

Agenda Date: March 27, 2008  
Item Number: A3

**Docket:** UT-053041

**Company Name:** Intelligent Community Services, Inc.

**Staff:** Wilford Saunders, Assistant Director – Telecommunications  
Paula Strain, Deputy Assistant Director – Telecommunications  
Tim Zawislak, Regulatory Analyst – Telecommunications

### **Recommendation**

Grant Intelligent Community Services, Inc.'s Amended Petition for Designation as an Eligible Telecommunications Carrier (ETC) for the Roslyn exchange.

### **Background**

Intelligent Community Services, Inc. (ICS), requests designation as an eligible telecommunications carrier (ETC) for the geographic service area that coincides with the Roslyn exchange, currently included as part of Inland Telephone Company's (Inland) study area. Inland is a "rural telephone company" (RTC) as defined by the Telecommunications Act of 1996 (the Act).

ICS is registered as a competitive local exchange carrier (CLEC) and currently operates facilities in a portion of the Roslyn exchange serving the Suncadia Resort (Suncadia). ICS has initially provisioned telecommunications service through a contractual arrangement with Suncadia LLC (owner of the Suncadia resort). Suncadia is a master-planned resort and Suncadia LLC controls the entire resort development. It has denied easements to Inland that Inland claims it needs to extend facilities into the resort to provide service. The record in UT-050606 indicates that service from two wireless ETCs can be used in some areas of the resort.

In Docket UT-050606 the Commission entered an order denying Inland's proposal to remove the Suncadia Resort from Inland's Roslyn exchange. ICS was an intervener in that case and Inland appealed the Commission's decision to Superior Court. In October 2007 the court upheld the Commission's order and ICS continues to serve residents of Suncadia.

Inland has filed comments in this docket that convey opposition to the designation of ICS as an ETC in this area.

On June 29, 2005, ICS filed its initial petition for designation as an ETC. On December 14, 2007, ICS filed an amended petition (Amended Petition) to reactivate this case after the Commission's order regarding Suncadia and to comply with more recently enacted WAC 480-123 (that became effective during the interim period on July 29, 2006).

Including Inland, there are four ETCs currently designated for all or portions of the Roslyn exchange. All except Inland are wireless carriers. Inland's wireless affiliate is not currently designated an ETC for this exchange.

## **Discussion**

ICS has asserted in its petition that it meets all of the requirements for designation as an eligible telecommunications carrier.

Comments opposed suggest that the petition is not sufficient to support designation due to deficiencies in form and substance.

### **Formal requirements for designation**

In its petition, ICS addresses the applicable formal requirements of WAC 480-123, including the following:

- [WAC 480-123-030](#) Contents of petition for eligible telecommunications carriers.
  - (a) A description of the area or areas for which designation is sought;
  - (b) A statement that the carrier will offer service throughout the area for which it seeks designation through a mix of facilities and resale;
  - (c) A description of how it will provide each supported service as defined in [47 C.F.R. 54.101](#);
  - (d) A substantive plan of the investments and a substantive description of how those expenditures will benefit customers<sup>1</sup>;
  - (e) A statement that the carrier will advertise the availability of services supported by federal universal service mechanisms,
  - (f) A statement confirming that ICS is not a wireless petitioner and therefore is not required to provide a service shape file;
  - (g) Information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with [WAC 480-120-411](#);
  - (h) Information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC
- (2) A company officer must submit the petition in the manner required by RCW 9A.72.085.

ICS also addresses the requirements of the Telecommunications Act of 1996 (“the Act”), including the following:

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<sup>1</sup> Though not clearly identified as such, ICS provides a substantive description of how supported expenditures will benefit customers by providing information sufficient to support a conclusion that ICS customers would benefit through access to a greater variety of basic and advanced services. For example, ICS offers advanced services such as broadband internet with a substantially high data rate than currently offered by wireless carriers in the area. *See, e.g.*, Petition at ¶13.

