

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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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

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
TC05-016

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Transcript of Proceedings
December 19, 2006

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COMMISSION STAFF

Rolayne Ailts Wiest
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ORIGINAL

APPEARANCES

WILLIAM P. HEASTON,
PrairieWave Telecommunications, Inc.,
5100 South Broadband Lane,
Sioux Falls, South Dakota 57108,
appearing on behalf of PrairieWave;

MICHAEL J. BRADLEY,
MOSS & BARNETT, Attorneys at Law,
4800 Wells Fargo Center, 90 South Seventh Street,
Minneapolis, Minnesota 55402-4129,
appearing on behalf of Fort Randall Telephone Co.;

RICHARD D. COIT,
South Dakota Telecommunications Association,
320 East Capitol Avenue, Pierre, South Dakota
57501,
appearing on behalf of SDTA.

Reported by Carla A. Bachand, RMR, CRR

1 TUESDAY, DECEMBER 19, 2006

2 CHAIRMAN JOHNSON: The commission will now take up
3 item number two under telecom. This is TC05-016, in the matter
4 of the filing by PrairieWave Telecommunications, Inc., for a
5 designation as an Eligible Telecommunications Carrier. Today
6 we do have scheduled oral arguments. Briefs have been received
7 by the commission and at this be point we would move forward.
8 Presumably PrairieWave will go first. Mr. Heaston, are you on
9 the line and ready to proceed.

10 MR. HEASTON: I am here, Mr. Chair, and I am ready to
11 proceed.

12 CHAIRMAN JOHNSON: Go ahead.

13 MR. HEASTON: Thank you, Mr. Chairman and members of
14 the commission. I apologize, I really wanted to be there in
15 person so I could look you three gentlemen in the eye when I
16 made this argument, but circumstances of the business made it
17 necessary for me to stick around here today. I really hate
18 arguing as a disembodied voice over a communications device.

19 But be that as it may, this has been before the
20 commission for almost two years now, and I'm not complaining
21 because in that interim period a number of things have happened
22 which I think have strengthened our application in this matter.
23 This is the third time we have come before the commission in an
24 attempt to get ETC status in the Centerville and Viborg
25 exchanges or service areas and we think our application is as

1 strong as it's ever been.

2 In the past the application was denied because we
3 could not serve all of the then designated service area of Fort
4 Randall, which included not only Centerville and Viborg but a
5 number of other exchanges spread across the state of South
6 Dakota. Since that time and most recently the commission has
7 designated Centerville and Viborg as a separate service area
8 and so that issue has been taken care of. However, I think the
9 main issue to be resolved here is one of the public interest
10 standard.

11 I think in our application and in the stipulation of
12 facts, which the parties agreed to, we have demonstrated
13 convincingly that we have the wherewithal and the facilities
14 and comply with all of the requirements to be an ETC, an
15 Eligible Telecommunications Carrier. We provide the services
16 necessary to do so.

17 I would hope that you have had the opportunity to read
18 the reply brief that I submitted in July of this year and have
19 had a chance to look through those various points that I have
20 made in support of our application and in response to various
21 concerns expressed by the other parties to this matter.

22 We are a facilities-based provider in these two
23 exchanges. We have been one since 1997. We are in those
24 exchanges, that service area, to stay as a facilities-based
25 provider. We contribute to the economic development of that

1 area and our application and deployment of the facilities
2 that -- the technology that we intend to deploy will bring
3 economic development to that area.

4 Originally we had a wireless telecommunications setup
5 that provided voice communications and Internet outside the
6 towns of Centerville and Viborg. That system worked very well
7 for the technology of the time. We did eventually get 17
8 customers in that service area on that technology for both
9 voice and Internet. As time passes, of course, the
10 technologies -- we used the unlicensed spectrum. The speeds
11 for voice were fine, it was the Internet that was a problem,
12 that we could not get it upgraded beyond really dial up speeds
13 and we needed to do more, so we needed to replace that and
14 that's why we began this effort at the end of 2004 into 2005 to
15 again apply for ETC status in this matter in order to be able
16 to deploy newer technology to provide the voice product but
17 also high speed Internet.

18 In any event, we want to point out that this wireless
19 service -- that we have been in these two -- in this service
20 area since 1997 as a facilities-based provider in town and as
21 was pointed out in the various stipulations of fact, that we
22 would have about a little over 40 percent of the market. We
23 have 40 percent of the market offering a triple bundle, that is
24 voice, video and Internet. I would venture to say that with
25 voice and Internet and not the video out in the country, that I

1 don't think it's fair to assume that our success rate is going
2 to be the same and the success rate over almost nine years now
3 of being in that service area.

4 The facilities we provide are network powered. They
5 are not home powered. They are survivable, they provide the
6 full 911 capability. We provide a choice to the consumers in
7 that service area. We keep -- we believe we keep the services
8 affordable. We keep -- both providers constantly have to
9 update their facilities in order to provide the latest that's
10 available that the customer wants out in this service area.

11 Yes, we are not a cellular company, we don't provide
12 the mobility that a cellular company provides. As we explained
13 in our application and in the stipulation, that we plan, that
14 we will use a voice over IP product for voice, that this does
15 have some mobility characteristics, that you use it in
16 conjunction with a computer, although that's not necessary to
17 do that, you can use your typical home phone, but you can take
18 your computer and that home phone number we are going to give
19 you as a voice product and make a local call from Denver,
20 Washington or any place else that you want to where you have a
21 high speed connection anywhere in the country or really
22 anywhere in the world.

23 There's a claim that somehow that PrairieWave is going
24 to realize some type of windfall from this. That's just not
25 true. We have been in these towns, we are going to stay in

1 these towns, in this service area. We have been out to the
2 farm. We want to get back out to the farm and provide service
3 out there. We want to provide service. This wireless
4 technology and the unlicensed spectrum will work very well. It
5 will give the consumers out there the opportunity to locate a
6 residence or a business wherever they want to and not be tied
7 to an existing wireline route or have to pay construction
8 charges in order to get connected to an existing wireline
9 route. We think that because of this impact, it will work.

