

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-2967-03-666

ORDER DENYING MOTION FOR CONTINUANCE

June 22, 2006

Preliminary Statement

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

On September 21, 2005 the Commission granted a Second 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) to the extent that the Commission would schedule and notice a further hearing at a future date. In its decision, the Commission found the record is lacking information to determine whether SmartNET, Inc. (SmartNET) is using Complainants' facilities, and therefore to determine whether SmartNET is liable to Complainants for compensation, and therefore to determine the types of compensation due the Complainants. A public hearing was scheduled beginning January 13, 2006.

On December 8, 2005 the Commission was advised that the parties were engaged in discussions to reach an agreement and the parties requested that the hearing be postponed to allow time for negotiations.

On December 14, 2005 the Commission postponed indefinitely the January 13, 2006 hearing.

On March 27, 2005 Complainants' counsel filed a letter advising the Commission that it is necessary to reschedule the hearing originally scheduled for January 13, 2006.

On May 24, 2006 the Commission issued a Notice of Rescheduled Hearing for July 19, 2006 beginning at 9 a.m.

On June 7, 2006 the Commission issued an Order to Amend Complaint adding Consolidated Communications Networks, Inc. as an additional complainant party to this action.

On June 12, 2006 SmartNET filed a Motion for Continuance together with a Brief in Support of Motion for Continuance. SmartNET requests that the Commission continue the hearing to allow the parties and the Commission the benefit of rulings in the pending court case before the Eighth Circuit Court of Appeals, the pending FCC action, and pending legislation. The court case referenced by SmartNET is *Minnesota Public Utilities Commission v. FCC*, Case Nos. 05-1069, 05-1122, and 05-3118. The FCC proceedings referred to by SmartNET include the *IP Enabled Services Rulemaking*, FCC Docket WC 04-36 (released March 10, 2004) and the petition of a *Development Unified Intercarrier Compensation Regime*, FCC Docket 01-92 (released March 3, 2005) as well as other pending petitions relating to VoIP. SmartNET also stated that both houses of Congress are considering substantive telecommunications legislation that would, among other things, define certain VoIP services and specify the rights and obligations of VoIP service providers.

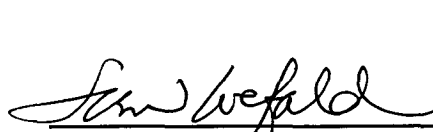
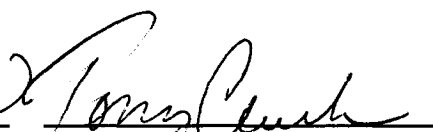

On June 19, 2006 the Complainants filed a Brief in Opposition to Motion for Continuance. The Complainants urge the Commission to deny SmartNET's Motion for Continuance. Complainants state that the current list of pending decisions in other jurisdictions or in Washington, D.C. offer no more promise of resolving this matter than has occurred over the past 2½ years. Complainants state that the Commission has the sole jurisdiction to determine issues related solely to intrastate access charges, which are the crux of this matter.

The Commission has reviewed the record and considered the arguments of the parties. The Commission has already determined that the service being provided by SmartNET is a telecommunications service under North Dakota law. The purpose of the July 19th hearing is to determine whether SmartNET is liable to Complainants for compensation, and to determine the types of compensation due the Complainants. There is no indication when any of the pending cases before the courts, pending matters before the FCC or legislation in Congress will be resolved or whether any of those pending matters or federal legislation will resolve the issue before the Commission.

Order

The Commission orders that SmartNET's Motion for Continuance is **DENIED**.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner