

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**BEK Communications Cooperative, et al.**  
**vs. SmartNET, Inc.**  
**Complaint**

**Case No. PU-2967-03-666**

**ORDER GRANTING TRADE SECRET PROTECTION**

**May 12, 2004**

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:

- 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.

SmartNET states that all of the information sought to be protected is confidential and proprietary to SmartNET and is not publicly disclosed. 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.

SmartNET 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.

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

N.D.C.C. Section 47-25.1-01(4) defines "trade secret" as:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commission staff (Staff) filed a response to SMARTNET's request for trade secret protection. Staff believes that SMARTNET's application satisfies the requirements of N.D.C.C. Chapter 47-25.1 which allows the Commission to grant trade secret protection in this proceeding, and that the information SMARTNET seeks to protect qualifies as "trade secret" as that term is defined in N.D.C.C. § 47-25.1-04.

SMARTNET's application deals with responses to discovery requests. Staff position is that responses to discovery requests are not at this time a part of the Commission's official record, but once filed with the Commission are records that are open to the public unless protected as trade secret documents.

The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.


### Order

The Commission Orders:

1. SmartNET, Inc.'s application for trade secret protection is GRANTED.
2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

### PUBLIC SERVICE COMMISSION

  
**Susan E. Wefald**  
Commissioner

  
**Tony Clark**  
President

  
**Kevin Cramer**  
Commissioner