BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. INLAND TELEPHONE COMPANY, Respondent.	DOCKET NO. UT-050606 INLAND TELEPHONE COMPANY'S RESPONSE TO PUBLIC COUNSEL'S ANSWER IN SUPPORT OF COMMISSION STAFF'S MOTION FOR SUMMARY DETERMINATION

Inland Telephone Company ("Inland") hereby submits this Response to Public Counsel's Answer in Support of Commission Staff's Motion for Summary Determination ("Answer"). The primary issue that will be addressed by this Response is Public Counsel's assertion as to the appropriate standard of review for Inland's tariff filing. Following that discussion, the Response will address other matters that are asserted in the Answer which are in error.

1. Public Counsel Applies an Erroneous Standard of Review for Inland's Tariff Filing.

Public Counsel's concluding statement at paragraph 8 of the Answer is "the Company has failed to show any actual and substantial harm that would outweigh the benefits it receives as a monopoly provider." There are several errors in this statement.

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First and foremost, this statement is in error by advancing the concept that a company must show "actual and substantial harm" before a tariff filing can be approved. Where in statute is the Commission's review of a tariff filing predicated on a company being required to demonstrate harm if the tariff change is not approved before a tariff revision can be approved? Simply put, it does not exist.

To take Public Counsel's asserted standard to the absurd, assume that a regulated company files a tariff change to correct a typographical error in a sentence. Is the company harmed by the typographical error? Probably not. Does that mean the filing cannot be approved? Of course not.

To move a little closer to reality, assume that a regulated company files a tariff change to its business office hours. Assume that the business office was formerly opened from 8:30 a.m. to 4:30 p.m. Assume that the change is to have the business office open from 9:00 a.m. to 5:00 p.m. The number of hours that the office is open remain the same. Is the company harmed without the change? No. Should the tariff filing be approved? It depends on whether it is in the public interest. Assume the company states that the reason for the change is that because the change would better accommodate its two customer service representatives' childcare needs.[1] Should the tariff change be approved? Why not?

Assume that a regulated company makes a tariff filing to expand its business hours from 9:00 a.m. to 4:00 p.m. to 8:30 a.m. to 4:30 p.m. Is the company harmed without the tariff change? No. In fact, the company is harmed because of the tariff change in that it has possibly greater employee expenses. Does this mean the tariff change should not be approved? Of course not.

Finally for purposes of this discussion, assume that a telephone company files to reduce its rates for a particular service by ten percent. Is the company harmed without the tariff change? The

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[1] Obviously, with only two customer service representatives, this is a small company, such as Inland Telephone Company.

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answer is no. The company is actually in a financially worse condition because of the tariff change. Does that mean the tariff change should not be approved? Of course not.

Any sort of "but for" test applicable to tariff changes as suggested by Public Counsel (and Commission Staff) is clearly inappropriate. The test is not that "but for" the proposed tariff change the company is harmed. The test is whether the tariff change is in the public interest.

Public Counsel argues, in addition, that somehow there are some benefits that Inland receives as monopoly provider for the Suncadia Resort area that should be used to calculate a cost benefit analysis for the tariff filing. That concept is extremely frustrating for Inland. The whole premise of this case is that Inland is not the monopoly provider for the Suncadia Resort. It is not a provider at all. Inland is physically precluded from serving the Suncadia Resort area. In addition, it is clear that even if Inland were somehow to become a provider for the Suncadia Resort area -- and it must be emphasized that that is not a possibility under any realistic scenario -- it would do so only in competition with other providers. ICS has clearly indicated its intention to serve the Suncadia Resort area. Where is Inland's status as a monopoly provider? It does not exist.

2. Public Counsel's Concept That There Must be a Tariffed Wireline Service Offering is Inappropriate.

In paragraph 3 of its Answer, Public Counsel appears to argue that there must be a tariffed wireline service available in all cases. They make this position very clear in the text of footnote number 4, beginning at the bottom of page 2 and running over to page 3. In the course of that footnote, Public Counsel states "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." That is not a correct proposition. Nor do the cases cited by Public Counsel

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support that proposition as an absolute precondition to approval of a tariff change to a company's service area.

In the case of WUTC v. US West Communications, Inc., Docket No. UT-961638, Fourth Supplemental Order (1998), cited by Public Counsel, the Commission considered Qwest's (then US West) request to modify the tariffed obligations to furnish service upon demand. Under Qwest's proposal, service would be provided within intervals within the sole discretion of Qwest. The Commission found that this tariff proposal was inconsistent with the requirements to provide service under then WAC 480-120-051 and the customer service guarantee provisions that Qwest was required to meet by Commission order arising out of Docket No. UT-950200. Further, the proposed tariff language was found to be overly broad in vesting unreasonable discretion in Qwest. See, Findings of Fact 3 and 4 at page 28. See, also, the Discussion at page 17.

In addition to addressing the specific issues, the Commission, in what is apparent dicta, engaged in a broader discussion of the obligation to serve. However, part of that discussion is instructive. Even in January of 1998, the Commission recognized that there would be a coming change to the long-standing obligation of incumbent telephone companies to serve upon demand. The Commission stated as follows at page 22 of its Order: "The Commission is cognizant and mindful that continuing to impose an obligation to serve upon demand upon incumbent local exchange companies is a short-run proposition given technological innovation and federal and state regulatory policy."

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Thus, the real holding in this case is that Qwest's proposal violated Commission rule and specific Commission order that Qwest provide certain service guarantees. It is not a holding that there must be a tariffed, wireline service offering.

In this case, Inland is not trying to gain unbridled discretion as to where it will or will not serve. The tariff filing presented by Inland in this case is a recognition of the reality that it cannot physically serve the Suncadia Resort area and has no foreseeable basis to provide service in the Suncadia Resort area.

It should be noted that the Commission did find that Qwest failed to carry a burden of demonstrating that the tariff filing was "fair, just and reasonable and in the public interest." This is a different test than "fair, just, reasonable and sufficient," which would, in the view of Public Counsel and Commission Staff, require a demonstration that the rates that would result after exiting the area would be fair, just, reasonable and sufficient. Inland's discussion of the tests of fair, just and reasonable and in the public interest are contained in its response to Commission Staff but will not be repeated here.

Another case cited by Public Counsel is WUTC v. US West Communications, Inc., Docket Nos. UT-911488, UT-911490 and UT-920252 (Consolidated), Fourth Supplemental Order (November 1993). This was actually a rate filing changing the rates Qwest charged for Centrex Service. It was consolidated with a complaint and order instituting investigation to determine whether the competitively classified Centrex Services should be reclassified as non-competitive. This case involved issues of imputation, price squeeze between regulated and competitive services, unbundling of bottleneck or gateway services from other services, and a host of other issues. One

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of those issues was an attempt by Qwest to limit resale of services in a certain segment of the Centrex market. At best, this case stands for the proposition that within a competitive environment, once a service has been classified as competitive, in order to restrict offerings of lines of service within the overall service, a company must have prior Commission approval. It has limited applicability, if any, to the tariff filing before the Commission in this docket.[2]

The third and final case cited by Public Counsel in this context is WUTC v. US West Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (1996). This case was one in a long line of Centrex cases, which are summarized within the Background section of the Commission's Order. There had been an extreme level of controversy between Qwest (then US West) and the Commission as to the appropriate treatment of Centrex and its affect on competitive markets. The Commission considered Qwest's argument that a withdrawal of service does not fall under RCW 80.04.130 allowing suspension of tariff changes. The Commission found that the statute contemplates that where there is a tariff filing "the effect of which" is to change any rate or charge theretofore charged, the Commission can suspend and the reasonableness and justness of the tariff filing is at issue. It is without doubt that there would have been an effect on the existing rates charged to customers by Qwest through the company's tariff filing. It is in that context that the Commission applied the test that there was a change in rates or charges to existing or potential future customers that would result from the withdrawal of service. In the case before the Commission in this docket, that is not the case. There are no customers which are affected by the filing for which rates will change. The cause of this state of facts is that Inland is precluded from serving the Suncadia Resort area.

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[2] The Commission correctly applied the "fair, just, reasonable and sufficient" test to the proposed rates and charges. That, of course, is not the issue in this docket.

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This is not a case in which rates have been charged customers and will be changed because of the withdrawal of the tariff filing. This is a tariff change that reflects the reality that Inland cannot provide service and has not provided service to residential customers within the Suncadia Resort area.[3]

It is also worth noting that in the cited case, Qwest's claim as the basis for withdrawal of the service is that the service had become obsolete. The evidence in the record showed that the service was not obsolete. See, Finding of Fact 7. In the case before the Commission in this docket, the contention is that the company cannot serve the Suncadia Resort area. The evidence is uncontroverted that the fact is that Inland cannot serve the Suncadia Resort area at the present time and for the foreseeable future.

3. Public Counsel is Mistaken as to the Effect of the Availability of Wireless Service.

In footnote 5, Public Counsel argues that "The record contains what appears to be hearsay evidence that wireless service exists within the territory." Public Counsel goes on to argue that the Commission has found that wireless companies will not be fulfilling the role of a suitable tariffed alternative any time in the near future, citing to In Re: Joint Application of Verizon Communications Inc. and MCI, Inc., Docket No. UT-050814, Order No. 07 at paragraph 70 (2005). The authority cited by Public Counsel does not support the proposition for which it is cited.

The question before the Commission in the Verizon case was a side issue to the requested merger. It was a question of intermodal competition between wireline and wireless services in general. In that context, the Commission determined that wireline is a supplemental, not substitute service.

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[3] The only service exceptions are the limited business services that are provided to Suncadia Resort itself and those will continue at tariffed rates pursuant to a contract on file with the Commission.

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That context is far different from the context that is raised by Inland. Inland is pointing out the fact that there are three wireless ETCs that have been designated by the Commission to serve the Suncadia Resort area.[4] As an ETC, each of the wireless carriers is representing that they hold themselves out throughout the area for which they have been designated as having the ability to provide basic telecommunications service. Basic service is defined in this context by the Federal Communications Commission as constituting what everyone views as the basic residential or business services that would be otherwise available from a wireline provider. The services that an ETC must provide are set forth in 47 C.F.R. §54.101 and include the concept of voice grade access to the public switched network. If a wireless company is not a substitute for a wireline company for purposes of this definition, it should not be designated as an ETC. A wireless company has to be able to provide the same level of supported services as the wireline company to be an ETC.

Further, under 47 C.F.R. §54.201(d), an entity that is designated as an ETC must be able to offer the services supported by the federal universal service support mechanism throughout the service area for which it is designated, either using its own facilities or a combination of its own facilities and resale of another carrier's services. Thus, each of the three wireless ETCs that are designated to serve the Suncadia Resort area by definition must be able to offer basic telecommunications service throughout that service area.[5]

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[4] This is not hearsay. It is fact. The Commission's orders approving the ETC status for each of the wireless carriers are on file at the Commission. See, UT-043120, UT-043011 and UT-970345.

[5] In context with recent FCC decisions, this obligation is one to commit to provide service or explain why service is not available within a reasonable period of time. The point that is being made in opposition to Public Counsel's assertion is that where a wireless carrier takes on an ETC designation, it is not simply a question of substitute versus supplementary service. It is a question of obligations under statute and rule.

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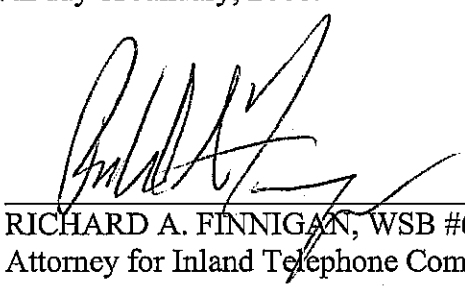
CONCLUSION

Public Counsel states at paragraph 7 of its Answer, "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." This statement is a non-sequitur. Inland has no ability to provide service to the Suncadia Resort area and has no foreseeable prospect of providing service to the Suncadia Resort area. Denying Inland's petition accomplishes nothing.

Further, it is worth noting that in one of the cases cited by Public Counsel, WUTC v. US West Communications, Inc., Docket No. UT-961638, Fourth Supplemental Order (1998), the Commission made a specific conclusion of law that RCW 80.36.090, the statutory obligation to serve, applies equally to all telecommunications companies offering to provide basic local exchange telecommunications service whether competitive or incumbent. See, Conclusion of Law 3 at page 28. This means that to the extent ICS undertakes to provide basic local telecommunications service in the Suncadia Resort area, the statutory obligation to serve applies to it and the public interest is satisfied.

For all of the foregoing reasons, Inland respectfully requests that Public Counsel's arguments not be given weight and Staff's Motion be denied.

Respectfully submitted this 17th day of January, 2006.



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