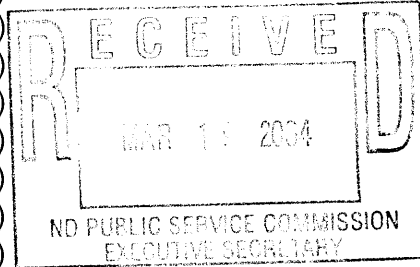


BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

BEK Communications Cooperative,)
 Consolidated Telcom, Dakota Central)
 Telecommunications Cooperative, Dickey)
 Rural Telephone Cooperative, Griggs)
 County Telephone Company, Inter-Community)
 Telephone Company, LLC, Missouri Valley)
 Communications, Inc., Moore and Liberty)
 Telephone Company, Nemont Telephone)
 Cooperative, Inc., North Dakota Telephone)
 Company, Northwest Communications)
 Cooperative, Polar Communications Mutual)
 Aid Corporation, and Reservation Telephone)
 Cooperative,)



Complainants,)

vs.)

SmartNET, Inc., d/b/a CallSmart,)

Respondent.)

Case No. PU-2967-03-666

**BRIEF IN SUPPORT OF
 MOTION FOR PRODUCTION,
 SANCTIONS, OR
 RESCHEDULED HEARING**

FACTS

The Complainants have alleged the Respondent has violated North Dakota law by providing long distance services in North Dakota without properly registering and complying with North Dakota law.

On January 19, 2004, the Complainants served a notice to take the deposition of Bruce Burke, SmartNET's president and a principal owner. This notice included a Request for Production of Documents (see tab number 1).

At the deposition of Bruce Burke on February 3, 2004 (portions reproduced at tab number 2), the Respondent, for the first time, objected to production of documents (pp. 17, 27-28).

The undersigned advised SmartNET's attorney that an objection had been properly served prior to the deposition, as called for by the North Dakota Rules of Civil Procedure (tab number 2, p. 17).

The deposition continued with a number of objections. Finally, at page 57 of the deposition, the undersigned agreed to protect further information disclosed at the deposition, subject to the requirement that SmartNET apply for trade secret protection. For that reason, the balance of the deposition is not reproduced for the purpose of this motion.

For the purposes of this motion, it is sufficient to say that no further significant documentation was provided by CallSmart after page 57.

On February 13, 2004, the undersigned sent a letter to CallSmart's attorney (see tab number 3).

On February 20, 2004, we received a reply from CallSmart's attorney (see tab number 4).

On February 27, 2004, the attorney for CallSmart sent a further reply (portions are redacted to preserve confidentiality) (see tab number 5).

Despite assurances from CallSmart's attorney that he would check certain non-disclosure requirements and advise me of their status, no further reply was received until today, March 18, 2004.

On March 16, 2004, the undersigned sent an e-mail and a letter (portions redacted to preserve confidentiality) by regular mail to CallSmart's attorney (see tab number 6). On March 16, 2004, SmartNET's attorney did file with the PSC a request for trade secret protection. Today, March 18, 2004, the undersigned sent CallSmart's attorney an e-mail (see tab number 7). A response is attached at tab number 8.

Dated this 18th day of March, 2004.


PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Second Floor, Bremer Bank Building
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Motion for Production, Sanctions, or Rescheduled Hearing and Brief in Support of Motion for Production, Sanctions, or Rescheduled Hearing was served by mail on the 18th day of March, 2004, on the following:

Bruce A. Selinger
KUBIK, BOGNER, RIDL & SELINGER
26 East Third Street
P.O. Box 1173
Dickinson, ND 58602-1173

A handwritten signature in blue ink, appearing to be 'DN', is written over a horizontal line.

Don Negaard, ND Bar ID #03598

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

BEK Communications Cooperative,)
Consolidated Telcom, Dakota Central)
Telecommunications Cooperative, Dickey)
Rural Telephone Cooperative, Griggs)
County Telephone Company, Inter-Community)
Telephone Company, LLC, Missouri Valley)
Communications, Inc., Moore and Liberty)
Telephone Company, Nemont Telephone)
Cooperative, Inc., North Dakota Telephone)
Company, Northwest Communications)
Cooperative, Polar Communications Mutual)
Aid Corporation, and Reservation Telephone)
Cooperative,)
Complainants,)
vs.)
SmartNET, Inc., d/b/a CallSmart,)
Respondent.)

Case No. PU-2967-03-666

NOTICE TO TAKE
DEPOSITION UPON ORAL
EXAMINATION AND FOR
PRODUCTION OF DOCUMENTS

TO: RESPONDENT AND ITS ATTORNEY, BRUCE A. SELINGER

PLEASE TAKE NOTICE that the Complainants will take the deposition of Bruce Burke, owner, officer, and represent to present evidence and testimony on behalf of SmartNET, Inc., d/b/a CallSmart, at 9 a.m. MST on Tuesday, February 3, 2004, at the offices of Kubik, Bogner, Ridl & Selinger located at 26 East Third Street, Dickinson, North Dakota 58601, with authority to adjourn from day to day until such deposition is completed. At such time and place you are notified to appear and take such part in the examination as you may be advised and as shall be fit and proper.

YOU ARE FURTHER NOTIFIED that the above individual will produce the following documentation. All documents requested herein relate to the time period from the

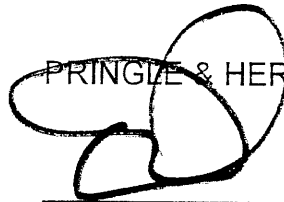
inception of the business operations of SmartNET, Inc., and/or CallSmart, to the current date. Please produce the following:

1. All quarterly sales tax reports of SmartNET, Inc.
2. A copy of all contracts, service agreements, and bills for local telecommunications access facilities, used to connect a local wire center to the SmartNET network. (As used herein, the term SmartNET network will also refer to the CallSmart network.)
3. A copy of all contracts, service agreements, and bills for telecommunications access and transport facilities purchased by the SmartNET network to connect locations on the SmartNET network together.
4. A copy of all contract, service agreements, and bills for telecommunications facilities or services purchased from interexchange carrier companies.
5. A copy of all contracts, service agreements, and bills for all transport and access services purchased from another telecommunications provider and not already provided in the previous disclosures.
6. A copy of all contracts, service agreements, and bills for all internet service provider connections and transport purchased from an internet service provider.
7. A detailed schematic diagram of how the SmartNET network architecture is configured in North Dakota and how the SmartNET network connects to the national and international networks. Please include all equipment locations, locations where the SmartNET network connects to other telecommunications providers facilities, switch locations, router locations, access hubs, interexchange carrier points of interface, internet points of interface, and all other significant network locations, components, transport facilities, operations points, or carrier access points of presences.
8. A detailed list of all routing and switching equipment owned and operated in the SmartNET network, including product manufacturer and part number.
9. A copy of all agreements, contracts, and bills for telecommunications switching and routing services provided by a third party.

10. A complete description of all equipment and appliances required on the customer premise allowing a user to access the SmartNET network for voice communications services.
11. A detailed description of the steps an end user takes to connect to the SmartNET network and complete a voice call from each wire center in which SmartNET has customers.
12. A detailed explanation of how a voice call placed over the SmartNET network is completed, including a detailed discussion of facility type and ownership used as the call traverses the network. Also, the case of one SmartNET user calling another SmartNET user.
- ✓ 13. A description of the minimum internet service connection required at the customer premise to access the SmartNET network.
14. A complete list of all information and content services offered to end users by SmartNET.
15. A complete list of the routable IP addresses registered and available to SmartNET and its affiliates.
16. A complete list of all domain names registered and available to SmartNET and its affiliates.
17. A complete list and description of all content and information service types that originate, terminate, or transit over the SmartNET network.
18. A breakdown of network utilization by relative use of each type of content or information service that originates, terminates, or transits the SmartNET network.
19. A copy of all contracts, service agreements, and bills for network peering arrangements used to transit internet traffic from one provider network to another.
20. A complete list of all locations where SmartNET services can be completed to the end user without mediation of a third party.
21. All terminating and originating traffic records.
22. Balance sheet of SmartNET, Inc.

23. Current subscriber/customer list showing wire center and address.
24. Statements showing remittance to or for:
 - a. Universal Service Funds,
 - b. 911 or E911 taxes or funds,
 - c. Gross receipts taxes,
 - d. Dickinson and any other city's sales taxes, and
 - e. Federal excise taxes.

Dated at Minot, North Dakota, this 19th day of January, 2004.



PRINGLE & HERIGSTAD, P.C.

By: Don Negaard, ND Bar ID #03598
Second Floor, Bremer Bank Building
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Complainants

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Notice to Take Deposition Upon Oral Examination and for Production of Documents was mailed on the 19th day of January, 2004, to the following:

Bruce A. Selinger
KUBIK, BOGNER, RIDL & SELINGER
26 East Third Street
P.O. Box 1173
Dickinson, ND 58602-1173

A handwritten signature in black ink, appearing to be 'DN', written over a horizontal line.

