BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY PRAIRIEWAVE TELECOMMUNICATIONS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))))	**ORDER DENYING ELIGIBLE TELECOMMUNICATIONS DESIGNATION; NOTICE OF ENTRY OF ORDER TC05-016**

On January 24, 2005, the Public Utilities Commission (Commission) received a filing by PrairieWave Telecommunications, Inc. (PrairieWave) petitioning for approval of it as an eligible telecommunications carrier (ETC).

On January 27, 2005, the Commission electronically transmitted notice of the filing and the intervention deadline of February 11, 2005, to interested individuals and entities. On February 8, 2005, the Commission received a Petition to Intervene from South Dakota Telecommunications Association (SDTA). On February 11, 2005, the Commission received a Petition for Intervention and Initial Comments from Fort Randall Telephone Company (Fort Randall). At a regularly scheduled meeting of March 8, 2005, the Commission granted intervention to SDTA and Fort Randall. On May 18, 2006, the Commission received a Stipulation of Facts signed by the Parties. On June 20, 2006, the Commission received an initial brief from PrairieWave and Fort Randall. On July 6, 2006, the Commission received reply briefs from PrairieWave, Fort Randall, and SDTA. On September 8, 2006, the Commission received a Supplemental Stipulation of Facts signed by the Parties. On November 29, 2006, the Commission received Staff's Response to SDTA, PrairieWave, and Fort Randall's Briefs.

On December 19, 2006, the Commission heard oral arguments on this matter. At its January 23, 2007, meeting, the Commission considered this matter. The Commission voted unanimously to deny PrairieWave its ETC designation.

STIPULATION OF FACTS

PrairieWave, Fort Randall, and SDTA agreed to a Stipulation of Facts and Supplemental Stipulation of Facts. PrairieWave, Fort Randall, and SDTA agreed that the stipulated facts may be used without further evidentiary support. The Stipulation of Facts and Supplemental Stipulation of Facts along with the attachments are hereby incorporated by reference and attached to this order.

Based on the record presented in this case, the Commission makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to section 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. 47 U.S.C. § 214(e)(2). The designation of an additional ETC must be consistent with

the public interest, convenience, and necessity. *Id.* The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). *Id.* Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. *Id.*

3. Pursuant to section 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. 47 U.S.C. § 214(e)(1)(A). The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). In stipulated fact 50, Prairie Wave explains how it currently advertises its local service offerings and further states that "PrairieWave has stated that it intends to specifically target customers outside the towns' corporate limits if the petition is granted and if the wireless service becomes operational as specified in the 3-year plan submitted to the Commission."

4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a). Stipulated facts 39 through 47 state that PrairieWave is currently providing, or will provide through its wireless system, the supported services.

5. The Commission has adopted new ETC rules that are similar to the rules adopted by the FCC. *See* ARSD 20:10:32:42 through 20:10:32:46. As the FCC stated in its order adopting its new ETC rules, the new rules were designed to "create a more rigorous ETC designation process" and because of this more rigorous process, the "long-term sustainability of the universal service fund" would be improved. *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 05-46, Report and Order, ¶ 2 (rel. March 17, 2005) ("*FCC Order Regarding ETC Designations*").

6. Pursuant to ARSD 20:10:32:43.01, an applicant for ETC status must commit to providing service to customers making a reasonable request for service in the service area. In stipulated fact 58(a), PrairieWave made that commitment.

7. Pursuant to ARSD 20:10:32:43.02, an applicant must provide a two year plan that explains upgrades or improvements the applicant will make in each wire center. In stipulated fact 58(b), PrairieWave described its three year plan to deploy a fixed wireless system throughout the Centerville and Viborg wire centers.

8. Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations. In stipulated fact 58(d), PrairieWave explained how it intended to remain functional in emergency situations through batteries, generators, and a fiber optic backbone.

9. Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. In stipulated fact 58(e), PrairieWave agreed to provide annual reports detailing consumer complaints and any requests for service that were

unfulfilled. In stipulated fact 58(f), PrairieWave agreed to allow consumer disputes to be resolved by the Commission.

10. In order to designate an applicant as an ETC, the Commission must determine whether such designation is in the public interest. When making this determination, the Commission must consider the following:

> Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. 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 the 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 of the applicant 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.

ARSD 20:10:32:43.02.

11. In accordance with the public interest rule, the Commission will first consider the benefits of increased consumer choice. The Commission first notes that the FCC has stated that "the value of increased competition, by itself, is unlikely to satisfy the public interest test." *FCC Order Regarding ETC Designations* at ¶ 44. Thus, although PrairieWave provides increased competition to Fort Randall, the analysis of the benefits of increased consumer choice does not end with a finding of increased competition. In its prior decisions in which it designated competing carriers as ETCs in areas served by a rural telephone company, the Commission looked at the benefits of expanded local calling areas, mobility, and the provisioning of service in areas that are not currently served or are underserved. *See* In the Matter of the Filing by WWC Holding Co., Inc. d/b/a CellularOne for Designation as an Eligible Telecommunications Carrier in Other Rural Areas, *Order Designating Western Wireless as an Eligible Telecommunications Carrier*, Docket TC03-191, at ¶ 20 (September 2, 2004). With respect to expanded local calling areas, the Commission points out that although PrairieWave provides some extended local calling capabilities if the called party is also a PrairieWave customer, it does not provide large local calling areas that the Commission referenced in prior orders. *See* Stipulated Fact 18. The Commission further notes that Fort Randall also provides some extended local calling capabilities. *See* Stipulated Fact 19. In addition, PrairieWave's current wireline service and its proposed fixed wireless service are not capable of mobility. Further, there was no indication in the stipulated facts that there are areas in the Centerville and Viborg wire centers that are not served or are underserved. Thus, the Commission finds that designating PrairieWave as an ETC would result in little benefit to consumers.

12. Next, the Commission will consider the impact of multiple designations on the universal service fund. The FCC has stated that "analyzing the impact of one ETC on the overall fund may be inconclusive." *FCC Order Regarding ETC Designations* at ¶ 54. Given the size of the high-cost fund, the FCC found that it was "unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund." *Id.* The FCC then stated that "one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund." *Id.* at ¶ 55.

13. In the stipulated facts the parties agreed that granting ETC status to PrairieWave would have little impact on the overall size of the federal Universal Service Fund. Stipulated Fact 55. The parties stipulated that the increase would be around $7,000.00 per month for PrairieWave's existing access lines. Stipulated Fact 56. The stipulated facts further provided that Fort Randall is currently receiving approximately $15.34 per line per month of high-cost support. *Id.* Although the Commission may look at whether the per-line support is high and limit the number of ETCs in an area if it is high, the stipulated facts do not indicate whether $15.34 per-line support is considered to be high and would, by itself, justify limiting the number of ETCs in this area. However, the Commission does note that given its conclusions that PrairieWave's service offering provides little in the way of unique advantage or benefits, the Commission finds that it is reluctant to designate additional ETCs that would be entitled to additional federal funding. As the FCC stated in its order adopting the new ETC rules, by using a more rigorous ETC designation process the long term sustainability of the fund would be improved. *FCC Order Regarding ETC Designations* at ¶ 2. Thus, based on this more rigorous analysis, the Commission finds that denying designation of ETC applicants that would provide few, if any, benefits or unique advantages, will ultimately improve the long term sustainability of the universal service fund.

14. With respect to the unique advantages and disadvantages of PrairieWave's service offering, the Commission first notes that both PrairieWave and Fort Randall currently provide wireline service to their customers through the use of a Lucent 5ESS switch. Stipulated Fact 17. Both companies offer high speed internet access, voicemail, numeric paging, call forwarding, three-way calling, and call waiting. *Id.* While Fort Randall offers service throughout the Centerville and Viborg areas, PrairieWave only offers the service to consumers located within the city boundaries of Centerville and Viborg, with the exception of three customers who live within a mile of the cities' boundaries. Stipulated Fact 22. PrairieWave stipulated that it does not assert that Fort Randall's local service quality is inadequate. Stipulated Fact 20. Advantages cited in the Commission's prior ETC decisions included mobility, large local calling areas, varying amounts of minutes, and safety features. In the Matter of the Filing by RCC Minnesota, Inc. and Wireless Alliance, L.L.C. d/b/a Unicel for Designation as an Eligible Telecommunications Carrier, *Order Designating RCC Minnesota, Inc. and Wireless Alliance, L.L.C, d/b/a Unicel as Eligible Telecommunications Carriers*, Docket TC03-193, at ¶ 29 (June 6, 2005) ("*RCC and Wireless Alliance ETC Designation Order*"). Having already found a lack of mobility and large local calling areas, the Commission will look at safety features. In its previous decision, the Commission noted the ability of customers to dial 911 when away from home as well as the ability to make non-emergency calls when away from their home or business. *Id.* None of these advantages are present in this case. Further, Fort Randall and PrairieWave stipulated that customers in the Centerville and Viborg wire centers already have service available from at least five wireless providers. Stipulated Fact 21. With respect to rates, the stipulated facts showed that while PrairieWave's rates are lower than Fort Randall's rates for business customer, PrairieWave's rates are higher for residential customers. Stipulated Fact 16.

