

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Review of:)	
Inland Request to Remove Area)	Docket No. UT-050606
Comprising the Suncadia Resort)	
From It's Service Territory)	ICS OPPOSITION TO
)	INLAND MOTION TO
)	COMPEL
_____)	

Intelligent Community Services, Inc. ("ICS") provides the following opposition to the Motion of Inland Telephone Company. ("Inland") to Compel ICS to Respond to Data Requests ("Motion"). Inland's Motion is designed more to burden ICS's participation in this proceeding and to garner competitively sensitive business information than to obtain information necessary to evaluate the legitimate issues in this Docket. The Commission should deny the Motion.

DISCUSSION

Inland seeks to compel responses to two types of data requests. The first type is data requests that would require ICS to provide detailed legal analysis of all regulations that are implicated by Inland's suspended tariff revision. ICS's view of the law is not an appropriate topic for discovery. The schedule for this proceeding permits all parties to provide and respond to legal issues, and Inland is not entitled to require ICS to draft and supply its legal briefing in the form of responses to Inland data requests.

The second type of data requests to which Inland seeks to compel responses asks for expansive and intrusive information about ICS's network or planned network construction. Inland asserts that it is entitled to such information because "one

consideration in this proceeding is the extent to which it may be likely that ICS will fail in its operations and the customers left without service if the Suncadia Resort is no longer in Inland's service territory." Motion at 2. No such issue exists. ICS has yet to reach an agreement with the owners of the Suncadia Resort to provide local telephone service to area residents and may not serve that area at all. Even if ICS reaches such an agreement, the minutia of ICS's current and future network facilities, costs, and operations have nothing to do with whether Inland may abandon a portion of its service territory because it cannot dictate service terms to Suncadia.

Compelling ICS to respond to Inland's data requests, therefore, would only permit Inland to punish ICS for opposing Inland's proposed tariff revision and to gather competitively sensitive data for purposes other than this proceeding, and will provide no information that Inland legitimately needs to prepare its testimony. The Commission should refuse to permit such abuse of the discovery process and should deny Inland's Motion.

Data Request Nos. 1 and 2

Inland's first two data requests ask for ICS's view of the law, not facts. Inland states, "Data Request No. 1 simply asks ICS to explain what regulatory requirements would be altered and how they would be altered." Motion at 3. In other words, this request simply asks ICS to explain its view of applicable law. Inland is fully capable of doing its own legal research to determine the regulatory consequences of excluding the Suncadia resort from Inland's Roslyn exchange. Asking ICS to do so in the form of a

data request is wholly improper.

Inland similarly characterizes Data Request No. 2 as asking ICS “to explain how the alteration of the Roslyn exchange would preclude access to universal service funds, how the alteration of the Roslyn exchange would limit ICS’s ability to obtain interconnection with, and services from, Inland on reasonable rates, terms and conditions, and how the alteration of the Roslyn exchange would subject ICS to treatment as an incumbent local exchange carrier.” *Id.* at 4. The availability of universal service funds for an area that is not served by an incumbent local exchange carrier (“ILEC”) is a question of law. The availability of interconnection with an adjacent, rather than competing, ILEC is a question of law. The regulations applicable to a carrier that serves an area that has been abandoned by an ILEC is a question of law. ICS will brief these legal issues at the appropriate time, which the Commission should conclude is not now in response to a data request.

Data Request Nos. 4-9

Inland propounded a series of burdensome and intrusive data requests to ICS asking for more details about ICS’s Petition for Designation as an Eligible Telecommunications Carrier in Docket No. UT-053041 (“Petition”). These requests are a transparent effort to circumvent the Commission’s procedural rules and conduct discovery in that other docket. ICS has not offered to introduce the whole or any portion of the Petition into evidence in this proceeding, and ICS provided the information contained in the Petition expressly and exclusively for use in that docket. Nothing in the

Commission's procedural rules permit a party in one docket to undertake discovery of another party's filing in a completely separate docket.

The fig leaf that Inland offers for its improper conduct is that this information is needed "so that an evaluation could be made about whether or not there is any practical concern that ICS may fail in its operations in the Suncadia Resort area in the near future." Motion at 4. ICS does not have, and may not have, operations in the Suncadia Resort. Even if it does, a microscopic examination of ICS's costs, facilities and operations, both existing and future, is far beyond the scope of this proceeding. The Commission has registered ICS as a competitive telecommunications company, and this is not the proper forum for Inland to challenge the Commission's finding that ICS has the financial, technical, and managerial expertise to provide telecommunications service.

Inland, moreover, is the only party that has questioned ICS's ability to provide service to the Suncadia Resort area, and paradoxically, it is in Inland's interest for there to be no issue of ICS's ability to provide such service. Inland is fabricating a concern by Staff or Public Counsel as an alleged basis for obtaining information in which Inland should have no interest and to which Inland would not otherwise even arguably be entitled. Inland will have ample opportunity to conduct discovery and file rebuttal testimony on any concern Staff or Public Counsel actually raise in their testimony or other filings. At least for now, therefore, Inland has failed to identify any legitimate need for the information it requests, and the Commission should refuse to compel ICS to respond to these requests.

Data Request Nos. 10-11

ICS identified the types of services it would offer to Suncadia Resort residents in response to informal questions from Commission Staff. Staff did not ask, nor did ICS state, how these services would be provisioned. In Data Requests Nos. 10 and 11, however, Inland asks for every detail of how ICS would provide each such service, including “each and every facility that ICS will use” and how ICS will construct or obtain the facility. Not only does Inland mischaracterize Staff’s original informal request and ICS’s response, but once again, Inland seeks virtually every scrap of information about every aspect of ICS’s network, operations, and plans. Such information is not even remotely at issue in this proceeding, and the Commission should not compel ICS to produce it.

Data Requests Nos. 21 and 22

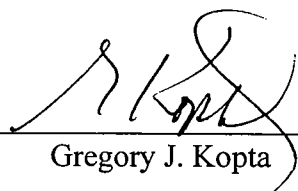
Jeff Tilleman of ICS informed the Commission at the June 29, 2005 open meeting in this docket that ICS was constructing a network operations center and interconnection facilities with Qwest. Inland’s Data Requests Nos. 21 and 22 ask for every detail about the location and costs of this construction, including how ICS is obtaining the land or rights of way for the construction. Again, there is no nexus between this information and any legitimate issue in this proceeding. ICS should not be required effectively to open up all of its files to the competing incumbent monopoly service provider when the only purpose would be to enable that incumbent to obtain intimate knowledge of its competitor’s operations.

CONCLUSION

The Commission's discovery rules are intended to facilitate development of evidence used to create a record on which the Commission can make an informed determination, not for one party to burden, harass and competitively disadvantage its competitors. Inland seeks to compel ICS to create and provide legal research and analysis and to produce detailed and extensive ICS network information that is not reasonably related to any legitimate issue in this proceeding. The Commission, therefore, should deny Inland's Motion.

DATED this 3rd day of October, 2005.

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

By  _____
Gregory J. Kopta

CERTIFICATE OF SERVICE
Docket No. UT-050606

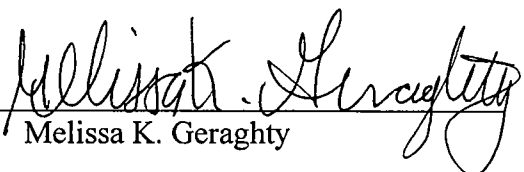
I hereby certify that on the date given below the original and 6 true and correct copies of ICS Opposition to Inland Motion to Compel in the above-referenced docket were delivered by Federal Express overnight delivery and email to:

Ms. Carole J. Washburn, Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250
E-mail: records@wutc.wa.gov

On the same date, a true and correct copy was sent by email and by regular U.S. Mail, postage prepaid, to:

Richard Finnigan 2112 Black Lake Blvd SW Olympia, WA 98512 Email: rickfinn@yelmtel.com	Richard M. Peterson / John West Hillis Clark Martin & Peterson, PS 1221 Second Avenue, Suite 500 Seattle, WA 98101 Email: rmp@hcmp.com Email: jlw@hcmp.com
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DATED this 3rd day of October, 2005.

By: 
Melissa K. Geraghty