

# **EXHIBIT 4**

Oglala Sioux Tribe Utility Commission  
*A Chartered Governmental Subdivision of the Oglala Sioux Tribe*

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**Matter:** **Inquiry into the rates, terms and conditions of service being provided by telecommunications utilities on the Pine Ridge reservation**

**Case No:** **T-3-2014**

**Date:** **September 24, 2014**

### **FINAL ORDER**

The Commission, on its own motion, addresses in this Order an issue of importance to the administration and application of rules and orders in a non-discriminatory manner on the Pine Ridge reservation. On August 20, 2014, the Commission initiated an inquiry into the whether any carrier serving the Pine Ridge reservation has been subject to unreasonable discrimination.<sup>1</sup> AT&T Corp. filed a letter on August 29, 2014 claiming the Commission is not a properly authorized public body of the Oglala Sioux Tribe and, even if it is properly authorized, it does not have jurisdiction over AT&T Corp. and its dispute with Native American Telecom – Pine Ridge, LLC (“NAT-PR”).<sup>2</sup> In its letter, AT&T Corp. includes a copy of its Informal Complaint against NAT-PR filed with the Federal Communications Commission (“FCC”) on August 21, 2014, one day after the Commission issued its order exercising jurisdiction over this matter.

The integrity of the administrative process and procedures of the Commission, and the uniform application of federal and tribal laws, is of paramount importance to the establishment of just and reasonable requirements for operation on the Pine Ridge reservation. Each Utility providing service on the Pine Ridge reservation must adhere to Commission authority and jurisdiction and must comply with applicable laws. Recently, the Commission adopted Final Orders in the Utility

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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, Order #3, U-1-2014, August 20 2014 (“Utility Order #3”).*

<sup>2</sup> AT&T Letter to Beau White from James Huttenhower, Case No. U-1-2014, August 29, 2014. AT&T Corp.’s challenge to the Commission’s jurisdiction was not similarly raised by AT&T Mobility in its Comments on proposed Utility regulations. See AT&T Mobility Comments on Proposed Order #1, Case U-1-2014, July 25, 2014.

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Case<sup>3</sup> and Propane Case<sup>4</sup> establishing new requirements governing the operation of Utility providers on the Pine Ridge reservation. All Utilities on the Pine Ridge reservation must comply with applicable requirements, including the newly adopted requirements in the Utility Case and Propane Case, or be subject to penalties established by this Commission consistent with the Tribe Utilities Code.

The Pine Ridge reservation is served by: (i) three incumbent local exchange carriers, Golden West Telecommunications, Inc., Cooperative, Fort Randall Telephone Company, and Great Plains Communications; (ii) two nationwide Commercial Mobile Radio Service (“CMRS”) providers, AT&T Mobility and Verizon Wireless; (iii) a new competitive tribally owned carrier, Native American Telecom – Pine Ridge, LLC (“NAT-PR”); and (iv) several long distance carriers, such as AT&T Corp., Sprint, CenturyLink, Verizon, and South Dakota Network, Inc. All of these carriers provide service and/or have customers on the Pine Ridge reservation. As such, all of these carriers, regardless of whether they have their own facilities on the Pine Ridge reservation or use the facilities of another carrier, are subject to the jurisdiction and authority of the Oglala Sioux Tribe and this Commission.

The Commission’s authority and jurisdiction over Utilities on the Pine Ridge reservation is based upon applicable Tribal Laws and Tribal Council Ordinance 09-11.<sup>5</sup> 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 Tribe Utility Commission. Section 3-102 of the Oglala Sioux Tribe Utilities Code. 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 Oglala

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<sup>3</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.

<sup>4</sup> *Inquiry into the rates, terms and conditions of Propane service on the Pine Ridge reservation*, Final Order, U-3-2014, September 9, 2014.

<sup>5</sup> See [www.ostuc.net](http://www.ostuc.net) for a copy of the Tribe Utilities Code and Tribal Council Ordinance.

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Sioux Tribe Utilities Code. The Commission therefore has jurisdiction over the regulation of Utilities operating on the Pine Ridge reservation. In *Utility Order #2* in Case U-1-2014,<sup>6</sup> the Commission affirmed its jurisdiction over all “telecommunications companies engaged in the furnishing of telecommunications services, including cable, telegraph, or telephone companies engaged in the transmission of images, data, messages, conversations by voice or electronic means, whether by land based or wireless technologies.”<sup>7</sup> This jurisdiction extends to long distance carriers, like AT&T Corp., CenturyLink, and Sprint.<sup>8</sup>

In *Utility Order #3*, the Commission sought Comments on the issue of unreasonable discrimination by long distance carriers:<sup>9</sup>

The Commission seeks comment on this issue and, to the extent any Utility provider on the Pine Ridge reservation is not complying with applicable requirements, including, but not limited to, the payment of lawful tariffs, whether the Commission should require carriers to post a bond and/or use property as collateral for any outstanding obligations related to the provision of service on the Pine Ridge reservation. To the extent issues implicate federal and/or state issues, should the Commission convene an inter-governmental working group comprising the Federal Communications Commission (“FCC”), state utility commissions, tribal utility commissions, and other governmental entities?

