

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**

On August 10, 2005, the Commission issued its Order on Reconsideration. In its Order on Reconsideration, the Commission, while purporting to grant the Complainants' request for reconsideration, eliminated wording on the amount of compensation due to the Complainants but again reiterated that "there is insufficient evidence to determine whether respondent (SmartNET) is liable to the complainants." The Complainants submit this finding of fact and recitation in the Order is contrary to the evidence and the record in the case. It is also inconsistent with the Commission's own Conclusion of Law, number 6, which states: "SmartNET is providing a telecommunications service to end users located in separate local exchange areas and is an interexchange telecommunications company

under 49-21-01(8).” By the very virtue of the fact that SmartNET, Inc., is found to be an interexchange carrier, it is responsible for or is liable for access charges by virtue of prior Commission Orders and attached to the Post-Hearing Response Brief in this matter.

Complainants hereby request the Commission to reconsider its Order and issue an Order whereby this language in the Order is amended to read as follows:

“We hereby find the Respondent is liable to the Complainants for origination and termination of interexchange traffic, in accordance with prior Commission orders on intrastate access.”

At the hearing, the Complainants, in response to a request by the Commission for proof of some compensation is due to the Complainants, requested the Commission to take judicial notice of its own prior Intrastate Access Orders and Access Tariffs that had been filed by the Complainants. Filings of documents with public agencies are a proper form of facts which can be judicially noticed. Remillary v. Schneider, 185 N.W.2d 493 (N.D. 1971). See also Rule 201 of the North Dakota Rules of Evidence.

In this case, it appears the Commission Order seems to suggest that since SmartNET’s customers have paid their local rates for service and SmartNET has paid transport costs to DCN to haul traffic from Dickinson to Bismarck that fair compensation has already been paid by Smart NET and its customers for service. This logic ignores the access charge regimen and obligations of every interexchange carrier (such as At&T or CallSmart) that deals with customers who have already paid local rates and uses its own facilities or leased facilities to haul telecommunications traffic. AT&T (or CallSmart) is still

responsible to pay for access on the originating and terminating end of the interexchange call.

If the position of the Commission in this case prevails, it would eliminate the other access charge regimen without proper notice and force all local companies to raise local rates. It would mean that any interexchange carrier is free to ignore this Commission's orders on access and would be improper without prior notice and an opportunity to be heard.

The Complainants merely wish the Commission to acknowledge the obligation and responsibility of an interexchange carrier to be liable for intrastate access charges. An Order amending the prior Order to acknowledge this responsibility is respectfully requested.

Respectfully submitted this 23rd day of August, 2005.

PRINGLE & HERIGSTAD, P.C.



Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Complainants