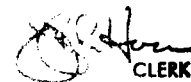


**FILED**

FEB 09 2015

  
CLERK

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION**

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Sprint Communications Company L.P. and  
Sprint Communications, Inc., formerly  
known as Sprint Nextel Corporation,

Civil No. 15-4051

Plaintiffs,

vs.

**COMPLAINT**

Mary Wynne, in her official capacity as  
Chief Judge of the Oglala Sioux Tribal  
Court, the Oglala Sioux Tribe Utilities  
Commission; and Joe Red Cloud, Ivan  
Bettelyoun, David "Terry" Mills, Martina  
White Hawk and Arlene Catches the  
Enemy, in their official capacities as  
Commissioners of the Oglala Sioux Tribe  
Utilities Commission,

Defendants.

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Plaintiffs Sprint Communications Company, L.P. ("Sprint Communications") and  
Sprint Communications, Inc. ("Sprint Inc.") bring this Complaint against Mary Wynne,  
in her official capacity as Chief Judge of the Oglala Sioux Tribal Court; the Oglala Sioux  
Tribe Utilities Commission ("OSTUC"); and Joe Red Cloud, Ivan Bettelyoun, David  
"Terry" Mills, Martina White Hawk and Arlene Catches the Enemy, in their official  
capacities as Commissioners of the OSTUC, and allege as follows:

**INTRODUCTION**

1. Sprint Inc., formerly known as Sprint Nextel Corporation, seeks declaratory  
and injunctive relief to prevent the OSTUC from unlawfully asserting jurisdiction over

Sprint Inc. and suing Sprint Inc. in the Oglala Sioux Tribal Court, seeking to require Sprint Inc. to be registered with the OSTUC and to impose fines of \$1,000 per day for each day Sprint Inc. that has not registered with the OSTUC, beginning October 1, 2014. Those fines now exceed \$100,000.

2. Sprint Communications is also joining this action because the OSTUC's assertion of jurisdiction over Sprint Inc. is ultimately an effort to compel Sprint Communications to pay Native American Telecom – Pine Ridge, LLC (“NAT-PR”) over \$1.6 million for terminating access charges on long distance telecommunications traffic that Sprint Communications is required by federal law to deliver to NAT-PR.

3. NAT-PR claims to be a local exchange carrier (“LEC”), which is a provider of telecommunications services within a local area. NAT-PR has invoiced Sprint Communications under tariffs NAT-PR has on file with the Federal Communications Commission (“FCC”) and the OSTUC for these terminating access charges. For convenience, both Sprint Inc. and Sprint Communications will hereafter be referred to collectively as “Sprint,” and individually as either Sprint Inc. or Sprint Communications if the context so requires.

4. Sprint Communications is an interexchange carrier (“IXC”) that, among other things, provides telecommunications services nationally. Sprint Communications is qualified to do business in South Dakota. An IXC is a telecommunications company that connects a LEC in one geographic area with another carrier elsewhere. The South Dakota Public Utilities Commission (“SDPUC”) has issued Sprint Communications a certificate of authority to provide intrastate interexchange services in South Dakota. The

FCC has granted Sprint Communications authority to provide interstate interexchange services.

5. As an IXC, Sprint Communications 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 Communications), 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.

6. 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) or with the FCC (for interstate services). In the absence of lawful tariff authority to bill for a call, switched access charges cannot be assessed, and no payment is due on any invoices illegally sent by a LEC.

7. The principals behind NAT-PR are Gene DeJordy and Thomas Reiman. DeJordy and Reiman formed NAT-PR on or about September 15, 2009, as a limited liability company formed under South Dakota law. Neither DeJordy nor Reiman is an enrolled member of an Indian tribe. DeJordy and Reiman had previously formed an affiliated entity known as Native American Telecom LLC ("NAT") in 2008, which applied for a certificate of authority from the SDPUC to provide local exchange service within both the Pine Ridge and Crow Creek Reservations. NAT subsequently withdrew its application to the SDPUC for a certificate of authority. NAT apparently went forward

operating only on the Crow Creek Reservation without a certificate of authority from the SDPUC. After DeJordy and Reiman formed NAT-PR, that entity operated and continues to operate on the Pine Ridge Reservation, again without authorization from the SDPUC. NAT-PR now claims to be majority tribally owned, but Sprint believes operating control of NAT-PR rests with DeJordy, Reiman or other non-tribal persons or entities. Notably, the OSTUC lists DeGordy as its General Counsel.

