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March 24, 2008

**VIA E-MAIL AND HAND DELIVERY**

Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

Re: Docket No. UT-053041 – Petition of Intelligent Community Services  
for Designation as Eligible Telecommunications Carrier

Dear Ms. Washburn:

This letter is written on behalf of the Washington Independent Telephone Association (“WITA”). WITA respectfully requests that the Petition of Intelligent Community Services for Designation as Eligible Telecommunications Carrier (“Petition”) be denied. WITA’s position is that the Petition does not comply with law, does not comport with the Commission’s rules for ETC applications and is not in the public interest for reasons described below.

**BACKGROUND**

Intelligent Community Services (“ICS”) is requesting designation as a competitive eligible telecommunications carrier (“ETC”) in Inland Telephone Company’s Roslyn exchange.<sup>1</sup> The Roslyn wire center serves rural areas of the State of Washington west of Cle Elum, including the town of Roslyn itself. Part of that service area includes the Suncadia Resort.

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<sup>1</sup> The Petition identifies the request as “exchange.” Certain portions of FCC orders on the subject of designation of competitive ETCs use the term “wire center.” For the purpose of this discussion, the terms are interchangeable.

The Suncadia Resort is a master planned community which will have 2,800 homes, three golf courses, a hotel and several businesses. When completed, there will be approximately 4,000 access lines within the Resort. By comparison, the rest of the Roslyn wire center currently consists of approximately 1,500 access lines spread over a much larger area.

The Suncadia Resort is a planned resort community for homeowners of well above average income. The lots run from \$300,000 to over \$1,000,000, just for the lot itself. Obviously, people who can afford to build in such an area are financially well-to-do.

Inland Telephone Company has no right to access the customers in the Suncadia Resort to provide service. The roads are all private roads and the Suncadia Resort has refused to provide Inland Telephone Company with an easement by which Inland could provide service to customers within the Suncadia Resort. Thus, Inland Telephone Company is effectively barred from serving anyone in the Suncadia Resort.

As the Commission is aware, ICS has entered into a contract with the owners of the Suncadia Resort to provide telecommunications services within the Resort. Although the terms of the contract are confidential, certain aspects of the contract can be disclosed. The fact is that all of the facilities needed to serve the Suncadia Resort are being constructed and owned by the owners of the Suncadia Resort itself. The only facilities that ICS owns, or apparently ever will construct or own, are a network operating center and some limited facilities to connect the network operating center to the Suncadia Resort facilities.<sup>2</sup>

ICS very briefly entered into negotiations with Inland Telephone Company concerning service within the Roslyn wire center. On June 19, 2007, ICS committed to provide a draft agreement to Inland Telephone Company concerning the terms and conditions under which ICS desired provide service within the Roslyn exchange and to exchange traffic between Inland Telephone Company and ICS. That was the last that Inland heard from ICS on the subject until just recently. Then, in a cynical and calculated effort to support its ETC Petition, ICS contacted Inland's attorney on March 13, 2008, to request

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<sup>2</sup> The Amended Petition filed by ICS on approximately December 11, 2007, lists a switch in Bend, Oregon which ICS states it "leases." The relationship of that switch to the switch owned by the developers of Suncadia Resort is not explained.

further discussions. However, the actions of ICS belie its words. Waiting nine months to request further discussions demonstrates that ICS has no intent to serve outside Suncadia Resort. It is just trying to get its Petition approved.

**CUSTOMERS IN WASHINGTON ARE NOT BENEFITED  
BY THE GRANTING OF THE PETITION**

Recent applications for ETC status have been approved by the Commission in part on the theory that obtaining additional federal funding will provide benefits to customers in the State of Washington. In this case, there can be no demonstrable benefits to customers in the State of Washington. The network that serves the Suncadia Resort has been built by the developers of the resort. Federal funds are not needed to aid in that construction. The only thing that will happen is that the owners of ICS will receive a windfall.

