

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Access Charge Reform) CC Docket No. 96-262
Reform of Access Charges Imposed by)
Competitive Local Exchange Carriers)

COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

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Qwest Communications International Inc. (“Qwest”) respectfully submits these Comments in response to the Petition for Waiver filed by PrairieWave Telecommunications, Inc. (“PrairieWave”). PrairieWave’s petition should be denied because it fails to meet the standard applicable to a petition for waiver, and the relief requested by PrairieWave fundamentally conflicts with the regulatory regime established in the *CLEC Access Charge Reform Order* and *CLEC Access Reconsideration Order*.¹

I. INTRODUCTION AND SUMMARY

In its petition, PrairieWave seeks a waiver of the Federal Communications Commission’s (“Commission”) access charge rules, which currently cap PrairieWave’s interstate switched access rates at those of the competing incumbent local exchange carrier (“ILEC”). If its petition

¹ *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923, 9924-25 ¶ 2 (2001) (“*CLEC Access Charge Reform Order*”); *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc., For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas, Eighth Report and Order and Fifth Order on Reconsideration*, 19 FCC Rcd 9108, 9110 ¶ 3 (2004) (“*CLEC Access Reconsideration Order*”) (collectively “*CLEC Access Orders*”).

is granted, PrairieWave intends to increase its access rates on interexchange carriers (“IXCs”) more than 700%, from approximately 7/10 of a cent per minute to more than 5 cents per minute.

PrairieWave’s petition falls far short of demonstrating “special circumstances” that would justify a waiver of the rules the Commission adopted in the *CLEC Access Charge Reform Order*, and recently reaffirmed in the *CLEC Access Reconsideration Order*. PrairieWave asserts that it should be exempted from the CLEC access benchmarks because all but one of the communities it serves are rural in nature. However, PrairieWave is by no means the only carrier that serves both rural areas and non-rural areas. According to the Association for Local Telecommunications Services (“ALTS”), almost no competitive local exchange carriers (“CLECs”) serve exclusively rural areas.² Moreover, many ILECs such as Qwest are classified as non-rural ILECs despite the fact that much of their service territories are rural.

PrairieWave also fails to show that grant of its petition would serve the public interest. On the contrary, the relief sought by PrairieWave has been twice rejected by the Commission, because it completely conflicts with the policy objectives underlying the *CLEC Access Orders*. In those *Orders*, the Commission established an objective, easily-administrable bright line rule to govern CLEC access charges, subject to a narrow exception for CLECs serving exclusively rural areas. Grant of PrairieWave’s petition would result in cumbersome, highly regulatory oversight of CLEC access charges, or, alternatively, a dramatic broadening of the rural exemption. Both of these outcomes are fundamentally inconsistent with the policies that the Commission reaffirmed in the *CLEC Access Reconsideration Order* less than a year ago, particularly given that PrairieWave’s average costs in its serving area should not necessarily be higher than those of Qwest, the competing non-rural ILEC. As a final matter, PrairieWave’s assertion that the

requested waiver is necessary to promote competitive entry in rural areas is unfounded.

II. PRAIRIEWAVE’S PETITION FAILS TO SATISFY THE STANDARD APPLICABLE TO A REQUEST FOR WAIVER OF THE COMMISSION’S RULES

Four years ago, the Commission revised its tariff rules to ensure, “by the least intrusive means possible,” that CLEC access charges are just and reasonable.³ Prior to the *CLEC Access Charge Reform Order*, certain CLECs had used the tariff system to impose excessive access charges on IXCs and their customers.⁴ Under the rules adopted in that *Order*, CLECs generally are precluded from imposing access rates by tariff that exceed a Commission-established benchmark, which now equals the access rate of the competing ILEC.⁵ Despite these rules, CLECs are free to negotiate higher rates with IXCs, or pass through additional costs to their end users, and a CLEC that qualifies as a “rural CLEC” may charge the access rate prescribed in the National Exchange Carrier Association (“NECA”) access rate. Earlier this year, the Commission reaffirmed the rules adopted in the *CLEC Access Charge Reform Order*, subject to certain limited clarifications.⁶

PrairieWave seeks a waiver of the rules established in the *CLEC Access Orders* to allow it, as a CLEC, to impose interstate switched access charges based on its own cost study, without regard to the access rate of the competing ILEC. In the alternative, PrairieWave requests a waiver to be classified a “rural CLEC,” to allow it to increase its switched access charges to the

² *CLEC Access Reconsideration Order*, 19 FCC Rcd 9126 ¶ 36 (citing ALTS Comments at 10).

