

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

INLAND TELEPHONE COMPANY,

Respondent.

DOCKET NO. UT-050606

COMMISSION STAFF'S
MOTION FOR SUMMARY
DETERMINATION

I. INTRODUCTION

1 Staff files this Motion for Summary Determination because the pleadings and testimony of petitioner Inland Telephone Company and intervenor Suncadia, LLC fail to establish any genuine issues of material fact, and Staff is entitled to judgment as a matter of law.

II. STATEMENT OF FACTS

2 Inland service territory encompasses the Suncadia resort area. After the failure of Inland and Suncadia to resolve their private dispute about how to provide telephone service to the households in Suncadia, on April 19, 2005, Inland filed a tariff for the removal from Inland's service area the territory at the southern edge of the Roslyn exchange comprised of the Suncadia Resort and the addition of other

territory, not associated with Suncadia, LLC, north of the Roslyn exchange. The contract between Inland and Suncadia agreeing on the process to seek Commission approval for service territory removal is part of the tariff filing. Intelligent Community Services, Inc. (ICS), a competitive local exchange company (CLEC) registered with the Commission and a vendor to Suncadia resort, has signaled its opposition the boundary change. Public Counsel has also signaled its opposition. The Commission suspended the proposed tariff revisions on June 29, 2005.

III. STATEMENT OF LAW

3 RCW 80.36.230 gives the Commission the power to prescribe exchange boundaries.¹ Inland is required to show that its tariff to change its exchange boundary is fair, just, reasonable and sufficient and in the public interest. RCW RCW 80.01.040, 80.04.130, RCW 80.36.080, RCW 80.36.100, RCW 80.36.230, RCW 80.36.240.

IV. DISCUSSION

4 It is uncontested that Inland and Suncadia have proposed this solution as a result of the failure of private business negotiations. Inland details its attempts to negotiate a private solution in its testimony. *See* JPC-1T, p. 2 to 7. Suncadia also addresses the failed negotiations over the scope of an easement in its testimony. *See*

¹ *See* In the Matter of Douglass and Jessica Rupp, et al v. Verizon, Order Denying Motion to Dismiss, Docket No. UT-050778, ¶¶ 23, 27 (September 13, 2005).

PJE-1T, p. 3 to 4. To date, Inland has failed to establish any present harm that has or will come to Inland by declining to approve the tariff. The only harm identified by Inland, the possible harm to its reputation is both hypothetical and speculative.² See *Brown v. MacPherson's, Inc.*, 86 Wn.2d 293, 298, footnote 2 (1975) (hypothetical facts should not be considered in reviewing a motion for summary judgment).³ Furthermore, as described in greater detail in footnote 2, the *public interest outcome* with regard to the hypothetical situation presented by Inland has already been addressed by the Commission in rule. WAC 480-120-061(1)(h).

5 Nor have Inland and Suncadia shown that additional private business negotiations will not reach a resolution prior to any harmful situation arising. In fact, if the Commission were to deny Inland's petition for the tariff, there is a chance that the parties would return to the bargaining table and resolve the issue under private contract and within the existing regulatory scheme. Staff believe that it is better to let these private parties resolve their dispute without Commission intervention especially where no harm has been shown.

² This harm would allegedly occur if a customer were to request service and Inland refused to provide it. To date, there is evidence that only one applicant has attempted to obtain service from Inland and been refused service. See JPC-1T, p. 3 to p. 4. Inland was within its rights to refuse service to that applicant. According to WAC 480-120-061(1)(h), "a company may refuse to connect with ... an applicant ... [w]hen all necessary rights of way, easements, and permits have not been secured" and "the applicant is responsible for securing all necessary rights of way or easements on private property..." Thus, existing law resolves this very situation and clearly contemplates that companies will sometimes refuse service to applicants. The rule defines the public interest.

³ If lot owners in Suncadia are harmed because Suncadia has not provided easements to lot owners or to Inland, or because lot owners or Inland is unwilling to accept an easement with a narrow scope that permits Inland to provide only plain old telephone service (POTS), lot owners (and perhaps Inland) have recourse to civil litigation; the resolution of easement issues is not within the jurisdiction of the Commission.

Additionally, maintaining the status quo (denying the petition for the boundary change) permits consumers to maintain their options for obtaining service. RCW 80.36.300 makes it the policy of the state to maintain diversity in the supply of telecommunications and to maintain the efficiency and availability of telecommunications service. Staff also believes that it is the Commission’s role to provide stability to consumers in obtaining services. Approving Inland’s petition may give Inland and Suncadia greater predictability and opportunity for profit, but it will most assuredly, and as a matter of law, provide less predictability and opportunity for obtaining reliable, affordable telecommunications service to consumers.⁴ Because Inland and Suncadia have failed to show any tangible harm that would be caused by maintaining the status quo, Inland’s petition should be denied.

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⁴ RCW 80.36.300(2), (3).

V. CONCLUSION

7 Staff asks that this Motion for Summary Determination be granted because the pleadings and testimony of petitioner Inland Telephone Company and intervenor Suncadia fail to establish any genuine issues of material fact and Staff is entitled to judgment as a matter of law.

DATED this 21st day of December, 2005.

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and Transportation Commission
Staff