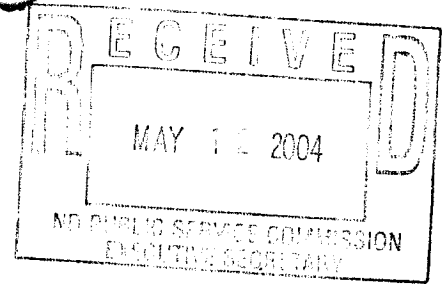


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



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

Case No. PU-2967-03-666

ORDER GRANTING MOTION FOR PRODUCTION AND SANCTIONS
May 12, 2004

On March 19, 2004, the Complainants in this matter, BEK Communications Cooperative, *et al* ("BEK"), filed a Motion for Production and Sanctions ("March 19 Motion"). In accordance with the Hearing Officer's March 23, 2004, Order for Indefinite Continuance, BEK renewed its March 19 Motion on April 13, 2004. The Respondent in this matter, SmartNET, Inc., filed a Brief in Reply to Complainant's Motion and in Support of Respondent's Motion for Production and Sanctions, and a Reply to Motion for Production and Respondent's Own Motion for Production and Brief in Support of Both on April 23, 2004. On May 6, 2004, BEK filed Complainant's Brief in Response to Discovery Issues.

Meanwhile, SmartNET filed on March 17, 2004, an Application Requesting Trade Secret Protection, requesting 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. On April 30, 2004, the Commission Staff filed Staff Response to SmartNET's Application Requesting Trade Secret Protection for Responses to Discovery Requests. BEK has not made a filing in regard to SmartNET's trade secret application.

The Hearing Officer has reviewed all of the relevant filings and **grants** BEK's March 19 Motion, as limited in this order. SmartNET's April 23, 2004, motion for production and sanctions is **denied**.

BEK, not SmartNET is the Complainant in this matter. Therefore, although the production sought by BEK in its motion is relevant to this administrative proceeding, the production sought by SmartNET in its motion is not relevant.

SmartNET, shall immediately, *i.e.*, by May 21, 2004, provide to BEK, a copy of all current contracts with any other telecommunications carriers. including internet service providers

and companies to which SmartNET terminates telecommunications traffic, a complete list of equipment and facilities utilized by SmartNET in operating its system, and a certificate that all other discovery that has been requested has been provided or does not exist. For the purposes of this order only, providing by May 21, 2004, means that the documents to be provided will be in the hands of counsel for BEK no later than 5:00 p.m. on May 21, 2004.

Failure to immediately provide the documentation as required by this order authorizes the Complainant, at its option, to apply to a judge of the district court to enforce this order in accordance with the provisions of N.D.C.C. § 28-32-33(5), or to apply to the hearing officer to impose sanctions in accordance with the provisions of N.D. Admin. Code § 98-02-02-06(3), or both.

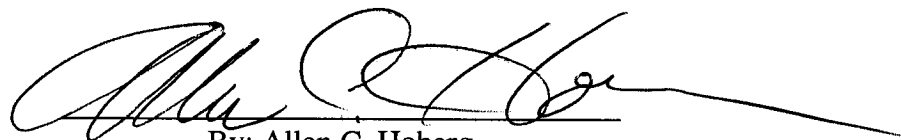
The documentation provided by SmartNET pursuant to this order is protected information to the extent any trade secret protection is granted by the Commission pursuant to SmartNET's March 17, 2004, application, and shall be handled and treated by both BEK and SmartNET in accordance with the requirements of any trade secret protection granted by the Commission.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

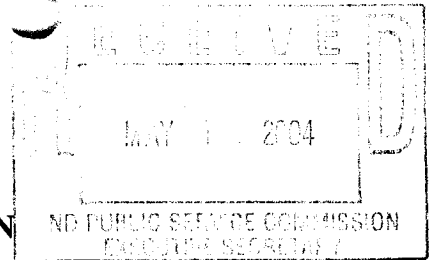
Tony Clark
President

Kevin Cramer
Commissioner



By: Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



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

Case No. PU-2967-03-666

CERTIFICATE OF SERVICE
OAH File No. 20040052

The undersigned certifies that the original **ORDER GRANTING MOTION FOR PRODUCTION AND SANCTIONS** was faxed, via facsimile, and mailed, inside mail, at the State Capitol, on the 12 day of May, 2004, to:

Ms. Illona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 E. Boulevard Avenue
Bismarck, ND 58505
(701) 328-2410

and that true and correct copies of the above documents were faxed, via facsimile, and mailed, regular mail, on the 12 day of May, 2004, to:

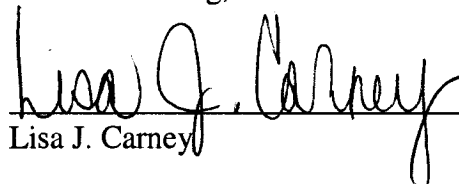
Mr. Don Negaard
Pringle & Herigstad
P.O. Box 1000
Minot, ND 58702-1000
(701) 857-1361

Mr. Bruce A. Selinger
Kubik, Bogner, Ridl & Selinger
P.O. Box 1173
Dickinson, ND 58602-1173
(701) 225-9157

and that a true and correct copy of the above document was mailed, regular mail, on the 12 day of May, 2004, to:

Mr. Bruce Burke
SmartNET, Inc.
649 4th Avenue SW
Dickinson, ND 58601

OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge



Lisa J. Carney