ORIGINAL

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

KENNETH D. SALOMON
DIRECT DIAL 202-776-2566
ksalomon@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 · FACSIMILE 202-776-2222

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

August 4, 1998

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VIA HAND DELIVERY

Hon. William E. Kennard
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Iowa Telecommunications and Technology Commission
Request for Determination of Carrier Status
CC Docket No. 96-45; AAD/USB File No. 98-37
Written Ex Parte Presentation

Dear Chairman Kennard:

Recently, you and your fellow Commissioners responded to an inquiry from Senators Harkin and Gorton concerning the status of the Iowa Communications Network (the "ICN") and Washington's state telecommunications network under the Commission's universal service rules. These responses raised some issues that we would like to address, on behalf of the ICN, through this letter. In particular, the responses raised questions about the competitive impact of any Commission decision in this proceeding and the nature of ICN as a carrier. These issues are discussed below.

Competitive Impact

Commissioners Tristani and Powell both raised questions concerning the impact of a favorable ruling in this matter on competition. This inquiry is critical because it has a direct effect on the ability of schools, libraries and rural health care institutions to obtain high quality, low cost service. ICN submits that a favorable ruling will maintain existing levels of competition while increasing the ability of Iowa schools, libraries and rural health care institutions to obtain the services they need.

As ICN previously has described, in practice no entity is required to obtain service from ICN. This is particularly true of schools, libraries and health care providers. Schools and libraries have taken particular advantage of their ability to choose other providers (or to choose no provider at all). For instance, as of June 30, 1998, out of the more than 500 public libraries in Iowa, only 78 purchase their long distance service from ICN. Similarly, among the 375 school districts in Iowa, 196 purchase their long distance service from ICN.

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Thus, ICN has served to add a competitive choice for schools and libraries when purchasing telecommunications services. Moreover, given the number of schools and libraries that purchase long distance from other providers, it is evident that the existence of ICN has not disadvantaged commercial carriers.

ICN also provides schools, libraries and health care providers with additional competitive options for advanced services, including specialized high-bandwidth services used for telemedicine and distance learning. Although in some cases, ICN is the only entity that has chosen to provide these services in certain areas of Iowa, there is no bar to any other provider competing with ICN. Indeed, in some Iowa communities served by both ICN and commercial providers, schools have chosen to use other providers for distance learning services. At the same time, ICN has taken steps to encourage the development of competitive services. Recently, ICN even entered into an agreement that permitted a provider to place its own fiber facilities alongside facilities dedicated to ICN's use. In effect, this arrangement permits the provider to compete directly with ICN if it so chooses.

The net effect of ICN's actions has been to increase the choices available to Iowa schools and libraries, without preventing private sector carriers from competing fairly. ICN believes these actions are fully consistent with the Commission's goals of promoting competition and ensuring the availability of advanced services to schools, libraries and rural health care institutions.

ICN's Carrier Status

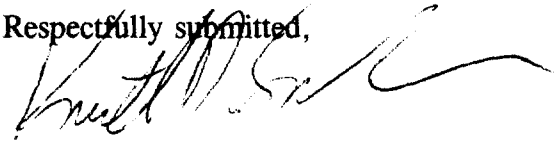
ICN previously has provided a wide range of evidence to the Commission demonstrating that it cannot be treated as a private carrier under the existing Commission and court precedent and, therefore, must be treated as a common carrier for purposes of Section 254(h) of the Communications Act. This evidence has shown that ICN lacks the indicia of private carriage because it does not pick and choose its customers and does not individually negotiate contracts with those customers. Indeed, ICN is forbidden by law from refusing to serve any eligible customer and sets its prices for each class of service on an annual basis. These characteristics are the indicia of common carriage and, consequently, it is apparent that ICN is a common carrier. Moreover, the Iowa Utilities Board, through comments filed in this proceeding, has informed the Commission that it has concluded that ICN is a common carrier.

Further confirmation of the nature of ICN's service has been provided by the actions of the Universal Service Administrative Corporation ("USAC"). USAC has determined that it should treat ICN like any other carrier and has billed ICN for contributions to the federal universal service fund. ICN has paid those bills and, as of June 30, 1998, have made contributions in excess of $92,000 to support universal service. While ICN recognizes that

USAC's treatment of ICN is not dispositive, USAC's actions, like the determination of the Iowa Utilities Board, support the conclusion that ICN is a common carrier and that the Commission should recognize that status.

Pursuant to Section 1.1206(b) of the Commission's Rules, two copies of this letter are being submitted to the Secretary's office by the close of the business day following this presentation. Please inform us if any questions should arise in connection with this filing.

Respectfully submitted,



Kenneth D. Salomon
J.G. Harrington

Counsel for the Iowa Telecommunications and Technology Commission

JGH/vll

cc: Honorable Susan Ness
Honorable Michael Powell
Honorable Harold Furchtgott-Roth
Honorable Gloria Tristani
Magalie Roman Salas, Esq. (2 copies)