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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

April 11, 2006

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

RE: Motion to Dismiss AT&T's Counterclaim and  
For Summary Judgment on PrairieWave's Complaint  
Docket No. CT-5-007

Dear Ms. DeCook:

On behalf of PrairieWave Telecommunications, Inc., enclosed please find an original and four (4) copies of the Motion to Dismiss AT&T's Counterclaim and For Summary Judgment on PrairieWave's Complaint.

Should you have any questions, please contact William P. Heaston at 605-965-9894 or [bheaston@prairiewave.com](mailto:bheaston@prairiewave.com).

Sincerely,

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

Dawn Haase  
Legal Assistant  
PrairieWave Communications, Inc.  
605-965-9368

Enclosures  
cc: Service List

**CERTIFICATE OF SERVICE**

I, Dawn Haase, on the 11<sup>th</sup> day of April, 2006, on behalf of PrairieWave Telecommunications, Inc. served the attached Motion to Dismiss AT&T's Counterclaim and For Summary Judgement on PrairieWave's Complaint, Docket CT05-007, via UPS overnight mail to:

Ms. Patricia Van Gerpen, Executive Director  
SD Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501


And via USPS First Class Mail to:

Rebecca B. DeCook, CO #14590  
Holland & Hart LLP  
8390 E. Crescent Parkway, Suite 400  
Greenwood Village, CO 80111-2800

Letty S D Friesen  
AT&T  
919 Congress Ave., Ste 900  
Austin, TX 78701

William Van Camp  
Olinger, Lovald, McCahren & Reimers, P.C.  
117 East Capitol  
PO Box 66  
Pierre, SD 57501-0066

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Dawn Haase

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

<b>In the Matter of the Complaint filed by PrairieWave Telecommunications, Inc. against AT&amp;T Communications of the Midwest, Inc. Regarding Access Charges</b>	) ) ) )
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Docket No. CT05-007

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**Motion to Dismiss AT&T's Counterclaim  
and  
For Summary Judgment on PrairieWave's Complaint**

**I. Introduction**

On November 21, 2005, PrairieWave Telecommunications, Inc. ("PrairieWave") filed with the Commission its complaint against AT&T Communications of the Midwest, Inc. ("AT&T") for AT&T's failure to pay bills for intrastate access services provided by PrairieWave. Attached as Exhibit 1 is a spreadsheet detailing AT&T's persistent failure to pay its intrastate access bills. The amount in arrears as of the April 2006 invoices is \$114,650.41, plus late fees of \$9,562.69, for a total of \$124,213.10. Certainly, AT&T does not contend that PrairieWave is entitled to nothing for its intrastate access services and its failure to pay any amount is unfair, unconscionable and in violation of South Dakota law.<sup>1</sup>

AT&T replied to the complaint on December 15, 2005, setting forth a denial to all material allegations, claiming defenses of no merit, and asserting a counterclaim with no factual or legal bases. PrairieWave responded to the counterclaim on December 30, 2005. On March 27, 2006 the Commission held a prehearing conference. The schedule is dependent on the filing of these motions.

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<sup>1</sup> AT&T has paid in full to-date all invoices from PrairieWave Community Telephone, Inc., PrairieWave's ILEC sibling subsidiary, for the same intrastate switched access services. After lengthy review, the Commission approved the ILEC's cost study and rates on December 17, 2004 in Docket No. TC04-097. Those rates went into effect in tariffs filed with the Commission effective December 30, 2004. The ILEC rates were determined based on the same cost rules used by PrairieWave in this instance.

## II. Facts

PrairieWave came into being on September 30, 2002 through the acquisition of McLeodUSA Telecom Development Inc. (“MTDI”). The Commission approved that acquisition on August 20, 2002 in Docket No. TC02-062. Prior to the close of that acquisition, MTDI filed a petition for approval of interstate switched access rates pursuant to ARSD ¶ 20:10:27:07, which requires a filing of cost-based rates every three years. The filing asked for an exemption of the cost rules as allowed by ARSD ¶ 20:10:27:11 and to mirror Qwest’s access rates. On April 19, 2002, the Commission approved the petition and request to mirror Qwest’s rates on the condition that MTDI, within three years of the date of the order, file a petition to renew the exemption or file cost-based rates as required by ARSD ¶ 20:10:27:11. The Commission published its notice of the petition on February 20, 2002 with an intervention deadline of March 8, 2002. AT&T did not file to intervene in that proceeding or in any manner contest the request for exemption or the mirroring of Qwest’s rates.

