

**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 No. UT-053041 ICS MOTION TO COMPEL WITA AND INLAND TO RESPOND TO DATA REQUESTS
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Intelligent Community Services, Inc. (“ICS”) brings the following motion pursuant to WAC 480-07-425 to compel the Washington Independent Telecommunications Association (“WITA”) and Inland Telephone Company (“Inland”) to respond or provide additional responses to certain data requests.

MOTION

1. ICS propounded its first set of data requests to WITA and Inland on July 2, 2008. These requests were designed to obtain information about the extent to which WITA members, including Inland, serve multiple tenant environments (“MTEs”) and whether these companies permit a landline competitor to access their fiber optic facilities used to provide telecommunications services. WITA and Inland provided objections and responses to these requests on July 21, 2008, refusing to provide little, if any, responsive information based primarily on WITA and Inland’s claim that the information requested is not relevant. Counsel conferred but were not able to resolve the disagreement. Lack of relevance is not a proper objection to data requests, but even if WITA and Inland’s objections are construed as asserting that the requests are not reasonably calculated to lead to the discovery of admissible evidence, those objections are not well taken.

2. WITA and Inland have taken the position that ICS's petition for designation as an eligible telecommunications carrier ("ETC") is not in the public interest because ICS currently is the only landline telecommunications carrier that the owner of the Suncadia Resort has authorized to provide services to residents in the resort area. Commission Staff has filed testimony taking a similar position. ICS, therefore, seeks information on the extent to which other landline ETCs also are the sole providers of service to residents in resort communities, apartment or condominium complexes, office parks, or other MTEs. Whether WITA members, including Inland, are the only landline carriers that serve MTEs within their service territories is directly related to the issue of whether it is in the public interest to designate a company as an ETC if it is the only landline carrier providing basic telecommunications service to an MTE. The requested information is also relevant to the issue of whether it would be discriminatory to deny ETC status to ICS because it is the only landline carrier that Suncadia has permitted to have physical access to Suncadia's fiber network when WITA members receive universal service funds for being the sole landline service provider to MTEs in their service territories.

3. ICS has also requested information on the terms and conditions under which Inland and WITA members provide competitors or potential competitors with access to their network infrastructure. WITA and Inland have criticized Suncadia for authorizing only ICS to physically access the fiber optic backbone that Suncadia has constructed and that Suncadia requires any landline telecommunications carrier to use in providing service within the resort area. Again, the terms and conditions, if any, under which WITA members, including Inland, permit a competitor to access their networks bear

directly on whether WITA members are engaged in the very anticompetitive behavior of which they accuse Suncadia and ICS.

4. Attached to this motion are the applicable ICS data requests and WITA and Inland's objections and responses. In addition, each of the requests to which ICS requests the Commission to compel a response and the specific objections WITA and Inland have raised to those requests is discussed below:

Specific Data Requests

2. **Does any WITA member provide telecommunications service to customers in a multi-tenant environment, including but not limited to a resort area, private subdivision or community, condominium or condominium complex, apartment building or complex, office building or complex, office park, school dormitory, or shopping center? If so, please provide the following information for each such multi-tenant environment:**
- a. **The name of the WITA member;**
 - b. **The identity of the multi-tenant environment;**
 - c. **A copy of any written agreement with the person or entity that owns the multi-tenant environment or the common areas in that environment;**
 - d. **The identity of any other carrier that provides telecommunications services to customers within that multi-tenant environment other than commercial mobile radio service providers; and**
 - e. **Whether the WITA member receives universal service funding for its provision of telecommunications service to customers within that multi-tenant environment.**

5. ICS Request Number 2 seeks information on whether and how WITA members, including Inland, serve MTEs. WITA and Inland object to this request as burdensome and irrelevant, but as discussed above, one of the issues in this proceeding is whether it is in the public interest for carriers who are the only landline providers of basic local

exchange service to residents in an MTE to be designated as ETCs. WITA and Inland, moreover, have provided no explanation of why the requested information would be burdensome for each WITA member to produce. Even in the unlikely event that there are dozens or hundreds of MTEs in a particular carrier's service territory, each WITA member, at a minimum, could confirm whether it is the sole provider of landline service to the MTEs in its exchange(s), as well as whether it receives universal service funding to provide that service, and each WITA member could produce any written agreements between the carrier and an MTE. This request thus is neither unduly burdensome nor irrelevant.

3. **Other than in the Suncadia resort area in the Roslyn exchange, is any carrier other than a WITA member the exclusive or primary provider of telecommunications service to customers in a multi-tenant environment located in any area served by a WITA member, including but not limited to a resort area, private subdivision or community, condominium or condominium complex, apartment building or complex, office building or complex, office park, school dormitory, or shopping center? If so, please provide the following information for each such multi-tenant environment:**
 - a. **The name of the WITA member in whose service territory the multi-tenant environment is located;**
 - b. **The identity of the multi-tenant environment;**
 - c. **The identity of the carrier other than the WITA member that is the exclusive or primary provider of telecommunications service to customers in that multi-tenant environment; and**
 - d. **A description of how the WITA member in whose service territory the multi-tenant environment is located obtains access to customers in that environment in order to provide telecommunications service, or an explanation of why the WITA member does not have such access..**

6. ICS Request Number 3 is the mirror image of Request Number 2 and seeks information about MTEs located in a WITA member's service territory that are served primarily by carriers *other* than the WITA member. Again, WITA and Inland object that providing a substantive response to this request would be overly burdensome and not relevant to the issues in this docket, but the extent to which circumstances similar to those presented in this case exist in other exchanges in Washington is directly related to the issues in this proceeding. Nor has WITA made any effort to demonstrate that identifying and providing information about such circumstances, to the extent they exist, would be burdensome. Indeed, if WITA finds ICS's arrangement with Suncadia as alarming as WITA claims, its members should already be very well aware of any similar arrangements between an MTE owner and a landline competitor in their exchanges.

5. Has WITA ever not opposed any carrier's petition for designation as a competitive eligible telecommunications carrier in Washington? If so, please identify the carrier, the docket number of the proceeding, and an explanation of WITA's position on that petition.

7. WITA opposes the designation of ICS as an ETC, and ICS is unaware of any petition for competitive ETC designation that WITA has not opposed. ICS, therefore, has requested that WITA identify any such petition that WITA has not opposed and provide an explanation of WITA's position on that petition. WITA has objected to this request on the grounds that it is ambiguous because ICS did not identify any specific dockets in which carriers requested ETC designation, but the object of the request is for *WITA* to identify any such cases in which WITA did not oppose the petition and the basis for WITA's position. WITA also objects that the request is irrelevant, but the information requested is relevant to the credibility of WITA's objections to ICS's petition if, as ICS

suspects, WITA has consistently opposed any and all petitions for Commission designation of competitive ETCs.

9. Does Inland Telephone Company own utility poles or conduit in the Roslyn exchange? If so, does or will Inland permit other carriers to attach facilities to those poles or in those conduits? If so, please provide a copy of the rates, terms and conditions under which Inland offers or is willing to provide such attachments.

8. WITA and Inland object to designating ICS as an ETC, in part, because Suncadia will not permit Inland to construct its own facilities to offer service in the Suncadia resort area. ICS has requested information about whether Inland owns telecommunications infrastructure that ICS needs to access in order to construct network facilities in the remainder of the Roslyn exchange, and if so, the extent to which Inland will provide access to that infrastructure. WITA and Inland object on the grounds of relevance, but the requested information is entirely relevant to WITA and Inland's credibility, as well as to the issue of the extent of landline competition in the Roslyn exchange as a whole. WITA and Inland are not entitled to withhold information about the extent to which Inland permits or precludes competitors' access to its network while simultaneously criticizing Suncadia (and by implication ICS) for allegedly precluding Inland from accessing Suncadia's fiber network.

11. Is Inland Telephone Company willing to provide other carriers with access, on any basis other than purchase or resale of tariffed telecommunications services, to any fiber optic or other telecommunications network facilities that Inland has deployed in the Roslyn exchange? If not, please explain why not. If so, please provide the rates, terms and conditions under which Inland is willing to provide such access.

9. ICS's Request No. 11, like the previously discussed request, is designed to obtain information about the extent to which Inland is willing to provide competitors with

access to the network facilities that Inland has constructed. WITA and Inland have objected that the request is speculative and irrelevant. Again, however, Inland's position and practices with respect to providing landline competitors with access to its network is directly related to the level of competition in the Roslyn exchange. The requested information is also germane to WITA and Inland's credibility in claiming that ICS's petition is not in the public interest because Suncadia has only agreed to allow ICS to physically access Suncadia's fiber infrastructure, if Inland does not make its own fiber network available for use by competitors.

10. The request, moreover, is no more speculative than WITA's request for Suncadia's position on permitting carriers other than ICS to access its fiber infrastructure, to which the Commission compelled a response over ICS's speculation objection. Nor should ICS be required to request such access as a prerequisite to seeking information about Inland's position in discovery. As a factual matter, Inland has invoked its exemption as a rural local exchange carrier in discussions with ICS and stated that it will not negotiate terms and conditions for requirements other than those in Section 251(a) and (b) of the Telecommunications Act of 1996, which do not include unbundled access to Inland's network. Inland cannot legitimately object to this data request as speculative because no carrier has asked for access to Inland's network facilities when Inland refuses to negotiate such access.

12. **Does any WITA member other than Inland Telephone Company offer or provide other carriers with access, on any basis other than purchase or resale of finished telecommunications services, to any fiber optic or other telecommunications network facilities that the WITA member has deployed in its service territory? If not, please explain why not. If so, please provide the rates, terms and conditions under which the WITA member offers or provides such access.**

11. ICS Request Number 12 seeks the same information from all WITA members that ICS requested of Inland in Request Number 11. WITA objects to this request as speculative, unduly burdensome, and irrelevant. WITA's objections on the grounds of relevance and speculation are no more credible here than they are in the context of ICS Request Number 11. Nor has WITA provided any information to demonstrate that it would be burdensome for its members to disclose any terms or conditions they have with competitors to provide access to their networks, particularly given that as far as ICS knows, all WITA members take the same position as Inland and refuse to negotiate such access. WITA also claims that ICS could search interconnection agreements on file with the Commission, but the WITA members are in a far better position than ICS to know whether, and if so under what terms, they offer or provide competitors with access to their networks, particularly if that position is not reflected in an existing agreement.

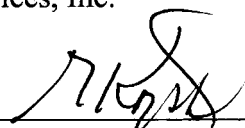
REQUEST FOR RELIEF

12. WHEREFORE, ICS requests the following relief:
- (A) That the Commission compel WITA and Inland to provide substantive responses to the data requests discussed above; and
 - (B) Such other or further relief as the Commission finds fair, just, reasonable, and sufficient.

DATED this 30th day of July, 2008.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Intelligent Community
Services, Inc.

By _____


Gregory J. Kopta
WSBA No. 20519

ATTACHMENT

**BEFORE THE WASHINGTON STATE
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 NO. UT-053041

WITA AND INLAND TELEPHONE
COMPANY'S RESPONSES AND OBJECTIONS
TO ICS'S FIRST SET OF DATA REQUESTS

Washington Independent Telecommunications Association (WITA) and Inland Telephone Company (Inland) hereby submit their responses and objections to the First Set of Data Requests from Intelligent Community Services, Inc. (ICS), which are referred to herein as "Data Requests."

WITA and Inland hereby object to the Definitions set forth in the Data Requests as follows: (1) to the extent the Definitions request a broader search than required by statutes, rules and orders that govern this proceeding; (2) Definition 1 to the extent that the Definition attempts to request discovery from entities that are not parties to this proceeding; (3) Definitions 2, 3, 4, 5, 6, 7, 8 and 9 to the extent that the Definitions seek to impose a burden in requesting non-relevant, immaterial or overly broad information; and (4) to the extent the Definitions attempt to

seek information protected by the Attorney-Client Privilege, the Attorney Work-Product Doctrine, or any other applicable privilege or restriction on discovery.

WITA and Inland further object to the Data Requests to the extent the Instructions seek to impose a process for objections that is narrower than allowed by law or seeks to impose requirements in terms of identifying responses or objections in a manner that is not required by law. The Instructions are further objected to to the extent that they seek information protected by the Attorney-Client Privilege, the Attorney Work-Product Doctrine, or any other applicable privilege or restriction on discovery.

Further, WITA and Inland object to the Data Requests as follows: (1) to the extent that the Data Requests seek information or documents that are not relevant and material to the issues in this proceeding; (2) to the extent that the Data Requests are vague and ambiguous; (3) to the extent that the Data Requests seek to impose burdens on WITA and Inland that are overly broad, unduly burdensome, excessively time consuming, expensive and beyond WITA and Inland's obligation in this proceeding; (4) to the extent that the Data Requests call for information already in the possession and control of ICS or in the public record equally accessible to ICS; (5) to the extent that the Data Requests seek to impose a burden on WITA or Inland, or both, to secure documents or information in the possession, custody or control of persons or entities other than WITA and Inland; (6) to the extent that the Data Requests are overly broad, beyond the scope of discovery, or is unduly burdensome; and (7) to the extent that the information sought by the Data Requests is protected by the Attorney-Client Privilege or Attorney Work-Product Doctrine.

All of the foregoing objections may be referred to herein as the "General Obligations."

The responses contained herein are made solely for the purposes of this proceeding. Each response provided is subject to all objections as to confidence, relevance, materiality, propriety, admissibility, and any and all other objections on grounds to which the same statement would be subject if delivered by way of live testimony in this proceeding. All such objections

and the right to assert the same at hearing are expressly reserved by WITA and Inland and may be interposed at the time of hearing or in conjunction with other uses of the responses.

ICS DATA REQUEST NO. 2

Does any WITA member provide telecommunications service to customers in a multi-tenant environment, including but not limited to a resort area, private subdivision or community, condominium or condominium complex, apartment building or complex, office building or complex, office park, school dormitory, or shopping center? If so, please provide the following information for each such multi-tenant environment:

- a. The name of the WITA member;
- b. The identity of the multi-tenant environment;
- c. A copy of any written agreement with the person or entity that owns the multi-tenant environment or the common areas in that environment;
- d. The identity of any other carrier that provides telecommunications services to customers within that multi-tenant environment other than commercial mobile radio service providers; and
- e. Whether the WITA member receives universal service funding for its provision of telecommunications service to customers within that multi-tenant environment.

RESPONSE:

See, General Objections. This data request is objected in its entirety as overly burdensome and not relevant to the issues in this docket. The issue is not how or in what manner a member of WITA provides service. Without waiving this objection, WITA notes that the Federal Communications Commission has ruled that exclusive arrangements for service are

generally inappropriate. See, FCC 00-366, FCC 07-189 and FCC 08-87. WITA is confident that each of its members conforms its actions to the requirements of law.

Person preparing response: Richard A. Finnigan

Date: July 21, 2008

ICS DATA REQUEST NO. 3

Other than in the Suncadia resort area in the Roslyn exchange, is any carrier other than a WITA member the exclusive or primary provider of telecommunications service to customers in a multi-tenant environment located in any area served by a WITA member, including but not limited to a resort area, private subdivision or community, condominium or condominium complex, apartment building or complex, office building or complex, office park, school dormitory, or shopping center? If so, please provide the following information for each such multi-tenant environment:

- a. The name of the WITA member in whose service territory the multi-tenant environment is located;
- b. The identity of the multi-tenant environment;
- c. The identity of the carrier other than the WITA member that is the exclusive or primary provider of telecommunications service to customers in that multi-tenant environment; and
- d. A description of how the WITA member in whose service territory the multi-tenant environment is located obtains access to customers in that environment in order to provide telecommunications service, or an explanation of why the WITA member does not have such access.

RESPONSE:

See, General Objections. This data request is objected in its entirety as overly burdensome and not relevant to the issues in this docket. The issue is not how or in what manner a member of WITA provides service. Without waiving this objection, WITA notes that the Federal Communications Commission has ruled that exclusive arrangements for service are

generally inappropriate. See, FCC 00-366, FCC 07-189 and FCC 08-87. WITA is confident that each of its members conforms its actions to the requirements of law.

Person preparing response: Richard A. Finnigan

Date: July 21, 2008

ICS DATA REQUEST NO. 5

Has WITA ever not opposed any carrier's petition for designation as a competitive eligible telecommunications carrier in Washington? If so, please identify the carrier, the docket number of the proceeding, and an explanation of WITA's position on that petition.

RESPONSE:

See, General Objections. This data request is objected to in its entirety as being ambiguous. In addition, this data request is objected to in its entirety as not relevant to the issues in this proceeding.

The data request is ambiguous in that ICS fails to identify the dockets that are involved in carriers' petition for designation as a competitive eligible telecommunications carrier in Washington. Without reference to the docket or the applicants, WITA is unable to respond to this data request. Without waiving the objections, WITA is confident that there have been petitions for designation as a competitive eligible telecommunications carrier in Washington that WITA has not objected to.

WITA is objecting to the petition for designation as a competitive eligible telecommunications carrier by ICS for several reasons. The petition by ICS raises issues of first impression in the State of Washington. The petition by ICS seeks designation for competitive eligible telecommunications carrier status in an area where the incumbent is barred from service. The petition by ICS seeks to obtain universal service support for ICS based upon the cost to Inland Telephone Company to serve a much different area than that served by ICS, which is a resort area with the probability of much lower costs per customer related to much higher density

than the density of the area Inland serves.

Person preparing response: Richard A. Finnigan

Date: July 21, 2008

ICS DATA REQUEST NO. 9:

Does Inland Telephone Company own utility poles or conduit in the Roslyn exchange? If so, does or will Inland permit other carriers to attach facilities to those poles or in those conduits? If so, please provide a copy of the rates, terms and conditions under which Inland offers or is willing to provide such attachments.

RESPONSE:

See, General Objections. This data request is objected to in its entirety as not relevant. Whether Inland Telephone Company owns utility poles or conduits in the Roslyn exchange is not relevant to whether ICS should be designated as a competitive eligible telecommunications carrier in the Roslyn exchange. Without waiving this objection, Inland Telephone Company notes that it has not received a request from any telecommunications carrier for access to attach facilities to poles or to place facilities in conduits.

Person preparing response: Richard A. Finnigan

Date: July 21, 2008

ICS DATA REQUEST NO. 11:

Is Inland Telephone Company willing to provide other carriers with access, on any basis other than purchase or resale of tariffed telecommunications services, to any fiber optic or other telecommunications network facilities that Inland has deployed in the Roslyn exchange? If not, please explain why not. If so, please provide the rates, terms and conditions under which Inland is willing to provide such access.

RESPONSE:

See, General Objections. This data request is objected to in its entirety as calling for speculation. This data request is also objected to in its entirety as not relevant. This data request is speculative in that Inland Telephone Company notes that no carrier has asked for access to fiber optic or other telecommunications network facilities that Inland has deployed in the Roslyn exchange. The access requested by ICS is for resale of tariffed telecommunications services. It is also both speculative and not relevant what Inland Telephone Company may or may not offer to some unknown telecommunications carrier that may approach Inland Telephone Company at some unknown date in the future.

Person preparing response: Richard A. Finnigan

Date: July 21, 2008

ICS DATA REQUEST NO. 12:

Does any WITA member other than Inland Telephone Company offer or provide other carriers with access, on any basis other than purchase or resale of finished telecommunications services, to any fiber optic or other telecommunications network facilities that the WITA member has deployed in its service territory? If not, please explain why not. If so, please provide the rates, terms and conditions under which the WITA member offers or provides such access.

RESPONSE:

See, General Objections. WITA objects to this data request in its entirety as calling for speculation. WITA objects to this data request in its entirety as overly burdensome. WITA objects to this data request in its entirety as not relevant to the issues in this docket. The issues that are relevant in this docket are contained in the Issues List filed in this docket. The actions of WITA members other than Inland Telephone Company in areas outside the Roslyn exchange are not among the issues contained on the Issues List. In addition, WITA also objects that the information sought in this data request is equally available to ICS. All interconnection agreements reached pursuant to the Communications Act of 1934 as amended by the Telecommunications Act of 1996 are on file at the Washington Utilities and Transportation Commission and are available for ICS to review as public documents.

Person preparing response: Richard A. Finnigan

Date: July 21, 2008

DATED this 21st day of July, 2008.



RICHARD A. FINNIGAN, WSB #6443
Attorney for the Washington Independent
Telecommunications Association and
Inland Telephone Company