AT&T Corp. filed Comments contesting the Commission’s jurisdiction and providing a copy of its Informal Complaint filed with the FCC. NAT-PR has been operating on the Pine Ridge reservation since 2009 and has filed its intrastate access tariff with the Commission, which mirrors its interstate access tariff on file

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<sup>6</sup> *Inquiry into the rates, terms and conditions of service being provided by utilities on the Pine Ridge reservation, Order #2, U-1-2014, July 16, 2014 (“Utility Order #2”).*

<sup>7</sup> *Utility Order #2* at p. 3

<sup>8</sup> CenturyLink filed a letter on July 31, 2014 expressing concerns about the Commission’s jurisdiction, but stated that it would respond to Requests for Information. See CenturyLink letter to Beau White, Tribe Utility Commission, from Jason Topp, July 31, 2014. Sprint has not responded to Staff’s Requests for Information.

<sup>9</sup> *Utility Order #3* at p. 2.

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with the FCC. In the *NAT-PR CLEC Order*, the Commission granted NAT-PR approval to provide telecommunications services on the Pine Ridge reservation.<sup>10</sup> Since 2009, NAT-PR has been providing telephone and broadband service on the Pine Ridge reservation pursuant to the *NAT-PR CLEC Order*.<sup>11</sup>

Now, Native Telecom – Pine Ridge proposes to: (i) provide basic telephone and advanced broadband services, which are essential services to the health and welfare of the tribe; and (ii) provide these services within the exterior boundaries of the Pine Ridge reservation. Furthermore, Native Telecom – Pine Ridge proposes to provide basic telephone service, consistent with the federal universal service requirements of 47 U.S.C. § 214(e) and the rules of the Federal Communications Commission (“FCC”). In addition, Native Telecom – Pine Ridge commits to work with the Oglala Sioux Tribe to identify and pursue economic development opportunities and make basic telephone and advanced broadband services readily available and affordable to residents of the reservation.

All telecommunications utilities on the Pine Ridge reservation serve a specific market segment or geography of the reservation. NAT-PR is serving a specific segment of the reservation that needs access to affordable telephone and broadband service. Earlier this year, NAT-PR opened an Internet Library and Technology Center providing tribal members with free access to computers and Internet service, which are very valuable services not available through any other service provider.

The ability of NAT-PR, like all Utilities, to operate and provide service is dependent upon the receipt of payment for services rendered. Utilities, like NAT-PR, have tariffs in place to govern the rates, terms and conditions of service provided to other carriers. Through tariffs, Utilities are able to establish uniform rates, terms and conditions of service for all of its customers. Typically, carriers pay

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<sup>10</sup> *In the Matter of Native American Telecom – Pine Ridge, LLC Request To Provide Telecommunications Service, Including Local Telephone and Broadband Service Within The Exterior Boundaries of the Pine Ridge Reservation, Order Granting Approval To Provide Telecommunications Service, Including Local Telephone and Broadband Service on the Pine Ridge Reservation, June 1, 2009 (“NAT-PR CLEC Order”)*.

<sup>11</sup> *NAT-PR CLEC Order* at p. 1-2.

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the tariffed rates of other carriers unless they negotiate separate agreements based upon the unique nature of the services provided.

At its core, the payment dispute involves customers of originating carriers, such as AT&T Corp. and Sprint, making calls to customers of NAT-PR, a terminating carrier serving the Pine Ridge reservation, without compensating NAT-PR for terminating originating carriers' traffic. In its Informal Complaint filed with the FCC, AT&T Corp. does not dispute this basic issue, but makes several arguments to support its non-payment for services provided by NAT-PR. Rather than address with the Commission the merits of the local payment issues, originating carriers (i) seek recourse in a different regulatory forum (AT&T filed its Informal Complaint with the FCC one day after this Commission issued Order #3), (ii) contend this Commission lacks jurisdiction (*see* comments of AT&T and CenturyLink), or (iii) refuse to acknowledge or recognizing the jurisdiction of this Commission (Sprint has not responded to Commission Orders and Requests for Information).

Some of these payment disputes have been going on for years without resolution. There does not appear to be any incentive for the originating carriers to resolve these payment issues, forcing the terminating carriers to pursue costly and lengthy litigation as the only means for resolution. It is this Commission's responsibility to address issues that impact a Utility's ability to meet its obligations on the Pine Ridge reservation. This payment issue is putting at risk NAT-PR's continued ability to serve residents of the reservation based upon other service providers on the Pine Ridge reservation refusing to pay NAT-PR's tariffed rates.<sup>12</sup> NAT-PR provides a critically important local telephone and broadband service on the Pine Ridge reservation that is relied upon by low-income consumers.

It is this Commission's understanding that NAT-PR has established lawful tariffs to govern its termination of traffic from long distance carriers and that these tariffs are consistent with the requirements adopted by the FCC in its 2011

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<sup>12</sup> NAT-PR has filed tariffs governing the traffic in dispute with the FCC and the Commission. These tariffs have either not been challenged or, if challenged, have been deemed lawful.