10 If you take a look, and in going back to the order in
11 which this commission designated Centerville and Viborg as a
12 separate service area, it was in docket 04-213, and that
13 designation was concurred in by the FCC, you will notice
14 there's two other things that I think are important from that
15 order.

16 Number one is that you note in that order that the ETC
17 that is designated will draw about 100,000 a year out of the
18 high cost fund and so on as a result of the ETC designation,
19 and you note that on page four of that order, that that 100,000
20 is a very small percentage of the projected support for ETCs in
21 South Dakota. The projected support or the estimated support
22 that will come to PrairieWave as a result of this is less than
23 \$100,000 a year. So we are in that same ballpark.

24 There is also a statement on page five of that order
25 which indicates, and if you excuse me here a second, I need to

1 get my hands on that order. Anyway, it indicates that -- on
2 page five it says that the competitive ETC support is a per
3 line support and if the ILEC customer goes to Swiftel, which
4 was the ETC designee there, the ILEC does not lose support.
5 Now, this seems to be, it probably is inconsistent with the
6 addendum or the second stipulation the parties agreed to, which
7 goes into an analysis of what would happen if PrairieWave
8 becomes an ETC and Fort Randall loses additional customers out
9 in the rural areas.

10 Well, there's a couple of ways of looking at these two
11 things, but whichever scenario is the appropriate one, whether
12 the staff analysis and this order or this stipulation that's
13 before the commission now, but in either instance Fort Randall
14 does not -- or the public interest is not adversely impacted,
15 nor is Fort Randall really. To the extent that Fort Randall
16 has already lost customers to PrairieWave over the last nine
17 years, it is not recovering the high cost support for those
18 customers. To the extent that it would lose additional
19 customers, and we are not an ETC and I can tell you that we
20 intend to still deploy this technology out to the farm because
21 we think that the rural portions of the areas that we serve
22 deserve to have the same technology available to them as are
23 available to people who live in town, that they are still going
24 to lose that support regardless. So that, you know, the public
25 interest is not served by taking away a wireline choice from

1 the customer on the farm, which is the same choice that the
2 customer in town has, because of a loss of funding. If we take
3 away a customer, the funding goes away regardless. Therefore,
4 why not allow us to get that funding and to continue to provide
5 service and give the customer in the rural area the same choice
6 that the customer has in town?

7 Baseded on all that's before you, we think that we
8 have established our case for ETC designation and that the
9 commission should approve this request for ETC. I'm available
10 for any questions that the commission or staff may have.

11 CHAIRMAN JOHNSON: Thanks very much, Mr. Heaston. We
12 will hold questions until we hear from all the parties. Thanks
13 very much. At this point, go ahead, proceed.

14 MR. BRADLEY: My name is Mike Bradly and I'm here on
15 of behalf of Fort Randall Telephone Company. Also with me is
16 Bruce Hanson, and of course next to me is Rich Coit, and I will
17 proceed first speaking on behalf of Fort Randall Telephone
18 Company.

19 PrairieWave is a wireline carrier, that's very
20 critical, seeking duplicative ETC status in a rural telephone
21 company service area. Our research has not found a single
22 instance where a second wireline ETC has been granted in a
23 rural study area.

24 The commission has established I multipart test in its
25 rules for determining whether or not there is public interest.

1 The first part of that test is whether PrairieWave's service
2 offering would improve customer and consumer choice. The facts
3 in this case indicate that it does not. As Mr. Heaston
4 indicates, they have already been serving two-thirds of the
5 customers for nine years. Certainly they offer no new choice
6 for two-thirds of the customers. For the one-third of the
7 customers residing outside of the town boundaries, we do not
8 believe that they are offering a choice, or to the extent that
9 it is a choice, that it's worth the cost we are discussing
10 here, \$100,000.

11 Mr. Heaston says that if he cannot provide video, he
12 is not going to be able to garner the same sort of support that
13 they do in the towns, and we don't believe they are going to
14 garner anywhere close to the type of support in the towns,
15 because in the first instance, these are residential customers
16 out there and the rate for PrairieWave's residential service is
17 42 percent higher than the residential rate offered by Fort
18 Randall.

19 Secondly, their service is an experimental, fixed
20 wireless Voice Over Internet Protocol, VOIP technology, not
21 offered anywhere in the country. It's currently being used by
22 four PrairieWave customers, just like their first service was
23 used by 17 PrairieWave customers. Excuse me, PrairieWave
24 employees. Four PrairieWave employees were using this service.
25 As indicated, this is the second time that PrairieWave has

1 promised us no matter what, they will go forward and provide a
2 fixed wireless technology. The first time was in order to get
3 a foothold in the door in order to compete with us in
4 Centerville and Viborg. This commission required that they
5 serve the entire communities and their solution for that was
6 this fixed wireless service. We know that they withdrew that
7 service several years ago despite their promise to this
8 commission. There's no reason to believe that this latest
9 offering of a higher priced, experimental, fixed VOIP service
10 would be any more successful than the first failed version.

11 A second test this commission employs is whether the
12 service offered by PrairieWave provides advantages or
13 disadvantages to the service currently offered to these
14 customers. The stipulation makes it very clear there is no
15 advantage to the consumers by adding PrairieWave's second
16 offering. Both companies use a 5ESS switch. They both offer
17 high speed Internet service, voice mail, numeric paging, call
18 forwarding, three-way calling, call waiting. We are providing
19 the best available service already to those customers and
20 indeed I come back to my concern that a fixed wireless
21 experimental VOIP system is a detriment to service, not an
22 advantage.

23 The third test for evaluating ETC application is
24 whether the applicant intends to serve the entire service area,
25 and if they do not, whether limiting that service is cream

1 skimming. In this case PrairieWave undeniably intends to serve
2 only two out of eight of Fort Randall's service areas.