- Section 214(e)(1)(A):
  - The carrier must “offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier).”
- Section 214(e)(1)(B):
  - The carrier must “advertise the availability of such services and the charges therefore using media of general distribution.”
- Section 254(b): designation would support some or all of the goals of universal service:
  - Quality and rates
  - Access to advanced services
  - Access in rural and high cost areas
  - Equitable and nondiscriminatory contributions
  - Specific and predictable support mechanisms
  - Access to advanced telecommunications services for schools, health care, and libraries

Staff's review of the amended petition has not revealed any technical deficiencies.

### **Operational status**

ICS is currently in operation, operating approximately 69 phone lines, and has shown that it is both technically and financially capable of providing service. ICS offers E911 service and the local public safety answering point (PSAP) confirms that the service is functional. ICS has an approved interconnection agreement with Qwest, enabling it to reach the public switched telephone network (PSTN). The technical description of ICS' switching equipment is consistent with industry norms, and the company's Network Operations Center (NOC) was examined by staff within the last year. ICS has provided its terms and conditions of service in this docket, which it maintains itself since the withdrawal of price lists last year.

### **Permissive Rather Than Mandatory Designation**

The legal standard and process for designation of an ETC in 47 U.S.C. § 214(e)(2) permit rather than require a state commission to designate multiple ETCs in rural telephone company areas.<sup>2</sup> Applying the permissive rather than mandatory standard outlined above, the Commission could conclude that it need not designate an additional ETC for

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<sup>2</sup> U.S.C. § 214(e)(2) provides: “A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.”

this exchange. However, since the Commission has already designated multiple ETCs for this area, declining to designate ICS outright on those grounds would raise questions of equity at least, and might have anti-competitive effects.

### **Deferral**

In previous dockets WITA has urged the Commission not to designate new ETCs pending some external event: anticipated action by the FCC, a Florida-style review of process guidelines, etc. The FCC currently has a docket open on the Recommended Decision of the Universal Service Joint Board that offers an avenue for open discussion and may in the future offer resolution of some of the issues surrounding the fund. However, the FCC's action record on USF is not good, and staff cannot in good conscience recommend deferring a decision in this case based on events not under the control of the parties or the Commission.

### **The Public Interest and Enhancing Competition**

Commission rule and federal law both impose a public interest test on ETC designations in addition to formal content and service requirements. In light of the current state of the USF and efforts at its reform this is becoming a substantial concern. ICS argues that the designation will enhance competition in the area, citing the Commission's order in docket UT-043120. ICS further argues that failure to designate ICS when its competitors receive such support would harm or hamper competition. Based on ICS' service to 69 phone lines, its estimated draw on the federal high-cost fund would be approximately \$22,000.

There are in fact several ETCs designated for the Roslyn exchange, including multiple wireless carriers. ICS currently provides service only within the confines of the Suncadia resort, an area wherein it may face some competition from wireless providers but no competition from the incumbent wireline carrier, Inland. ICS asserts in its petition that it will offer service in the entire area for which it requests designation, using a mix of facilities-based and resold services, some purchased from Inland's tariff.

Though it has often done so in the past, the commission is not bound to accept this expression of intent to compete as sufficient to support an overall determination that designation is in the public interest. For example, in docket UT-073024, the commission expressed its disinclination to designate Eltopia an ETC absent a showing of actual customers, notwithstanding the company's unquestionable intent to offer services in competition with existing providers. As in that case, the commission could defer designation pending a showing of actual service outside the territory of the resort. Doing so, however, would be inconsistent with the precedent of several years, wherein the commission has typically accepted similar prospective arguments, as in the cases of Silverton (Beaver Creek Telephone) and Stehekin (Westgate Communications).

### **Conclusion**

On balance, taking into account the public interest value of deploying advanced services, advancing universal service as currently constituted, regulatory consistency and equitable

treatment of petitioners, and notwithstanding the uncertain character of competition between ICS and other operators in the area, staff concludes that designation of ICS as an eligible telecommunications carrier is consistent with the public interest calculus the Commission has applied in previous cases. Staff recommends that the commission grant ICS' petition.