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*Intercarrier Compensation Order*. It is also the understanding of this Commission that many long distance carriers are paying NAT-PR in accordance with its effective tariffs, but other carriers, like AT&T and Sprint, are not paying for services provided by NAT-PR. AT&T and Sprint have resorted to “self-help” by not paying for the termination of their traffic by NAT-PR.

In adopting new rules governing the termination of traffic, including conferencing traffic, the FCC specifically stated that carriers may not take the law into their own hands by withholding payment to another carrier:<sup>13</sup>

As the Commission has previously stated, “[w]e do not endorse such withholding of payment outside the context of any applicable tariffed dispute resolution provisions.” We otherwise decline to address this issue in this Order, but caution parties of their payment obligations under tariffs and contracts to which they are a party. The new rules we adopt in today’s Order will provide clarity to all affected parties, which should reduce disputes and litigation surrounding access stimulation and revenue sharing agreements.

The Oglala Sioux Tribe Utilities Code provides that “each utility shall furnish safe, adequate, efficient, and reasonable service without unjust discrimination or preference”<sup>14</sup> and that “every unjust and unreasonable rate or charge made, demanded, or received by any utility or by any two or more utilities for any product, commodity or service, is prohibited and unlawful.”<sup>15</sup>

NAT-PR is operating in compliance with all applicable tribal laws and federal requirements and is providing service consistent with the requirements of the *Intercarrier Compensation Order*. NAT-PR is also meeting the requirements of the *NAT-PR CLEC Order* by providing affordable telephone and broadband service to tribal members and other residents of the Pine Ridge reservation.

The Commission finds that NAT-PR is providing service on the Pine Ridge reservation consistent with all applicable requirements, including the *NAT-PR CLEC Order* and the FCC’s *Intercarrier Compensation Order*. NAT-PR is also providing

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<sup>13</sup> *Intercarrier Compensation Order* at para. 700.

<sup>14</sup> Oglala Sioux Tribe Utility Code, Section 5-101.

<sup>15</sup> Oglala Sioux Tribe Utility Code, Section 5-102.

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service in accordance with its tariffs in effect with this Commission and the FCC. AT&T does not dispute that it is not paying for services provided by NAT-PR, but contends this Commission lacks jurisdiction over the non-payment issue with NAT-PR, a Utility provider serving within the exterior boundaries of the Pine Ridge reservation. It is the responsibility of this Commission to ensure that Utilities operating on this reservation are in compliance with tribal and federal requirements. AT&T Corp. and Sprint serve the Pine Ridge reservation, have customers on the reservation, and terminate their traffic to NAT-PR on the reservation. It is unlawful for these carriers to unilaterally withhold payment for services provided by NAT-PR while continuing to enjoy the benefits of such services. Separate and apart from any violation of federal law, the failure of one Utility on the Pine Ridge reservation to pay the lawful charges of another Utility on the Pine Ridge reservation is a violation of tribal laws and is subject to forfeitures and penalties to be separately established by this Commission.

To the extent any local carrier on the Pine Ridge reservation (*e.g.*, Claimant”) believes that it has been subject to unreasonable discrimination by another carrier (*e.g.*, Offending Carrier), it should bring this to the attention of the Commission. The Commission adopts the following requirements and procedures for resolving disputes between carriers:

1. Carriers that have been subject to unreasonable discrimination or have not been paid for services shall provide the Commission with the act of discrimination or amount owed, an explanation of the discrimination or amount owed and legal justification for this amount (*e.g.*, Claim), and serve a copy on the Offending Carrier.
2. The Offending Carrier shall provide its Response to the Commission within 7 days of receipt of the Claim.
3. The Commission shall issue an Order within 14 days of the Response.
4. The Commission’s Order shall be served on the Claimant and Offending Carrier with a copy forwarded to the FCC requesting, in the interest of comity and as part of its federal trust responsibilities, that the FCC not act on pending matters involving the Offending Carrier until such time as the act of discrimination or payment dispute is resolved with carriers serving the sovereign Nation of the Oglala Sioux Tribe.



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5. The Commission's Order shall also be forwarded to the Tribal Court.

The Commission believes this process for addressing discrimination and payment issues balances the interests of the parties and enables expeditious resolution of disputes. With respect to the payment dispute between NAT-PR and AT&T Corp. and Sprint, the Commission will proceed with steps 4 and 5 under the above procedures.<sup>16</sup>

**TRIBAL UTILITY COMMISSION**

Joe Red Cloud - Chair (not voting)  
Ivan Bettleyoun - Vice Chair  
David Mills, Commissioner  
Arlene Catches The Enemy - Treasurer

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<sup>16</sup> AT&T Corp. and Sprint were provided with an opportunity to address the discrimination and payment issue, but did not respond to Commission orders.

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**Certificate of Service**

A copy of this Order has been served by email on September 25, 2014 on the following individuals:

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