

0031

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)
5)
6 Complainant,)
7)
8 vs.) DOCKET NO. UT-050606
9) Volume IV
10 INLAND TELEPHONE COMPANY,) Pages 31 - 194
11)
12)
13 Respondent.)
14 -----

15 A hearing in the above matter was held on
16 April 27, 2006, at 9:45 a.m., at 1300 South Evergreen
17 Park Drive Southwest, Olympia, Washington, before
18 Administrative Law Judge THEODORA MACE.
19

20 The parties were present as follows:

21 WASHINGTON UTILITIES AND TRANSPORTATION
22 COMMISSION, by JENNIFER CAMERON-RULKOWSKI, Assistant
23 Attorney General, 1400 South Evergreen Park Drive
24 Southwest, Post Office Box 40128, Olympia, Washington
25 98504; telephone, (360) 664-1188.

26 INLAND TELEPHONE COMPANY, by RICHARD A.
27 FINNIGAN, Attorney at Law, 2112 Black Lake Boulevard
28 Southwest, Olympia, Washington 98512; telephone, (360)
29 956-7001.

30 PUBLIC COUNSEL, by JUDY KREBS, Assistant
31 Attorney General, 900 Fourth Avenue, Suite 2000,
32 Seattle, Washington 98164-1012; telephone, (206)
33 464-6595.

34 Kathryn T. Wilson, CCR
35 Court Reporter

0032

1 INTELLIGENT COMMUNITY SERVICES, by GREGORY J.
2 KOPTA, Attorney at Law, Davis, Wright, Tremaine, 1501
3 Fourth Avenue, Suite 2600, Seattle, Washington 98101;
4 telephone, (206) 628-7692.

5 SUNCADIA, LLC, by JOHN L. WEST, Attorney at
6 Law, Hillis, Clark, Martin & Peterson, 1221 Second
7 Avenue, Suite 500, Seattle, Washington 98101;
8 telephone, (206) 623-1745.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

0033

1

2

INDEX OF EXHIBITS

3

4

EXHIBIT: OFFERED: ADMITTED:

5

John P. Coonan - Inland

6

1-T 40 40

7

2 40 40

8

3 40 40

9

4 40 40

10

5-T 40 40

11

6 40 40

12

7 40 40

13

ICS Cross-Exhibits

14

8 117 117

15

9 117 117

16

11 117 117

17

13 117 117

18

14 117 117

19

15 117 117

20

Staff Cross-Exhibits

21

16 55 55

22

17 54 55

23

18 54 55

24

19-C, 19-HC 167 167

25

0034

| 1 | EXHIBIT: | OFFERED: | ADMITTED: |
|----|-------------------------------|-------------|-----------|
| 2 | Public Counsel Cross-Exhibits | | |
| 3 | 20 | (withdrawn) | |
| 4 | 21 | 91 | 91 |
| 5 | 22 | 91 | 91 |
| 6 | 23 | | 167 |
| 7 | 24 | 91 | 91 |
| 8 | 25 | 91 | 91 |
| 9 | 26 | 91 | 91 |
| 10 | 27 | (withdrawn) | 174 |
| 11 | Paul J. Eisenberg - Suncadia | | |
| 12 | 31-T | 127 | 127 |
| 13 | 32 | 127 | 127 |
| 14 | 33 | 127 | 127 |
| 15 | 34 | 127 | 127 |
| 16 | 35 | 127 | 127 |
| 17 | Public Counsel Cross-Exhibit | | |
| 18 | 36 | (withdrawn) | 174 |
| 19 | Inland Cross-Exhibits | | |
| 20 | 37 | 193 | 193 |
| 21 | 38 | 193 | 193 |
| 22 | 39 | 193 | 193 |
| 23 | 40 | 193 | 193 |
| 24 | 41 | 193 | 193 |
| 25 | 42 | 193 | 193 |

0035

| | EXHIBIT: | OFFERED: | ADMITTED: |
|----|--------------------|----------|-----------|
| 1 | | | |
| 2 | 43 | 193 | 193 |
| 3 | 44 | 193 | 193 |
| 4 | 45 | 193 | 193 |
| 5 | 49 | 193 | 193 |
| 6 | 50 (Bench Request) | 186 | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| 13 | | | |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |
| 21 | | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | | | |

0036

1

2

INDEX OF WITNESSES

3

4

WITNESS:

PAGE:

5

JOHN P. COONAN:

6

7

Direct Examination by Mr. Finnigan 39

8

Cross-Examination by Ms. Cameron-Rulkowski 40

9

Cross-Examination by Ms. Krebs 59

10

Cross-Examination by Mr. Kopta 93

11

Redirect Examination by Mr. Finnigan 120

12

13

14

15

PAUL J. EISENBERG:

16

17

Direct Examination by Mr. West 126

18

Cross-Examination by Ms. Cameron-Rulkowski 127

19

(Separate confidential record.) 131-157

20

(Separate confidential record.) 158-166

21

Cross-Examination by Ms. Krebs 167

22

Cross-Examination by Mr. Finnigan 174

23

24

25

0037

1 PROCEEDINGS

2 JUDGE MACE: Let's be on the record in the
3 case of Washington Utilities and Transportation
4 Commission against Inland Telephone Company. This is
5 Docket No. UT-050606. Today is April 27th, and we are
6 here at the offices of the Washington Utilities and
7 Transportation Commission in Olympia, Washington, for
8 an evidentiary hearing in this case.

9 My name is Theodora Mace. I'm the
10 administrative law judge who has been assigned to hear
11 the case, and at this point, I would like to have the
12 brief oral appearances of counsel beginning with this
13 side of the table. (Indicating.)

14 MS. CAMERON-RULKOWSKI: Jennifer
15 Cameron-Rulkowski, assistant attorney general,
16 representing Commission staff.

17 MS. KREBS: Judy Krebs, assistant attorney
18 general, representing the public counsel section of the
19 attorney general's office.

20 MR. KOPTA: Gregory J. Kopta of the law firm
21 Davis Wright Tremaine, LLC, on behalf of Intelligent
22 Community Services.

23 MR. FINNIGAN: Rick Finnigan on behalf of
24 Inland Telephone Company.

25 MR. WEST: John West appearing on behalf of

0038

1 Suncadia, LLC.

2 JUDGE MACE: I'm not thinking of anything
3 that I have to address particularly in the way of
4 preliminaries except I did need to have an idea of the
5 order of cross-examination for Mr. Coonan.

6 Before we go to that, let me ask the parties
7 if there is anything of a preliminary nature that we
8 need to address on the record at this point?
9 Mr. Coonan will be cross-examined by Staff, Public
10 Counsel, and ICS according to the information I have.
11 What order are you going to proceed for cross? Have
12 you talked about that?

13 MS. CAMERON-RULKOWSKI: We haven't discussed
14 it.

15 JUDGE MACE: So it will be Staff, Public
16 Counsel, and ICS; is that correct?

17 MR. KOPTA: Yes, Your Honor.

18 JUDGE MACE: So our first witness is
19 Mr. Coonan. Is this the first time you are testifying
20 in something like this?

21 THE WITNESS: In something like this, yes.

22 JUDGE MACE: I'm sure your counsel has talked
23 to you about our procedures here. The first is you
24 will have to stand and raise your right hand because I
25 will swear you in.

0039

1 Whereupon,

2 JOHN P. COONAN,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 JUDGE MACE: It's really important, and it's
7 important for all the witnesses in the room, to make
8 sure you speak up because the reporter is going to be
9 taking down every word you say, and we want to make
10 sure she takes it accurately, and she's concerned about
11 that too, so please speak slowly and clearly.

12 Mr. Finnigan?

13

14

15 DIRECT EXAMINATION

16 BY MR. FINNIGAN:

17 Q. Mr. Coonan, would you please state your name,
18 spell your last name, and give us your business address
19 for the record?

20 A. My name is John Coonan, C-o-o-n-a-n,
21 treasurer of Inland Telephone Company, and our business
22 address is 103 South Second, Roslyn, Washington, 98941.

23 Q. Mr. Coonan, do you have with you your
24 prefiled testimony and accompanying exhibits, which are
25 marked JPC-1-T through JPC-7, and for the record,

0040

1 Exhibits 1-T through 7?

2 A. Yes, I do.

3 Q. Were these exhibits prepared by you or under
4 your direction or supervision?

5 A. Yes, they were.

6 Q. Do you have any corrections or modifications
7 to offer at this time?

8 A. No, I don't.

9 Q. If you were to be asked the questions that
10 are in Exhibits 1-T and 5-T, would your responses be
11 the same?

12 A. Yes.

13 MR. FINNIGAN: Your Honor, I'll offer
14 Exhibits 1-T through 7, and Mr. Coonan is available for
15 cross-examination.

16 JUDGE MACE: Is there any objection to the
17 admission of the exhibits? Hearing no objection, I
18 will admit them, and let's turn to Ms. Rulkowski.

19

20

21 CROSS-EXAMINATION

22 BY MS. CAMERON-RULKOWSKI:

23 Q. Mr. Coonan, on Page 7 of your direct
24 testimony, and I can give you a moment if you would
25 like to turn to that page, starting at Line 11, you

0041

1 state that if Inland could have access on reasonable
2 terms and conditions, Inland would be very willing to
3 provide telecommunications service to the Suncadia
4 Resort area. Now that ICS has signed a contract with
5 Suncadia, is this statement still accurate?

6 A. Yes. If we could obtain an easement on
7 reasonable terms, we would still be interested in
8 serving the resort.

9 Q. If Inland received access on reasonable terms
10 and conditions, would Inland be willing to provide
11 Plain Old Telephone Service only?

12 A. Yes, we would.

13 Q. Does Inland hold any easements from Suncadia
14 at this time?

15 A. I don't believe so.

16 Q. How is Inland providing existing service to
17 the Discovery Center?

18 A. We entered into what I believe is called a
19 right-of-entry agreement.

20 JUDGE MACE: Could you tell me what is the
21 Discovery Center?

22 THE WITNESS: The Discovery Center is what I
23 understand is Suncadia's, basically, sales center.
24 It's parts of Suncadia's business operations.

25 JUDGE MACE: Thank you.

0042

1 Q. (By Ms. Cameron-Rulkowski) And now I have a
2 somewhat hypothetical question for you. Now that there
3 is a contract for telecommunications service for
4 Suncadia, let's assume that a resident with existing
5 service from ICS, or a successor in interest to ICS,
6 would like to switch to service from Inland -- we are
7 also assuming that the boundary modification is not
8 approved -- what plant would Inland have to install and
9 what expenses would Inland incur to serve that
10 resident?

11 MR. FINNIGAN: Does your hypothetical assume
12 that Inland has an easement that allows it to have
13 access to the customer?

14 MS. CAMERON-RULKOWSKI: Yes, it does.

15 MR. FINNIGAN: Okay.

16 THE WITNESS: I guess it depends on the type
17 of service the customer desires and where they are
18 located in the resort.

19 Q. (By Ms. Cameron-Rulkowski) Let's assume that
20 this is a standard suburban neighborhood.

21 MR. FINNIGAN: I'll object to that because
22 that has no fact in the record to sustain it.

23 Q. In the resort area, some houses are closer to
24 the street and some are further, so if you want to
25 qualify your answer with that differentiation, that's

0043

1 fine.

2 A. Could you rephrase the question or repeat the
3 question, please?

4 Q. Certainly. I can also give you a reference.
5 This is in reference to your discussion about having to
6 depreciate plant, and also you discussed the
7 substantial investment expense of serving a few
8 customers, and so I wanted to know if there is a
9 resident who has existing service in Suncadia, what
10 plant would Inland have to install and what expenses
11 would Inland incur to serve that resident?

12 MR. FINNIGAN: Just to be clear, are your
13 references to his reply testimony?

14 MS. CAMERON-RULKOWSKI: On Page 6, there is a
15 discussion --

16 JUDGE MACE: Is this his direct testimony?

17 MS. CAMERON-RULKOWSKI: Yes. There is a
18 discussion of depreciating plant, and on Page 9 of the
19 reply testimony, there is a discussion of the
20 investment expense.

21 MR. FINNIGAN: Thank you.

22 THE WITNESS: Again, it's very difficult to
23 answer that question. I don't know if you've been to
24 the resort, but there is homes that I understand are
25 being built sporadically. They are not necessarily all

0044

1 in one cluster. So we may have to put in a backbone
2 type facility to get to that customer.

3 In doing so, I expect our engineers to say,
4 Let's do this so if other customers want to -- since
5 this is all hypothetical -- if other customers want to
6 later ask for Inland service, again, using your
7 assumptions, we try to design that so we wouldn't have
8 to rebuild things twice. That would be a fairly
9 substantial investment, could be. Obviously, there is
10 the drops to the home. I understand the customers or
11 Suncadia would like their customers to have
12 state-of-the-art facilities, so fiber to the home, not
13 necessarily to the curb.

14 So your question, I can't answer it real
15 precisely because it could be millions of dollars. It
16 could be hundreds of thousands of dollars depending on
17 the location of that particular customer.

18 Q. Could you explain backbone infrastructure?

19 A. For instance, you have what we call a trunk,
20 or it's basically the pipe that gets from our central
21 office equipment out into the area where the
22 development is, and from that, then you have spurs or
23 runs that run off to different areas, and from there,
24 you have your loop that goes from that run to the
25 residence.

0045

1 Q. Thank you. What I'm trying to find out is if
2 ICS will be serving the resort community, and that's
3 the assumption we are operating under, how would
4 Inland's investment in plant be different under that
5 scenario rather than under the scenario that there was
6 no telecommunications provider?

7 A. I'm not sure I understand your question.

8 Q. When we initially filed testimony, there was
9 no telecommunications provider for the resort. Now
10 there is a contract that provides telecommunications
11 service to the resort. Given that there will be
12 telecommunication services provided to the resort, how
13 would Inland's investment in plant be different under
14 those circumstances?

15 A. First off, I haven't seen a contract, but I
16 will take everybody's word for it there is a contract
17 in place today --

18 Q. Let me interrupt you briefly. We'll assume
19 we are talking about the situation of a resident with
20 existing service, so this resident already has
21 telecommunication services, and what would Inland's
22 investment in plant need to be?

23 A. Again, like I said, it really depends. My
24 understanding is that Suncadia owns the fiber backbone,
25 which I referred to before. That's my understanding.

0046

1 If we had to put our own fiber in, obviously that would
2 be fairly spendy to get to the customer.

3 I don't know. These are hypotheticals. I
4 can't really speculate on whether we have access to
5 Suncadia's fiber, and I don't know the arrangements
6 that they made with ICS. It's really hard to answer
7 the question. It really depends on the actual facts
8 and circumstances at the time and where the customer is
9 located. We could have to put duplicative facilities
10 out there theoretically.

11 Q. Is it possible that Inland would provide
12 service to Suncadia residences or ICS lines through a
13 lease or other arrangement?

14 A. I don't know if ICS has lines there today.
15 Again, my understanding is Suncadia owns the fiber.

16 Q. Is it possible that Inland could provide
17 service to Suncadia residents over Suncadia fiber
18 and/or any lines of ICS?

19 MR. FINNIGAN: I'm going to object that the
20 hypothetical has gone way, way afield, and I don't know
21 that it's adding anything useful to the record.

22 JUDGE MACE: Any response?

23 MS. CAMERON-RULKOWSKI: What I'm trying to
24 find out is how much plant Inland would actually have
25 to install, and so I would like to know if it's

0047

1 possible if Inland could provide service with a minimum
2 installation of plant or possibly a minimum
3 installation of plant.

4 JUDGE MACE: I'm going to allow the answer.

5 Do you need to have the question repeated?

6 THE WITNESS: Please, thank you.

7 Q. (By Ms. Cameron-Rulkowski) Is it possible
8 that Inland could provide service to Suncadia residents
9 and businesses over the lines of Suncadia or ICS,
10 depending on which lines were needed, through a lease
11 or other arrangement?