Don Negaard, ND Bar ID #03598

1 BEFC THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA
 2
 3 BEK Communications Cooperative,)
 Consolidated Telcom, Dakota)
 4 Central Telecommunications)
 Cooperative, Dickey Rural Telephone)
 Cooperative, Griggs County)
 Telephone Company, Inter-Community)
 Telephone Company, LLC, Missouri) Case No.
 Valley Communications, Inc., Moore) PU-2967-03-656
 7 and Liberty Telephone Company,)
 Nemont Telephone Cooperative, Inc.,)
 8 North Dakota Telephone Company,)
 Northwest Communications)
 9 Cooperative, Polar Communications)
 Mutual Aid Corporation, and)
 10 Reservation Telephone Cooperative,)
)
 11 Complainants,)
 vs.)
 12 SmartNET, Inc., d/b/a CallSmart,)
)
 13 Respondent.)
 14
 15 TRANSCRIPT OF
 16 DEPOSITION OF BRUCE BURKE
 17
 18 Taken at
 26 East Third Street
 19 Dickinson, North Dakota
 February 3, 2004
 20
 21 (APPEARANCES AS NOTED HEREIN)
 22
 23
 24
 25

1 C O N T E N T S 3
 2 Page No.
 3 BRUCE BURKE
 4 Examination by Mr. Negaard 4
 5 CERTIFICATE OF COURT REPORTER
 AND NOTARY PUBLIC 73
 6 DEPOSITION EXHIBITS MARKED:
 7 No. Description Page No.
 8 1 Quarterly sales tax reports 8
 9 2 Qwest ISDN Primary Rate Service
 10 Agreement - Bismarck 10
 11 3 Telecommunications Service Agreement -
 Fargo 12
 12 4 Private Line and/or ATM Transport
 13 Service Agreement between Dakota
 Carrier Network and SmartNET, Inc. 13
 14 5 SmartNET network drawing 16
 15 -----
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

2 A P P E A R A N C E S 2
 3 MR. DONALD A. NEGAARD of
 Pringle & Herigstad, P.C.
 Attorneys at Law
 4 Second Floor, Bremer Bank Building
 P. O. Box 1000
 5 Minot, North Dakota 58702-1000
 6 FOR THE COMPLAINANTS.
 7 -----
 8 MR. BRUCE A. SELINGER of
 Kubik, Bogner, Ridl & Selinger
 Attorneys at Law
 9 26 East Third Street
 P. O. Box 1173
 10 Dickinson, North Dakota 58602-1173
 11 FOR THE RESPONDENT.
 12 -----
 13 ALSO PRESENT: MR. DEAN ANAGNOST
 14 -----
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 (Pursuant to Notice to Take the Deposition
 2 of BRUCE BURKE in the above-entitled cause, the
 3 following examination came on for taking before
 4 Linda L. Gingery, a Registered Professional Reporter
 5 and a Notary Public in and for the State of North
 6 Dakota, at 26 East Third Street, in the City of
 7 Dickinson, County of Stark, State of North Dakota,
 8 on the 3rd day of February, 2004, commencing at 9:00
 9 a.m., M.T., counsel appearing on behalf of the
 10 respective parties as hereinbefore indicated.)
 11 -----
 12 (The following proceedings were had and
 13 made of record:)
 14 BRUCE BURKE,
 15 being first duly sworn, was examined and testified
 16 as follows:
 17 EXAMINATION
 18 BY MR. NEGAARD:
 19 Q. For the record, your name is?
 20 A. Bruce Burke.
 21 Q. And how old are you?
 22 A. 46.
 23 Q. Okay. And tell me a little bit about your
 24 background, where you were born and raised.
 25 A. I was born in Dickinson, raised in Bowman.

5

7

1 Went to high school in Bowman, graduated there, and
2 then working telephone ever since.

3 Q. Okay. Did you attend any post high school
4 education?

5 A. I did, two years in Bismarck at BJC.

6 Q. Okay. What kind of program did you take
7 there?

8 A. An agri-business program.

9 Q. Okay. Unrelated to telecommunications?

10 A. Totally unrelated.

11 Q. Okay. And so following BJC, what was your
12 first job that you took?

13 A. I worked construction for Woodley
14 Construction for a year and then I got on with
15 Northwestern Bell, worked for them for nine years.

16 Q. What year did you start with Northwestern
17 Bell?

18 A. I think it was '78.

19 Q. Okay. And, of course, today it's Qwest?

20 A. Right. Right. And then I started with
21 Consolidated Telephone in '86.

22 Q. Let me back up. What did you do for
23 Northwestern Bell? What were your job titles?

24 A. Started out as a cable locator, cable
25 splicer, combination technician, and that was it.

1 A. Each owns about a third.

2 Q. Okay. How many employees do you have,
3 SmartNET, Inc.?

4 A. Just the two of us.

5 Q. And by the two of us?

6 A. Clay Kerner and myself.

7 Q. Okay. And before I go on, other than
8 traffic tickets, have you ever entered a plea or
9 been found guilty of any criminal matters?

10 A. Haven't even had any traffic tickets.

11 Q. Okay. So I assume the answer is no.

12 A. No.

13 Q. Okay. Why did SmartNET get a long-distance
14 reseller's license from the State of North Dakota?

15 A. We were pursuing a customer to sell them
16 the VOIP long-distance and they weren't comfortable
17 with it and wanted us to sell on something else and
18 so we were going to pursue another product to resell
19 to them, but it never came to. So we applied for
20 it, but never did use it.

21 Q. Okay. So you do no reselling of long-
22 distance?

23 A. No. No.

24 Q. And I did ask for some documents, and maybe
25 the best place would be to start and mark these as

6

8

1 Q. And then you started with Consolidated?

2 A. Mm-hmm.

3 Q. What did you do for Consolidated?

4 A. Started as a marketing manager, and became
5 an area supervisor, central office supervisor, and
6 then plant manager. I think I had some other title
7 changes in there, too, but I can't remember them
8 all.

9 Q. Okay. How many years did you work for
10 Consolidated?

11 A. I think it was about 14.

12 Q. All right. And then you started up a
13 business called SmartNET, Inc.?

14 A. The corporate name is SmartNET, Inc. We do
15 business as CallSmart.

16 Q. All right. And you're one of the
17 shareholders in CallSmart?

18 A. Yes.

19 Q. And who are the other shareholders?

20 A. Clay Kerner and Dave Schauer.

21 Q. Okay. And where is Dave Schauer from?

22 A. From Regent.

23 Q. And how many shares do you own?

24 A. About a third of the shares.

25 Q. All right. And Dave Schauer owns?

1 we go through them, Mr. Burke.

2 A. Okay.

3 Q. First item I have on my list, I asked for
4 quarterly sales tax reports for SmartNET, Inc. Do
5 you pay sales tax on your services?

6 A. We do, yep, because it's -- in North Dakota
7 Internet services are required to pay sales tax.

8 Q. Okay. And maybe if we could, the court
9 reporter could mark those and then we can identify
10 those that you produced.

11 (Deposition Exhibit 1 was marked for
12 identification.)

13 Q. (MR. NEGAARD CONTINUING) Showing you
14 what's been marked as Exhibit No. 1, is that the
15 documents that you've produced in response to our
16 request for quarterly sales tax reports for
17 SmartNET, Inc.?

18 A. It looks like it.

19 Q. And consists of about seven pages?

20 A. Yes.

21 Q. Is that a business record of your company,
22 or where did you obtain those documents?

23 A. We had our accountant produce them. So,
24 yeah, they're our documents.

25 Q. Okay. And who is your accountant?

1 A. Clay's wife, Deb Kerner.
 2 Q. Okay. And she does all your bookkeeping
 3 for you?
 A. Yeah.
 5 Q. Does she have her own business then?
 6 A. No.
 7 Q. Okay. So is she employed by your company?
 8 A. No. She's just doing it for free.
 9 Q. I see. Okay. Then the next thing that I
 10 asked you for was a copy of all contracts, service
 11 agreements, and bills for local telecommunications
 12 access facilities used to connect to a local wire
 13 center to the SmartNET network. And as we use the
 14 term herein, the term SmartNET will also refer to
 15 CallSmart network.
 16 So if I use SmartNET or CallSmart
 17 interchangeably, is that fair enough for you? I
 18 mean, one is the name of your company and the other
 19 is the one you do business as.
 20 A. It's okay with me.
 21 Q. Okay.
 22 A. Okay. This is the agreement that we have
 23 with Qwest.
 24
 25

1 Q. And does this contract cover all of those
 2 locations?
 3 A. That contract is for -- I think it's for
 4 Bismarck. I'm not sure. This one is for Bismarck.
 5 Q. Okay. And that's the contract you have,
 6 currently have in place for Bismarck?
 7 A. Yes.
 8 Q. Is that the contract that you've had in
 9 place since you started doing business?
 10 A. I believe it is. And this contract may
 11 have even expired by now. I'd have to look. I
 12 think it's expired. So we're on a month-to-month
 13 with them in Bismarck, I would assume.
 14 Q. Okay. And do you have a similar type of
 15 arrangement with Qwest in Dickinson?
 16 A. We do. And I don't have that with me, but
 17 it would be similar to that.
 18 Q. Who do you deal with with Qwest on those
 19 contracts?
 20 A. A gentleman by the name of Brian Elum.
 21 Q. Where is Brian from?
 22 A. I think he's in Phoenix.
 23 Q. What department is he with?
 24 A. Small business. He's the one that we dealt
 25 with to order the Dickinson circuits. We get a

1 (Deposition Exhibit 2 was marked for
 2 identification.)
 3 Q. (MR. NEGAARD CONTINUING) Have you ever had
 4 your deposition taken before?
 5 A. I have, but it's been a long time ago.
 6 Q. Okay. Just some things here. She can't
 7 record it when both of us are talking, so I'll try
 8 not to step on you.
 9 A. Okay.
 10 Q. And if you try not to step on me. And then
 11 if she's marking something or doing something else,
 12 we have to wait for her to catch up.
 13 So I'll show you what's been marked then as
 14 Exhibit 2. And, again, would you tell us what that
 15 is?
 16 A. It's the PRI Service Agreement with Qwest.
 17 Q. Okay. And when you say PRI Service
 18 Agreement, what does that mean to you?
 19 A. It's a primary ISDN. Primary rate ISDN
 20 Service Agreement.
 21 Q. Okay. Now, I notice on your Internet site
 22 that you have advertised that you do business
 23 principally in and around three locations;
 24 Dickinson, Bismarck and Fargo?
 25 A. Yes.

