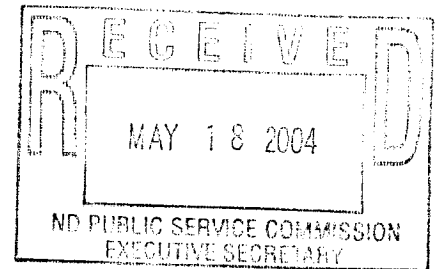


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



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

Case No. PU-2967-03-666

ORDER DENYING CONTINUANCE
May 18, 2004

By motion dated April 23, 2004, the Respondents in this matter, SmartNET, Inc. requested, amongst other things, "... a continuance of this entire proceeding until these exact issues are resolved by the Federal Communications Commission ..." Reply to Motion for Production and Respondent's Own Motion for Production and Brief in Support of Both." On May 6, 2004, BEK filed Complainant's Brief in Response to Discovery Issues; see *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97 (copy attached to Complainant's response).

The hearing should not be postponed or continued at this time. More information is necessary before this matter is postponed or continued. A decision to defer to the FCC may be the eventual outcome of this matter, but any such decision about postponement or continuation for deferral to the FCC, or for other reasons, should be based on a more fully developed record.

The Hearing Officer has reviewed all of the relevant filings and **denies** at this time SmartNET's April 23, 2004, motion for a continuance. The hearing on this matter will be held as scheduled on May 25, 2004.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Kevin Cramer
Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Allen C. Hoberg".

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

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 DENYING CONTINUANCE** was faxed, via facsimile, and mailed, inside mail, at the State Capitol, on the 18th 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 18th day of May, 2004, to:

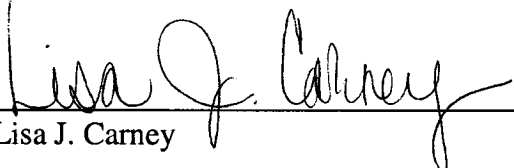
Mr. Don Negaard
Pringle & Herigstad
P.O. Box 1000
Minot, ND 58702-1000
(701) 857-1361

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 18th 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