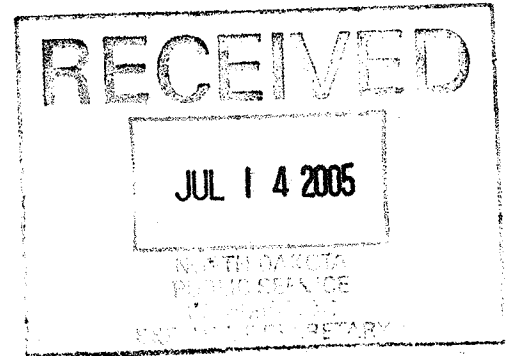


BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

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

**BRIEF IN SUPPORT OF  
PETITION FOR  
RECONSIDERATION**

In support of its Petition for Reconsideration of the North Dakota Public Service Commission (Commission) Order dated June 29, 2005, in the above-entitled matter, the Rural Telephone Company Group (RTCG), the Complainants herein, does hereby set forth its law and argument.

As noted in the Petition for Reconsideration, the Commission set five issues for hearing in this matter. The issue of the **amount** of reparations due the Complainants was not one of the issues noticed for hearing.

As the Commission was advised, at the end of the hearing, one of the problems with SmartNET's method of doing business was its assertion that it did not keep records of the

amount of compensable traffic it was moving on its network from or onto the RTCG facilities. The RTCG requested the Commission to fashion a remedy that required SmartNET to document such usage so SmartNET would be in compliance with prior Commission orders on intrastate access charges.

In its Order of June 29, 2005, the Commission stated, in paragraph 21 of its Findings of Fact, as follows:

We find there is insufficient evidence to determine whether SmartNET's traffic can be measured with the specificity required for billing purposes. It appears that Consolidated, for example, would be unable to determine whether interLATA access charges or intraLATA access charges, or interstate access charges would be applied to a specific call. We also find there is insufficient evidence to determine if compensation is due the complainants.

This statement by the Commission merely restates the SmartNET record-keeping problem the RTCG related to the Commission.

If the Commission concludes it does not have authority to enter an order on the amount of reparations due the RTCG, then the Commission should strike paragraph 21 from its Findings of Fact and paragraph 2 of its Order should be revised to state:

"As a public utility, SmartNET is required to keep records to assure compliance with Commission Orders on access charges and provide these records to telecommunications carriers on whose networks it originates or terminates traffic in North Dakota. The Commission has this authority under North Dakota Century Code sections 49-04-03, 49-04-18, and 49-21-09.

SmartNET is hereby ordered to (a) compile records to determine where its intrastate interexchange traffic is originated and routed to, (b) provide such records to the RTCG and other local exchange carriers on whose networks the traffic originates or terminates, and (c) provide available records of past traffic in such detail and turn such records over to the RTCG and other local exchange carriers."

It is the understanding of the RTCG that this Commission has authority under section 49-02-15 to grant reparations for excessive billing, but that is not an issue in this case.

In its Order of June 29, 2005, the Commission cites section 49-21-09 as authority for the proposition that the Commission may prescribe reasonable compensation, terms, and conditions for the connections between two telecommunications companies. In its access orders going back to the 1980s, the Commission has already established the rates. The RTCG does not believe the burden of keeping records to establish this compensation falls on the Commission or on the RTCG. As a public utility, SmartNET is required to comply with prior Commission orders. If the Commission needs to order SmartNET to do so to assure compliance, then the Commission should do so.

### **CONCLUSION**

If the Commission believes it has authority to order reparations in this matter, the RTCG requests that the Commission properly issue notice that this issue will be heard and then hold a hearing to do so.

If the Commission does not have authority to determine the amount due the RTCG, then paragraph 21 of the Findings of Fact and paragraph 2 of the Order should be stricken because they are outside the scope of this Agency's authority and properly noticed hearing issues and paragraph 2 of the Order should read, as follows:

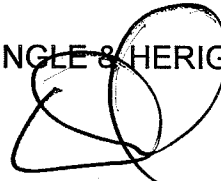
"As a public utility, SmartNET is required to keep records to assure compliance with Commission Orders on access charges and provide these records to telecommunications carriers on whose networks it originates or

terminates traffic in North Dakota. The Commission has this authority under North Dakota Century Code sections 49-04-03, 49-04-18, and 49-21-09.

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Respectfully submitted this 14th day of July, 2005.

PRINGLE & HERIGSTAD, P.C.



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