

# **EXHIBIT 3**

**OGLALA SIOUX TRIBAL COURT  
PINE RIDGE INDIAN RESERVATION  
PINE RIDGE, SOUTH DAKOTA**

<b>OGLALA SIOUX TRIBAL UTILITY</b>	)	<b>Civil No. 14-</b>
<b>COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	<b>VERIFIED COMPLAINT</b>
<b>AT&amp;T CORPORATION, SPRINT NEXTEL</b>	)	
<b>CORPORATION, GOLDEN WEST</b>	)	
<b>TELECOMMUNICATIONS</b>	)	
<b>COOPERATIVE, SOUTH DAKOTA</b>	)	
<b>NETWORKS, INC., GREAT PLAINS</b>	)	
<b>COMMUNICATIONS INC.,</b>	)	
<b>CENTURYLINK INC., LACREEK</b>	)	
<b>ELECTRIC ASSOCIATION INC., AND</b>	)	
<b>BLACK HILLS ELECTRIC COOPERATIVE</b>	)	

**Defendants.**

Plaintiff Oglala Sioux Tribal Utility Commission, a Chartered Governmental Subdivision of the Oglala Sioux Tribe (“Utility Commission”), brings this complaint against defendant utility providers AT&T Corporation (“AT&T”), Sprint Nextel Corporation (“Sprint”), Golden West Telecommunications Cooperative, Inc. (“Golden West”), South Dakota Networks, Inc. (“SDN”), Great Plains Communications Inc. (“Great Plains”), CenturyLink, Inc. (“CenturyLink”), LaCreek Electric Association, Inc. (“LaCreek”), and Black Hills Electric Cooperative (“Black Hills”) for non-compliance with the laws and orders of the Oglala Sioux Tribe and the Utility Commission.

The Utility Commission brings this action to enforce its lawful orders and obtain declaratory relief regarding its lawful exercise of regulatory jurisdiction and authority over

the defendant utility providers, who are availing themselves of the economic benefits of operating on the Pine Ridge Indian Reservation ("PRIR") and providing utility services to the Oglala Sioux Tribe and its members, but are refusing to accept responsibility for their actions on the PRIR and are refusing to recognize the jurisdiction and authority of the Oglala Sioux Tribal Utility Commission and its lawful orders governing defendants' operations on the PRIR.

### **FACTUAL ALLEGATIONS**

1. The Utility Commission was established through the adoption of the Oglala Sioux Tribe Utilities Code ("Utilities Code") by Ordinance of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe, Ordinance No. 09-11, February 24, 2009 ("Utility Commission Ordinance"), which is attached as Exhibit A.

2. The Utility Commission's authority and jurisdiction over Utility providers on the Pine Ridge Indian Reservation ("PRIR") is based upon applicable laws, including the Utilities Code and the Utility Commission Ordinance.

3. The PRIR is served by the following Utility providers: (i) three incumbent local exchange carriers, Golden West, Fort Randall Telephone Company, and Great Plains; (ii) two nationwide Commercial Mobile Radio Service ("CMRS") providers, AT&T Mobility LLC and Verizon Wireless; (iii) a new competitive tribally owned carrier, Native American Telecom Pine Ridge, LLC ("NAT-PR"); (iv) several long distance carriers, such as AT&T, Sprint, CenturyLink, Verizon, and SDN; (v) three propane providers, Lakota Plains Propane, Midwest Cooperative, and Westco Propane; and (vi) three electric service providers, Lacreek, Black Hills, and Nebraska Public Power District.

4. Defendant Utility providers Golden West, Great Plains, Lacreek, and Black Hills

have a Business License from the Oglala Sioux Tribe Department of Revenue for their operations on the PRIR, in which Defendant Utility providers Golden West, Great Plains, Lacreek, and Black Hills specifically acknowledge the jurisdiction and authority of the Oglala Sioux Tribe:

By signing, I hereby certify that the information provided on this application is true and correct to the best of my knowledge. I understand that this is a consensual relationship with the Oglala Sioux Tribe. I also give my consent to the authority and jurisdiction of the Oglala Sioux Tribe and agree to pay all applicable Oglala Sioux Tribal Fees and Taxes.

Attached as Exhibit B is the Business License executed by the Defendant Utility providers Golden West, Great Plains, Lacreek, and Black Hills.

5. Defendant Utility providers AT&T, Sprint, CenturyLink and SDN have not obtained a Business License from the Oglala Sioux Tribe Department of Revenue.