On June 29, 2004, within the mandated three year period, PrairieWave filed a switched access cost study consistent with the Commission’s cost rules in ARSD Chapters 20:10:01:27 through 20:10:01:29. The Commission noticed the filing on June 30, 2004 with an intervention deadline of July 16, 2004. The Commission established Docket No. TC04-115 to review the costs and resulting rates. AT&T did not file to intervene in the docket.<sup>2</sup> AT&T did not avail itself of the opportunity afforded by the docket to review PrairieWave’s costs, staffs review and comments, or the level of prices filed in the tariff. After extensive staff review, including responses to numerous staff

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<sup>2</sup> The Commission also noticed the assessment of a filing fee against PrairieWave, which was approved by the Commission at its regularly scheduled meeting on August 17, 2004.

data requests, the Commission approved the cost study results as adjusted by staff recommendations, and the tariff prices, effective December 29, 2004. The Commission specifically found that the switched access rates were fair and reasonable. As demonstrated in Exhibit 1, AT&T paid the PrairieWave's tariffed rates until May 2005, when it stopped paying altogether.

During the period of June 23 to July 1, 2004, numerous other local exchange companies filed cost studies for Commission approval.<sup>3</sup> Those cost dockets were noticed for intervention on either July 16 or July 23, 2004. No one filed to intervene in those dockets within the specified time. Those dockets are still open. On September 19, 2005, AT&T sought to intervene in those dockets. The intervention was filed more than one year late. The Commission denied those interventions on October 4, 2005 because AT&T did not timely file. AT&T will not be able to challenge the cost studies or whatever rates are reviewed and approved by the Commission in those dockets.

### **III. Argument**

#### **A. The counterclaim fails to state a claim of any violation of South Dakota law or regulation.**

AT&T stated defenses and counterclaim completely ignore the reality of the legal and regulatory environment in South Dakota for the charging of intrastate switched access services. The Commission regulates switched access rates under SDCL § 49-31-19, which requires PrairieWave file its access tariffs with the Commission consistent with the provisions of SDCL § 49-31-12.4<sup>4</sup> for Commission approval. The Commission has the authority under SDCL § 49-31-18 to promulgate rules to insure that PrairieWave

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<sup>3</sup> See dockets numbered TC04-104, 106 to 108, 111-112, 114, 116-125.

<sup>4</sup> The provisions of SDCL 49-31-12.4 apply because PrairieWave is a company subject to exemptions under SDCL § 49-31-5.1 and switched access is a noncompetitive service by operation of SDCL § 49-31-1.1(6).

provides “access facilities at reasonable rates and to enhance and preserve universal service.” The Commission’s promulgated such rules in ARSD 20:10:27 through 20:10:29 effective January 31, 1993.

As described above PrairieWave has faithfully filed its switched access rates as required by statute and in accordance with the Commission’s rules. The Commission published its order approving the rates as reasonable and in effect, those rates are presumed valid.<sup>5</sup> The Commission’s rules establish a three-year period during which those rates are in effect before PrairieWave must either file new cost studies<sup>6</sup> or request an exemption.<sup>7</sup> This three-year period is established by Commission rule to provide an orderly review of a company’s costs and provide predictability and stability for the industry, both PrairieWave and AT&T, to plan and forecast costs and revenues. The hiatus in reviewing costs and rates is not indeterminable. AT&T and PrairieWave know what the rates are and that there will be a mandated review of those rates at least every three years in which AT&T can participate.

