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1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION
3 _____)
4 In the Matter of the Review of:)Docket UT-050606
5 Inland Request to Remove Area)Volume II
6 Comprising the Suncadia Resort From)Pages 10-24
7 Its Service Territory.)
8 _____)

7 A pre-hearing conference in the
8 above-entitled matter was held at 9:18 a.m. on
9 Wednesday, October 5, 2005, at 1300 South Evergreen
10 Park Drive, S.W., Olympia, Washington, before
11 Administrative Law Judge THEODORA MACE.

13 The parties present were as follows:

14 INTELLIGENT COMMUNITY SERVICES, by
15 Gregory J. Kopta, Attorney at Law, Davis Wright
16 Tremaine, LLP, 2600 Century Square, 1501 Fourth
17 Avenue, Seattle, Washington 98101.

18 INLAND TELEPHONE COMPANY, by Richard A.
19 Finnigan, Attorney at Law, 2112 Black Lake Boulevard,
20 S.W., Olympia, Washington 98512.

21 SUNCADIA, L.L.C., by John L. West,
22 Attorney at Law, Hillis Clark Martin & Peterson, LLC,
23 500 Galland Building, 1221 Second Avenue, Seattle,
24 Washington 98101 (Appearing via teleconference
25 bridge.)

26 COMMISSION STAFF, by Chris Swanson,
27 Assistant Attorney General, 1400 S.W. Evergreen Park
28 Drive, S.W., P.O. Box 40128, Olympia, Washington
29 98504-0128.

30 Barbara L. Nelson, CCR

31 Court Reporter

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1 JUDGE MACE: Let's be on the record in the
2 complaint of Washington Utilities and Transportation
3 Commission against Inland Telephone Company. This is
4 Docket Number UT-050606. We are convened here today,
5 October 5th, 2005, at the offices of the Washington
6 Utilities and Transportation Commission in Olympia,
7 Washington.

8 My name is Theodora Mace. I'm the
9 Administrative Law Judge who's been assigned to this
10 case. I'd like to have the oral appearances of
11 counsel now, beginning with counsel who are in the
12 room. And this does not need to be the long form.
13 Just introduce yourselves for the record. We'll
14 start with you, Mr. Kopta.

15 MR. KOPTA: Thank you, Your Honor. Gregory
16 J. Kopta, of the Law Firm Davis Wright Tremaine,
17 L.L.P., on behalf of Intelligent Community Services.

18 MR. FINNIGAN: Richard Finnigan, on behalf
19 of Inland Telephone Company.

20 MR. SWANSON: Chris Swanson, Assistant
21 Attorney General, on behalf of Commission Staff.

22 JUDGE MACE: Thank you. And I understand,
23 Mr. West, that you're on the conference bridge?

24 MR. WEST: Yes, John West, on behalf of
25 Suncadia, L.L.C.

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1 JUDGE MACE: Thank you very much. Well,
2 we're here today to address a discovery dispute. I
3 have received a motion to compel discovery from
4 Inland Telephone Company and a response from ICS, so
5 I have reviewed those documents.

6 I guess I would ask you, Mr. Finnigan, if
7 you wanted to briefly address the motion at this
8 point on the record?

9 MR. FINNIGAN: Thank you, Your Honor.
10 First, I do want to thank everyone present for making
11 an adjustment in the schedule to accommodate my
12 schedule. That's very much appreciated. However,
13 that doesn't mean that we don't want the information
14 produced.

15 Just a couple of comments, and I'll divide
16 them into two parts. First, addressing Data Requests
17 Number One and Two, then I'll address some of the
18 rest of the data requests. I think they separate out
19 into two separate issues.

20 Data Requests One and Two go to trying to
21 understand the issues that ICS has raised in its
22 petition to intervene. It has made several
23 allegations concerning what Inland's application may
24 mean to ICS, and we simply ask them to explain what
25 it is that they mean by those allegations.