12 A. It may be possible, and again, it would
13 depend upon the terms of the lease or other
14 arrangement. If it was acceptable to Inland, it's
15 possible.

16 Q. If the terms would be acceptable, it would be
17 possible; is that correct?

18 A. I believe so.

19 Q. One more question along those lines. Have
20 you discussed any sort of arrangement with ICS dealing
21 with using their lines if they were to become the
22 provider at Suncadia?

23 MR. FINNIGAN: Is this a hypothetical
24 question?

25 MS. CAMERON-RULKOWSKI: No.

0048

1 MR. FINNIGAN: Then I will object because
2 there is no evidence in the record that ICS has any
3 lines.

4 MS. CAMERON-RULKOWSKI: I'll rephrase the
5 question. May I rephrase the question?

6 JUDGE MACE: Yes.

7 Q. (By Ms. Cameron-Rulkowski) Have you discussed
8 using future ICS lines should they be installed in the
9 resort?

10 A. No discussions have taken place along those
11 lines.

12 Q. Now I'm going to ask you to refer to the
13 exhibit marked No. 18, which is a list of services
14 Inland offers itself or through affiliates.

15 A. I believe I have that.

16 Q. Are you familiar with that list?

17 A. I'm not.

18 Q. Would you like to take a brief moment to
19 review it?

20 A. (Witness complies.)

21 JUDGE MACE: This is Inland's response to
22 Staff Question 14.

23 MR. FINNIGAN: I was going to wait for the
24 first question, some nonfoundational to be asked, but,
25 Your Honor, this is a substantially redacted portion of

0049

1 the response to Exhibit DR-14. The entire response is
2 that thick, over an inch thick for the record, and I've
3 talked with Staff about the purpose for which they are
4 offering this exhibit, and I'm not going to have an
5 objection to it, but I want to note that Public Counsel
6 has a different redacted version that I may have an
7 objection to, but I want to make sure I'm not waiving
8 that possible objection by allowing Staff to talk about
9 these two pages.

10 JUDGE MACE: Very well. Have you had a
11 chance to review this?

12 THE WITNESS: I'm looking at it, yes, Your
13 Honor.

14 Q. (By Ms. Cameron-Rulkowski) Does that appear
15 to be a true and accurate record of Inland's response
16 to Question 14?

17 A. Without understanding the context or without
18 a transmittal letter with this noting what it is, I
19 hesitate to --

20 JUDGE MACE: Do you want to review that to
21 make sure this is accurate?

22 THE WITNESS: I don't know if that would help
23 me or not. It could.

24 JUDGE MACE: If this is something Inland
25 provided, it's kind of rough if the witness can't talk

0050

1 about it.

2 MR. FINNIGAN: We can say for the record that
3 this is something that Inland provided in response to
4 data request. What we've got, of course, is probably a
5 couple hundred pages of material that was provided in
6 that response, and he's been asked to single out two
7 pages and respond to two pages, but for the record, it
8 certainly was part of the data request.

9 MS. KREBS: One is authenticity, which I hear
10 Mr. Finnigan vouching for. You would stipulate to
11 that.

12 MR. FINNIGAN: Correct.

13 MS. KREBS: And then I believe the question
14 is -- what I heard Ms. Cameron-Rulkowski ask is if he
15 could identify that this accurately reflects the
16 services they provide, and I believe he could do that.

17 MR. FINNIGAN: I would appreciate you letting
18 the witness answer the question.

19 JUDGE MACE: One of the things I need to have
20 happen here is if you have an objection or a problem,
21 address it to me. I've been a little lax about
22 enforcing that, but I would rather not have a
23 discussion amongst counsel. Let's go back to asking
24 the witness if he has any familiarity with the exhibit.

25 THE WITNESS: I don't recall seeing this

0051

1 exhibit before, even though it was provided, according
2 to my counsel, with one of our responses.