Therefore, the Commission finds that PrairieWave's service currently being offered to customers primarily within the city limits provides few, if any, unique advantages over Fort Randall's service.

15. Further, the Commission finds that the record does not show any advantages of PrairieWave's proposed service offering to customers outside of the city limits. Specifically, PrairieWave proposes to provide voice grade telephone and other related services via a "WaveRider LM4000 Matrix or similar broadband wireless connection throughout the Centerville and Viborg wire centers." Stipulated Fact 27. The WaveRider system is a fixed, non-mobile wireless system using voice-over-internet protocol. Stipulated Fact 24. PrairieWave is currently beta-testing the WaveRider system with four of its employees Stipulated Fact 23. These four employee are the only persons known to be currently receiving service using the WaveRider system. Stipulated Fact 25. The Commission notes that PrairieWave's successor, DTI, deployed a fixed wireless system back to at least 1998 and that this system was discontinued in 2004 due to "changes in technology and customer expectations...." Stipulated Fact 9. No service is being offered to customers outside the city limits (except for three) even though DTI entered into a Stipulation Agreement, in 1997, in which it committed to offering services to all customers within the Centerville and Viborg exchanges. Although this prior system is mentioned in the facts, the stipulated facts provide no information on how this proposed new system is an improvement over the first discontinued fixed wireless system. In addition the record is silent as to any advantages of this proposed fixed wireless system over the service currently being offered by Fort Randall. The Commission further notes that PrairieWave has not committed to even using the WaveRider system since the facts also reference providing the service through a "similar broadband wireless connection." *See* Stipulated Fact 27. Thus, the Commission finds that PrairieWave's proposed fixed wireless system to provide service to customers, including those outside the city limits, will not provide any unique advantages to customers in the service area.

16. The Commission will next consider commitments made regarding the quality of the telephone service provided by PrairieWave. As previously noted, PrairieWave is currently providing wireline service primarily to customers in the Viborg and Centerville city limits. PrairieWave and Fort Randall both provide wireline service using a Lucent 5ESS switch. However, with respect to its proposed deployment of a fixed wireless system to serve rural customers, the record lacks any factual findings as to the quality of this service. As previously noted, PrairieWave's first attempt at deployment of a fixed wireless system was discontinued after only serving a few customers due to technology changes and customer expectations. The proposed new system is being beta-tested and PrairieWave is not even committing to using this WaveRider system but may use a "similar" broadband wireless connection. Although four of PrairieWave's employees are using the system, no findings were presented regarding the quality of the telephone service provided by the fixed wireless system. Apparently, these four employees are the *only* people known to be actually receiving services via this system. The Commission finds that PrairieWave has failed to provide sufficient commitments regarding the quality of its proposed fixed wireless service.

17. The next consideration is PrairieWave's ability to provide the supported services throughout the designated service area within a reasonable time frame. PrairieWave currently provides service primarily throughout the city limits of Centerville and Viborg. Stipulated Fact 22. For customers outside the city limits, PrairieWave provided a three year plan using a fixed wireless system. At the end of three years, PrairieWave's plan calls for the completion of a fixed wireless system throughout the Centerville and Viborg wire centers. The Commission finds that, based on the record before it, the Commission has concerns about the ability of PrairieWave to provide the supported services outside the city limits within a reasonable time frame for the reasons stated in conclusions of law 15 and 16. In addition to the concerns already mentioned, the Commission notes that in stipulated fact

50, with respect to its advertising responsibilities, PrairieWave stated "that it intends to specifically target customers outside the towns' corporate limits if the petition is granted and *if the wireless service becomes operational* as specified in the 3-year plan submitted to the Commission." (*emphasis added*). The Commission is not sure why PrairieWave stated "if" the wireless service becomes operational. Moreover, the Commission finds it troubling that PrairieWave is not currently offering service throughout the entire service areas of Centerville and Viborg even though it stipulated it would do so in an agreement with Fort Randall that was approved by the Commission. It appears that PrairieWave has not complied with the earlier Settlement Agreement but now plans to use federal universal service funds in order to fund the previously agreed to commitment.

18. The next part of the public interest test is whether the designation of PrairieWave will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier, namely Fort Randall. The stipulated facts provided little information regarding detrimental effects on Fort Randall in the event PrairieWave was granted ETC status. Pursuant to the supplemental stipulation of facts, if Fort Randall would lose 200 access lines to PrairieWave, Fort Randall would lose approximately $46,000 annually out of approximately $422,774 it currently receives in interstate settlements for Centerville and Viborg. However, under this scenario, apparently Fort Randall would lose this amount even if PrairieWave is *not* designated as an ETC.

19. The final part of the public interest test requires the Commission to conduct a creamskimming analysis. Pursuant to the rule, "[i]f 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." PrairieWave is seeking designation below the study area level.[1] Fort Randall has not disaggregated its study area. Stipulated Fact 30. The stipulated facts provided that the overall population density for the Fort Randall study area is 9.1 persons per square mile and the population density for the Centerville and Viborg wire centers is 15.5 persons per square mile. Stipulated Fact 34.[2] Thus the ratio of the entire study area to the Centerville and Viborg areas is 1.7 to 1. As the Commission has previously found, this low ratio is not high enough to create creamskimming concerns. *See RCC and Wireless Alliance ETC Designation Order* at ¶ 53 (wherein the Commission found a 1.8 to 1 ratio was not high enough to implicate creamskimming).

20. After reviewing each part of the public interest, the Commission concludes that, when viewed in their entirety, it is not in the public interest to designate PrairieWave as an ETC. PrairieWave was unable to show how its designation would result in benefits or unique advantages and failed to provide sufficient facts regarding its proposed fixed wireless system. Therefore, the Commission denies PrairieWave's application to be designated as an ETC.

It is therefore

ORDERED, that PrairieWave's application for designation as an ETC is denied.

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[1] The Centerville and Viborg wire centers have previously been redefined as a separate service area in another proceeding. *See 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 TC04-213 (February 10, 2006). Thus, no redefinition is required as requested in stipulated facts 30 and 31.

[2] The Commission points out that the stipulated facts should have used the *unserved* areas of Fort Randall's study area, not the *total* study area.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 6th day of March, 2007. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 6th day of March, 2007.

CERTIFICATE OF SERVICE

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, electronically.

By: Delaine Kolbo

Date: 3/6/07

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

DUSTIN M. JOHNSON, Chairman

GARY HANSON, Commissioner

STEVE KOLBECK, Commissioner

Com. Rec 5/10/06

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

STIPULATION OF FACTS

PrairieWave Communications Inc. ("PrairieWave"), Fort Randall Telephone Company ("Fort Randall") and the South Dakota Telephone Association stipulate to the following facts and agree that these facts may be used without further evidentiary support in the above-identified proceeding.

1. On January 24, 2005, PrairieWave filed a petition with the South Dakota Public Utilities Commission ("Commission") for approval of its application for designation as an eligible telecommunications carrier ("ETC") in the Centerville and Viborg wire centers ("Application").
2. PrairieWave filed the Application in its capacity as a competitive local exchange carrier ("CLEC") providing competitive local exchange service to business and residential customers in the Centerville and Viborg wire centers.
3. The Commission electronically transmitted a notice of the Application with an intervention deadline of February 11, 2005. Fort Randall and the South Dakota Telecommunications Association ("SDTA") filed timely petitions to intervene, which the Commission granted on March 17, 2005.
4. Fort Randall is an incumbent local exchange carrier providing local exchange service in eight wire centers (a/k/a exchanges) in South Dakota – Centerville, Viborg, Tabor, Tyndall,

Wagner, Lake Andes, Hermosa, and Keystone. Fort Randall provides local exchange service in the Keystone and Hermosa wire centers d/b/a Mt. Rushmore Telephone Company.

5. PrairieWave is seeking certification as an ETC in Fort Randall's Centerville and Viborg wire centers, and is not seeking ETC status in Fort Randall's other six wire centers. PrairieWave has no current plans to offer telecommunications services in Fort Randall's other six wire centers. DTI is not certified, and has not sought certification to serve these six wire centers.

6. PrairieWave is a Commission certified CLEC for the entire State of South Dakota, subject to a restriction by the Commission with respect to areas served by rural telephone companies, pursuant to the Commission's order in Docket No. TC96-050, dated October 22, 1996. Paragraph III of the Conclusions of Law of that order require PrairieWave to come before the Commission in another proceeding before providing service in a rural service area allowing the Commission to require compliance with 47 U.S.C. § 253 (f) of the Telecommunications Act of 1996. PrairieWave is the successor corporation to the original corporate entity, Dakota Telecom, Inc. ("DTI"). At the time of the certification, the Centerville and Viborg wire centers were owned by U S WEST Communications, but were subsequently sold to Hanson Communications, Inc. and are now owned and operated by Fort Randall. The sale was approved by the Commission in Docket No. TC96-125.

7. The Commission, in its order granting DTI a state-wide certificate of authority, declined to determine, at that time, the service obligations that would apply to DTI in the Centerville and Viborg wire centers after the sale was completed.

8. DTI and Fort Randall entered into a Settlement Agreement relating to DTI's request for an interconnection agreement entered into pursuant to 47 U.S.C. §§ 251 and 252. The Settlement Agreement established DTI's service obligations in the Centerville and Viborg wire centers, a copy of which is Attachment A to this Stipulation of Facts. The Commission, on December 12, 1997 issued an ORDER APPROVING SETTLEMENT AGREEMENT AND CLOSING DOCKET in Docket No. TC97-062.
9. DTI previously sought ETC status in the Centerville and Viborg exchanges in Docket No. TC98-111. DTI's Chief Executive Officer provided prefiled and live testimony in Docket No. TC98-111, in support of DTI's request for ETC status in the Centerville and Viborg exchanges. A copy of pages 1 through 4 of the prefiled testimony, and 40 of the transcript are provided as Attachment B. DTI served 17 customers using a wireless technology. (Transcript p. 40.) Because of changes in technology and customer expectations, PrairieWave discontinued that wireless service to those customers on or about April, 2004.
10. The Commission, on December 11, 1998, issued an ORDER DENYING REQUEST FOR ETC DESIGNATION; NOTICE OF ENTRY OF ORDER in Docket TC98-111. A copy of that Order is provided as Attachment C.
11. Fort Randall is a rural telephone company, as that term is defined by 47 U.S.C. § 153(37).
12. The Centerville and Viborg wire centers are contiguous with each other but not with any of the other six wire centers operated by Fort Randall. The same is true of Lake Andes and Wagner (contiguous with each other and have a center of mass located about 68 miles west of the Centerville/Viborg area) and Tabor and Tyndall (contiguous with each other and have a center of mass located about 46 miles west of the Centerville/Viborg area).

Hermosa and Keystone are in the Black Hills area and are located several hundred miles west of the other six wire centers and are not contiguous with each other.

13. PrairieWave operates as both an incumbent local exchange carrier and as a competitive local exchange carrier in the 45 South Dakota, Iowa and Minnesota wire centers listed in Exhibit B to PrairieWave's Response to Fort Randall's First Set of Interrogatories. A copy of that Exhibit B is included as Attachment D to this Stipulation of Facts. PrairieWave serves those 45 wire centers on a host-remote basis using host switches located in Viborg and Rapid City, South Dakota and Marshall, Minnesota. The distances between the host switches and the remote wire centers are also listed in Attachment D to this Stipulation of Facts.

14. Attachment E to this Stipulation of Facts are maps showing the South Dakota wire centers served by Fort Randall and PrairieWave.

15. PrairieWave has provided CLEC local exchange service in the Centerville and Viborg wire centers since 1997 using its own Lucent 5ESS local exchange switch located in Viborg and fiber optic, coaxial and copper cable buried throughout the wire center territory. There are no complaints, formal or informal, pending before the Commission regarding the availability or quality of PrairieWave local exchange services in the Centerville and Viborg wire centers.

16. The following table is a comparison of PrairieWave and Fort Randall rates in the Centerville and Viborg exchanges.

Service	PrairieWave	Fort Randall
Residential	$9.95	$7.00
Business	$17.50	$23.34

17. PrairieWave and Fort Randall each use a Lucent 5ESS switch to serve their respective customers in Centerville and Viborg and both PrairieWave and Fort Randall offer high-speed internet access, voicemail, numeric paging, call forwarding, three-way calling, and call waiting.

18. PrairieWave offers calling without an additional charge to PrairieWave customers in the Centerville and Viborg wire centers who call PrairieWave customers located in exchanges that are also served by the Viborg host 5ESS switch. Some of those exchanges have Extended Area Service ("EAS") with Centerville and Viborg and would not be subject to a long distance charge in any event.

19. Fort Randall customers in the Centerville wire center have EAS to Viborg. Fort Randall customers in the Viborg wire center have EAS to Davis and Hurley, Flyger, and Irene. Fort Randall customers in the Centerville and Viborg wire centers have 1+ access to 41 long distance carriers. PrairieWave customers in these two wire centers have 1+ access to 51 long distance carriers.

20. PrairieWave does not assert that Fort Randall's local service quality is inadequate.

21. All customers in the Centerville and Viborg wire centers also have service available from at least 5 CMRS providers on an unbundled basis, and those CMRS providers offer a number of calling plans, including very large "local" calling areas.

22. PrairieWave provides service to customers located within the city boundaries of Centerville and Viborg on a wireline basis. It also offers wireline service to three customers who live outside the city boundaries (all three reside within one mile of the city boundaries).

23. PrairieWave is conducting a beta-test with four of its employees of a voice-over-internet protocol ("VoIP") service using a WaveRider LM4000 Matrix wireless system. The

WaveRider LM4000 Matrix wireless system uses unlicensed radio frequency to provide a wireless broadband connection and requires a transmitting "base radio" to provide wireless signals to a PrairieWave-owned antenna, modem, and other voice equipment located at the customer premises. The VoIP service does not require that the end-user have a personal computer or any special hand set.

24. The WaveRider LM4000 Matrix wireless system is a fixed wireless (not mobile) system. The wireless technologies utilize the PrairieWave Lucent 5ESS switch to provide the necessary features and functionality for local exchange service. Exhibit B to the PrairieWave Application describes that technology and the 3-year timeline necessary to complete deployment. The PrairieWave wireless system will be provided in the 900 MHz (902 to 928 MHz) spectrum.

25. Currently, the base radios for the WaveRider LM4000 Matrix fixed wireless service must be located within five miles of the end-user modems (not line of sight) and ten miles where there is a line of sight to the base radio in order to provide a usable wireless connection. The premises of the four employees involved in the beta-test are located within 5 miles of the base radio that has been installed by PrairieWave. These four employees are the only persons known to be currently receiving VoIP service using the WaveRider LM4000 Matrix wireless system.

26. The PrairieWave wireless system that would provide VOIP uses unlicensed radio spectrum in a 900 MHz frequency-hopping system. It will either be similar to, or use, the WaveRider LMS4000 Matrix system. The necessary equipment consists of 120-foot towers, with sectored antennas for more direct connectivity to the customer, providing non-line of sight coverage for about 7 miles from the tower location including the ability to

penetrate trees and other obstructions up to a half-mile in density. The towers home on a tower in Viborg that connects to the PrairieWave Lucent 5ESS switch through a direct fiber connection and a redundant wireless 10 Mbps capability.

27. PrairieWave proposes, in its 3-year plan, to use VoIP to provide voice grade telephone and other related services via the WaveRider LM4000 Matrix or similar broadband wireless connection throughout the Centerville and Viborg wire centers. The proposed project will require three transmit/receive towers. PrairieWave currently has one tower that will need to be heightened. The remaining two towers will be new. The towers will have redundant route radio connections. The time to complete the wireless network is 3 years. Total Cost is forecasted to be $218,000 using current labor, facilities and equipment prices.

28. In the first year, the PrairieWave plan calls for completion of the Viborg wireless serving area. The tower/equipment installation is estimated to cost $35,000. There are 190 estimated potential customers in this area. Total estimated cost is $60,000 including customer premises equipment ("CPE") and installation labor. During the second year, the PrairieWave plan calls for completion of the south Centerville wireless serving area. The tower/equipment installation is estimated to cost $57,000. There are 132 estimated potential customers in this area. Total estimated cost is $76,000 including CPE and installation labor. In the third year, the PrairieWave plan calls for completion of the north Centerville wireless serving area. The tower/equipment installation is estimated to cost $59,000. There are 157 estimated potential customers in this area. Total cost is estimated to be $82,000 including CPE and installation labor.

29. Fort Randall has been certified as an eligible telecommunications carrier ("ETC") under 47 U.S.C. § 214(e) in each of the eight wire centers that it serves. (Docket No. TC97-075, dated December 17, 1997).

30. Consistent with 47 C.F.R. § 54.207(b) and (c), the service area of a rural telephone company is the study area unless and until the Federal Communications Commission ("FCC") and the Commission establish a different service area. Fort Randall has a single service area within the meaning of 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b) that includes all eight wire centers in the Fort Randall study area for federal Universal Service Fund ("USF") purposes. Fort Randall has not disaggregated its study area or targeted its federal universal service support as described in 47 C.F.R. § 54.315.

31. PrairieWave requests that the contiguous Centerville and Viborg wire centers be redefined as a separate service area for purposes of ETC designation. PrairieWave must demonstrate that designation in a redefined service area is in the public interest.

32. The Federal-State Joint Board on Universal Service and the FCC have articulated their concerns regarding the redefinition of rural telephone company service areas. The concerns raised are to: (1) minimize cream-skimming; (2) recognize that the 1996 Act places rural companies on a different competitive footing from other LECs; and (3) recognize the administrative burden of requiring rural telephone companies to calculate costs on something other than a study area level.

33. Cream-skimming occurs when CLECs disproportionately serve the low-cost, high-revenue customers in the study area. The FCC has based the determination of potential cream-skimming on the relative population density of the portions of the rural telephone company's study area where the CLEC serves versus the population density for the study

area as a whole. A low population density typically indicates a high-cost service area, and a high population density typically indicates a low-cost service area.

