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June 17, 1998 JUN 17 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW - Room 222  
Washington, DC 20554

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

Dear Ms. Salas:

On June 17, 1998, Porter Childers, Mary Henze, Marv Bailey, BB Nugent, Jim Lambertson and Bill Maher, representing the United States Telephone Association (USTA), met with Irene Flannery and Jane Whang of the Federal Communications Commission's Accounting Policy Division to discuss USTA's position regarding legal and policy issues associated with the non-common carrier status of the Iowa Communications Network. The attached material was the basis for the presentation. The USTA representatives also discussed their opposition to the reconsideration petition of the Washington Department of Information Services regarding advanced services.

In accordance with Section 1.1206(b)(2) of the Commission's rules, two copies of this notice and attached presentation materials are being submitted to your office for filing in each of the referenced proceedings. Please include them in the public records of those proceedings.

Respectfully submitted,

Porter Childers  
Executive Director - Legal & Regulatory Affairs

attachment

- cc: Chairman Kennard
- Commissioner Ness
- Commissioner Powell
- Commissioner Furchtgott-Roth
- Commissioner Tristani
- Kathryn C. Brown
- James L. Casserly
- Kyle D. Dixon
- Irene M. Flannery
- Paul Gallant
- Lisa Gelb
- Kevin J. Martin
- Ruth Milkman
- Amy L. Nathan
- Thomas C. Power
- Jane Whang
- Valerie Yates

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**USTA**

**THE IOWA COMMUNICATIONS NETWORK  
IS NOT A TELECOMMUNICATIONS CARRIER  
OR A COMMON CARRIER  
CC DOCKET NO. 96-45  
AAD/USB FILE NO. 98-37**

**EX PARTE PRESENTATION**

**JUNE 17, 1998**

**USTA**  
**THE IOWA COMMUNICATIONS NETWORK**  
**IS NOT A TELECOMMUNICATIONS CARRIER**

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- I. **The Fourth Reconsideration Order in the Universal Service Proceeding Rightly Found ICN and Other State Networks Not to Be Telecommunications Carriers (4<sup>th</sup> Reconsideration Order ¶¶ 177, 187)**
  - A. **The ICN petition is a repetitive petition for reconsideration of the Fourth Reconsideration Order; since the Commission has already considered the status of ICN and other state networks, the petition should be dismissed**
  - B. **Such networks cannot receive direct “schools and libraries” support under Section 254(h)(1)(B) (4<sup>th</sup> Reconsideration Order ¶187)**



# **USTA**

## **THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER**

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- C. They may obtain and pass on discounts when procuring supported telecommunications (4<sup>th</sup> Reconsideration Order ¶183)**
  
- D. They may receive reimbursement for providing access to the Internet and internal connections (4<sup>th</sup> Reconsideration Order ¶190)**

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## **THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER**

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- II. ICN Does Not Provide Telecommunications “To The Public, or to Such Classes of Users as to Be Directly Available to the Public”**
  - A. Only narrow classes of “public agencies” and “private agencies,” enumerated in Iowa law, are even eligible to become authorized users. These agencies are not “the public”**
    - 1. Example: Iowa state agencies are eligible, but most local and county agencies in Iowa are not**
    - 2. Example: Post offices with federal grants for demonstration projects are eligible, but other post offices are not**



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## **THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER**

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- B. Many nominally eligible agencies now require an act of the Iowa legislature to become authorized ICN users**
- 1. Legislation is required for many agencies that did not become part of ICN by July 1, 1994**
  - 2. Even authorized users are treated differently: based on identity, ICN charges different rates for the same service**

**Example: Federal agencies must pay \$45/hour per site for video sessions. State government users pay \$10/hour per site. Telemedicine users pay \$45/hour per site; telemedicine training users pay \$6/hour per site. This contrasts with the broad residential/business rate structure of LECs and other common carriers.**



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**THE IOWA COMMUNICATIONS NETWORK**  
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**III. ICN's Services Are Not Services Offered on a Common Carrier Basis**

**A. ICN does not hold itself out to serve indifferently all potential users: for ICN, Iowa law determines on an individualized basis "whether and on what terms to serve"**

- 1. ICN is prohibited by law from serving "all potential users" - only users specified by statute or regulation are permitted**
- 2. Iowa law thus bars many potential users from receiving service**
- 3. Legislation is needed to approve some individual users**
- 4. ICN considers the individualized circumstances of authorized users**



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## **B. ICN limits the subject matter of communications by end users**

- 1. The test is whether “customers transmit intelligence of their own design and choosing”**
- 2. Iowa law limits the subject matter of transmissions to the written mission of the authorized users**
- 3. ICN cannot be used for for-profit activities**

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### IV. Summary

- A. ICN does not satisfy the definition of telecommunications carrier under the 1996 Act
- B. ICN does not offer service to the public
- C. ICN does not operate on a common carrier basis
- D. ICN does not satisfy D.C. Circuit's requirements for common carrier status



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## V. Conclusion

**FCC should not disturb the finding of the Fourth Reconsideration Order that ICN is not a telecommunications carrier**