

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
)	DOCKET UT-053041
)	
INTELLIGENT COMMUNITY)	ORDER 03
SERVICES, INC.,)	
)	
For Designation as an Eligible)	ORDER GRANTING IN PART
Telecommunications Carrier Under 47)	AND DENYING IN PART WITA's
U.S.C. § 214(e)(2))	MOTION TO COMPEL
)	
.....)	

1 ***Synopsis.** This Order resolves a discovery dispute between WITA and ICS. The Order grants WITA's Motion to Compel responses to Data Request Nos. 1 and 10 from WITA's First Data requests and denies the Motion to Compel responses to Data Request Nos. 2, 11, 14 from WITA's First Data Requests and Data Request Nos. 1 through 11 from WITA's Second Data Requests. In addition, this Order denies WITA's request to reclassify two of ICS' response documents from Highly Confidential to Confidential.*

SUMMARY

2 **NATURE OF PROCEEDING.** Docket UT-053041 involves the request of Intelligent Community Services, Inc. (ICS) for designation as an Eligible Telecommunication Carrier (ETC) under Section 214(e)(2) of the Telecommunications Act of 1996 to receive support from the federal Universal Service Fund, including support for customers in high-cost locations and low-income customers in the Roslyn, Washington, exchange.

3 **APPEARANCES.** Gregory J. Kopta, Davis Wright Tremaine LLP, Seattle, Washington, represents ICS. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (the Commission Staff or Staff). Richard A. Finnegan, attorney, Olympia, Washington,

represents Inland Telephone Company (Inland) and the Washington Independent Telephone Association (WITA).

4 **DECISION.** This Order grants WITA's Motion to Compel Responses to Data Request Nos. 1 and 10 of WITA's First Data Requests. This Order denies WITA's Motion to Compel Responses to Data Request Nos. 2, 11, and 14 of WITA's First Data Requests and Data Request Nos. 1 through 11 of WITA's Second Data Requests. This Order also denies WITA's request for the Commission to modify the designation of ICS' response to Data Request Nos. 10 and 14 from Highly Confidential to Confidential.

MEMORANDUM

A. Procedural History

5 ICS filed a Petition with the Washington Utilities and Transportation Commission (Commission) on June 29, 2005, seeking designation as an ETC under 47 U.S.C. § 214(e)(2), in Docket UT-053041. On December 14, 2007, ICS filed an Amended Petition in the docket. The Commission set the matter for hearing at its March 27, 2008, open meeting.

6 The Commission held a prehearing conference on April 23, 2008, before Administrative Law Judge Ann E. Rendahl. Thereafter, the Commission adopted a procedural schedule in Order 01 and granted the interventions requested by Inland and WITA.

7 On May 1, 2008, the Commission issued Order 02, a Protective Order with Highly Confidential provisions.

8 WITA filed a Motion to Compel on June 18, 2008, seeking responses to certain data requests. ICS filed its Opposition to WITA's Motion to Compel on June 25, 2008. On June 27, 2008, WITA filed its Reply to ICS' Opposition to WITA's Motion to Compel.

B. WITA's Motion to Compel

9 The contested data requests seek information that falls into two categories: (1) the nature of the investment ICS has made and plans to make in the Roslyn, Washington, exchange and (2) the degree to which Suncadia LLC (Suncadia), a corporation owning Suncadia Resort, a master-planned resort located in the Roslyn exchange, will allow competitive telecommunications providers access to the Suncadia Resort area. WITA also raises an objection to ICS' designation of its responses to Data Request Nos. 10 and 14 as Highly Confidential.

1. ICS's Investment in the Roslyn, Washington Exchange

10 In Data Request Nos. 10,¹ 11,² and 14³ of WITA's First Data Requests, WITA asserts that it is seeking information from ICS "to identify the nature of the facilities in which it has invested and the nature, extent and location of facilities that it plans to construct in the Roslyn exchange and the Cle Elum Urban Growth Area."⁴ WITA asserts that the details surrounding ICS's past and future investments in the telecommunications facilities in the Roslyn, Washington, exchange are relevant to the issues in the case, and were originally raised in the testimony of ICS' own witness, Mr. Keith Southard.

