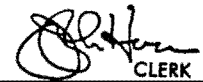


**FILED**

**MAY 12 2015**

  
CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

SOUTH DAKOTA NETWORK, LLC and  
EXPRESS COMMUNICATIONS, INC.,

Plaintiffs,

vs.

OGLALA SIOUX TRIBE UTILITIES  
COMMISSION; and JOE RED CLOUD,  
IVAN BETTELYOUN, DAVID MILLS,  
MARTINA WHITE HAWK, and ARLENE  
CATCHES THE ENEMY, in their official  
capacities as Commissioners of the Oglala  
Sioux Tribe Utilities Commission,

Defendants.

CIV. 15 - 4089

**COMPLAINT**

Plaintiffs South Dakota Network, LLC (“SDN”) and Express Communications, Inc.

(“Express”) bring this action against WHOM. Plaintiffs seek declaratory and injunctive relief to prevent the Oglala Sioux Utility Commission from unlawfully asserting jurisdiction over them.

**JURISDICTION AND VENUE**

1. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331, as Plaintiffs’ claims arise under the laws of the United States.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b), as all Defendants reside here.

**THE PARTIES**

3. SDN is a South Dakota limited liability company with its headquarters in Sioux Falls, South Dakota. SDN is owned by its members, which are South Dakota local exchange carriers.

4. The Oglala Sioux Tribe Utility Commission is an entity created by the Oglala Sioux Tribe to regulate the activities of utilities on the Pine Ridge Reservation.

5. Joe Red Cloud, Ivan Bettelyoun, David Mills, Martina White Hawk, and Arlene Catches the Enemy are the current Commissioners of the Oglala Sioux Tribe Utility Commission.

### **FACTUAL BACKGROUND**

6. SDN acts as a hub for access, long distance, internet, and cable television services for its members and carriers seeking transport to and from members' local exchange areas. Its network is made up of SDN-owned and leased fiber that connects to the facilities and systems of its members.

7. SDN is not a long distance carrier. It does not provide long distance services to any customers, including its members, and it is not certified as a long distance carrier.

8. SDN has no telecommunications facilities on the Pine Ridge Reservation.

9. SDN neither owns nor leases telecommunications cable or fiber on the Pine Ridge Reservation.

10. No members of the Oglala Sioux Tribe are retail customers of SDN.

11. SDN has no contracts to provide long distance service to the Oglala Sioux Tribe or any of its affiliates.

12. Express is a South Dakota corporation that is a subsidiary of SDN. Express buys long distance services from other providers and resells these services to SDN's members.

13. Outgoing long distance traffic from SDN's members is aggregated at SDN's Sioux Falls hub, where it is then routed to the long distance carriers whose services had been purchased by Express and sold to the members.

14. Long distance traffic going to or from the Pine Ridge reservation is routed through Rapid City, where Golden West's network connects with SDN-owned fiber.

15. Express has no contracts with the Oglala Sioux Tribe or any of its affiliates.

16. No members of the Oglala Sioux Tribe are retail customers of Express.

17. The Oglala Sioux Utility Commission ("the Commission") is an entity created by the Oglala Sioux Tribal Council. The Commission claims authority and jurisdiction over utility providers on the Pine Ridge Indian Reservation.

18. In 2014, the Commission initiated a series of proceedings concerning utility providers on the reservation.

19. On September 9, 2014, the Commission issued a document entitled "Final Utility Order" in Case No. U-1-2014. A copy of the order is attached as Exhibit A. In this order, the Commission asserted that it had "jurisdiction and authority over all Utility providers on the Pine Ridge reservation, regardless of whether a Utility provider uses its own facilities or those of another entity to provide service to residents and individuals located on the Pine Ridge reservation." On the basis of this alleged authority, the Commission promulgated a number of regulations, set a utility fee, and ordered all providers to register with the Commission.

20. SDN and Express did not register with the Commission.

21. On October 23, 2014, the Commission issued a document entitled "Notice of Liability", in which it purported to impose a fine of \$1,000 per day on any entity that refused to register by November 7, 2014. A copy of the notice is attached as Exhibit B. The Commission asserted that the registration requirement "applies to all Utilities regardless of whether they have physical facilities on the Pine Ridge reservation."

22. The October 23, 2014 Notice identified SDN as one of the providers that was not “properly registering” with the Commission.

23. On February 19, 2015, the Commission issued a second document entitled “Notice of Liability” that purported to impose an additional fine of \$500 per day on any entity that did not comply with the annual report and fee requirements set out in the September 9, 2014 order. A copy of the notice is attached as Exhibit C.

24. The February 19, 2015 Notice identified SDN as one of the noncompliant providers; the Commission alleged that it owed \$122,000 in penalties as of that date.

25. The Commission filed suit against SDN in Oglala Sioux Tribal Court, seeking a declaration that it has regulatory jurisdiction over SDN and enforcing the penalties set out in the October 23, 2014 and February 19, 2015 Notices.

26. A copy of the tribal court complaint was mailed to SDN on February 25, 2015. A copy of this complaint is attached as Exhibit D. However, SDN has not been properly served.

**Count 1: Declaratory and Injunctive Relief**

27. Plaintiffs incorporate the preceding paragraphs of the Complaint

28. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201, for the purpose of resolving an actual controversy between the parties.

29. The Commission is attempting to assert jurisdiction over Plaintiffs via the September 9, 2014 Order, the October 23, 2014 Notice, the February 19, 2015 Notice, and the pending tribal court action.

30. Neither SDN nor Express is engaged in any long distance-related activity on the Pine Ridge Reservation.

31. Neither SDN nor Express has a consensual agreement with the Commission, the Oglala Sioux Tribe, or any tribe members on the Pine Ridge Reservation for the provision of long distance services.

32. Plaintiffs have not consented and cannot consent to the exercise of regulatory authority by the Commission.

33. The tribal court does not have jurisdiction over Plaintiffs.

34. The Oglala Sioux Tribe and the Commission do not have regulatory jurisdiction over Plaintiffs.

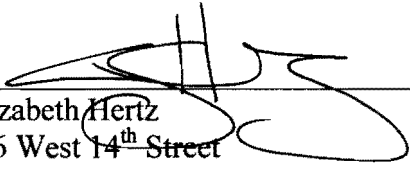
35. Plaintiffs are entitled to a declaration that Defendants lack jurisdiction over Plaintiffs and cannot impose regulations or fines for failure to comply with these regulations upon Plaintiffs. Plaintiffs are also entitled to have Defendants enjoined from purporting to exercise jurisdiction over them in tribal court, including issuing or seeking any order regarding forfeitures and penalties against Plaintiffs.

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and award them the following relief:

- A) A declaratory judgment stating that the Tribe and the Commission lack jurisdiction over Plaintiffs;
- B) A permanent injunction prohibiting Defendants from attempting to exercise jurisdiction over Plaintiffs.

Dated at Sioux Falls, South Dakota, this 12<sup>th</sup> day of May, 2015.

DAVENPORT, EVANS, HURWITZ &  
SMITH, L.L.P.



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