

Exhibit No. ___T (RS-1T)
Docket No. UT-050606
Witness: Robert Shirley

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Complainant,

v.

INLAND TELEPHONE COMPANY,

Respondent.

DOCKET NO. UT-050606

DIRECT TESTIMONY OF

ROBERT SHIRLEY

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

December 16, 2005

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I. Qualifications and Summary

Q. Please state your name and business address.

A. My name is Robert Shirley, and my business address is P.O. Box 47250, Olympia, Washington 98504-7250. My e-mail address is bshirley@wutc.wa.gov, and my telephone number is 360-664-1292.

Q. By whom are you employed?

A. I am employed by the Washington Utilities and Transportation Commission (WUTC) as a telecommunications policy analyst.

Q. What qualifications do you have that are relevant to this matter?

A. I have been employed by the WUTC for eight years, and in that time I have been responsible for analyzing issues related to service to individuals in rural areas without telecommunications service and for most activity relating to eligible telecommunications carriers (ETCs). I am a member of the Washington State Bar Association.

1 **Q. Please summarize the purpose of this testimony.**

2 A. This testimony explains that the Commission has never determined the
3 effect on an ETC service area designation when an incumbent's exchange
4 boundaries change, and provides information about how difficult it can be
5 for the Commission to assure, in the public interest, the provision of
6 telephone service for people who do not live inside exchange area
7 boundaries.

8

9 **II. Eligible Telecommunications Carriers**

10

11 **Q. What is an eligible telecommunications carrier (ETC)?**

12 A. An ETC is a telecommunications carrier designated by the Commission to
13 serve a defined geographic area. ETC's have an obligation to offer
14 service in their designated service areas, and are eligible to receive federal
15 universal service support if the designated area is a high-cost area.¹

16

¹ See 47 U.S.C. §§ 214(e) and 254, and 47 C.F.R. Part 54.

1 **Q. Why is testimony about ETCs needed in this case?**

2 A. Whether a carrier other than the incumbent, Inland, that is also an ETC
3 will be obligated to serve the Suncadia area if it is removed from the
4 Roslyn exchange has been raised, albeit obliquely, by Inland. In the
5 testimony of Inland witness Mr. Coonan, he states:

6 There are other designated ETCs in this area that may not
7 need easements since they are wireless carriers. Do their
8 obligations to serve include carrier of last resort
9 responsibilities? If so, why should Inland be forced to serve
10 this area under untenable conditions?

11
12 *JPC – 1T, p. 9, l. 3-6.*

13
14 **Q. Do other ETCs have an obligation to serve the Suncadia area if the**
15 **Inland exchange includes Suncadia?**

16 A. Yes. All ETCs have an obligation to serve their designated service areas
17 based on 47 U.S.C. § 214(e)(1)(A). If a non-incumbent ETC was designated
18 by reference to the Roslyn exchange, then the area for which it was
19 designated is the same as the area for the Roslyn exchange at the time of
20 the non-incumbent's designation.

21

1 **Q. If the Suncadia area is removed from the Roslyn exchange of Inland**
2 **Telephone, will an ETC designated to serve the Roslyn exchange still**
3 **have an obligation to serve the Suncadia area?**

4 A. That is an unanswered question. No case has posed directly the question
5 of whether a non-incumbent ETC's designated service area shrinks or
6 expands with a change in the incumbent's exchange area that occurs after
7 the incumbent and other ETCs were designated for a service area.

8

9 **Q. Did you review Commission orders in an attempt to ascertain the**
10 **Commission's intentions on this issue?**

11 A. Yes. I reviewed the last several ETC orders, including UT-043121 (Hood
12 Canal), UT-043120 (Sprint PCS), UT-043011 (Cingular), and UT-023033
13 (RCC).

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Q. Are there statements in previous ETC designation orders that indicate the Commission intended ETC service areas would shift or would remain unchanged if an exchange boundary is altered?

A. I was unable to draw a conclusion about the intention of the Commission on this issue from my review of Commission orders. In my opinion, it is possible the issue was not anticipated by the Commission.

That said, there are statements in ETC orders that could be used to argue both that the ETC service area changes with the incumbent's exchange, and that the service area does not change. Still, the question has not been asked directly and there is no holding on the question.

Q. Is it important for wireless and other non-incumbent ETCs to be associated with an incumbent's exchange?

A. Yes, because the non-incumbent ETCs receive federal support based on the federal support received by the underlying incumbent company.

1 Q. If the Suncadia area is removed from the Inland exchange, will another
2 ETC serving the Suncadia (but no longer Roslyn exchange) area be
3 eligible to receive federal universal service support?

