



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 04-3652
Released: November 24, 2004

PLEADING CYCLE ESTABLISHED FOR PETITION OF PRAIRIEWAVE TELECOMMUNICATIONS, INC. FOR WAIVER OF CLEC ACCESS CHARGE RULES

CC Docket No. 96-262

COMMENTS DUE: December 17, 2004
REPLY COMMENTS DUE: January 7, 2005

On November 12, 2004, PrairieWave Telecommunications, Inc. (PrairieWave) filed a Petition for Waiver of sections 61.26(b) and 61.26(c) of the Commission's rules to permit it to tariff rates for interstate switched access services consistent with its costs.¹ Sections 61.26(b) and 61.26(c) of the Commission's rules generally provide that a competitive LEC may not tariff interstate access charges above the rate charged for such services by the competing incumbent LEC.² PrairieWave completed a forward-looking economic cost study and analysis, and determined that its cost-based rates for interstate switched access services would exceed the rates charged by the competing incumbent LEC.³ PrairieWave seeks a waiver of the Commission's rules to allow it to tariff its cost-based interstate switched access rates.⁴

In the alternative, PrairieWave seeks a waiver of section 61.26(a)(6) of the Commission's rules to permit it to qualify for the "rural exemption" described in section 61.26(e) of the

¹ See *In the Matter of Access Charge Reform*, CC Docket No. 96-262, PrairieWave Telecommunications, Inc. Petition for Waiver, at 2, 9 (filed Nov. 12, 2004) (Waiver Petition). PrairieWave is a facilities-based competitive local exchange carrier (LEC) serving predominantly rural markets in Iowa, Minnesota, and South Dakota. *Id.* at 2, 9. PrairieWave also operates an incumbent LEC subsidiary in parts of South Dakota. *Id.* at 3. The petition was filed on the Commission's Electronic Tariff Filing System (ETFS) on November 12, 2004 and on the Commission's Electronic Comment Filing System (ECFS) on November 23, 2004.

² See 47 C.F.R. § 61.26(b), (c).

³ Waiver Petition at 6-8.

⁴ PrairieWave states that its cost-based composite per-minute rate is \$0.050879, whereas the composite rate of the competing incumbent LEC, Qwest, is \$0.0066. *Id.* at 6-7.

Commission's rules.⁵ Section 61.26(a)(6) of the Commission's rules defines a "rural CLEC" as "a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either: (i) [a]ny incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (ii) [a]n urbanized area, as defined by the Census Bureau."⁶ Under the rules, a carrier meeting the definition of a rural CLEC is eligible for the "rural exemption," which permits rural competitive LECs to tariff rates up to the highest rate band in the NECA tariff.⁷ PrairieWave contends that it serves predominantly rural customers and communities, and that its limited provision of service in non-rural areas should not preclude it from qualifying for the "rural exemption."⁸

Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁹ interested parties may file comments on or before **December 17, 2004**, and reply comments on or before **January 7, 2005**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁰ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 96-262. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). **Parties are strongly encouraged to file comments electronically using the Commission's ECFS.**

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

⁵ *Id.* at 9.

⁶ 47 C.F.R. § 61.26(a)(6).

⁷ *Id.* § 61.26(e).

⁸ See Waiver Petition at 9-15.

⁹ 47 C.F.R. §§ 1.415, 1.419.

¹⁰ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 12th Street, SW, Washington, D.C. 20554. Parties should also send a copy of their filings to Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A266, 445 12th Street, SW, Washington, D.C. 20554, or by e-mail to victoria.schlesinger@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in CC Docket No. 96-262 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.¹² Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.¹³

For further information, contact Victoria Schlesinger of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-7353.

- FCC -

¹¹ See 47 C.F.R. §§ 1.1200, 1.1206.

¹² See 47 C.F.R. § 1.1206(b).

¹³ 47 C.F.R. § 1.1206(b).