

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-2967-03-666**

**ORDER ON COMPLAINANTS' SECOND PETITION FOR RECONSIDERATION**

**September 21, 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) and 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 August 10, 2005 the Commission issued its Order on Reconsideration denying SmartNET's Petition for Reconsideration and granting in part the Complainants' Petition for Reconsideration. In its order, the Commission found there was insufficient evidence to determine whether SmartNET is liable to the Complainants for compensation for the use of Complainants' facilities.

On August 24, 2005, the Complainants filed a second Petition for Reconsideration. The Complainants' contend that the finding of insufficient evidence is contrary to the evidence and record in the case and is inconsistent with the Commission's own conclusion that SmartNET is providing a telecommunications service to end users located in separate local exchange areas and is an interexchange telecommunications company. The Complainants' assert that by the virtue of the fact that SmartNET is found to be an interexchange carrier, it is responsible for or is liable for access charges by virtue of prior Commission orders. The Complainants request that the Commission reconsider its order to find that SmartNET is liable to the Complainants for origination and termination of interexchange traffic in accordance with prior Commission orders on intrastate access.

On September 9, 2005, SmartNET filed a Reply Brief in Opposition to Complainant's Petition for Reconsideration. SmartNET asserts that the tariff approvals and rate approval cases cited by the Complainants do not address VoIP or apply specifically to IP enabled services. SmartNET also asserts that the Complainants have not established how or why those access cases should apply to VoIP or IP enabled services. SmartNET states that VoIP is a completely different service from long distance services for which the original tariffs were

intended regarding access charges. SmartNET continues to request that the Commission await direction from the FCC in this proceeding.

One of the issues stated by the Commission in its Notice of Hearing 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 Commission has reviewed the record and finds it is lacking information to determine whether SmartNET is using Complainants’ facilities. Therefore, the Commission cannot determine whether SmartNET is liable to Complainants for compensation and therefore cannot determine types of compensation due the Complainants.

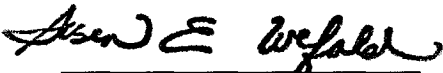
North Dakota Century Code Section 28-32-40(4) provides that the Commission may deny the petition for consideration or may grant the petition on such terms as it may prescribe and may limit the hearing as appropriate. In order to provide opportunity for additional evidence by the parties to supplement the record in this proceeding, the Commission finds it necessary to schedule a hearing.

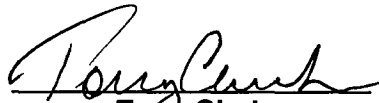
**Order**

The Commission orders:

1. Complainants’ second petition for reconsideration is granted to the extent that the Commission will schedule and notice a further hearing at a future date.

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
Susan E. Wehald  
Commissioner

  
\_\_\_\_\_  
Tony Clark  
President

  
\_\_\_\_\_  
Kevin Cramer  
Commissioner