11 Mr. Southard states in his pre-filed testimony that, "...ICS plans to construct its own facilities in other parts of the exchange,"⁵ and further asserts that ICS "... has already

¹ WITA's Data Request 10 asserts that, "[a]t page 3, lines 12 through 13, Mr. Southard states as follows: '...but ICS plans to construct its own facilities in other parts of the exchange.' Please identify what facilities ICS plans to construct and where ICS plans to construct the facilities. Please provide the date of the planned construction. Please provide a copy of any of the "plans" referenced by Mr. Southard."

² WITA's Data Request No. 11 states that, "[a]t page 4, line 14 of Mr. Southard's Testimony, he states there is 1.5 million dollars 'already invested in network infrastructure to serve the Roslyn exchange.' Provide a detailed list of the 1.5 million dollars in expenditures broken down by category of expenditure."

³ WITA's Data Request No. 14 asserts that, "[a]t page 6, lines 10 through 12, Mr. Southard states 'ICS plans to invest more than 4.2 million over the next two years to expand its network into the remainder of the Roslyn exchange and into the adjacent Cle Elum Urban Growth Area.' Please identify in detail, by classification of expenditure (e.g., fiber optic cable, copper cable, distribution facility, etc.) the expenditure of 4.2 million dollars and where such expenditures will occur in specific geographic relationship to the remainder of the Roslyn exchange and the Cle Elum Urban Growth Area."

⁴ *WITA's Motion to Compel*, at 2.

⁵ *Pre-filed testimony of Keith Southard*, at 3, ll 12-13.

invested [\$1.5 million] in network infrastructure to serve the Roslyn exchange.”⁶ WITA posits that statements such as these are meant to bolster the credibility of ICS’s commitment to invest capital in the area. However, WITA argues that ICS has not clarified that its prior investments were in telecommunications facilities, particularly when ICS offers cable television and Internet services which are not USF-eligible services. Furthermore, WITA claims that it cannot test the veracity of Mr. Southard’s statements absent the information it has sought in the data requests.

- 12 ICS objects to Data Request Nos. 10, 11, and 14, asserting that the requests are irrelevant, overbroad, and unduly burdensome. Subject to these objections, ICS has provided WITA with: the Initial Phase Construction Area plan in response to Data Request No. 10, designated by ICS as Highly Confidential; the WATEL Capital Investment document in response to Data Request No. 11, designated by ICS as Confidential; and the Capital Plan in Data Request No. 14, designated by ICS as Highly Confidential.
- 13 ICS also argues that WITA has yet to address why the documents proffered under Confidential and Highly Confidential seal, as well as the additional data ICS provided in its Amended Petition, are not sufficient to address the data requests. In response to WITA’s request for information concerning facilities ICS plans to construct, as well as the date and location of the facilities sought in Data Request No. 10, ICS argues such a request for a “more granular planning” breakdown is irrelevant to the issues of the docket.⁷
- 14 With specific reference to WITA’s request for information relating to past investments ICS has made in the Roslyn exchange infrastructure, also known as Data Request No. 11, ICS asserts that the information is unavailable and of no value to this proceeding. ICS explains that, until the beginning of this year, its accounting system did not have the ability to assign its infrastructure costs according to the services ICS provides. As a result, ICS would have to manually breakdown the costs of the past investments made in the exchange according to services. ICS argues further that the Commission has never required that such information be provided by a competitive

⁶ *Id.*, p. 4, ll 14-15.

⁷ *ICS’ Opposition*, at 4, ¶ 6.

ETC and should not require the disclosure of a breakdown of past facility expenditures as it has no bearing on the issues in this docket.

- 15 With regard to Data Request No. 14, WITA’s request for a breakdown of the \$4.2 million proposed ICS expenditures and their locations in the Roslyn exchange and the Cle Elum Urban Growth Area, ICS disputes the necessity for such information as it has already provided this information in its Amended Petition and its data request responses filed under seal. Additionally, ICS argues that it included a reference to the \$4.2 million to “show only that ICS has substantial plans to provide telecommunications and other services beyond the boundaries of the Suncadia [R]esort area.”⁸
- 16 WITA counters that ICS has directly placed the issue of its past and future expenditures into its testimony, and ICS cannot now question a request for more details relating to these expenditures. As to ICS’ provision of data under Confidential seal, WITA argues that the data is meager, likening it to “a response at a fifty foot level that hides the nature of the investment.”⁹ WITA also argues that, because ICS provides cable, Internet, and other non-regulated services, the question arises as to whether the proposed investment ICS has pledged will actually be for services supported by USF.
- 17 ***Discussion and decision.*** The Commission’s rules require that data requests must “seek only information that is relevant to the issues in the adjudicative proceeding or may lead to the production of information that is relevant.”¹⁰ Parties may not object to a data request on the grounds that information may be inadmissible, as the Commission will allow discovery if the information “appears reasonably calculated to lead to discovery of admissible evidence.”¹¹ The Commission’s discovery rule, WAC 480-07-400(5), further provides:

Parties must not seek discovery that is unreasonable cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is

⁸ *Id.*, at 6, ¶ 9.

⁹ *WITA’s Reply to ICS’ Opposition*, at 4.

¹⁰ WAC 480-07-400(4).

¹¹ *Id.*

inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.

- 18 Having considered the contested data requests, the parties' pleadings and arguments in light of the standards for resolving discovery disputes, WITA's motion to compel responses to Data Request No. 10 is granted and WITA's motion to compel responses to Data Request Nos. 11 and 14 is denied.
- 19 WAC 480-123-040 mandates, *inter alia*, that a petitioner seeking ETC designation meet the requirements of WAC 480-123-030 as a prerequisite to approval of the petition by the Commission. WAC 480-123-030(d) specifically requires that an ETC petition include "a substantive plan of the investments and a substantive description of how those expenditures will benefit customers." Data Request No. 10, which asks ICS to "identify what facilities [it] plans to construct and where [it] plans to construct the facilities ... [and] the date of the planned construction," relates directly to the information required pursuant to WAC 480-123-030 and is therefore relevant to the proceedings.
- 20 ICS has provided WITA with a document it has labeled its Initial Phase Construction Area plan. An "Initial" plan is not the same as a "substantive plan" as described in WAC 480-123-030. Furthermore, WITA did not seek information regarding a specific phase of the construction project in its data request. The question of what facilities ICS plans to construct encompasses the entire project. As a result, the Commission finds that ICS' response to Data Request No. 10 is incomplete and should be amended. The Commission would note that, if ICS has concerns regarding the commercial integrity of its construction plans for USF facilities, ICS may submit the information under Highly Confidential seal pursuant to WAC 480-07-423 or request that the presiding officer review the information *in camera* prior to its dissemination under WAC 480-07-420(3).

- 21 With regard to Data Request No. 11, WITA seeks information relating to prior investments ICS may have made in the exchange's infrastructure.¹² Prior investments in a network's infrastructure are irrelevant to the regulatory requirements imposed upon a Petitioner seeking designation as an ETC. The regulatory schema at issue in this docket focuses on prospective plans and investments, delving into the planned services, investments, and facilities of a prospective ETC. Even assuming, as WITA does, that the past investment ICS has made into the exchange related to services other than telecommunications, such retrospective examination is unnecessary. The Commission finds WITA's Data Request No. 11 is irrelevant to the issues in this docket.
- 22 WITA's Data Request No. 14 seeks additional information relating to the \$4.2 million that ICS has projected that it will invest in the exchange. Specifically, WITA is requesting a detailed breakdown by classification of expenditures¹³ and where such expenditures are to be located. The Commission finds that the request for this information is duplicative when viewed in conjunction with Data Request No. 10 as the Commission expects this information to be provided within ICS' response to Data Request No. 10.
- 23 Thus, WITA's motion to compel responses to Data Request No. 10 is granted and denied as to Data Request Nos. 11 and 14.

2. The Degree to Which Competitive Telecommunications Providers Will Have Access to the Suncadia Resort Area.

- 24 In Data Request Nos. 1¹⁴ and 2¹⁵ of the First Data Requests, WITA seeks information from ICS concerning the level of access which Suncadia will allow competitive

¹² ICS, again subject to its objection to the data request, did provide WITA with its 'WATEL Capital Investment Schedule.' However, as discussed below, analysis of ICS's prior investments within the exchange are not anticipated in the regulatory schema.