The Commission has opened a rulemaking proceeding to consider changes to the rules.<sup>8</sup> In that rulemaking AT&T can seek to alter that time period or suggest any changes it deems appropriate in how costs are determined. Under current law PrairieWave will have to file new cost studies or file for an exemption in 2007. AT&T

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<sup>5</sup> SDCL § 49-31-12.1 states, “any tariff . . . approved pursuant to § . . . 49-31-12.4 or 49-31-12.5, shall be received in evidence as the official tariff on file with the commission . . . .” This section also states that in any claim brought against PrairieWave the tariff constitutes, “prima facie evidence that the rates or prices approved thereby are *fair and reasonable*.” Emphasis added. *See also*, SDCL § 49-13-16.

<sup>6</sup> ARSD ¶20:10:27:07. The specific language requires PrairieWave to, “file cost data in support of its switched access service tariff *no less than once every three years*.” Emphasis added. The rule goes on to state the only the Commission, “may change or revise any switched access rate or price in accordance with SDCL 49-31-12 and 49-31-12.4.” This means only the Commission on its own initiative or PrairieWave by filing new rates can seek to review and change rates already approved by the Commission.

<sup>7</sup> ARSD ¶ 20:10:27:11.

<sup>8</sup> Docket No. RM05-002.

will have an opportunity to challenge the rates at that time, an opportunity it declined to take advantage of in 2004.

**B. The tariffed rates approved as reasonable by the Commission must be paid by AT&T until such time as the rates are changed in accordance with applicable law.**

PrairieWave is required by South Dakota law to file its intrastate switched access rates in a tariff approved by the Commission.<sup>9</sup> The approved tariff and the accompanying rates become law and exclusively govern the rights and obligations of PrairieWave and its access customers like AT&T.<sup>10</sup> This is known as the filed rate or filed tariff doctrine.<sup>11</sup> The purpose of the filed rate doctrine is to preserve the Commission's authority to determine the reasonableness of rates and to insure that PrairieWave charges only those rates that the agency has approved or been made aware of as the law requires.<sup>12</sup> The doctrine requires PrairieWave to charge the approved tariff rate and AT&T to pay that rate.<sup>13</sup> The right to a reasonable rate is the right to the rate that this Commission fixes.<sup>14</sup> For the filed rate doctrine to serve its purpose, it must preempt those suits or actions that seek to alter the terms and conditions provided for in the tariff.<sup>15</sup>

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<sup>9</sup> SDCL § 49-31-19 and 49-31-12.4.

<sup>10</sup> *AT&T v. Central Office Tel.*, 524 U.S. 214, 118 S.Ct. 1956, 141 L.Ed.2d 222 (1998); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 101 S.Ct. 2925, 69 L.Ed. 2d 856 (1981); *Hill v. Bell South*, 364 F.3d 1308 (11<sup>th</sup> Cir. 2004); *Evanns v. AT&T Corp.*, 229 F.3d 837 (9<sup>th</sup> Cir. 2000); *Southwestern Bell Telephone L.P., et al. v. Global Crossings LTD., et al.*, 2006 U.S. Dist. LEXIS 4655, p. 3 (February 7, 2006).

<sup>11</sup> The doctrine is expressly, repeatedly and succinctly stated in SDCL §§ 49-31-12, 49-31-12.1, 49-31-12.4, 49-31-12.5, 49-31-18 and 49-31-19, and the rules in ARSD chapters 20:10:27 through 20:10:29.

<sup>12</sup> *Qwest Corporation v. Scott*, 380 F. 3d 367, 375 (citing *H.J. v. Northwestern Bell Tel. Co.*, 954 F.2d 1173, 1179 (8<sup>th</sup> Cir. 1992)).

<sup>13</sup> *Evanns*, 229 F.3d at 841, citing *Louisville & Nashville R. R. Co. v. Maxwell*, 237 U.S. 94, 97-98, 59 L.Ed. 853, 35 S.Ct. 494 (1915).

<sup>14</sup> *Arkansas Louisiana Gas Co.*, 524 U.S. at 577.

<sup>15</sup> *Bell South*, 364 F.3d at 1315; *Hill v. MCI WorldCom*, 141 F. Supp.2d 1205 (S.D. Iowa 2001) (citing Rehnquist, C.J. in *Central Office*, 524 U.S. at 230).

The filed rate doctrine is embodied in South Dakota statute and Commission rules. As evidenced by the facts and circumstances in the cited legal authorities, AT&T is well aware of the filed rate doctrine and has successfully used that doctrine to its advantage.<sup>16</sup> AT&T has no excuse for not paying the approved, fair and reasonable charges in PrairieWave's tariff.<sup>17</sup>

**C. PrairieWave's approved and tariffed rates, aside from operation of the filed rate doctrine, are res judicata as to AT&T.**

The doctrine of res judicata prevents the relitigation of issues actually litigated *or which could have been properly raised and determined* in a prior action.<sup>18</sup> "At the heart of res judicata is the effort to 'preclude parties from contesting matters that they have had a full and fair opportunity to litigate.'"<sup>19</sup> Res judicata is premised on the maxims that PrairieWave should not be "twice vexed" for the same cause and public policy is best

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<sup>16</sup> In the interstate jurisdiction for switched access rates, the FCC was asked by a federal district court whether AT&T could refuse to provide service where it thought access charges were too high. *In the Matter of AT&T and Sprint Petitions for Declaratory Ruling on CLEC Access Charge Issues*, Declaratory Ruling, 16 FCC Rcd 19158 (rel. Oct. 22, 2001). The refusal to provide service has a flip side - the refusal to pay. The FCC made it clear that where tariffed rates are presumed lawful, there can be no refusal to serve nor a refusal to pay for such services. *Id.* at 19161, PP 8-10, at 19162-63, PP 14-15.

<sup>17</sup> The PrairieWave access rate, as approved by the Commission, is \$.068621 per minute of use ("MOU"). The Qwest Corporation ("Qwest") (fka U S West Communications, Inc.) access rate, according to AT&T, is about \$.06 per MOU. The last Qwest cost study was filed in 1996 (Docket No. TC96-107) and after extensive litigation a phase-in to a rate of \$.060905 by December 1, 1999 was approved (*In the Matter of the Establishment of Switched Access Rates for U S West Communications, Inc.*, Findings of Fact Conclusions of Law, Order and Notice of Entry of Order, TC96-107 (Nov. 24, 1997); *see also, In the Matter of the Establishment of Switched Access Rates for U S West Comm. v. AT&T Communications of the Midwest*, 618 N.W.2d 847 (SD 2000)). Qwest has not filed a cost study since then. In its most recent filing on January 20, 2005 (Docket TC05-002), Qwest claimed that a preliminary analysis indicated an increase in rates was appropriate, but it applied for and was granted a cost study waiver to allow existing rates to remain in effect for the next three years (*In the Matter of the Request by Qwest Corporation for a Waiver of a Requirement to file a Switched Access Cost Study*, Order Granting the Waiver Request, TC05-006 (Mar. 17, 2005). The difference between the Qwest rate and the PrairieWave rate is not significant give the relative differences in size, coverage and customer base.

<sup>18</sup> *Frigaard v. Seffens*, 599 N.W.2d 646, 648 (SD 1999) (emphasis added) (citing *SDDS, Inc. v. State*, 569 N.W.2d 289, 295 (SD 1997) and *Hogg v. Siebrecht*, 464 N.W.2d 209, 211 (SD 1990); *Bank of Hoven v. Rausch*, 449 N.W.2d 263, 266 (SD 1989) ("Res judicata, on the other hand, precludes relitigation of an issue actually litigated *or which could have been properly raised and determined in a prior action.*") (emphasis in the original). *See also, Barnes v. Matzner*, 661 N.W.2d 372 (SD 2003).

<sup>19</sup> *Id.* (citing *Risse v. Meeks*, 585 N.W.2d 875, 880 (SD 1998)), (quoting *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979)).



served when litigation has finality.<sup>20</sup> There are four factors to be met: (1) whether the issue raised by AT&T is the same decided by the Commission previously in Docket TC05-007; (2) whether the decision and order in TC05-007 is a final judgment on the merits; (3) whether AT&T was a party to, or could have been a party to the proceedings in TC05-007;<sup>21</sup> and (4) whether there was a full and fair opportunity to litigate issues in the docket.<sup>22</sup>

The one issue raised by AT&T is the reasonableness of PrairieWave's switched access rates. It is the identical issue the Commission considered and decided in Docket TC04-115, and the Commission determined the rates to be fair and reasonable. AT&T *could have intervened in this proceeding* and litigated the reasonableness of the costs and the rates – it did not.

There is a final order from the Commission on the issue of fairness and reasonableness dated December 29, 2004. The Commission investigated PrairieWave's cost study and proposed rates. AT&T *could have been part of that investigation* – it declined to participate. The Commission specifically states, “the Commission found that the revised switched access rates are fair and reasonable and should be approved.”<sup>23</sup> The Commission then issued its “final decision” and ordered “PrairieWave's revised switched

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<sup>20</sup> *Black Hills Jewelry Mfg. Co. v. Felco Jewel Indus.*, 336 N.W. 153, 157 (SD 1983) (citations omitted).

<sup>21</sup> The Commission must look beyond any named parties in the docket and treat all those whose interests are involved in the litigation. *Id.* “An exception to the general rule that the doctrine of res judicata does not bind strangers to a judgment exists in the case of persons . . . derivatively responsible ‘at least where there has been *notice to the third person and an opportunity to defend . . .*’” *Nite Owl Corp. v. Management Services, Inc.*, 173 N.W.2d 451 (SD 1970) (emphasis added).

<sup>22</sup> *Frigaard*, 599 N.W.2d at 648 (citing *Springer v. Black*, 520 N.W.2d 77, 79 (SD 1999)).

<sup>23</sup> *In the Matter of the Establishment of Switched Access Rates for PrairieWave Telecommunications, Inc.*, Order Approving Switched Access Rates, TC04-115 (Dec. 29, 2004).

access rates are hereby approved, effective the date of this order.”<sup>24</sup> This is a final judgment on the merits of the switched access costs and rates.

AT&T had a full and fair opportunity to participate in the docket and litigate the fairness and reasonableness of the rates. The Commission provided notice to all interested parties of PrairieWave’s filing of its cost study. AT&T had notice of that filing. *AT&T could have been a party to the review of PrairieWave’s costs and rates* – AT&T chose not to participate.

AT&T has intervened in numerous dockets before this Commission on the issue of switched access rates. It participated in the 1992 rulemaking that established the Commission’s cost study methodology utilized in this docket. It participated and extensively litigated the last Qwest cost study filing in Docket TC96-007 and the two appeals to circuit court. AT&T had notice of the proceedings in Docket TC04-115, and if it had wanted to become involved, it knew how to do so. AT&T cannot now at this late date change its mind and seek to challenge what it could have fully and legitimately challenged in 2004.<sup>25</sup>

**D. The Commission should summarily dismiss AT&T’s counterclaim.**

South Dakota law states that summary judgment “shall be rendered forthwith” if there is no genuine issue as to any material fact and PrairieWave is entitled to a judgment as a matter of law (SDCL § 15-6-56(c)). A review of the documentation filed by both parties in this docket reveals that there is certainly no dispute over any fact, let alone a material fact. PrairieWave filed its cost study and proposed switched access rates as it

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<sup>24</sup> *Id.*

<sup>25</sup> This is similar to AT&T’s late-filed intervention in the dockets described in footnote 3, *supra*. There are appropriate due process procedures that must be followed, among them notice and an opportunity become an interested party if qualified. The failure to intervene in a timely manner has consequences.

was required to do by law. The Commission properly noticed the filing and set a date for intervention. AT&T did not intervene, nor did any other third party. The Commission reviewed the costs and after several revisions of the study, the costs and rates were found by the Commission to be fair and reasonable. PrairieWave filed the approved rates in its South Dakota access services tariff effective December 29, 2004.

