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6 **BEFORE THE WASHINGTON STATE**  
7 **UTILITIES AND TRANSPORTATION COMMISSION**  
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9 In the Matter of the Petition of  
10 Intelligent Community Services, Inc.  
11 For Designation as Eligible  
12 Telecommunications Carrier Under  
13 47 U.S.C. §214(e)(2)

DOCKET NO. UT-053041

MOTION TO COMPEL

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15 COMES NOW, the Washington Independent Telecommunications Association (“WITA”),  
16 by and through its attorney of record, Richard A. Finnigan, and hereby files this Motion to Compel  
17 responses to data requests propounded by WITA to Intelligent Community Services, Inc. (“ICS”).  
18 This Motion to Compel (“Motion”) is filed pursuant to WAC 480-07-405(3) and WAC 480-07-  
19 425(1).

20 The parties have discussed the objections and responses to the subject data requests either by  
21 telephone as to some or through an exchange of e-mail messages as to others and the parties agree  
22 that the obligations to meet and confer concerning the data requests and responses and objections  
23 has been fulfilled. Obviously, no progress was made in those discussions.  
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26 MOTION TO COMPEL - 1

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1 NATURE OF MOTION

2 This Motion addresses two primary subject areas. The first subject area is the nature of the  
3 investment made by ICS and planned to be made by ICS in the Roslyn exchange. The second  
4 primary subject matter for this Motion is the information related to the substance of Suncadia's  
5 somewhat ambiguous statements regarding the ability of Inland to serve the Suncadia Resort. These  
6 two subject matters go to the heart of the issue of whether the application by ICS is in the public  
7 interest.

8 There is a third portion of this Motion which addresses the designation of certain material as  
9 Highly Confidential.

10 MOTION

- 11 1. ICS should be compelled to produce details concerning its past investment and planned  
12 investment in the Roslyn exchange.

13 The witness for ICS, Mr. Southard, makes certain statements in his pre-filed testimony  
14 concerning the level of past investment and the planned future investment by ICS in the Roslyn  
15 exchange. For example, Mr. Southard states at page 3, lines 12-13 of his pre-filed testimony that  
16 "...ICS plans to construct its own facilities in other parts of the exchange." He further states at page  
17 4, line 14 of his pre-filed testimony that there is 1.5 million dollars "already invested in network  
18 infrastructure to serve the Roslyn exchange." Mr. Southard also states at page 6, lines 10-12 of his  
19 pre-filed testimony that "ICS plans to invest more than 4.2 million dollars over the next two years to  
20 expand its network into the remainder of the Roslyn exchange and into the adjacent Cle Elum  
21 Urban Growth Area."

22 In WITA's First Set of Data Requests to ICS, WITA asked questions designed to require  
23 ICS to identify the nature of the facilities in which it has invested and the nature, extent and location  
24 of facilities that it plans to construct in the Roslyn exchange and the Cle Elum Urban Growth Area.

1 Those questions and the responses of ICS are set out in Attachment A. In particular, they consist of  
2 Data Requests 10, 11 and 14. Those Data Requests are as follows:

3 10. At page 3, lines 12 through 13, Mr. Southard states as follows: "...but ICS plans to  
4 construct its own facilities in other parts of the exchange." Please identify what facilities ICS plans  
5 to construct and where ICS plans to construct the facilities. Please provide the date of the planned  
6 construction. Please provide a copy of any of the "plans" referenced by Mr. Southard.

7 11. At page 4, line 14 of Mr. Southard's Testimony, he states there is 1.5 million dollars  
8 "already invested in network infrastructure to serve the Roslyn exchange." Provide a detailed list of  
9 the 1.5 million dollars in expenditures broken down by category of expenditure.

10 14. At page 6, lines 10 through 12, Mr. Southard states "ICS plans to invest more than  
11 4.2 million over the next two years to expand its network into the remainder of the Roslyn exchange  
12 and into the adjacent Cle Elum Urban Growth Area." Please identify in detail, by classification of  
13 expenditure (e.g., fiber optic cable, copper cable, distribution facility, etc.) the expenditure of 4.2  
14 million dollars and where such expenditures will occur in specific geographic relationship to the  
15 remainder of the Roslyn exchange and the Cle Elum Urban Growth Area.