¹³ For example, the total amount ICS will invest in fiber optic cable, the total amount ICS will invest in copper cable, et cetera. See, *WITA's Motion to Compel*, Attachment A, Data Request No. 14.

¹⁴ WITA's Data Request No. 1 asks of ICS, "[i]s Suncadia willing to offer to Inland the contract that it has entered into with ICS simply substituting 'Inland' for 'ICS' and providing a more current date for the agreement? If no, please identify in detail all reasons why this is not an offer that Suncadia would make to Inland."

telecommunications providers to have to customers within the Suncadia Resort area. In Data Request Nos. 1 through 11¹⁶ of the Second Data Requests, WITA asks ICS to provide the technical details of Suncadia's network infrastructure.

¹⁵WITA's Data Request No. 2 states that, "[a]t page 3, lines 14 and 15 of Mr. Eisenberg's Testimony, he states as follows: '...Suncadia would be willing to enter into negotiations with that carrier to enable it to provide such services.' Please identify in detail the terms of the negotiations that Suncadia would propose."

¹⁶ WITA's Data Request No. 1 of its Second Data Requests states that, "In Mr. Eisenberg's Testimony at page 3, line 4, he states 'Suncadia has constructed a backbone fiber optic network throughout the resort area....' Please identify the "backbone fiber optic network" in detail; including, but not limited to, the following: a. The manufacturer of the fiber optic cable; b. Splitter configuration; c. Location of nodes; d. Location of hand holes; 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."

WITA's Data Request No. 2 of its Second Data Requests asks for ICS to "[p]lease provide 'as-built' staking sheets for the backbone fiber optic network referenced in Mr. Eisenberg's Testimony."

WITA's Data Request No. 3 of its Second Data Requests asks for ICS to "[p]lease provide engineering staking sheets for planned future additions to the backbone fiber optic network referenced in Mr. Eisenberg's Testimony."

WITA's Data Request No. 4 of its Second Data Requests asks for ICS to "[p]lease provide a narrative description of any planned additions to the backbone fiber optic network referenced in Mr. Eisenberg's Testimony."

WITA's Data Request No. 5 of its Second Data Requests asks for ICS to "[p]lease identify whether the backbone fiber optic network referenced in Mr. Eisenberg's Testimony is passive or active."

WITA's Data Request No. 6 of its Second Data Requests asks for ICS to "[p]lease identify whether the backbone fiber optic network referenced in Mr. Eisenberg's Testimony is GPON or APON."

WITA's Data Request No. 7 of its Second Data Requests asks for ICS to "[p]lease identify the manufacturer of the core electronics."

WITA's Data Request No. 8 of its Second Data Requests asks for ICS to "[p]lease identify the manufacturer of the optical NID or optical network terminal or, if both are used, the manufacturer of each."

WITA's Data Request No. 9 of its Second Data Requests asks for ICS to "[p]lease identify whether customers drops are in conduits."

WITA's Data Request No. 10 of its Second Data Requests asks "[w]ill Suncadia allow Inland Telephone Company to pull its own fiber optic cable through Suncadia's distribution conduit and drop conduit, if any?"

WITA's Data Request No. 11 of its Second Data Requests for ICS to "[p]lease identify the size and configuration of all conduit used for the backbone fiber optic network referenced in Mr. Eisenberg's Testimony."

- 25 WITA argues that the response of ICS witness, Mr. Paul J. Eisenberg, in the form of “a vague reference to being willing to negotiate with other providers,” does not address the Commission’s concerns relating to Suncadia’s willingness to allow Inland access to the Suncadia Resort under the same terms and conditions as have been offered to ICS.
- 26 ICS objects to the data requests on the grounds that they require speculation regarding future negotiations between Suncadia and WITA. Additionally, ICS argues that WITA is abusing the discovery process by attempting to conduct negotiations with Suncadia through data requests. ICS asserts that Suncadia is not a party to this docket, and WITA appears to be using ICS to compel Suncadia “to develop and disclose its positions and provide detailed network specifications prior to any negotiations taking place.”¹⁷
- 27 Subject to those objections, ICS notes that Suncadia, through Mr. Eisenberg, has indicated that it is willing to enter into negotiations with any telecommunications carrier who has a genuine interest in providing service to the Suncadia Resort area. ICS wishes to emphasize that Suncadia is not willing to make a preemptive offer to any telecommunications carrier.
- 28 WITA argues that these data requests are not designed to use discovery as a negotiating vehicle, but instead are directly related to Issue 4.4¹⁸ on the Issues List. WITA also argues that the Commission itself has asked this question of Suncadia, and “the responses by ICS to the questions that have been asked can only be identified as a ‘no.’”¹⁹
- 29 In Data Request Nos. 1 through 11 of WITA’s Second Data Requests, WITA seeks information from ICS regarding the technical aspects of Suncadia’s networks. WITA argues that the information sought in these data requests is necessary for WITA to determine if Inland is capable of accessing Suncadia’s network from a technical

