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1 P R O C E E D I N G S

2 JUDGE RENDAHL: Let's be on the record. Good
3 afternoon. I'm Ann Rendahl, the administrative law
4 judge presiding over this proceeding. We are here
5 before the Washington Utilities and Transportation
6 Commission on Wednesday, April the 23rd, 2008, for a
7 prehearing conference in Docket UT-053041, which is
8 captioned, in the matter of the petition of Intelligent
9 Community Services, ICS, for designation as an eligible
10 telecommunications carrier, or ETC, under 47 U.S.C.,
11 Section 214(e)(2).

12 The purpose of our prehearing this afternoon
13 is to take appearances from the parties, address any
14 petitions for intervention, identify any issues for
15 decision, discuss the procedural schedule, and any
16 other procedural issues the parties wish to discuss.
17 So before we go any farther, let's take appearances
18 from the parties, beginning with the petitioner, and I
19 have a question first for you, Mr. Kopta. Is the
20 company Intelligent Community Services, Incorporated,
21 or Inc., or is it just Intelligent Community Services?

22 MR. KOPTA: That's a good question. I'm
23 assuming that we set it correctly when we filed our
24 petition, which I don't have a copy of in front of me
25 right now, but I believe it's "incorporated."

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1 JUDGE RENDAHL: Your petition says
2 "incorporated."

3 MR. KOPTA: That would be correct then.

4 JUDGE RENDAHL: The notice did not include
5 the "Inc.", and I just noticed that.

6 MR. KOPTA: I appreciate that.

7 JUDGE RENDAHL: Mr. Kopta, please go ahead.

8 MR. KOPTA: Thank you, Your Honor. Gregory
9 J. Kopta of the law firm Davis Wright Tremaine, LLP, on
10 behalf of Intelligent Community Services, Inc. The
11 address is 1201 Third Avenue, Suite 2200, Seattle,
12 Washington, 98101-3045. Telephone is (206) 757-8079;
13 fax, (206) 757-7079; e-mail, gregkopta@dwt.com.

14 JUDGE RENDAHL: Thank you. For purposes of
15 the courtesy service list, do you wish to include
16 Mr. Jeffrey Tillman on that courtesy e-mail list as
17 well?

18 MR. KOPTA: Yes.

19 JUDGE RENDAHL: And his name and information
20 are in your petition, so I'll just take that off the
21 petition and put it on the courtesy list.

22 MR. KOPTA: Thank you, Your Honor.

23 JUDGE RENDAHL: Is there anyone else who
24 should be on that list?

25 MR. KOPTA: Probably Keith Southard.

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1 JUDGE RENDAHL: Is he also in the petition?

2 MR. KOPTA: I don't know that he is, but I
3 will provide you with that information. I don't know
4 that I have his exact e-mail address with me at the
5 moment.

6 JUDGE RENDAHL: How do you spell his name?

7 MR. KOPTA: S-o-u-t-h-a-r-d.

8 JUDGE RENDAHL: Thank you. Just a point of
9 procedure, I know this case has been going on in
10 various stages for a long time. Mr. Finnigan, have you
11 stated an appearance in this matter? Have your clients
12 intervened in this matter previously?

13 MR. FINNIGAN: I did file a notice of
14 appearance in 2005, and I believe that was filed on
15 behalf of the Inland Telephone Company, if my memory
16 serves me correctly.

17 JUDGE RENDAHL: Why don't we renew your
18 appearance, and I assume you are going to be making an
19 oral petition for intervention today?

20 MR. FINNIGAN: That is correct.

21 JUDGE RENDAHL: State your appearance,
22 please.

23 MR. FINNIGAN: Richard A. Finnigan on behalf
24 of Inland Telephone Company and the Washington
25 Independent Telecommunications Association. My address

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1 is 2112 Black Lake Boulevard Southwest, Olympia,
2 Washington, 98512. Phone is (360) 956-7001. The fax
3 is (360) 753-6862, and e-mail is
4 rickfinn@localaccess.com.

