

Open Video System
Notice of Intent

Attention Media
Bureau

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

In the Matter of)
PrairieWave Telecommunications, Inc.)
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)
)
Notice of Intent to Establish)
an Open Video System)

File No. _____

**NOTICE OF INTENT
TO ESTABLISH AN OPEN VIDEO SYSTEM**

PRAIRIEWAVE TELECOMMUNICATIONS, INC., (PrairieWave) pursuant to Section 651 of the Telecommunications Act of 1996 and Section 76.1503(b)(1) of the Commission’s Rules, hereby submits its “Notice of Intent,” (“Notice”) to establish an open video system (“OVS”). As required by Section 76.1503(b)(1), PrairieWave, respectfully submits the following information:

1. The OVS operator is PRAIRIEWAVE TELECOMMUNICATIONS, INC. The contact person for the operator, Patrick J. Mastel, is located at 5100 S Broadband Lane, Sioux Falls, SD 57108. Mr. Mastel may be reached at 605-965-9359.
2. PrairieWave’s projected service area will encompass the City of Sioux Falls, SD:

<u>Community</u>	<u>CUID#</u>
Areas of Sioux Falls, SD	SDXXXX

3. The open video system will have a maximum of 300 digital channels, each consisting of an average of 4 megabits of capacity. PrairieWave's system will satisfy all OVS channel capacity requirements.

4. Video Programming Providers (VPP) interested in carriage of PrairieWave's open video system may obtain additional information about the system by completing the OVS

Information Request Form (Attachment 1) and submitting it to:

Patrick J. Mastel
Sr. Legal Counsel
5100 S Broadband Lane
Sioux Falls, SD 57108
605-965-9359

Pursuant to 47 C.F.R. § 76.1503(b)(2) of the FCC's rules, within five business days of receipt of a request for information PrairieWave will provide the VPP with additional information regarding the open video system to enable the VPP to make an enrollment decision. With this information, the VPP also will be provided with additional forms and instructions necessary for carriage on PrairieWave's open video system. If a VPP decides to seek carriage on PrairieWave's open video system after receipt of the additional information, the VPP must submit the required forms, a non-refundable application-processing fee, and a channel reservation deposit by the end of the enrollment period.

5. One third of the system's maximum capacity will be set aside for PrairieWave and/or its affiliates. In addition, PrairieWave will utilize approximately three channels to carry public programs, educational programs, governmental programs, in addition to approximately five "must-carry" stations entitled to demand carriage pursuant to 47 C.F.R. §76.56 and §76.1506 of the FCC's rules. The remaining channels will be available for interested VPPs. No VPP will be assigned more than the capacity set aside for PrairieWave and its affiliates.

6. The enrollment period for VPPs seeking carriage on PrairieWave's open video system will commence on January 19, 2004, and will conclude April 19, 2004. In order to allow for contract finalization, ensure orderly channel allocation and allow timely systems allocation to occur, VPPs must submit their preliminary enrollment requests no later than March 5, 2004. Allocation of capacity in the event demand exceeds system capacity will occur as described in Attachment 2.

7. Attached is a certification that PrairieWave has complied with all relevant notification requirements under the FCC's open video system regulations concerning must-carry and retransmission consent (47 C.F.R. § 76.1506), including a list of all local commercial and non-commercial television stations served. (Attachment 3). An example of the notification letter sent to television stations pursuant to this Section is also appended hereto (Attachment 4.) Also attached is a certificate of service showing that PrairieWave's Notice of Intent has been served on all local franchising authorities, which are located with PrairieWave's anticipated OVS service area (Attachment 5).

Respectfully submitted,

PRAIRIEWAVE TELECOMMUNICATIONS, INC,

/s/
William P. Heaston
PRAIRIEWAVE TELECOMMUNICATIONS, INC.
5100 S Broadband Lane
Sioux Falls, SD 57108
(605)965-9894 (Phone)
(605)965-7867 (FAX)

Dated: January 16, 2004

PRAIRIEWAVE TELECOMMUNICATIONS, INC.
OPEN VIDEO SYSTEM
INFORMATION REQUEST FORM

Section I: Video Programming Provider Information

Name of Company: _____

Name of Contact: _____

Address: _____

Telephone: _____

Facsimile: _____

Section II: Carriage Information

Total amount of capacity requested: _____ channels

Section III: Certification and Non-Disclosure Statement

The undersigned video programming provider (“VPP”) represents that it has the right under the copyright laws to select and contract for carriage of specific video programming on the PrairieWave open video system, and that it has no formal or informal affiliation (as defined by 47 C.F.R. § 76.1500(g) of the FCC’s rules) or agreement with any other VPP requesting capacity or with any cable operator providing cable television services within PrairieWave’s open video system service area, and that the capacity requested will only be used for the commercial operation of an information service. The VPP and its affiliates agree not to disclose to any other party the information provided by PrairieWave in response to this request, except for information that is in the public domain and except as provided in 47 C.F. R. § 76.1513(1) of the FCC’s rules and that they will not use the information for any purpose whatsoever other than making an informed decision as to whether to enroll in PrairieWave’s open video system and the subsequent activation of such enrollment, if any.

Signature

Name

Title

Date

PRAIRIEWAVE TELECOMMUNICATIONS, INC.
OPEN VIDEO SYSTEM
CHANNEL ALLOCATION PROCESS

PrairieWave's anticipated total system capacity on its open video system is 300 digital channels. The following channel allocations already have been made:

PrairieWave: 100 channels for video programming + approximately 22 channels for the PEG/Must-Carry requirements. The remaining number of channels to be allocated is 178.