6. Defendant Utility providers AT&T, Sprint, CenturyLink and SDN have facilities – owned, leased, or purchased from other carriers – on the PRIR to provide long distance telephone services.

7. Defendant Utility providers AT&T, Sprint, CenturyLink and SDN are providing long distance telecommunications service on the PRIR and have customers on the PRIR, have entered into actual or implied consensual agreements with residents – both members and non-members of the PRIR to provide long distance telecommunications services, and are originating and/or terminating their long distance telecommunications traffic on the PRIR.

8. The Utility Commission has jurisdiction over Utility providers on the PRIR. The Oglala Sioux Tribe "formally delegates exclusive and essential government functions and authority for the appropriate and independent regulation of utilities on the Pine Ridge

Indian reservation" to the Tribal Utility Commission. Section 3-102 of the Utilities Code.

9. It is the purpose and intent of the Tribal Council that "the operations of the Commission be conducted independently and on behalf of the Tribe for the sole benefit and interests of the Tribe, its members, and the residents of the Reservation." Section 3-102(3) of the Utilities Code.

10. Consistent with the Utilities Code and Utility Commission Ordinance, the Utility Commission has implemented a system of regulation to govern the provision of Utility service to residents and consumers on the PRIR. The Utility Commission has adopted a regulatory process with discovery, notice and comment periods, and public meetings on the first Tuesday of each month (*see* [www.ostuc.net](http://www.ostuc.net)).

11. The Utility Commission has initiated six proceedings since the beginning of 2014 (*see* [www.ostuc.net](http://www.ostuc.net)) and Defendant utility providers Golden West, SDN, Great Plains, Lacreek, and Black Hills have each participated in one or more of these proceedings by responding to Requests for Information ("RFIs") and/or filing comments.

12. The Utility Commission adopted *Final Utility Order* in Case No. U-1-2014 on September 9, 2014,<sup>1</sup> in which it established basic consumer protection requirements governing the provision of utility services on the PRIR by all utility providers (telecommunications, electric, propane, etc.), after a lengthy discovery and comment period. Defendant utility providers Golden West, Great Plains, SDN, Lacreek and Black Hills responded to discovery requests and filed comments in this proceeding. Defendant utility providers AT&T, Sprint, and CenturyLink were served with all Utility Commission orders

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<sup>1</sup> *Inquiry into the rates, terms and conditions of service being provided by utilities on the Pine Ridge reservation*, Final Order, U-1-2014, September 9, 2014 ("*Final Utility Order*"). See Exhibit C.

and documents, but did not submit any comments.

13. Pursuant to the *Final Utility Order*, the Utility Commission adopted the following basic consumer protection requirements applicable only to utility services provided on the PRIR: (1) registration with the Commission (no approval required) by October 1, 2014 to identify Utility provider customer service point of contact and after-hour emergency point of contact; (2) submission of reports to the Commission regarding each Utility provider's operations on the PRIR; (3) providing notice to consumers prior to disconnection of service; (4) informing consumers of their ability to submit complaints to the Utility Commission about Utility services; (5) guidance on the imposition of taxes and fees on consumers; and (6) paying a nominal annual utility fee based upon the number of utility customers on the PRIR.

14. On October 23, 2014, the Commission adopted a Notice of Liability imposing a fine of \$1,000.00 per day for non-compliance with the utility registration requirement due October 1, 2014, but waived the fine for any utility provider registering with the Utility Commission by November 7, 2014.<sup>2</sup>

**COUNT ONE:  
VIOLATION OF TRIBAL LAW REGISTRATION REQUIREMENT**

15. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

16. The Oglala Sioux Tribe is a sovereign Indian tribe organized pursuant to the

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<sup>2</sup> *Inquiry into the rates, terms and conditions of service being provided by utilities on the Pine Ridge reservation, Notice of Liability, U-1-2014, October 23, 2014 ("Notice of Liability"). See Exhibit D. The Utility Commission also sent all Utility providers a reminder of the October 1 registration deadline on September 23, 2014.*

Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and By-Laws of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation of South Dakota, Article 4, Section 1 (f), (g), (m), and (t), approved on January 15, 1936, and amended December 24, 1969, and December 3, 1985.

17. The authority to regulate utility providers is an inherent and essential part of the jurisdiction and authority of any reservation tribal government, including the Oglala Sioux Tribe on the PRIR.