5 JUDGE RENDAHL: For Commission staff?

6 MS. CAMERON-RULKOWSKI: Jennifer
7 Cameron-Rulkowski, assistant attorney general. My
8 address is 1400 South Evergreen Park Drive Southwest,
9 Olympia, Washington, 98504. Telephone number is (360)
10 664-1186. Fax is (360) 586-5522. E-mail is
11 jcameron@utc.wa.gov.

12 JUDGE RENDAHL: I neglected to ask you,
13 Mr. Finnigan, is there anyone for Inland or WITA that
14 you would wish to be included on the courtesy e-mail
15 list for notices and orders?

16 MR. FINNIGAN: For WITA, it would be Terry
17 Stapleton. I will get you his information, and for
18 Inland, it would be James Brooks, and again, I'll
19 supply that to you.

20 JUDGE RENDAHL: Thank you. And

21 Ms. Cameron-Rulkowski?

22 MS. CAMERON-RULKOWSKI: No, Your Honor.

23 JUDGE RENDAHL: Would Mr. Saunders like to
24 have that information?

25 MS. CAMERON-RULKOWSKI: I believe Staff will

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1 receive the information as a matter of course.

2 JUDGE RENDAHL: I'm not sure if we get
3 everybody on the courtesy e-mail list, but I'll check.
4 With that, let's move forward. Is there anyone on the
5 conference bridge who wishes to make an appearance at
6 the hearing this afternoon? Hearing nothing,
7 Mr. Finnigan, please go ahead with your oral petition
8 for intervention.

9 MR. FINNIGAN: Inland Telephone Company
10 serves the Roslyn exchange. ICS is operating in the
11 Roslyn exchange; although, in an area that Inland is
12 physically prevented from serving at the present time,
13 and ICS has sought -- it's not clear to me exactly what
14 they are seeking, but some form of agreement for the
15 exchange of traffic between Inland and ICS, and Inland
16 has a direct interest in the manner in which ICS
17 operates within the exchange that Inland serves.
18 Inland is a WITA member.

19 WITA has an interest in this case to the
20 extent that this case presents fairly new and unusual
21 facts that as the chairman identified at the meeting in
22 discussing this matter could set precedent that would
23 occur in other areas of the state.

24 JUDGE RENDAHL: Is there any objection to the
25 oral petitions for intervention by Inland and WITA in

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1 this proceeding; Mr. Kopta?

2 MR. KOPTA: No objection, Your Honor.

3 JUDGE RENDAHL: Staff?

4 MS. CAMERON-RULKOWSKI: No objection.

5 JUDGE RENDAHL: Considering the basis for
6 intervention that you've stated, Mr. Finnigan, for your
7 two clients, and the lack of opposition by the other
8 parties, the petitions for intervention for Inland and
9 WITA are granted for this proceeding.

10 MR. FINNIGAN: Thank you.

11 JUDGE RENDAHL: The other issues we need to
12 talk about, a few administrative matters, and then we
13 are going to talk about the schedule. Do the parties
14 wish to enter a protective order in this proceeding?

15 MR. KOPTA: Yes, Your Honor. We would like
16 to have a protective order, and I know right now that
17 there will be some information that we would consider
18 also to be highly confidential, so we would ask that
19 the standard highly confidential and confidential
20 protective order be entered in this proceeding.

21 JUDGE RENDAHL: Is there any objection to a
22 highly confidential protective order being entered?

23 MS. CAMERON-RULKOWSKI: Not on behalf of
24 Staff, Your Honor.

25 JUDGE RENDAHL: All right. What I will do is

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1 the Commission has entered a variety of highly
2 confidential protective orders in various cases, so I
3 will work with my staff to identify what is standard
4 and circulate it to all of you for review, and if the
5 terms of that order meet your needs, there is no need
6 to modify anything and we will go ahead and enter it,
7 but I think it's worthwhile doing that without having a
8 motion to modify the protective order. We'll get it
9 worked out in advance.