4 A. I cannot draw a conclusion. The absence of an incumbent, and therefore
5 the absence of a known amount of federal support on which support
6 calculations for non-incumbent ETCs may be based, would seem to create
7 a problem for determining what, if any, amount of support would be
8 provided to the non-incumbent ETC. Whether or not support would be
9 paid under this circumstance would be a decision made by the FCC and I
10 find nothing in FCC rules on which I can rely for a prediction about its
11 decision.

12
13 Q. What would be the basis for calculating the amount of federal support if
14 there is no incumbent?

15 A. I do not know. I am unaware of this situation arising elsewhere, and I do
16 not know of any FCC rule that contemplates this and would allow the
17 Commission to draw a conclusion that support would be available to a
18 non-incumbent ETC serving the Suncadia area in the absence of the
19 incumbent, Inland.

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Q. If the Suncadia area were removed from the Roslyn exchange, and if another carrier began serving the Suncadia area, could that other carrier be treated as an incumbent for purposes of calculating federal support?

A. Yes, but the last time a new carrier replaced an incumbent in an existing exchange in Washington, the FCC took more than three years to determine it would treat the new carrier as an incumbent for purposes of calculating universal service.²

Q. Is Inland witness Mr. Coonan correct, then, that “[t]here are other designated ETCs in this area?”

A. If by “area” Mr. Coonan means the Suncadia area *proposed* to be removed from the Roslyn exchange, the answer is yes. The important question is, however, if the tariff takes effect and the Suncadia area *is* removed from the Roslyn exchange, will other ETCs retain an obligation to serve the Suncadia area. Before residents of Suncadia can be given a reliable answer to that question, the Commission would have to decide if ETC service areas shrink or expand with exchange boundaries.

² M&L Enterprises d/b/a Skyline Telephone, serving the Mt. Hull exchange north of Tonasket, replaced Qwest and Verizon.

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III. Service to Failed Developments

Q. Has the Commission encountered large numbers of rural residents living in failed developments without telephone service?

A. Yes. Over the eight years I have worked for the Commission it has been contacted by persons living in what I call “failed developments” who did not have available to them reliable, affordable telephone service.

Q. What is a failed development?

A. A failed development, in my experience, is an area where a developer has created lots, built roads, whether dirt or macadam, and created and sold lots. Several or more houses are built, but by no means is every lot built upon by the developer or lot owners.

According to residents, at the time of the initial development, promises are made, including that there will be park or swimming amenities, that there will be electric service available, and that there will be telephone service available to owners. For whatever reason, however, the development is never completed and many promises go unfulfilled.

1 The important failure to be considered for the purpose of this case
2 is the failure to bring telephone service to the development.

3

4 **Q. Why is information about failed developments important in this case?**

5 A. Failed developments have resulted in relatively large numbers of rural
6 residents living for long periods without access to reliable, affordable
7 telephone service. As a result, residents, the Commission, and telephone
8 companies spend considerable time, money, and effort to resolve whether,
9 and on what terms, residents will receive reliable, affordable telephone
10 service.

11

12 **Q. Are easements typically at issue in failed developments?**

13 A. Unlike this case, easements are not typically at issue in failed development
14 cases. *See Exhibit No. ___TC (DJR-1TC) Pp. 7-9.* However, the failed
15 developments that have come to the Commission's attention have been
16 older developments and, to the best of my knowledge, were not
17 developed with the intention of the developer to earn revenue from the
18 provision of basic utility services.

19

1 **Q. In your experience with failed development cases, what principal kinds**
2 **of harms to the public interest, or injury to individuals, can arise?**

3 A. To the extent the public interest is met by expanding the number of people
4 and households with a connection to the public switched telephone
5 network, the public interest is frustrated when large numbers of
6 residences do not have access to reliable, affordable telecommunications
7 service.

8 Injury to individuals is a consideration. Only months before
9 hearing on the Nelson Ranch case, one of the homeowners' father-in-law
10 collapsed and died while the daughter-in-law and granddaughter use two
11 cell phones in an attempt to reach emergency services through 911. It took
12 more than twenty minutes to reach emergency services. On Libby Creek
13 Road, about one week after telephones were installed, Lori Seaburg lost
14 control of her truck on the icy road and came to rest upside in a creek. A
15 member of the Robertson family saw the accident and called 911 from the
16 brand new telephone at their farm. Previously, placing a call to 911 would
17 have required a five mile drive (on the same icy roads) to the nearest
18 home with a telephone.

1 Other considerations concern parents' inability to stay in touch
2 with teachers and others involved in their children's education and the
3 difficulties encountered in searching for employment.

4

5 **Q. Is Suncadia Resort a failed development?**

6 A. It appears to be successful at this time. The reason for this testimony is to
7 inform Commissioners what happens when a development fails with
8 respect to telephone service and residents are left without access to
9 reliable, affordable telephone service.

10

11 **Q. Please name several failed developments in which the Commission has**
12 **intervened to see that telephone service is provided.**

13 A. The Commission has intervened in the following areas:

14 1. Wilderness Lake – UT-993000 (50 lots, 20 homes)

15 2. Hobart-Kerriston – UT-991938 (35 homes)

16 3. Brady Area – UT-991931 (20 homes)

17 4. Mt. St. Helens – UT-991930 (10 homes, 1 business)

18 5. Moses Coulee – UT-003106 (12 homes, 3 farms, 300 lots)

19 6. Mt Hull – UT-013022 (100 homes)

1

2 **Q. Are these the only areas where the Commission has taken action to**
3 **assist rural residents to obtain telephone service?**

4 A. There have been many other areas (e.g., Libby Creek, Nelson's Ranch), but
5 the list contains the areas that were, in my understanding, failed
6 developments.

7

8 **Q. Were the six failed developments all inside the boundaries of a**
9 **telephone exchange?**

10 A. No. Wilderness Lake, the Brady Area, Moses Coulee, and Hobart-
11 Kerriston were not in telephone exchanges.

12

13 **Q. Suncadia Resort is inside the Roslyn exchange; should the Commission**
14 **be concerned with information about failed developments that were**
15 **outside telephone exchange areas?**

16 A. Yes, because the Inland tariff will remove the Suncadia area from the
17 exchange and the Suncadia area will change from an area where Inland
18 has an obligation to serve to an area that is no longer in a wireline

1 exchange with Inland having an obligation to serve. And, as discussed
2 above, perhaps no other carrier has an obligation.

3

4 **Q. What has the Commission done to address telephone service to failed**
5 **developments?**

6 A. In some circumstances the Commission has begun an adjudication to
7 create an obligation for a carrier to serve, and in some instances it has
8 sought, and found, carriers willing to serve.

9

10 **Q. Have these efforts stretched over years and required substantial effort**
11 **by the Commission?**

12 A. Yes, it has taken substantial effort and most of the cases stretched into
13 years. Two good examples are Wilderness Lake and Hobart-Kerriston.

14 Wilderness Lake was partially developed in the 1960s. It is
15 located about 30 miles from Spokane, between the Elk exchange of what is
16 now Qwest and the Newport exchange of what is now a Verizon
17 exchange. Verizon provided service to a house about 100 yards from the
18 entrance to the development. Residents of the development made
19 periodic efforts to obtain telephone service. The Commission began an

1 adjudication in 1999. Testimony was filed in 2000. The case settled in
2 2001 in large part because there was a substantial amount of money
3 available from unallocated U.S. West refunds that were used to provide
4 Verizon with immediate recovery for the cost of serving Wilderness Lake.

5 The second example, Hobart-Kerriston, was developed in the 1970s
6 and 1980s, and still does not have telephone service after seven years of
7 effort on the part of the Commission. It is a development of about 35
8 homes in East King County situated between a Qwest and a CenturyTel
9 exchange. Neither company was willing to expand its exchange
10 boundaries and serve the area. Staff located Beaver Creek Telephone
11 Company, a carrier that stated it would serve. After seven years, Beaver
12 Creek Telephone Company has been unable to provide service due to lack
13 of capital, insufficient experience with local service (the parent company
14 provides long distance and other services), and permitting hurdles.

15 [Please note, however, that new management took over Beaver Creek and
16 the Hobart-Kerriston project in September 2005, and the new organization
17 is making a renewed effort to serve Hobart-Kerriston.]

18

1 **Q. What is the lesson the Commission can draw from these experiences?**

2 A. In the absence of an obligated carrier, it can take years for the
3 Commission or another carrier to take actions that ultimately result in
4 telephone service for an area that is not in an exchange. If the Suncadia area
5 is removed from the Roslyn exchange and there is ever a need for service,
6 it may be years before residents will receive service.

7

8 **Q. Should it matter to the Commission that Suncadia, LLC, appears to be a**
9 **financially sound company that is selling very expensive lots and that**
10 **the purchasers presumably have the buying power to attract a**
11 **telecommunications provider even to a rural area that today has**
12 **telephone service because of state and federal universal service**
13 **support?**

14 A. Staff believes that the provision of reliable telephone service is an
15 important policy of the state and should be upheld without regard to the
16 financial status of the ultimate consumer. The Commission will likely set
17 a precedent with this decision. The next case may be the same in all
18 respects except the land an incumbent would like to remove from its
19 exchange may be of little value and the planned "resort" a mobile home

1 park for single-wide trailers. If the Commission decides to consider the
2 value of the land and the affluence and buying power of the purchasers, it
3 should emphasize in any order that a future case concerning customers
4 less financially advantaged can and should be treated differently.

5

6

IV. Conclusion

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8 **Q. Have you completed your testimony?**

9 **A. Yes.**