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1 The objection is that it calls for a legal
2 conclusion, and most certainly it does not. We are
3 asking them to explain their statements, identify
4 factually what regulations they say would be altered.
5 That doesn't -- that's not a legal conclusion.
6 That's identifying factually which regulations
7 they're talking about when they say that the
8 regulations would be altered. We're simply asking
9 them to explain on a factual basis what they have
10 alleged.

11 This is no different than what's standard
12 discovery practice in civil matters. Someone files a
13 complaint, someone files an answer, they make
14 allegations in those pleadings. It's standard to
15 issue an interrogatory under the court rules asking
16 them to explain, Please provide your basis for making
17 this statement. That's all we're doing in this case.
18 It's very straightforward. They've put these matters
19 into the record, they should be required to explain
20 them.

21 The second part of the motion goes to
22 discovery of factual operating characteristics of how
23 ICS will operate in the Suncadia Resort, what its
24 basis for operation will be.

25 Now, the reason for requesting that

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1 information are statements that part of the reason
2 that Inland should maintain its carrier of last
3 resort status for the Suncadia Resort is that, even
4 though ICS is there and serving today, they may fail,
5 they may not succeed in the long run, and therefore
6 Inland has to stand at the ready and be required to
7 serve an area that it doesn't want to serve under the
8 current circumstances.

9 On this, I'm going to -- what I'm going to
10 do is offer perhaps a solution to this issue.
11 Inland has no interest in finding out competitively
12 sensitive information about Suncadia -- or about ICS.
13 Inland hopes ICS is very successful in the long run,
14 but Inland feels that if these issues are being
15 raised as to why Inland has to retain a service area
16 that it doesn't want to retain, it should be entitled
17 to that information.

18 What we're willing to do is to hold in
19 abeyance -- we want -- we would like an order that
20 says, yes, they're required to produce it, but if in
21 the responsive testimony to Inland's opening
22 testimony no one raises the issue, then we have no
23 need to see the information, and we would withdraw
24 the request at, you know, at that time, and we would
25 -- in other words, what I would like to do is say,

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1 okay, ICS, you're going to need to produce that
2 information, but if it's not raised as an issue, then
3 you don't have to disclose it to Inland.

4 What I don't want to do is wait to have it
5 -- wait till the testimony's written, have the issue
6 be raised, and then have to go through another motion
7 and delay at that time. If it's not needed, we could
8 certainly understand the reluctance of ICS to produce
9 confidential information, so it's not needed, we
10 don't want it, we don't care from a competitive
11 purpose. The only interest we have is if it's going
12 to be raised as an issue as to why Inland has to
13 serve this area or retain that area within its
14 service territory, then we feel we're entitled to it,
15 to look at whether or not the issue of whether ICS
16 may fail or not is a theoretical abstract or
17 something that has practical consequences that the
18 Commission should consider.

19 JUDGE MACE: So does this, then, pertain to
20 all of your other data requests, except for One and
21 Two?

22 MR. FINNIGAN: All of -- yes, Your Honor.

23 JUDGE MACE: Anything further?

24 MR. FINNIGAN: No, Your Honor.

25 JUDGE MACE: Mr. Kopta.

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1 MR. KOPTA: Thank you, Your Honor. I too
2 will address these as to different types of requests.
3 With respect to Data Requests Numbers One and Two, we
4 still adhere to our concern that these are requesting
5 legal opinion, as opposed to facts.

6 The existence of a regulation is not, in our
7 view, a fact; it's a matter of law. And what Inland
8 is asking for is a brief in advance of ICS's legal
9 views on what would result if Inland were no longer
10 serving this particular service area.

11 It's not simply a question of fact; it's our
12 interpretation of the law. There are certainly a
13 list of regulations that the Commission has
14 promulgated, there's a list of regulations that the
15 FCC has promulgated. There are statutes that the
16 Washington legislature has enacted, there are
17 statutes that Congress has enacted. Which of those
18 apply is a matter of legal interpretation and legal
19 opinion.

20 We will certainly, at the appropriate time,
21 provide briefing on those statutes and regulations
22 that we believe would or might be implicated by the
23 issues in this case, but at this point, asking for
24 those in response to a discovery request is not
25 asking for facts; it's asking for me to write a

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1 brief. In fact, if we're required to provide this
2 information, it would come from me. It would not
3 come from any factual source.

4 With respect to the other data requests, we
5 do not believe that there is an issue of ICS's
6 ability to provide telecommunications service. The
7 Commission has registered ICS as a telecommunications
8 provider and part of that registration is a finding
9 that ICS is financially, technically and managerially
10 competent to provide telecommunications services in
11 Washington, and we do not believe that this is an
12 appropriate proceeding to review that Commission
13 determination.

14 As a matter of fact, ICS is not providing
15 service in the Suncadia Resort area at this time.
16 There has been no agreement reached yet between ICS
17 and Suncadia with respect to providing service, so at
18 this point it's a matter of speculation as to how and
19 whether ICS would be providing service in that
20 particular area.

21 As far as Mr. Finnigan's proposal for a
22 delay, I assume, in being required to provide this
23 information and yet having an order that we would be
24 required to provide it, it's a little like agreeing
25 to have a sword of Damocles hanging over our heads

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1 waiting for Staff or Public Counsel to decide whether
2 or not this is going to be an issue, as opposed to
3 waiting until it is an issue before deciding whether
4 or not the Commission should compel these types of
5 responses.

6 We do not believe that this is or should be
7 an issue in this proceeding. The issues, as we view
8 the complaint, are the extent to which Inland may
9 revise its service territory to exclude this resort,
10 and those have to do with Inland's obligations and
11 impacts on customers in those particular areas,
12 regardless of who any other service provider might
13 be, not specifically ICS or any other particular
14 carrier, and the types of financial and technical and
15 network details that Inland has asked for have no
16 place in this particular proceeding.

17 So certainly we would be willing to, at this
18 point, since we do not believe it is an issue, to
19 hold the entire motion in abeyance and, at Mr.
20 Finnigan's convenience, allow it to stand on the
21 books and for him to reinvigorate it, if you will, at
22 such time as Staff or Public Counsel bring this
23 issue, bring an issue related to ICS's competence to
24 provide service in any particular area, specifically
25 the Suncadia Service Resort area, so that we won't

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1 need to go through filing a new motion and a new
2 response that will essentially be the same, but we
3 certainly would not want an order compelling us to
4 provide information that may or may not be relevant.

5 We think that is essentially an advisory
6 order and the Commission should resolve a dispute
7 based on a dispute that actually exists, based on an
8 issue that has actually been raised, as opposed to a
9 hypothetical if this issue is raised, then we will be
10 required to provide X, Y, or Z.

11 JUDGE MACE: Okay. Mr. Swanson, does Staff
12 have a position?

13 MR. SWANSON: Yeah, just briefly. I guess
14 Staff, since it was mentioned as a party in terms of
15 its informal position in a motion to compel by ICS,
16 would just like to, you know, indicate that, although
17 we can't, and I don't think we're required to provide
18 what our position would be at the point that we file
19 testimony or briefing, you know, I think that a lot
20 of this relates to hypotheticals that could occur and
21 doesn't necessarily relate specifically to ICS's
22 ability to provide telecommunications services. And
23 also, I guess to the extent --

24 JUDGE MACE: Sorry. Can you explain that a
25 little bit? What do you mean by that?

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1 MR. SWANSON: Sure. I think that my sense
2 is that, you know, this issue of carrier of last
3 resort has come up in the past, and Staff's issue
4 really relates to the ability of, in general,
5 customers being able to obtain service from a
6 carrier, whether it be ICS, whether it be Inland,
7 somewhat.

8 So I guess my sense is this isn't
9 sufficiently developed at this point and Staff's
10 position isn't sufficiently developed to really make
11 this a relevant issue, at least as framed in this
12 proceeding at this point in time. Does that explain?

13 JUDGE MACE: Yes, thank you. Mr. West, do
14 you have a position on this motion? Do you have any
15 comment that you'd like to make about this motion?