8. NAT-PR is engaged in access stimulation – also called traffic pumping – which is the manufacturing of large volumes of termination traffic from users outside local exchange carriers’ area of service. NAT-PR asserts that it operates as a local exchange carrier on the Pine Ridge Reservation, but in substance NAT-PR exists only to engage in traffic pumping. In 2010, Sprint Communications sued a related entity, NAT, in this Court, for engaging in traffic pumping on the Crow Creek Reservation in South Dakota. *See Sprint Commc’ns Company L.P. v. Native American Telecom LLC, et al.*, Civ. No. 10-4110-KES. In December 2010, this Court entered an order enjoining NAT from pursuing a Crow Creek tribal court action to collect terminating access charges billed under tariffs similar to what NAT-PR is relying on now. *See Order Denying Defendants’ Motion to Stay and Motion to Strike Plaintiff’s Memorandum and Granting Plaintiff’s Motion for a Preliminary Injunction*, filed December 1, 2010 in Civ. No. 10-4110-KES.

9. This Court is well aware of this traffic pumping scheme, as there have been numerous lawsuits between local exchange and long distance carriers over the validity of various traffic pumping operations and the terminating access charges that LECs were

billing the long distance carriers. *See, e.g., Sancom, Inc. v. Sprint Commc'ns Co.*, Civ. 07-4107-KES; *Northern Valley Commc'ns, LLC v. Sprint Commc'ns Co.*, Civ. 08-1003-KES; and *Splitrock Props., Inc. v. Qwest Commc'ns Co.*, Civ. 08-4172-KES.

10. NAT-PR has several tariffs that it seeks to enforce in tribal court. One is a tariff entitled "South Dakota Telecommunications Services Tariff of Native American Telecom-Pine Ridge, LLC," which purports to be issued January 1, 2012, effective that same day and on file with the OSTUC. NAT-PR replaced that tariff with South Dakota Tariff No. 2 on August 6, 2014, effective that same day. NAT-PR has no certificate of authority from the SDPUC nor any tariff covering intrastate telecommunications services on file with the SDPUC.

11. The other tariffs that NAT-PR seeks to enforce in tribal court are those it filed with the FCC to cover interstate service. NAT-PR issued its FCC Tariff No. 1 on October 21, 2009, effective October 22, 2009. NAT-PR issued its FCC Tariff No. 2 on November 15, 2010, with an effective date of November 30, 2010. NAT-PR amended FCC Tariff No. 2 on June 14, 2011, effective June 29, 2011. On February 16, 2012, NAT-PR issued its FCC Tariff No. 3, effective March 2, 2012.

#### **THE PARTIES**

12. Sprint Inc. is a Kansas corporation with its principal place of business in Overland Park, Kansas. Sprint Inc. was formerly called Sprint Nextel Corporation. Sprint Inc. is merely a holding company that does not directly provide telecommunications services, is not registered to do business in South Dakota and is not certificated by the FCC to provide interstate telecommunications services.

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

14. The Oglala Sioux Tribal Court is the tribal court of the Oglala Sioux Tribe and has its chambers in Pine Ridge, South Dakota.

15. Mary Wynne is the Chief Judge of the Oglala Sioux Tribal Court, which is located in Pine Ridge, South Dakota.

16. The OSTUC purports to be authorized by the Oglala Sioux Tribal Council to regulate the activities of utilities within the exterior boundaries of the Pine Ridge Reservation.

17. Joe Red Cloud, Ivan Bettelyoun, David "Terry" Mills, Martina White Hawk and Arlene Catches the Enemy are currently the Commissioners of the OSTUC.

### **JURISDICTION**

18. This Court has jurisdiction over this case under 28 U.S.C. § 1331, because the authority to regulate the interstate activities of Sprint Communications arises under the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* It is also settled that questions of tribal jurisdiction are questions of federal law. Section 2201 of Title 28 of the United States Code authorizes the Court to grant Plaintiffs the declaratory relief they seek.

### **VENUE**

19. 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 Plaintiffs' claims arose in South Dakota.

## BACKGROUND

20. The dispute between Sprint Communications and NAT-PR goes back to September, 2010, when NAT-PR first invoiced Sprint Communications for both interstate and intrastate terminating access charges. NAT-PR has continued to bill Sprint Communications for interstate terminating access services monthly since that time. The amount NAT-PR has invoiced adds up to over \$1.6 million through January 2015.

21. NAT-PR is operating a traffic pumping scheme in conjunction with a company called Free Conferencing Corporation (“Free Conferencing”), which is based in Long Beach, California. In recent months, NAT-PR’s interstate traffic exceeded three or even four million minutes of use. Sprint Communications has investigated the destination of this interstate traffic. In August, 2014, over 99.9% of NAT-PR’s interstate traffic went to telephone numbers assigned to Free Conferencing.

22. This Court is familiar with the modus operandi of Free Conferencing, having seen Free Conferencing in the background of several suits involving traffic pumping, *e.g.*, *Sprint Commc’ns Company L.P. v. Native American Telecom LLC, et al.*, Civ. No. 10-4110-KES, and even cases between IXCs and Free Conferencing directly, *e.g.*, *Free Conferencing Corp. v. Sancom, Inc.*, Civ. 10-4113-KES; *Splitrock Props., Inc. v. Qwest Commc’ns Corp.*, Civ. 08-4172-KES (Free Conferencing a third-party defendant).

23. On November 18, 2011, the FCC released its Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect Am. Fund*, 26 FCC Rcd. 17663 (2011) [*CAF Order*], *petitions for review denied, Direct Commc’ns Cedar Valley, LLC v.*

*FCC*, 753 F.3d 1015 (10th Cir. 2014). In the *CAF Order* the FCC initiated a comprehensive reform and modernization of the agency's universal service fund and its intercarrier compensation regime. Regarding the latter, the FCC revised its interstate switched access charge rules to address, and ultimately eliminate, business practices that are driven by the manufacturing of large volumes of terminating traffic and corresponding collection of intercarrier compensation revenues. *Id.* ¶¶ 656-701. In its order the FCC determined that while revenue sharing was not per se unlawful, neither was it per se lawful ¶¶ 672-673.

24. In the *CAF Order*, the FCC found that:

Access stimulation schemes work because when LECs enter traffic-inflating revenue sharing agreements, they are currently not required to reduce their access rates to reflect their increased volume of minutes. The combination of significant increases in switched access traffic with unchanged access rates results in a jump in revenues and thus inflated profits that almost uniformly make the LEC's interstate switched access rates unjust and unreasonable under section 201(b) of the Act.

*Id.* ¶ 657 (emphasis added). This is NAT-PR's business model – inflate traffic volume and bill IXC's for switched access at rates that are unjust and unreasonable.

25. To address the unreasonableness of these access rates, the FCC imposed transition and final rules. For the transition period, the *CAF Order* established a two-pronged test to determine whether a LEC is participating in access stimulation. *Id.* ¶ 658.

The test is met if the LEC:

- (a) Is sharing switched access revenues with a third party,
- and
- (b) Has traffic volumes that meet either of the following:



- (i) A three-to-one interstate terminating-to-originating traffic ratio in a calendar month; or
- (ii) More than a 100 percent growth in interstate originating and/or terminating switched access MOU in a month compared to the same month in the preceding year.

*Id.* Under these guidelines, NAT-PR is engaged in access stimulation, artificially boosting traffic far beyond what bona fide local customers would generate. If a LEC is operating under the purview of these guidelines, it is required to file a revised interstate switched access tariff with switched access rates generally equal to the lowest rate charged by the largest LEC in the state. *Id.* ¶ 679.

