



## FINDINGS OF FACT

### GENERAL FINDINGS

1. DCT, a South Dakota corporation, is a wholly-owned subsidiary corporation of McLeodUSA Community Telephone, Inc., a Delaware corporation, which is in turn a wholly-owned subsidiary of McLeodUSA Holdings, Inc. Exhibit I at 1; Exhibit A; Exhibit D. DCT owns and operates the following fourteen local exchanges in South Dakota as the incumbent carrier: Alsen, Beresford Rural, Chancellor, Davis, Flyger, Gayville, Hurley, Irene, Lennox, Monroe, Parker, Volin, Wakonda and Worthing (DCT Exchanges). Exhibit I at 2; Exhibit G; Transcript at 62.
2. MTD, a South Dakota corporation, is a wholly-owned subsidiary of McLeodUSA Telecommunications Services, Inc. Exhibit I at 1; Exhibit A; Exhibit D. MTD owns and operates the following twelve local exchanges in South Dakota as a competitive carrier: Canton, Centerville, Colman, Elk Point, Flandreau, Harrisburg, Madison, North Sioux City, Tea, Viborg, Watertown and Yankton (MTD Exchanges). Exhibit I at 2; Exhibit G; Transcript at 62.
3. The McLeod Exchanges are comprised of the DCT Exchanges and the MTD Exchanges. Exhibit G.
4. PrairieWave was incorporated in Delaware on May 6, 2002, and received a Certificate of Authority to transact business in South Dakota as a foreign corporation on June 17, 2002. Exhibit B. PrairieWave will be based in Sioux Falls, SD with its business address at 5100 South McLeod Lane, Sioux Falls, SD 57108. Exhibit I at 1.
5. The change of ownership and control of DCT and MTD, and correspondingly of the McLeod Exchanges, will be accomplished in accordance with the terms and conditions of Exhibit A, the Stock Purchase Agreement among PrairieWave, McLeodUSA Telecommunications Services, Inc. and McLeodUSA Holdings, Inc. Contemporaneously with the closing of the Stock Purchase Agreement, PrairieWave will file with the Secretary of State to change the names of DCT to PrairieWave Community Telephone, Inc. and MTD to PrairieWave Telecommunications, Inc. Exhibit I at 1.

### PRAIRIEWAVE'S INTEREST

6. As the purchaser of the stock and telephone exchanges at issue in this proceeding, PrairieWave will be bound and affected by the outcome of this proceeding with respect to an interest peculiar to PrairieWave as distinguished from an interest common to the general public or to the taxpayers in general.

### ADEQUACY OF LOCAL TELEPHONE SERVICE

7. As a result of the stock sale transaction, there will be no change in the management or operation of Petitioners. Exhibit I at 2. All of Petitioners' existing management will continue with the company after the transaction is complete. Exhibit C.
8. PrairieWave will honor all existing contracts, commitments, leases, and other arrangements and will not eliminate any services currently provided by Petitioners. Transcript at 33, 40 and 79.
9. PrairieWave will retain all current employees of Petitioners. Id. at 23 and 86. Customers will continue to be able to make trouble reports and ask service questions by calling a local or toll-free number. Exhibit J, Letter to Harlan Best at 3. PrairieWave will continue twenty-four hour, seven day per week customer service following the transaction. Transcript at 86.

10. Petitioners have installed and made available to their customers facilities and services that provide state-of-the-art telecommunications services, including at many locations broadband services using cable modems and DSL. PrairieWave will continue these services following the transaction. Exhibit J, Letter to Harlan Best at 5; Exhibit I at 2 and 3; Transcript at 33. PrairieWave intends to pursue a program of installing enhanced service capabilities. Transcript at 79 et seq.

#### REASONABLENESS OF RATES

11. Following the transaction, the existing terms, conditions and prices for local exchange service to the McLeod Exchanges will remain in effect and Petitioners' access tariffs will change in name only. Exhibit I at 2 and 3. DCT has filed its required access cost study, which may result in a change in switched access rates as approved by the Commission. Transcript at 38; Docket No. TC02-087.

#### PUBLIC SAFETY ISSUES

12. Petitioners provide full support and connectivity to all Public Services Answering Points within its service territories. Exhibit I at 3. PrairieWave will continue to provide existing emergency services. Exhibit J, Letter to Harlan Best at 3; Transcript at 34.

#### ABILITY OF THE BUYER TO PROVIDE SERVICE

13. The management team of PrairieWave is essentially the same as the management team of Petitioners prior to the acquisition of Petitioners by McLeod and has experience with managing the business. Petitioners' operational management will continue with PrairieWave following the stock sale. Exhibit C. PrairieWave's management team has extensive experience in the successful management and development of telecommunications companies and operations. Exhibit B-1. The management team and work force have been in the telecommunications business for many years and are highly skilled and knowledgeable in providing local exchange service, long distance service, broadband and Internet services, cable TV service and network management. Exhibit I at 3; Transcript at 18.

14. PrairieWave has arranged adequate financing to consummate the transaction and operate the McLeod Exchanges following the transaction. Exhibit I at 3; Exhibit H; Exhibit J, Letter to Harlan Best at 4; Transcript at 67.

15. Petitioners currently provide and PrairieWave will continue to provide modern, state-of-the-art telecommunications services that will help promote economic development, tele-medicine, and distance learning in rural South Dakota. Exhibit I at 2; Transcript at 77 et seq.

#### PROTECTION OF THE PUBLIC INTEREST

16. During the hearing in Viborg, there was no public opposition to the acquisition by PrairieWave of Petitioners' stock and telephone exchanges. The only member of the public who commented supported the sale of the stock and exchanges to PrairieWave. Transcript at 95.

