



July 6, 2006

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, South Dakota 57501

**RE: Response Brief of PrairieWave Telecommunications, Inc.  
TC05-016**

Dear Ms. Van Gerpen:

On behalf of PrairieWave Telecommunications, Inc., ("PrairieWave"), enclosed please find an original and one copy of the Response Brief of PrairieWave Telecommunications, Inc. in response to the initial brief of Ft. Randall.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Haase".

Dawn Haase  
Legal Administrative Assistant

Enclosures  
cc: Service List

**CERTIFICATE OF SERVICE**

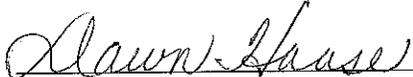
I, Dawn Haase, on the 6th day of July, 2006, served the attached **Response Brief of PrairieWave Telecommunications, Inc. in Docket No. TC-05-016** via electronic filing and UPS overnight mail to:

Patricia Van Gerpen, Executive Director  
SD Public Utilities Commission  
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And via email and UPS overnight mail to:

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Dawn Haase

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

**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**

**TC05-016**

**RESPONSE BRIEF  
OF  
PRAIRIEWAVE TELECOMMUNICATIONS, INC.**

**Introduction**

On January 24, 2005, PrairieWave Telecommunications, Inc. ("PrairieWave") filed a petition with the Commission for designation as an eligible telecommunications carrier ("ETC") in the Centerville and Viborg wire centers. On May 18, 2006, PrairieWave, Ft. Randall Telephone, Inc. ("Ft. Randall") and the South Dakota Telecommunications Association ("SDTA") filed a Stipulation of Facts ("Stipulation") in this docket. The parties intended that filing to comprise the factual record upon which the Commission would determine whether to grant PrairieWave ETC status for the Centerville/Viborg service area. On June 20, 2006, PrairieWave and Ft. Randall simultaneously filed initial briefs. This brief is in response to the initial brief of Ft. Randall.

**Argument**

It is interesting to say the least that in the attempt to defeat PrairieWave's application for ETC designation in the Centerville/Viborg service area, Ft. Randall becomes an advocate and defender of the designations of the mobile wireless carriers or

cellular carriers as ETCs in the same and adjacent service areas.<sup>1</sup> The advantages touted by Ft. Randall are mobility and the expanded local calling area represented by the FCC's designation of cellular local calling as the Major Trading Area ("MTA"), which can cover not only the local calling areas designated by the Commission, but can cross state lines.

PrairieWave cannot match either the mobility or the expanded local calling area of a cellular carrier like RCC Minnesota, Inc. ("RCC") or Swiftel Communications ("Swiftel"). PrairieWave is not that type of carrier. PrairieWave is basically a wireline, facilities-based carrier with its own advantages to the customers in the Centerville/Viborg service area. PrairieWave would ask the Commission to consider the following:

1. PrairieWave has its Lucent 5E host switch in the Centerville/Viborg service area. PrairieWave has significant fiber, copper and coaxial facilities associated with that host switch in and around the service area. As business, technology and customer demand warrant, those facilities can be expanded to provide the latest in technology and services to the customers in the service area. Choice of provider for the customer, whether wireline or wireless, may not be the determinative criterion, but it certainly is a matter for the Commission to consider.

2. PrairieWave has been a facilities-based provider in the service area since 1997. It is there to stay. It can easily become an alternate provider of last resort insuring that there will always be a facilities-based provider in the service area for customers to have

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<sup>1</sup> *In the Matter of the Filing by RCC Minnesota, Inc., and Wireless Alliance, LLC d/b/a Unicel for Designation as an Eligible Telecommunications Carrier*, Findings of Fact and Conclusions of Law; Notice of Entry of Order, Docket No. TC03-193 (June 6, 2005); *In the Matter of the Filing by Brookings Municipal Utilities d/b/a Swiftel Communications for Designation as an Eligible Telecommunications Carrier*, Order Granting Eligible Telecommunications Designation, Docket No. TC04-213 (February 10, 2006) ("Swiftel Order").

as a choice of provider. PrairieWave's unique combination of wireline and wireless technology will provide a base from which the service area can economically develop. Residents and businesses in the service area are not limited to existing wireline facility routes to decide where to live or where to establish a business. The establishment of voice and high-speed Internet service with PrairieWave is just a service order away. The suggestion in the Ft. Randall brief that the out-of-town customer is "almost exclusively" a residential user is simply not correct.<sup>2</sup> The out-of-town areas are mainly occupied by modern, high-tech agribusiness operations that need access to multiple providers of modern, high-speed telecommunications services. The out-of-town areas are going to continue to economically develop only if the area has access to a choice of provider for those high-speed services.