10 MR. FINNIGAN: Your Honor, there is an issue
11 about the protective orders that I want to raise. I
12 assume one of the documents that is going to be subject
13 to confidentiality is the operating agreement, for lack
14 of a better term, between ICS and Suncadia Resort.

15 MR. KOPTA: That's correct.

16 MR. FINNIGAN: One of the issues in this case
17 is going to be whether Inland Telephone Company can
18 have access to Suncadia Resort under those terms and
19 conditions that are set out in that agreement. That
20 means my clients will need to see that agreement, and
21 normally, the way the protective order is written is
22 that employees of a party aren't able to see items that
23 are marked confidential.

24 Now, I don't think there is any reason that
25 my client needs to see the material that is highly

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1 confidential, which would actually be the actual dollar
2 terms, if I remember correctly from the last case --

3 MR. KOPTA: That's correct.

4 MR. FINNIGAN: -- but they need to know
5 generally what the terms and conditions are to be able
6 to function in this case, so I would like to suggest
7 that the protective order needs to be written in such a
8 way that they can see sort of the vanilla confidential
9 material.

10 JUDGE RENDAHL: As opposed to the hot fudge
11 on top?

12 MR. FINNIGAN: That's correct.

13 JUDGE RENDAHL: My suggestion would be that I
14 would again circulate to you what is our standard and
15 have, particularly Mr. Kopta and Mr. Finnigan,
16 negotiate what the appropriate terms for your client to
17 view this document which is central to the issues in
18 the case and then work with Staff if you have any
19 issues you need to work with from Staff and then send
20 to me what is your agreed protective order. I am not
21 in your shoes, in your client's shoes, so I think it's
22 best for the two of you or for the three of you to work
23 on an agreed highly confidential agreement.

24 MR. KOPTA: I think we should be able to do
25 that. I don't know that it's necessary in general to

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1 exclude employees or just certain employees that engage
2 in certain activities, so I think there is room for us
3 to reach an agreement on an appropriate protective
4 order.

5 JUDGE RENDAHL: That's good to hear. I will
6 do that after today. I will circulate that agreement
7 to all of you.

8 In terms of discovery rules, I'm assuming you
9 all wish to invoke the discovery rules as well, or
10 maybe not?

11 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

12 JUDGE RENDAHL: All right. So the Commission
13 will invoke the discovery rules under WAC 480-07-400 to
14 480-07-425 in this proceeding, and finally, do the
15 parties wish to request a one-day extension of time to
16 file documents with the Commission allowing electronic
17 submission on the deadline?

18 MR. KOPTA: Yes, Your Honor.

19 MR. FINNIGAN: Yes, Your Honor.

20 JUDGE RENDAHL: So I will grant that under
21 WAC 480-07-145, Sub 6, so the parties in this
22 proceeding can submit electronically all documents on
23 the deadline set in the procedural schedule.

24 Let's move on to the procedural schedule.
25 Have the parties had any discussions prior to the

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1 prehearing about a draft procedural schedule for this
2 case?

3 MR. KOPTA: Your Honor, we have had, at least
4 Staff and I have had some preliminary discussions in
5 terms of how to proceed on this, and it might make
6 sense at this point to have some discussions off the
7 record because I don't think that we've quite come up
8 with exactly what kind of procedure we think is
9 appropriate, and then once we do that, I think we will
10 be able to come up with a schedule.

11 JUDGE RENDAHL: Would you like me to vacate
12 the room while you have those discussions, or do you
13 need me in the room for dates?

14 MR. KOPTA: Actually, it might be beneficial
15 to have you in the room when we are discussing what
16 type of procedure would be most appropriate. We can
17 discuss among ourselves a schedule that makes sense,
18 but the first thing we need to discuss would benefit
19 from having you participate.

20 JUDGE RENDAHL: Should that discussion be on
21 the record, or do we need to go off the record for
22 that?

23 MR. KOPTA: It might make more sense to do it
24 off the record, and if we need to memorialize it for
25 any reason, we can do that.

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1 (Discussion off the record.)

2 JUDGE RENDAHL: While we were off the record,
3 I initially engaged in discussion with the parties
4 about the process for this case. There was some
5 discussion as to whether a paper record might be an
6 appropriate record to resolve this case, an efficient
7 way of resolving the issues, but having listened to the
8 Commissioners' statements during the open meeting from
9 the MP-3 recording on the Commission's Web site -- I
10 was not at the open meeting when this was addressed --
11 I believe it's appropriate to have a hearing scheduled
12 in this matter.

13 Once all the prefiled testimony and evidence
14 has been submitted and the issues are laid out whether
15 there is, in fact, a need for hearing of questioning of
16 any of the witnesses, we will decide that at a status
17 conference. The parties have identified the need for a
18 status conference.

19 There is also a question of whether we should
20 use an alternative method other than prefiled testimony
21 for the purpose of getting possible witnesses'
22 information into the record as opposed to declarations
23 or affidavits, and I had determined that it's best to
24 use the traditional method in case we do go to hearing
25 as opposed to then trying to convert declarations and

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1 affidavits, etcetera, into a form usable for hearing,
2 so that's a summary of our discussion off the record.

3 Also, the parties talked about or asked the
4 Commission to identify issues in the prehearing
5 conference order that should be addressed, but I think
6 the parties have come up with an alternative during
7 their discussions about scheduling. So the schedule
8 that the parties have discussed off the record and
9 agreed to with some additional input when I returned,
10 the parties will submit an issues list by May 2nd. Is
11 that a joint issues list, or is that each party will
12 submit an issues list?

13 MR. KOPTA: It's a joint issues list.

14 JUDGE RENDAHL: A joint issues list will be
15 submitted on May 2nd, and then a week later on May 9th,
16 if there are additional issues the Commission wishes
17 the parties to address, the Commission will issue a
18 notice of additional issues identifying those issues
19 that also need to be addressed in the prefiled
20 testimony. Opening testimony by ICS, and I assume
21 Staff or just ICS, is on May 23rd?

22 MR. KOPTA: Just ICS at this point.

23 JUDGE RENDAHL: Then responsive testimony by
24 Inland and WITA will be June 9th; is that correct?

25 MR. FINNIGAN: And Staff.

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1 JUDGE RENDAHL: And then reply testimony for
2 all would be on August 6th. A status conference would
3 be held on August 13th for the purpose of determining
4 whether there is a need for the hearing and also to
5 establish the briefing schedule, and we will also
6 discuss if we are going to hearing what the schedule
7 will be for filing cross-examination exhibits, witness
8 lists, and the proposed cross-examination time for the
9 witnesses, and then we will schedule a hearing for
10 either August 27th or August 28th, and that will be in
11 Room 108 as there is a general rate case hearing
12 scheduled for this room, and I will look at the
13 schedule for Room 108 and see which date works best.
14 Is there any preference one day or the other by the
15 parties?

16 MR. FINNIGAN: None here.

17 MS. CAMERON-RULKOWSKI: I prefer a Wednesday
18 over a Thursday.

19 JUDGE RENDAHL: With that, I think that is
20 all that we discussed off the record but we wanted on
21 the record. Is there anything that I haven't mentioned
22 on the record that we discussed off the record?

23 MR. KOPTA: No.

24 JUDGE RENDAHL: Hearing nothing on that, is
25 there anything else we need to talk about this

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1 afternoon at this prehearing conference?

2 MS. CAMERON-RULKOWSKI: Not from Staff, Your
3 Honor.

4 MR. FINNIGAN: No, Your Honor.

5 MR. KOPTA: No, Your Honor.

6 JUDGE RENDAHL: Before we adjourn, does
7 anybody wish to order a transcript? If so, you can
8 contact the court reporter. This prehearing is
9 adjourned.

10 (Prehearing adjourned at 2:22 p.m.)

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