



South Dakota Telecommunications Association
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Rural roots, global connections

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

July 6, 2006

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket TC05-016, Petition for ETC Designation of
PrairieWave Communications, Inc.

Dear Ms. Van Gerpen:

Attached for filing with the Commission in the above referenced docket are the original and ten (10) copies the "Reply Brief" of the South Dakota Telecommunications Association.

Also provided, with the Brief, is a Certificate of Service verifying service on counsel for the other parties.

Thank you for your assistance in filing and distributing these documents.

Sincerely,

Richard D. Coit
Executive Director and General Counsel
SDTA

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION
OF PRAIRIEWAVE COMMUNICATIONS
INC. FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS
CARRIER IN THE CONTIGUOUS WIRE
CENTERS OF CENTERVILLE AND
VIBORG**

DOCKET TC05-016

REPLY BRIEF OF SDTA

I. Introduction.

The South Dakota Telecommunications Association (“SDTA”) files this Reply Brief based on the procedural schedule agreed upon between Commission Staff and the other parties to this Docket. As noted in the SDTA Petition to Intervene filed in this matter, Fort Randall Telephone Company (Fort Randall), the incumbent local exchange carrier (ILEC) serving the exchanges of Centerville and Viborg and also six other exchange areas in South Dakota (all as part of the same rural study area), is a member of the SDTA. This Reply Brief is filed to emphasize SDTA’s support for the positions and arguments presented in this matter by Fort Randall.

II. Argument.

Pursuant to the applicable federal and state statutes (47 U.S.C. § 214(e)(2) and SDCL § 49-31-78) and also under this Commission’s administrative rules, the Commission “may not, in an area served by a rural telephone company, designate more than one eligible telecommunications carrier absent a finding that the additional

designation is in the public interest.” (See ARSD § 20:10:32:42).¹ With respect to this public interest requirement applicable to rural service areas, this Commission has now also identified in its administrative rules the specific criteria that should be considered. The pertinent rule, ARSD § 20:10:32:43.07, in describing the applicable public interest standard, states as follows:

. . . The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant’s service offering, commitments made regarding the quality of telephone service provided by the applicant, and the applicant’s ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether the designation will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

SDTA shares the views of Fort Randall and believes that a fair review of the petition for designation filed in this matter and the stipulated record can only reasonably lead to the conclusion that PrairieWave Communications, Inc. (“PrairieWave”) should not receive competitive ETC status in the Centerville and Viborg exchange areas. As summarized on page 5 of Fort Randall’s Initial Brief, the petition for designation should be rejected for a number of reasons, including the following: (1) PrairieWave’s service proposal provides no advantages over the existing Fort Randall service and there is a

¹ The provisions of ARSD § 20:10:32:42, along with other rules related to ETC designations and annual ETC certification filings (ARSD §§ 20:10:32:43 thru 20:10:32:56), were approved by the Commission and filed with the South Dakota Secretary of State’s Office on or about June 19th. Eventhough the new rules will not actually take effect until 20 days after this filing date, Prairie Wave has indicated its intention to comply with the rules. (See Prairie Wave’s Initial Brief p. 3).

significant probability that PrairieWave's higher priced (residential), fixed-wireless service will be of lower quality than the service provided by Fort Randall; (2) there is no legal or other barrier (other than lack of available profit) to PrairieWave serving Fort Randall's entire service area; (3) granting the Application would result in undeniable and harmful creamskimming; (4) the universal service payments to PrairieWave would result in a windfall to PrairieWave with little or no customer benefits; (5) there is a potential significant impact on Fort Randall's ability to continue providing high quality service at affordable rates, particularly to the out-of-town customers in Centerville and Viborg; and (6) in the long term, there could be significant adverse impact on the Universal Service Fund if duplicative ETCs are consistently certified by the commission.

In regards to the ETC request filed by PrairieWave, for all of the above reasons, it is SDTA's position that the request does not meet the established public interest criteria. SDTA also believes that this case is distinguishable, for various reasons, from previous ETC applications addressed by this Commission, where ETC status has been granted. Unlike what was indicated by the facts presented in earlier cases, it is very likely in this case, if the request for ETC designation is granted, that the level of federal universal service funding available to Fort Randall, as the incumbent carrier, would be reduced. (See "Stipulation of Facts" par. 56). This, in turn, would negatively affect Fort Randall's ability to meet its carrier of last resort and universal service obligations and would have an adverse impact on end user customers. Furthermore, unlike what was shown in the earlier ETC cases, there are no unique service advantages associated with PrairieWave's local service offerings in the Centerville and Viborg exchanges. In fact, the "fixed" wireless offering that is planned for use by PrairieWave in the rural parts of each

exchange would use an unlicensed spectrum and would be based on what appears to be an experimental or unproven technology. This being the case, the PrairieWave local service offerings, particularly with respect to what will be offered to out-of-town customers, will more likely bring disadvantages rather than advantages.

In earlier wireless ETC cases decided by this Commission, the Commission was faced with mobile wireless offerings which brought certain new service features or functionalities to end-user customers. Furthermore, the wireless services were more complementary than substitute services and this effectively reduced the chances that the ILECs universal service support would be negatively affected by the competitive ETC designation.² In this case, because the universal service support received by Fort Randall is likely to be negatively impacted if the competitive ETC designation is granted, there is an increased risk of harm to end-user customers. This increased risk, however, is not outweighed by any significant, identifiable service benefits.

