

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.)

Case No. PU-2967-03-666

**FINDINGS OF
FACT,
CONCLUSIONS OF
LAW
AND ORDER**

FINDINGS OF FACT

1. This is a Complaint initiated by the Complainants who are licensed local exchange telecommunications providers.

2. SmartNET, Inc., does business under the name of CallSmart (herein CallSmart). CallSmart has equipment and offices in Dickinson, Bismarck, and Fargo, North Dakota.

3. CallSmart holds itself out to the public as a provider of long distance voice telecommunications services. No special Customer Premises Equipment is required for CallSmart customers to use CallSmart's long distance services. All that is required is a

telephone connected to the local loop of a local exchange carrier in the communities of Bismarck, Dickinson, or Fargo, or an outlying exchange area where the local exchange carrier has an Extended Area Services (EAS) arrangement with Qwest. Qwest is a local exchange provider in the communities of Dickinson, Fargo, and Bismarck.

4. CallSmart has two “gateways” located in Bismarck in the same office, some 26 inches apart. CallSmart has a gateway in Fargo. CallSmart has leased a circuit or line between Dickinson and Bismarck from Dakota Carrier Network and transports or carries its customers’ voice signals between these two communities on this circuit. This telecommunications traffic is interexchange traffic.

5. CallSmart receives telecommunications services from Qwest in Dickinson and Bismarck, North Dakota. Qwest is an Incumbent Local Exchange Carrier (ILEC). In Fargo, CallSmart receives telecommunications services from IdeaOne, a Competitive Local Exchange Carrier (CLEC), in Fargo. This ILEC and CLEC are the Local Exchange Carriers (LECs) for CallSmart’s local services.

6. CallSmart receives internet services from Sprint. CallSmart uses its gateways Bismarck and Fargo to convert its customers’ telecommunications signals into internet signals and sends the signals on the internet. CallSmart has contracts with two “terminating providers,” company V and company T, to convert some of its signals back to telecommunications signals and terminate the signals back onto the local public switched telecommunications network.

7. CallSmart transports telecommunications signals from Dickinson to Bismarck with no conversion of the signal into an internet signal.

8. CallSmart originates and terminates, in Bismarck and Fargo, some of its customers' signals that travel on the internet between Bismarck and Fargo and from Fargo to Bismarck through the use of gateways, in Bismarck and Fargo. CallSmart also originates and terminates some of its customers' signals from Bismarck to Dickinson and Dickinson to Bismarck on gateways in Bismarck. According to Bruce Burke of CallSmart, these two Bismarck gateways are located 26 inches apart.

9. Under current protocols used by the telecommunications industry in North Dakota, the local exchange carrier may be able to record or keep track of calls originating into CallSmart's network by tracking calls to the telephone numbers used by CallSmart if they know the local numbers CallSmart is using. Customers of CallSmart access CallSmart's services by dialing a local telephone number and then dialing 1+ the destination number in another exchange area they are calling. The Local exchange carrier does not have the ability to determine if the customer of CallSmart is calling another number within North Dakota or a number outside North Dakota.

10. The local exchange carriers in North Dakota are unable to determine the amount of CallSmart customers' signals or traffic terminated into their local exchange areas because the signal is terminated into a local exchange carrier's system as a local telephone call and may be fed into the local exchange as EAS traffic.

11. Because CallSmart transports or carries its customers' traffic or signals from one local exchange area to another within the state of North Dakota it is an interexchange telecommunications company as that term is used in N.D. Cent. Code § 49-21-01(8).

12. This Commission has conducted extensive hearings and has studied the issue of interexchange traffic in the 1980s and concluded that a mechanism was needed to

provide compensation to local exchange carriers for the use of their facilities by interexchange carriers. These intercarrier compensation mechanisms were called access charges.

13. In a series of Orders (Case Nos. 10,444, 10,694, and 10,699) and five supplemental Orders dated December 9, 1985, January 1, 1986, April 1, 1986, August 7, 1986, October 14, 1988, and July 19, 1990, this Commission established access rates to be paid by interexchange telecommunications companies to local exchange carriers for intraLATA and interLATA interexchange telecommunications services.

14. Under these prior Commission Orders, the concept of telephone affordability was preserved by keeping rates for local exchange services within reason. This concept was called universal service and was embraced and adopted by this Commission as a way to preserve reasonably priced services for the local consumer.

15. The Orders referenced above included a mechanism for local exchange carriers to establish access charges for intrastate interexchange traffic that was originated or terminated on the local telecommunications public switched network.

16. The Orders referenced herein required interexchange carriers to pay compensation to local exchange carriers for telecommunications which originated or terminated on the local exchange carriers' systems, sometimes called the local loop.

17. CallSmart is required by North Dakota law to be licensed because it offers interexchange telecommunications to the public and it is a telecommunications company providing telecommunications services as those terms are used in N.D. Cent. Code § 49-21-01.

18. CallSmart is required by prior Commission Orders to compensate local exchange carriers through the mechanism of access charges.

19. CallSmart is not properly licensed nor is it complying with prior Commission Orders requiring it to pay access charges to local exchange carriers.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to hear this Complaint.

2. CallSmart has failed to comply with North Dakota law and Orders of this Commission, as referenced above.

ORDERS

1. CallSmart shall discontinue doing business as a telecommunications company in North Dakota for intrastate telecommunications services until such time as it applies for and requires a Certificate of Public Convenience and Necessity to provide telecommunications services in the state of North Dakota.

2. CallSmart shall, upon receipt of proper licensure, begin immediately to track and keep proper records of all interexchange telecommunications services of its customers that originate or terminate in the local exchange carrier's networks or systems in the state of North Dakota that:

- a. Are originated or terminated by CallSmart customers that use a telephone connected to the local exchange carrier's system;
- b. Are also originated and terminated onto the North Dakota public switched network by CallSmart; or
- c. Originate or terminate onto the Dickinson, North Dakota, local exchange area or areas.

3. CallSmart shall provide these records to the local exchange carriers in North Dakota and shall pay bills for access charges it receives from local exchange carriers in North Dakota.

Dated this _____ day of June, 2004.

PUBLIC SERVICE COMMISSION

**Susan E. Wefald
Commissioner**

**Tony Clark
President**

**Kevin Cramer
Commissioner**