3. The PrairieWave services provide the customer with a safe living and work environment. Service continuity is and reliability is insured by facilities that are network powered including back-up power as required by Commission rules. PrairieWave's commitment to a lifeline service is demonstrated by PrairieWave providing network power to its facilities and back-up power at the customer premises to meet the same power minimums as required by the Commission's rules. Because the local service is tied directly to the Lucent 5E, the customer's phone number and location are noted in the appropriate 911 databases so that emergency responders know where to go when a call by a PrairieWave customer is made in an emergency situation either at work or at home.<sup>3</sup>

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<sup>2</sup> Ft. Randall Initial Brief, p. 11. The subscriber may be paying just residential rates, but anyone who drives around the area would immediately get another impression.

<sup>3</sup> Being a "fixed" wireless service does have advantages from a service reliability and quality perspective and to provide more ready access to the community in emergency situations.

4. The choice of a provider in the service area has had the obvious effect of keeping residential and business prices very affordable.<sup>4</sup> The prices in the out-of-town areas will be the same as the prices for the in-town customer. Whatever that price is now may not be the price going forward. PrairieWave will price the service to be competitive, and it is nonsense to infer that PrairieWave has deliberately priced its service to be noncompetitive. The technology deployed by PrairieWave is not “experimental,” is not unproven, is hardly the only wireless VoIP offering in the United States using unlicensed spectrum<sup>5</sup>, and will work as advertised and represented to this Commission. PrairieWave will initially deploy the WaveRider brand technology,<sup>6</sup> it is certain that it can make the system work, and it will have an operational system in place as represented in its application in the docket.

5. While mobility is not the hallmark of the PrairieWave service, mobility is an aspect. As represented in the Stipulation, the VoIP capability will work without owning or accessing a computer.<sup>7</sup> However with a laptop computer, VoIP software, and access to a high-speed Internet connection, the PrairieWave customer would have the capability of using his or her PrairieWave VoIP service anywhere in the world as if the customer were calling from the home or business location. This capability would be unique to the PrairieWave customer.

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<sup>4</sup> Stipulation, ¶ 16.

<sup>5</sup> There is nothing wrong with unlicensed spectrum. There is nothing to suggest that it is somehow inherently inferior to other available spectrum, especially in rural areas where there is not a profusion of spectrum usage. That said, there is always the possibility that PrairieWave could obtain licensed spectrum, which would enable PrairieWave to provide the same voice and Internet service capabilities and service quality, but would make adding video service to the out-of-town customer more likely.

<sup>6</sup> PrairieWave is certain the WaveRider system will provide quality voice and high-speed data service. That was the purpose of testing the technology before representing to the Commission that it would use that technology in its three-year plan presented with the application for ETC designation. PrairieWave will deploy WaveRider or any other similar technology “as necessary” to insure that the represented capabilities and service quality are provided. PrairieWave should not be tied to a particular vendor or brand of wireless technology as a result of this application.

<sup>7</sup> Stipulation, ¶ 23.

6. The “reasonable cost” qualifier cited by Ft. Randall as a negative in the PrairieWave application<sup>8</sup> is the standard commitment required by the FCC rule<sup>9</sup> and the proposed Commission rules<sup>10</sup> regarding the commitment to provide service within the service area but outside PrairieWave’s existing network. That commitment has been made and is hardly a basis to consider rejecting the application for ETC designation. In any event once the system is built out in three years, there will be no customer in the service area outside PrairieWave’s network.

7. The designation of PrairieWave as an ETC in the Centerville/Viborg service area will not result in any “windfall” to PrairieWave any more than such designation is a “windfall” to RCC or Swiftel. Since 1997 PrairieWave has had to act as an ETC<sup>11</sup> and should be treated as an ETC. PrairieWave has constructed facilities throughout the service area and will continue to do so to upgrade its network and provide the most modern voice and Internet services available. It has provided Lifeline and Link-up service even though it does not now qualify for reimbursement for those services, which as an ETC it would. Ft. Randall asserts that PrairieWave is using this application just to profit from its existing base of customers in the service area.<sup>12</sup> Nothing could be further from the truth. The application recognizes an existing situation where PrairieWave is committed to serving all customers in the service area. This is no different than the situation with RCC and Swiftel. PrairieWave should have access to ETC support to enable that commitment. Any funds realized from the granting of this application will initially be used to fund the build-out of facilities to provide service choice to the out-of-

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<sup>8</sup> Ft. Randall Initial Brief, p. 7.

<sup>9</sup> 47 C.F.R. ¶ 54.202(a)(1)(B).

<sup>10</sup> ARSD 20:10:32:43.01(2).

<sup>11</sup> Stipulation, Attachment A.

<sup>12</sup> Ft. Randall Initial Brief, p. 14.

town customer, business and residential, and thereafter to fund facility upgrades and better service for all service area customers. The use of the funding will be detailed in annual certifications filed with the Commission as required by FCC and Commission rules.

8. Whether PrairieWave is able or willing to serve the remaining local exchange area served by Ft. Randall is no longer an issue.<sup>13</sup> The service area in this proceeding is the Centerville/Viborg service area – a separate service area defined by the Commission and concurred in by the FCC.<sup>14</sup> Even so PrairieWave is in no different position legally than RCC or Swiftel. PrairieWave has a certificate of authority to provide local exchange service in the Centerville/Viborg.<sup>15</sup> At that time, U S WEST Communications was the owner and certificated provider of local exchange services in Centerville and Viborg. From a review of the map at Attachment E of the Stipulation, it is apparent that the Centerville/Viborg service area is surrounded by PrairieWave’s sister, ILEC affiliate, PrairieWave Community Telephone, Inc. Seeking to serve the “hole in the donut” makes perfectly good business sense. RCC and Swiftel sought authority from the appropriate regulatory agency to provide wireless service by obtaining licensed spectrum in certain defined areas of South Dakota. Swiftel could have sought licenses for spectrum in the entire Ft. Randall area, but it did not. There was no legal or operational limitation on its ability to include all of the Ft. Randall exchanges in their FCC-licensed service territory.

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<sup>13</sup> It was an issue in PrairieWave’s 1998 petition. *In the Matter of the Filing by Dakota Telecom, Inc. for Designation as an Eligible Telecommunications Carrier*, Order Denying Request for ETC Designation; Notice of Entry of Order, TC98-111 (December 11, 1998), ¶¶ 8-10. The Commission’s sole basis for denying the petition was the fact that PrairieWave did not serve the “entire service area.” *Id.* at ¶ 10.

<sup>14</sup> *Swiftel Order*, p. 6; Public Notice, *The Wireline Competition 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).

<sup>15</sup> *In the Matter of the Application of Dakota Telecom, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota*, Final Order and Decision Granting a Certificate of Authority; Notice of Entry of Judgment, Docket No. TC96-050 (October 22, 1996).

They chose the territory they wished to serve and obtained the necessary license. PrairieWave asked to provide service in the Centerville/Viborg area, and in Docket No. TC96-050, the Commission granted that certification. Swiftel sought to have the Centerville/Viborg centers defined as a separate service area, the Commission and the FCC granted that request. There is nothing in the FCC record to indicate that Ft. Randall filed comments with the FCC, when it had the opportunity to do so, to oppose the definition of Centerville/Viborg as a separate service area.

9. The FCC rules regarding the definition of service areas are found at 47 C.F.R. ¶ 54.207. Subsection (b) states that for Ft. Randall, the service area will be its study area “unless and until” the FCC and the Commission establish a different service area for Ft. Randall. In defining Centerville/Viborg as a separate service are, and consistent with the provisions of 47 C.F.R. ¶ 54.207(c), the Commission filed the appropriate petition with the FCC.<sup>16</sup> A critical part of that petition was an analysis to address the minimization of creamskimming, that is, not allowing competitors to serve only the low-cost, high revenue customers in Ft. Randall’s study area. The Commission stated in the petition, “that its analysis and proposed redefinitions meet the Joint Board’s goal of minimizing creamskimming.”<sup>17</sup> Definition of a specific service area is not done competitor by competitor, but based on an analysis of the service area by the Commission. The analysis the Commission relied on, and described in its order approving the definition of the Centerville/Viborg service area, is of population densities of the Ft. Randall exchanges. Those densities have not changed appreciably since that analysis was filed and did

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<sup>16</sup> *Petition for FCC Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of South Dakota Pursuant to 47 C.F.R. Section 54.207(c)*, CC Docket No. 96-45 (February 28, 2006) (“*FCC Petition*”).

<sup>17</sup> *Id.*, p. 4-5.

support the assertions the Commission made in the *FCC Petition*. Likewise, the FCC relied on similar population density analyses in its *Virginia Cellular*<sup>18</sup> and *Highland Cellular*<sup>19</sup> decisions. The population density analysis presented in paragraph 34 of the Stipulation are consistent with the numbers in the *Swiftel Order* analysis, and it does not alter the conclusion that the Commission and the FCC made the correct decision regarding creamskimming and defining Centerville/Viborg as a separate study area. More to the point it is clear from PrairieWave's application that it seeks to serve the high-cost, low density customer in the service area.

### **Conclusion**

PrairieWave has made the requisite assurances, is in the process of beginning to deploy the technology to provide the required services, has demonstrated that the service will be in the public interest, and has met all other requirements of law and regulation. The Commission should grant PrairieWave's petition for designation as an ETC in the Centerville/Viborg study area.

Respectfully submitted this 6<sup>th</sup> day of July, 2006.



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cc: Service List

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<sup>18</sup> *In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, P34-35 (2004) ("*Virginia Cellular*").

<sup>19</sup> *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, P28 (2004) ("*Highland Cellular*").