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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )

CC Docket No. 94-129

**Iowa Telecommunications Services' Amended Petition for Waiver**

Iowa Telecommunications Services ("ITS"), by its attorneys and pursuant to section 1.3 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. §1.3, respectfully submits its amended petition for waiver of the Commission's "authorization and verification" rules, codified in 47 C.F.R. §§64.1100 to 64.1190. ITS requests this waiver to enable ITS to continue to provide uninterrupted, interstate and intrastate, intraLATA and local services to the customers currently served by GTE of the Midwest ("GTE") in Iowa, without first obtaining authorization and verification from these customers.

For the reasons explained below, ITS fully satisfies the good cause standard established by *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) for securing a waiver.

**Background**

Iowa Network Services, Inc. ("INS") and Touch America, Inc. ("Touch America") formed ITS to acquire all of GTE's access lines in Iowa.

INS was formed in 1989 by 128 small incumbent local exchange carriers ("ILECs") to provide centralized equal access, including intraLATA equal access, to rural Iowa.

Subsequently, INS and its now 147 small ILEC partners in Iowa have deployed a fully redundant

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pair of access tandem switches and 1900 miles of fiber optic cable throughout the state. In addition to 1+ dialing to their interexchange carrier (“IXC”) of choice, INS’ network offers end user customers access to such services as ATM and frame relay services, DS1 and DS3 high-capacity services, enhanced fax services, ISDN access, video conferencing services and Internet gateway services.<sup>1</sup>

Touch America is a fully owned subsidiary of Montana Power Company (“MPC”). Touch America grew from MPC’s efforts to provide reliable telecommunications services to itself, which began in 1939. MPC built its own microwave “bypass” network in 1956-58 and installed the first digital phone system in Montana in 1978. In 1983, MPC used its internal telecommunications expertise to offer competitive services to other customers and then formed what is now known as Touch America in 1992. Touch America provides Internet access, long distance, private line services and telephone equipment to customers throughout the northwestern United States.

After GTE announced its plans to exit the local exchange market in Iowa, INS and Touch America joined together to bid for GTE’s operations in Iowa and became the successful bidders for those properties. The partners formed a new corporation, ITS, to operate the 296 GTE exchanges and approximately 280,400 access lines in Iowa. Upon receipt of all necessary regulatory approvals and after closing the transaction with GTE, ITS will begin providing telecommunications services to GTE’s customers in Iowa.

Among the services that GTE provides today is interstate, intraLATA Message Telecommunications Service (“MTS”).<sup>2</sup> Under the FCC’s rules, 47 C.F.R. §51.209 *et seq.*,

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<sup>1</sup> In addition, INS is the general partner in Iowa Wireless Services, L.L.P. (“IWS”), which provides personal communication service (“PCS”) covering 2.3 million residents of Iowa, Illinois and Nebraska.

<sup>2</sup> GTE concurs in the interstate, intraLATA MTS tariff of US West Communications, Inc. US West Tariff F.C.C. No. 4, first revised page 0-9 (eff. Dec. 14, 1994).

customers may select their carrier of choice for 1+ interstate and intrastate, intraLATA MTS. In compliance with these rules, GTE recently implemented 1+ intraLATA equal access in Iowa, which gave its customers the ability to select another carrier for their intraLATA calls.

On information and belief, a significant number of GTE's customers have elected to remain presubscribed to GTE for interstate and intrastate, intraLATA MTS after 1+ equal access became available for intraLATA MTS in Iowa. ITS will continue to provide interstate and intrastate, intraLATA MTS to these customers, once it begins its Iowa operations.<sup>3</sup> In addition, ITS will continue to charge its customers the same rates for this service as are being charged by GTE today. Any future rate changes by ITS would be made only in compliance with the applicable rules of the FCC and the Iowa Utilities Board ("IUB"). Further, ITS will provide local exchange services to GTE's current customers upon closing. Those services will be provided at the same rates currently charged by GTE and any future rate changes will be made in compliance with the applicable IUB's rules.

As part of the transfer of ownership process in Iowa, ITS and GTE have filed with the IUB, a joint application for approval of the transfer of these exchanges from GTE to ITS.<sup>4</sup> As part of this approval process, ITS will provide any required notification to customers about the change in ownership of GTE's exchanges in Iowa and its impact on services, including intraLATA, interexchange service, provided to GTE's customers. Any discussion of intraLATA, interexchange service would include both intra- and interstate calls in order to avoid any possible customer confusion.