3 PrairieWave argues what it perceives to be a gotcha, that this
4 commission and the FCC approved a redefinition of Centerville
5 and Viborg for Swiftel as a stand alone service area for
6 Swiftel and other ETCs, but ignores what the FCC's orders and
7 this commission rules actually say on these points.

8 By granting Swiftel stand alone service area, it did
9 not change Fort Randall's study area. That's a critical fact.
10 And the FCC explained in Virginia Cellular that a redefinition
11 of a service area for a particular ETC applicant does not
12 change the rural telephone company's study area and the need to
13 meet the tests established by the FCC to serve a smaller
14 portion of that study area.

15 This commission rule states undeniably, quote, if an
16 applicant seeks designation below the study area level of a
17 rural telephone company, the commission shall also conduct a
18 cream skimming analysis that compares the population density of
19 each wire center in which the applicant seeks designation
20 against each wire center in the study area for which the
21 applicant does not seek designation. The importance of making
22 a case-by-case analysis on the public interest on this cream
23 skimming issue is demonstrated by comparing the facts of this
24 case against the facts of Swiftel.

25 Swiftel is a wireless carrier, was legally prevented

1 from serving all eight of our exchanges. But it was not
2 legally prevented from serving four of them, and Swiftel agreed
3 to serve all four. In contrast, in this case PrairieWave has
4 no legal or technical impediment from serving all eight
5 exchanges but has selected to serve only two rather than the
6 eight and in fact has even bypassed Tyndall and Tabor, which is
7 served by Swiftel, which are also two exchanges which are
8 contiguous to existing PrairieWave exchange services.

9 Clearly, then, PrairieWave seeks to serve, and I don't
10 know if you are familiar with the geographic area, but what we
11 have here is the affiliated company of PrairieWave is an ILEC
12 and it is, if you will, the doughnut that surrounds Centerville
13 and Viborg, which are the holes to that doughnut. So they are
14 already surrounded us, it was very easy for them to come in,
15 then, and serve and put -- they can put their switch in one of
16 those two exchanges to serve the 43 percent of the customers in
17 the downtown areas or the town areas of Centerville and Viborg.

18 Not only are they trying to cherry pick with regard to
19 our exchanges, they are cherry picking within those exchanges.
20 They have purposely undercut significantly our business rate
21 but they have not tried to match our residential rate. Why?
22 Because the revenues come from the business customers, thus
23 their ability to have a very high market share in the town
24 areas.

25 Let's compare the densities, the test. The densities

1 within the entire Centerville, Viborg area, 15.5 persons per
2 square mile. Within the town itself, 1622 persons per square
3 mile, where they have selected to serve, compared to our entire
4 study area is only 9.1, roughly half of the persons per square
5 mile compared to the Centerville and Viborg as a total.

6 Clearly, then, Swiftel served everyone they could and
7 we have a situation here where PrairieWave is not. In
8 addition, Swiftel offered the same quality service to all of
9 its customers, where PrairieWave is proposing this untried,
10 fixed wireless VOIP technology in the higher cost portions of
11 the Centerville and Viborg centers, clearly an approach which
12 will discourage out-of-town customers from changing from Fort
13 Randall's service, while at the same time allowing PrairieWave
14 to earn \$100,000 for serving its existing town customers.

15 Commission rules also require consideration of whether
16 the designation would, quote, have a detrimental effect on the
17 provision of universal service by the incumbent local exchange
18 carrier. In this case, PrairieWave has failed to prove that
19 approval of its application is sustainable on a full wire
20 center basis. Fort Randall has managed to provide
21 state-of-the-art service because it currently has 70 percent of
22 the overall access lines.

23 If PrairieWave is truly going to offer this service
24 and if it's as successful as Mr. Heaston thinks it would be, we
25 have to assume they are going to capture a portion, maybe not

1 43 percent, but a portion of those customers from us. We only
2 have 461 out-of-town customers to begin with. If they did
3 capture 43 percent, we would be down to 261 out-of-town
4 customers. That is simply too small a population with too
5 diverse a geographic area in which they are spread across for
6 us to continue providing state-of-the-art service and to
7 continue meeting our carrier of last resort obligations for
8 those out-of-town customers.

9 Further, if PrairieWave were to capture 43 percent of
10 those out-of-town customers, we would lose, as an average
11 schedule company, \$19.22 per line. That is revenue that
12 PrairieWave would take away from Fort Randall, who needs that
13 money to continue providing the service it has provided to
14 date.

15 Finally, the impact on the Universal Service Fund is
16 not negligible. The FCC has recognized that you will never
17 have a case where adding a single carrier is going to have a
18 major impact on the fund, so it has suggested we should change
19 our focus to look at what is the impact on the area served.
20 The impact on the area of service is a significant 44 percent
21 increase. Simply, we are not getting, as the public, an
22 adequate return for that \$100,000 in that area.

23 Further, we are concerned in the long run as we look
24 forward to this, if this is to become the norm, if every time
25 an applicant can come in and get ETC status in rural

1 communities, just like we saw the vast number of ETC
2 applications for wireless, we should start expecting a
3 catalytic effect for ETC status for CLECs. And we are also
4 finally concerned about future caps on universal service
5 funding. Caps affect everyone. It would reduce the money to
6 Fort Randall, reduce its ability to continue providing service.

7 Let me conclude that we believe that PrairieWave has
8 failed to satisfy its burden of proving that granting the
9 application is in the public interest. Customer choice is not
10 improved. PrairieWave offers no improvement in service.
11 Granting the application would foster cream skimming. It would
12 harm Fort Randall's long-term ability to continue providing
13 universal, high quality service in the area. And it would have
14 a small negative effect on their fund in the short run, but
15 because of the catalytic effect, could have a significant long-
16 term impact. In summation, please do not approve this
17 application. It's not in the public interest. Thank you.
18 Also available for questions.