16 As noted above, ICS's objections and attachments are set out in Attachment A. The  
17 attachments are designated as either Confidential or Highly Confidential. Those materials are  
18 contained in an envelope that contains the designation of both "Confidential" and "Highly  
19 Confidential" pursuant to the Protective Order entered in this matter.

20 The essential basis for ICS's objections are that the data requests are "overbroad, unduly  
21 burdensome, and [is] not reasonably calculated to lead to the discovery of admissible evidence."  
22 However, without the information sought by the data requests, WITA cannot test the veracity of the  
23 statements made by ICS.

24 The data requests propounded by WITA are relevant and directly related to the issues in this  
25 case. Issue 4.3 states as follows: "What infrastructure is ICS or Suncadia provisioning (or planning  
26 to provision) to which other local exchange carriers would need access in order to provide  
telecommunications service to customers in the Suncadia Resort area?" Issue 2.2 states: "Has ICS  
provided a substantive plan of investment to be made during the first two years in which support is

1 received and a substantive description of how those expenditures will benefit customers?" Issue 1.2  
2 states: "Will ICS offer the services that are supported by federal universal service support  
3 mechanisms offer to [sic] provide the supported services throughout the area for which it seeks  
4 designation consistent with the requirements of 47 C.F.R. §54.201(d)?"<sup>1</sup> Issue III states as follows:  
5 "Is ICS' request to be designated as a CETC consistent with the purposes of Universal Service and  
6 will it advance some or all of the purposes of Universal Service set forth in 47 U.S.C. §254?" Issue  
7 4.9 states as follows: "Is ICS engaged in creamskimming?" The data requests promulgated by  
8 WITA concerning the nature of the investment by ICS address each of these issues.

9 Further, ICS is representing to the Commission that it has made a certain level of investment  
10 in the Roslyn exchange and plans to make additional investment in the Roslyn exchange. These  
11 statements on behalf of ICS apparently are made to bolster its petition in this matter. The  
12 statements are apparently made to infer that the investments described by ICS are for the provision  
13 of telecommunications services. However, on closer inspection, that intended inference may be  
14 misleading.

15 For example, ICS does not state that the facilities it has invested in or the facilities it plans to  
16 invest in are, in fact, telecommunications facilities. ICS states that they are simply "facilities." ICS  
17 has made no secret of the fact that it offers cable television services and other services which may  
18 not be included in telecommunications services, such as Internet services. Cable television and  
19 Internet services are not among the list of supported services for which universal service funds can  
20 be used.

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23 <sup>1</sup> There appears to be a typographical error in the formulation of Issue 1.2. It would seem that a more appropriate  
24 wording is as follows: "Will ICS offer the services that are supported by federal universal service support mechanisms  
25 and provide the supported services throughout the area for which it seeks designation consistent with the requirements  
26 of 47 C.F.R. §54.201(d)?"

1 Another reason that this may be misleading is that if, for example, most of the 1.5 million  
2 dollars of past investment is related to construction of a cable TV "head end" and related facilities,  
3 then the statement by ICS should not be given the credence that ICS tries to suggest it carries. The  
4 statement needs to be tested and ICS needs to provide the information related to that statement.

5 The same is true as to the planned investment of 4.2 million dollars. In addition, it is  
6 important to note that ICS states that the planned investment will be for not just the Roslyn  
7 exchange but the "adjacent Cle Elum Urban Growth Area." This is important because ICS suggests  
8 that its investment levels are meant to have some relationship to the funds that it will be receiving  
9 from the high cost fund if its application is granted. However, the Cle Elum Urban Growth Area  
10 lies within Qwest's service area. Is ICS suggesting that it will use universal service high cost funds  
11 to subsidize competition with Qwest in an area in which Qwest does not receive high cost funds and  
12 is an area outside of the area requested by ICS for ETC designation? Is that in the public interest?  
13 ICS needs to provide the details of its planned investment. The same questions related to the type  
14 of service that will be provided and the nature of the facilities exists for the planned investment as  
15 they do for the past investment. How much of the planned investment is for cable TV or other non-  
16 telecommunications services? How much of that investment is related to services for which it is not  
17 appropriate to use universal service funds to support?

18 The data requests that are propounded by WITA go directly to the core issues in this case.

- 19 2. ICS should be compelled to respond to data requests concerning the nature of the access that  
20 Suncadia may make available to other telecommunications providers in the Suncadia Resort  
21 area.

