

Exhibit ___T (MV-1T)
Docket UT-053041
Witness: Mark Vasconi
REDACTED VERSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
Intelligent Community Services, Inc.
For Designation as Eligible
Telecommunications Carrier Under
47 U.S.C. § 214(e)(2)

DOCKET UT-053041

TESTIMONY OF

Mark Vasconi

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

July 18, 2008

REDACTED VERSION

LIST OF EXHIBITS

- Exhibit No. ____ (MV-2): Resume of Mark Vasconi
- Exhibit No. ____ (MV-3): ICS price/service sheets, Attachment to WITA's Sixth Set of Data Requests to ICS
- Exhibit No. ____ (MV-4): Map of Roslyn area
- Exhibit No. ____ (MV-5): Confidential Attachment A to ICS Responses to Commission Staff's Second Set of Data Requests
- Exhibit No. ____ (MV-6) ICS Response to Commission Staff Data Request No.6
- Exhibit No. ____ (MV-7) Excerpt of Testimony of Mr. Paul Eisenberg, Exhibit 31-T (PJE), in Docket UT-050606, pp. 2–3.
- Exhibit No. ____ (MV-8) Printout from Suncadia website, [www. suncadia.com](http://www.suncadia.com)
- Exhibit No. ____ (MV-9) Confidential Attachment B to ICS Responses to Commission Staff's Second Set of Data Requests
- Exhibit No. ____ (MV-10) Correspondence between ICS and Inland—Attachments to ICS Response to Commission Staff Data Request No. 2
- Exhibit No. ____ (MV-11) ICS Supplemental Compelled Responses to WITA's First Set of Data Requests, Data Request No. 10.
- Exhibit No. ____ (MV-12) ICS Supplemental Compelled Responses to WITA's First Set of Data Requests, Data Request No. 1.
- Exhibit No. ____ (MV-13) Open Meeting Memo

1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Mark Vasconi. My business address is:

4 1300 South Evergreen Park Drive S.W.

5 P.O. Box 47250

6 Olympia, Washington 98504-7250

7 My email address is mvasconi@utc.wa.gov.

8

9 **Q. By whom are you employed and in what capacity?**

10 A. I am employed by the Washington Utilities and Transportation Commission (the
11 Commission) as the Acting Assistant Director of the Telecommunications Section.

12 My resume is attached as Exhibit No. ____ (MV-2).

13

14 **II. PURPOSE OF TESTIMONY**

15 **Q. What is the purpose of your testimony today?**

16 A. The purpose of my testimony today is to explain Commission Staff's
17 recommendation that the Commission not designate ICS as an Eligible
18 Telecommunications Carrier ("ETC") until ICS can serve end users located
19 throughout the Roslyn exchange, including outside of the Suncadia resort and until
20 other providers, such as Inland, can provide facilities-based competition within the
21 Suncadia resort. This opposition is based on policy grounds and the fact that ICS is
22 not serving any customers located outside of the Suncadia resort yet within the
23 Roslyn exchange. Moreover, from information provided by ICS it is unclear if ICS's

1 investment plans are sufficient to insure that facilities-based service will be provided
2 to Roslyn. For these reasons, Staff concludes that ICS's petition is deficient and that
3 granting the petition would not be in the public interest.

4 5 **III. BACKGROUND**

6 **Q. Please generally describe the services provided by ICS and the area it currently**
7 **serves in Washington State.**

8 **A.** Currently, ICS provides phone service, high speed internet service and IPTV in the
9 Suncadia resort. *See Exhibit No. ___ (MV-3), ICS price/service sheets, Attachment to*
10 *WITA's Sixth Set of Data Requests to ICS.* The Suncadia resort is located near Cle
11 Elum, Washington, but within the boundaries of the Roslyn exchange. *See Exhibit*
12 *No. ___ (MV-4), map of Roslyn exchange, Exhibit No. 52 in Docket UT-050606.*

13
14 **Q. How many customers does ICS serve in Washington State?**

15 Currently, ICS serves [REDACTED]
16 [REDACTED]. *Exhibit No. ___ (MV-5), Confidential Attachment A to ICS Responses*
17 *to Commission Staff's Second Set of Data Requests.*