**THE PETITION IS DEFICIENT IN THAT ICS HAS  
NOT DEMONSTRATED IT WILL PROVIDE SERVICE  
THROUGHOUT THE ROSLYN WIRE CENTER**

Under 47 C.F.R. §54.201(d)(1) an applicant must offer the services that are supported by the federal universal service support mechanism throughout the service area for which the designation is received. ICS is seeking designation as ETC for the Roslyn wire center. However, ICS will only have facilities to provide service within the Suncadia Resort.

An interconnection agreement with Inland is necessary to provide service in any meaningful way to customers throughout the Roslyn wire center. Thus, the fact that ICS walked away from negotiations with Inland Telephone Company clearly demonstrates that ICS has no intention of providing service throughout the Roslyn wire center.

While ICS can avail itself under 47 U.S.C. §251(b) of resale of Inland's service without a discount, that does not appear to be a meaningful promise by ICS. ICS's own actions in walking away from negotiations demonstrate how little regard ICS has for providing service throughout the Roslyn wire center.

Further, it is not clear how ICS is completing traffic today that originates from ICS customers within the Suncadia Resort and terminates to Inland Telephone Company's customers within the Roslyn wire center. It originally

appeared that ICS was assigning customers within the Suncadia Resort with Cle Elum wire center numbers. This assignment of Cle Elum numbers to Suncadia Resort customers appears to be a violation of numbering assignment rules. This also means that the ICS originating traffic would be hidden as extended area service traffic coming through Qwest to Inland Telephone Company. A company that serves through hidden or deceptive delivery of traffic should not be designated as an ETC.

#### THE PETITION FAILS TO COMPLY WITH COMMISSION RULES

The Petition was filed by ICS in June of 2005. Following its filing, the Commission has adopted new rules delineating what must be demonstrated in a petition for designation as an ETC. The Petition does not comply with those requirements. ICS filed an Amended Petition in December of 2007. The Petition as amended does not comply with the Commission's rules.

For example, the Petition, as amended, does not contain "a substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers" as required by WAC 480-123-030(1)(d).

In the Amended Petition, ICS provides a very general description of its plan for investment. See Paragraphs 35 and 36 of Exhibit A to ICS Amended Petition. In Paragraph 35, ICS states "...the funds received would in many instances directly compensate ICS for the investments made and expenses incurred to connect the supported customer to the network." In Paragraph 36, ICS states "Just the basic connectivity and switch lease costs to serve the exchange exceed the level of high cost support that ICS could reasonably anticipate receiving over the next two years, and those costs will grow as subscribers are added." However, ICS does not provide any quantification of these statements. ICS provides nothing to show its level of investment. ICS shows nothing to provide its level of projected USF receipts over the next two years. ICS has no comparison of the level of its investment to the level of projected USF receipts. How can the Commission evaluate ICS's assertion that "Just the basic connectivity and switch lease costs" will exceed the level of high cost support that ICS receives over the next two years? There is no quantitative analysis to support this statement.

Further, the Commission's rules require that a petition demonstrate how the applicant "will comply with the applicable consumer protection and service quality standards of Chapter 480-120 WAC..." as required by WAC 480-123-030(1)(h). In its Amended Petition, ICS selects five service quality rules and asserts as follows: "ICS will comply with these standards, to the extent they apply to the company, as demonstrated below."<sup>3</sup> ICS then goes on to discuss in general ways how it will comply with the five selected standards. There are several problems with this lack of commitment by ICS.

First, ICS does not explain what it means by using the language "to the extent they [the standards] apply to the company." Is ICS asserting that as a competitive local exchange carrier it will not comply with the standards unless it specifically states that it will do so? This becomes an important consideration given the fact that ICS never commits to complying with network maintenance requirements set out in WAC 480-120-411, for example, even though WAC 480-120-411 is one of the five rules identified by ICS in its Amended Petition.

It is further troubling to see ICS's lack of commitment to the repair of service interruptions and impairments under WAC 480-120-440. Even though ICS is serving a densely populated, compact geographic area, ICS states that it will try to comply with the rule "in most instances." Given ICS's compact service territory, with all distribution facilities in conduits, ICS should be able to make a near unequivocal commitment.