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<sup>3</sup> These customers are always free to change their preferred intraLATA toll carrier at any time before or after GTE transfers ownership of its Iowa exchanges to ITS.

<sup>4</sup> *In Re: GTE Midwest, Inc. and Iowa Telecommunications Services, Inc.*, Docket No SPU-99-29 (Iowa Utilities Board). The requirements for a sale and purchase of a substantial portion of the assets of any public utility that operates in the state of Iowa are set forth in Sections 32.1 *et seq.* of the IUB. IOWA ADMIN. CODE §§199-32.1 *et seq.*

## Argument

Under the Commission's rules, 47 C.F.R. §§64.1000 *et seq.*, carriers are required to verify all preferred carrier change orders before such modifications can be executed. These rules were adopted by the FCC to implement Section 258 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §258, which makes it unlawful for any carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange or telephone toll service except in accordance with such procedures as the Commission shall prescribe." Congress enacted Section 258 in order to prevent "slamming," or the unauthorized change in a subscriber's preferred carrier.

The sale of exchanges from one ILEC to another, which also results in a change in the name of the serving carrier, is not the type of change in a subscriber's preferred carrier that Section 258 was designed to prevent. Accordingly, the FCC's authorization and verification rules do not fit the current circumstances and should, therefore, be waived by the Commission. Waiver of the FCC's rules is appropriate when special circumstances warrant a deviation from the general rule and such a deviation serves the public interest. *WAIT Radio*, 418 F.2d at 1159.

The goal of both GTE and ITS for this transfer of ownership is to minimize any customer confusion and inconvenience. Most Iowa customers would likely believe that it would be confusing and inconvenient if they were required to submit a new letter of agency just to keep their current local and intraLATA toll services under the ITS name. This is especially true since GTE newly implemented 1+ intraLATA dialing parity in Iowa. Customers who just recently selected GTE as their 1+ intraLATA MTS carrier are likely to wonder why they were again being requested to select their preferred intraLATA MTS carrier. The public interest is not

served by the application of the FCC's rules in a manner that would likely cause customer confusion and inconvenience.

In addition, the imposition of the FCC's authorization and verification rules in this instance could open the opportunity for consumer fraud by unscrupulous carriers or their marketing agents. For example, a carrier could take advantage of the GTE-ITS transaction to misinform the current GTE intraLATA toll customers that they can no longer obtain service from GTE and must, therefore, change their carrier. Some customers, who would not otherwise decide to switch their preferred intraLATA carrier, might believe that they are required to switch carriers and may even find themselves paying higher rates for intraLATA calls than they would pay to either GTE or ITS. Such a result would simply be antithetical to the public interest.

We, therefore, respectfully submit that, under these circumstances, application of the FCC's authorization and verification rules would be inconsistent with the public interest. Under the *WAIT Radio* standard, the Commission should grant the requested waiver.

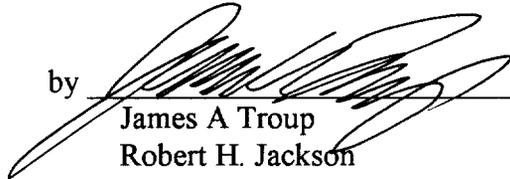
## Conclusion

For the reasons set forth above, the FCC should grant a waiver of Sections 64.1100 *et seq.* to ITS, as requested herein.

Respectfully submitted,

IOWA TELECOMMUNICATIONS SERVICES

by



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**CERTIFICATE OF SERVICE**

I, *Monica Gibson-Moore*, a secretary with Arter & Hadden LLP, hereby certify that a copy of the foregoing *Iowa Telecommunications Services' Amended Petition for Waiver* has been sent via hand-delivery this 15th day of December , 1999, to the following:

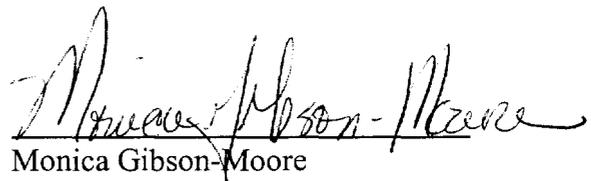
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