³ *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9924-25 ¶ 2.

⁴ *Id.*

⁵ *Id.* at 9944-45 ¶ 52.

⁶ *See CLEC Access Reconsideration Order*, 19 FCC Rcd 9108.

access rate prescribed by the NECA access tariff.⁷ Under the Commission’s rules, a waiver is appropriate only if “special circumstances” warrant a deviation from the general rule and such deviation will serve the public interest.⁸ PrairieWave’s request for waiver fails to meet either of these standards necessary for a waiver.

A. PrairieWave’s Petition Does Not Present Special Circumstances That Would Warrant A Waiver

PrairieWave openly acknowledges that the theories on which its petition is based are not unique to PrairieWave, but rather apply to all CLECs operating in rural areas: “While using PrairieWave’s situation as an exemplar for this analysis, the general economic theories discussed in this paper as well as the problems created for competition in rural communities are applicable in general to all [rural local exchange carriers] RLECs in the country.”⁹ The fact that PrairieWave may have been the first CLEC to present a cost study to the Commission hardly makes PrairieWave uniquely situated, such that it should be entitled to tariff its access rates based on a cost study. Every other CLEC could just as easily prepare and provide to the Commission a study of its purported access costs. Indeed, if the Commission were to grant PrairieWave’s petition, it could expect many similar filings by other CLECs. As a result, PrairieWave’s filing of a cost study does not constitute the special and unusual circumstances required to justify a waiver of a Commission rule.

Likewise, the inclusion of a non-rural community in PrairieWave’s service territory is not a special circumstance that justifies a waiver that would dramatically expand the rural exemption. Many CLECs that serve rural areas also serve non-rural areas. Moreover,

⁷ Petition at 1, 9.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁹ Petition, Exh. D at 5.

PrairieWave's continued service to Sioux Falls is a business decision that is solely within PrairieWave's control. The fact that PrairieWave's Sioux Falls operations originated through a merger is irrelevant. In any case, PrairieWave's petition indicates that PrairieWave is actually seeking to expand its operations there.¹⁰

Because PrairieWave's petition does not present special and unusual circumstances, grant of the petition would likely lead to numerous "me-too" petitions from other CLECs seeking to increase their switched access rates, which would be difficult for the Commission to distinguish from PrairieWave's petition. As discussed below, such a result would conflict with the policy objectives articulated in the *CLEC Access Orders*.

B. As The Commission Has Found Twice, The Type Of Relief Sought By PrairieWave Would Not Serve The Public Interest

Aside from the delinquencies just noted, the waiver sought by PrairieWave would not serve the public interest.

1. The Commission Has Already Rejected The Type Of Relief Requested By PrairieWave

In both the *CLEC Access Charge Reform Order* and the *CLEC Access Reconsideration Order*, the Commission considered and rejected approaches similar to those advocated by PrairieWave in its petition. In the *CLEC Access Charge Reform Order*, the Commission declined to develop access rates for CLECs through an extensive regulatory process similar to that traditionally used to set ILEC rates, noting that no CLEC had even suggested such an approach.¹¹ In the *CLEC Access Reconsideration Order*, the Commission was even more explicit in rejecting the idea of allowing CLECs to tariff access rates that are higher than the

¹⁰ *Id.* at 10-11.

¹¹ *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9939 ¶ 41.

competing ILEC's, based on a filing of their purported costs.¹²

The Commission also rejected requests to adopt a broad rural exemption that would encompass carriers such as PrairieWave that serve both rural and non-rural areas. After considering various alternatives in the *CLEC Access Charge Reform Order*, the Commission adopted a narrow rural exemption that treats a CLEC as a "rural CLEC" only if "no portion of the CLEC's service area falls within: (1) an incorporated place of 50,000 inhabitants or more, (such as Sioux Falls); or (2) an urbanized area, as defined by the Census Bureau."¹³ "Thus, if any portion of a CLEC's access traffic originates from or terminates to end users located within either of these two types of areas, the carrier will be ineligible for the rural exemption to our benchmark rule."¹⁴ In the *CLEC Access Reconsideration Order*, the Commission rejected requests to broaden the rural exemption, finding that the Commission intended to keep the exemption "as narrow as possible."¹⁵ The Commission dismissed arguments that a single end user in a non-rural area should not entirely disqualify a CLEC from charging the NECA rate, holding that "[i]f a competitive LEC chooses to serve more concentrated, non-rural areas, in order to offset the cost of serving high-cost, rural customers, it should not also receive the subsidy of charging NECA rates for access to its rural end-users."¹⁶

¹² *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9136 ¶ 57.

¹³ *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9954 ¶ 76.

¹⁴ *Id.* The Commission stated that this "narrow" exception would likely apply only "to a small number of carriers serving a tiny portion of the nation's access lines." *CLEC Access Charge Reform Order*, *id.* at 9951 ¶ 68; *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9126 ¶ 37.

¹⁵ *CLEC Access Reconsideration Order*, 19 FCC Rcd at 9125-26 ¶ 35.

¹⁶ *Id.* at 9126-27 ¶ 37.

2. PrairieWave's Requested Waiver Is Fundamentally Inconsistent With The Commission's Policy Objectives In The *CLEC Access Orders*

Granting the requested waiver would conflict with most of the Commission's policy objectives in the *CLEC Access Orders*. For example, allowing PrairieWave to set its switched access rates based on the submission of a cost study would be inconsistent with the Commission's objective of establishing a "bright line rule that permits a simple determination of whether a CLEC's access rates are just and reasonable."¹⁷ If PrairieWave's petition were granted, both the Commission and IXCs would have to scrutinize the cost study submitted by PrairieWave, as well as the cost studies that would likely be filed by other CLECs. Once those cost studies were approved, IXCs would need to keep track of which CLECs have received waivers to allow them to exceed the rate of the competing ILEC. The alternative relief sought by PrairieWave of treating it as a rural CLEC would also greatly complicate the regulatory regime established by the Commission, in conflict with the Commission's quest for administrative simplicity.¹⁸

Allowing PrairieWave to price its access rates above the rate of the competing ILEC would allow PrairieWave to pass on extra charges to IXCs and their end users. As a result, the waiver would send the wrong pricing signals to PrairieWave and its end users. As the Commission found in the *CLEC Access Charge Reform Order*, "[w]hen a CLEC attempts to recover additional amounts from its own end user, that customer receives correct price signals and can decide whether he should find an alternative provider for access (and likely local exchange) service. This approach brings market discipline and accurate price signals to bear on

¹⁷ *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9939 ¶ 41.

¹⁸ *See id.* at 9954 ¶ 75.

the end user's choice of access providers.”¹⁹ According to PrairieWave, however, the only way it is economical for it to enter rural markets is to shift costs to IXCs and other long distance customers. It asserts that, without the waiver, “the potential rates of return, which are heavily influenced by potential access revenues, do not justify the additional risks, particularly the regulatory risks surrounding network access revenues. . . . Without the waiver, the existing imposition of incumbent rate caps coupled with PrairieWave's inability to shift its cost recovery to other services makes further RLEC development uneconomical[.]”²⁰

PrairieWave's request is also unwarranted in that its actual costs should not necessarily be higher than those of Qwest, the competing ILEC. The Commission's sole rationale for adopting a rural exemption in the *CLEC Access Charge Reform Order* was that CLECs competing exclusively in rural areas tend to have higher average costs than competing non-rural ILECs, because they do not have low-cost urban areas to offset the cost of serving high-cost rural areas. To the extent the characteristics of PrairieWave's serving area is similar to Qwest's, there is no basis for even considering PrairieWave's petition. While Qwest has not yet been able to obtain access to PrairieWave's cost study, other information submitted with PrairieWave's petition is illuminating in this regard.

Based on that information, it appears that PrairieWave's service area has a higher urban-to-rural composition than the South Dakota and Wyoming study areas of Qwest.²¹ Exhibit A, attached hereto, displays the number of lines Qwest serves in metropolitan statistical areas

¹⁹ *Id.* at 9938 ¶ 39.

²⁰ Petition, Exh. D at 33 n.122.

²¹ Although PrairieWave does not serve Wyoming, Qwest provides data on that state because the rural/urban composition of that state is similar to South Dakota. In addition, the Wyoming state commission recently initiated a cost docket in Wyoming, so Qwest has comparable cost data available for Wyoming.