34. The overall population density for the Fort Randall study area is 9.1 persons per square mile. The population density for the Centerville and Viborg wire centers is 15.5 persons per square mile.

35. Within the Centerville and Viborg wire centers, the population density per square mile within the city limits and outside of the city limits of Centerville and Viborg are approximately as follows:

Inside city limits	Outside city limits
1,622.0 persons per mile	5.7 persons per mile

36. The following chart depicts the number of access lines served by Fort Randall and PrairieWave in the Centerville and Viborg wire centers and within and outside the city limits of Centerville and Viborg:

	Fort Randall	PrairieWave	Total
Centerville and Viborg	1,056	450	1,506
Within city limits	595	447	1,042
Outside city limits	461	3	464

37. Ft. Randall currently received approximately $15.34 per-line-per month of high-cost support for all lines served throughout the study area.

38. To be designated an ETC, PrairieWave must offer defined services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. The FCC, in 47 C.F.R. § 54.101(a), has designated the following services or functionalities as services that an ETC must provide to

receive USF support: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory services; and (9) toll limitation for qualifying low-income consumers.

39. Voice grade access is defined as "a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call." The FCC has defined the minimum bandwidth for voice grade access at 300 to 3000 Hertz. Both the Prairie Wave wireline and wireless systems will transport the voice grade communications in that bandwidth.

40. Local usage is defined as "an amount of minutes of use of exchange service, prescribed by the FCC, provided free of charge to end users." Customers have and will continue to have access to flat rated calling that includes expanded local calling areas. There are no exchange service charges based on usage.

41. Dual tone multi-frequency signaling ("DTMF") is defined as "a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time." Basically, this is the capability to use touchtone dialing to make, route and complete a telephone call. The PrairieWave Lucent 5ESS switch has the necessary intelligence to set-up, route and complete voice grade telecommunications using DTMF.

42. Single party service is defined as "telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed," or, in the case of wireless communications, "a dedicated message path for the length of a user's

particular transmission." In its wireline environment, PrairieWave provides only single party service, and for wireless, each customer will have a dedicated path for each call.

43. Access to emergency services is defined as "access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations." Through its wireline network, PrairieWave connects all dialed 911 calls to emergency service answering points and fully updates the emergency services databases on the telephone numbers and addresses of its customers so that the enhanced features of 911 are fully available to emergency service operators.

44. Access to operator services is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." PrairieWave customers dialing "0" are connected to both automated and live operator assistance.

45. Access to interexchange service is defined as "the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network." Through its Lucent 5 ESS switch, which supports both the wireline and wireless networks, PrairieWave provides equal access to many interexchange carrier networks through the customer selection of his/her preferred interexchange carrier as outlined in state and federal law.

46. Access to directory assistance is defined as "access to a service that includes, but is not limited to, making available to customers, upon request, information containing directory listings." PrairieWave customers can access nationwide directory assistance by dialing the numbers "411."

47. Each company designated as an ETC must offer toll limitation through toll blocking, toll control, or both, to qualifying Lifeline customers at no charge. Toll blocking is defined as "a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel. The PrairieWave Lucent 5ESS switch is capable of and does provide toll blocking of outgoing toll calls for requesting customers and PrairieWave would do so at no charge for those customers that qualify for Lifeline.

48. PrairieWave agrees that it will provide equal access to interexchange carrier networks if all other ETCs in the designated area are allowed to relinquish their ETC designations.

49. PrairieWave offers the supported services listed in paragraph 7 above "using its own facilities" as specified in 47 U.S.C. § 214(e)(1)(A). PrairieWave will not resell the services of another carrier.

50. PrairieWave currently advertises its local service offerings within the two affected wire centers using media of general distribution such as local and regional newspapers, magazines, direct mailings, public exhibits and displays, its Internet site, cable television programming, and directory advertising. PrairieWave has stated that it intends to specifically target customers outside the towns' corporate limits if the petition is granted and if the wireless service becomes operational as specified in the 3-year plan submitted to the Commission.

51. Federal law requires that before the Commission can designate an additional ETC in an area served by a rural telephone company, the Commission must find that the designation is in the public interest.

52. In 2004, the FCC adopted a more stringent public interest analysis in the *Virginia Cellular* and *Highland Cellular* cases. *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 (2004) ("*Virginia Cellular*") and *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 (2004) (*"Highland Cellular"*). This test requires the petitioner to show: (1) the benefits of increased competition; (2) the impact of multiple designations on the USF; (3) the unique advantages and disadvantages of the competitor's service offering; (4) commitments made regarding quality of telephone service; and (5) its ability to provide the supported services throughout the designated service area within a reasonable time frame. The Commission applied this test in its most recent decision in *In the Matter of the Filing by RCC Minnesota, Inc. and Wireless Alliance, L.L.C. 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 (dated June 6, 2005) ("RCC/WALLC ETC Order").

53. ETC certification has been approved for Brookings Municipal Utilities d/b/a Swifttel Communications in TC 04-213, which is a CMRS provider serving the Centerville and Viborg exchanges. *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 (Feb. 10, 2006).

54. The Commission has not granted ETC status to a second wireline service provider in any rural telephone company service area.

55. Granting the request for ETC certification to PrairieWave, by itself, would have little impact on the overall size of the federal Universal Service Fund, but it would increase the cost of federal Universal Service funding for the Viborg and Centerville wire centers as set forth in Paragraph 55.

56. If PrairieWave is granted ETC status, PrairieWave would receive the same amount of federal Universal Service Support per access line as is paid to Fort Randall, which is currently approximately $15.34 per-line-per-month of high-cost support. PrairieWave would receive federal Universal Service Support for all of its existing access lines in the Centerville and Viborg wire centers, which would be approximately $7,000 per month. Fort Randall would not continue to receive the same amount of universal service funds, which is currently $16,200, based on third quarter USAC information, if Prairie Wave captures additional customers in the Centerville and Viborg wire centers. The amount lost would be some portion of the $15.34 per-line depending on the effect that losing additional lines would have on the average schedule calculation. As a result, the cost of Federal universal service funding for the Centerville and Viborg wire centers would increase by something less than $7,000.

57. Most recently on March 17, 2005, the FCC released its order regarding recommendations of the Federal-State Joint Board on Universal Service. The requirements codified in 47 C.F.R. §§ 54.202 and 54.209, a copy of which is attached as Attachment F. The Commission should, in addition to applying the above standards, also apply the standards set forth in those regulations to this petition. PrairieWave is required to show:

(1)(A) a commitment to provide service throughout its proposed designated service area to all customers making a reasonable request for service by certifying that it will: (a) provide service on a timely basis to requesting customers where the PrairieWave network already passes the customer premises, and (b) provide service within a reasonable time if the customer is within the licensed service area but outside existing network coverage, if service can be provided at reasonable cost by: (i) modifying or replacing customer premise equipment, (ii) deploying a roof mounted antenna or other equipment, (iii) adjusting the nearest cell tower, (iv) adjusting network or customer facilities, (v) reselling services from another carrier's facilities, or (vi) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and (B) submit a 5-year plan describing with specificity proposed improvements or upgrades for each wire center demonstrating how service will improve due to the receipt of high-cost support, the projected start and completion dates of improvements, the estimated amount of investment, specific geographic area affected by the improvements, and the estimated population to be served;

(2) demonstrate the ability to remain functional in emergency situations including a reasonable amount of back-up battery power, the ability to reroute traffic around damaged facilities, the management of traffic spikes during emergencies;

(3) satisfy applicable customer protection and service quality standards;

(4) offer a local usage plan comparable to the one offered by the ILEC in the service areas sought for designation; and

(5) certify that it will provide equal access to toll carriers if there is no other ETC providing equal access in the area.

58. In response to the requirements set forth in paragraph 56, PrairieWave certifies that:

a. Where the requesting customer is outside the PrairieWave network, but within the certificated Centerville or Viborg wire centers, it will, within a reasonable time, if it can be provided at a reasonable cost, modify or replace customer equipment, deploy roof mounted antennas or other equipment, make adjustments to tower equipment, adjust network or customer facilities, resell services from another carrier's facilities, or employ, lease or construct additional facilities to provide service.

b. PrairieWave provided a 3-year plan using a fixed wireless system to deploy the necessary technology and facilities throughout the Centerville and Viborg wire center designated service areas to all residences and businesses currently present or which may be added in the future. As required by the FCC, PrairieWave will submit by October 1, 2006, a 5-year plan specifically describing proposed improvements and upgrades by wire center. Annually thereafter, in conjunction with, but separate from and in addition to its annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, PrairieWave shall submit records and documentation detailing its progress towards meeting the statutory objective of offering service throughout the service areas for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by PrairieWave within the State of South Dakota during the preceding annual period and shall include its proposed capital budget for the State of South Dakota for the ensuing year. PrairieWave shall work with Commission Staff to determine what constitutes material expenditures. If PrairieWave and Staff are unable to agree, either party shall bring the issue before the Commission for a decision.

c. PrairieWave shall annually submit proposed plans for the upcoming calendar year that set forth proposed plans for the construction of new facilities and service enhancements to existing facilities. The plans shall be submitted on or before March 1st of each year. Following the first filing, subsequent annual filings shall also include a report stating whether the proposed plans were implemented, any deviations from the previous year's proposed plans, and the reasons for any deviations. Following this annual filing, PrairieWave shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

d. PrairieWave shall maintain the ability to remain functional in emergency situations. Its facilities are powered by commercial power provided by PrairieWave. PrairieWave maintains batteries and auxiliary generators to maintain electrical power to all necessary facilities, both wireline and wireless, to ensure continuous operation consistent with the Commission's requirements in ARSD ¶ 20:10:33:19. In the wireless situation, CPE will be powered by home power; however, PrairieWave will provide battery backup capability for up to 8 hours to the customer premises to comply with the Commission's rule. PrairieWave deploys its fiber optic backbone facilities in a ring configuration that includes switching for Centerville and Viborg, providing diverse routing of telecommunications traffic. This allows PrairieWave to reroute traffic and maintain service in the instance of a cable or other facility failure. PrairieWave constantly monitors the activity on its switch and fiber and cable facilities. PrairieWave is able to react instantly to severe fluctuations in facility usage, which could result in system failure or blockage due to an inordinate demand for capacity.

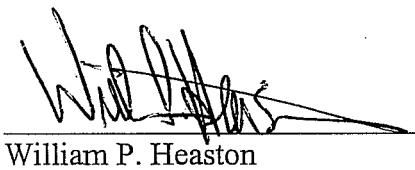
e. By March 1st of each year, PrairieWave shall provide annual reports detailing the complaints, including the nature and location, that it has received during the previous one-year period from customers in the designated service area. By March 1st of each year, PrairieWave shall provide a report itemizing the number of unfulfilled requests PrairieWave received to provide service in the designated service area to a current customer's residence during the previous year, and requests for service from potential customers within the designated service, that went unfulfilled during the previous year, including the steps PrairieWave took to provide service and the reasons why such requests went unfulfilled. Following the submission of these reports, PrairieWave shall, if requested, meet with Commission Staff to discuss the reports.

f. PrairieWave agrees to disputes being resolved by the Commission. Any service agreement or other applicable policy, terms and conditions of service shall state that any disputes or claims arising under the service agreement may be subject to the Commission's complaint jurisdiction, at the consumer's option. PrairieWave may not compel submission of disputes to arbitration which would deprive customers of access to the complaint procedures of SDCL chapter 49-13 and ARSD Chapter 20:10:01.

g. In the event that Commission Staff believes that information beyond what PrairieWave has provided is necessary for Staff and the Commission to perform their responsibilities relating to PrairieWave meeting its obligations under the law and any Commission order, Staff shall make a request for such information. If PrairieWave objects to such request, Staff and PrairieWave shall confer in an effort to resolve the issue. If after such conference, Staff and PrairieWave are unable to reach agreement

concerning the need for such information or the reasonableness of such request, Staff may petition the Commission for an order modifying the Conditions herein upon a showing of good cause therefore.

Dated: May 18, 2006



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Attachment A

SETTLEMENT AGREEMENT

This Agreement is made and entered into as of November 19, 1997 by and between Fort Randall Telephone Company ("Fort Randall") and Dakota Telecom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. and Dakota Telecommunications Group, Inc. (formerly Dakota Cooperative Telecommunications, Inc.) (collectively "Dakota").

RECITALS

Whereas, Dakota desires to provide local telecommunications services in the Centerville and Viborg exchanges operated by Fort Randall;

Whereas, Dakota and Fort Randall ("the Parties") desire to enter into an interim interconnection agreement that will be in effect until such time that a permanent interconnection agreement is approved by the South Dakota Public Utilities Commission ("Commission") pursuant to 47 U.S.C. § 252 ("Permanent Interconnection Agreement");

Whereas, the Parties wish to resolve all issues and disputes that have arisen, or which could arise in the following proceedings:

IN THE MATTER OF THE FILING BY DAKOTA TELECOM, INC., DAKOTA TELECOMMUNICATIONS SYSTEMS, INC., AND DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC. FOR INTERCONNECTION WITH FORT RANDALL TELEPHONE COMPANY, Docket TC97-062, currently pending before the Commission;

DAKOTA TELECOM, INC.; DAKOTA TELECOMMUNICATIONS SYSTEMS, INC.; and DAKOTA TELECOMMUNICATIONS GROUP, INC. vs. PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, Civ. 97-292; and

DAKOTA TELECOM, INC. vs. JAMES A. BURG, PAM NELSON, LASKA SCHOENFELDER, Commissioners of the Public Utilities Commission of the State of South Dakota, Civ. 97-425.

WHEREFORE, IT IS AGREED AS FOLLOWS:

1. DTI agrees to the following conditions on its authority to offer local telecommunications service in Fort Randall's service area/study area.

A. DTI will offer, on a nondiscriminatory basis, basic local services to all customers residing within the Centerville and Viborg exchanges.

B. DTI will provide notice of the availability of its basic local services to all customers in the Centerville and Viborg exchanges and shall comply with any future

Commission rules concerning the advertising/notice obligations of eligible telecommunications carriers.

C. DTI will offer a local calling scope which is at least as large as the existing local calling area offered by Fort Randall.

D. DTI's out-of-town rates will be no greater than DTI's in-town rates.

E. DTI will satisfy the requirements of paragraph 1, Clauses A through D inclusive, for both the Centerville and Viborg exchanges by the end of the 1999 construction season, and shall satisfy the requirements of paragraph 1, Clauses A through D inclusive, within 12 months of initially offering local exchange service in any other Fort Randall exchange.

2. The Parties agree to resolve all current issues related to the rural exemption of Fort Randall from 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(1) in the following manner:

A. The Parties agree that, based on the above service obligations, the Commission is not required to and should not determine whether any or all of Fort Randall's Rural Exemption from the requirements of 47 U.S.C. § 251(c) should be terminated with respect to DTI's service offerings in the Centerville and Viborg exchanges.

B. If DTI elects to provide local service in any Fort Randall exchange, Fort Randall agrees to waive the Rural Exemption as it applies to 47 U.S.C. 251(c)(4) and offer resale of its retail services at wholesale rates, subject to such reasonable restrictions on resale as are allowed under state and federal law. Fort Randall agrees to waive the Rural Exemption from 47 U.S.C. § 251(c)(1) with respect to negotiating the particular terms and conditions to be contained in the Permanent Agreement to fulfill the duties described in Section 251(b) and (c)(4)

3. The provisions of Paragraph 1 and 2 of this Agreement shall apply to DTI's parent corporation, affiliates, and subsidiary corporations should any of those entities offer local services in any Fort Randall exchange. Dakota shall not employ, authorize or direct its officers, agents, employees, directors, successors and assigns in any way to defeat or undermine the purpose of this Agreement

4. The Parties agreed that DTI has not requested universal service funding at this time, and the Commission should not, in Docket TC97-062, determine whether DTI should qualify for universal service funding. It is further agreed that this issue should be determined at the time DTI seeks universal service funding for its facilities used to provide local service in the Centerville and Viborg exchanges.

5. The Parties agree to the following terms with respect to an interim interconnection agreement.

A. The facilities used for the interconnection and transport of local traffic under this Agreement shall be dedicated facilities between Fort Randall's Centerville and Viborg exchanges and the switch used by DTI facilities at a single point in Viborg (the "Interconnection Facilities"). The Parties shall separately agree on the specific technical requirements of those Interconnection Facilities.

B. Each party shall be responsible for the installation and maintenance of the Interconnection Facilities on their respective side of the meet point (which meet point shall be separately negotiated by the Parties).

C. The Parties agree to complete the physical connection of their respective portions of the Interconnection Facilities as soon as reasonably possible, and by no later than December 1, 1997. Completion of the Interconnection Facilities includes installation of the transport facilities and all necessary switch changes, including programming Fort Randall's switches to recognize NXXs being used by DTI for service to customers.

D. The Parties agree to use a "bill and keep" arrangement for termination of local traffic transferred from one Party to the other Party (the "Local Traffic") using the Interconnection Facilities. Effective with Fort Randall's switch change out in Wagner and the rehoming of the Centerville and Viborg remote switches to the Wagner switch, which is scheduled to occur at the end of the first quarter of 1998, both Parties agree to measure the Local Traffic and agree that such Local Traffic shall become subject to the reciprocal, symmetrical compensation arrangements contained in the Permanent Interconnection Agreement. If the Permanent Interconnection Agreement is entered into after the date measurement of the Local Traffic commences, the Parties agree to make a true-up payment within 30 days of the Permanent Interconnection Agreement becoming effective.