AT&T paid those revised rates for several months through March 2005. AT&T has not paid on PrairieWave switched access bills starting with bills for April 2005 usage. The amount owed through April 2006 (March 2006 usage) is \$114,650.41, plus late fees of \$9,562.69, for a total of \$124,213.10.<sup>26</sup>

The law, as discussed above, is equally clear. South Dakota law requires AT&T to pay PrairieWave's tariffed rates so long as those rates are in effect as properly approved by the Commission. The reasonableness of those rates is established by Commission order, and by law the rates are presumed fair and reasonable until changed as provided for by law. There is no legal basis for AT&T to utilize self-help by not paying the PrairieWave's switched access rates.<sup>27</sup> There is no legal basis for AT&T to now challenge the reasonableness of the rates, that opportunity was lost when AT&T knowingly and willingly did not intervene in proceedings where the cost study was reviewed, revised, and approved.

As a matter of law PrairieWave is entitled to be paid its tariffed rates.

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<sup>26</sup> The exhibit contains an amount that was just billed in April 2006 for March 2006 usage. AT&T has not had time to pay that bill but give its track record to date, the Commission will have to order that bill and all future bills be paid.

<sup>27</sup> Approved tariffs become state law. See citations in footnote 10, *supra*. A willful failure to pay a lawful tariffed rate is a violation of state law.

**E. AT&T should be sanctioned for its willful and continuing misconduct.**

SDCL § 49-31-3 provides that AT&T's certificate of authority to provide IXC service granted by the Commission may be suspended or revoked for willful violations of South Dakota law, a willful failure to comply with rules or orders of the Commission, or other good cause. ARSD ¶¶ 20:10:24:04.02 through 20:10:24:04.04 implement that statute. Additionally, SDCL § 49-13-14 allows the Commission to determine the extent of any damages sustained by PrairieWave and award money damages to be paid on or before a date certain.

PrairieWave has not received revenues for services provided for almost a year of about \$10,000 per month. AT&T is an enormously large company and is getting larger as we write this motion.<sup>28</sup> PrairieWave is an energetic and dedicated competitive provider of local exchange and broadband services. AT&T did not even try to challenge the rates PrairieWave charges – not at the time the Commission opened a docket for consideration of the costs and rates, and not over the past year as AT&T continually failed to pay its bills. PrairieWave had to file a complaint with this Commission seeking to compel payment of its lawful switched access charges before AT&T claimed that the charges are unreasonable. When AT&T does not pay its bills, leaving PrairieWave with an unexpected and unwarranted revenue shortfall, it jeopardizes PrairieWave's ability to provide local exchange and broadband services to its customers. Not only does it become difficult to meet current expenses, but it makes it ever more problematic to invest in network upgrades and new services needed by PrairieWave's rural customers.

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<sup>28</sup> AT&T has regained at least half of its pre-divestiture, local exchange market with the combination of regional Bell operations of Southwestern Bell, Ameritech, Pacific Telesis, and soon to be acquired Bell South, in addition to all of the IXC markets where the AT&T brand is present.

AT&T should not benefit from its unlawful actions. The Commission should consider suspending AT&T's certificate as an IXC for some period of time and should require AT&T to pay not only the tariffed late fees, but also interest on the debt to reimburse PrairieWave for the loss of the use of the those funds for a year.

**IV. Request for Relief**

Accordingly, PrairieWave requests the following:

1. AT&T's counterclaims be dismissed with prejudice;
2. PrairieWave's complaint be granted and AT&T ordered to pay all amounts owned to date, including late fees and interest, and to continue to pay PrairieWave's lawfully tariffed rates; and
3. The Commission open a docket to consider suspending AT&T's certification as an IXC.

Respectfully submitted this 11<sup>th</sup> day of April, 2006.