¹⁷ *ICS’ Opposition*, at 3, ¶ 3.

¹⁸ Issue 4.4 asks: Are both Suncadia and ICS willing to provide access to Suncadia’s communications infrastructure to carriers other than ICS on the same or comparable terms and conditions as those under which ICS has access to Suncadia’s communications infrastructure? If not, are there other conditions on which Suncadia and ICS will provide such access?

¹⁹ *WITA’s Reply*, at 3, ll 9-10.

standpoint. WITA asserts that Suncadia's willingness to offer carriers access to its customers would be meaningless without Inland's ability to physically access Suncadia's existing network.

30 ICS objects to these data requests arguing that "the purpose of this docket is not to explore issues of technical network compatibility."²⁰ ICS asserts that any carrier wishing to connect to Suncadia's network can request the technical details of Suncadia's infrastructure directly from Suncadia. Furthermore, such detail does not bear any relevance to the issue of whether any legal barriers exist to the ability of other carriers to provide service to the Suncadia Resort.

31 WITA counters by describing the process by which it came up with its Second Data Requests as such:

WITA consulted some of its members who are experienced with fiber networks and posited the following situation: 'Assume that there is a private fiber network that is being used by one carrier to provide services throughout a defined area. Under this assumption, what do you need to know to determine whether another carrier can use that same network.' WITA received a list of questions that the people familiar with fiber networks said 'Here is what you need to know in order to make that determination.'²¹

32 ***Discussion and decision.*** WITA's motion to compel responses to Data Request Nos. 1 and 2 is granted in part and denied in part. As discussed above, the focus of a discovery dispute is whether the information requested is relevant to the issues in the proceeding and whether it is reasonably calculated to lead to admissible evidence. WITA's data request questioning whether Suncadia will offer Inland a contract to provide telecommunications services on the same terms and conditions Suncadia has offered to ICS is relevant to the issues in this proceeding. In order for the

²⁰ *ICS' Opposition*, at 8, ¶ 14.

²¹ *WITA's Reply*, at 2.

Commission to grant a petitioner such as ICS designation as an ETC, the Commission must find that: 1) the petition meets the requirements of WAC 480-123-030 as discussed previously, 2) that the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and 3) that the designation is in the public interest. WAC 480-123-040.

- 33 When addressing the “public interest” standard, the Commission has noted that, “it is a broad concept encompassing the welfare of present and future customers, stakeholders, and the general public.”²² The Commission has defined “public interest” to include the goal of fostering competition amongst providers. *Id.* Increased competition can benefit customers by providing greater varieties of services and technologies offered as well as lower prices for those services. However, increased competition cannot exist where carriers are given different levels of access to the same groups of customers. Specifically at issue is the level of access to residents of the Suncadia Resort that Suncadia will grant to other providers in addition to ICS.
- 34 Data Request No. 1 asks with particularity whether Suncadia would be willing to offer Inland the contract that it has entered into with ICS under the same terms and conditions. Competition cannot exist where one carrier has exclusive access to customers that other carriers are prevented from pursuing.²³ The question regarding the contract Suncadia would be willing to offer another provider is relevant to the issue of whether ICS’ designation as an ETC fosters the goal of competition and is in the public interest. ICS has failed to provide an answer to the data request and therefore should be compelled to do so.²⁴

²² *In the Matter of the Petition of Sprint Corporation, et al*, Docket UT-043120, Order Granting Petition for Designation as an Eligible Telecommunications Carrier, Order No. 01, at 10, ¶ 36 (January 13, 2005).

