

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

In the Matter of the Petition of:)	DOCKET UT-053041
)	
INTELLIGENT COMMUNITY)	ORDER 09
SERVICES, INC.)	
)	INITIAL ORDER GRANTING
For Designation as an Eligible)	LEAVE TO WITHDRAW;
Telecommunications Carrier Under 47)	DISMISSING PETITION AND
U.S.C. § 214(e)(2))	CLOSING DOCKET
)	
.....)	

MEMORANDUM

- 1 **NATURE OF PROCEEDING.** Docket UT-053041 involves the Petition 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 (Petition).

- 2 **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).

- 3 **PROCEDURAL HISTORY.** ICS filed a Petition with the 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.

- 4 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.

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

6 WITA, Inland, and the Commission Staff filed a Joint Motion to Compel (Joint Motion) on June 18, 2008, seeking responses to certain data requests. The Joint Motion sought information regarding ICS' planned investment in the Suncadia community and the level of access competitors would have to ICS' facilities within the Suncadia Resort, as well as the revision of the designation of various ICS data request responses from highly confidential to confidential. On July 8, 2008, the Commission issued Order 03, granting in part and denying in part the Joint Motion.

7 Also on July 8, 2008, the Commission issued Order 04, granting the Joint Motion to Amend the Procedural Schedule. The Commission issued Order 05 on August 4, 2008, again amending the procedural schedule based on a request by ICS and to which none of the parties voiced opposition.

8 On August 27, 2008, the Commission issued Order 06, granting in part and denying in part ICS' Motion to Compel WITA and Inland to respond to data requests. On September 23, 2008, the Commission issued Order 07, granting Staff's and ICS's request to amend the procedural schedule to postpone the deadline for filing reply testimony from September 26, 2008, to October 24, 2008, as both parties' witnesses have left the organizations and are no longer available to provide testimony.

9 The Commission issued Order 08 on October 21, 2008, granting Staff's request to modify the procedural schedule and set a scheduling conference in this docket for November 3, 2008.

10 **WITHDRAWAL OF PETITION.** On October 30, 2008, ICS filed a request to withdraw its Petition without prejudice.¹ ICS states that it is unable to satisfy the

¹On October 30, 2008, the Commission mistakenly sent correspondence to ICS indicating that its request to withdraw the Petition was granted and that the docket had been closed. The Commission closes adjudicatory dockets by order only. Therefore, this Order supersedes and replaces the Commission's October 30, 2008, letter.

conditions required of those companies designated as ETCs. Further, ICS asserts that litigating the conditions is not the best use of ICS' or the Commission's resources. On October 31, 2008, the Commission cancelled the November 3, 2008, scheduling conference.

- 11 Under WAC 480-07-380(3), a party must seek permission from the Commission to withdraw an initial pleading when the Commission has issued a hearing notice or begun an adjudication. In this case, the Commission had recently cancelled the hearing at the request of Commission Staff due to the loss of witnesses by Staff and ICS.
- 12 The Commission will grant the motion to withdraw when withdrawal is in the public interest. Where the Petitioner asserts that it is unable to meet the conditions for designation as an ETC, it is reasonable and in the public interest to grant the Petitioner's request to withdraw its initial filing. ICS' request to withdraw its Petition should be granted, and the docket closed.

ORDER

- 13 THE COMMISSION ORDERS that Intelligent Community Services, Inc.'s request to withdraw and dismiss its Petition for designation as an eligible telecommunications carrier is granted without prejudice, and closes the docket.

Dated at Olympia, Washington, and effective November 3, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. RUSSELL
Administrative Law Judge

ANN E. RENDAHL
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and three (3) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
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