Initial capacity requests must be submitted by March 5, 2004. At that time, the total number of channels requested from all VPPs will be calculated. If sufficient capacity exists to fill all requests, each VPP will be allocated channel capacity equal to its

request. If the sum of all channels requested exceeds available channel capacity, each VPP requesting fewer than 6 channels will receive its requested channels; VPPs requesting more than 6 channels will receive at least 6, total capacity permitting. The remaining channels will be allocated to each VPP requesting more than 6 channels on a pro-rate basis; that is based on the ratio of the remaining number of channels requested by all VPPs.

The following is an illustration of the allocation process based on the availability of 178 channels and a request for 398 channels from multiple VPPs.

	Channels Requested	Minimum Allocations	Remaining Channels Requested	Ratio of Rmng Chal Avlble to Rmng Chal Requested	No. of Channels Allocated
A	2	2	0	-	2
B	6	6	0	-	6
C	20	6	14	398	12
D	110	6	104	398	47
E	150	6	144	398	64
F	<u>110</u>	<u>6</u>	<u>104</u>	398	<u>47</u>
Total	398	32	366		178

Because VPPs C through F all requested more than 6 channels, each VPP is allotted up to 6 channels as the minimum allocation. The remaining number of channels available

to be divided among the VPPs is 146 (178 channels minus 32 channels).

The number of available channels to be allocated on a pro-rata basis (146) is divided by the remaining number of channels requested (366) which equals .398. This factor is used to calculate the distribution of the remaining 146 channels to VPPs C through F.

The remaining channels requested by VPPs C through F are multiplied by the pro rata factor (.398) to determine the number of channels the VPPs will be allocated in addition to the six channel minimum. Fractions of channels have been rounded to the nearest whole number, provided that the sum of all allocations not exceed the total

number of available channels.

PrairieWave will mail a notification to each VPP to confirm the channel capacity allocation by March 15, 2004. Any VPP that is allocated fewer channels than it initially requested may withdraw its channel capacity request by notifying PrairieWave by mail. Cancellations must be received by 5:00 p.m. on March 31, 2004. Channel capacity made available through the withdrawal of one or more VPPs will be reallocated on a pro rata basis to the remaining VPPs who did not receive their full request. On March 31, 2004, PrairieWave will mail a notification to each remaining VPP to confirm the final channel capacity allocation.

CERTIFICATION Attachment 3

I, William P. Heaston, hereby certify that on or before this 16 day of January, 2004, I caused must-carry-retransmission consent election notification to be sent by US mail to all commercial and noncommercial television stations operating within PrairieWave's open video system television market, as indicated by the attached service list.

/s/

William P. Heaston
General Counsel

Dear

This letter serves to inform you that PrairieWave Telecommunications, Inc. intends to begin operating an Open Video System ("OVS") in and around the area of Sioux Falls, SD. Service activation is expected to occur on or about April 20, 2004. The open video system will have 300 channels of digital capacity.

Due to the OVS's geographic deployment, your station is entitled to carriage should you so elect, provided it is subsequently determined that the station delivers a good quality signal to the principal headend location at Viborg, SD, and provided further that carriage of the station will not subject PrairieWave to copyright liability.

If your station is commercial broadcast station, under the Federal Communications Commissions' OVS Rules, 47 C.F.R. 76.1500, et seq., you may elect mandatory carriage or you may negotiate consent for retransmission of your signal. All video programming providers (VPPs) on PrairieWave's Open Video System will be notified of your decision. If you elect "must carry", PrairieWave as the operator of the system will deliver your signal to all subscribers of any VPP on the system. If you elect "retransmission consent", you may negotiate with one or more VPPs delivering programming over the PrairieWave OVS for inclusion in their programming package. Please notify us by Certified Mail within five business days of your election. Pursuant to FCC Rules, your election of OVS must be the same as any election you make with respect to the cable system operators in Sioux Falls, SD.

The FCC's OVS Rules specify that PrairieWave, as the system operator, must receive notification with respect to black-out requirements related to sports broadcasts, network non-duplication, and syndicated exclusively. PrairieWave will make all notifications available to appropriate VPP's on the system, and will delete signals from the system in accordance with the FCC's Rules.

To the extent that you are carried as part of the VPP's programming package pursuant to retransmission consent, you should notify that VPP. Please make all notifications to PrairieWave required by these regulations to:

Patrick J. Mastel, Sr. Counsel
PrairieWave Telecommunications, Inc.
5100 S Broadband Lane
Sioux Falls, SD 57108

Please call Mr. Mastel at 605-965-9539 if you have any questions.

Sincerely,

William P. Heaston
General Counsel

CERTIFICATE OF SERVICE

I, William P. Heaston, hereby certify that I have caused copies of the foregoing open video system “Notice of Intent” of PRAIRIEWAVE TELECOMMUNICATIONS, INC., to be hand delivered on the 16 day of January 2004 to the following local franchising authorities listed below:

Sioux Falls, SD:

City Attorney—Gary Colwell
224 West 9th St.
Sioux Falls, SD 57104

_____/s/_____
William P. Heaston
General Counsel

Company	Name	Address	City, State, Zip
KELO-TV	Marc Antonitis Gen. Mgr.	501 S Phillips Ave.	Sioux Falls, SD 57104
KDLT-TV	Gary Bolton Gen. Mgr.	3600 S Westport Ave	Sioux Falls, SD 57116-0196
KSFY-TV C/O ATV Broadcast Consultants	Douglas Smith.	1820 East 81 st St.	Indianapolis, IN 46240
KTTW-TV.	Ed Hoffman, Mgr.	PO Box 5103	Sioux Falls, SD 57117
KAUN-TV		300 N Dakota, Suite 110	Sioux Falls, SD 57104