19 CHAIRMAN JOHNSON: Thanks, Mr. Bradley. Mr. Coit, did
20 you have something to add?

21 MR. COIT: Yes, just briefly, Mr. Chairman,
22 commissioners and staff. SDTA concurs in the arguments
23 presented by Fort Randall within their written comments and
24 also today. Just generally, we would like to highlight a few
25 things. We do also believe that this case is very

1 distinguishable from some of the other ETC cases that you have
2 addressed to this point or all of the other ETC cases you have
3 addressed to this point, coming from providers other than
4 ILECs.

5 And really as Mr. Bradley has noted, what we have got
6 here is we have got an application from another wireline
7 carrier and this commission has not to date granted any ETC
8 designation in a rural service area to a multiple or an
9 additional wireline service provider. We are dealing here with
10 a fixed wireless product. There is reason to question
11 certainly the reliability of this product, given the fact that
12 we are dealing with an experimental and unproven technology at
13 this point.

14 We believe that the stipulation that's presented shows
15 pretty clearly that there's really no unique service advantages
16 and more likely there are disadvantages in terms of the service
17 that might be offered in particular to rural customers through
18 this new technology.

19 When dealing with the other ETC designations, very
20 clearly this commission's concern has been about mobility, in
21 getting a wireless product out to consumers throughout the
22 state, and I think that's what's fueled these past designations
23 primarily. We are concerned that in this case, we have got
24 risk to universal service, we have got risk to quality of
25 service. Certainly looking at the fact that it is very likely

1 if this ETC designation is granted, that Fort Randall would
2 actually lose universal service dollars, that that will or
3 certainly would I guess have a pretty good likelihood of
4 affecting the rates that Fort Randall charges to its consumers
5 as an ILEC, a carrier of last resort. And in addition, that it
6 certainly could affect quality of service at some point.

7 And I think the other thing that I would note is if
8 you look at the rule that the commission passed here not all
9 that long ago, 20:10:32:43.07 focuses on a couple things I
10 think are really important, and staff has highlighted in their
11 comments in particular that the commission shall consider
12 whether the designation of the applicant will have detrimental
13 effects on the provisioning of universal service by the
14 incumbent local exchange carrier. We agree with staff's
15 comments and we agree with their conclusions.

16 The other thing would be on the last sentence of the
17 rule, and it references the cream skimming analysis, and it
18 says, the commission shall consider other factors such as
19 disaggregation of support pursuant to 47 CFR 54.315,
20 disaggregation by the incumbent local exchange carrier. We
21 believe that that language makes it relevant for this
22 commission, in the cream skimming analysis, to consider the
23 densities, the density differences between the towns of
24 Centerville and Viborg and the rural areas, and there is an
25 extreme difference in densities obviously between the town

1 areas and the rural.

2 And I think the purpose of engaging in the cream
3 skimming analysis is to try to insure that you don't have a
4 carrier that is really after windfalls and is truly interested
5 in serving the entire area. And I think if you look at the
6 current customer counts and where PrairieWave has its customers
7 to date, I think the numbers stated in the stipulation is it
8 has 450 total access lines in town or serving a total of 450
9 access lines in the Centerville and Viborg exchanges and only
10 three of the lines are located outside the city limits of
11 either Centerville or Viborg.

12 Given those facts and given the fact that we are
13 dealing with a company that has not disaggregated support and
14 is receiving the same amount of per line support on every line
15 and currently Fort Randall is serving all of those rural end
16 users, it certainly seems that there's a windfall. Because
17 PrairieWave doesn't have to add a single customer and yet it's
18 going to get that \$15 per month on every line that it serves
19 within the Centerville and Viborg towns. That to me I think
20 certainly indicates that they would potentially gain some
21 pretty significant advantage by really not having shown to this
22 point that they are sufficiently interested in serving the
23 rural customers, and I don't believe that, given the lack of
24 interest in serving rural customers it's shown thus far, that
25 they should somehow be rewarded or given some advantage for

1 that. I think that the history shows pretty clearly that at
2 least to this point they haven't been that interested in
3 serving rural customers. And we are very concerned about the
4 potential impact to Fort Randall being a carrier of last resort
5 and having to continue to serve all those customers in a
6 situation where they have lost universal service support.

7 Finally, and this is something Mr. Bradley commented
8 on as well, and we commented on it in our written filing, the
9 public interest test has to mean something and I think if it's
10 granted in this situation, the only justification for granting
11 it is you are increasing competition, and that's not supposed
12 to be the only factor. And I think the commission in its
13 rules, in its new rule and in particular the one that I cited
14 earlier, has a pretty good public interest standard
15 incorporated into its rules and we would just urge the
16 commission to follow those standards and not just forget about
17 all of the specifics and say, hey, it's good for competition
18 and let's do it. There's a lot more to this. There are more
19 risks with this application. We would ask the commission to
20 pay attention to those risks. Thank you.

21 CHAIRMAN JOHNSON: Thanks very much, Mr. Coit. I
22 think it's clear we are not going to be done in ten minutes.
23 We are working on extending that bridge. At this time we would
24 take argument from staff. Ms. Cremer, you filed the brief.
25 Will you be giving the arguments?

1 MS. CREMER: I will, thank you. If you want to quick
2 ask Mr. Heaston questions in case you are concerned about it,
3 if you want to do that now rather than taking staff's
4 recommendation, that's fine.

5 CHAIRMAN JOHNSON: Any thoughts?

6 MS. CREMER: I have got about a two-minute argument
7 here.

8 CHAIRMAN JOHNSON: Go ahead.

9 MS. CREMER: The parties stipulated to the facts, and
10 based on those facts, staff would submit that the commission
11 should find that the petition fails to pass the public interest
12 test, and it was in our brief, it's not that difficult what
13 staff is saying. Fort Randall will lose money each time
14 PrairieWave captures a customer. For staff, that was a hurdle
15 that we found not to be in the public interest. I believe the
16 commission, if you wanted to, could find that the public
17 interest standard is still met even taking that into
18 consideration. However, staff's belief is that that fact alone
19 of losing money each time was not in the public interest.