18
19 **Q. What does ICS charge for its services?**

20 **A.** Prices for the services provided by ICS range from \$29.95 to \$49.95 per month for a
21 bundle of local phone services; \$63.95 or \$74.95 per month for IPTV (without
22 special channels such as Showtime); and either \$39.95 or \$49.95 per month for high-
23 speed internet service. *See Exhibit No. ___ (MV-3).*

1 **Q. What is the potential market for telecommunications service in the Suncadia**
2 **resort?**

3 A. The Suncadia resort is a development in progress that functions both as a resort, with
4 a hotel, and a planned community. If and when development is completed in the
5 Suncadia resort area, there could be up to 3,485 units, consisting of single family
6 homes, condominiums, and business locations. *See Exhibit ____ (MV-6), ICS*
7 *Response to Commission Staff Data Request No.6.* As of June 1, 2008, 893 lots had
8 been sold and 82 homes had been completed. *Id.* Potentially, there could be as many
9 as 4,000 connections when the resort has been fully developed. *See Exhibit ____ (MV-*
10 *7), Excerpt of testimony of Mr. Paul Eisenberg, Exhibit XI-T (PJE), in Docket UT-*
11 *050606, pp. 2–3.* Single family homes currently are listed from \$743,800 to
12 \$3,250,000 while condominiums currently are listed from \$386,500 to \$1,795,000.
13 *See Exhibit No. ____ (MV-8), printout from Suncadia website, www. suncadia.com*

14
15 **Q. Do you know what costs ICS incurs and the revenue it realizes from serving the**
16 **Suncadia resort?**

17 A. According to ICS, it incurs a cost of approximately [REDACTED]
18 to provide telecommunications service in the Suncadia resort. *See Exhibit*
19 *No. ____ (MV-9), Confidential Attachment B to ICS Responses to Commission Staff's*
20 *Second Set of Data Requests.* In its 2007 Annual Report to the Commission, ICS
21 reported revenue of just over \$30,000.

22
23

1 **IV. STAFF ANALYSIS**

2 **Q. Is designating ICS as an ETC in the public interest?**

3 A. No, because with respect to serving outside of the Suncadia resort, ICS does not have
4 a substantive investment plan in and is not offering service to end users located in
5 areas of the Roslyn exchange that lie outside the Suncadia resort. Also, it appears
6 that Suncadia will not allow another facilities-based provider other than ICS to serve
7 customers within Suncadia.

8
9 **Q. How does Staff reach its conclusion that granting ICS’s petition would not be in**
10 **the public interest?**

11 A. Staff believes that competition is in the public interest because it promotes expanded
12 service offerings to end users, reduces prices and gives end users a choice of service
13 providers. Also, Staff reviewed RCW 80.36.300 which is the Legislature’s policy
14 declaration on telecommunications service. The declaration lists six policy goals.

15 The policy goals are as follows:

- 16 (1) Preserve affordable universal telecommunications service;
17 (2) Maintain and advance the efficiency and availability of telecommunications
18 service;
19 (3) Ensure that customers pay only reasonable charges for telecommunications
20 service;
21 (4) Ensure that rates for noncompetitive telecommunications services do not
22 subsidize the competitive ventures of regulated telecommunications
23 companies;

- 1 (5) Promote diversity in the supply of telecommunications services and products
2 in telecommunications markets throughout the state; and
3 (6) Permit flexible regulation of competitive telecommunications companies and
4 services.

5 Staff concludes that because ICS has limited its service offerings to Suncadia and has
6 not served Roslyn end users located outside of the Suncadia resort, by using either its
7 own facilities or through the resale of Inland's services, designating ICS as an ETC
8 would not increase competition or advance the Legislature's goal of promoting
9 diversity in the supply of telecommunications services and products in the Roslyn
10 Exchange, which is the only exchange ICS serves in Washington. ICS must be
11 capable of serving the entire Roslyn exchange before its services have any real effect
12 on competition or supplier diversity.

13

14 **Q. Could you please explain this in more detail?**

15 A. Yes. Competition and diversity of supply are enhanced when additional
16 telecommunications carriers enter markets with services and products that add to end
17 users' range of choices. To date, ICS has concentrated its efforts on serving only a
18 portion of the Roslyn exchange which happens to be within the confines of Suncadia.
19 ICS has not marketed any services to the rest of the Roslyn exchange. ICS first filed
20 for ETC designation in the Roslyn exchange in 2005 and then filed an amended
21 petition in late 2007. Over the period, ICS has indicated that it will serve Roslyn
22 customers located outside of Suncadia either through its own facilities or those that it
23 resells from Inland. As of mid-2008, ICS still has not introduced service outside

1 Suncadia. Therefore, to date, ICS has not promoted competition or diversity in
2 supply to end users throughout the Roslyn exchange, the area for which it seeks ETC
3 designation.

4
5 Within Suncadia, competition and diversity of supply with respect to wireline service
6 appears to be restricted since Suncadia “is not willing to allow Inland to ‘opt in’ to
7 the agreement between Suncadia and ICS because the network Suncadia has
8 constructed was designed for physical access by a single service provider.” *See*
9 *Exhibit No. ____ (MV-12), ICS Supplemental Compelled Responses to WITA’s First*
10 *Set of Data Requests, Data Request No. 1.* Therefore, it appears that ICS, to date, has
11 not enhanced competition or the diversity of supply *outside* Suncadia, and
12 competition and diversity of supply with respect to wireline services cannot be
13 enhanced *within* Suncadia.

14
15 **SERVICE BY ICS OUTSIDE SUNCADIA**

16 **Q. Do you know if ICS has attempted to acquire services from Inland that would**
17 **be used in providing services throughout the Roslyn exchange, including the**
18 **area outside of Suncadia?**

19 A. It appears that ICS and Inland have entered discussions on as many as three
20 occasions since 2005, the most recent starting on May 5, 2008. To date, none of
21 these efforts has resulted in an agreement that provides ICS with the ability to resell
22 Inland’s services to Roslyn customers located outside of Suncadia.

23

1 **Q. Do you know why previous efforts have failed to secure an agreement between**
2 **ICS and Inland?**

3 A. No. Staff asked ICS for all copies of letters and other documents relating to ICS's
4 efforts to request facilities or services from Inland so that ICS could provide service
5 to Roslyn customers residing outside of the Suncadia resort. Five letters in total were
6 produced. *See Exhibit ____ (MV-10), Attachments to ICS Response to Commission*
7 *Staff Data Request No. 2.* One letter was provided for discussions that were to have
8 taken place in 2005; two letters were produced relating to discussions held in 2007
9 and two letters were produced regarding negotiations that are supposed to have
10 begun in May 2008. Nothing in these letters firmly identifies why ICS has not yet
11 gained the ability to resell Inland's service.

12
13 **Q. Is Inland a rural telephone company?**

14 A. Yes

15
16 **Q. As a rural telephone company, does Inland hold an exemption from the duty to**
17 **negotiate a resale agreement with ICS?**

18 A. Yes and No. It depends upon the nature of ICS's request. Inland has a rural
19 exemption if ICS requests that Inland negotiate the sale of unbundled network
20 elements, resale of various services at wholesale rates, physical collocation of
21 equipment or other items specified in Sec. 251(c)(2) – (c)(6). However, even if
22 Inland had a rural exemption due to the exact nature of ICS's request, ICS could
23 submit a notice to the UTC for the purpose of conducting an inquiry to determine if

1 Inland's rural exemption should continue. This mechanism for examining a rural
2 telephone company's exemption from the duty to negotiate unbundled elements or a
3 wholesale discount among other items is found in Sec. 251(f)(1)(B). To date, ICS
4 has not submitted a notice to the UTC invoking Sec. 251(f)(1)(B).

5
6 Alternatively, Inland does not have a rural exemption if ICS requests facilities
7 interconnection under Sec. 251(a) or if it resells service provided by Inland where
8 ICS purchases services from Inland at tariffed rates (that is, undiscounted resale).

