens of different states and the amount in controversy exceeds $75,000. This Court has supplemental jurisdiction over Sprint's state law claims under 28 U.S.C. § 1367.

VENUE

17. Venue is proper in this district under 28 U.S.C. § 1391(b) because all defendants reside in South Dakota and a substantial part of the events giving rise to Sprint's claims arose in South Dakota.

BACKGROUND

A. Sprint's Services

18. Sprint is a telecommunications carrier offering long-distance wireline services to its customers around the country. Long-distance calls are those that are made from one local calling area to another. For example, in a typical situation (unlike in this case), a long-distance call may be made from a Sprint customer in Massachusetts to a called party, or "end user," in South Dakota. Sprint generally owns the facilities over which the call travels between the local calling area of the calling customer and the local calling area of the called customer (or it enters arrangements with other carriers to route the calls over their facilities).

19. Sprint does not ordinarily own the facilities within a local calling area over which the call travels its last leg to the called customer's premises. The facilities used to complete the last leg of these calls are typically provided by the called party's own LEC. Because Sprint does not generally own the facilities that physically connect to end users, it must pay local carriers for access to them. The charge that Sprint pays for access to the called party is known as a "terminating access" charge because the call "terminates" with the party that is called. In this way, Sprint is a customer of the local exchange carriers – it is purchasing the LEC's "terminating access service" in order to enable its customers to

complete long distance calls to their final destination, that is, to the premises of the called party.

20. Sprint (like other long-distance carriers) purchases terminating access service under a tariff required to be published by the local carrier that contains charges for terminating access (along with other offered services). Pursuant to the terms of that tariff, Sprint and other long-distance carriers have purchased access services under the tariff whenever they hand off a call to the local carrier that meets the tariff's definitions of "terminating access" service. Because LECs have an effective monopoly over local telephone service in their service areas, the long distance carriers have no choice but to purchase the service defined in the tariff when the calls are made from one of their customers to an end user in the calling area of the local exchange carrier. *See In re Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, T 30 (2001). For that reason, it is important that tariffed services are defined precisely. For that reason, too, tariffs are construed narrowly – only services expressly set out in the tariff are "deemed" to be purchased. *See In re Theodore Allen Commc'ns, Inc. v. MCI Telecomms. Corp.*, 12 F.C.C.R. 6623, ¶ 22 (1997).

B. Defendant NAT's Scheme

21. In this case, NAT has billed Sprint for services NAT asserts that Sprint has purchased under NAT's tariffs. Specifically, NAT devised a scheme artificially to inflate call volumes to phone numbers assigned to NAT's local calling area in order to bill

Sprint for what NAT wrongly characterizes as tariffed "terminating access" service. But under this scheme, Sprint is *not* connecting a call with a called party on the Reservation that is a customer of NAT. Instead, NAT's scheme with its Call Connection Company partners involves advertising "conference call," or similar services that allow callers, who do not reside on the Reservation, to talk to one another.

22. Callers throughout the nation access these services by dialing a ten-digit NAT phone number with a South Dakota area code. To Sprint, each call appears to be an ordinary long-distance call to a called party in South Dakota. Sprint thus carries the traffic close to the location of the NAT South Dakota number. At that point, Sprint (either directly or indirectly) transfers the call to a NAT-designated point of interface. At the point of interface, however, Sprint has learned that the call ostensibly going to a NAT customer is redirected to a telephone switch in California. The call then reaches the Call Connection Company's conference bridge where the call is terminated. It is Sprint's belief that the conference bridge equipment is very likely located at or near this switch. None of this activity qualifies as the provision of local exchange services on the Reservation.

23. If a Sprint customer were calling one of the residences or businesses that purchase local phone service from NAT, Sprint would be purchasing a typical "terminating access" service, and would be paying the local carrier's terminating access charge under the tariff. But that is not what happens in this traffic pumping scheme. Instead, with these calls, NAT transfers the call not to an end user customer, but to a Call Connection Company that is jointly engaged in this scam.

24. These Call Connection Companies are business partners or joint venturers, not "customers" of NAT, as that term is understood in common parlance. The Call Connection Companies do not pay money to NAT for any "service" as would be the case in a true customer relationship. Instead, they actually *receive* money in the form of kickbacks from NAT for their participation in this illegal scheme.

25. Moreover, the calling parties are not making terminating calls to these Call Connection Companies, but are seeking to talk to other parties outside of the service territory of NAT. The Call Connection Companies are simply connecting the calls like any other common carrier, and the calls do not actually "terminate" in the local exchange. Thus, unlike the typical scenario where a caller makes a long-distance call to a person in South Dakota and Sprint pays the LEC to "terminate" the call, Sprint is merely delivering the call to an *intermediate* point – delivering the call to NAT, who then delivers the call to the conference bridge provider which in turn connects callers who are geographically dispersed.

26. Sprint has not expressly agreed to pay terminating access charges for this service. Nor can it be deemed to have agreed to pay for this service. But NAT has been unlawfully billing Sprint "terminating access" charges for these calls, even though the calls do not terminate at an end user premises on the Reservation.

27. Moreover, the bogus terminating access charges are high enough to allow NAT and the Call Connection Companies to profit handsomely from this scheme. The Call Connection Companies are able to offer their services to calling parties for no cost, or nearly no cost. For customers who have long distance calling plans that do not charge

per minute, the calling party does not pay anything for the call at all. Of course, these caller connection services are not actually "free" – they are directly and unreasonably subsidized by long distance carriers such as Sprint who are being charged high "terminating access" rates when there is no provision of terminating access. They are thus being subsidized by all long distance carriers' customers throughout the country, including those who never use the Call Connection Companies' services.

28. The scam here is one of a number of similar scams recently perpetrated by certain rural LECs and their call connection partners. There is currently litigaton all over the country over these schemes. In Iowa, for example, there are several suits involving similar scams. *See, e.g., Sprint Communications Co., L. P. v. Superior Telephone Cooperative*, No. 4:07-cv-00194 (S.D. Iowa); *Qwest Communications Corp. v. Superior Telephone Cooperative*, No. 4:07-cv-0078 (S.D. Iowa), *AT&T Corp. v. Superior Telephone Cooperative*, No. 4:07-cv-0043 (S.D. Iowa); *AT&T Corp. v. Reasnor Telephone Co., LLC*, No. 4:07-cv-00117 (S.D. Iowa). There are also eight similar suits pending in South Dakota, including three suits involving Sprint. *See Sancom, Inc. v. Sprint Communications Co., L.P.*, No. CIV 07-4107 (D.S.D.); N*orthern Valley Commc'ns, LLC v. Sprint Communications Co., L.P.*, No. CIV. 08-1003 (D.S.D.); *Splitrock Properties, Inc. v. Sprint Communications Co., L.P.*, No. CIV 09-4075 (D.S.D.). And two other cases brought in the District of Minnesota involving a Minnesota LEC and Sprint and Qwest have been referred to the FCC and stayed pending the outcome of related proceedings at the Minnesota Public Utilities Commission. *See Tekstar Communications, Inc. v. Sprint Communications Co., L.P.*, No. 08-cv-01130-

JNE-RLE (D. Minn.); *Qwest Communications Company LLC v. Tekstar Communications, Inc.* No. 10-cv-00490 (MJD/SCN). Sprint is also involved with cases in California, Utah and Kentucky. *North County Communications Corp. v. Sprint Communications Co. L.P.*, 09-CV-2685 (S.D. Cal.); *Beehive Tel. Co., Inc. v. Sprint Communications Co., L.P.*, 2:10-CV-00052 (D. Ut.); *Bluegrass Tel. Co., Inc. v. Sprint Communications Co., L.P.*, 4:10-CV-104 (D. Ky).

29. Further, the Iowa Utilities Board has released an order in *In re Qwest Communications Corp. v. Superior Telephone Cooperative, et. al.*, Docket No. FCU-07-02 (IUB) (the "IUB Order"), holding that certain LECs' intrastate access charges for calls routed to conference call, chat line, and other call connection service providers did not fall within those LECs' tariff provisions defining access service. Finally, the FCC has found such traffic-pumping schemes to be likely unlawful and is still exploring ways to prohibit them going forward. *See Establishing Just and Reasonable Rates for Local Exchange Carriers, Notice of Proposed Rulemaking*, WC Docket No. 07-135, FCC 07-176, ¶¶ 11, 18-19, 34-37 (October 2, 2007). To date, the FCC's relief is prospective only. Long-distance carriers like Sprint must seek retroactive relief through litigation with LEC's over their traffic pumping scams.

30. After Sprint determined that NAT was engaging in a traffic-pumping, Sprint began disputing NAT's access bills. Sprint also initiated a complaint with the SD PUC seeking to stop NAT from offering telecommunication services without a Certificate of Authority from the SD PUC. In reality, however, it is NAT that owes Sprint a refund, since Sprint had already paid NAT access charges for traffic stemming

from NAT's scam before it came to realize the existence of the scam. Sprint has paid these erroneous charges to NAT, and is entitled to get them back.