(“MSAs”) in South Dakota and Wyoming, the non-MSA lines it serves in those states, and a ratio of MSA lines to non-MSA lines in those study areas. PrairieWave’s data are derived from Exhibit C of its Petition for Waiver where it identifies the towns and cities it serves and the population of each. PrairieWave’s service area has approximately 1.2 potential urban lines (*i.e.*, lines within an MSA) to each potential rural line (*i.e.*, a line outside of an MSA). In contrast, Qwest’s South Dakota and Wyoming study areas have 0.81 and 0.54 urban lines per rural line, respectively. Clearly, PrairieWave’s rural composition is not unique, nor should it cause its exchange access costs to exceed Qwest’s costs substantially. Additionally, PrairieWave has 20,000 number assignments for its operations in Sioux Falls, which equates to over 28 percent of Qwest’s total lines in Sioux Falls.²² This fact suggests that PrairieWave intends to be a substantial competitor in the urban market in Sioux Falls.

Even though Qwest serves a higher ratio of rural to urban customers than PrairieWave in South Dakota and Wyoming, Qwest’s costs in those states are significantly less than the forward-looking costs PrairieWave represents in its petition. Based on a recent cost docket in Wyoming, it appears that PrairieWave’s purported forward-looking switching cost is nearly six times higher than Qwest’s total element long run incremental cost (“TELRIC”), and PrairieWave’s purported forward-looking transport cost is more than 12 times higher than Qwest’s comparable Wyoming costs.²³ Even if Qwest’s larger scale resulted in some cost advantage, that advantage cannot fully explain such cost differences.

PrairieWave’s alleged costs appear to greatly exceed its local exchange rates. However, that is not grounds for allowing PrairieWave dramatic increases in its access rates to recover

²² See Exhibit A.

these costs from IXCs. Given PrairieWave's purported costs of \$0.014942 for switching and \$0.035937 for transport and typical usage rates,²⁴ the cost for usage alone to serve an end user would be over \$62.00 per month. PrairieWave also has costs associated with providing the loop to the end-user customer. PrairieWave claims that its CLEC operations have a line density similar to its ILEC operations (6.67 lines per square mile versus 5.89 lines per square mile).²⁵ Given the similarity in densities, it can be assumed that the CLEC operation has similar loop costs to its ILEC affiliate, which has loop costs of approximately \$38 per month based on 2002 data.²⁶ Thus, PrairieWave's purported cost of providing local exchange service is roughly \$100 per month per line.²⁷ In Iowa, PrairieWave's residential local exchange offerings range from a low of \$10.71 for service with no features to \$29.66 for local service, features, and voice mail.

It is apparent that PrairieWave's local service rates do not come close to covering its purported costs. Even if these costs are accurate, which is highly questionable, they do not appear to be reasonable, as explained above. It is not the intention of the Telecommunications Act of 1996 to promote competition by CLECs with unreasonably high costs at the expense of IXCs. PrairieWave appears to be a high-cost CLEC that is scrambling to figure out a way to have the IXCs salvage a poorly-conceived or badly-executed business plan. Under these

²³ See Exhibit B, attached hereto. In Wyoming Docket Number 70000-TA-04-1023 filed August, 2004, Qwest's proposed local switching interconnection cost was \$0.002622 compared to PrairieWave's petition switch cost of \$0.014942.

²⁴ For local exchange service, the typical local switch usage is approximately 2,000 minutes per month, while typical local transport usage is approximately 900 minutes per month.

²⁵ Petition at 12 n.36.

²⁶ October 2004 Universal Service Monitoring Report, CC Docket No. 98-202, Prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service, at Table 3.30, page 3-166. Unseparated NTS Revenue Requirement of \$3,213,773 and 6,990 loops. This equals an NTS Revenue Requirement per loop of \$459.77 and a monthly NTS Revenue Requirement of \$38.31.

²⁷ See Exhibit C, attached hereto.

circumstances, there is no possible justification for PrairieWave to recover revenues above the competing ILEC exchange access rates from IXCs.