Even more troubling is the fact that ICS chose to select five specific rules related to service quality and ignored three others. ICS does not discuss WAC 480-120-402 which sets out the basic safety standard. ICS does not discuss WAC 480-120-412 which relates to major outages. ICS does not discuss WAC 480-120-414 related to emergency operation. Given that ICS is the only wireline company serving the Suncadia Resort, ICS should make a commitment to comply with each and every one of these service quality standards.

A still larger problem is the fact that ICS totally ignores the consumer protection component of the rule. The Commission's rule states that the petition must demonstrate how the applicant "will comply with the applicable consumer protection...standards of WAC 480-120 WAC." ICS does not discuss

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<sup>3</sup> Amended Petition, Exhibit A at Paragraph 40.

any of the consumer protection standards. Instead, ICS states only that “ICS will cooperate with Commission consumer affairs staff in resolving any customer complaints that may arise.”<sup>4</sup> There is no discussion of the establishment of service and credit rules. There is no discussion of the maintenance of business office and office hours. There is no discussion about the providing of consumer information and the protection of that information. There is no discussion of disconnection policies. ICS has failed to address the consumer protection aspects of its service.

#### ICS'S APPLICATION DOES NOT MEET GENERAL PUBLIC OF INTEREST STANDARDS

In its Amended Petition, ICS states that it will advance the public interest “by giving more customers in the Roslyn exchange access to a greater variety of basic and advanced services.” Amended Petition at Paragraph 7. However, the Amended Petition does not demonstrate in any way this promised “greater variety” of services. Further, since ICS is serving only the Suncadia Resort, it cannot possibly pretend to provide this “greater variety” of services throughout the Roslyn exchange. ICS’s claims of acting in the public interest are not supported by the Petition as amended.

In fact, when ICS discusses advanced services, ICS simply states as follows: “ICS will also provide customers within the Suncadia Resort area with access to affordable broadband service.” (Emphasis added.)<sup>5</sup> This is an admission by ICS that it will not provide advanced services outside of the Suncadia Resort. Thus, ICS’s Petition is not in the public interest.

ICS also argues that “[t]he Commission need not be concerned that ICS’s entry into this market will harm universal service through ‘creamskimming’ of universal service support.” ICS is flat wrong. What ICS is doing is engaging in creamskiimming. ICS is serving the densely populated Suncadia Resort. ICS is not providing service throughout the Roslyn exchange. Because ICS will receive support premised upon Inland’s service to widely dispersed customers, which requires Inland to make a high per customer investment to serve, ICS will receive a windfall and is, in fact, engaging in creamskiimming.

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<sup>4</sup> Amended Petition, Exhibit A at Paragraph 46.

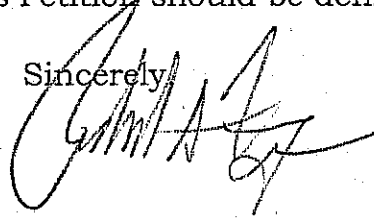
<sup>5</sup> Amended Petition at Paragraph 13.

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## CONCLUSION

ICS is seeking designation as a competitive ETC. In reality, ICS wants to limit its service obligations to the Suncadia Resort where it will serve in a compact geographic area using facilities largely provided by the Suncadia Resort itself. ICS wants to obtain support from the federal universal service fund for service to the Suncadia Resort based upon Inland Telephone Company's costs. The costs of Inland Telephone Company are predicated on Inland providing service to relatively few customers spread over large geographic areas. This is a thinly disguised effort by ICS and the owners of Suncadia Resort to steal the cream. ICS's Petition should be denied.

Sincerely,



RICHARD A. FINNIGAN

RAF/km

cc: Chairman Sidran  
Commissioner Oshie  
Commissioner Jones  
Greg Kopta  
Will Saunders  
Brian Thomas  
Clients (via e-mail)