



Federal Communications Commission  
Washington, D.C. 20554

DA 11-240

Adopted: February, 8, 2011

Released: February, 8, 2011

Robert J. Sherlock  
Vice President – Engineering  
Iowa Network Services, Inc.  
4201 Corporate Drive  
West Des Moines, IA 50266-5906

Re: *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, File No. W-P-C-6025

Dear Mr. Sherlock:

This letter is to inform you that we hereby waive, on our own motion, the Reporting Condition of Iowa Network Access Division's (INAD) authority<sup>1</sup> pursuant to section 214 of the Communications Act of 1934, as amended (Act).<sup>2</sup> As a result, INAD is no longer required to report on a semi-annual basis the amount of capacity leased from Iowa Network Services, Inc. (INS) for the provision of interstate access services.

On February 29, 1988, the Common Carrier Bureau (now the Wireline Competition Bureau) (Bureau) granted INAD's application in the above-captioned proceeding pursuant to section 214 of the Act and section 63.01 of the Commission's rules.<sup>3</sup> In its application, INAD sought authority to lease transmission facilities from an affiliated long distance carrier to provide access services to interexchange carriers. Specifically, INAD proposed to lease and operate a number of DS-1 digital channels in order to allow interexchange carriers to obtain Feature Group B and D services to access approximately 158,000 subscribers' lines from a centralized location in Des Moines, Iowa.<sup>4</sup> The proposal was "presented as a solution to the problem of how to achieve competition in long distance services in small rural communities" where only AT&T offered interstate toll service at the time because other interexchange carriers "would find it an expensive task to provide their own facilities to each of these small exchanges, given the

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<sup>1</sup> See *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, File No. W-P-C-6025, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (Com. Car. Bur. 1988) (*INAD Order*) (granting section 214 application with condition requiring semi-annual reporting of amount of capacity leased from INS for interstate access services), *aff'd on recon.*, 4 FCC Rcd 2201 (Com. Car. Bur. 1989).

<sup>2</sup> 47 U.S.C. § 214.

<sup>3</sup> 47 C.F.R. § 63.01.

<sup>4</sup> See *INAD Order*, 3 FCC Rcd at 1468, paras. 1-2.

relatively low amount of toll traffic they generate.”<sup>5</sup> Under this proposal, INAD would lease these facilities from Iowa Network Interexchange Carrier Division (INICD), an affiliate of INAD.<sup>6</sup> The Bureau found INAD’s application to be in the public interest and granted it. However, as a condition to the authority, and to ensure that INAD would not shift the cost of spare capacity in the underlying fiber system from INICD’s competitive services to INAD’s customers, the Bureau required INAD to submit semi-annual circuit usage reports, comparing the amount of capacity INAD leases from INICD with the capacity it actually uses to render equal access service (Reporting Condition).<sup>7</sup> Since the grant of INAD’s application, it has filed these reports semi-annually, as required by the Reporting Condition to its operating authority.

In light of our experience since the Reporting Condition was adopted, we believe that the information provided in these reports is of limited usefulness in detecting possible cross-subsidization. Moreover, other mechanisms are in place to detect and deter any possible cross-subsidization, such as the requirement to file tariffs and the section 208 complaint process.<sup>8</sup> At the same time, we recognize that the Reporting Condition imposes costs and administrative burdens on INAD and the Commission that are no longer outweighed by the benefits derived from the requirement. In addition, we note that since INAD’s conditional authority was granted, the Commission has adopted a policy of blanket section 214 authority for new lines of all domestic carriers, allowing carriers to construct, operate, or engage in transmission over lines of communication without filing an application with the Commission.<sup>9</sup> Under this policy, carriers, such as INAD, no longer are required to seek authority from the Commission to provide services like those at issue in this proceeding, and would not be subject to conditions to their blanket authority.

For these reasons, we find that good cause exists to waive the Reporting Condition to INAD’s section 214 authority, adopted in the above-captioned proceeding.<sup>10</sup> The Commission may exercise its discretion to waive a regulation where the particular facts make strict compliance unnecessary or inconsistent with the public interest.<sup>11</sup> We note, however, that the Commission has authority to require INAD to provide information required by the Reporting Condition if the Commission deems it necessary at some point in the future.

If INAD disagrees with any of this letter’s findings, it may file a petition for reconsideration pursuant to section 1.106 of the Commission’s rules or an application for review

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<sup>5</sup> *Id.* at 1468, para. 3.

<sup>6</sup> *See id.* at 1468, para. 2. INAD’s application explained that INAD and INICD were operating divisions of INS, which in turn was jointly owned by the 136 independent telephone companies participating in the proposed project. *See id.* at 1474 n.3.

<sup>7</sup> *See id.* at 1472, paras. 24, 26.

<sup>8</sup> *See* 47 U.S.C. §§ 203-05, 208.

<sup>9</sup> *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 97-11; AAD File No. 98-43, Report and Order and Second Memorandum Opinion and Order, 14 FCC Rcd 11364, 11372-75, paras. 12-16 (1999) (granting blanket section 214 authority for new lines of all domestic carriers including dominant carriers).

<sup>10</sup> The Commission has discretion to waive its rules on its own motion at any time “for good cause shown.” *See* 47 C.F.R. § 1.3.

<sup>11</sup> *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

with the Commission pursuant to section 1.115 of the Commission's rules.<sup>12</sup>

If you need further assistance, you may contact Christi Shewman, Associate Chief, Wireline Competition Bureau, at (202) 418-1686.

Sincerely,

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

cc: James U. Troup, Counsel For Iowa Network Services, Inc.

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<sup>12</sup> 47 C.F.R. §§ 1.106, 1.115.