

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BEK Communications Cooperative, et al.
Vs SmartNET, Inc.
Complaint

Case No. PU-2967-03-666

**STAFF RESPONSE TO SMARTNET's APPLICATION REQUESTING
TRADE SECRET PROTECTION FOR RESPONSES TO DISCOVERY REQUESTS**

On March 17, 2004, SmartNET, Inc. (SmartNET) filed an application for a protective order limiting the disclosure of trade secret information included in response to discovery requests served by the Complainants that are expected to be offered at the public hearing. SMARTNET provides the general description of the nature of the information sought to be protected, as follows:

1. General Description of the Nature of the Information Sought to be Protected.

- A. Confidential information to SmartNET's response to information about SmartNET's contracts, service agreements, and bills for telecommunications access and transport facilities to SmartNET's network.
- B. Confidential information to SmartNET's response to information about SmartNET's network architecture, drawings, facilities, and equipment locations.
- C. Confidential information to SmartNET's response to information about SmartNET's equipment list, including gateways, routers, and software used to develop the network.
- D. Confidential information to SmartNET's response to information about SmartNET's agreements and business names of third party providers to terminate VoIP calls.

2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From Not Being Generally Known to Other Persons.

SmartNET states that all of the information sought to be protected is confidential and proprietary to SmartNET and is not publicly disclosed. SmartNET also states that in a competitive internet communications marketplace, this type of information is highly sensitive and

its public disclosure would place SmartNET at a competitive disadvantage as the information reflects specific VoIP network design. The information also reflects specific telecommunications services, specific hardware and software, and specific VoIP termination service providers required to develop and duplicate SmartNET's VoIP network.

3. An Explanation of Why the Information is not Readily Available by Proper Means to Other Persons.

SmartNET states that the information is proprietary to SmartNET and is available only to SmartNET employees, and that SmartNET does not disclose the information outside the company except pursuant to the terms of strict agreements or orders to maintain the confidentiality of the information.

4. The General Description of the Persons or Entities that Would Obtain Economic Value from the Disclosure or Use of the Information.

SmartNET states that competitors or potential competitors of SmartNET would obtain economic value from the disclosure or use of the information.

5. Specific Description of Known Competitors or Competitor's Goods and Services that are Pertinent to the Information.

SmartNET states that competitors and potential competitors of SmartNET in North Dakota include BEC Communications Cooperative, Consolidated Telecom, 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, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Reservation Telephone Cooperative, and any other provider of telecommunications or internet services

6. Description of the Efforts Used to Maintain the Secrecy of the Information.

SmartNET states that the description is the same as its response to No. 3.

The present application deals with responses to discovery requests. Responses to discovery requests are not at this time a part of the Commission's official record, but will be a part of the record if introduced as an exhibit at the hearing.

Staff believes that SMARTNET's application satisfies the requirements of the law which allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

Staff recommends that the Commission grant SMARTNET's Application Requesting Trade Secret Protection in this case.

Dated April 30, 2004.

A handwritten signature in black ink, appearing to read "William W. Binek", written over a horizontal line.

William W. Binek
Chief Counsel