16 MR. WEST: No, Your Honor, we have no
17 comment or position on it. I'm just on the line to
18 observe.

19 JUDGE MACE: Thank you. Well, I did review
20 the written documents and I've heard your argument
21 here today. I am going to rule right now, so that
22 you have some clarity about the issues.

23 As far as the Data Request Number One and
24 Two, I'm going to require that ICS file answers to
25 that, to those questions. I agree with Mr. Finnigan

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1 that these are more in the nature of a factual
2 response. Even though they may require some
3 citations to regulatory requirements, I do not
4 believe that they require a brief and would be very
5 surprised if you would file a brief in response, but
6 I do want you to answer the discovery requests.

7 With regard to the others, in view of Mr.
8 Finnigan's statement and the posture of the case as
9 it is right now, I am not going to rule, and you may
10 revisit this at a later time as the case develops.
11 It may be that, as the case develops, you would
12 refine your discovery requests. They may be
13 different than what appears in your current motion.
14 So I'm not going to rule at this point.

15 MR. FINNIGAN: Thank you.

16 JUDGE MACE: Is there anything else about
17 this that we need to address?

18 MR. FINNIGAN: No. Thank you, Your Honor.

19 JUDGE MACE: Allright.

20 MR. FINNIGAN: I'm sorry, I moved too quick.

21 By what date would a response be forthcoming?

22 JUDGE MACE: A response?

23 MR. FINNIGAN: To Data Requests One and Two?

24 JUDGE MACE: Mr. Kopta?

25 MR. KOPTA: We could certainly provide one

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1 within a week, so a week from today, if that would be
2 --

3 MR. FINNIGAN: That would be perfect. I was
4 just concerned about whether I would need to seek a
5 modification of the filing schedule for our
6 testimony, but if it's produced in a week, I'm fine
7 with our current schedule.

8 JUDGE MACE: Actually, I'd like to briefly
9 talk about the schedule if I might, see if I have an
10 actual current copy of the schedule. I thought that
11 there was a settlement conference that had been
12 established in this proceeding. What happened to
13 that?

14 MR. KOPTA: It was rescheduled, and again, I
15 will echo Mr. Finnigan's appreciation to the parties
16 for making an adjustment to the schedule to
17 accommodate my --

18 JUDGE MACE: Yes, sorry to interrupt. I see
19 now, I have the schedule here in front of me, and
20 that was rescheduled to January of 2006.

21 MR. FINNIGAN: Actually, Your Honor, that's
22 the second settlement conference.

23 JUDGE MACE: Yes, okay, right.

24 MR. FINNIGAN: We rescheduled to October
25 28th.

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1 MR. SWANSON: I think. And I'm sorry, I
2 should have --

3 JUDGE MACE: When did that happen? Has
4 there been an order?

5 MR. FINNIGAN: No, Your Honor, and that's
6 our collective oversight. What happened is there was
7 an issue that Mr. Kopta had to deal with that took
8 him out of town.

9 JUDGE MACE: Right.

10 MR. FINNIGAN: And so on that basis, we
11 rescheduled.

12 MR. SWANSON: I believe we informed you
13 informally by e-mail, but it was my oversight not to
14 let you know what the rescheduled date was. That is
15 October 28th, I believe.

16 JUDGE MACE: I would appreciate getting
17 something from the parties so that I can give to the
18 Commission a schedule that actually reflects what the
19 schedule is in this case. I appreciate, Mr. Kopta,
20 you had an emergency, and I understand that. But,
21 yeah, I was a little -- I was trying to sort through
22 this briefly before the hearing and it looked like
23 there were some gaps in what had happened and what
24 was supposed to happen, so yeah, we need to make sure
25 that the schedule in the record reflects what the

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1 schedule is, so just let me know right away.

2 MR. SWANSON: I'll send something by e-mail
3 today letting you know what the rescheduled
4 settlement date is.

5 JUDGE MACE: All right.

6 MR. FINNIGAN: Thank you.

7 JUDGE MACE: Thank you, Mr. West.

8 MR. WEST: Thank you, Your Honor.

9 (Proceedings adjourned at 9:35 a.m.)

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