E. Fort Randall is currently unable to offer local referral announcements following customer number changes because of equipment limitations. Each Party shall as soon as reasonably possible, but not later than the end of the first quarter of 1998, make a good faith effort to make referral announcements available in accordance with the Act, and shall, if referral announcements can be made available, establish a rate or other recovery mechanism to recover the cost of the service. The Permanent Interconnection Agreement shall address local service announcements. As an alternative, Fort Randall is willing to provide remote call forwarding at the following rates: $5 nonrecurring charge per customer for implementing the service, and a recurring charge of $3.50 per month for each increment of 20 numbers receiving this service.

F. The Parties agree to resolve service issues, maintenance issues and on-going operational issues using the same business standards that are prevalent in the telecommunications industry.

6. The Parties agree that the above-described legal proceedings currently pending before the Commission and the Circuit Court shall be resolved as follows:

A. The Parties agree to present this Agreement to the Commission by no later than November 21, 1997, along with a request that the Commission issue an Order accepting Paragraphs 1 through 4, inclusive, of this Agreement and closing Docket No. TC97-062. The Parties agree not to appeal an Order accepting the Agreement. It is further agreed that if the Commission does not issue such an Order, the Settlement shall be withdrawn with respect to Paragraphs 1 through 4, and the Parties shall be free to argue their respective positions on all outstanding issues without regard to this Agreement.

B. Dakota agrees to dismiss with prejudice both Docket Civ. 97-292 and Docket Civ. 97-425 by no later than November 21, 1997.

7. This agreement shall be binding upon and benefit each of the Parties and their respective affiliates, subsidiary corporations, their officers, agents, employees, directors, successors and assigns.

DAKOTA TELECOM, INC.

By: T.W. Hertz
Thomas Hertz

FORT RANDALL TELEPHONE COMPANY

By: Bruce Hanson

Attachment B

Prefiled Testimony of Thomas W. Hertz
Dakota Telecom, Inc.
Docket No. TC98-111
August 21, 1998

1 **Q. Please state your name, title, occupation, and work address.**

2 **A.** I am Thomas W. Hertz, Chief Executive Officer of Dakota Telecommunications
3 Group (DTG) and its subsidiary Dakota Telecom, Inc. (DTI) the competitive local
4 exchange carrier (CLEC). My business address is P.O. Box 66, Irene, South Dakota
5 57037.

6 **Q. What is the purpose of your testimony in this docket?**

7 **A.** I am testifying in support of DTI's application for eligible telecommunications
8 carrier (ETC) status in the Centerville and Viborg service area.

9 **Q. What is the significance of ETC status?**

10 **A.** Under federal law, the designation of ETC status for a common carrier makes that
11 carrier eligible for federal universal service support to provide service to consumers in
12 rural, insular and high cost areas, to low income consumers, and to schools and libraries,
13 which are located in that company's service area.

14 **Q. Is DTI a common carrier?**

15 **A.** Yes, DTI is a common carrier in the Centerville and Viborg service area. That
16 means that DTI provides telecommunications services throughout the Centerville and
17 Viborg service area for hire to any customer willing to pay for that service. A definition
18 of common carrier is found at 47 U.S.C. § 153(10).

19 **Q. What criteria must a common carrier meet in order to be designated as an**
20 **ETC?**

21 **A.** The criteria are stated in 47 U.S.C. § 214(e)(1). DTI must offer services
22 supported by the federal universal service fund support mechanisms under 47 U.S.C. §

1 254(c) using its own facilities or a combination of its own facilities and the resale of
2 another carrier's services, and must advertise the availability of such services and its
3 charges using media of general distribution.

4 **Q. Does DTI provide supported services using its own facilities?**

5 **A.** Yes it does. DTI provides the supported services in the Centerville and Viborg
6 service area using only its own facilities. DTI does not use any unbundled network
7 elements from the incumbent carrier, Ft. Randall Telephone Company, nor does it
8 provide any service through the resale of Ft. Randall's services.

9 **Q. What services are supported by federal universal service support**
10 **mechanisms?**

11 **A.** Those services are listed by the Federal Communications Commission (FCC) in
12 its rules in 47 C.F.R. ¶¶ 54.101, 54.405 and 54.411. The services are: (a) voice grade
13 access to the public switched network; (b) local usage; (c) dual tone multi-frequency
14 signaling; (d) single-party service; (e) access to emergency services; (f) access to operator
15 services; (g) access to interexchange service; (h) access to directory assistance; (i) toll
16 limitation for qualifying low-income consumers; and (j) Lifeline and Link Up services to
17 low-income consumers.

18 **Q. Does DTI provide those services designated for support in the Centerville**
19 **and Viborg service area?**

20 **A.** Yes it does. The telecommunications service DTI deploys uses fiber optic cable
21 to the neighborhood node and then coaxial cable to the premises. The service is better
22 than the traditional twisted pair, copper facility and provides not only very good voice

1 service, but also Internet access up to 50 kbps. Outside the city limits of Centerville and
2 Viborg, DTI employs a fixed wireless system for telephone service. This service
3 provides significantly better voice service than the traditional twisted pair, copper
4 facilities, and we have measured Internet access speeds in excess of 24 kbps, even for
5 customers on the far end of the system. DTI does provide local usage as that term is
6 defined in 47 C.F.R. § 54-101(a)(2). Dual tone multi-frequency signaling is the same as
7 touch tone signaling (i.e., touch tone dialing). It is the industry standard and is provided
8 in the 5E Lucent switch in Viborg and over the fixed wireless system. DTI only has
9 single-party service to its customers. DTI's switch does provide access via 911 dialing to
10 all emergency services provided through the affected local government public service
11 access point (PSAP). DTI provides operator services through AT&T until September 1,
12 1998, when DTG becomes the operator services provider. Interstate (interLATA)
13 directory assistance is provided by Worldcom. Intrastate (or intraLATA) directory
14 service is from U S WEST. Long distance service is provided in the interstate (or
15 interLATA) jurisdiction by the presubscribed interexchange carrier (PIC). DTG
16 Communications, Inc. provides the intrastate (or intraLATA) service. Like all other
17 companies, DTI cannot provide toll control, but does provide toll blocking, which meets
18 the current FCC requirement for toll limitation. Finally, DTI will provide Lifeline
19 service and the Link Up program to eligible low-income consumers in the service area.

1 **Q. Does DTI advertise the availability and price of its services in the service**
2 **area using media of general distribution?**
3 **A.** Yes, it does. Attached as Exhibit A to my testimony are examples of that
4 advertising.
5 **Q. What is DTI's service area for purposes of an ETC designation?**
6 **A.** The service area should be limited to the area encompassed by the Viborg and
7 Centerville exchanges. I have attached as Exhibit B to my testimony an excerpt of the
8 FCC's Report and Order in CC Docket No. 96-45, as amended, dated June 4, 1997 (FCC
9 97-157). I have included pages 71 to 110, or paragraphs 127 to 198. The FCC has stated
10 in ¶¶ 186-191 of Exhibit B that universal service policy objectives may be best served if a
11 state defines a rural service area to consist only of the contiguous portion of a rural study
12 area, rather than the entire rural study area. The Viborg and Centerville service area is
13 not contiguous with the rest of Ft. Randall's study area in South Dakota. Also the
14 encouragement of the FCC in ¶¶ 189 and 190, regarding wireless service perhaps being
15 the most effective and efficient competitive provider in rural areas, is directly applicable
16 to DTI's wireless service to the more rural customers in the service area. Failure to grant
17 a service area limited to the contiguous area represented by the exchanges of Viborg and
18 Centerville would be a serious barrier to entry as stated in ¶ 190.
19 **Q. Can this Commission make this service area determination on its own?**
20 **A.** Yes, I believe so. In 47 U.S.C. § 214(e)(1), ETC status is for a "service area."
21 The language of 47 U.S.C. § 214(e)(5) defines a service area as a geographic area
22 established by this Commission for the purpose of determining universal service

1 support may go down.
2 As you're well aware here in South Dakota,
3 Western Wireless has filed a petition for it to become
4 an ETC for the entire state of South Dakota. There the
5 underlying theory of -- they're filing, I think,
6 without knowing the actual facts. But the underlying
7 theory seems to be is that wireless carriers can
8 provide service more cost-effectively in rural areas,
9 therefore, the amount of U.S.F. should go down,
10 therefore, they ought to be allowed to get some of it.
11 That certainly isn't a message the incumbents are going
12 to be happy with. But the point of the discussion is
13 here that these things are not locked in stone. They
14 do change with time. And we believe that we need to do
15 this at this time. The only way to get the ball
16 rolling is to give it a push.
17 MR. HOSECK: Thank you. No further
18 questions.
19 MS. WIEST: Commissioners?
20 COMMISSIONER SCHOENFELDER: Mr. Hertz, I have
21 some about the technology you deploy. Is it true that
22 you only have two customers that are wireless?
23 A. No. We have 17 customers that are wireless.
24 COMMISSIONER SCHOENFELDER: I needed to know
25 that. I also need -- but in these two exchanges?

Attachment C

RECEIVED

DEC 14 1998

MICHAEL J. BRADLEY

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

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

On June 4, 1998, the South Dakota Public Utilities Commission (Commission) received a filing from Dakota Telecom, Inc. (DTI) requesting designation as an eligible telecommunications carrier for the Centerville and Viborg exchanges in South Dakota.

