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September 3, 2003

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom,
F.C.C. Tariff No. 1, Transmittal No. 39**

Dear Ms. Dortch:

Pursuant to Section 0.459(a) of the Commission's rules,¹ Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom ("Iowa Telecom") hereby requests confidential treatment of certain proprietary and competitively sensitive commercial and financial information contained in the attached Iowa Telecom ATS Cost Study ("Cost Study") and the associated Confidential Exhibits A-1 through A-4, which Iowa Telecom is submitting as Exhibit A to Tariff Transmittal No. 39 in Iowa Telecom' F.C.C. Tariff No. 1. Iowa Telecom is filing unredacted versions of the Cost Study and Confidential Exhibits A-1 through A-4 on the Commission's Electronic Tariff Filing System as "not for public inspection." The company is also submitting a public version of the Cost Study from which proprietary and competitively sensitive information has been redacted.

If the Commission denies this request for confidential treatment of the Exhibit A cost support materials, Iowa Telecom requests that the Commission return the unredacted Cost Study and Confidential Exhibits A-1 through A-4 to Iowa Telecom without making them available for public inspection, pursuant to Section 0.459(e) of the Commission's rules.² If the Commission designates this tariff filing for a hearing pursuant to Section 204(a)(1) of the Communications Act, Iowa Telecom would not object to release of the confidential Exhibit A cost support materials to parties to the proceeding under the existing Protective Order in WC Docket No. 03-135³ or an appropriate protective order specific to this tariff filing.⁴

¹ 47 C.F.R. § 0.459(a).

² 47 C.F.R. § 0.459(e).

³ Iowa Telecommunications Service, Inc. Tariff F.C.C. No. 1, Transmittal No. 31, WC Docket No. 03-135, Protective Order, DA 03-1953, 18 FCC Rcd 11571 (rel. June 13, 2003).

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The Information Iowa Telecom Seeks to Withhold from Public Disclosure Is Exempt from Disclosure Under FOIA Exemption 4.

The information contained in the confidential Exhibit A cost support materials is proprietary and competitively sensitive commercial and financial information that is routinely withheld from public disclosure. Under Section 0.459 of the Commission's rules, parties whose confidential information is submitted to the Commission are permitted to file a request that the information not be disclosed to the public. If that information is withholdable by the agency pursuant to an exemption of the Freedom of Information Act ("FOIA"),⁵ the Commission's rules require that the information remain confidential unless the Commission identifies a "compelling public interest in disclosure."⁶

Exemption 4 of FOIA exempts "commercial or financial information obtained from a person" that is "confidential" from public disclosure under FOIA.⁷ Where the information is provided to the Government voluntarily, Exemption 4 protects as confidential any commercial or financial information that is "of a kind that would not customarily be released to the public by the person from whom it was obtained."⁸

(Continued . . .)

⁴ See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24842 (1998) ("*Confidential Treatment Order*").

⁵ 5 U.S.C. § 522(b)(4).

⁶ *Confidential Treatment Order*, 13 FCC Rcd 24816 ¶ 8. Even in those rare circumstances, the Commission "'insists upon a showing that the information is a necessary link in a chain of evidence' that will resolve an issue before the Commission" before authorizing release of any information. *Id.* (quoting Classical Radio for Connecticut, Inc. and WTIC-FM Listeners' Guild on Request for Inspection of Records, FOIA Control No. 8-74, Memorandum Opinion and Order, 69 FCC 2d 1517, ¶ 8 n.4 (1978)).

⁷ 5 U.S.C. § 552(b)(4).

⁸ *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("*Critical Mass*"); see also *Confidential Treatment Order*, 13 FCC Rcd 24816 ¶ 4. In *Critical Mass*, the court recognized that "[i]t is a matter of common sense that the disclosure of information the Government has secured from voluntary sources on a confidential basis will both jeopardize its continuing ability to secure such data on a

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The information for which Iowa Telecom requests confidential treatment is contained in the following Exhibit A cost support materials: selected material in sections I through VI of the Cost Study; and the entirety of Confidential Exhibits A-1, A-2, A-3 and A-4. These sections contain extensive information regarding the future design of Iowa Telecom's network, planned infrastructure investments, and individual pricing components, such as switching costs. Some of this cost information is also proprietary to the equipment vendors that supply Iowa Telecom. Moreover, all of this commercial information is customarily not released to the public, and therefore falls under FOIA Exemption 4. The information for which Iowa Telecom is seeking confidential treatment would be extremely beneficial to Iowa Telecom's actual and potential competitors. More than twenty competitive local exchange carriers have commenced operation within the company's service territory and are presently competing against Iowa Telecom. Iowa Telecom would therefore suffer substantial competitive harm if the confidential commercial or financial information contained in the Cost Study were to be released to the public. Commission precedent has found this type of information to be competitively sensitive and withholdable under Exemption 4.⁹

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cooperative basis and injure the provider's interest in preventing its unauthorized release." *Critical Mass*, 975 F.2d at 879.

⁹ See, e.g., Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport; CC Docket No. 94-97, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Application for Review, Transmittal No. 2524, Order, 13 FCC Rcd 13615 ¶ 5 (1998) (concluding that data providing "details of investments [and] capital costs" fall under FOIA Exemption 4 because they "provide insight into [a company's] business strategies" and "could be used by competitors to devise strategies to introduce new services to the competitor's benefit"); Mercury PCS II, LLC on Request for Inspection of Records, Omnipoint Corporation on Request for Confidential Treatment of Documents, FOIA Control No. 98-85, Memorandum Opinion and Order, 15 FCC Rcd 14559 ¶ 12 (2000) (affirming that an exhibit containing information on a company's "strategic plan and business strategy" are protected under FOIA Exemption 4).

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For all the foregoing reasons, Iowa Telecom requests that the Commission withhold from public disclosure the proprietary commercial and financial information contained in the unredacted Cost Study and Confidential Exhibits A-1 through A-4, pursuant to Section 0.459 of the Commission's rules.

Sincerely,

/s/

Gregory J. Vogt

Derek A. Yeo

Counsel for Iowa Telecommunications
Services, Inc. d/b/a Iowa Telecom