22 In Mr. Eisenberg's testimony, he makes a vague reference to being willing to negotiate with  
23 other providers for access to the Suncadia Resort with other telecommunications providers for  
24 access to the Suncadia Resort area. See, Mr. Eisenberg's pre-filed testimony of page 3, lines 14-15.  
25 However, he has yet to directly respond to the question Chairman Sidran put forth in the open  
26

1 meeting, which is whether Suncadia will allow Inland to have access to the Suncadia Resort area on  
2 the same terms and conditions that ICS accesses the Suncadia Resort area. Be that as it may,  
3 WITA's Data Requests No. 1 and No. 2 of the First Set of Data Requests and the entire Second Set  
4 of Data Requests were designed to understand whether Mr. Eisenberg's vague statements about  
5 negotiation can even lead to something that is real and positive. It would be a hollow statement,  
6 indeed, if because of the way Suncadia has configured the network within the Suncadia Resort, only  
7 one carrier can actually access that network or if it turns out that the network is technically  
8 incompatible with Inland's network.

9 The data requests together with the objections and responses of ICS are set out in  
10 Attachment B. The data requests read as follows:

11 First Set of Data Requests

12 1. Is Suncadia willing to offer to Inland the contract that it has entered into with ICS  
13 simply substituting "Inland" for "ICS" and providing a more current date for the agreement? If no,  
14 please identify in detail all reasons why this is not an offer that Suncadia would make to Inland.

15 2. At page 3, lines 14 and 15 of Mr. Eisenberg's Testimony, he states as follows:  
16 "...Suncadia would be willing to enter into negotiations with that carrier to enable it to provide such  
17 services." Please identify in detail the terms of the negotiations that Suncadia would propose.

18 Second Set of Data Requests

19 1. In Mr. Eisenberg's Testimony at page 3, line 4, he states "Suncadia has constructed a  
20 backbone fiberoptic network throughout the resort area...." Please identify the "backbone  
21 fiberoptic network" in detail; including, but not limited to, the following:

- 22 a. The manufacturer of the fiberoptic cable;
- 23 b. Splitter configuration;
- 24 c. Location of nodes;
- 25 d. Location of hand holes;
- 26 e. Location of man holes;
- f. Locations and types of cabinets identifying type of cabinet by location;
- g. The number of fibers; and
- h. Whether all fibers are in one sheath and, if not, the number of sheaths and the number of fibers per sheath.

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2 2. Please provide "as-built" staking sheets for the backbone fiberoptic network  
referenced in Mr. Eisenberg's Testimony.

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4 3. Please provide engineering staking sheets for planned future additions to the  
backbone fiberoptic network referenced in Mr. Eisenberg's Testimony.

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6 4. Please provide a narrative description of any planned additions to the backbone  
fiberoptic network referenced in Mr. Eisenberg's Testimony.

7  
8 5. Please identify whether the backbone fiberoptic network referenced in Mr.  
Eisenberg's Testimony is passive or active.

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10 6. Please identify whether the backbone fiberoptic network referenced in Mr.  
Eisenberg's Testimony is GPON or APON.

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12 7. Please identify the manufacturer of the core electronics.

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14 8. Please identify the manufacturer of the optical NID or optical network terminal or, if  
both are used, the manufacturer of each.

15  
16 9. Please identify whether customer drops are in conduits.

17  
18 10. Will Suncadia allow Inland Telephone Company to pull its own fiberoptic cable  
through Suncadia's distribution conduit and drop conduit, if any?

19  
20 11. Please identify the size and configuration of all conduit used for the backbone  
fiberoptic network referenced in Mr. Eisenberg's Testimony.

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22 The objections to the Second Set of Data Requests advanced by ICS are that the data  
requests are beyond the scope of Mr. Eisenberg's testimony, not reasonably related to any  
legitimate issue in this proceeding, not reasonably calculated to lead to discovery of admissible  
evidence, and in some cases objected to as either vague or an abuse of discovery. As to whether the  
data requests are vague, it should be noted that ICS at no time made any effort to obtain clarification  
of the data requests. The data requests are not an abuse of discovery.