1 new -- we get a new rep just about every time we
 2 call in, so, I mean -- but he's the last one I
 3 remember ordering services from for Dickinson. I
 4 don't remember who we ordered them from when we
 5 ordered these.
 6 Q. Okay. And you also have another document
 7 in front of you that you referenced, I think, when
 8 we talked about Exhibit 2?
 9 A. I guess I don't know what you mean.
 10 Q. I'll make it easier then, maybe. Do you
 11 have any other documents that you have in response
 12 to our request No. 2 for copies of your contracts?
 13 A. Yes. Here's -- I do. Here's the PRI for
 14 Fargo.
 15 (Deposition Exhibit 3 was marked for
 16 identification.)
 17 THE WITNESS: That's the service agreement
 18 for Fargo, for our PRI in Fargo.
 19 Q. (MR. NEGAARD CONTINUING) And that's
 20 Exhibit No. 3?
 21 A. Mm-hmm.
 22 Q. And that's with IdeaOne?
 23 A. Yes.
 24 Q. And who did you deal with there?
 25 A. Kathy Skramstad.

1 Q. Okay. Any other documents you have with
 2 you today in response to our request No. 2?
 3 A. Yes. I've got a transport agreement from
 4 Dakota Carrier Networks for a circuit from Dickinson
 5 to Bismarck.
 6 (Deposition Exhibit 4 was marked for
 7 identification.)
 8 Q. (MR. NEGAARD CONTINUING) And then so the
 9 court reporter can identify it for the record,
 10 that's been marked as Exhibit 4?
 11 A. Okay.
 12 Q. Is that --
 13 A. Yes.
 14 Q. Okay. And who did you deal with at Dakota
 15 Carrier Network?
 16 A. The last agreement I dealt with was Seth
 17 Arndorfer.
 18 Q. Okay. Do you have any similar type of
 19 agreements with DCN for transport between Bismarck
 20 and Fargo?
 21 A. No.
 22 Q. Okay. Any other documents you brought with
 23 you in response to No. 2?
 24 A. No.
 25 Q. Okay. Item No. 3, we asked you for a copy

1 of all contract service agreements for tele-
 2 communications access and transport facilities
 3 purchased by the SmartNET network to connect
 4 locations on the SmartNET network together.
 5 A. Can I get my notes? I brought notes and I
 6 forgot to bring those in. Is that acceptable?
 7 Q. Sure. We'll take a short break here while
 8 you grab that.
 9 (A brief recess was taken.)
 10 THE WITNESS: Okay. I'm ready. What was
 11 the question?
 12 Q. (MR. NEGAARD CONTINUING) Item No. 3, do
 13 you have any documents to produce as a result of
 14 that request?
 15 A. That was the DCN document.
 16 Q. Okay. Do you have any other contracts,
 17 service arrangements, or bills for access and
 18 transport with any other entities other than DCN?
 19 A. No.
 20 Q. Okay. Item No. 4, we asked you for a copy
 21 of all contracts, service agreements, bills -- and
 22 you've reviewed these, right?
 23 A. Mm-hmm. Mm-hmm.
 24 Q. Would it be fair with you if I just refers
 25 them as No. 4?

1 A. Well, you know, we should probably -- you
 2 can go ahead and read through them, because that
 3 will --
 4 Q. Okay. A copy of all contracts, service
 5 agreements, and bills for telecommunications
 6 facilities or services purchased from interexchange
 7 carrier companies.
 8 A. None.
 9 Q. You have none?
 10 A. No.
 11 Q. No. 5, a copy of all contracts, service
 12 agreements, and bills for transport and access
 13 services provided from another telecommunications
 14 provider and not already provided in the previous
 15 disclosures.
 16 A. No contracts.
 17 Q. No. 6, a copy of all contracts, service
 18 agreements, and bills for all Internet service
 19 provider connections and transport purchased from an
 20 Internet service provider.
 21 A. We have contracts, but I could not find
 22 them.
 23 Q. And who do you have contracts with?
 24 A. Sprint.
 25 Q. Do you have contracts in each of your

1 locations then?
 2 A. We have contracts in two of the locations,
 3 Dickinson and Fargo.
 4 Q. No such contracts then in Bismarck?
 5 A. Did I say Dickinson? I meant Bismarck and
 6 Fargo. We do not have a Sprint contract in
 7 Dickinson.
 8 Q. Do you have a contract with anyone, any ISP
 9 in Dickinson?
 10 A. No.
 11 Q. No. 7, I asked you for a schematic drawing
 12 showing how your company operates, and I see a
 13 schematic here. Is that what you produced today?
 14 A. Yes.
 15 (Deposition Exhibit 5 was marked for
 16 identification.)
 17 Q. (MR. NEGAARD CONTINUING) And that's been
 18 marked as Exhibit 5?
 19 A. Yes.
 20 Q. Any other documents now in the first seven
 21 that we've covered that you haven't given me?
 22 A. No.
 23 Q. Okay. No. 8, a detailed list of all
 24 routing and switching equipment owned and operated
 25 in the SmartNET network, including product

17

1 manufacturer and part number.
2 MR. SELINGER: We're going to object to
3 that question, that it's irrelevant, overbroad,
4 proprietary and confidential as to how the network
5 works.

6 MR. NEGAARD: And you can understand my
7 position that the Rules of Civil Procedure say that
8 you're supposed to object before the time of the
9 taking of the deposition?

10 MR. SELINGER: Well, I guess I'm still
11 going to object.

12 MR. NEGAARD: Okay. So noted.

13 Q. (MR. NEGAARD CONTINUING) No. 9, a copy of
14 all agreements, contracts, and bills for
15 telecommunications switching and routing services
16 provided by a third party.

17 A. What I've got in my notes is, refer to
18 questions 2, 3, 4, 5, and 6. They are all included
19 in those questions.

20 Q. And you didn't bring a copy of any of the
21 bills with you today?

22 A. No.

23 Q. Okay. No. 10, a complete description of
24 equipment and appliances required on the customer
25 premise allowing the user to access SmartNET network

18

1 for voice and communications services.

2 A. Okay. We're on No. 10?

3 Q. Yes.

4 A. Okay. My answer to No. 10 is one is a
5 telephone. The second way to access our network is
6 by soft phone clients and that's a program that's on
7 a computer using a microphone and software. Another
8 way to access our network is with an IP phone. And
9 another way, the last way, is a gateway.

10 Q. And when you say by accessing with a
11 gateway, what do you mean?

12 A. It's a product that you can install in your
13 home, connect to any Internet connection, actually
14 can be any Internet connection anywhere in the
15 world, and it gives you access to our network.

16 Q. Okay. Is there any special capability
17 required to access in that fashion as far as the
18 speed of the Internet connection the user has?

19 A. No.

20 Q. Okay. Do most of your customers access by
21 using their telephone?

22 A. Yes.

23 Q. Okay. Do you have any percentage how many
24 percent of those access your service by telephone?

25 A. I don't, no.

19

1 Q. And on your Website, you advertise that
2 they don't need any customer premises equipment
3 other than their telephone to access your network;
4 is that correct?

5 A. Yes.

6 Q. There are some other ways they can do it,
7 but most of your customers just do it over the
8 telephone?

9 A. Yes.

10 Q. Okay. No. 12, a detailed explanation of
11 how a voice call placed over the SmartNET network is
12 completed, including a detailed discussion of
13 facility type and ownership used as the call
14 traverses the network. Also, the case of one
15 SmartNET user calling up another SmartNET user.

16 A. Okay. We skipped 11. Did you mean to do
17 that?

18 Q. Not really, but as long as we're on this
19 one, let's go ahead and cover this one.

20 A. You want to do 12 first?

21 Q. Yeah.

22 A. Okay. What I have for an answer in 12 in
23 my notes is, please refer to the drawing requested
24 on item No. 7.

25 Q. Okay.

20

1 A. To follow the explanation, you can pick any
2 two devices used to access SmartNET -- excuse me.
3 Access the SmartNET/CallSmart network, then follow
4 the Internet path between any two devices. The
5 facility type varies depending on the customer
6 access device and Internet connection. Access
7 devices are described in items 10 and 12. Facility
8 types include dial-up and/or broadband connections.