9 Under Sec. 251(b) Inland cannot impose unreasonable or discriminatory conditions
10 on the resale of Inland's telecommunications services. Therefore, if ICS is merely to
11 interconnect under Sec. 251(a) or attempting to resell service under Sec. 251(b),
12 Inland has no claim to a rural exemption.

13
14 **Q. Under which federal statutory provisions, Sec. 251 (a), (b), or (c), has ICS**
15 **requested service?**

16 A. In a letter dated May 5, 2008, ICS requests that Inland provide services under Sec.
17 251(a), the duty to interconnect, and Sec. 251(b)(1) – Sec. 251(b)(5). *See*
18 *Exhibit ___ (MV-10)*. Since ICS is not requesting negotiations for services found in
19 Sec. 251(c)(1) – (c)(6), Inland cannot invoke the rural exemption.

1 **Q. Given what you have indicated above, does ICS have the ability to resell**
2 **Inland’s service and provide service to customers located outside of the**
3 **Suncadia resort?**

4 A. No. Staff believes that ICS could have secured the ability to market services to
5 Roslyn end users through Sec. 251(b) – undiscounted resale - but to date has not
6 elected to do so. Instead, it appears that ICS has focused on providing service to end
7 users located in Suncadia.

8
9 **Q. So, is it your opinion that competition could develop in the rest of Roslyn**
10 **exchange outside of Suncadia?**

11 A. Yes. In the short run, through the resale of Inland services and then over the next two
12 years with ICS’s execution of a substantive investment plan which would bring its
13 own facilities to the rest of the Roslyn exchange.

14

15 **SUBSTANTIAL INVESTMENT PLAN**

16 **Q. Has ICS provided a clear plan of investment in its petition or in the testimony of**
17 **Mr. Keith Southard regarding facilities-based service in areas of the Roslyn**
18 **exchange outside Suncadia resort?**

19 A. No.

20

21

1 **Q. Does the lack of a clear plan of investment mean that ICS’s petition fails to meet**
2 **the requirements for ETC petitions?**

3 A. Yes. Staff concludes that while ICS’s application and the subsequent testimony of
4 Mr. Southard are sufficient to meet most of the requirements of WAC 480-123-030,
5 which specifies what a petition for ETC designation must contain, ICS’s petition
6 fails to meet WAC 480-123-030(1)(d), which requires:

7 A substantive plan of the investments to be made with initial federal support
8 during the first two years in which support is received and a substantive
9 description of how those expenditures will benefit customers.
10

11 **Q. Why do you believe that ICS’s petition is deficient with respect to the**
12 **requirement that a petition for ETC designation contain a substantive plan of**
13 **investments?**

14 A. As stated above, ICS has not provided a substantive plan of investment. The
15 information provided by ICS that addresses its planned investment in serving the
16 remaining portions of the Roslyn exchange outside of Suncadia is ambiguous [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] *See Exhibit*

21 *No. ___ (MV-11), ICS Supplemental Compelled Responses to WITA’s First Set of*

22 *Data Requests, Data Request 10.* [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

[REDACTED]

[REDACTED].

In its Supplemental Compelled Responses, ICS also included a map XXXX

[REDACTED]

[REDACTED]

[REDACTED] Staff does not believe that ICS has provided “substantive plan of the investments to be made with initial federal support during the first two years in which support is received...” *See WAC 480-123-030(1)(d).*

COMPETITION WITHIN SUNCADIA

Q. Can wireline competition develop in the Suncadia portion of the Roslyn Exchange?

A. No. Certainly not in the same manner, or to the degree, that it can outside of Suncadia.

Q. Could you please explain this in more detail?

A. Yes. In ICS’s Supplemental Compelled Responses to WITA’s First Set of Data Requests, Data Request No. 1, filed on July 14, 2008, ICS indicated, “Suncadia is not willing to allow Inland to ‘opt in’ to the agreement between Suncadia and ICS because the network Suncadia has constructed was designed for physical access by a single service provider.” The response is contained in Exhibit No. ___ (MV-12). In the same response, Suncadia also indicated,

1 It is not technically feasible for two different carriers to physically access the
2 Suncadia distribution infrastructure because no more than one carrier can
3 ‘light’ a particular strand on dark fiber, and Suncadia has not deployed
4 sufficient dark fiber for more than one carrier to have fiber dedicated to its
5 use in serving customers within the resort area. Suncadia is not willing to
6 expend the resources that would be required to build duplicate facilities
7 solely to allow a second service provider to have its own fiber to use to serve
8 customers.