26. In the *CAF Order* the FCC recognized that, under current practice, there were “significant billing disputes and litigation” over whether and how VoIP calls were to be compensated. *CAF Order*, ¶ 937. To address those concerns going forward, the FCC established a “prospective intercarrier compensation regime” for what it called “‘VoIP-PSTN’ traffic.” *CAF Order*, ¶ 940. “PSTN” stands for “Public Switched Telephone Network,” which is made up of the traditional telecommunications facilities that allow customers of one carrier to make calls to customers of other carriers. The FCC established a new compensation regime in part to “reduce disputes and provide greater certainty” going forward. *CAF Order*, ¶ 946. The effective date of the *CAF Order* was December 29, 2011. 76 Fed. Reg. 73830 (Nov. 29, 2011). The FCC did not resolve existing disputes, however.

27. The FCC defined “VoIP-PSTN traffic” as “‘traffic exchanged over PSTN facilities that originates and/or terminates in IP [Internet Protocol] format.’” *CAF Order*,

¶ 940. “VoIP” simply is the term used to describe the technology for delivery of voice using Internet Protocol to do so. Hence, VoIP-PSTN calls are calls that are delivered through traditional means, but are in IP format on either end, or both ends, of a call.

28. In January 2014, the OSTUC, apparently on its own initiative, opened an inquiry into the provision of utility services on the Pine Ridge Reservation. *Inquiry into the rates, terms and conditions of service being provided by utilities on the Pine Ridge Reservation*, Case No. U-1-2014. The email distribution list for the case included the following utility service providers: AT&T; CenturyLink; Verizon; Golden West Telecommunications Cooperative, Inc.; Great Plains Communications; Fort Randall Telephone Company; South Dakota Network LLC (“SDN”); Black Hills Electric Power Cooperative, Inc.; Nebraska Public Power District; Lacreek Electric Association, Inc.; and Lakota Plains Propane. Sprint Communications was also on that email distribution list.

29. In an Order dated July 16, 2014 in Case No. U-1-2014, the OSTUC asserted that it had regulatory jurisdiction over:

all telecommunications providers engaged in providing service on the Pine Ridge reservation, regardless of whether a telecommunications provider has facilities physically located on the reservation or whether the telecommunications provider has entered into an agreement with the Tribe.

A copy of the July 16, 2014, Order from the OSTUC is attached to the Complaint as Exhibit 1.

30. On September 9, 2014, the OSTUC issued its “Final Order” in U-1-2014. In the Final Order, the OSTUC imposed a registration requirement on all utility

providers, including Sprint Communications. The OSTUC also imposed a registration fee based on the number of customers a utility has on the Reservation. A copy of the Final Order in U-1-2014 is attached to this Complaint as Exhibit 2.

31. In a subsequent opinion dated October 23, 2014, in U-1-2014, the OSTUC established a fine of \$1,000 per day for each day a utility failed to register with the OSTUC, effective retroactive to October 1, 2014, for every utility that failed to register by November 7, 2014.

32. Sprint has not participated in any way in the U-1-2014 proceeding. Sprint has not registered with the OSTUC, and the OSTUC is without lawful authority to impose or enforce its registration requirements on either Sprint entity.

33. Notwithstanding the OSTUC's lack of jurisdiction over Sprint, the OSTUC sued Sprint Inc. under its former name (Sprint Nextel) in Oglala Sioux Tribal Court, seeking to enforce the OSTUC's registration requirements and to enforce its \$1,000 per-day penalty for failing to register. The Sprint entities have received a courtesy copy of the OSTUC tribal complaint, but neither has yet been properly served. In fact, Sprint Inc. is the only Sprint entity named in the tribal court suit, even though Sprint Inc. is a holding company that does not provide telecommunications services and has no telecommunications traffic to any entity on the Pine Ridge Reservation. A copy of the OSTUC tribal court complaint is attached to this Complaint as Exhibit 3. To date the amount the OSTUC is seeking in fines exceeds \$100,000.

34. It is plain the OSTUC is merely a stalking horse for NAT-PR. In another proceeding the OSTUC also initiated on its own, Case No. T-3-2014, the OSTUC

inquired into “whether any carrier serving the Pine Ridge reservation has been subject to unreasonable discrimination.” The focus of this inquiry was plainly NAT-PR. On September 24, 2014, the OSTUC issued a “Final Order” that described NAT-PR’s tariffs as “consistent with the requirements adopted by the FCC on its 2011 *Inter Carrier Compensation Order*.” The tribal agency stated it was:

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 on the reservation based upon other service providers on the Pine Ridge reservation refusing to pay NAT-PR’s tariffed rates.

Sprint has never participated in the T-3-2014 proceeding.

35. The OSTUC also found NAT-PR in compliance:

with all applicable tribal laws and federal requirements and is providing service consistent with the requirements of the *Intercarrier Compensation Order*.

Singling out AT&T and Sprint by name, the OSTUC declared:

It is unlawful for these [IXC] carriers to unilaterally withhold payment for services provided by NAT-PR while continuing to enjoy the benefit of such services.

The OSTUC said it would ask for the FCC “in the interest of comity” to defer to the OSTUC and the tribal court to resolve the dispute between NAT-PR and the non-paying long distance carriers. A copy of the OSTUC’s Final Order in Case T-3-2014 is attached to this Complaint as Exhibit 4.

36. Contrary to what the OSTUC asserted in its September 24, 2014 order in T-3-2014, Sprint Communications receives no net benefits from carrying traffic that is ultimately delivered to NAT-PR. While receiving no net benefits from carrying such

traffic, and being billed over \$1.6 million by NAT-PR for doing so, Sprint Communications is forbidden by the FCC from refusing to deliver traffic that terminates to NAT-PR. See *In re Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, 22 FCC Rcd 11629 (June 28, 2007).

37. The OSTUC is plainly attempting to regulate in the field of interstate telecommunications services, which Congress has decreed is exclusively a federal matter, with only federal courts or the FCC having jurisdiction. In T-2-2014, the OSTUC declared it was “unlawful” for either Sprint Communications or AT&T, or any other IXC, to refuse to pay NAT-PR’s invoices for terminating access services. The OSTUC is without any lawful authority to make that assertion. Moreover, the FCC has specifically addressed the lawfulness of IXCs refusing to pay tariffed terminating access charges, such as what NAT-PR has billed Sprint Communications:

The law is settled that a carrier-customer’s failure to pay tariffed access charges does not violate either Section 201(b) or Section 203(c) of the Act [Communications Act of 1934].

*In re All Am. Tele. Co.*, FCC 11-5, 26 FCC Rcd 723, at ¶ 21 (Jan. 20, 2011). The OSTUC is acting in blatant derogation of the FCC’s ruling, and no version of comity permits the OSTUC to attempt to regulate Sprint Communications, or declare its refusal to pay NAT-PR unlawful.

38. The proceedings in U-1-2014 and T-3-2014 are part of an overall assertion by the OSTUC to regulate all activities involving telecommunications services on the Pine Ridge Reservation. In another related proceeding, T-2-2014, the OSTUC is attempting to regulate the provision of Lifeline Service, which is subsidized telephone

service the FCC has established. But Lifeline Service is extensively regulated by the FCC, and only the FCC and the SDPUC have authority under federal telecommunications law to regulate Lifeline Service on the Pine Ridge Reservation. Taken together, the OSTUC, in proceedings U-1-2014, T-2-2014 and T-3-2014, is attempting to usurp state authority over intrastate telecommunications services, while asking the FCC to stay away from interfering with the OSTUC's initiative, which otherwise transgress the FCC's jurisdiction.

