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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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February 10, 2005

VIA FEDERAL EXPRESS

Pam Bonrud
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol
Pierre, South Dakota 57501

Re: In the Matter of the Application of PrairieWave Telecommunications, Inc. for
Designation as an Eligible Telecommunications Carrier in the Contiguous Wire Centers
of Centerville and Viborg
Docket No.: TC05-016

Dear Ms. Bonrud:

Enclosed for filing please find the original and 10 copies of the Petition for Intervention and
Initial Comments by Fort Randall Telephone Company in the above-referenced docket. Also
enclosed is a Certificate of Service.

Very truly yours,


Michael J. Bradley

MJB/jjh
Enclosures

cc: All parties of record
749427v1

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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF PRAIRIE WAVE TELECOMMUNICATIONS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE CONTIGUOUS WIRE CENTERS OF CENTERVILLE AND VIBORG

TC05-016

PETITION FOR INTERVENTION AND INITIAL COMMENTS BY FORT RANDALL TELEPHONE COMPANY

PrairieWave Telecommunications, Inc ("PrairieWave") has filed a petition requesting that it be designated as an eligible telecommunications carrier ("ETC"), pursuant to 47 U.S.C. § 214(e), for the Centerville and Viborg exchanges. Fort Randall Telephone Company ("Fort Randall") is a rural telephone company and is currently designated as an ETC for its entire service area of eight (8) exchanges, including the Centerville and Viborg exchanges.

Fort Randall petitions to intervene to explain that granting PrairieWave ETC status would not be in the public interest because:

- 1) PrairieWave proposal will not provide the basic service requirements of 47 C.F.R. § 54.101 to the entire Centerville and Viborg exchanges, much less to the other six (6) other exchanges served by Fort Randall;
2) Granting PrairieWave's request would lead to "creamskimming," which violates criteria adopted by the Federal Communications Commission ("FCC");
3) PrairieWave's proposed service does not meet the higher public interest requirement and does not provide the advantages of wireless ETC offerings; and
4) Granting ETC status would provide a windfall to PrairieWave and deprive Fort Randall of revenues needed to continue providing quality service.

To obtain ETC status in a "rural telephone company area," such as Fort Randall's, an applicant must meet both the basic requirements of an ETC and the higher public interest standard. See, 47 U.S.C. § 214(e)(2). Research indicates that there may no other instance anywhere in the United States in which a second wireline carrier has been granted ETC status in

an area served by a rural telephone company. No other State Commission has concluded that adding an essentially duplicative wireline service (without any added advantages of mobility and significant wide area local calling) has met the public interest criteria. Review of the PrairieWave application shows that this proposal also fails to meet that test.

1. PrairieWave’s proposal will not provide the basic service requirements of 47 C.F.R. § 54.101 to the entire Centerville and Viborg exchanges, much less to the other six (6) exchanges served by Fort Randall.

PrairieWave’s proposal is defective in two substantial ways: 1) it does not include providing the required services to the entire Centerville and Viborg exchanges; and 2) it does not include providing the required services to the remaining six (6) other exchange areas served by Fort Randall in its study area.

PrairieWave’s application states that it will “expand its basic fiber optic, copper and coaxial network in the Centerville and Viborg wire-centers where it is economically feasible to do so” and suggests that the “Wireless Project” described on Exhibit A to its petition will provide the supported services to the more rural portions. (Section 7(b).) However, contrary to that suggestion, statements by the manufacturer of the WaveRider LMS4000 Matrix system (which is the system described in PrairieWave’s Exhibit A) indicate that this system DOES NOT PROVIDE basic voice service, including the supported services. Rather, the WaveRider LMS4000 Matrix system provides only a wireless broad-band connection. If this is correct, then PrairieWave’s proposal fails to provide the commitment to provide supported services for even the entire Centerville and Viborg exchanges that is required under the standards of the *Virginia Cellular* decision¹, since the asserted willingness to expand the wireline system only when

¹ *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*, CC Docket 96-45, Memorandum and Order, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”).

PrairieWave finds it to be “economically feasible” is not any commitment at all. These facts would not justify granting ETC status for the Centerville and Viborg exchanges even if they had been disaggregated.

Past history also indicates that PrairieWave will not provide service throughout the Centerville and Viborg exchanges. PrairieWave concedes that it is not economical to serve rural areas of Centerville and Viborg through a build out of its existing network. Consequently, it states that it will instead offer a fixed wireless service. This proposal conveniently ignores that PrairieWave (and its predecessor, Dakota Telecom, Inc. (“DTI”)) has been offering a fixed wireless service since 1998, which now appears to have been abandoned.

Second, the PrairieWave proposal admits that it will not provide service to the other six (6) higher cost exchanges served by Fort Randall. While the South Dakota Public Utilities Commission (“Commission”) may disaggregate to the exchange level, the PrairieWave petition does not merit disaggregation because PrairieWave will not meet the basic ETC requirements, much less the public interest requirement.

2. Granting PrairieWave’s request would lead to “creamskimming,” which violates criteria adopted by the FCC.

Fort Randall’s service area is defined as its study area, unless and until the FCC and the States determine otherwise, after taking into account the recommendations of the Joint Board.

ARSD § 20:10:32:42 also provides in relevant part:

In reviewing any proposed additional eligible telecommunications carrier designation within an area served by a rural telephone company, the commission may not find it to be in the public interest if the provider requesting such designation is not offering its services coextensive with the rural telephone company’s service area.

It is more than noteworthy that PrairieWave’s predecessor, DTI, in TC98-111, sought ETC status in the Centerville and Viborg exchanges based on the same arguments. The

Commission's December 11, 1998 Order Denying Request For ETC Designation, p. 3, rejected the request because "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."

While the Commission can disaggregate to the exchange areas of rural LECs, such as Fort Randall, such disaggregation should not be allowed if the result is "creamskimming." The FCC acknowledged the adverse impact of creamskimming in *Virginia Cellular* and granted the request for ETC certification (and disaggregation) because that application "should not result in opportunities for creamskimming."² The FCC "analyzed the population densities of the wire centers" that would and would not be served in making its decision.³ Based on that review, no risk of creamskimming was found.

In contrast, granting PrairieWave's request would also lead to cream-skimming in two ways.

First, granting PrairieWave's request would lead to creamskimming *within* the Centerville and Viborg exchanges because PrairieWave's proposal for service does not include providing the required services throughout the higher cost portions of the Centerville and Viborg exchanges. As previously discussed, statements by the manufacturer of the WaveRider LMS4000 Matrix system indicate that this fixed wireless system is limited to broadband internet access and does not include the required basic telephone services. PrairieWave has also limited its commitment to expand its wireline network (which does provide the required services) to areas where it is "economically feasible." Thus, it is highly probable that PrairieWave will

² *Virginia Cellular* ¶ 42.

³ Id.

provide the required services to only the lower cost portions of the Centerville and Viborg exchanges. This is “creamskimming” which violates FCC standards.

Second, allowing PrairieWave to limit service to only the Centerville and Viborg exchanges would constitute creamskimming even if the entire exchanges were served, since the costs of service within these exchanges are lower than the overall costs to serve the entire eight (8) exchange service areas of Fort Randall. Of Fort Randall’s eight (8) exchanges, Centerville and Viborg constitute the smallest geographical area with the most subscribers per square mile served. As a result, it is probable that these are the lowest cost exchanges, providing “opportunities for creamskimming.”⁴

3. PrairieWave’s proposed service does not meet the higher public interest requirement and does not provide the advantages of wireless ETC offerings.

47 U.S.C. § 214(e) only allows a second ETC to be designated in the service area of a rural telephone company if such designation would be in the public interest. See also SDCL § 49-31-78. Consequently, the standard for reviewing a second ETC petition in a rural telephone company service area is different than the standard applied, for example, in a Qwest service area. PrairieWave must not only demonstrate that it meets the service obligations of an ETC, but that two ETCs would be in the public interest. PrairieWave falls short in both respects: its proposal does not meet the service requirements of an ETC for all of the Centerville and Viborg exchanges, much less the remaining six (6) other exchange areas; and granting the petition would not be in the public interest.

The FCC has determined that “the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas.”⁵ Instead, the FCC stated that it would

⁴ *Virginia Cellular* ¶ 42.

⁵ *Virginia Cellular* ¶ 4.

weigh numerous factors, including the benefits of increased competitive choices, and the unique advantages and disadvantages of the competitor's service offering.

Unlike cellular service providers, which offer extensive local calling areas and mobility as unique service choices that have been cited to provide new consumer benefits, PrairieWave offers a service alternative that provides none of these advantages. The PrairieWave system will certainly not offer mobility since the proposed wireless service (the WaveRider LMS4000 Matrix system) does not offer the required services on even a fixed basis.

While PrairieWave offers a very limited local calling program (PrairieWave customers can call other PrairieWave customers without incurring a toll call), customers already have access to a number of much broader long distance calling alternatives offered by both interexchange carriers and cellular providers. PrairieWave's lack of success in the market demonstrates that its toll service offering is not viewed by the market as a valuable alternative.

Further, Fort Randall already offers a high speed internet offering throughout the Centerville and Viborg exchanges. Thus, the PrairieWave proposal does not offer the type of innovations or new features that have supported public interest determinations. Rather, at best, it proposes only an increase in competition which is NOT adequate for a public interest determination.

4. Granting ETC status would provide a windfall to PrairieWave and deprive Fort Randall of revenues needed to continue providing quality service.

Congress established, and the FCC implemented, USF as a funding source for the purpose of ensuring that telephone companies would extend telephone service to everyone, even when those costs are extremely high, and that customers would be able to afford service. PrairieWave's petition runs contrary to the purpose of USF. PrairieWave does not make a commitment to expand its area of providing supported services beyond areas where it is

“economically feasible.” As a result, it is probable that there will be little, if any, change in the area in which it does so. As a further result, providing support to PrairieWave will result in little more than a windfall to PrairieWave.

If, on the other hand, PrairieWave would actually increase the number of customers receiving the supported services, each new customer gained by PrairieWave would be a lost customer to Fort Randall. Unlike competition with wireless carriers where a customer is likely to retain service with the wireline provider, in the case of competition between PrairieWave and Fort Randall, the loss of a customer to Prairie Wave terminates all revenue from that customer to Fort Randall, including both local and federal USF funding. Loss of support would adversely affect both service in Centerville and Viborg and in Fort Randall’s six (6) other higher cost exchanges.

Congress was obviously concerned that competition in rural communities could actually harm service. It must have had exchanges like Centerville and Viborg in mind, because if dual ETCs should be approved for these very rural, small exchanges, it is difficult to imagine when a dual ETC application would ever be denied.

Conclusion.

PrairieWave seeks by its ETC request to gain an economic advantage over Fort Randall, by not serving the entire service area, and by not serving the more rural portions of the Centerville and Viborg exchanges, while increasing its revenues by \$10,000 per month through USF support. Therefore, Fort Randall requests permission to intervene and provide the South

Dakota Public Utilities Commission with the information needed to make a reasoned decision with respect to the PrairieWave petition.

Dated: February 10, 2005

Respectfully submitted,

MOSS & BARNETT
A Professional Association

A handwritten signature in cursive script, reading "Michael J. Bradley", written over a horizontal line.

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Attorneys on behalf of Fort Randall Telephone
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Certificate of Service

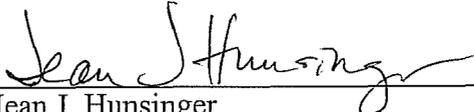
I hereby certify that an original and ten copies of the above and foregoing Petition for Intervention and Initial Comments by Fort Randall Telephone Company were sent via overnight service on the 10th day of February, 2005, to the following:

Pam Bonrud
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, South Dakota 57501

and a true and correct copy was sent by overnight service to the following:

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and a true and correct copy by overnight service to the persons on the attached list.



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