18. The Oglala Sioux Tribe "formally delegates exclusive and essential government functions and authority for the appropriate and independent regulation of utilities on the Pine Ridge Indian reservation" to the Utility Commission. Section 3-102 of the Utilities Code. The Utility Commission therefore has jurisdiction and authority over utility providers, including the defendants, operating and providing service on the PRIR.

19. The Oglala Sioux Tribe has recognized that utility services impact the economic security, health, welfare, and general well-being of the Tribe:

Every utility which enters and operates within the exterior boundaries of the Reservation, enters into consensual relations, commercial dealings and contracts with residents of the Reservation, Indian and non-Indian, and with the Tribe, to provide services, operate facilities, construct and erect pipelines, transmission lines, poles, towers and other improvements upon and across Reservation lands owned by Indians, non-Indians and the Tribe. The services, rates, policies, procedures and practices of every utility located and operating upon the Reservation have a demonstrably serious impact which imperils the economic security, health, welfare and general well-being of the Tribe, its members, and all residents of the Reservation and that regulation of every such utility by the Tribe is a necessary and proper exercise of the sovereign authority of the Tribe. The regulation of such utilities located, operating or providing services upon the Reservation is an essential governmental function of the Tribe.

Section 1.101(8) of the Utilities Code.

20. It is well-established that Tribes, like the Oglala Sioux Tribe, have inherent

sovereign powers to regulate activities, such as the provision of utility services, by members and non-members of the tribe. "A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." *Montana v. United States*, 450 U.S. 544 (1981). In addition, "[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* at 566.

21. The Oglala Sioux Tribe Law & Order Code provides:

Any person who it is not a member of the Oglala Sioux Tribe shall be deemed as having consented to the jurisdiction of the Oglala Sioux Tribe, by doing personally through an employee, through an agent or through a subsidiary, any of the following acts within the exterior boundaries of the Pine Ridge Indian Reservation.

1. The transaction of any business.

...

3. The ownership use or possession of any property situated within the exterior boundaries of the Pine Ridge Indian Reservation.

...

5. Leasing or permitting of any land or property.

...

8. Any contractual agreement entered into within the exterior boundaries of the Pine Ridge Indian Reservation."

Oglala Sioux Tribe Law & Order Code § 20(a)(1, 3, 5, 8).



22. The Defendant utility providers have voluntarily entered the PRIR to provide utility services to tribal members and non-members who reside on the PRIR. They have operated on a for-profit basis with full knowledge of the jurisdiction and authority of the Oglala Sioux Tribe and its Utility Commission over their operations.

23. Defendants Golden West, Great Plains, Lacreek and Black Hills have procured a Business License from the Oglala Sioux Tribe Department of Revenue for their operations on the PRIR, in which Defendants Golden West, Great Plains, Lacreek and Black Hills specifically and expressly acknowledged the jurisdiction and authority of the Oglala Sioux Tribe.

24. Defendants Golden West, Great Plains, SDN, Lacreek and Black Hills also have physical facilities on or crossing over trust land on the PRIR and use tribal rights-of-way obtained through the Oglala Sioux Tribe and Bureau of Indian Affairs.

25. Defendant utility providers AT&T, Sprint, CenturyLink and SDN have facilities – owned, leased, or purchased from other carriers – on the PRIR to provide long distance telephone services.

26. Defendant utility providers AT&T, Sprint, CenturyLink and SDN are providing long distance telecommunications service on the PRIR and have customers on the PRIR, have entered into actual or implied consensual agreements with residents – both members and non-members of the PRIR to provide long distance telecommunications services, and are originating and/or terminating their long distance telecommunications traffic on the PRIR.

27. As utility providers on the PRIR, the Defendant utility providers are subject to the jurisdiction and authority of the Oglala Sioux Tribe, either by virtue of their specific

and express acknowledgement of tribal jurisdiction and authority or by virtue of the operation and provision of utility services to members and non-members residing on the PRIR.

28. Pursuant to the *Final Utility Order*, all utility providers are required to meet basic consumer protection requirements. Defendant utility providers have refused and are currently refusing to comply with these requirements.

29. Defendant utility providers are in violation of the *Final Utility Order* by not registering with the Utility Commission by the October 1, 2014 deadline. On October 23, 2014, the Utility Commission served each Defendant with a Notice of Liability and provided each Utility with an opportunity to cure non-compliance by registering with the Utility Commission by November 7, 2014. None of the Defendant utility providers have cured their noncompliance and are currently in violation of the requirements of the *Final Utility Order*.