39. It is plain that unless this Court enjoins the OSTUC and the Oglala Sioux Tribal Court from proceeding with the OSTUC's present action, both the tribal agency and the tribal court will be resolving legal questions involving interstate telecommunications services. This assertion of jurisdiction is patently unlawful, as Congress has ordained that jurisdiction to resolve questions of interstate telecommunications law rests exclusively in federal court or the FCC. *See* 47 U.S.C. § 151 *et seq.*; *see* Order filed December 1, 2010 at 8-14 in *Sprint Comm'ncs Co. L.P. v. Native American Telecom LLC*, in 10-4110-KES at 8-14.

40. Moreover, the United States Supreme Court has generally made clear in cases like this that the scope of tribal jurisdiction over non-members is a matter of federal law. *Montana v. United States*, 450 U.S. 544 (1981), has emerged as the path-marking case which unequivocally sets forth the general rule that tribal jurisdiction exists only in limited circumstances. In the State of Montana, as in South Dakota and most other states, the common origin for that general rule is the General Allotment Act of 1887. As implemented, the loss of exclusive use and occupation of reservation land by Indian

tribes has resulted in the loss of regulatory jurisdiction over the use of the land by non-Indians. In this respect, right-of-way legislation and other federal acts have also added to the loss of tribal regulatory authority. See *Strate v. A-1 Contractors*, 520 U.S. 438 at 456 (1997) (quoting *South Dakota v. Bourland*, 508 U.S. 679 (1993)). In most cases the tribes have retained no gatekeeping rights. *Id.*

41. Sprint Communications has no employees on the Pine Ridge Reservation.

42. Sprint Communications has no property of any kind within the Pine Ridge Reservation for providing telecommunication services. Sprint Communications has no numbering resources on the Pine Ridge Reservation. The absence of any numbering resources means Sprint Communications is not offering local telecommunications services to persons residing within the Pine Ridge Reservation.

43. With the transformation of the telecommunications industry into a competitive market, individual LEC subscribers can direct their LEC to use a specific IXC for traditional (wireline) long distance service. Hence, a subscriber of Golden West Communications Cooperative, Inc. (“Golden West”), one of the LECs that serve the Pine Ridge Reservation, could instruct Golden West that a particular subscriber’s long distance calls should use AT&T, for example, to provide the interconnection service.

44. Sprint Communications has identified only a few subscribers of Golden West that have selected Sprint Communications as the long distance carrier. Two of these are businesses, one based out of Seattle, the other a standard South Dakota corporation. Of the five individuals, four apparently do not in fact make any traditional long distance calls. Only one individual Golden West customer has long distance calls

that ultimately go over Sprint Communications' network. No subscribers of any of the other LECs serving the Pine Ridge Reservation have chosen Sprint Communications as its long distance carrier, including NAT-PR.

45. The manner by which Sprint Communications provides long distance service also indicates the lack of consent by its part – actual or implied – to be regulated by the OSTUC. With Golden West, for example, any interstate traffic that Sprint Communications carries that is eventually delivered to Golden West is routed first to a switch in Sioux Falls, South Dakota, owned by SDN. SDN then routes that traffic to Golden West. Similarly, NAT-PR has directed that all traffic destined for one of its assigned numbers is routed to a third party entity that receives traffic from Sprint Communications at a switch that is outside the Pine Ridge Reservation. Hence, whatever long distance traffic that Sprint Communications handles that terminates or originates within the Pine Ridge Reservation, Sprint Communications delivers to third parties *outside* the Pine Ridge Reservation. Moreover, the routing of this traffic is determined by the LEC receiving the in-bound traffic, not Sprint Communications.

46. Virtually all of the interstate telecommunications traffic that Sprint Communications delivers to SDN that ultimately terminates on NAT-PR's equipment is for traffic generated by off-reservation users of Free Conferencing's service.

47. Customers of LECs choose which IXC they want their LEC to use to deliver their long distance traffic. On the incoming side, the LEC receiving the call determines which switch the IXC should deliver inbound traffic to. These decisions are outside the control of IXCs like Sprint Communications. Moreover, the FCC has ordered



that IXC may not engage in self help and block calls to entities like Free Conferencing that engage in traffic pumping. *See Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 11629 (June 28, 2007). Hence, Sprint Communications has no choice but to deliver whatever long distance traffic is directed to it to the LEC of the called party.

