

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

<b>IN THE MATTER OF THE COMPLAINT FILED</b>	)	<b>ORDER DENYING MOTION</b>
<b>BY PRAIRIEWAVE TELECOMMUNICATIONS,</b>	)	<b>TO DISMISS AT&amp;T'S</b>
<b>INC. AGAINST AT&amp;T COMMUNICATIONS OF</b>	)	<b>COUNTERCLAIM AND</b>
<b>THE MIDWEST, INC. REGARDING ACCESS</b>	)	<b>ORDER DENYING MOTION</b>
<b>CHARGES</b>	)	<b>FOR SUMMARY JUDGMENT</b>
	)	<b>CT05-007</b>

On November 21, 2005, the Public Utilities Commission (Commission) received a complaint filed by PrairieWave Telecommunications, Inc. (PrairieWave) against AT&T Communications of the Midwest, Inc. (AT&T) regarding access charges.

On November 21, 2005, the complaint was faxed to AT&T. Pursuant to ARSD 20:10:01:09, AT&T was notified that it must satisfy the complaint or file an answer in writing with the Commission by December 12, 2005. On December 9, 2005, the Commission received a letter from AT&T requesting an extension to answer the complaint up to and including December 19, 2005, which PrairieWave agreed to. On December 19, 2005, the Commission received AT&T's Answer, Affirmative Defenses and Counterclaims. On January 3, 2006, the Commission received a Response to the Counterclaim made by AT&T from PrairieWave. On April 12, 2006, the Commission received a Motion to Dismiss AT&T's Counterclaim and for Summary Judgment on PrairieWave's Complaint from PrairieWave. On May 15, 2006, the Commission received AT&T's Response to PrairieWave's Motion to Dismiss AT&T's Counterclaim and Motion for Summary Judgment on PrairieWave's Complaint. On June 20, 2006, the Commission received Staff's Response to PrairieWave's Motion to Dismiss AT&T's Counterclaim and for PrairieWave's Motion for Summary Judgment. On June 28, 2006, the Commission received PrairieWave's Reply to AT&T's Response to PrairieWave's Motion to Dismiss AT&T's Counterclaim and Motion for Summary Judgment on its Complaint.

The Commission finds that it has jurisdiction to enter this preliminary order pursuant to SDCL Chapters 1-26, 49-1, including 49-1-9 and 49-1-11, 49-13, including 49-13-1 through 49-13-14.1, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-11, 49-31-76 and 49-31-89, and ARSD Chapters 20:10:01 and 20:10:32.

At its duly noticed August 8, 2006, meeting, the Commission considered this matter. The Commission voted to deny the Motion to Dismiss AT&T's Counterclaim (Commissioner Hanson dissented). The Commission also voted to deny the Motion for Summary Judgment on PrairieWave's Complaint (Commissioner Hanson dissented). It is therefore

ORDERED, that the Motion to Dismiss AT&T's Counterclaim is denied; and it is further

ORDERED, that the Motion for Summary Judgment on PrairieWave's Complaint is denied.

Dated at Pierre, South Dakota, this 24<sup>th</sup> day of August, 2006.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>William Kelbo</u>
Date:	<u>8/25/06</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr  
ROBERT K. SAHR, Chairman

Dustin M. Johnson  
DUSTIN M. JOHNSON, Commissioner

GARY HANSON, Commissioner  
dissenting