30. The majority of utility providers have properly registered with the Utility Commission. These providers include Fort Randall Telephone Company, AT&T Mobility, Verizon, Nebraska Public Power District, Native American Telecom – Pine Ridge, Lakota Plains Propane, Bob's Gas, WestCo, and MidWest Coop.

31. Defendant utility providers Golden West, Great Plains, Lacreek, Black Hills, AT&T, Sprint, CenturyLink, and SDN, however, continue to violate the *Final Utility Order* by not registering with the Utility Commission, claiming the Utility Commission lacks jurisdiction over them and their operations on the PRIR, even though:

- Defendant utility providers Golden West, Great Plains, SDN, Lacreek, and Black Hills participated in Case No. U-1-2014 before the Utility Commission

by responding to RFIs and/or submitting comments on proposed requirements;

- Defendant utility providers Golden West, Great Plains, Lacreek, and Black Hills hold a Business License on the PRIR and have expressly acknowledged the jurisdiction and authority of the Oglala Sioux Tribal Utility Commission;
- Defendant utility providers Golden West, Great Plains, SDN, Lacreek, and Black Hills have physical facilities on the PRIR, including facilities that are located on or which cross over trust land;
- Defendant utility providers Golden West, Great Plains, Lacreek, and Black Hills hold rights-of-way with the Oglala Sioux Tribe and BIA in which they have established consensual agreements with the Oglala Sioux Tribe;
- Defendant utility providers AT&T, Sprint, CenturyLink and SDN have facilities – owned, leased, or purchased from other carriers – on the PRIR to provide long distance telephone services;
- Defendant utility providers AT&T, Sprint, CenturyLink and SDN are providing long distance telecommunications service on the PRIR and have customers on the PRIR, and have entered into actual or implied consensual agreements with residents – both members and non-members of the PRIR to provide long distance telecommunications services;
- Defendant utility providers AT&T, Sprint, CenturyLink and SDN carry long distance telephone calls to the PRIR for termination to customers of local Utility providers (Golden West, Great Plains, Fort Randall, and NAT-PR); and
- Defendant utility providers AT&T, Sprint, and CenturyLink have contractual

arrangements with local Utility providers (Golden West, Great Plains, Fort Randall, and NAT-PR) on the PRIR for the origination and termination of their customers' long distance telephone calls.

32. Utility services – electric, heating, communications, etc. – are essential services for the Oglala Sioux Tribe, its members, and residents of the PRIR. The enforcement of the *Final Utility Order* is essential to the political integrity, the economic security, or the health or welfare of the Oglala Sioux Tribe. The requirements of the *Final Utility Order* are basic consumer protection requirements, which are within the inherent authority of the Utility Commission to impose on member and non-member utility providers operating and providing service on the PRIR.

33. Defendant utility providers Golden West, Great Plains, Lacreek, Black Hills, AT&T, Sprint, CenturyLink, and SDN are in violation of the laws and orders of the Oglala Sioux Tribe and the Tribal Utility Commission, including the consumer protection requirements of the *Final Utility Order*.

34. In its *Notice of Liability*, the Utility Commission has imposed fines on the Defendant utility providers Golden West, Great Plains, Lacreek, Black Hills, AT&T, Sprint, CenturyLink, and SDN for non-compliance with the registration requirement.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Oglala Sioux Tribal Utility Commission respectfully requests that this Court enter judgment in the Utility Commission's favor and award the following relief:

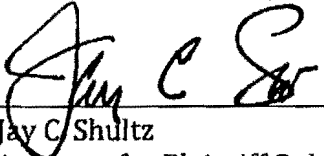
1. An Order enforcing the Notice of Liability and the fines imposed on the Defendant utility providers;

2. A declaratory judgment, declaring:

- a. That the Utility Commission has jurisdiction and authority over defendant utility providers engaged in the furnishing of utility services on the PRIR.
  - b. That the Utility Commission may exercise jurisdiction over defendant utility providers by adopting consumer protection requirements, including those requirements set forth in the *Final Utility Order*.
  - c. That the Utility Commission may exercise jurisdiction over defendant utility providers by compelling compliance with applicable requirements and orders through, among other actions, imposing forfeitures and penalties, consistent with the Tribe Utilities Code.
3. Such further relief as the Court may deem just and proper.

Dated this 19 day of December, 2014.

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