31. Rather than defending itself before the SD PUC, NAT obtained an *ex parte* order from the Crow Creek Sioux Tribal Utility Authority and has now sued Sprint in tribal court to seek payment for its illegal traffic pumping services. The tribal court has no jurisdiction over Sprint to enforce the terms of NAT's federal tariff, which Congress has ruled must be enforced only in federal court or the FCC. *AT&T Corp. v. Coeur D'Alene Tribe*, 295 F.3d 899, 905 (9th Cir. 2002) (47 U.S.C. § 207 diverts state and tribal courts of jurisdiction to adjudicate Federal Communications Act claims); *see Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Comty.*, 991 F.2d 458, 463 (8th Cir. 1993) (Hazardous Materials Transportation Act preempted tribal ordinance and excused any need to exhaust tribal remedies). Likewise, the tribal court cannot exercise jurisdiction over Sprint for it has not consented to that court's jurisdiction. *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 650 (2001) ("inherent sovereign powers of an Indian tribe do not extend to the activities with non members of the tribe.") (quotation omitted); *Alltel Communications, LLC v. Ogalala Sioux Tribe*, 2010 WL 1999 , at *12 (D.S.D.) (Federal Communications Act vests jurisdiction only in federal court or the FCC, and not in state or tribal court).

C. The Tariffs

32. There are many problems with NAT's scheme, foremost that NAT cannot lawfully charge Sprint for a terminating access service under its filed tariffs.

33. The services that NAT purports to offer related to handling calls from callers in other states are set forth in an interstate tariff filed with the FCC. The services that NAT purports to offer relating to in-state calls should be set forth in intrastate tariffs filed with the SD PUC. But NAT has no state tariff, only a tribal tariff. NAT's tariffs describe the access services that NAT claims that Sprint is taking. The tariffs also set the rates charged for those services. Under Section 203 of the Federal Communications Act, 47 U.S.C. § 203, carriers subject to tariff requirements cannot charge customers for services not specified in their interstate tariffs, and cannot charge rates other than those set out in those tariffs. *See American Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 222 (1998). Further, because carriers set the terms of their tariffs unilaterally, it is well settled that any ambiguity in the terms of a tariff must be strictly construed against the carrier that drafted it and in favor of customers. *See In re Theodore Allen Commc'ns., Inc. v. MCI Telecomc'ns. Corp.*, 12 F.C.C.R. 6623, ¶ 22 (1997). Similar rules govern intrastate tariffs.

34. NAT is subject to refund liability on both tariffs. NAT filed its FCC tariff with the FCC with only one day's notice before becoming effective. NAT's tribal tariff was effective immediately on filing. Under 47 U.S.C. § 204(a)(3), to be "deemed lawful," a LEC filing a tariff must give 15 days' notice before becoming effective. NAT's FCC tariff states it was issued September 14, 2009 and effective September 15, 2009; the tribal tariff issued September 1, 2009, with the same effective date. Consequently, neither of NAT's tariffs are "deemed lawful," and Sprint is entitled to a refund of the amounts it mistakenly paid.

35. When Congress enacted the Telecommunications Act of 1996 ("1996 Act") it made clear that the legacy access charge regime was locked into place and would not be expanded further. 47 U.S.C. § 251(g) provides:

> On and after February 8, 1996, each local exchange carrier, to the extent that it provide wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission. (Emphasis added.)

Section 251(g) means that access charges apply only to traffic for which there was a pre-1996 Act access payment obligation. *See PAETEC Commn'ns, Inc. v. CommPartners LLC*, Civ. No. 08-0397, 2010 WL 1767193 at *8 (D.D.C. Feb. 18, 2010) (Doc. 34-2); *WorldCom Inc. v. FCC*, 288 F.3d 429, 433 (D.C. Cir. 2002); *Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1073 (8th Cir. 1997) (legacy exchange carriers will continue to receive payment under pre-Act regulations). Thus, to the extent NAT's tariffs purport to apply to traffic that did not exist or was ineligible for access charges in 1996, section 251(g) prohibits such charges today.

36. The FCC has enacted regulations pursuant to statutory authorization that defines switched access services as involving the origination or termination of an interstate telephone call to or from an end user within the service area of the LEC. NAT's tariff severs that connection, which results in NAT claiming to terminate millions

of calls that never involve a bona fide end user actually receiving the call within NAT's service area. Because NAT's FCC tariff violates statutory authority and FCC regulations, NAT's tariff amounts to an unreasonable practice that Congress prohibited in 47 U.S.C. § 251. As a result, this Court is not bound by the filed rate doctrine. *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F. 3d 1091, 1097 (8th Cir. 2006) (filed rate doctrine inapplicable where tariff does not cover services at issue); *Paetec, supra,* 2010 WL 1767193 at *4 (filed rate doctrine must yield when tariff is "inconsistent with the statutory framework pursuant to which it is promulgated").