20 So for that reason, we would recommend denial of the
21 petition. Again, it is different than the other ETC
22 designations that you have made in the past, you have heard
23 that, and so for those reasons, staff would recommend denying
24 the petition for an ETC in the Centerville and Viborg wire
25 centers.

1 CHAIRMAN JOHNSON: Thanks very much, Ms. Cremer. We
2 are still working on that bridge, I think we will be okay.
3 This happens occasionally. And so at this point we will just
4 open it up to any commissioner or advisor questions. I might
5 start with Mr. Heaston just in case we lose you for a few
6 minutes, if that's okay, Bill.

7 MR. HEASTON: That's fine, thank you.

8 CHAIRMAN JOHNSON: You note in page four of your
9 application, you talk about unique characteristics of the
10 offering. I guess I'm not so interested in the technology
11 behind but more interested in the user interface. Unique
12 characteristics I get. Are there unique advantages?

13 MR. HEASTON: Well, I think one of the unique
14 advantages we have is we are not tied to the wireline routes
15 with the fixed wireless. If you want to live in rural, in the
16 rural area of Centerville and Viborg, you can do that and get
17 our product. You can get the voice and the Internet and you
18 don't have to -- you don't have to locate near a route or you
19 don't have to talk to either one of us about building anything
20 out from the standpoint of copper or fiber. To me that's one
21 of the unique advantages.

22 The other thing is it's going to be Voice Over IP and
23 that is not an experimental technology. That is an established
24 technology as evidenced by Vonage and Skype and all the other
25 copiers of that and what everybody else is doing and why people

1 are burying fiber to the home and fiber to the premises and all
2 that sort of thing.

3 The other reason it's kind of unique is these aren't
4 residents out there in the rural, these are farms. These are
5 people trying to make a living. These are businesses. You
6 know, it's a whole different -- to me to label these areas,
7 these rural areas as just residents is just wrong. I mean, we
8 know what South Dakota is, it's an agrarian state, it's
9 agribusiness and that's what's out there in the rural areas,
10 and we offer an ability to get the high speed Internet and a
11 choice in high speed Internet and a little different product,
12 something that will operate off Voice Over IP and give you
13 access to an IP network.

14 CHAIRMAN JOHNSON: Mr. Heaston, Mr. Coit noted in his
15 arguments that the FCC has said, because what you just
16 described I think is in large part the advantages tied to
17 increased competition, and please correct me if I'm
18 mischaracterizing your comments, but he also notes in his brief
19 that the FCC has made it very clear that competition by itself
20 is not sufficient to satisfy the public need. Comments.

21 MR. HEASTON: Well, I don't think it's competition in
22 the sense that that isn't what my argument has been. It's been
23 based upon the fact of technology. It's been based on the fact
24 that we have been there for nine years. It's based on the fact
25 that to the extent that we have taken customers from Fort

1 Randall, they are already losing money. And I'll tell you
2 quite honestly, we would be the carrier of last resort if
3 that's what it takes. We demonstrated an interest to get out
4 there. We went out there when we had the original unlicensed
5 spectrum product out there, it worked very well. The customers
6 were happy with the voice product. They weren't happy with the
7 Internet product and that's why we had to -- we just could not
8 get any more customers to sign up. We covered the whole
9 service area of those two wire centers with that wireless
10 product, and it worked. We even had a waiver from the FCC to
11 do spectrum hopping in order to make it work very well. So we
12 demonstrated the desire to be out there to those rural areas
13 and we are just trying to keep that going.

14 CHAIRMAN JOHNSON: I have a number of other questions.
15 I should note that we have gotten the bridge extended for
16 another 50 minutes or so. I think that should be sufficient.
17 I have got a number of other questions. Maybe I'll just ask
18 one more and pause to see if others have questions.

19 Mr. Heaston, is PrairieWave in violation of the
20 commission's '97 order that I believe was tied to the
21 certificate of authority to serve that area? It's TC97-062.

22 MR. HEASTON: I know what you are referring to and I
23 don't believe we are. We are trying to get in a position where
24 we can again deploy a wireless product out there. I don't
25 think that the nature of the technology determines any -- I

1 don't think we have to build out using fiber or any other type
2 of cabling technology to get to everybody in the area. We
3 think that the wireless product -- and nobody has ever
4 complained otherwise. As I say, at the time we did have a
5 viable product, it became outdated, we could not -- as a matter
6 of fact, we couldn't even get replacement parts for it. The
7 system, the Wave Rider system we have already deployed there
8 and that we have just been testing with employees works very
9 well. It's not experimental. It is state of the art, it's
10 fixed wireless technology and it will work with Voice Over IP
11 and it will work with our 5E switch and it will work with our
12 soft switch here in Sioux Falls. So we do not have any
13 problems that way.

14 CHAIRMAN JOHNSON: I should just note it was for an
15 interconnection agreement, which no doubt you knew, but I'll
16 clarify. Just a follow-up on that and then again I'll turn it
17 over. Should the commission be concerned that there wasn't any
18 request by either of the parties to amend the order in that '97
19 case? If the commission ordered that there --

20 MR. HEASTON: We would intend to live up to our
21 commitment there.

22 CHAIRMAN JOHNSON: There has been -- this is only
23 tangential to the issue before us and I understand that and I
24 apologize for the digression. But there has been a gap of a
25 number of years, three, four.

1 MR. HEASTON: We had to discontinue that Tadiran
2 system in '04. We took the last customer off it and we have
3 been working with this -- we were trying to use this
4 application to get back into -- to continue to comply with that
5 order.

6 CHAIRMAN JOHNSON: Thanks very much, Mr. Heaston.
7 Other commissioner or advisor comments or questions.

8 VICE-CHAIR HANSON: Mr. Chairman, if I may. Mr.
9 Heaston, under your filing, are you agreeing to serve the
10 entire service area?