**PrairieWave Telecommunications, Inc.**



William P. Heaston  
General Counsel  
5100 South Broadband Lane  
Sioux Falls, SD 57108

Its Attorney

cc: Service List

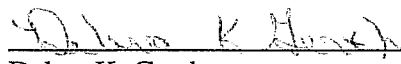
## AFFIDAVIT

I, Debra K. Gerth, Access Billing Analyst for PrairieWave Communications, Inc. located at 5100 South Broadband Lane, Sioux Falls, SD 57108, having been duly sworn, states as follows:

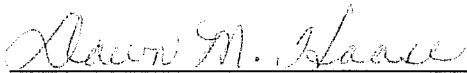
1. As PrairieWave's Access Billing Analyst, I prepare the invoices to bill all interexchange carriers ("IXC") for PrairieWave Telecommunications Inc.'s ("PrairieWave") inter and intrastate switched access services. The intrastate switched access rates charged on the invoices for South Dakota customers of PrairieWave are the same rates as are found in PrairieWave's South Dakota Access Tariff No. 1, effective December 29, 2004 on file with the South Dakota Public Utilities Commission ("Commission").

2. AT&T Communications of the Midwest, Inc. ("AT&T") is an IXC customer of PrairieWave's intrastate switched access services. Each month I prepare and mail to AT&T a bill for those services. Attached to this affidavit is a spreadsheet (Exhibit 1) detailing the amounts billed and the amounts paid from February 1, 2004 to April 1, 2006. At all times during this period, PrairieWave has had on file with the Commission and in effect tariffs for its switched access services. Beginning with invoices for May 2005, AT&T has not paid on those invoices.

This completes my affidavit.

  
\_\_\_\_\_  
Debra K. Gerth  
Access Services Analyst

Subscribed and sworn to before me this 11<sup>th</sup> day of April, 2006.

  
\_\_\_\_\_  
Notary Public

*My commission expires 6/15/2010.*

# Exhibit 1

<b>Exhibit 1</b>					
as of 04-06-06					
<b>7040288D</b>					
Inv. Date	Intra owed	Payment or Adjustment Received	Late Fees	Total Due	
02-01-04	\$ 11,695.36	\$ (11,695.44)	\$ -	\$ (0.08)	
03-01-04	\$ 11,259.42	\$ (11,259.63)	\$ -	\$ (0.21)	
04-01-04	\$ 11,916.33	\$ (11,837.40)	\$ 33.92	\$ 112.85	
05-01-04	\$ 10,117.79	\$ (10,043.64)	\$ 30.30	\$ 104.45	
02-01-05	\$ 8,216.00	\$ (8,215.91)	\$ 0.02	\$ 0.11	
04-01-05	\$ 8,578.91	\$ (7,488.61)	\$ 211.76	\$ 1,302.06	
05-01-05	\$ 8,082.62	\$ -	\$ 1,428.07	\$ 9,510.69	
06-01-05	\$ 7,993.15	\$ -	\$ 1,274.17	\$ 9,267.32	
07-01-05	\$ 8,559.63	\$ -	\$ 1,218.78	\$ 9,778.41	
08-01-05	\$ 9,017.07	\$ -	\$ 1,132.66	\$ 10,149.73	
09-01-05	\$ 9,795.46	\$ -	\$ 1,068.55	\$ 10,864.01	
10-01-05	\$ 9,622.66	\$ -	\$ 893.00	\$ 10,515.66	
11-01-05	\$ 9,627.39	\$ -	\$ 738.98	\$ 10,366.37	
12-01-05	\$ 9,044.29	\$ -	\$ 551.24	\$ 9,595.53	
2005 Total	\$ 133,526.08	\$ (60,540.63)	\$ 8,581.45	\$ 81,566.90	
01-01-06	\$ 9,808.65	\$ -	\$ 445.05	\$ 10,253.70	
02-01-06	\$ 13,463.07	\$ -	\$ 404.21	\$ 13,867.28	
03-01-06	\$ 8,857.26	\$ -	\$ 131.98	\$ 9,989.24	
04-01-06	\$ 9,535.98	\$ -	\$ -	\$ 9,535.98	
2006 Total	\$ 41,664.96	\$ -	\$ 981.24	\$ 42,646.20	
Total due with out late fees				\$ 114,650.41	
add late fees				\$ 9,562.69	
total due				\$ 124,213.10	