The Commission electronically transmitted notice of the filing and the intervention deadline to interested individuals and entities on June 4, 1998, with an intervention deadline of June 19, 1998. Petitions to Intervene were received from Fort Randall Telephone Company (Fort Randall) and South Dakota Independent Telephone Coalition, Inc. (SDITC). Fort Randall and SDITC were granted intervention by Order dated August 5, 1998.

On August 7, 1998, the Commission issued an Order for and Notice of Hearing setting the hearing for September 14, 1998, commencing at 1:30 p.m., in Room 412 of the State Capitol, Pierre, South Dakota. The hearing was held as scheduled. The parties filed post-hearing briefs.

At its November 25, 1998, meeting, the Commission considered this matter. The Commission voted to deny DTI's request for designation as an eligible telecommunications carrier for the Centerville and Viborg exchanges (Commissioner Schoenfelder, dissenting).

Based on the evidence of record, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 4, 1998, the Commission received a request from DTI requesting designation as an eligible telecommunications carrier (ETC) for the Centerville and Viborg exchanges in South Dakota.

2. Fort Randall serves the exchanges of Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. Exhibit 3 at 3. As designated by the Federal Communications Commission (FCC), Fort Randall's study area consists of those seven exchanges and the one exchange served by Fort Randall's affiliate Mount Rushmore. Id. at 2.

3. Fort Randall is a rural telephone company as defined by 47 U.S.C. § 153(37). Consistent with 47 U.S.C. § 214(e)(5), the Commission designated Fort Randall's study area as its service area in Docket TC97-075.

4. Thomas Hertz, Chief Executive Officer of Dakota Telecommunications Group and its subsidiary DTI, stated that DTI offers the services supported by the federal universal service fund support mechanisms in the Centerville and Viborg exchanges using its own facilities. Exhibit 2 at 2. DTI provides telecommunications service through the use of fiber optic cable to the neighborhood node and coaxial cable to the premises. Id. DTI uses a fixed wireless system for telephone service outside the city limits of Centerville and Viborg. Id. at 3.

5. Mr. Hertz stated that the Commission could designate the Viborg and Centerville exchanges as DTI's service area. Id. at 4. DTI was not asking the Commission to change Fort Randall's service area. Tr. at 53.

6. DTI provides service in the Centerville and Viborg exchanges but offers no service in Fort Randall's Tabor, Tyndall, Wagner, Lake Andes, or Hermosa exchanges or in Mt. Rushmore's exchange. Exhibit 3 at 3.

7. The Commission finds that when designating a second ETC in a rural telephone company's service area, the second ETC must serve the entire service area of the rural telephone company. The Commission finds that this position is consistent with the Federal-State Joint Board on Universal Service's (Joint Board) and the FCC's interpretations of section 214(e).

8. The Joint Board recommended that current study areas of rural telephone companies be retained as the service areas in order to minimize "cream-skimming." FCC 96J-3, CC Docket No. 96-45, *Recommended Decision* (In the Matter of Federal-State Joint Board on Universal Service), released November 8, 1996, ¶ 172. If service areas were the same as study areas, the Joint Board recognized that competitors must then provide services throughout a rural telephone company's study area. Id. The FCC accepted the Joint Board's recommendation on this issue. FCC 97-157, *Report and Order*, (In the Matter of Federal-State Joint Board on Universal Service) released May 8, 1997, ¶ 189. The FCC noted that if required to provide services throughout a rural telephone company's study area, "the competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the ILEC's [incumbent local exchange carrier] ability to provide service throughout the area." Id. The FCC found that this would be consistent with its decision "to use a rural ILEC's embedded costs to determine, at least initially, that company's costs of providing universal service because rural telephone companies currently average such costs at the study-area level." Id.

9. The Commission finds that it would not be in the public interest to allow a competitive telephone company to be designated as a second ETC for a lesser service area than that

served by the rural telephone company. Designating a lesser service area for a competitive local exchange company may serve to undercut the incumbent rural telephone company's ability to provide services throughout its service area.

10. Since DTI does not currently serve Fort Randall's entire service area, the Commission denies DTI's request to designate DTI as an ETC for the Centerville and Viborg exchanges.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, and 49-31-78 and the federal Telecommunications Act of 1996, specifically 47 U.S.C. § 214(e).

2. Pursuant to SDCL 49-31-78, the Commission "shall designate a common carrier as an eligible telecommunications carrier for a service area designated by the Commission consistent with 47 U.S.C. § 214(e). . . ."

3. Fort Randall is a rural telephone company as defined by 47 U.S.C. § 153(37). Consistent with section 214(e)(5), the Commission designated Fort Randall's study area as its service area in Docket TC97-075.

4. For an area served by a rural telephone company, the Commission may not designate more than one ETC without finding that the additional designation is in the public interest. SDCL 49-31-78.

5. The Commission finds that it would not be in the public interest to allow a competitive telephone company to be designated as a second ETC for a lesser service area than that served by the rural telephone company. Since DTI does not currently serve Fort Randall's entire service area, the Commission denies DTI's request to designate DTI as an ETC for the Centerville and Viborg exchanges.

It is therefore

ORDERED, that DTI's request for designation as an ETC for the Centerville and Viborg exchanges is denied.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 11th day of December, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 11th day of December, 1998.

CERTIFICATE OF SERVICE

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: Delaine Kolbo

Date: 12/11/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner dissenting

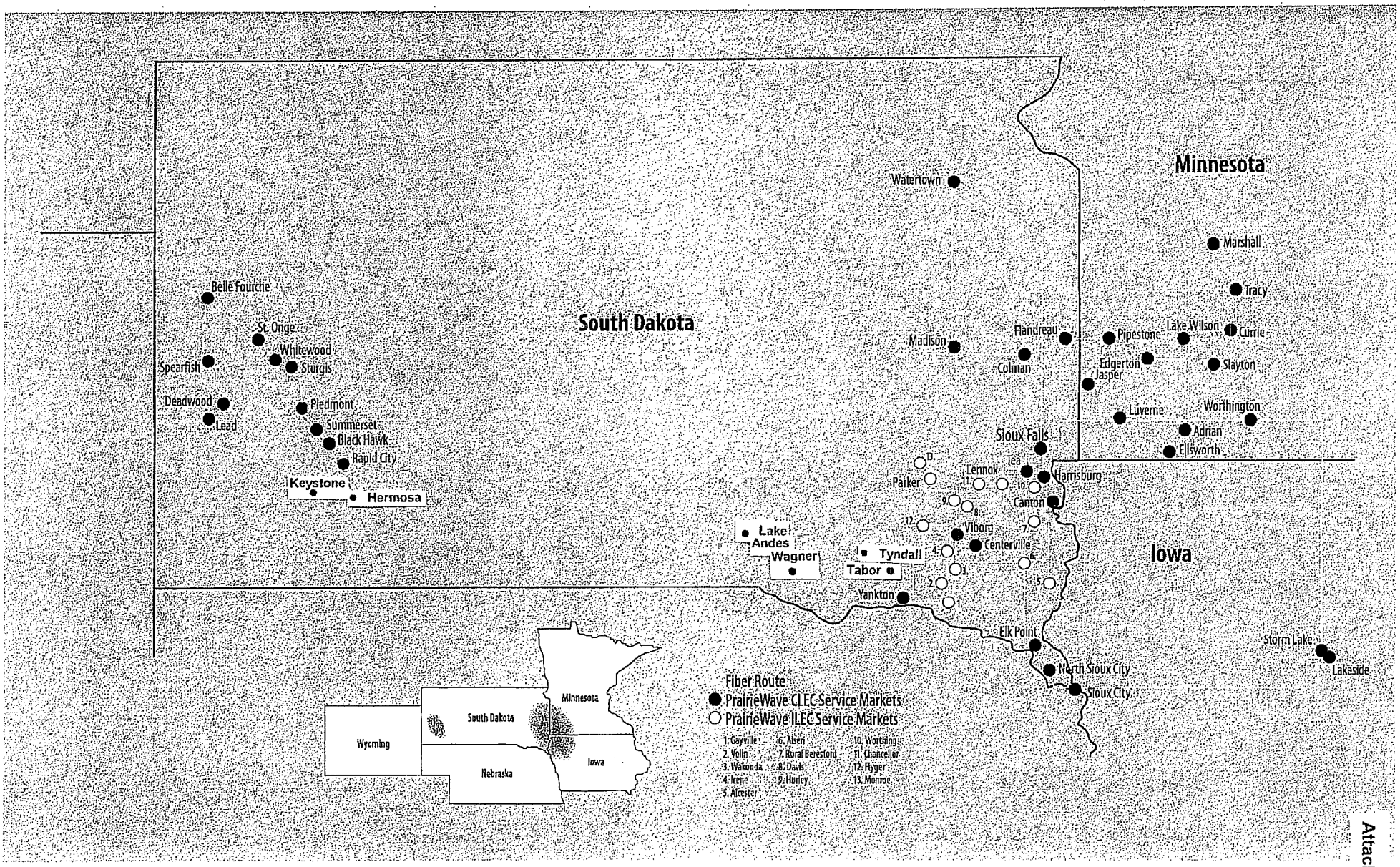
Attachment D

Exhibit B

PrairieWave Communications, Inc. (Falls Area)							
Host Switch Located in Viborg, SD						Host Switch located in Marshall, MN	
SD ILEC	Miles to Viborg	SD CLEC	Miles to Viborg	IA	Miles to Viborg	MN	Miles to Viborg
Beresford	22	Alcester	33	Storm Lake	154	Adrian	88
Burbank	46	Canton	34			Currie	137
Canistota	40	Centerville	9			Edgerton	96
Chancellor	19	Colman	74			Lake Wilson	113
Davis	10	Elk Point	51			Luverne	75
Freeman	31	Flandreau	84			Marshall	139
Gayville	25	Harrisburg	38			Pipestone	95
Hudson	35	Madison	63			Slayton	134
Humboldt	36	North Sioux City	66			Tracy	139
Hurley	8	Sioux Falls	44			Worthington	106
Irene	10	Tea	32				
Lennox	23	Viborg					
Marion	25	Watertown	143				
Meckling	25	Yankton	37				
Merino	30						
Mission Hill	31						
Monroe	28						
Parker	18						
Vermillion	34						
Volin	20						
Wakonda	12						
Worthing	27						