11 MR. HEASTON: Yes. Of Centerville and Viborg, yes.

12 VICE-CHAIR HANSON: And under your filing, are you
13 agreeing to be the carrier of last resort?

14 MR. HEASTON: Yes, if that's what it comes down to,
15 yes.

16 VICE-CHAIR HANSON: Well, is that part of your filing
17 at this juncture?

18 MR. HEASTON: Yes, that's part of the filing. We
19 would pick up the carrier of last resort obligation if Fort
20 Randall -- I can't believe Fort Randall would withdraw, but if
21 they wanted to get out from under that burden, we would take
22 it.

23 VICE-CHAIR HANSON: What additional advantages to the
24 customers do you see if we pass this ETC status? What
25 additional services will the customers receive?

1 MR. HEASTON: I think they will receive the basic
2 voice product. They will receive it in a more modern
3 technology, which is using an IP protocol. They will receive
4 an Internet product that is high speed that will meet their
5 needs to be able to run their business or to -- they may have
6 kids out there on the farm or if they want to work from the
7 farm, you know, we have people who work for companies like
8 Microsoft and so on who use some of our high speed products and
9 are able to live in towns or rural communities to do that.
10 They don't have to live in Bellingham, Washington or Fargo,
11 North Dakota, where the software development goes on. That's
12 what we want to do, is to be able to develop -- to provide an
13 opportunity for economic development for these rural areas
14 through the use of modern technology. And we are not going to
15 limit them to living where the particular wireline facilities
16 are located. They can build a home or start a business
17 anywhere in that area that they want and we can give them
18 conductivity.

19 VICE-CHAIR HANSON: And at what price is that
20 presently?

21 MR. HEASTON: The present prices now I think are \$9.70
22 for a residential line and \$17 for a business line.

23 VICE-CHAIR HANSON: That's approximately how much more
24 on a percentage basis? I believe I heard 42 percent or
25 something like that.

1 MR. HEASTON: Fort Randall charges \$7 for a
2 residential line and in the stipulation, they charge \$23.34 for
3 a business line. \$17 for a business line is the same rate we
4 have throughout our entire South Dakota area. That's not just
5 limited, that's a business rate we have had from day one in
6 those areas. It's not unique to Centerville and Viborg.

7 VICE-CHAIR HANSON: Thank you, Mr. Chairman.

8 CHAIRMAN JOHNSON: Go ahead, Commissioner.

9 COMMISSIONER KOLBECK: Bill, my question would be I'm
10 a little confused on you said it is network powered and 911
11 compatible even though it is VOIP technology.

12 MR. HEASTON: Yes, we run it through the 5E switch so
13 it is powered by the network, the radios and the system is
14 powered and the NIDs that go on the house with the fixed
15 wireless is all network powered.

16 COMMISSIONER KOLBECK: And there --

17 MR. HEASTON: No, the NID is home powered, I'll take
18 that back. That's right, the NID is home powered, but we
19 provide the battery backup to the customer on the NID.

20 COMMISSIONER KOLBECK: So that would be how you would
21 justify the lifeline POTS, the battery backup?

22 MR. HEASTON: That's right. Eight to ten hours of
23 battery backup at the farm site.

24 COMMISSIONER KOLBECK: My question would be to staff.
25 Is that adequate to request for lifeline POTS, eight hours of

1 backup I believe is, correct, Harlan?

2 MS. CREMER: Yes, that would be correct.

3 CHAIRMAN JOHNSON: I have a question or two for Mr.
4 Bradley. You noted that you don't know of any instances in the
5 country where a multiple, a second wireline ETC has been
6 granted in a rural service area. Is that right?

7 MR. BRADLEY: That's correct.

8 CHAIRMAN JOHNSON: Is there any scenario that you can
9 think of in which designating a second wireline ETC would be
10 appropriate for this commission?

11 MR. BRADLEY: Not in Centerville and Viborg. I'm a
12 telecom lawyer and I have rural telephone companies that
13 compete with PrairieWave in Minnesota, for example, in
14 Worthington and Bloomington, southern, just south of the Twin
15 Cities, it's still a rural telephone company because of the
16 definition, but it would be hard pressed for that company to
17 argue that it had the sort of circumstances that we have got
18 here.

19 I think Mr. Coit said it best with his concluding
20 comment, which is basically if it's granted here, then we have
21 really run over the rules, because this is the best case I can
22 think of for not granting one, and if you grant one here, when
23 will we ever deny it? We have got cherry picking. We have
24 about as rural a community as you can get, we have got a
25 population of 9.1 people per square mile. This is the rural

1 community where the thought was that maybe one carrier can do
2 it better than two. And when it comes to serving 400
3 out-of-town customers, we do believe that one carrier can do it
4 better than two.

5 MR. COIT: Could I add a comment to that? I think the
6 other critical thing here, too, is we argue about whether it's
7 an experimental technology or not. And when I reference
8 experimental, I'm not really talking about VOIP. We are
9 talking about some technology that this Wave Rider system, I'm
10 not exactly sure what sort of spectrum or what spectrum that
11 operates on. I believe or at least it had been my assumption
12 along -- all along it's an unlicensed spectrum.

13 We are dealing with something that I think is new and
14 I would just ask the question, are we comfortable enough at
15 this point to say that customers want this and that it's a
16 substitute, it's a sufficient, good substitute to traditional
17 landline telephone services in that area and if they want to be
18 carrier of last resort and go out and offer everybody that
19 particular technology, really that's the question we are
20 talking about here, in my view, and I find it hard to believe
21 that we are at that point. But I would agree with Mr. Bradley,
22 that if you grant it here, I don't know of any real situations
23 where you are able to say that there is sufficient reason not
24 to grant it.

25 There's a public interest standard, as I said earlier.

1 I think that standard has to mean something and right now they
2 are serving, what, three customers that are rural that are not
3 located in the Centerville and Viborg towns. That doesn't show
4 a lot to this point, I guess, in terms of having any sort of
5 comfort that customers in the rural areas are really going to
6 be out for this product.

