

MOSS & BARNETT

A Professional Association

4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone 612.347.0300
Facsimile 612.339.6686
www.moss-barnett.com

THOMAS A. KELLER III
JAMES E. O'BRIEN
EDWARD L. WINER
WILLIAM A. HAUG
CHARLES A. PARSONS, JR.
RICHARD J. JOHNSON
ROBERT J. LUKES
JAMES A. RUBENSTEIN
THOMAS R. SHERAN
EDWARD J. BLOMME
JEFFREY L. WATSON
THOMAS J. SHROYER
DAVID P. JENDRZEJEK
CURTIS D. SMITH
DAVE F. SENGER
MITCHELL H. COX
MICHAEL J. BRADLEY
PETER A. KOLLER
RICHARD J. KELBER
KEVIN M. BUSCH
SUSAN C. RHODE
THOMAS A. JUDD
DEANNE M. GRECO
CASS S. WEIL
GLEN E. SCHUMANN
JANNA R. SEVERANCE
M. CECILIA RAY
NANCY M. KISKIS
BARRY LAZARUS
PAUL B. ZISLA
BRIAN T. GROGAN
J. MICHAEL COLLOTON
JOSEPH G. MATERNOWSKI
JAYMES D. LITTLEJOHN
MICHAEL R. NIXT
JAMES F. BALDWIN
DAVID S. JOHNSON
PHILIP J. YOUNG
ARTHUR W. DICKINSON
BEN M. HIENSCHER
DAN LIPSCHULTZ
JOHN K. ROSSMAN
MARK B. PETERSON
MATHEW M. MEYER
TIMOTHY L. GUSTIN
YURI B. BERNDT
DAVID L. BIEK
MARSHA STOLT
JONATHAN J. SOLBERG
MARCY R. FROST
MATTHEW B. JOHNSON
ELIZABETH H. KIERNAT
JAMES J. VEDDER
MICHAEL S. PONCIN
JANA AUNE DEACH
JENNIFER A. REUSSÉ
CINDY J. ACKERMAN
ANTHONY A. DORLAND
CHRISTOPHER D. STALL
JOSEPH G. SOCHA
GREGORY L. KOELLER
LORIE A. KLEIN
TERESE A. WEST
JEFFREY L. BODENSTEINER
JULIA M. DAYTON
J. VINCENT STEVENS
BRADLEY J. HINTZE

MICHAEL J. BRADLEY
612.347.0337
BradleyM@moss-barnett.com

July 6, 2006

VIA FEDERAL EXPRESS

Patricia Van Gerpen
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. Van Gerpen:

Enclosed for filing please find the original and 10 copies of the Reply Brief on behalf of Fort
Randall Telephone Company in the above-referenced docket.

Also enclosed is a Certificate of Service.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

OF COUNSEL
THOMAS E. HARMS
ARTHUR J. GLASSMAN

MJB/krm
Enclosures

cc: All parties of record
895176v1

Certificate of Service

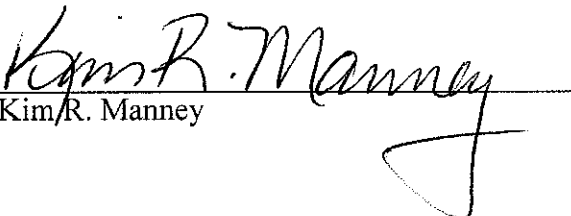
I hereby certify that an original and ten copies of the above and foregoing Reply Brief on behalf of Fort Randall Telephone Company were sent via email and overnight service on the 6th day of July, 2006, to the following:

Patricia Van Gerpen
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:

Rolayne Ailts Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501

and a true and correct copy by overnight service or United States Mail, postage prepaid, to the persons on the attached list.



Kim/R. Manney

Karen Cremer
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501

William P. Heaston
PrairieWave Communications, Inc.
5100 South Broadband Lane
Sioux Falls, SD 57108