48. In *Montana*, the United States Supreme Court has ruled that an Indian tribe presumptively cannot regulate the activities of non-Indians within a reservation, *unless* Congress has specifically authorized tribal jurisdiction over non-Indians. The Supreme Court has provided only two exceptions to the main rule articulated in *Montana*. The tribe may regulate a non-member on fee land within its reservation if the non-member has consented, or if the non-member's conduct threatens or has some direct effect on the political integrity, economic security or health or welfare of the tribe.

49. Sprint has not consented to jurisdiction over it by the Oglala Sioux Tribe or any of the tribe's governmental subdivisions.

50. Sprint has *no* activities on the Pine Ridge Reservation, but even if it did, the mere provision of long distance telecommunications service that eventually terminates on the Pine Ridge Reservation does not operate to create a consensual relationship granting the tribe authority to regulate Sprint or threaten in any way the political integrity, economic security or health or welfare of the Oglala Sioux Tribe. Because Sprint Communications completes its provision of any interstate telecommunications services *off* the Reservation, the OSTUC simply has no lawful authority over Sprint Communications. *See Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d

1087 (8th Cir. 1998); *Christian Children's Fund, Inc. v. Crow Creek Sioux Tribal Court*, 103 F. Supp. 2d 1161 (D.S.D. 2000) (Kornmann, J.). It follows that no tribal jurisdiction exists over Sprint Inc. either, as that entity is in Kansas and does not provide telecommunications services.

51. In view of the *Montana* rule that tribes presumptively lack jurisdiction over non-Indians, even within a reservation, and Congress' determination that only the FCC or a federal court is authorized to resolve disputes over interstate telecommunications services, it is plain the Oglala Sioux Tribal Court and the OSTUC are without jurisdiction over Sprint. Accordingly, Sprint is not required to exhaust tribal court remedies. As the Supreme Court has said, when it is plain there is:

no federal grant providing for tribal governance of nonmembers' conduct on land covered by *Montana's* main rule . . . the otherwise applicable exhaustion requirement . . . must give way, for it would serve no other purpose than delay.

*Strate v. A-1 Contractors*, 520 U.S. 438, 459 n. 14 (1997).

## COUNT ONE

### **Declaratory and Injunctive Relief (28 U.S. C. § 2201)**

52. Plaintiff incorporates and repleads the preceding paragraphs as though set forth here.

53. The efforts of the OSTUC to assert jurisdiction over Sprint violates federal communications law.

54. Plaintiffs are therefore entitled to a declaration that the Oglala Sioux Tribe Utilities Commission lacks jurisdiction over Sprint.

55. Plaintiffs are accordingly entitled to an injunction permanently enjoining the Oglala Sioux Tribe Utilities Commission from proceeding against Plaintiffs in Oglala Sioux Tribal Court to enforce the OSTUC's regulatory regime against Plaintiffs or to impose penalties on Plaintiffs for failing to comply with OSTUC regulations and policies.

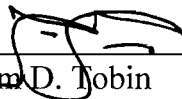
**PRAYER FOR RELIEF**

**WHEREFORE**, for the reasons stated above, Plaintiffs Sprint Communications and Sprint Inc. request that judgment be entered in their favor and award Plaintiffs the following relief:

- (a) A declaratory judgment that the Oglala Sioux Tribe Utilities Commission lacks jurisdiction over Plaintiffs;
- (b) A permanent injunction barring the Oglala Sioux Tribe Utilities Commission from proceeding against Plaintiffs;
- (c) A permanent injunction against Chief Judge Mary Wynne or any other judge of the Oglala Sioux Tribal Court from hearing any claims against Plaintiffs brought by the Oglala Sioux Tribe Utilities Commission; and
- (d) Such further relief as the Court deems appropriate.

Dated: February 7, 2015

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