7 CHAIRMAN JOHNSON: Mr. Coit, I share your concerns
8 about the rural nature of the area. I'm not sure I have quite
9 as much sympathy with the technology arguments. Maybe you can
10 reeducate me. Don't you think there's been -- the FCC has been
11 very consistent throughout its orders that it wants to foster
12 new technologies, that it doesn't want the same proven type of
13 deployment out there? Why should we care whether or not four
14 people are using this in the country or whether four million
15 are?

16 MR. COIT: I think my concerns -- I understand that
17 the rurals are technology neutral, it's quality of service.
18 That's all it is about, if you ask me.

19 MR. BRADLEY: If I may piggyback this time myself.
20 Mr. Heaston said they had one before and 17 customers took it.
21 It was the record in that proceeding that the 17 were all DTI
22 employees, so if they had a service that they were serving that
23 was so successful before and it could only, in nine years, get
24 17 of their own customers to take it, then I say to you for
25 someone to take a different technology, it has to offer

1 something different.

2 Mr. Heaston says -- the only thing he identified that
3 I heard at least that was different was it wasn't tied to the
4 existing wireline network. And you should be aware that as a
5 carrier of last resort, we have to go out and serve everyone
6 regardless of where they build and Fort Randall does not charge
7 construction charges, so if they want to connect, we will
8 provide the service, we are required to, we are happy to have
9 them. We know that these are farms. We are not ignorant of
10 the people we serve. The point is that we charge them a
11 residential rate. We are charging those people a very low rate
12 for that service. In terms of connecting people to the outside
13 world, those people all have access to high speed Internet, the
14 same as our town customers do.

15 CHAIRMAN JOHNSON: Mr. Heaston --

16 MR. HEASTON: If I may correct the record here, if you
17 look at the record that was submitted, attachment B to the
18 stipulation, 17, there's nothing in there to indicate that the
19 customers, the 17 customers were employees. In fact some were
20 employees but most were not.

21 MR. BRADLEY: Bill, if you went to the record from the
22 proceeding in which you first sought ETC status, in that
23 record, which was before this commission, that's where that
24 statement was made.

25 MR. HEASTON: Well, you will have to point it out to

1 me, Mike, because the record that's in this hearing, which we
2 attached as attachment B to the stipulation, it says 17
3 customers. They were not all employees. Four that we have
4 right now are employees.

5 CHAIRMAN JOHNSON: Thanks, Mr. Heaston. I do have
6 another question for Mr. Bradley. You spend a fair amount of
7 time in your brief discussing cream skimming. You also allude
8 to the Swiftel case. Commission counsel Rolayne Wiest reminded
9 me this morning that we laid out some guidelines, we discussed
10 cream skimming in that Swiftel case and spent some time
11 discussing ratios and I think the 15 person compared to nine
12 person would fall within those guidelines that the commission
13 had discussed as not being evidence of a cream skimming
14 approach. Do you want to address?

15 MR. BRADLEY: I think that you have to again look at
16 more than just the raw numbers. You have to look at whether
17 it's actually as we point out, that's why we tell you there's a
18 1622 to one per mile ratio in town and so is this service,
19 which is going to, if you add this ETC, serve Mr. Heaston says
20 less than 200 customers, where is the cherry picking? And I
21 don't know where you would draw a fine line on that. I just
22 know that they have contiguous exchanges to six of our -- six
23 out of eight of our exchanges. They could just as easily serve
24 six out of eight. They have decided to go where they have
25 decided to go because of cream skimming. And there's just not

1 enough cream in the other places and I think that's what should
2 control your decision.

3 CHAIRMAN JOHNSON: Thanks very much. I have one other
4 question. Ms. Cremer, in staff's brief, you note that you
5 believe designating PrairieWave will have a detrimental effect
6 on the provisioning of universal service. You note that each
7 time that PrairieWave captures an access line in the
8 Centerville and Viborg wire centers, Fort Randall will lose
9 money. Isn't that the case today?

10 MS. CREMER: It is, and Mr. Heaston said that, and I
11 think the difference is even if they proceed forward like they
12 intend, he can do that certainly, but he just won't do it with
13 the commission blessing or USF funding.

14 CHAIRMAN JOHNSON: So is the public interest any
15 better off by denying ETC status to PrairieWave?

16 MS. CREMER: I think it is if you look in the big
17 picture, the cumulative effect, like they said, of sure, it's
18 \$84,000, that's a drop of water, but you have enough drops of
19 water and soon you have a bucket. I think it sends the overall
20 message that concerns staff is, ILEC, you are out there, you
21 are working hard and you are losing money every time
22 PrairieWave captures a customer, and I agree with Mr. Heaston,
23 he can continue to do that, but again I would come back to I'm
24 not sure we want to give that our blessing, that that is --
25 that that would be in the public interest.

1 CHAIRMAN JOHNSON: Thanks, Ms. Cremer. Other
2 commissioner or advisor comments or questions. Ms. Wiest.

3 MS. WIEST: Just for clarification, do all the parties
4 agree, then, that no redefinition is needed by the commission?
5 Because in paragraph 31, I think, of your stipulation, there's
6 a mention that redefinition is needed.

7 MR. HEASTON: This is Bill Heaston for PrairieWave. I
8 don't think redefinition is needed. I think that happened
9 after we filed the stipulation.

10 MR. BRADLEY: I accept that.

11 MS. WIEST: Then to clarify, when we are talking about
12 the wireless offering, Mr. Heaston, there is always reference
13 made to the rural areas, but will that wireless offering be
14 actually offered throughout both exchanges?

15 MR. HEASTON: Yes, it will.

16 MS. WIEST: Going to the questions of the amount of --
17 I think it's your supplemental stipulation, I just didn't
18 understand, why did you -- I'll ask Mr. Bradley this first.
19 Why did you use 200 lines? What was that based on?

20 MR. BRADLEY: 43 percent, which is the same market
21 share that they had in town.

22 MS. WIEST: Whenever you talk about the per line lost,
23 you always say it will be per line if it loses 200 lines. So
24 my question is when we are talking about the per line loss for
25 high cost of \$2.22, \$12.14, local switch \$4.86, do those

1 numbers change if it's not a loss of 200 lines?