²³ See, Commission’s Open Meeting discussion, March 27, 2008, which can be accessed electronically on the Commission’s website at: <http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/eff05591721ed5a2882574200067cb8e!OpenDocument>.

²⁴ The Commission notes that it is permissible for ICS to respond to this data request with an answer of yes, no, or ICS does not know. If the response ICS provides WITA is no, then a further explanation of this response is in order.

35 With regard to Data Request No. 2 to the First Data Requests, WITA refers to ICS' statement that "... Suncadia would be willing to enter into negotiations with that carrier to enable it to provide such services."²⁵ Therefore, WITA has asked ICS to provide the terms of negotiations that Suncadia would propose. As stated previously, the Commission is investigating whether equal terms and conditions of access will be offered by Suncadia to competitive carriers other than ICS. The issue comes down to one of competition carried out on a level playing field. The terms of negotiations for an interconnection agreement are not at issue in this matter. Therefore, the Motion to Compel ICS to respond to Data Request No. 2 to the First Data Requests is denied.

36 The Commission agrees with ICS' arguments that WITA's Second Data Requests, Data Request Nos. 1 through 11, are beyond the scope of this proceeding. As stated above, one of the requirements necessary for the Commission to designate ICS as an ETC is the fostering of competition. The technical components of Suncadia's infrastructure are not at issue in this matter. As a result, the Commission denies WITA's Motion to Compel responses to Data Request Nos. 1 through 11 of WITA's Second Data Requests.

3. Modification of ICS' Designation of its Data Request Responses from Highly Confidential to Confidential.

37 In its motion, WITA argues that ICS' responses to its First Data Requests, Data Request Nos. 10 and 14 do not deserve designation as Highly Confidential because "the material that is provided is provided at a summary level, not a detailed level."²⁶ ICS objected to WITA's request claiming that the "information reflects the highly proprietary and competitively sensitive future plans of ICS and Inland, a WITA member is a competitor [of ICS]."²⁷ Inland has signed the protective order authorizing its corporate officer to view Confidential information only, not Highly Confidential information. ICS asserts that WITA is now attempting to get this corporate officer, whose responsibilities include "the strategic planning and direction of ICS' primary competitor in the Roslyn exchange," access to the Highly

²⁵ ICS' Response to Data Request Nos. 1 and 2.

²⁶ WITA's Motion to Compel, at 9.

²⁷ ICS' Opposition, at 12, ¶ 25.

Confidential information as well.²⁸ In its Reply to ICS' Opposition, WITA makes one very narrow reference to the Highly Confidential information, and even then, only in furtherance of an additional response from ICS, not in relation to WITA's request that the information be reclassified as Confidential.

38 WITA's sole argument for redesignating as confidential ICS' self-designated "Initial Phase Construction Area" and "Capital Plan" responses is that the information is summary and not detailed. However, this is not the standard by which the Highly Confidential classification is judged. WAC 480-07-423(3)(b) defines those documents which may be classified as Highly Confidential as, "information the dissemination of which, for example, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections provided in the commission's protective order." Furthermore, WITA fails to counter ICS' argument that disclosure of the information to ICS' competitor and WITA member Inland would put ICS' operations in competitive harm. Therefore, the Commission finds that WITA's request for redesignation of ICS' Initial Phase Construction Area plan and Capital Plan should be denied.

ORDER

THE COMMISSION ORDERS:

- 39 (1) The Washington Independent Telecommunications Association's Motion to Compel Responses to Data Request Nos. 1 and 10 of its First Data Requests is granted.
- 40 (2) The Washington Independent Telecommunications Association's Motion to Compel Responses to Data Request Nos. 2, 11, and 14 of its First Data Requests is denied.
- 41 (3) The Washington Independent Telecommunications Association's Motion to Compel Responses to Data Request Nos. 1 through 11 of its Second Data Requests is denied.

²⁸ *Id.*, ¶ 26.

- 42 (4) The Washington Independent Telecommunications Association's request for redesignation of the responses of Intelligent Community Services, Inc., entitled the Initial Phase Construction Area plan and the Capital Plan, from Highly Confidential to Confidential is denied.

Dated at Olympia, Washington, and effective July 8, 2008.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. RUSSELL
Administrative Law Judge