3 Q. (By Ms. Cameron-Rulkowski) All right. What
4 I'm trying to find out is if you can tell it's a true
5 and accurate copy of what was provided. I understand
6 that you are available to testify on the evidence here
7 today, and my purpose of it is simply to look at the
8 listing of services, so perhaps you could run your eye
9 over the listing of services and tell us if that
10 appears to be accurate in terms of the services that
11 were offered by Inland and its affiliates during the
12 time of the negotiations.

13 A. Assuming this was prepared by my staff, then
14 I would believe this is an accurate representation. If
15 I could add to that, at least with respect to Inland
16 Telephone Company.

17 JUDGE MACE: I'm not sure what you mean by
18 that.

19 THE WITNESS: I'm the treasurer of Inland
20 Telephone Company. I'm not an officer of R&R Cable
21 Company, but if my staff prepared this, I rely on my
22 staff. If they prepared this correctly, I would assume
23 it's accurate.

24 Q. (By Ms. Cameron-Rulkowski) My assumption is
25 that this is a list of services from Inland or its

0052

1 affiliates.

2 A. That's what it appears to be.

3 Q. So this is simply a list.

4 A. Just to clarify, when you asked if it's
5 accurate, I was concerned about pricing and those types
6 of things. I haven't had an opportunity to go back and
7 compare the prices.

8 Q. I understand, and I also understand this is a
9 historical document. In your direct testimony on
10 Page 6 in the area of Lines 20, 21, you refer to fee
11 sharing of regulated revenue. What I want to know is,
12 does the revenue contemplated there include revenue
13 from such services as appear on that list, such as
14 dial-up Internet connection, wi-fi network, cable alarm
15 systems, and med alert systems?

16 MR. FINNIGAN: Your Honor, I think I have an
17 objection to the form of the question in that the first
18 part of the question asked about regulated services and
19 the second part asked about nontelecommunication
20 services, so I have an objection to the form of the
21 question.

22 MS. CAMERON-RULKOWSKI: Your Honor, I'm not
23 trying to provide a trick question, but that's true. I
24 can rephrase that.

25 JUDGE MACE: Go ahead.

0053

1 Q. (By Ms. Cameron-Rulkowski) Does the revenue
2 contemplated include revenue from nonregulated
3 services, such as dial-up, Internet connection, wi-fi
4 network, cable alarm systems, and med alert services?

5 A. If your question refers to regulated
6 revenues, if that's what you are focusing on, no, I
7 would not include the below-the-line or nonregulated
8 revenues.

9 Q. Could you please refer to Exhibit 17?

10 MR. FINNIGAN: For the witness's assistance,
11 that's the March 12th, 2004, memorandum from Mountain
12 Star to Mr. Brooks.

13 Q. This was also provided in response to a data
14 request and is an excerpt of a larger response.

15 A. I just received some of these additional
16 exhibits this morning. That's why I'm having
17 difficulty finding it.

18 Q. I understand.

19 A. I have that document in front of me.

20 Q. Is this a true and accurate copy of a
21 memorandum regarding proposed service to the resort
22 authored by James K. Brooks of Inland on March 12th,
23 2004?

24 A. I don't see his signature on this copy, so I
25 don't know if this is true and accurate.

0054

1 Q. Given again that these are Inland's records,
2 would you agree subject to check that this is a true
3 and accurate copy of that memorandum?

4 A. Yes.

5 Q. Would you please read the first paragraph?

6 A. "The following list demonstrates the services
7 that Western Elite Incorporated Services companies have
8 to offer to residential and business customers. For
9 some of these offerings within the Mountain Star Resort
10 project, Inland Telephone Company and its affiliates
11 (Inland) may develop an equitable revenue-sharing
12 arrangement. Percentages or flat fees may be developed
13 for nonregulated services (e.g., long distance,
14 Internet, security, and cable television.)

15 Q. Would you agree that this memo contemplates
16 fee sharing only for nonregulated services based on
17 that first paragraph?

18 A. Other than for the long distance, I would
19 agree.

20 MS. CAMERON-RULKOWSKI: I move to admit
21 Exhibits No. 17 and 18.

22 JUDGE MACE: Any objection to the admission
23 of those exhibits?

24 MR. FINNIGAN: Just subject to the
25 qualification of the subject to check, there is no

0055

1 objection.