9 Q. Okay. And that's your response then to
10 No. 12?

11 A. Yes.

12 Q. Okay. No. 11 then, a detailed description
13 of the stems an end user takes -- and I believe that
14 should be steps --

15 A. Okay.

16 Q. -- an end user takes to connect to the
17 SmartNET network and complete a voice call from each
18 wire center in which SmartNET has customers.

19 A. Telephone, two-step process; first step,
20 customer dials a local access to the gateway.
21 Second step, customer dials destination number.
22 Soft phone, first step, customer connects computer
23 to any Internet connection. Second step, customer
24 dials destination number. IP phone, customer
25 connects IP phone to any Internet connection.

21

1 Second step, customer dials destination number.
 2 Gateway, first step, customer connects gateway to
 3 any Internet connection. Second step, customer
 4 dials destination number.
 5 Q. Okay. And then that's then the complete
 6 response to No. 11?
 7 A. Yes.
 8 Q. Okay. Thirteen, we ask for a description
 9 of the minimum Internet service connection required
 10 at the customer premise to access the SmartNET
 11 network.
 12 A. It's a dial-up connection.
 13 Q. Okay. Fourteen, a complete list of all
 14 information and content services offered to end
 15 users by SmartNET.
 16 A. Currently, CallSmart is offering VOIP
 17 information services. We are also beta testing more
 18 new IP services, such as phone home and voice to
 19 e-mail.
 20 Q. But you're not offering those now?
 21 A. Actually, we are. We're offering those in
 22 a beta test right now.
 23 Q. Which means your first customer?
 24 A. First dozen or so customers.
 25 Q. You have 12 beta sites?

22

1 A. More than 12.
 2 Q. Okay. And is that in the Dickinson,
 3 Bismarck or Fargo area?
 4 A. Actually, it's international. It's all
 5 over the world.
 6 Q. Okay. Do you have some customers then
 7 outside the U.S.?
 8 A. Yes.
 9 Q. What countries?
 10 A. Most of those customers are in Iraq.
 11 Q. Okay. U.S. citizens in Iraq?
 12 A. Yes.
 13 Q. Okay. And tell me what they're doing in
 14 Iraq then.
 15 A. They're in the military, National Guard.
 16 Q. How do they use your service in Iraq?
 17 Explain that to me.
 18 A. They will connect -- they will connect
 19 their -- basically, they're using it as a soft phone
 20 under the soft-phone description. They connect to
 21 an Internet connection and dial their destination
 22 number.
 23 Q. Okay. And they're using that to make
 24 contact in the United States then with family, I
 25 presume.

23

1 A. Yes. Yes.
 2 Q. What's the charge for that service?
 3 A. During the beta test there is no charge,
 4 and we haven't decided what our rate will be for
 5 that type of service.
 6 Q. Okay. And how many users in Iraq do you
 7 have?
 8 A. I should clarify that. The users are on
 9 their way to Iraq. They're in Colorado right now.
 10 They're going through some training before they go
 11 to Iraq.
 12 Q. Is this Guard unit based in North Dakota
 13 then?
 14 A. Based out of Dickinson.
 15 Q. Okay. And so I take it some of them were
 16 your current customers.
 17 A. I don't know for sure if they were or not.
 18 Q. Okay. How did you make contact with that
 19 group to market this concept?
 20 A. Phone calls. Actually, we made one phone
 21 call and they have been coming to us so we didn't
 22 have to really market it.
 23 Q. Okay. Who did you make the one phone call
 24 to then?
 25 A. To one of the teachers. I'm embarrassed.

24

1 I can't remember his name.
 2 MR. SELINGER: Dobitz?
 3 THE WITNESS: I think it was Pete Dobitz.
 4 Yeah, I think it was Pete Dobitz.
 5 Q. (MR. NEGAARD CONTINUING) Where does he
 6 teach at?
 7 MR. SELINGER: Hagen.
 8 THE WITNESS: Hagen Junior High.
 9 Q. (MR. NEGAARD CONTINUING) Okay. Any other
 10 content service offers that you have other than the
 11 two that you gave me?
 12 A. No.
 13 Q. Okay. And you told me a little bit about
 14 the one service type that you said the people in
 15 Iraq were doing. What's the other one that you
 16 talked about?
 17 A. We are working on enhancing our service to
 18 change voice to e-mails.
 19 Q. Okay. Are you operating as an Internet
 20 service provider then in that context?
 21 A. All of our services are Internet service --
 22 Internet-based services, yes.
 23 Q. Okay. If I wanted to transmit data using
 24 your company, e-mails without using your voice to
 25 e-mail transmission, can I do that with your company

25

1 in today's environment?

2 A. You can on a limited basis, yes.

3 Q. Okay. And what's that limited basis?

4 A. I don't know. I know some people are doing
5 it, are transmitting and connecting to the Internet
6 through our VOIP service.

7 Q. Are they -- you mean they're hooking up
8 with the computer?

9 A. Yes. We're not encouraging it, but they're
10 doing it.

11 Q. Okay. And so they have so many minutes of
12 use that they can use with your service?

13 A. It depends on the plan they choose.

14 Q. Okay. What are you charging them for that
15 then? If I were one of your customers and I was
16 accessing the Internet through your company using
17 the computer in my home, would I incur minutes-
18 of-use charges or a monthly charge? How would I pay
19 you for that?

20 A. Depending on the plan you select. We have
21 an unlimited package. You would not be charged
22 additional for those minutes. If you select a per-
23 minute package, you would be charged for every
24 minute that you were connected to the network.

25 Q. Okay. But you don't advertise yourself as

26

1 that, you don't encourage that?

2 A. Not yet.

3 Q. Okay. Have we pretty much covered 14?

4 A. Yes.

5 Q. Okay. No. 15, a complete list of the
6 routable IP addresses registered and available to
7 SmartNET and its affiliates.

8 A. We have one. It's 63.224.234.145.

9 Q. And where is that physically located?

10 A. I believe it's in Bismarck.

11 Q. Okay. No other IP addresses registered to
12 your company?

13 A. No, not that I'm aware of.

14 Q. Okay. Sixteen, a complete list of all
15 domain names registered and available to CallSmart,
16 SmartNET and its affiliates.

17 A. We have one. It's GetCallSmart.com.

18 Q. Okay. Seventeen, a complete list and
19 description of all content and information service
20 types that originate, terminate, or transit over the
21 SmartNET network.

22 A. My answer to No. 17 is refer to item
23 No. 14. They're the same.

24 Q. Okay. And you've already told us about all
25 those?

27

1 A. Yes.

2 Q. Okay. Eighteen, a breakdown of network
3 utilization by relative use of each type of content
4 or information service that originates, terminates,
5 or transits the SmartNET network.

6 A. My answer is unknown.

7 Q. And why is it unknown?

8 A. I have no idea. I don't know. We don't
9 monitor that. We don't record that, monitor it. We
10 don't know.

11 Q. Okay. Nineteen, a copy of all contracts,
12 service agreements, and bills for network peering
13 arrangements used to transit Internet traffic from
14 one provider network to another.

15 A. We have none.

16 Q. No. 20, a complete list of all locations
17 where SmartNET services can be completed to the end
18 user without mediation of a third party.

19 A. We have -- there are none.

20 Q. Twenty-one, all terminating and originating
21 traffic records.

22 MR. SELINGER: We're going to object.
23 Again, that's overbroad, irrelevant in this issue,
24 proprietary.

25 MR. NEGAARD: So noted.

28

1 Q. (MR. NEGAARD CONTINUING) Twenty-two,
2 balance sheet of SmartNET, Inc.

3 MR. SELINGER: Same objection.

4 Q. (MR. NEGAARD CONTINUING) Twenty-three,
5 current subscriber/customer list showing wire center
6 and address.

7 MR. SELINGER: Same objection. It's
8 protected. The customer list is protected. You
9 have to get that from the customer.

10 Q. (MR. NEGAARD CONTINUING) Twenty-four,
11 statements showing remittance to or for universal
12 service funds. Does your company pay anything for
13 universal service funds or into the fund?

14 A. Now, you're asking if we remit any?

15 Q. Mm-hmm.

16 A. We do not remit. The only thing that we
17 remit is, you would have to refer to item 1 for
18 sales tax.

19 Q. Okay. So you don't pay any 911 or E911
20 taxes or funds?

21 A. Oh, we pay them when we buy local services,
22 but we don't remit them in a -- isn't that what this
23 question is asking, do we remit them by reporting
24 and paying them through a --

25 Q. I think both. Either does your company pay

29

1 them or do you remit them on behalf of your
2 customers?
3 A. We don't -- the only thing that we remit on
4 behalf of our customers are sales taxes. We do pay
5 universal service funds, 911, gross receipts, and
6 federal excise taxes on the services that we
7 purchase from Qwest, IdeaOne, DCN. So the answer is
8 yes, but it would be in telecom services that we
9 purchase. But we don't remit any on behalf of our
10 customers.

11 Q. And you pay those taxes to someone else as
12 part of being a customer of that company?

13 A. Yes.

14 Q. You don't actually report and remit those
15 or pay those yourself?

16 A. No.

17 Q. Okay. We've covered the list of 24 items,
18 I believe. Are there any other documents you
19 brought with you that we haven't marked?

20 A. No.

21 Q. Okay. Your service or your Website
22 indicates that customers can use it for long-
23 distance anywhere in the United States or Canada,
24 except Alaska and Hawaii. Why is there a limit on
25 it?

30

1 A. There's not a limit on it. Our customers
2 can actually call anywhere in the world. I don't
3 know when the last time you looked at the Website,
4 but we have international rates. They can call
5 Alaska and Hawaii. What you might be referring to
6 is under the unlimited plan, that does not include
7 Alaska and Hawaii.

8 Q. And the unlimited plan, explain that to me.
9 Why do you call it unlimited if you can't use it
10 internationally?

11 A. It's unlimited to domestic U.S. and Canada.
12 And if you want to call -- it's the plan that we
13 established. If you want to call outside of that,
14 then you have to pay per minute to do that.

15 Q. Okay. What's the charge per minute for
16 calling outside that?

17 A. It varies depending on the country that you
18 call and the number that you call inside the
19 country. It's a rate table of probably 10 or 12
20 pages. There's lots of different rates.

21 Q. And you have a rate table for that?

22 A. Yeah, it's on the Website.

23 Q. Okay. Well, if you're using the Internet,
24 why is there a different charge for that plan to
25 call outside the U.S. or Canada?

31

1 A. Our costs are different. We charge based
2 on what it costs us to terminate calls.

3 Q. Okay. So if I understand you correctly
4 then, you are paying terminating charges?

5 A. We're paying -- we're paying to terminate
6 calls, yes.

7 Q. You're not doing that in North Dakota, are
8 you?

9 A. No.

10 Q. Okay. And are you paying to terminate
11 calls anywhere else in the United States?

12 A. We send our calls to the Internet and we
13 pay a couple different VOIP termination providers to
14 terminate calls for us.

15 Q. Okay. And who are those other VOIP
16 providers?

17 A. That's private.

18 Q. Well, I don't think it is, sir, because
19 you've been operating in the state without paying
20 access to the local telephone companies and so
21 you're saying that you're operating as a VOIP
22 provider and I think the issue here is how are you
23 operating. If you're saying that you're a VOIP
24 provider, that information is important. If you
25 refuse to provide it, then I would suggest to you

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1 that the record could be laid on the fact that
2 you're refusing to provide information. And if
3 you're doing that, then the Public Service
4 Commission can make a decision on the fact that
5 you're refusing to provide information. That call
6 is yours. It's not mine. You and your attorney can
7 consult about it, if you want to.

8 A. Well, I think we should. I think we should
9 consult about it.

10 MR. SELINGER: Okay. We'll take a little
11 break.

12 (Recess was taken from 9:38 a.m. to 9:45
13 a.m., the same day.)

14 MR. NEGAARD: We're back on the record.

15 Q. (MR. NEGAARD CONTINUING) And you've spoken
16 to your attorney and I'm not going to ask you what
17 you talked about, but the question I asked you was
18 what companies do you have contractual
19 relationships or other relationships with in order
20 to terminate your calls from the Internet to the end
21 user?

22 MR. SELINGER: And just so the record is
23 clean on that, we want to object to it as being
24 overbroad and proprietary and confidential. And I'm
25 going to have Bruce explain why it is. We're not

1 trying to be cute in not answering the question, but
2 that is basically the trade secret that separates
3 our IP company from other IP companies, and Bruce
' can probably explain better.

5 THE WITNESS: That's a pretty good
6 explanation. We've spent three years wading through
7 different VOIP providers, termination providers,
8 that are from bad to worse. And we've got a couple
9 that are pretty good and for us to share that right
10 now would be detrimental to our livelihood. The
11 companies that are complaining have the money to do
12 what we're trying to do and we've got the experience
13 and if we share too much of our experience with
14 them, we feel it puts us in a position where we will
15 lose out.

16 Q. (MR. NEGAARD CONTINUING) Okay. Don't you
17 think that competition is good?

18 A. Absolutely.

19 Q. Okay. And all the other telecommunication
20 providers in the world are putting their information
21 out there so the consumers can pick and choose their
22 options. Don't you think it's fair to share that
23 information so other people can benefit by your
24 experience?

25 A. I don't think it's good business for us to

1 share all of our secrets so companies that have the
2 wherewithal to really take off with it can run us
3 out of business.

4 Q. Okay. But the long and the short of it is,
5 you're refusing to answer the question?

6 A. Yes.

7 Q. Okay. Then tell me the companies that you
8 sifted through or used that weren't good.

9 A. I'll tell you a couple of them. InterTel.

10 Q. Where are they located?

11 A. They're in Nevada.

12 Q. Okay. Are they on the Internet, you can
13 find them there?

14 A. Yeah -- I don't know. I've lost contact
15 with them, so I don't know. There's another company
16 called Morewire and I think they've gone out of
17 business. Lost contact with them. Genuity, and
18 they have been bought out by Level 3.

19 Q. And you did business with these companies?

20 A. Yes.

21 Q. Any others?

22 A. No. Well, there might be others, but I
23 don't want to share all of them with you. Do you
24 want to know all of them?

25 Q. Yeah, I do.

1 A. No, that's all that I can think of right
2 now.

3 Q. Well, you've obviously -- you thought that
4 there are more because you just told me that there
5 are others and then asked if -- asked if you should
6 share those with me, so there obviously must be some
7 more that you're thinking of, Mr. Burke.

8 A. Well, let me think. There's one more. A
9 company call Nikotel.

10 Q. Is it N-e-c or N-e-k?

11 A. It's N-i-k-o-t-e-l, I think.

12 Q. Okay. We talked briefly about the call
13 plans and you said that certain plans have a charge
14 for each minute of use. How do you record these
15 minutes of use?

16 A. We have a software, billing software that
17 records them.

18 Q. Okay. And what type of billing software is
19 that?

20 THE WITNESS: Can we talk again?

21 MR. SELINGER: Sure, take a break.

22 (Recess was taken from 9:51 a.m. to 9:53
23 a.m., the same day.)

24 MR. NEGAARD: We're back on the record.

25 MR. SELINGER: We're going to object again

1 to the question as being overbroad, burdensome,
2 proprietary and confidential, and not relevant at
3 all to the issue before the Public Service
4 Commission.

5 Q. (MR. NEGAARD CONTINUING) Okay. You use
6 some software for billing or keeping track of your
7 customers' minutes of use; is that correct?

8 A. Yes.

9 Q. And what type of device is that located in?
10 Is it a PC, a router?

11 THE WITNESS: Let's go back out again.

12 (Recess was taken from 9:53 a.m. to 9:54
13 a.m., the same day.)

14 MR. SELINGER: We're going to object as
15 being totally irrelevant to the issue before the
16 Public Service Commission. Basically gets into
17 proprietary issues and confidential things that
18 basically distinguish our network.

19 Q. (MR. NEGAARD CONTINUING) Did your company
20 write the software that you're using?

21 A. No.

22 Q. Have you developed or manufactured any of
23 the devices that you're using?

24 A. No.

25 Q. Okay. So the equipment and the software

37

1 that you're using is something you purchased on the
2 market?

3 A. Yes.

4 Q. Okay. Can you tell me what an OIP
5 long-distance is?

6 A. An OIP long-distance? I don't know what
7 that is.

8 Q. Okay. I thought that you had used that
9 term earlier.

10 A. Oh, VOIP. Okay. VOIP. That's voice-over
11 Internet protocol, is what that stands for.

12 Q. Okay. And you're just referencing -- why
13 don't you tell me what you mean by VOIP long-
14 distance, what it means to you.

15 A. What I can tell you that VOIP long-distance
16 means to me is, it's a long-distance call that -- or
17 a long-distance -- it's an application that uses the
18 Internet backbone.

19 Q. Let's talk about that a little bit.

20 A. Okay.

21 Q. Tell me -- and I know you gave us a chart,
22 Bruce. I'm not an engineer or a technical person.
23 Quite frankly, I don't understand how all this stuff
24 works.

25 So if you could just nuts and bolts

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1 explain to me, a customer from Dickinson that you
2 have is going to use your service to make a long-
3 distance call to Bismarck. Tell me how that works.

4 A. Well, if you want to look at this diagram,
5 you can pick any device on that diagram and whether
6 it's Bismarck or Dickinson or Fargo or Iraq and you
7 can follow the Internet connection to any other
8 device. This could be -- and you can multiply any
9 one of these drawings. This is showing one type.
10 Like this would be showing Bismarck or this would be
11 showing Dickinson or this would be showing Fargo.

12 Q. Okay. And with you pointing on a diagram,
13 it doesn't translate very well into the record.

14 A. Mm-hmm.

15 Q. So let's say that I'm a customer of yours
16 in Dickinson --

17 A. Mm-hmm.

18 Q. -- and I'm going to call my brother, who
19 lives in Bismarck, and I pick up my telephone, I
20 call your local number in Dickinson. I then dial
21 some other numbers and a call gets routed to
22 Bismarck and my brother picks up his telephone in
23 Bismarck.

24 A. Mm-hmm.

25 Q. When my call from Dickinson gets to your

39

1 facility, what happens at your facility with that
2 phone call?