37. NAT has filed a tariff with the Tribal Utility Authority that similarly violates federal law. The tribal tariff is not limited to regulating calls the Tribal Utility Authority arguably could regulate; instead it purports to regulate the same extent as NAT's FCC tariff. This, too, amounts to an unreasonable practice in violation of 47 U.S.C. § 201, and conflicts with 47 U.S.C. § 203 and the FCC's access charge rules. NAT's tribal tariff is also presumptively invalid because it attempts to regulate Sprint's off-reservation activities with non-tribal members who are also off the Reservation.

COUNT ONE

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

38. Sprint repeats and realleges each and every allegation contained in paragraphs 12 through 37 of its Complaint as if fully set forth herein.

39. NAT has caused Sprint to be billed hundreds of thousands of dollars in charges denominated as "terminating access" charges based on routing interstate long-

distance calls from Sprint to NAT's joint venture partners that are carriers, not end user customers on the Reservation. These joint venture partners provide conference call or similar services that enable callers to connect to each other and, on information and belief, are themselves located outside of NAT's local calling areas and do not own or control the premises to which the calls are routed.

40. NAT's actions constitute an unreasonable practice prohibited by 47 U.S.C. § 201.

41. NAT's tariffs – both federal and tribal – attempt to regulate Sprint's interstate telephone services. By severing any connection between switched access services and a local exchange area, NAT has engaged in an unreasonable practice under 47 U.S.C. § 201, and the tariffs conflict with 47 U.S.C. § 203 and the FCC. To the extent NAT's tribal tariff purports to permit such charges, it is a presumptively invalid effort to regulate the off-reservation conduct of a non-member of the Crow Creek Sioux Tribe.

42. Sprint is authorized to bring suit for damages for this conduct in this Court pursuant to 47 U.S.C. § 207.

43. Sprint is entitled to reasonable damages in the amount of the unauthorized access charges paid to NAT under NAT's federal tariff, plus reasonable costs and attorneys' fees, pursuant to 47 U.S.C. §§ 206, 207. Sprint will establish the amount of damages at trial.

44. Sprint is also entitled to an order enjoining NAT from assessing charges on Sprint pursuant to their unlawful scheme. 28 U.S.C. §§ 2201, 2202.

45. Sprint is further entitled to a declaratory judgment and declaration of rights establishing that NAT has no right to charge or collect access charges based on routing interstate long-distance calls from Sprint to entities that provide conference call, chat line, international call, or similar services that enable callers to connect to each other. 28 U.S.C. §§ 2201, 2202.

COUNT TWO

Unjust Enrichment
(Defendant NAT)

46. Sprint repeats and realleges each and every allegation contained in paragraphs 12 through 45 of its Complaint as if fully set forth herein.

47. NAT, through its wrongful, improper, unjust, and unfair conduct has reaped substantial and unconscionable profits from Sprint by charging Sprint for services for which Sprint has not agreed to pay and which are not permitted by federal law. As such, Sprint has conferred a benefit on NAT, which has received monies to which it is not entitled.

48. In equity and good conscience, it would be unjust for NAT to enrich itself at the expense of Sprint. Among other reasons, NAT had no lawful authority to collect those charges from Sprint. NAT's unlawful conduct will continue unless the prayer for relief is granted.

49. Sprint has been damaged by the actions of NAT and is entitled to damages and restitution in the amount to be determined at trial, plus interest, attorneys' fees, and costs, and all available declaratory and injunctive relief.

COUNT THREE

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

50. Sprint repeats and realleges each and every allegation contained in paragraphs 12 through 49 of its Complaint as if fully set forth herein.

51. NAT has sued Sprint in Crow Creek Tribal Court.

52. Jurisdiction to enforce NAT's FCC tariff on file with the FCC, rests exclusively with the federal courts or the FCC. Because NAT's tribal tariff purports to regulate interstate calls, it is presumptively invalid under federal law.

53. Sprint's provision of long distance services does not constitute voluntarily doing business on the Crow Creek Reservation.

54. Sprint has not consented to being sued in Crow Creek Tribal Court.

55. Because the trial court clearly lacks jurisdiction, Sprint is not required to exhaust its tribal court remedies, which in any case would be futile.

56. Sprint is entitled to a declaration that the Crow Creek Tribal Court lacks jurisdiction over Sprint and an injunction against that court and its judge from proceeding further with NAT's action against Sprint in tribal court.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Sprint requests that judgment be entered in its favor and against NAT on each and all of its claims, including damages in an amount to be proven at trial, plus interest on that amount, reasonable costs and attorneys' fees. Sprint further requests that the Court order against NAT, the Crow Creek

Tribal Court and the Honorable Theresa Maule in her official capacity as the Judge of the Tribal Court, appropriate declaratory and injunctive relief, and any such other and further relief that the Court may deem just and equitable under the circumstances.

Dated: August 16th, 2010

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By: _____

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