9 These statements demonstrate that Suncadia has no intention of supporting and, in
10 fact, is unwilling to promote facilities-based wireline competition within Suncadia.

11

12 **Q. Is Suncadia willing to allow another service provider to offer service within the**
13 **resort?**

14 A. Yes, but only through the resale of ICS’s infrastructure, not via the deployment of
15 additional facilities. *See Exhibit No. ____ (MV-11), ICS’s Supplemental Compelled*
16 *Responses to WITA First Set of Data Requests, Data Request No. 10.*

17

18 **Q. Are there deficiencies with this approach?**

19 A. Yes, there is an issue of equity. ICS, in its efforts to establish service in the
20 remaining portions of the Roslyn exchange can employ both resale and facilities
21 construction to diversify supply and enhance competition. Over the long run, since
22 ICS could build facilities throughout the Roslyn exchange it would be able to control
23 its service offerings and define its costs and margins. Inland, on the other hand (or
24 any other service provider for that matter) only has the option of resale to enhance

1 competition within Suncadia. With this approach, a competing service provider
2 operating in Suncadia will have limited ability to control its costs or margins or to
3 expand service offerings beyond what ICS and Suncadia's infrastructure will allow.
4 Ultimately, if ICS develops and executes a substantive investment plan, ICS would
5 be able to enhance competition throughout the entire Roslyn exchange. In contrast,
6 due to Suncadia's restrictions on its infrastructure, expanded wireline competition in
7 Suncadia is effectively limited.

8
9 As a property developer there may be nothing that compels Suncadia to provide
10 additional facilities to support additional competitors. However, in doing so,
11 Suncadia is limiting the rights of those to whom it sells property since Suncadia
12 residents will be denied the benefits of effective, facilities-based competition and
13 supply diversity.

14
15 **Q. At the Open Meeting on March 27, 2008, Staff recommended that ICS' petition**
16 **for ETC status be granted. Why has Staff changed its position?**

17 A. Staff also stated then that it would be reasonable to condition ETC designation on
18 ICS's entry into areas of the Roslyn exchange outside Suncadia resort and referenced
19 the uncertain level of competition in the area. *Exhibit No. ____ (MV-12), Open*
20 *Meeting Memo.* Given today's absence of any resale arrangement with Inland, when
21 ICS has had ample opportunity to both engage in negotiations with Inland and come
22 to the Commission to resolve any rural exemption claims by Inland, Staff now
23 believes that designating ICS as an ETC would be in the public interest only if ICS

1 were to come forward with a substantive investment plan and begin to offer service
2 outside as well as inside Suncadia resort. Finally, Suncadia's owners should allow
3 other providers the opportunity to offer some type of facilities-based competition.
4

5 V. CONCLUSION

6 **Q. What is your recommendation regarding ICS's petition for designation as an**
7 **ETC?**

8 A. I recommend that the Commission deny ICS's petition. First, ICS has not come
9 forward with a substantive investment plan. Second, ICS has yet to establish the
10 ability to provide telecommunications service to the remaining portion of the Roslyn
11 exchange, and third, due to Suncadia's decision to not support additional facilities-
12 based providers, competition within Suncadia likely will not be enhanced. Therefore,
13 the Commission should not confer ETC status upon ICS until (1) ICS submits a
14 substantive investment plan, which could also be used in annual certification
15 proceedings as a way to measure ICS's progress toward expanding its facilities and
16 promoting competition; (2) ICS begins to resell Inland service outside of Suncadia;
17 and (3) Suncadia supports facilities-based competition within the resort so that both
18 competition and diversity of supply can be enhanced within Suncadia.
19

20 **Q. Does that conclude your Testimony?**

21 A. Yes, it does.
22