3 A. We change that -- we change that to IP and
4 send it to the Internet.

5 Q. Okay. So then it travels the Internet to
6 where?

7 A. To the terminating gateway.

8 Q. And where is the terminating gateway
9 located?

10 A. In the particular call you're asking about?

11 Q. Yes.

12 A. That terminating gateway is Bismarck, the
13 gateway in Bismarck.

14 Q. Okay. Now, the gateway in Bismarck, is
15 that your gateway?

16 A. Yes.

17 Q. Okay. And so the call gets to Bismarck and
18 then is it converted at Bismarck?

19 A. Yes.

20 Q. Okay. And once it's converted in Bismarck,
21 then it's delivered to a local phone system in
22 Bismarck?

23 A. Yes.

24 Q. Okay. Is that the same situation that
25 would occur calling from Dickinson to Fargo?

40

1 A. Yes.

2 Q. You have another gateway in Fargo?

3 A. Yes.

4 Q. Okay. Now, tell me --

5 A. Let me clarify that by saying it's not all
6 the numbers, but some of the numbers between
7 Dickinson-Bismarck, Bismarck-Fargo and vice versa do
8 go gateway to gateway, not all of them. Some
9 terminate through our VOIP termination providers as
10 well. So it depends on who you call.

11 Q. Okay. And what types of customers -- were
12 you making a call within the State of North Dakota,
13 what types of customers in those locations,
14 Bismarck, Dickinson, Fargo, do you have to go
15 through one of your VOIP providers, your VOIP
16 providers?

17 A. It's not a certain type. It just depends
18 on the number that you call. We don't have all the
19 numbers programmed to terminate on our own gateways.

20 Q. Okay. So some phone numbers do not?

21 A. Right.

22 Q. Are those --

23 A. Depends on the office code, the NPA/NXX.

24 Q. Okay. And do those vary depending on

25 whether it's an incumbent local exchange carrier or

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1 a CMRS carrier? What defines the NPA/NXX that you
2 don't have programmed into your computers?

3 A. We didn't really make a definition. It's
4 just some are going that way and some aren't. We
5 haven't probably done a good job of making it as
6 efficient as we can yet. We're still working on
7 that.

8 Q. Okay. So then I want to call someone in
9 San Diego from Dickinson. I would assume that that
10 phone call starts out the same way to your office in
11 Dickinson.

12 A. Mm-hmm.

13 Q. Are you converting it then into a packet at
14 your office?

15 A. Actually -- in Dickinson?

16 Q. Yes.

17 A. Our equipment for Dickinson is in Bismarck,
18 so at that location we convert it to IP. And we
19 share that -- we share that Sprint Internet
20 connection in Bismarck.

21 Q. Okay. So how do you get the call then from
22 Dickinson to Bismarck?

23 A. Through that DCN transport agreement.

24 Q. Okay. So you're transporting it over DCN?

25 A. Mm-hmm. Yes.

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1 Q. Okay. So then getting back to my question
2 about the phone call to San Diego, the call from
3 Dickinson goes to your office here in Dickinson and
4 then is transported via DCN to Bismarck?

5 A. That's a close enough description, yes.

6 Q. Okay. And then once it gets to Bismarck,
7 you're converting it and putting it on the Internet?

8 A. Yes.

9 Q. And then it travels on the Internet to San
10 Diego?

11 A. We send our calls to two different VOIP
12 providers, termination providers, and depends on --
13 it will go to one of those two VOIP termination
14 providers.

15 Q. Okay. Do you in turn then accept traffic
16 for those VOIP providers that is going to terminate
17 in North Dakota?

18 A. No.

19 Q. So you don't have a reciprocal arrangement
20 with them?

21 A. No.

22 Q. Okay. Do you accept any VOIP traffic from
23 any other providers that you terminate into North
24 Dakota?

25 A. No. Only our own -- only our own

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1 customers.

2 Q. Okay. Would it be fair to say then within
3 the United States, the Continental United States,
4 any calls that you have that go outside of North
5 Dakota are then terminated using one of those VOIP
6 companies you're operating with?

7 A. Actually, most of the calls even inside the
8 State of North Dakota go to them.

9 Q. They do?

10 A. Yes.

11 Q. Okay. And then they're terminating them
12 somehow or another onto the local network?

13 A. We're sending these calls to those
14 termination providers. How they terminate them, we
15 don't know.

16 Q. Okay. Do they ever bill you for any kind
17 of terminating access?

18 A. We're billed -- yeah, we pay termination
19 charges.

20 Q. Is it identified on their bill to you as
21 terminating access?

22 A. I don't know.

23 Q. Okay. Call goes international, are you
24 still using these same two companies for
25 terminating?

44

1 A. Yes. Yes.

2 Q. We talked about the call from Dickinson
3 that you said gets routed to Bismarck. I'm assuming
4 a call then that originates in Bismarck would get
5 handled out of Bismarck and it would be the same,
6 except that we don't have a transport over DCN from
7 Dickinson to Bismarck; is that correct?

8 A. I'm not sure if I understood the question.

9 Q. Okay. You have a customer in Bismarck --

10 A. Mm-hmm.

11 Q. -- he's using your facilities to make a
12 phone call long-distance --

13 A. Okay.

14 Q. -- would it be fair to say that that's
15 identical to the Dickinson call, except that we
16 don't have the transport for Dickinson to Bismarck,
17 the person is already in Bismarck?

18 A. Oh, yes. Yes. Yeah.

19 Q. Okay. And then what about Fargo, do you
20 have a facility in Fargo similar to your Bismarck
21 facility?

22 A. Yes.

23 Q. So you don't need to transport the Fargo
24 call to Bismarck?

25 A. No.

1 Q. Okay. Do you pay any originating access
2 charges in North Dakota to any telephone companies?

3 A. I'm drawing a blank. Sorry. I don't
4 believe so.

5 Q. Okay. Your Website advertises a special
6 arrangement in Bismarck using BTI. Do you have a
7 special arrangement with BTI?

8 A. We have an agreement. We bundle services
9 with them, is all. We bundle the two products.

10 Q. So you sell your service along with
11 whatever service they are selling and bundle that
12 together?

13 A. Yes.

14 Q. And who have you dealt with at BTI?

15 A. Mitch Stafford.

16 Q. Okay. Has your Website changed at all
17 since this complaint was filed?

18 A. About the only thing that changed is we
19 added international calling. There could have been
20 some other minor changes, but I don't recall.

21 Q. Have you changed any of your operations
22 since the complaint was filed?

23 A. No.

24 Q. And so I understand it, in Dickinson you
25 provided us an agreement that you have with Qwest

1 A. Yes.

2 Q. And in Fargo you have a contract with
3 IdeaOne, which I understand that's a CLEC in Fargo?

4 A. Yeah.

5 Q. And so all your traffic in Fargo then that
6 you terminate into Fargo terminates through IdeaOne?

7 A. Yes.

8 Q. I understand that you indicate you are not
9 going to give me the names of the two VOIP providers
10 that you have that provide termination services for
11 you. Are you affiliated with any other VOIP
12 providers in the United States other than those two
13 entities, belong to any trade organizations?

14 THE WITNESS: Can we step outside again?

15 MR. SELINGER: Sure.

16 (Recess was taken from 10:12 a.m. to 10:13
17 a.m., the same day.)

18 MR. NEGAARD: Okay. Back on the record.

19 THE WITNESS: Ask the question again,
20 please.

21 Q. (MR. NEGAARD CONTINUING) I asked if you
22 were affiliated with any other similar operating
23 entities, VOIP providers, in the United States,
24 other than the two that you're using for terminating
25 services.

1 and I think you also indicated -- and that's
2 Exhibit 2. It's actually for Bismarck.

3 A. Yes.

4 Q. And you have a similar arrangement in
5 Dickinson?

6 A. Yes.

7 Q. Okay. So all of the traffic that you have
8 that comes into the Dickinson area, that's
9 terminated in the Dickinson area, is terminated
10 through Qwest under your relationship with Qwest in
11 Dickinson?

12 A. Ask me the question again, please.

13 Q. Okay. All the traffic that you have --

14 A. Okay.

15 Q. -- that terminates in Dickinson --

16 A. Okay.

17 Q. -- over your company's network --

18 A. Okay.

19 Q. -- is terminated through Qwest under this
20 agreement that you have, Exhibit No. 2?

21 A. Yes.

22 Q. Okay. You aren't terminating to any other
23 carrier in Dickinson?

24 A. No.

25 Q. Okay. And that's the same in Bismarck?

1 A. No.

2 Q. Okay. Do you belong to any trade
3 organizations?

4 A. Yes.

5 Q. And what are those?

6 A. We belong to the VON Coalition.

7 Q. Okay. And what's the VON Coalition?

8 A. They're an organization developed to
9 represent voice on net, VOIP technology, to protect
10 it, and to influence rulemaking.

11 Q. Okay. Their office is in Washington, D.C.?

12 A. I'm not sure.

13 Q. Okay. Do you pay dues to them?

14 A. Yes.

15 Q. Okay. How much are the dues?

16 A. Two grand a year.

17 Q. Okay. Do you get any other services from
18 them other than advocating the interests of VOIP
19 providers?

20 A. No.

21 Q. Okay. Just to back up for a minute,
22 talking about the phone call from Dickinson to
23 Bismarck, that call would never actually go out on
24 the Internet, would it?

25 A. It depends on the number that you dial.

1 Q. In Bismarck?
 2 A. Right. Depending on the number that you
 3 dial, some of the calls go out on the Internet and
 terminate through one of our two termination
 5 providers and some of them go through an Internet
 6 hub and back to another gateway.
 7 Q. Where is the Internet hub?
 8 A. It's in Bismarck.
 9 Q. And where is the gateway?
 10 A. It's in Bismarck.
 11 Q. Okay. And are they in the same office?
 12 A. Yes.
 13 Q. Okay. And the gateway is connected to
 14 Qwest's facilities?
 15 A. Yes.
 16 Q. And the hub is connected to the DCN
 17 facility?
 18 A. No. The hub is connected to Sprint, to the
 19 IP facility.
 20 Q. Okay. So you're taking that traffic -- are
 21 both those pieces of equipment in the same office?
 22 A. Yes.
 23 Q. Okay. So you're sending it out over the
 24 Internet and then bringing it back in off the
 25 Internet into the same office?

1 A. Yes.
 2 Q. Okay. Seems like kind of a waste of time
 3 and money, doesn't it?
 4 A. It doesn't to me.
 5 Q. Okay. But all your calls into Bismarck are
 6 handled that way?
 7 A. No. Some of the calls are. And some of
 8 the calls terminate through one of the other VOIP
 9 termination providers.
 10 Q. Okay. Are there any calls coming from
 11 Dickinson into Bismarck that are terminated onto the
 12 Qwest exchange there?
 13 A. Yes.
 14 Q. Without going over the Internet?
 15 A. No.
 16 Q. So they're all going over the Internet?
 17 A. Yes.
 18 Q. Okay. Have you ever filed any tariffs
 19 anywhere?
 20 A. Not that I'm aware of, no.
 21 Q. Does your company have any operations or
 22 presence in Florida?
 23 A. No.
 24 Q. Okay. No equipment there?
 25 A. No.

1 Q. Okay. Are you an officer, director or a
 2 shareholder in any other companies other than
 3 SmartNET, Inc.? And by "shareholder," I'm referring
 4 to any nonpublicly traded companies.
 5 THE WITNESS: Can we go outside again?
 6 MR. SELINGER: Sure.
 7 (Recess was taken from 10:18 a.m. to 10:21
 8 a.m., the same day.)
 9 Q. (MR. NEGAARD CONTINUING) Do you remember
 10 the question?
 11 A. Please repeat it.
 12 Q. I asked you if you were an officer,
 13 director or shareholder in any other companies, and
 14 by that I meant nonpublicly traded companies.
 15 A. Yes.
 16 Q. Okay. And what companies are those?
 17 A. One other company is NDX Communications.
 18 Q. Okay. And what capacity or relationship do
 19 you have with NDA?
 20 A. NDX.
 21 Q. Okay.
 22 A. Shareholder, an officer.
 23 Q. Is that a North Dakota corporation?
 24 A. Yes.
 25 Q. And it's a corporation?

1 A. Yes, I believe so.
 2 Q. Okay. And what lines of business is that
 3 company in?
 4 A. The communications business.
 5 Q. Okay. Is it an operating company?
 6 A. What do you mean by "operating company"?
 7 Q. Is it doing business today?
 8 A. Yes. We're trying to develop a
 9 relationship in India.
 10 Q. Okay. And is this for communications
 11 services?
 12 A. Yes.
 13 Q. Okay. Is it different than what you're
 14 doing through SmartNET?
 15 A. Yes, completely unrelated.
 16 Q. Okay. And who are the other owners or
 17 shareholders in that company?
 18 A. Dave Schauer, Clay Kerner, Sangeeta Patel,
 19 Sumit Patel and Samir Patel.
 20 Q. Are the Patels brothers?
 21 A. Yes.
 22 Q. Okay. And where are they located?
 23 A. They're in Fargo.
 24 Q. Okay. Is this some type of communications
 25 between the United States and India?

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1 A. We're trying to develop a communications --
2 we're trying to develop a customer base in India,
3 trying to develop business in India is what we're
4 trying to do with that, to communicate in and
5 between the United States and India.

6 Q. Okay. Do you have any offices in North
7 Dakota?

8 A. For NDX?

9 Q. Yes.

10 A. No.

11 Q. Any other companies?

12 A. No.

13 Q. What's Platypus?

14 A. Platypus is an Internet billing software.

15 Q. Okay. Is that the one you use that's so
16 top secret?

17 A. No.

18 Q. Okay. Do you use Platypus --

19 A. No.

20 Q. -- software?

21 A. No.

22 Q. You don't?

23 A. No.

24 MR. NEGAARD: What I'd like to do at this
25 point in light of the fact that the witness has

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1 refused to answer certain questions and certain
2 documents weren't provided to us, there are some
3 documents that were provided, I would like to take a
4 short recess, have your office make copies of these
5 documents, if I could, and instead of me wasting
6 your time sitting here dragging through some
7 questions that we haven't thought through, I'd
8 rather have a half-hour, 40 minutes to go sit down
9 someplace, organize some questions I can ask based
10 on what I've been provided, come back, finish those
11 questions, and then what I'm going to do is recess
12 this deposition so that I can get these issues in
13 front of a hearing officer and get an order to
14 compel that either your client answers the questions
15 or is de facto found in violation of North Dakota
16 law because of the fact that he's not providing this
17 information.

18 MR. SELINGER: And I agree, that's a good
19 idea. We'll get it in front of an administrative
20 law judge to see if we can develop confidentiality
21 agreements or something like that.

22 MR. NEGAARD: So we'll take a short recess
23 and be back here in, what, 40 minutes? Does that
24 work for you?

25 MR. SELINGER: Sure.

55

1 (Recess taken from 10:26 a.m., to 11:07
2 a.m., the same day.)

3 MR. NEGAARD: Back on the record.

4 We've taken a short recess and I want it
5 noted on the record that myself and Mr. Anagnost
6 agree to be bound by the trade secret rule that the
7 North Dakota Public Service Commission has adopted,
8 which allows for protection of trade secrets under
9 North Dakota's Trade Secret Act. And so with that
10 in mind, I would like to ask if you, on the record,
11 would agree to provide us with the information that
12 you have not provided us with today?

13 MR. SELINGER: Could you explain that? I
14 guess I'm not familiar with that pertaining to the
15 Public Service Commission.

16 MR. NEGAARD: Okay. What the rule says is
17 that if a party has trade secret information that's
18 provided to another party or is filed with the
19 Public Service Commission, that that information is
20 not released to anyone without them signing a
21 nondisclosure agreement stating that they agree to
22 treat the information as proprietary and protected
23 by the North Dakota Trade Secrets Act, which is in
24 the Century Code.

25 And I'm suggesting to you today that if

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1 your client believes that he has information that
2 qualifies for that trade secret, that we would agree
3 to be honored by the rule of the Public Service
4 Commission and that is, that if any portion of that
5 information would be used during the testimony or
6 the proceedings of the Public Service Commission,
7 anyone who has not signed such a disclosure is
8 required to leave the room during the hearing so
9 that this information is protected and not revealed.

10 MR. SELINGER: And it doesn't become a part
11 of the public record?

12 MR. NEGAARD: No, it does not.

13 MR. SELINGER: Can I take a minute just to
14 visit with him on that?

15 MR. NEGAARD: Sure.

16 (A recess was taken from 11:10 a.m., to
17 11:17 a.m., the same day.)

18 MR. SELINGER: We basically -- our
19 intentions here, again, were not to thwart
20 discovery. Basically, we need to have it protected.
21 We think anything we give you regarding the
22 questions you are going to ask are going to fall
23 under a trade secret, meaning our formula, pattern,
24 compilation, program devices and everything to run
25 our business. And as long as it remains

1 confidential, not part of a public record and isn't
2 given to any complainants or anything, that they
3 will sign a confidentiality agreement, then we will
answer your questions.

5 MR. NEGAARD: Okay. And so you understand,
6 that I would agree to allow you to apply to the PSC
7 to have it treated as trade secrets the way that you
8 are suggesting. Whether it actually is a trade
9 secret or not is not for me to determine.

10 MR. SELINGER: Well, and that's what I'm
11 saying. It's eventually going to go to the judge to
12 determine if it's a trade secret or not or the
13 Public Service Commission. We don't want it
14 disclosed or presented to anybody until they have
15 made that determination and basically we are
16 afforded our protection.

17 MR. NEGAARD: Okay. And just so you
18 understand since you're unfamiliar with the
19 procedure, the Public Service Commission rule
20 provides that before anyone would be allowed to
21 access that information, that they do have to sign a
22 nondisclosure agreement, that they agree to be bound
23 by the Trade Secrets Act, if the Public Service
24 Commission agrees with you that it is, in fact,
25 trade-secret information.

1 MR. SELINGER: Right. We understand that.
2 If they determine it is, I mean they are going to be
3 the one who determines.

4 MR. NEGAARD: And until you have time to
5 make that application, Dean and myself would agree
6 that we would be bound by nondisclosure until you've
7 had a chance to make that application. Does that
8 sound fair enough?

9 MR. SELINGER: Yeah. And I'm not familiar
10 with the application process.

11 MR. NEGAARD: It's in the Administrative
12 Code.

13 MR. SELINGER: We want to give you the
14 information so we can distinguish the services
15 before the Public Service Commission and the FCC and
16 that sort of thing.

17 MR. NEGAARD: Well, and I think that's
18 really the issue here.

19 MR. SELINGER: Right. We're just thinking
20 some of it is kind of going beyond what you need to
21 really make that determination.

22 MR. NEGAARD: Okay.

23 MR. SELINGER: Let's start and see where we
24 go with it.

25 Q. (MR. NEGAARD CONTINUING) Okay. Perhaps it



LAW OFFICES OF

PRINGLE & HERIGSTAD, P.C.

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)

February 13, 2004

Mr. Bruce A. Selinger
KUBIK, BOGNER, RIDL & SELINGER
P.O. Box 1173
Dickinson, ND 58602-1173

**BEK COMMUNICATIONS COOPERATIVE, ET AL V. SMARTNET, INC.
NORTH DAKOTA PUBLIC SERVICE COMMISSION CASE NO. PU-2967-03-666**

We enclose a set of Interrogatories. There are a number of documents we requested that were not produced at Bruce Burke's deposition. You objected to certain questions and requests at the deposition. You did not serve the objections prior to the deposition as required by the North Dakota Rules of Civil Procedure.

We now request that you cure the following areas of noncompliance by February 23, 2004, or we will move for sanctions for failure to comply with discovery. The following items referenced in the deposition notice have not been provided:

NUMBERS 1 AND 24: Sales tax reports.

We requested sales tax reports from the inception of business through the date of the deposition notice. The witness produced 2003 sales tax reports.

REQUIRED: Sales tax reports for 2002, 2001, and 2000. We assume that since no other tax reports were produced no other taxes or fees were paid.

NUMBERS 2, 3, 4, 5, 6, 9 AND 19: Copies of all contracts, service agreements, and bills.

The witness provided a Qwest ISDN Primary Rate Service Agreement for Bismarck, an IdeaOne Service Agreement, and a Private Line and/or ATM Transport Service Agreement with Dakota Carrier Network.

f Bruce A. Selinger
Page 2
February 13, 2004

REQUIRED: There should be two Qwest agreements for Dickinson and Bismarck locations.

1. We need a local access (ISDN) agreement for Dickinson.
2. We need a copy of all Qwest contracts and bills for trunks or local services.
3. We need all agreements for connection to Sprint in Bismarck and Fargo.
4. We also need copies of bills from Qwest for all services provided.
5. We need copies of all agreements and bills for the two ISP termination providers.

NUMBER 8: Equipment lists.

Detail on these equipment lists was requested to include manufacturer and part numbers.

REQUIRED: Detail on equipment of all CallSmart locations.

NUMBERS 10-15:

REQUIRED: Although some discussion was had during the deposition regarding these items, we request a complete listing of those items. Mr. Burke testified he has one IP address which is located in Bismarck. We will assume this has to be true unless advised in writing to the contrary.

NUMBERS 16-18, 20, 21, 22, AND 23:

REQUIRED: These were not provided. We will assume Mr. Burke and SmartNET are refusing to provide these.

Don Negaard

jt

Enclosure

KUB, BOGNER, RIDL & SELINGER, L.L.P.

JON BOGNER
DAVID J. RIDL
BRUCE A. SELINGER

Attorneys and Counselors At Law

26 East Third Street
P.O. Box 1173
Dickinson, North Dakota 58602-1173

AREA CODE: 701
PHONE #: 225-9155
FAX #: 225-9157
EMAIL: kbrs@goesp.com

JOSEPH H. KUBIK
(1950-2002)

February 20, 2004

FAX NO.: 701-857-1361

Don Negaard
P.O. Box 1000
Minot, ND 58702

Re: BEK et al vs. Smartnet Inc.

Dear Don:

I received your letter February 15, 2004 and contacted my client on February 17 and discovered that he was on his way to Minot for the State Hockey Tournament. I will not be able to meet with him until next week so I will not be able to reply by February 23, 2004, but should have a response by March 1, 2004.

Sincerely,



Bruce A. Selinger

BAS/gw

Enclosures

KUBIK, BOGNER, RIDL & SELINGER, P.L.L.P.

JON BOGNER
DAVID J. RIDL
BRUCE A. SELINGER

Attorneys and Counselors At Law

26 East Third Street
P.O. Box 1173
Dickinson, North Dakota 58602-1173

AREA CODE: 701
PHONE #: 225-9155
FAX #: 225-9157
EMAIL: kbrs@goesp.com

JOSEPH H. KUBIK
(1950-2002)

February 27, 2004

Mr. Donald A. Negaard
Pringle & Herigstad, P.C.
P. O. Box 1000
Minot, ND 58702

*Re: BEK, et al vs. Smartnet
NDPSC Case No. PV-2967-03-666*

Dear Don:

Pursuant to your February 13 letter, I am enclosing the following documents:

NUMBERS 1 and 24: Sales Tax Reports.

Attached are the 2000 and 2001 sales tax reports.

NUMBERS 2, 3, 4, 5, 6, 9 and 19: Contracts, Service Agreements, Bills.

1. Attached is the ISDN Agreement for Dickinson and the DCN agreement.
2. Attached is the latest billing associated with the Qwest agreement.
3. Smartnet Inc. was required to sign a nondisclosure agreement with Sprint. We are in the process of determining how Sprint wants us to handle the situation.
4. This information is provided in 2 above.
5. The ISP providers required Smartnet to sign a nondisclosure agreement. We are in contact with both _____ to determine how to resolve this matter.

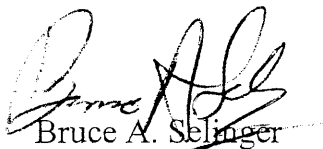
NUMBER 8: Equipment List.

Mr. Burke testified in the deposition about the equipment which he provided subject to your agreement to protect the information as a trade secret. The equipment is a _____ He believes _____ manufactured the equipment.

NUMBERS 16, 17, 18, 20, 21, 22 and 23:

Information regarding Numbers 16, 17 and 20 was provided in the deposition. The information you are requesting in Numbers 21, 22 and 23 is protected, burdensome and totally irrelevant to the issue. Mr. Burke believes this request is being done for the sole purpose of harassment and to size up the competition. By demanding these questions you are going way beyond what is truly needed to resolve the issue which is the same issue the FCC is wrestling with throughout the country.

Sincerely,


Bruce A. Selinger

BAS/gj

Enclosures

Don Negaard

From: "Don Negaard" <donn@srt.com>
To: "Bruce Selinger" <bruceselinger@goesp.com>
Sent: Tuesday, March 16, 2004 2:23 PM
Subject: Call Smart

Bruce,

On February 3, 2004 I took the deposition of your client, and its President, Bruce Burke. At that deposition we agreed that we would keep confidential the information provided to us at the end of the deposition until such time as you had a reasonable chance to apply to the North Dakota Public Service Commission for trade secret protection under the PSC's trade secret rules.

The hearing in this matter is set for March 30, 2004. The last meeting of the ND PSC before our hearing is tomorrow, the 17th. This means there may not be time for you to obtain a trade secret protection order before the hearing on the 30th. I am advising you of this well in advance of the hearing to advise you that we will not deem your client's information to be confidential without an order from the PSC.

I suggest we consider a stipulation of facts in this case. It does not seem there is a serious dispute about most of the facts in this case. What are your thoughts on that?

Before we would enter into a stipulation of facts we would need to obtain the following:

1. A copy of Call Smart's contract with Sprint for Internet Services at Bismarck and Fargo, and Dickinson if there is one at that location.
2. A clarification on the names of the two service providers that Bruce says they terminate their ISP traffic through. What is the full name _____, and what is the full name of _____ are those just brand names and what is the full legal names of these providers? As yet we have not yet received a copy of the contracts from those companies. Those contracts are still under subpoena since we have not been given copies of them.

3/16/2004



LAW OFFICES OF

PRINGLE & HERIGSTAD, P.C.

BREMER BANK BUILDING
20 SW 1ST STREET
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
MARK R. HAYS
BRENT M. OLSON
DENISE C. HAYS
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

ROGER O. HERIGSTAD
(1919-2003)

March 16, 2004

Mr. Bruce A. Selinger
KUBIK, BOGNER, RIDL & SELINGER
P.O. Box 1173
Dickinson, ND 58602-1173

**BEK COMMUNICATIONS COOPERATIVE V. SMARTNET, INC.
CASE NO. PU-2967-03-666**

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Mr. Bruce A. Selinger
Page 2
March 16, 2004

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Don Negaard

jt

Don Negaard

From: "Bruce Selinger" <BruceSelinger@goESP.com>
To: "Don Negaard" <donn@srt.com>
Sent: Thursday, March 18, 2004 2:36 PM
Subject: Re: Smart NET

As I explained in my February 27 letter these companies required that Smartnet sign a nondisclosure agreement which forbids us from providing this information.

When can I expect to receive the answers to my interrogatories. If you feel you have the right to this information I certainly am entitled to the same from your clients.

----- Original Message -----

From: [Don Negaard](#)
To: [Bruce Selinger](#)
Sent: Thursday, March 18, 2004 12:10 PM
Subject: Smart NET

I have received no response to my email and letter of this week asking for the contract with Sprint and the terminating providers .

Can I expect to receive them? Is so, when?