2 MR. BRADLEY: Yes.

3 MS. WIEST: How does that work?

4 MR. BRADLEY: As an average schedule company, it's a
5 little like, if you will, tax levels. You get a different
6 amount of funding depending on your size and as we change our
7 size, we can change our categories and we can change the amount
8 of aid or funding we receive and so we just ran it at the 200
9 number at the 43 percent.

10 MS. WIEST: So which way would it go if you lose less
11 lines, would those numbers go down?

12 MR. BRADLEY: I don't think we -- I cannot answer
13 that. I don't know.

14 MS. WIEST: And so you would agree with Mr. Heaston to
15 the extent any time he takes a line away from you, whether he's
16 an ETC or not, you would lose support, that same amount of
17 support?

18 MR. BRADLEY: Yes. We think, however, we have reached
19 equilibrium in the towns and so now the issue is we are
20 fighting over the 400 customers out of the town.

21 MS. WIEST: Is it a difference because your average
22 schedule companies you actually lose more revenue per line than
23 you actually receive, that's just how an average schedule
24 company works?

25 MR. BRADLEY: That's because of where we are on that

1 scale that I talked about for an average schedule company.

2 MS. WIEST: Is that the only difference between an
3 ILEC who isn't an average schedule company and how they would,
4 do you know, lose support or not lose support?

5 MR. BRADLEY: I don't know.

6 COMMISSIONER KOLBECK: That raises one more question
7 for me. Is there any idea how much Fort Randall has lost to
8 date with the customers they have already lost?

9 MR. BRADLEY: We can certainly do it. If we just take
10 the \$15 on our current and you multiplied it times
11 PrairieWave's total of 450 customers, I haven't got a
12 calculator, but it would be roughly \$15 times 450. That's per
13 month of course, so then you would multiply that times 12 to
14 come up with the annual amount. That's basically back of the
15 envelope. Again as we have noted, it could actually be higher,
16 it could be up to the \$19, but I'll just use the one as a back
17 of the envelope.

18 VICE-CHAIR HANSON: That's per month for how long?

19 MR. BRADLEY: For as long as the money is available.

20 VICE-CHAIR HANSON: Up to this juncture, though, how
21 long has that been?

22 MR. BRADLEY: I'm sorry. Commissioner Hanson, they
23 began competing with us in 1997, so it's been a nine-year
24 period with a ramp up. It has clearly been a ramp up, it has
25 not been an immediate ramp up, it has been a nine-year, if you

1 will, competition.

2 VICE-CHAIR HANSON: So \$40,000 if it's a ramp up?

3 MR. BRADLEY: I'm sorry, I don't know where the 40,000
4 comes from.

5 VICE-CHAIR HANSON: I was just multiplying, what did
6 you say, 450 times 15 times approximately -- oh, that's on a
7 per year basis, so I would have to multiply it times 12 so it's
8 about four or \$500,000.

9 MR. BRADLEY: Yes.

10 MS. WIEST: I just had one more question, I think, for
11 Mr. Heaston. After deployment of your wireless system, is it
12 your understanding that every rural user in those two wire
13 centers would actually be able to use that wireless system
14 based on its constraints?

15 MR. HEASTON: I don't know what you mean based on its
16 constraints, but yes, it would be accessible to every user.
17 Not every user because they are not using it. It would be
18 accessible to every person that would want to subscribe.

19 MS. WIEST: Thank you.

20 COMMISSIONER KOLBECK: I had one more question. This
21 is probably for maybe Mr. Heaston. Do you know what the
22 percentage of growth is in the rural areas of those two
23 communities?

24 MR. HEASTON: Population growth?

25 COMMISSIONER KOLBECK: Yes.

1 MR. HEASTON: It's not growing.

2 COMMISSIONER KOLBECK: I was wondering if there was
3 any outfall from Sioux Falls in those areas, if that's what was
4 generating the interest or something to that effect.

5 MR. HEASTON: No. Mr. Hanson and I were down in
6 Viborg and he's done a very admirable thing recently in helping
7 fund some new housing down in Viborg and we are both trying to
8 bring economic development to the rural areas that we serve,
9 and we understand, I hope we understand, I hope we all
10 understand that unless we grow those areas, you know, we are
11 not going to be in business long term. And that's the bottom
12 line here, is to provide an opportunity and an infrastructure
13 that will attract people to want to live there and work there.

14 There is going -- yeah, Viborg and Centerville are not
15 that far off the I-29 corridor. There is eventually, as that
16 corridor grows between Sioux City and Sioux Falls, there is
17 going to be growth as we are now experiencing in Worthing and
18 in Canton and in some of the other communities that are close
19 by there. You see it in Harrisburg certainly, they are
20 growing, and it will eventually work its way down to Parker,
21 Lennox, all those communities that are within easy commuting
22 distance to the interstate.

23 COMMISSIONER KOLBECK: Thank you.

24 MS. WIEST: One additional question. Do the parties
25 agree that the current commission rules apply to this

1 proceeding? The only reason I'm asking is because some of the
2 stipulated facts are not actually based on current commission
3 rules and are based on prior commission order language as
4 opposed to our rules.

5 MR. BRADLEY: We certainly submit ourselves to your
6 current rules.

7 MR. HEASTON: Yeah. Yes, we do.

8 MS. WIEST: And so whatever the commission does, to
9 the extent that your stipulated facts are inconsistent with
10 those rules, you would agree that we would rely on the rules as
11 they are?

12 MR. HEASTON: Yes.

13 MR. BRADLEY: Yes.

14 MS. WIEST: Thank you.

15 CHAIRMAN JOHNSON: Any other questions or comments?
16 If not, that would conclude our oral arguments scheduled for
17 today. So I'll check one more time. Any other questions or
18 comments? Hearing none, that concludes the oral arguments and
19 does conclude today's commission meeting.

20 (Whereupon, the proceedings were concluded at 12:20
21 p.m.)

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