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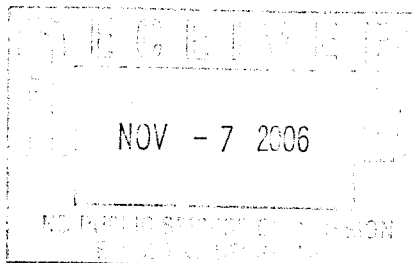
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November 6, 2006



Public Service Commission
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**BEK COMMUNICATIONS COOPERATIVE V. SMARTNET, INC.
CASE NO. PU-2967-03-666**

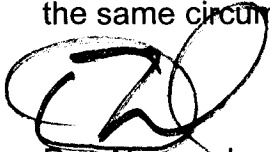
We are in receipt of a staff memo dated November 3, 2006, from staff to the Commissioners concerning BEK Communications, et al, v. SmartNET, Case No. PU-2697-03-666. We wish to comment on the staff recommendations.

First of all, the Complainants believe that the assertion that a company must file new tariffs following a merger is contrary to North Dakota law. Section 10-15-42 of the North Dakota Century Code (in the case of cooperative mergers) and section 10-19.1-102 of the North Dakota Century Code (in the case of corporate mergers) clearly specify that, following a merger, the surviving entity holds all of the rights, privileges, property, powers, duties, obligations, and liabilities of the merging entities. To suggest that old tariffs are no longer valid without refiling after a merger is clearly contrary to legislative intent. (Also, contrary to the memo, CCNI filed tariffs on May 22, 1998.)

Second, while the Complainants appreciate the recommendations that the Commission find that a sufficient usage of the Complainants' facilities was shown, the Complainants do disagree with the staff's suggestions that this Commission deviate from the findings of other similarly situated Commissions, in New York and Washington, that found that virtually identical interexchange carriers were responsible for originating tariff charges under existing tariffs filed by local exchange carriers. In addition, if SmartNET is required to register as an interexchange carrier, there seems to be no good reasons why the current interexchange tariffs would not apply.

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The Complainants believe the Commission made a progressive and sage decision in finding SmartNET to be an interexchange carrier. To now deviate from the lead that has been established in this arena would not be a wise policy decision. The Complainants' tariffs are valid and are every bit as detailed as those used in New York or Washington in the same circumstances.



Don Negaard

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