

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

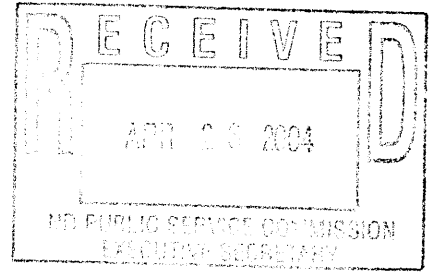
BEK Communications Cooperative,  
Consolidated Telcom, Dakota Central  
Telecommunications Cooperative, Dickey  
Rural Telephone Cooperative, Griggs  
County Telephone Company, Inter-  
Community Telephone Company, LLC,  
Missouri Valley Communications, Inc.,  
Moore and Liberty Telephone Company,  
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.



**BRIEF IN REPLY TO  
COMPLAINANT'S MOTION AND IN  
SUPPORT OF RESPONDENT'S  
MOTION FOR PRODUCTION AND  
SANCTIONS**

Case No. PU-2967-03-666

The Complainants are attempting to obtain information regarding trade secrets, information that would be unduly burdensome and expensive to provide and information that they cannot disclose because of a non-disclosure agreement (copies attached hereto), and business sensitive information that is not at all relevant to the issue before the Commission. The Complainants have already been provided all the relevant information they could possibly need to address this issue. I find it ironic that the Complainants have refused to provide the exact information they are requesting the Respondent provide.

As can be noted in the Complainant's Notice to Take Deposition as identified in Complainant's Tab No. 1 the information they want is the identical information requested by Respondents as noted in Question 2 of the Interrogatories sent to Complainants. (Copy of Interrogatory and Answer attached hereto.) The Complainant's Response to these interrogatories is that the information requested is unduly burdensome, expensive, and not relevant. If this is true as alleged then it is also true for the Respondents. Both parties have sufficient information to address this issue. Stop the harassing discovery games of the Complainants and deny Complainant's Motion.

The Respondents have answered the Complaint stating that they are not a long distance telecommunications company subject to the jurisdiction of the Public Service Commission. They are simply an internet service provider using VoIP Technology. The additional information they want has nothing to do with this issue.

If there is information that is relevant and Complainants need and intend to use this information in their favor then certainly Respondent is entitled to the same information from Complainants. Simply put using an old analogy "Respondent is a duck and Complainants are a goose". If the information sought will help distinguish the difference between the duck and the goose, the information must be provided to both parties.

Keep in mind that this issue is being struggled with throughout the country with little or no discovery. It is best if it is left to the Federal Communications Commissioner to resolve. VoIP Companies are on the cutting edge of developing and delivering voice innovations over the internet. Any premature ruling by this commission could greatly impact

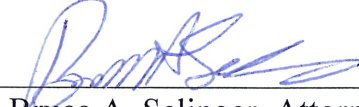
this industry for the State of North Dakota and put us behind all other states and the world. This issue is the beginning of an attempt to apply access charges to the internet. The growth and success of the internet and internet-based services like VoIP has depended and continues to depend on internet services being largely free of traditional telecommunications regulation. Competition and innovation have flourished. The social benefits have been enormous. The PSC can be a key champion of this policy of "hands off the internet". Applying access charges on any class of VoIP service is unnecessary because incumbent phone companies are already fully compensated for their costs when internet phone calls are terminated on their networks. Phone-to-phone VoIP doesn't require broadband access or use of a special device at home. Hence, it is accessible to all Americans.

The PSC should stay the course by following a "hands off" approach to regulating internet communications, keeping them free from subsidy payments to the old telephone companies and driving greater competition into the local phone market. For these reasons, this matter should be indefinitely continued at this time to allow for a full hearing by the Federal Communications Commission on the VoIP NPRM.

Dated this 23<sup>rd</sup> day of April, 2004.

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