PrairieWave Communications, Inc. f/k/a Black Hills FiberCom, LLC(Hills Area)							
Host Switch Located in Rapid City, SD							
		Community		Miles to Rapid City			
		Rapid City					
		Blackhawk		9			
		Piedmont		15			
		Sturgis		29			
		Whitewood		37			
		Spearfish		48			
		Belle Fourche		60			
		Lead		45			
		Deadwood		42			

Attachment E



Attachment E

Attachment F

(4) This paragraph does not apply to support distributed pursuant to subpart F of this part.

(b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term *facilities* means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term "facilities" under this subpart.

(g) A state commission shall not require a common carrier, in order to satisfy the requirements of paragraph (d)(1) of this section, to use facilities that are located within the relevant service area, as long as the carrier uses facilities to provide the services designated for support pursuant to subpart B of this part within the service area.

(h) A state commission shall designate a common carrier that meets the requirements of this section as an eligible telecommunications carrier irrespective of the technology used by such carrier.

(i) A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2125, Jan. 13, 1998; 64 FR 62123, Nov. 16, 1999]

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(1) Modifying or replacing the requesting customer's equipment;

(2) Deploying a roof-mounted antenna or other equipment;

(3) Adjusting the nearest cell tower;

(4) Adjusting network or customer facilities;

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under § 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier 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 eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority,

as applicable, by overnight express mail.

[70 FR 29978, May 25, 2005]

EFFECTIVE DATE NOTE: At 70 FR 29978, May 25, 2005, § 54.202 was added. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Manangement and Budget.

§ 54.203 Designation of eligible telecommunications carriers for unserved areas.

(a) If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(b) Any carrier or carriers ordered to provide such service under this section shall meet the requirements of section 54.201(d) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

§ 54.205 Relinquishment of universal service.

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

(b) Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

§ 54.207 Service areas.

(a) The term *service area* means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.

(b) In the case of a service area served by a rural telephone company, *service area* means such company's "study area" unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.

(c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State

Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission shall issue a Public Notice of any such petition within fourteen (14) days of its receipt.

(3) The Commission may initiate a proceeding to consider the petition within ninety (90) days of the release date of the Public Notice.

(i) If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(ii) If the Commission does not act on the petition within ninety (90) days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.

(d) The Commission may, on its own motion, initiate a proceeding to consider a definition of a service area served by a rural telephone company that is different from that company's study area. If it proposes such different definition, the Commission shall seek the agreement of the state commission according to this paragraph.

(1) The Commission shall submit a petition to the state commission according to that state commission's procedures. The petition submitted to the relevant state commission shall contain:

(i) The definition proposed by the Commission; and

(ii) The Commission's decision presenting its reasons for adopting the proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission's proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(e) The Commission delegates its authority under paragraphs (c) and (d) of this section to the Chief, Wireline Competition Bureau.

[62 FR 32948, June 17, 1997, as amended at 67 FR 13226, Mar. 21, 2002]

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

(1) A progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

(2) Detailed information on any outage, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the eligible telecommunications carrier's

service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in §54.202(a)(1)(i);

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in §54.201(a)(2);

(7) Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

[70 FR 29978, May 25, 2005]

EFFECTIVE DATE NOTE: At 70 FR 29978, May 25, 2005, §54.209 was added. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Manangement and Budget.

Subpart D—Universal Service Support for High Cost Areas

§54.301 Local switching support.

(a) *Calculation of local switching support.* (1) Beginning January 1, 1998, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: the carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter.

(2) *Local switching support factor.* (i) The local switching support factor shall be defined as the difference between the 1996 weighted interstate DEM factor, calculated pursuant to §36.125(f) of this chapter, and the 1996 unweighted interstate DEM factor.

(ii) If the number of a study area's access lines increases such that, under §36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

(3) Beginning January 1, 1998, the sum of the unweighted interstate DEM factor, as defined in §36.125(a)(5) of this chapter, and the local switching support factor shall not exceed 0.85. If the sum of those two factors would exceed 0.85, the local switching support factor shall be reduced to a level that would reduce the sum of the factors to 0.85.

(b) *Submission of data to the Administrator.* Each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account listed

CERTIFICATE OF SERVICE

I, Dawn Haase, on the 18th day of May, 2006, served the attached **Stipulation of Facts in Docket No. TC-05-016** by email and UPS overnight mail to:

Patricia Van Gerpen, Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and via email and U. S. mail to the persons indicated at the addresses below.

Michael J. Bradley
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Rich Coit
Executive Director and General Counsel
South Dakota Telecommunications Association
320 East Capitol Avenue
PO Box 57
Pierre, SD 57501-0057

Dawn Haase

RECEIVED
SEP 11 2006
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
Elec. Filed 9/8/06

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

SUPPLEMENTAL STIPULATION OF FACTS

IMPACT OF LOST LINES ON SUPPORT TO FORT RANDALL, AN AVERAGE SCHEDULE COMPANY

Fort Randall receives its support on a total company basis as an average schedule company. In order to identify the impact of having two LEC ETCs it is necessary to first assume that the only change that will happen going forward is that Prairie Wave will capture lines from Fort Randall. All else is assumed to remain unchanged. Currently: Fort Randall receives $15.34 per line-per-month – comprised of:

High Cost Support
Interstate Common Line Support (ICLS)
Local Switching Support

The loss of lines would have the following impact on support received by Fort Randall, assuming that PrairieWave captured an additional 200 access lines (43% of the out-of-town customers or 18.9% of Fort Randall's ~~total line count in Centerville and Viborg;~~ 3.05 % of For Randall's total study area line count):

High Cost Loop: Fort Randall would lose approximately 55% of the High Cost Support revenue, or $2.22 per line previously received if it lost 200 lines.

Interstate Common Line Support (ICLS): The actual cash flow that Fort Randall receives for ICLS support is included in the monthly CL settlement that Ft Randall receives from the NECA Pool. Assuming all else remains unchanged, Ft. Randall would loose approximately 76 % of the CL settlement previously received for the lost lines or $12.14 per line if it lost 200 lines.

Local Switch support: The actual cash flow that Fort Randall receives for Local Switching Support is included in the monthly Local Switch Settlement that Ft. Randall receives from the NECA pool. Assuming all else remains unchanged and that the lost lines had average toll minutes associated with them, Ft. Randall would loose approximately 37% of the Local Switch Settlement previously received for the lost lines, or $4.86 per line if it lost 200 lines.

The ICLS and Local Switch support are paid to NECA, and because of the way that NECA pays settlements to average schedule companies, Fort Randall will lose revenues of $19.22 per line, assuming a loss of 200 lines, which is more than the current per-line support. The annual lost revenues for these three support categories would be approximately $46,000 out of approximately $422,774 in interstate settlements for Centerville and Viborg, which is 10.9% of the amount now provided to Fort Randall for serving those exchanges; and 1.76% of the total interstate settlements (approximately $2.6 million) received by Fort Randall for serving the entire study area.

Respectfully submitted this 8th day of September, 2006.

By: _____
William P. Heaston

PrairieWave Telecommunications, Inc.
5100 South Broadband Lane
Sioux Falls, SD 57108
(605) 965-9894

Its Attorney

By: _____
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The ICLS and Local Switch support are paid to NECA, and because of the way that NECA pays settlements to average schedule companies, Fort Randall will lose revenues of $19.22 per line, assuming a loss of 200 lines, which is more than the current per-line support. The annual lost revenues for these three support categories would be approximately $46,000 out of approximately $422,774 in interstate settlements for Centerville and Viborg, which is 10.9% of the amount now provided to Fort Randall for serving those exchanges; and 1.76% of the total interstate settlements (approximately $2.6 million) received by Fort Randall for serving the entire study area.

Respectfully submitted this 8th day of September, 2006.

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