

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

AT&T Communications of the Midwest, Inc.
v. YMax Communications Corp.
Complaint

Case No. PU-12-433

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action, and, on the 12th day of **October, 2012**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

Order Granting Withdrawal of Complaint and Cancelling Hearing

The envelopes were addressed as follows:

Thomas Kelsch
Kelsch Kelsch Ruff & Kranda
PO Box 1266
Mandan ND 58554-7266

Sharon Thomas
Technologies Management Inc.
PO Drawer 200
Winter Park FL 32790-0200

Cert. No. 7011 3500 0003 4574 5896

Cert. No. 7011 3500 0003 4574 5902

Each address shown is the respective addressee's last reasonably ascertainable post office address.

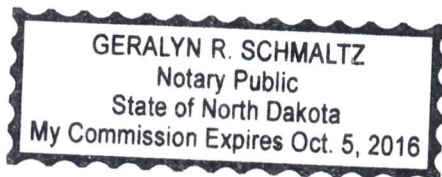
Subscribed and sworn to before me
this 12th day of **October, 2012**.





Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**AT&T Communications of the Midwest, Inc.
v. YMAX Communications Corp.
Complaint**

Case No. PU-12-433

**ORDER GRANTING WITHDRAWAL OF COMPLAINT AND
CANCELLING HEARING**

October 10, 2012

On June 29, 2012 AT&T Communications of the Midwest, Inc. ("AT&T") filed a Complaint alleging that YMAX Communications Corp.'s ("YMAX") North Dakota Tariff No. 2 – Access Service, filed with the North Dakota Public Service Commission (Commission) on June 8, 2012 (Case No. PU-12-289). AT&T alleged that the YMAX tariff includes charges for VoIP-PSTN traffic access functions that YMAX does not provide. VoIP-PSTN traffic access is traffic exchanged over public switched telephone network (PSTN) facilities that originates or terminates in internet protocol format (VoIP).

AT&T requested that the Commission suspend the YMAX tariff filed on June 8, 2012 and determine that the tariff is not in compliance with the Federal Communications Commission's (FCC) recent orders in its access reform docket including *Connect America Fund et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) and *YMAX Clarification Order*, DA 12-298, released on February 27, 2012.

On July 11, 2012, the Commission found the complaint filed by AT&T states a prima facie case, and served the complaint on the Respondent

On August 13, 2012, the Commission issued a Notice of Hearing for October 18, 2012 beginning at 10 a.m. The Notice of Hearing identified the following issues to be considered in this matter:

1. Whether the Commission has jurisdiction to award the relief requested by the Complainant.
2. Whether the price for the access service is unreasonable, unfair, or inadequate.
3. Whether the Commission should set aside the price for the access service.

On August 28, 2012, YMAX filed revisions its North Dakota Tariff No. 2, Case No. PU-12-694.

On October 5, 2012, AT&T filed a Notice of Withdrawal of Complaint stating that, in light of YMAX's August 28, 2012 filing removing the tariff pages that are the

subject of its complaint in this proceeding, AT&T requests approval to withdraw its complaint. AT&T also requests that the Commission assess any costs incurred in this action by the Commission against YMAX.

Based upon the information received the Commission believes AT&T's request to withdraw the complaint should be granted and the hearing should be cancelled. The Commission will make a determination concerning the assessment of costs at a later date using the procedure provided by N.D.C.C. 49-21-01.7 (6).

Order

The Commission orders:

1. The hearing scheduled for October 18, 2012, is cancelled.
2. AT&T Communications of the Midwest, Inc.'s request to withdraw its Complaint is granted.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Brian P. Kalk
Chairman



Bonny M. Fetch
Commissioner