Richard D. Coit
SDTA
320 E. Capitol Avenue
P.O. Box 57
Pierre, SD 57501-0057

Bruce Hanson
Hanson Communications, Inc.
227 S Main Street
Clara City, MN 56222

Mark Hanson
Fort Randall Telephone Company
722 W Highway 46
Wagner, SD 57380

**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

REPLY BRIEF OF FORT RANDALL TELEPHONE COMPANY

I. Introduction.

This Reply Brief by Fort Randall Telephone Company ("Fort Randall") responds to PrairieWave Telecommunication Inc.'s ("PrairieWave") Initial Brief. PrairieWave's Initial Brief argues that the benefits that resulted from competition *within* the Centerville and Viborg town boundaries justify granting PrairieWave's Application for a duplicate eligible telecommunications carrier ("ETC") designation. However, as explained below, PrairieWave's proposal fails to satisfy the public interest test because: 1) PrairieWave has failed to prove that there is adequate customer benefit from its proposal to offer an unproven, *fixed (non-mobile)* wireless service to customers residing outside the town boundaries at a higher residential rate than offered by Fort Randall; 2) PrairieWave's proposal will lead to prohibited cream skimming; 3) PrairieWave has not proven that competition would be sustainable on a full wire center basis; and 4) the impact on the High-Cost Universal Service Fund is not negligible.

When the public interest standards established by the South Dakota Public Utilities Commission ("Commission") and the Federal Communications Commission ("FCC") are applied to the stipulated facts of this case, the inescapable conclusion is that PrairieWave's Application should be denied.

II. Granting Duplicative ETC Status Would Not Be In The Public Interest.

A. PrairieWave Has Not Met Its Burden Of Proving Customer Benefit.

PrairieWave has scarcely addressed, much less met, the higher public interest standards that apply when an applicant seeks duplicative ETC status in a rural telephone company service area.

PrairieWave argues, Brief at 3, that the Centerville and Viborg wire centers have benefited from the competitive presence of PrairieWave, without harm to Fort Randall. In support of that assertion, PrairieWave observes that the customers within the town boundaries of those two wire centers have a choice of providers for local exchange service, that both providers have deployed switch upgrades to provide service features and the latest in high-speed Internet, and that service remains affordable. There are several problems in PrairieWave's reliance on these facts.

First, PrairieWave has not provided choice throughout the entire wire centers. It has offered choice only within the Centerville/Viborg town boundaries. PrairieWave admits, Brief at 5-6, that its prior fixed-wireless service offering to out-of-town customers gained only token acceptance (17 customers) and that PrairieWave began decommissioning the service in 2002, with the last customer being removed from the service in early 2004. PrairieWave has provided no reason to believe that its proposed replacement fixed-wireless service holds any better promise of offering out-of-town customers a desirable service alternative; particularly since PrairieWave's residential rate is higher than Fort Randall's residential rate and nearly all the out-of-town customers take residential service. PrairieWave also states, *id.*, that rates have "stabilized"— suggesting little prospect for a more competitive residential rate from PrairieWave. Consequently, it is unlikely that PrairieWave's offering of an unproven service technology to

out-of-town customers, at a higher residential rate provides meaningful choice to the out-of-town customers.

Even more important, “the value of increased competition, by itself, is unlikely to satisfy the public interest test.” *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, REPORT AND ORDER, RELEASED at ¶ 21 (“REPORT AND ORDER”); *accord* ORDER DESIGNATING RCC MINNESOTA, INC. AND WIRELESS ALLIANCE, L.L.C. D/B/A UNICEL AS ELIGIBLE TELECOMMUNICATIONS CARRIERS; FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND NOTICE OF ENTRY OF ORDER, Docket TC03-193 ¶¶ 19 and 20.

PrairieWave has not argued, nor could it successfully do so, that its proposed fixed wireless/wireline service provides advantages over Fort Randall’s service.¹ PrairieWave’s residential rate is higher than Fort Randall’s, and the only customers not currently able to receive service from PrairieWave are nearly all residential customers. In addition, PrairieWave’s fixed-wireless service lacks the elements of mobility, large local calling areas, and increased health and safety benefits that have been cited as justifying granting ETC status to mobile wireless providers.²

This combination of characteristics – no mobility, a higher residential price, no significant advantages from the service provided by Fort Randall, reliance on an unproven technology, and a track record of withdrawal of service despite a Commission order to provide such service– makes it clear that the public interest standard has not been met, even before consideration of the cream skimming effects of the PrairieWave proposal.

¹ 47 C.F.R. § 54.202(c) establishes, as one of the criteria to be considered, whether there are any unique advantages or disadvantages to PrairieWave’s service offerings. The Commission adopted this same public interest standard in ARSD § 20:10:32:43.07.

² *E.g. Brookings Municipal Utilities d/b/a Swiftel Communications* ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS DESIGNATION, February 10, 2006, Docket TC04-213 (“*Swiftel*”), at 4.

B. Granting The Application Would Result In Prohibited Cream Skimming.

PrairieWave ignored the issue of cream skimming in its Initial Brief. As demonstrated in detail in Fort Randall's Initial Brief, at 10-15, granting the Application would result in undeniable, and impermissible cream skimming. The fact that the Commission and the FCC approved a redefinition of the Centerville and Viborg wire centers to be a standalone service area for Swiftel and other competitive ETCs did not, in any way, alter the application of the public interest test to PrairieWave's request or the significance of cream skimming to that test.

As the FCC explained in *Virginia Cellular*, CC. Docket No. 96-45, MEMORANDUM AND ORDER, released January 22, 2004, the redefinition of a service area is for the sole purpose of defining the service area for the ETC applicant and other competitive ETCs. *Id.* at

¶ 41. It does not alter the rural telephone company service area:

[T]he redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service area does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis...

Further, the FCC expressly ruled that: "Any future competitive carrier seeking ETC designation in the same rural service areas [that have been redefined] will be required to demonstrate that such designation will be in the public interest." *Id.* at 41.

The FCC has also adopted rules on how to determine whether granting an ETC application would be in the public interest, including a case-by-case analysis of whether granting the particular application would result in prohibited cream skimming. 47 C.F.R. § 54.202 (c) provides:

Public Interest Standard. Prior to designating an eligible telecommunications carrier pursuant to section 215(e)(6), the [FCC] 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 [FCC] 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 [FCC] shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(Emphasis added.) The Commission, in ARSD § 20:10:32:43.07, adopted public interest standards that are fully consistent with Section 54.202 (c), including the need for a case-by-case cream skimming analysis that compares the population density of each wire center in which the applicant seeks designation against the population density in the wire centers in the rural telephone company study area in which the applicant does not seek designation.

The importance of making a cream skimming analysis on a case-by-case basis is exemplified by considering the differences in the facts of *Swiftel* with the facts involved in the current PrairieWave Application.

In *Swiftel*, the applicant was legally prohibited from serving more than four of Fort Randall's wire centers. Swiftel agreed to serve all four of those wire centers (Tyndall, Tabor, Centerville and Viborg). Swiftel did not engage in cream skimming by selecting to serve less than all of those wire centers it was legally able to serve. In contrast, PrairieWave seeks to serve only two out of the eight Fort Randall wire centers, even though it has no legal or technical impediment to serving any of those wire centers; six of which (including Tyndall and Tabor) are contiguous to wire centers where PrairieWave currently provides service.³

In addition, the Commission found that Swiftel "is not engaging in creamskimming by attempting to serve only the low-cost, high revenue customers in the rural company's service areas. *Swiftel* at 6. In sharp contrast, PrairieWave is limiting its service offering to two low-cost

³ See Fort Randall Initial Brief at 11-12 for a more in-depth explanation of why there is no impediment, other than the lack of adequate "cream," to serving all of Fort Randall's study area.

wire centers (with a population density of 15.5 persons per square mile compared to an overall population density of 9.1 persons per square mile in Fort Randall's service area).⁴ PrairieWave has also priced its service to offer higher residential rates and lower business rates – targeting the higher revenue business customers. Most customers in the higher-cost, out-of-town, portions of the Centerville and Viborg wire centers are residential customers.

Further, Swiftel offered the same quality of service to all of its customers; while PrairieWave has proposed using an untried wireless technology that uses VoIP technology in the higher-cost portions of the Centerville and Viborg wire centers. Clearly, such an approach will discourage out-of-town customers from changing from Fort Randall's service, which will enhance the cream skimming effects of the PrairieWave proposal by limiting service to the higher revenue, lower-cost, in-town, business customers.

The difference in population density for the relevant service areas is severe, with the overall density for Fort Randall being 9.1 persons per square mile, the density for the entire Centerville and Viborg wire centers being 15.5 persons per square mile, and the density within the town boundaries of the Centerville and Viborg wire centers being 1,622 persons per square mile. The cream skimming that would result under PrairieWave's proposal is completely inconsistent with the Commission's and the FCC's public interest requirements.

PrairieWave's application should be denied because its approval would result in prohibited cream skimming.

C. Prairie Wave Has Not Proven That Competition Would Be Sustainable On A Full Wire-Center Basis.

PrairieWave asserts, Brief at 4, that Fort Randall has not been harmed by competition. This argument ignores the problems Fort Randall will encounter as it seeks to continue providing

⁴ Stipulation ¶ 34.

high-quality service to an even smaller pool of out-of-town customers, while receiving less Universal Service High-Cost Support.

Fort Randall agrees that it has managed to provide state-of-the art service to all of the customers within the Centerville and Viborg wire centers, but it has done so while retaining 70% of the access lines within those wire centers. But, after 8 years of competition, PrairieWave has captured 43% of the market within the Centerville and Viborg town boundaries. If PrairieWave were to capture a similar portion of the out-of-town customers, Fort Randall's market share would drop to only 53%, and Fort Randall would retain only 261 out-of-town customers.⁵ Fort Randall would face a very real challenge to provide continued high-quality service to such an extremely small customer base, while also receiving less Universal Service High-Cost Support. The amount of lost support would be some portion of the \$15.34 per-line Fort Randall currently receives, depending on the effect that losing additional lines would have on the average schedule calculation. Stipulation § 56.

The requirement for a public interest showing before adding ETCs in areas served by rural telephone companies is intended to recognize that not all competition is in the public interest – that extremely rural areas may not be able to support multiple competitors, and that the Universal Service High-Cost Support funding should not be used to provide an incentive for such competition. As PrairieWave acknowledges, Brief at 5, “it is evident that this is a very rural part of South Dakota.” Further, a second ETC has already been certified in Centerville and Voborg area in *Swiftel*.⁶ If ever there was a case in which multiple (three) ETCs should not be

⁵ In its Initial Brief, Fort Randall focused on PrairieWave's overall 30% market share. However, if the maximum potential impact of PrairieWave's proposal is considered, it would be the potential to garner 43%, or 200 out of the available 461 out-of-town access lines.

⁶ *Brookings Municipal Utilities d/b/a Swiftel Communications* ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS DESIGNATION, February 10, 2006, Docket TC04-213 (“*Swiftel*”).

designated, particularly when little more than duplication of the incumbent rural telephone company's service would result, this is that case.

D. The Impact On Universal Service Is Not Negligible.

PrairieWave observes that the impact on the Universal Service Fund is approximately \$84,000 and concludes that the impact of granting its Application will be negligible. However, the FCC has recognized that no one applicant is very likely to have a major impact on the overall size of the fund. Consequently, the more appropriate test is the impact that granting the Application has on the per-line support provided to the area. REPORT AND ORDER ¶ 54.

As explained in Fort Randall's Initial Brief at 18-19, approving the Application would increase the cost to the Universal Service High-Cost Support Fund in the area by 44% (from \$194,400 to \$278,400). Further, while the impact is small when considered in isolation, granting the Application would serve as a catalyst for future requests, resulting in an impact that could be very significant.

In addition, given the heightened concerns being expressed in Congress over the size of the federal Universal Service Fund, it is no longer reasonable to assume that caps will not be imposed on the amount of USF support that can be provided *to any given area*. If caps are imposed, then adding ETCs is no longer a policy decision that can be made assuming there is low risk or no risk to existing ETCs and their customers because the imposition of caps would reduce the level of support for all providers, imposing a particularly serious burden on the carriers such as Fort Randall that are actually providing service to all customers.

The substantial percentage increase in the total cost of USF support for the Centerville and Viborg area and the potential long-term impact of approving multiple ETCs in such a rural area are negative consequences that would result from approving the Application.

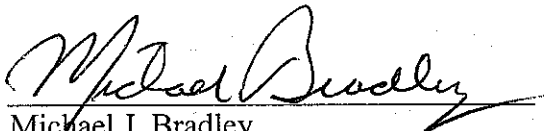
III. Conclusion.

For the reasons above set forth above and in Fort Randall's Initial Brief, and based on all of the facts in the record, PrairieWave's Application for ETC status should be denied.

PrairieWave has failed to satisfy its burden of proving that granting it ETC status would improve customer choice; or would improve service to either the out-of-town customers or the in-town customers. In addition, approving the Application would: (1) result in prohibited cream skimming; (2) provide little or no benefit to the area for which high-cost support would be provided; (3) harm Fort Randall's ability to continue providing quality service in the area; and (4) would have an immediate, but small, negative impact on the Universal Service High-Cost Support Fund, and could act as a catalyst for a much larger negative impact on the Fund in the long run. When all of these factors are considered in the aggregate, the Application should be denied.

Dated: July 6, 2006

Respectfully submitted,

By 
Michael J. Bradley
Mathew M. Meyer

MOSS & BARNETT
A Professional Association
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone: 612-347-0337

Attorneys on Behalf of Fort Randall Telephone
Company