

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

INLAND TELEPHONE COMPANY,

Respondent.

DOCKET NO. UT-050606

PUBLIC COUNSEL'S ANSWER IN  
SUPPORT OF COMMISSION  
STAFF'S MOTION FOR SUMMARY  
DETERMINATION DENYING  
TARIFF FILING

1. The Public Counsel Section of the Washington State Attorney General's Office (Public Counsel) files this brief<sup>1</sup> with the Washington Utilities and Transportation Commission (Commission) in support of Commission Staff's (Staff) Motion for Summary Determination. Staff's Motion should be granted because there are no genuine issues of material fact preventing the Commission from denying Inland Telephone Company's (Inland) petition as a matter of law.<sup>2</sup>
2. The Commission possesses clear statutory authority to define geographical service territories and grant non-exclusive franchises. RCW 80.36.230; *In re Electric Lightwave, Inc.* [*In re Consolidated Cases*], 123 Wn.2d 530, 537, 869 P.2d 1045 (1994). Upon receiving a franchise, a company has an obligation to provide its territory with service on demand. RCW

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<sup>1</sup> While Public Counsel has not submitted direct testimony in this matter, it has reviewed the testimony of the other parties in preparing this brief.

<sup>2</sup> As discussed below, the only fact material to Inland's petition is whether it has shown harm so substantial to its business that it should be allowed to relieve itself of service territory obligations for the Suncadia area.

80.36.090.<sup>3</sup> Conversely, once the Commission allows customers in a particular service territory to be removed from a franchise, those customers lose the protection of RCW 80.36.090. For this reason, the Commission's authority under RCW 80.36.230 must be exercised consistent with its statutory mandate of preserving the availability and affordability of telephone service. RCW 80.36.300; *WUTC v. U S WEST Communications, Inc.*, Docket No. UT-961638, Fourth Supplemental Order (January 1998).

3. Where, as here, customers could be left without tariffed wireline service, the Commission has refused to allow telecommunications companies to relinquish their obligations to provide service on demand. *Id.* For instance, in Docket No. UT-961638, the Commission strongly rejected U S West's proposed tariff relieving it of its obligation to serve and replacing it with language that U S West would "use reasonable efforts" to make services available, would furnish service "subject to the availability on a continuing basis of all the necessary facilities" at the sole discretion of the Company, and reserved for the Company the right "to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of a lack of facilities or due to some cause beyond the Company's control."<sup>4</sup>

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<sup>3</sup> As Staff has discussed, the Commission has never addressed the question whether a CLEC's service territory expands and contracts with the ILEC such that the CLEC will or will not be required to provide service. For the reasons discussed below, this issue need not be reached in this case. Regardless, it is more appropriately left for rulemaking. *See, WUTC v. U S WEST Communications, Inc.*, Docket No. UT-961638, Fourth Supplemental Order (January 1998) ("The Commission earlier in this proceeding expressed its frustration that U S WEST chose to raise such a significant public policy issue in the context of a tariff filing, with its requisite procedural formalities, the attendant positional litigation strategies, and the constraints imposed by the strict time lines associated with the tariff mechanism.").

<sup>4</sup> The Commission has consistently held that a company may not withdraw service in the absence of suitable tariffed alternatives available for consumers. *WUTC v. U S WEST Communications, Inc.*, Docket No. UT-960126, Fifth Supplemental Order (December 1996) (U S West's tariff revision proposing to terminate its Centrex Plus service for new customers, allowing continuing service to existing Centrex Plus customers within specified limitations, and terminating all Centrex Plus service in the year 2005 was rejected because there were no suitable

4. Indeed, a company seeking to eliminate service bears the burden of proof that the proposed tariff is in the public interest and would result in rates that are fair, just, reasonable, or sufficient under RCW 80.36.080 and RCW 80.36.140. *Id.* As a matter of law, Inland has failed to carry its burden.

5. The harm to reputation asserted by Inland is not only speculative (as discussed by Staff) but also one which, even if it existed, could not relieve the Company of its obligation to serve. As noted above, in Docket No. UT-961638, the Commission had the opportunity to address when a telecommunications company may be relieved of its service territory obligations under RCW 80.36.090. There, the Commission announced that a company seeking relief from its service obligation must prove actual and substantial harm outweighing the substantial benefits it receives as a de facto monopoly provider.

6. As the Commission explained, “[a de facto monopoly] bestows substantial benefits and substantial responsibilities upon the Company,” the substantial benefits include:

- near-ubiquitous already deployed network infrastructure;
- established relationships with nearly 100% of existing residential and business customers;
- brand name recognition acquired through ratepayer-funded advertising and communications programs aimed at customers of monopoly services;
- positive network externalities due to broad coverage; and,

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tariffed alternatives). In other words, a suitable tariffed alternative is a necessary (but not necessarily sufficient) precondition to holding that a company’s proposed withdrawal of service is in the public interest. *See also, WUTC v. U S WEST Communications, Inc.*, Docket Nos. UT-911488, UT-911490, & UT-920252 (Consolidated), Fourth Supplemental Order (November 1993) (A company may restrict a service offering (Centrix) only if doing so is consistent with the law and the Commission has approved of the consequences).

- protection against significant adverse financial results under rate of return regulation, and the opportunity, obtained both through its monopoly and ongoing regulatory protection, to fully recover its investment on all network resources.

*Id.* “Among the substantial responsibilities entailed by these substantial benefits is the obligation to serve customers in its tariffed service territory. This obligation is a balanced response to the enormity of the above benefits which [a de facto monopoly company] continues to enjoy.” *Id.* The Commission held that U S West failed to meet its burden because it did not quantify and contrast the benefits of its de facto monopoly status with the unreasonable economic burden alleged in its petition. *Id.*

7. Finally, as Staff points out, denying Inland’s petition merely guarantees that a wireline provider of last resort exists so that customers could potentially obtain service from Inland in the future.<sup>5</sup>

8. In conclusion, the Company has failed to show any actual and substantial harm that would outweigh the benefits it receives as a monopoly provider. Since there are no genuine

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<sup>5</sup> The record contains what appears to be hearsay evidence that wireless service exists in the territory. However, the Commission need not address this issue because it does not matter for this petition whether wireless service is available unless a wireless service provider is capable of fulfilling the role of a suitable tariffed alternative. The Commission recently expressed some skepticism about wireless carrying out such a role any time soon. *In re: Joint Application of Verizon Communications Inc. and MCI, Inc.*, Docket No. UT-050814, Seventh Order, ¶ 70 (December 2005) (“while wireless telephony is growing, it for the most part supplements and does not displace wireline.”). *See also*, RCW 80.66.010(1) (“The commission may regulate the rates, services, facilities, and practices of radio communications service companies, within a geographic service area or a portion of a geographic service area in which it is authorized to operate by the federal communications commission if it is the only provider of basic telecommunications service within such geographic service area or such portion of a geographic service area. For

issues as to any material fact to be decided by the Commission, Staff's motion should be granted.

DATED this 6<sup>th</sup> day of January, 2006.

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purposes of this section, 'basic telecommunications service' means voice grade, local exchange telecommunications service.").