SDTA is concerned that this Commission maintain a meaningful public interest review process of competitive ETC requests and believes, if designation is granted under the facts presented in this case, there would be good reason to question on a going forward basis the validity of the established ETC review process. If a decision is made to grant ETC status to PrairieWave, the decision would have to be based purely on the goal

² Under the FCC rules, high cost universal service support is distributed to each line served by the ETC. As long as the competitive ETC has not “captured” the subscriber line from the ILEC, the ILEC continues to receive universal service support for that line. Wireless phones have, however, been considered separate lines for purposes of calculating universal service fund distributions. Consequently, as long as an end-user customer continues as a subscriber of the ILEC and continues to keep the same number of wired lines, the ILEC receives universal service support on the same number of lines. The pertinent FCC rule provisions are found in Sec. 54.307 (a) which reads as follows: “Calculation of support. A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.”

of increasing competition and, as this Commission and the FCC have already held, “the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”³ As indicated by Fort Randall in its Initial Brief, if Prairie Wave is entitled to ETC status under the stipulated facts of this case, it is difficult to envision any circumstance in which a CLEC would not qualify for duplicative ETC status in portions of a rural telephone company service area by simply promising to meet the service checklist. The end result would be to render meaningless both the public interest test and the prohibition against creamskimming applicable to rural service areas.

SDTA would also note its concurrence in the arguments of Fort Randall addressing Prairie Wave’s apparent belief that there are no creamskimming issues for this Commission to address because the FCC has already concurred in this Commission’s redefinition of Fort Randall’s rural service area for competitive ETC purposes.⁴ Contrary to what PrairieWave suggests, eventhough the rural service area of Fort Randall has already been redefined for competitive ETC purposes, this does not eliminate all creamskimming concerns or the necessity for this Commission to conduct a creamskimming analysis. As indicated by the provisions of ARSD § 20:10:32:43.07, set forth above, in every case where “an applicant seeks designation below the study area level of a rural telephone company” the Commission is directed to “conduct a

³ Memorandum Opinion and Order, FCC 03-338 (*In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier*), par. 4; and Order Designating RCC Minnesota, Inc. and Wireless Alliance, L.L.C. d/b/a Unicel as Eligible Telecommunications Carriers; Findings of Fact and Conclusions of Law; and Notice of Entry of Order, Docket TC03-193, par. 19 and 20.

⁴ PrairieWave refers to the FCC’s concurrence of the service area redefinition ordered by this Commission in Docket TC 04-213 (*In the Matter of the Filing by Brookings Municipal Utilities d/b/a Swiftel Communications for Designation as an Eligible Telecommunications Carrier*). See FCC Public Notice, The Wireline Competition Bureau Seeks Comment on a Petition to Redefine the Service Areas of Certain Rural Telephone Companies in the State of South Dakota, CC Docket No. 96-45 (DA 06-564, rel. March 10, 2006).

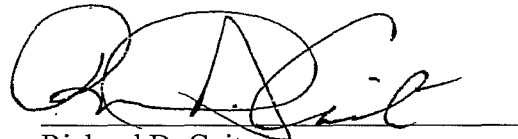
creamskimming analysis.” Furthermore, it is clear from the rule that this Commission in looking at creams-kimming concerns should not only be reviewing the population densities of each wire center area, it should also consider the population densities within and outside the city limits of each of the affected communities. As indicated by the Stipulation of Facts, inside the city limits of Centerville and Viborg the population density is 1,622 persons per square mile. Outside the city limits of each town the population density is 5.7 persons per square mile. Currently, Fort Randall does not have a disaggregation plan and therefore universal service support is paid on every line at the same amount (\$15.34 per-line-per-month). PrairieWave is already providing competitive local exchange services within both the Centerville and Viborg exchanges, currently serving a total of 450 access lines. With respect to these access lines, however, only 3 of the lines are located outside the city limits of either Centerville or Viborg. Under these circumstances, as pointed out by Fort Randall, if the requested ETC designation is granted, PrairieWave would receive a substantial windfall in universal service payments. These monies would be received even if PrairieWave does not add a single customer that resides outside the city limits of either Centerville or Viborg. As pointed out by Fort Randall, granting the petition for designation would result in exactly the type of harm the FCC seeks to avoid by requiring the creams-kimming analysis. PrairieWave would receive universal service support for serving, almost exclusively, low-cost in-town customers, while Fort Randall would need to use its support dollars to serve higher-cost customers in its six wire other wire centers and to serve high-cost out-of-town customers in the Centerville and Viborg exchanges. Contrary to what PrairieWave suggests, these facts cannot be ignored in the review of its petition for ETC designation. They are

relevant to the public interest review process and must be considered by this Commission.

III. Conclusion

Based on the foregoing and all of the arguments presented by counsel for Fort Randall in this matter, SDTA urges the Commission to deny PrairieWave's request for ETC designation in the Centerville and Viborg exchanges.

Dated this 6th day of July, 2006.

A handwritten signature in black ink, appearing to read 'R. D. Coit', written over a horizontal line.

Richard D. Coit
General Counsel, SDTA

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the Reply Brief of SDTA in Docket TC05-016 was hand-delivered to the South Dakota PUC on July 6, 2006, directed to the attention of:

Patty Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

A copy was sent by US Postal Service First Class mail to each of the following individuals:

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Dated this 6th day of July, 2006.



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