2 JUDGE MACE: I will admit them. Thank you.

3 MS. CAMERON-RULKOWSKI: Thank you, Your
4 Honor.

5 Q. (By Ms. Cameron-Rulkowski) Would you now
6 please turn to Exhibit No. 16 ?

7 MR. FINNIGAN: If I may help the witness?

8 JUDGE MACE: Certainly. I have no problem
9 with that.

10 MR. FINNIGAN: That's the portion of the
11 tariff dealing with line extensions?

12 MS. CAMERON-RULKOWSKI: Schedules 28 and
13 28(a).

14 THE WITNESS: Was there a question?

15 Q. Yes. Is this a true and accurate copy of
16 Prescott Telephone and Telegraph Company's line
17 extension tariff sheets, Schedules 28 and 28(a), and
18 Inland's adoption of Prescott's tariff?

19 A. It certainly appears to be.

20 MS. CAMERON-RULKOWSKI: I move to admit
21 Exhibit No. 16.

22 MR. FINNIGAN: No objection.

23 JUDGE MACE: Admitted.

24 Q. (By Ms. Cameron-Rulkowski) Inland has two
25 schedules in its tariff dealing with extension of

0056

1 service. Those are the documents in front of you now.
2 Did Inland consider filing new tariff sheets covering
3 line extensions with Suncadia?

4 A. Not to my knowledge, no.

5 Q. You express concern in your testimony about
6 Inland's investments if it were to provide service to
7 Suncadia under temporary easements. Given that
8 concern, did Inland consider requesting relief from the
9 Commission from its obligation to serve?

10 A. I'm not sure I understand your question.

11 Q. Given that Inland had enough concern about
12 its obligation to serve and Inland to file the boundary
13 modification that we are discussing today, did it
14 consider the alternative of requesting relief from the
15 Commission from its obligation to serve under, for
16 example, the general exemption provision 480-120-015?

17 A. You are getting into legal. I'm not an
18 attorney, so if you could tell me what that section
19 deals with, I might be able to answer the question to
20 the best of my ability.

21 Q. Certainly. There is a provision for general
22 exemptions that is available to carriers, and when you
23 were considering the concerns about extending lines
24 into Suncadia, did you consider going to the Commission
25 and asking to have the obligation to serve waived?

0057

1 MR. FINNIGAN: I'm going to object to the
2 question as posed because it assumes a set of facts
3 that I don't believe can exist in that the question
4 posed asks whether a rule can be used to waive a
5 statutory obligation, so I don't think the question is
6 posed as a question whether it's any set of facts that
7 it can exist.

8 JUDGE MACE: She can ask the question though
9 whether it was anything that was considered or
10 discussed, and I'll get an answer. Do you have an
11 answer for that? Do you want the question repeated?

12 THE WITNESS: I guess to answer the question,
13 in real life, I would go to my counsel and say, This
14 has been posed. Could you explain to me what this
15 "general exemption" means and how it works, and then
16 based on that, at that point, we could consider it, but
17 it's hypothetical, because I'm not sure what this
18 exemption is. I don't understand how it works.

19 Q. (By Ms. Cameron-Rulkowski) So Inland did not
20 consider coming before the Commission and asking for
21 relief from its obligation to serve under any
22 regulations or statutes?

23 MR. FINNIGAN: I'm going to object again. At
24 this stage, it's getting into attorney client privilege
25 information, and we object on that basis.

0058

1 JUDGE MACE: Any response?

2 Q. Given the broad scope of this boundary
3 modification request, Staff is interested to know if
4 Inland considered alternatives, and one of the
5 alternatives would have been to come before the
6 Commission to ask for some sort of relief from the
7 obligation to serve, and Staff would simply like to
8 know if Inland had considered that?

9 JUDGE MACE: All counsel wants to know is
10 whether or not you considered that avenue. It doesn't
11 mean you decided one way or the other. Did you
12 consider the possibility of waiver? There are a lot of
13 implications about it legally. We just want to know
14 whether you considered it.

15 THE WITNESS: It's very difficult to answer
16 that question, Your Honor. Again, I really need to
17 understand what that waiver is. We have had
18 discussions with counsel prior to this and what do we
19 do when we are obligated to serve and we are not able
20 to serve because we don't have physical access. So we
21 may have discussed that, but I may not have realized
22 that's the provision she was referring to.

23 JUDGE MACE: Are you through with the
24 questions on the tariff so I can get it back from him?

25 MS. CAMERON-RULKOWSKI: Yes.

0059

1 Q. (By Ms. Cameron-Rulkowski) Finally, I have a
2 couple of questions about the term "carrier of last
3 resort" which you use, for example, on Page 7 at Lines
4 18 to 19. This is in your direct testimony. Does the
5 term appear in your tariff?

6 A. I don't know.

7 Q. Does it appear in a rule or statute to which
8 you are subject?

9 A. I don't know.

10 Q. What is your definition of the term "carrier
11 of last resort"?

12 A. My definition is it's where nobody else is
13 willing to serve that customer. In Inland Telephone's
14 case, they happen to be inside our exchange boundary as
15 those maps are filed with the Commission.

16 MS. CAMERON-RULKOWSKI: Thank you. I have no
17 further questions.

18

19

20 CROSS-EXAMINATION

21 BY MS. KREBS:

22 Q. My name is Judy Krebs, and I'm the assistant
23 attorney general representing the public counsel
24 section of the attorney general's office, and I will
25 have questions for you today.

0060

1 A. Good morning.

2 Q. Let's start with Exhibit 1, which is your
3 direct testimony. Can you turn to Page 2 of that
4 testimony, please?

5 A. (Witness complies.)

6 Q. Starting on Page 2, Line 17, you say, "In
7 order to provide excellent quality service, Inland
8 needs to have access to customers and each customers'
9 premises in order to install service, repair any
10 problems with the service, and so on. This past year,
11 it became obvious to Inland that the owners of the
12 resort were not going to allow Inland to have the type
13 of access to customers that Inland needs to provide
14 high quality service to customers. In fact, it
15 appeared that Inland would not have any access to the
16 customer premises making it impossible to provide
17 service. In order to provide excellent quality
18 service, Inland needs to have access to customers and
19 each customers' premises." Is that your testimony?

20 A. Yes, it is.

21 Q. Now, you say it's possible to provide service
22 without access to customer premises; is that correct?
23 I refer you back to the testimony.

24 A. My testimony talks about excellent customer
25 service, and you do have to have access to their

0061

1 premises if anything goes wrong to troubleshoot.

2 Without that access, we can't provide that level of
3 service.

4 Q. So I want to be clear, because if you look at
5 Lines 21 through 23 of your testimony, what you say is,
6 "In fact, it appeared that Inland would not have any
7 access to the customer premises making it impossible to
8 provide service."

9 A. That is correct.

10 Q. Now, is that any service or is that quality
11 service?

12 A. It's both.

13 Q. So you say, we cannot provide service without
14 access.

15 A. That's correct.

16 Q. Let's turn to Exhibit 33.

17 MR. FINNIGAN: For the witness's benefit,
18 that is an exhibit to Mr. Eisenberg's testimony PJE-3.

19 Q. Looking at Exhibit 33, if you want to take a
20 moment to look at it...

21 A. Okay.

22 Q. Is that your signature on the document?

23 A. Yes, it is.

24 Q. And is this a letter that you wrote to
25 Suncadia?

0062

1 A. Yes, it is.

2 Q. And the date on this letter is February 15th,
3 2005; correct?

4 A. That's what it shows, yes.

5 Q. Looking at this letter, and I'll call your
6 attention to the second sentence in the second
7 paragraph, you say, "Suncadia is proposing to install
8 and retain ownership of the fiber backbone rather than
9 having Inland or some other entity do so, and further,
10 is looking for an entity that can provide a myriad of
11 services over the network as well as manage, operate,
12 and maintain the network. I explained to the board
13 that this new approach would enable Suncadia to change
14 service providers if one does not meet Suncadia's
15 contracted service levels, and therefore, