

LAW OFFICES
RITER, ROGERS, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P.O. Box 280
Pierre, South Dakota 57501-0280
www.riterlaw.com

ROBERT C. RITER, Jr.
DARLA POLLMAN ROGERS
JERRY L. WATTIER
JOHN L. BROWN

MARGO D. NORTHRUP, Associate

March 24, 2005

OF COUNSEL
Robert D. Hofe
E. D. Mayer
TELEPHONE
605-224-5825
FAX
605-224-7102

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RECEIVED
MAR 24 2005
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

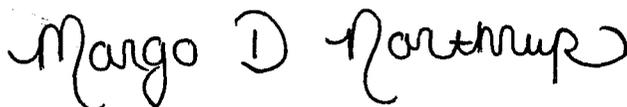
Re: Docket TC03-193

Dear Pam:

Enclosed herein are the original and ten copies of the MOTION BY INTERVENORS TO SUBMIT A SUPPLEMENTAL BRIEF in the above-referenced docket.

By copy of this letter, I am also serving those persons named on the Certificate of Service with a copy of the Motion.

Sincerely yours,



Margo D. Northrup
Attorney at Law

MDN/ph

Enclosures

CC: Talbot J. Wiczorek
David A. LaFuria
Meredith A. Moore
Richard D. Coit
James M. Cremer

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION
OF RCC MINNESOTA, INC., AND
WIRELESS ALLIANCE, L.L.C., FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
UNDER 47 U.S.C. § 214(e)(2)

Docket No. TC03-193

MOTION BY INTERVENORS
TO SUBMIT A
SUPPLEMENTAL BRIEF

RECEIVED
MAR 24 2005
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

COME NOW the Intervenors in the above-named docket and respectfully move the Commission to allow Intervenors to submit a Supplemental Brief in this case. This Motion is based upon the following:

1. In Docket No. TC03-193, RCC Minnesota, Inc., and Wireless Alliance, LLC ("RCC") have requested designation as an eligible telecommunications carrier ("ETC") from this Commission.
2. This Commission granted intervention to SDTA, Alliance, ITC, James Valley, Prairie Wave, Roberts County/RC Communications, Sioux Valley and Union, Stockholm-Strandburg, and Venture.
3. The parties participated in a hearing on RCC's Petition on October 13-14, 2004; thereafter, a briefing schedule was established. RCC submitted its initial Brief on January 5, 2005. Intervenors and Staff submitted their Briefs on February 11, 2005, and RCC submitted its Closing Brief on February 22, 2005.
4. In its Brief of February 11, 2005, Intervenors noted that further changes to ETC designation guidelines were imminent.

Further changes from the FCC can be expected soon. The FCC, on June 8, 2004, released a Notice of Proposed Rulemaking seeking comments on the Recommended Decision of the Federal-State Joint Board . . . Pursuant to the process established for reviewing recommendations of the Joint Board, the FCC is obligated to render its decision concerning such recommendations by no later than February 25, 2005.

5. On February 25, 2005, the FCC adopted its Report and Order In the Matter of Federal-State Joint Board on Universal Service (FCC Docket No. 96-45), which Report and Order was released March 17, 2005.

6. In said Order, the FCC accepted some of the recommendations of the Joint Board with regard to ETC designation, and rejected some of the recommendations.

7. While Intervenors covered some of the anticipated findings of the FCC in their initial Brief, there are some findings contained in the Order that are applicable in the current, pending docket, which Intervenors request to address by submission of a Supplemental Brief.

8. Intervenors seek to further address the following points in a Supplemental Brief:

A. Eligibility Requirements.

(1) In its Order, the FCC stated, “In this Report and Order, we adopt additional requirements . . . that all ETC applicants must meet to be designated an ETC by this Commission.” Report and Order, ¶17. The FCC enumerates five criteria that must be met, the first of which is commitment and ability to provide the supported services. As part of the demonstration of a carrier’s commitment and ability, an ETC applicant must “submit a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support.” Report and Order, ¶21.

(b) The FCC expanded on this requirement by requiring submission by the ETC applicant of a five-year plan, specifically describing proposed upgrades and improvements of the applicant's network on a wire center-by-wire center basis. (Report and Order, ¶23). The items that need to be included in the five-year plan are also enumerated in the Report and Order, Id. at ¶23.