17. PrairieWave's purchase of Petitioners' stock and the McLeod Exchanges is in the public interest of the customers within the companies' exchanges for the following reasons:

- a. As part of its restructuring in bankruptcy, McLeodUSA determined that the McLeod Exchanges no longer fit into its core business. If the McLeod Exchanges are not acquired by PrairieWave, they will be either continue to be owned by McLeodUSA, which considers them as non-core operations with a low priority for future investment, or will be offered to an unknown

alternative purchaser whose commitment to investment in and maintenance of the McLeod Exchanges cannot be determined. Exhibit J, Letter to Harlan Best at 4; Transcript at 81. The sale to PrairieWave is the best alternative for maintaining high quality service to the McLeod Exchange.

- b. Quality local service will be maintained, Exhibit I at 2; Transcript at 33 and 79.
- c. The customers of the exchanges will continue to receive 24/7/365 customer service at least as effective as Petitioners have provided. Transcript at 83.
- d. Rates will not increase as a result of the sale. Transcript at 34.
- e. Emergency services will continue to be provided to the exchanges at the level currently provided. Transcript at 34
- f. Customers in the exchanges will be able to obtain additional, advanced telecommunications services as needed. Transcript at 79.

#### TAXES

18. The sale of the stock is not expected to affect the payment of taxes. Exhibit J., Letter to Harlan Best at 5; Transcript at 35.

#### CONDITIONS OF SALE

19. The Commission's approval of the proposed sale of the stock of DCT and MTD and the resulting transfer of control of the McLeod Exchanges to PrairieWave, shall be subject to the following conditions:

- a. That the financing and purchase of the DCT and MTD stock and the transfer of control over the McLeod Exchanges proceed substantially in accordance with the terms of Exhibit A, the petition and the documents submitted in support of the petition.
- b. That current local rates not be increased for 18 months from the date PrairieWave begins to operate the McLeod Exchanges;
- c. That PrairieWave shall not recover any of the acquisition adjustment through its regulated interstate or intrastate rates, through its local rates, or through federal or state universal service funds;
- d. That PrairieWave shall honor all existing contracts, commitments, leases, licenses, and other agreements which relate to, arise from, or are used for the operation of the purchased exchange;
- e. That PrairieWave offer, at a minimum, all existing services currently offered by the purchased exchange; and
- f. That PrairieWave not discontinue any existing extended area service without first obtaining approval from the Commission.

#### REQUEST FOR CONFIDENTIALITY OF FINANCIAL INFORMATION

20. Petitioners requested confidential treatment of Exhibit A, the Stock Purchase Agreement, and Exhibit H, PrairieWave's pro forma balance sheet and other financial statements introduced in response to staff requests. No requests for access to such information have been received.

### SEPARATE VOTE ON EXCHANGES

21. The Commission voted separately on the sale of each of the McLeod Exchanges. The sale of each of the McLeod Exchanges to PrairieWave was approved by unanimous vote of the Commission. Minutes of August 15, 2002 Commission Meeting.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the sale of stock of DCT and MTD to PrairieWave pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-17.1, 49-31-3, 49-31-3.1, 49-31-4, 49-31-5.1, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, 49-31-21, and 49-31-59.

2. The hearing held by the Commission relative to this matter was an evidentiary hearing pursuant to SDCL Chapter 1-26.

3. The Commission has considered, among other things, the requirements of SDCL 49-31-59 in regard to the proposed sale of stock, and protection of the public interest pursuant to SDCL 49-31-7. The Commission finds that it is in the public interest to approve the sale of stock because the sale will enable the customers to continue to receive high quality service.

4. Petitioners and PrairieWave have satisfied their burden of proof under SDCL Chapter 49-31, specifically 49-31-59 for approval of the sale of stock of DCT and MTD to PrairieWave.

5. The Commission has considered the adequacy of local telephone service in reviewing this sale of stock. PrairieWave is required to provide all services currently offered. In addition, PrairieWave must honor existing contracts and other agreements.

6. The Commission has also considered the reasonableness of local rates. The Commission finds that rates for the customers will remain at the same levels and there will be no increase in rates for at least 18 months. Further, PrairieWave is prevented from recovering any of the acquisition adjustment through local rates.

7. Any existing public safety services currently provided will continue.

8. The Commission has determined that there will be no change in the amount of taxes paid as a result of the sale of stock.

9. The Commission has determined that PrairieWave has the ability to provide modern state-of-the-art telecommunications services that will facilitate economic development, tele-medicine, and distance learning in rural South Dakota after the sale.

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10. The Commission approves the sale of stock of DCT and MTD to PrairieWave and the sale of each of the McLeod Exchanges to PrairieWave subject to the Conditions of Sale.

11. The Commission concludes that PrairieWave has satisfied the interest requirements for intervention under ARSD 20:10:01:15.05 and that intervention should be granted.

12. The Commission concludes that Petitioners have requested confidential treatment of the Stock Purchase Agreement and pro forma financial statements and that such information shall be treated

as confidential information subject to the procedures of ARSD 20:10:01:39 through 20:10:01:44, inclusive.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

ORDERED that the sale of stock of DCT and MTD to PrairieWave is approved subject to the Conditions of Sale;

ORDERED that PrairieWave is granted intervention;

ORDERED that the Petition is amended to add Davis to the list of DCT Exchanges; and it is further

ORDERED that the information for which Petitioners have requested confidential treatment shall be so treated until such time as a determination of confidentiality is made pursuant to ARSD 20:10:01:42 and 20:10:01:43.

PLEASE TAKE NOTICE that this Decision and Order in Docket TC02-062 was duly entered this 20th day of August, 2002, and filed in the Commission's docket.

Dated at Pierre, South Dakota, this 20th day of August, 2002.

<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>Tina Douglas</u>
Date: <u>8-29-02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner

J. W. Smith  
by John Smith