3. The CLEC Access Orders Have Not Stifled Competition
In Rural Areas Served By Non-Rural ILECs

Based on PrairieWave's petition, one would think that competition has stalled in rural communities served by large ILECs since the *CLEC Access Charge Reform Order* was adopted in 2001. In fact, just the opposite has occurred. Qwest has experienced substantial facilities-based competition within its region, even in some of its most rural areas. In South Dakota, for example, Qwest faces facilities-based competition from cable operators, including MidContinent Communications, which has overbuilt Qwest's network in Aberdeen, Mitchell, Rapid City, Sioux Falls, and Spearfish. MidContinent is providing service to both residential and business customers with its network.²⁸ Qwest has also seen facilities-based competition in the state from rural ILECs and utility overbuilders. Black Hills Fibercom ("BHF"), a subsidiary of an energy utility company, provides residential and business telephone services via its hybrid coaxial network to Rapid City and the Northern Black Hills area. BHF reports that it has become the dominant provider of bundled broadband services, local and long distance telephone, digital cable entertainment, and high-speed Internet services in its market area, with more than 26,000 customers and 43,000 telephone access lines in service. BHF's revenues have grown from \$0.3 million in 1999 to \$39.8 million in 2003. Similarly, Northern Valley Communications has overbuilt Qwest in Aberdeen, and Sancom/Santel Communications has overbuilt Qwest in Mitchell.²⁹

²⁸ See Reply Comments of Qwest Communications International Inc., WC Docket No. 04-313, CC Docket No. 01-338 (Oct. 19, 2004), at 51.

²⁹ See *id.* at 55. Qwest faces similar competition in the other states in its region from cable companies, rural ILECs, and municipal providers. See *id.* at 48-57.

III. CONCLUSION

For the reasons set forth herein, the Commission should reject PrairieWave's Petition for Waiver.

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December 17, 2004

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EXHIBIT A

PrairieWave CLEC Population From Exhibit C

Lakeside IA	484
Storm Lake IA	10,076
Adrian MN	1,234
Currie MN	225
Edgerton MN	1,033
Lake Wilsc MN	270
Luverne MN	4,617
Marshall MN	12,735
Pipestone MN	4,280
Slayton MN	2,072
Tracy MN	2,668
Worthingto MN	11,283
Alcester SD	880
Canton SD	3,110
Centerville SD	910
Coleman SD	572
Elk Point SD	1,714
Flandreau SD	2,376
Harrisburg SD	958
Madison SD	6,540
North Siou: SD	2,288
Tea SD	1,742
Viborg SD	832
Watertown SD	20,237
Yankton SD	13,528
Total	106,664
Sioux Falls SD	123,975
Ratio (urban/rural)	1.162

Exhibit B

Default 08/05/04 7:06 PM		ICM Version 5.0			
Recurring Costs Wyoming					
Cost Element	Investment	TELRIC	Common	TELRIC + Common	SGAT Attachment A Item Numbers
Section C - Local Usage					
Tandem Switching per Minute of Use	\$ 0.007877	\$ 0.002617	\$ 0.000239	\$ 0.002856	7.6.2.1
Local Switching LIS per Minute of Use	\$ 0.007039	\$ 0.002403	\$ 0.000219	\$ 0.002622	7.6.1
PrairieWave Study Switch Cost				\$ 0.014942	
Ratio of PrairieWave to Qwest Wyoming				5.7	

Tandem Switched Local Transport					7.6.3
Fixed per Minute of Use	\$ 0.002027	\$ 0.000502	\$ 0.0000454	\$ 0.0005471	
Distance Sensitive per Minute of Use per Mile	\$ 0.000085	\$ 0.000018	\$ 0.0000016	\$ 0.0000191	
WY Average Air Miles for Tandem Switched Local Transport =		124.1			
Tandem Switched Local Transport Cost for Average Mileage =				\$ 0.002920	
PrairieWave Study Transport Cost				\$ 0.035937	
Ratio of PrairieWave to Qwest Wyoming				12.3	

Exhibit C

	Typical Usage	PrairieWave Cost per MOU	Total Usage Cost	Annual PrairieWave Comm Tel Unseparated NTS per loop	Monthly PrairieWave Comm Tel Unseparated NTS per loop	Total Local Service Cost
Local UNE-P DEMs/Switched line/month	2,000	\$ 0.014942	\$ 29.88			
Shared Transport UNE-P DEMs/Switched line/month	900	\$ 0.035937	\$ 32.34			
Total			\$ 62.23	\$ 459.77	\$ 38.31	\$ 100.54

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via e-mail on Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau at victoria.schlesinger@fcc.gov, 3) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com, and 4) served, via First Class United States Mail, postage prepaid, on the party listed on the attached service list.

/s/ Ross Dino _____
Ross Dino

December 17, 2004

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