(c) The FCC sets forth four other eligibility requirements that need further exploration in the current docket.

B. Public Interest Determinations.

(a) The FCC adopted a fact-specific public interest analysis, as developed in prior Orders, but gave further guidance on the factors to be considered. Report and Order, ¶41.

(b) The FCC urged consideration of the following: the benefits of increased consumer choice, the particular advantages and disadvantages of an ETC's service offering, and disadvantages may include examination of dropped call rates and poor coverage. Report and Order, ¶44.

(c) As part of its public interest determination, the FCC "will perform an examination to detect the potential for creamskimming effects" where an ETC applicant seeks designation below the service area level of a rural incumbent LEC. Report and Order, ¶48.

(d) The FCC sets forth specific factors to be examined in order "to avoid disproportionately burdening the universal service fund and [to] ensure that incumbent LEC's are not harmed by the effects of creamskimming," and these factors also need further explanation in the current docket. (Report and Order, ¶49).

C. Guidelines for State ETC Designation Proceedings.

(a) The FCC strongly encourages state commissions to adopt, at a minimum, the requirements adopted by the FCC in the Report and Order.

(b) Since the RCC Petition is still pending, Intervenors argue that it would be an appropriate time for the Commission to allow supplemental briefing on the Report and Order.

D. Redefinition Process.

(a) The FCC confirms its prior procedures and urges state commissions to “employ rigorous and fact-intensive analyses of requests for service area redefinitions that examine the impact of any redefinition on the affected rural incumbent LEC’s ability to serve the entire study area.” Report and Order, ¶74.

(b) The FCC further endorsed its previous holding in the Highland Cellular ETC Designation Order, “that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.” Report and Order, ¶77.

(c) Since these issues were raised in the current docket, Intervenors would like the opportunity to explore them more carefully in light of the FCC’s recent Order.

For all of the foregoing reasons, Intervenors respectfully request the Commission to allow Intervenors to submit a Supplemental Brief in the above-named docket, limited to discussion of the newly-released FCC Report and Order and its effect on the current docket.

Dated this twenty-fourth day of March, 2005.


Darla Polkman Rogers
Margo D. Northrup
Riter, Rogers, Wattier & Brown, LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889
Fax (605) 224-7102
Attorney for Intervenor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the MOTION BY INTERVENORS TO SUBMIT A SUPPLEMENTAL BRIEF was served via the method(s) indicated below, on the twenty-fourth day of March, 2005, addressed to:

Pamela Bonrud, Executive Director (original and 10)	()	First Class Mail
South Dakota Public Utilities Commission	(x)	Hand Delivery
500 East Capitol Avenue	()	Facsimile
Pierre, South Dakota 57501	()	Overnight Delivery
	()	E-Mail
Talbot J. Wiczorek	(x)	First Class Mail
Gunderson, Palmer, Goodsell & Nelson, LLP	()	Hand Delivery
P. O. Box 8045	()	Facsimile
Rapid City, South Dakota 57709	()	Overnight Delivery
	()	E-Mail
David A. LaFuria	(x)	First Class Mail
Lukas, Nace, Gutierrez & Sachs	()	Hand Delivery
1650 Tysons Boulevard, Suite 1500	()	Facsimile
McLean, Virginia 22102	()	Overnight Delivery
	()	E-Mail
Meredith A. Moore	(x)	First Class Mail
Cutler & Donahoe, LLP	()	Hand Delivery
100 N. Philips Ave., 9 th Floor	()	Facsimile
Sioux Falls, South Dakota 57104-6725	()	Overnight Delivery
	()	E-Mail

Richard D. Coit, Executive Director
South Dakota Telecommunications Ass'n
P. O. Box 57
Pierre, South Dakota 57501

First Class Mail
 Hand Delivery
 Facsimile
 Overnight Delivery
 E-Mail

James M. Cremer
Bantz, Gosch & Cremer, LLC
Box 970
Aberdeen, South Dakota 57402-0970

First Class Mail
 Hand Delivery
 Facsimile
 Overnight Delivery
 E-Mail

Dated this twenty-fourth day of March, 2005.


Margo D. Northrup
Riter, Rogers, Wattier & Brown, LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone (605) 224-7889
Fax (605) 224-7102