23  
24 WITA's data requests go directly to issues contained on the Issues List in this docket. Issue  
4.3 states as follows: "What infrastructure is ICS or Suncadia provisioning (or planning to

1 provision) to which other local exchange carriers would need access in order to provide  
2 telecommunications service to customers in the Suncadia Resort area?" Issue 4.4 states as follows:

3 Are both Suncadia and ICS separately willing to provide access to Suncadia's  
4 communication infrastructure to carriers other than ICS on the same or  
5 comparable terms and conditions as those under which ICS has access to  
6 Suncadia's communications infrastructure? If not, are there other conditions on  
7 which Suncadia or ICS will provide such access?

8 Issue 4.5 states: "Will Suncadia limit the use of infrastructure built by Suncadia to the provision of  
9 basic telecommunications service (local calling and features) by carriers other than ICS?"

10 Data Request Nos. 1 and 2 of the First Set of Data Requests to ICS are related directly to  
11 Issue 4.4. Mr. Eisenberg and ICS attempt to avoid answering those questions by raising objections  
12 that the data requests call for speculation and improperly attempt to conduct negotiations through  
13 discovery. However, ICS did not object to Issue 4.4. The conditions that Suncadia may impose and  
14 whether or not it will allow access on same or comparable terms and conditions to those under  
15 which ICS has access to Suncadia's communications infrastructure are directly relevant. ICS even  
16 agreed that they were relevant through the inclusion of Issue 4.4 on the Issues List. It is not  
17 appropriate to raise objections that the questions call for speculation when they are directly related  
18 to an issue on the Issues List. Nor is it appropriate to suggest that this is an attempt to conduct  
19 contract negotiations through discovery when the data requests are directly related to Issue 4.4.

20 WITA's Second Set of Data Requests were designed to get at a fundamental issue in this  
21 case. That fundamental issue is whether the owners of the Suncadia Resort will provide access to  
22 Inland and perhaps other carriers on the same terms and conditions enjoyed by ICS. As one subject  
23 matter for those data requests, the Second Set of Data Request contain a set of technical questions  
24 which are designed to determine whether such access is even technically possible. The Second Set  
25 of Data Requests are also designed to determine whether or not the network constructed by the  
26 Suncadia Resort owners is technically compatible with Inland's network such that access would be



1 feasible. Further, Data Requests 10 and 11 of the Second Set of Data Requests go to whether or not  
2 there is an alternative means of accessing the Suncadia property through Inland providing its own  
3 fiber.

4 All of these questions underlie an effort to try to reach a determination on a fundamental  
5 issue in this case. That fundamental issue is whether the Suncadia Resort will be able to be  
6 accessed by other carriers on the same terms and conditions that ICS accesses the network. The  
7 questions also test the veracity of Mr. Eisenberg's vague reference as to undertaking negotiations  
8 with other carriers. It would be a hollow statement if such a statement is made with the knowledge  
9 that actual access would not physically be able to be completed.

10 All of these data requests are directly related to Issues 4.3, 4.4 and 4.5.

11 3. WITA objects to ICS's designation of summary information as Highly Confidential.

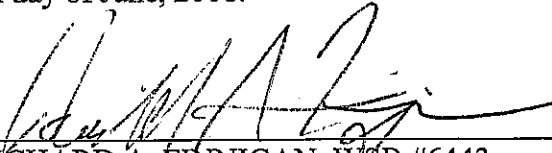
12 In response to WITA's First Set of Data Requests to ICS, ICS designated the attachments to  
13 the responses for Data Requests 10 and 14 as Highly Confidential. However, the material that is  
14 provided is provided at a summary level, not a detailed level. WITA wonders why the response to  
15 Data Request 14 can even qualify for Confidential designation. However, it certainly should not be  
16 allowed to be classified as Highly Confidential. WITA asks that the designations of information as  
17 Highly Confidential for the attachments to the data request responses be changed to Confidential.

18 RELIEF REQUESTED

19 Based on the foregoing, WITA respectfully requests that the Commission issue an order  
20 requiring ICS to fully and completely respond to Data Requests 10, 11 and 14 of WITA's First Set  
21 of Data Requests to ICS and to fully and completely respond to each and every data request  
22 contained in WITA's Second Set of Data Requests to ICS. WITA further respectfully requests that  
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1 the Commission order ICS to change the designation on two of the attachments that were designated  
2 by ICS as Highly Confidential to Confidential.

3 Respectfully submitted this 18th day of June, 2008.

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8 Attorney for the Washington Independent  
9 Telecommunications Association  
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