

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45
AAD/USB File No. 98-37

**OPPOSITION OF BELL ATLANTIC¹ TO REQUEST OF THE IOWA
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION**

The Commission should deny the request of the Iowa Telecommunications and Technology Commission ("Iowa") to have its private Iowa Communications Network ("ICN") declared eligible for universal service support.² Based on Iowa's own statement of the services offered, ICN is not providing common carrier telecommunications services to the general public and is therefore ineligible for universal service support.

Under the Telecommunications Act and the Commission's Rules, universal service funding is available to telecommunications carriers only for common carrier telecommunications services (and certain limited non-telecommunications services not at issue here). 47 U.S.C. § 254(h)(1)(B), 47 C.F.R. § 54.502. Therefore, in order to obtain universal

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² Iowa filed its request in a letter dated Feb. 4, 1998 to Magalie Roman Salas, Secretary, from Kenneth D. Salomon and J.G. Harrington. The Commission asked for comments in a Public Notice, DA 98-294 (Feb. 13, 1998) ("Letter").

service funding, Iowa must show that ICN is offering telecommunications services on a common carrier basis.

Iowa's only argument, however, is that the services the ICN offers, distance learning and telemedicine, are available to "all of its potential customers for those services," (i.e., educational and health care institutions). Letter at 3. This contention is insufficient to qualify the ICN for funding, because neither distance learning or telemedicine is a telecommunications services or is among the non-telecommunications services (Internet access and internal connections for schools and libraries) that the Commission has found that the universal service fund may support.

Although Iowa does not describe the components of distance learning or telemedicine, it appears that they both use the ICN's private network to deliver information content to educational and health care institutions within the state. If the ICN is storing educational and medical information in its network and allowing its educational or health care customers to retrieve that information, the services that ICN is providing are information services, which are not eligible for universal service support. *See* 47 U.S.C. § 153(20) ("The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information...." (emphasis added)). Even if, as Iowa claims, educational and health care institutions are the only potential customers for those information services, the services themselves are not telecommunications services and are therefore not eligible for universal service support.

If, on the other hand, the ICN is merely providing the transport of educational or medical information that is stored or generated by its educational and health care institution

customers on their premises, then that transport may constitute telecommunications.³ *See* 47 U.S.C. § 153(43) (“The term ‘telecommunications’ means the transmission ... of information of the user’s choosing.”). In that event, however, in order for the ICN to qualify as a common carrier and receive universal service support, Iowa must show that the ICN is holding itself out to offer its telecommunications services to all of the potential customers for the services, not to a limited subset of those customers (educational and health care institutions). *See, e.g., Nat’l Ass’n of Regulatory Utility Comm’rs v. F.C.C.*, 525 F.2d 630 (D.C. Cir. 1976). Iowa indicates, however, that the ICN’s potential customers are limited to such institutions. Letter at 3. While there may be a limited market for distance learning and telemedicine, which are not telecommunications services, the market for transport is much broader, and the failure of the ICN to hold itself out to all potential customers of its transport services is fatal to its claim that it is a common carrier.

³ Iowa has not attempted to show that what transmission services the ICN may provide.

Accordingly, the Commission must find that the ICN is not a common carrier and, therefore, is not eligible for universal service support.⁴

Michael E. Glover
Of Counsel



Lawrence W. Katz

1320 North Court House Road, 8th Floor
Arlington, Virginia 22201
(703) 974-4862

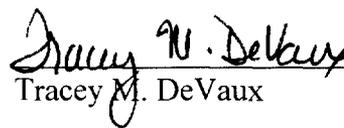
Attorney for the Bell Atlantic
Telephone Companies

March 4, 1998

⁴ Bell Atlantic is also submitting this Opposition via the Internet.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 1998 a copy of the foregoing "Opposition of Bell Atlantic to Request of the Iowa Telecommunications and Technology Commission" was sent by first class mail, postage prepaid, to the parties listed on the attached list.


Tracey M. DeVaux

* Via hand delivery.

Sheryl Todd*
Federal Communications Commission
2100 M Street, NW
8th Floor
Washington, DC 20554

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554

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