

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-2967-03-666

ORDER ON RECONSIDERATION

August 10, 2005

Preliminary Statement

On June 29, 2005 the Commission issued its Findings of Fact, Conclusions of Law, and Order in this proceeding.

On July 14, 2005 the Commission received a Petition for Reconsideration from SmartNET, Inc. (SmartNET).

On July 14, 2005 the Commission received a Petition for Reconsideration from BEK 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, Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, and Reservation Telephone Cooperative (complainants).

On July 22, 2005 complainants filed a response to SmartNET's Petition for Reconsideration.

On July 27, 2005 SmartNET filed a response to complainant's Petition for Reconsideration.

SmartNET argues that the AT&T decision relied on by the NDPSC is not applicable to SmartNET's VoIP phone to phone service. SmartNET claims its service is an information service that is not telecommunications service and is not subject to access charges.

The NDPSC finds that SmartNET's arguments provide no grounds upon which the requested relief can be granted. SmartNET's arguments are a restatement of arguments presented at the hearing.

Complainants argue that the NDPSC Order includes a finding concerning the amount of compensation due the complainants, but that the NDPSC never advised the parties that it was going to determine the amount of compensation due.

One of the issues stated by the NDPSC in this proceeding was: "[i]f respondent is using the local service facilities of the complainants, whether respondent is liable to the complainants for compensation for the use of those facilities." The NDPSC agrees with complainants that the NDPSC's does not specifically set forth as an issue the *amount* of compensation.

Complainants request that the Commission's June 29, 2005 Order be amended by deleting paragraph 21 of the findings of fact and revising paragraph 2 of the ordering clauses concerning the amount of compensation.

Complainants interpret the NDPSC order to state that intrastate access charges are appropriate. SmartNET interprets the NDPSC order to state that SmartNET is not liable for access charges at this time. The Commission clarifies that neither interpretation is accurate. The Commission was not provided sufficient evidence to determine whether SmartNET is liable for compensation for use of complainant's facilities.

Order

The Commission orders:

1. SmartNET's petition for reconsideration is DENIED.
2. Complainant's petition for reconsideration is GRANTED to the extent that paragraph 21 of the findings of fact and paragraph 2 of the ordering clauses should not address the amount of compensation due complainants.
3. Paragraph 21 of the findings of fact contained in the NDPSC's June 29, 2005 Order is amended to state: We find there is insufficient evidence to determine whether respondent is liable to the complainants for compensation for the use of complainant's facilities.
4. Paragraph 2 of the ordering clauses contained in the NDPSC's June 29, 2005 Order is amended to state: The Commission has insufficient evidence of record to determine whether SmartNET is liable to the complainants for compensation for the use of complainant's facilities.

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner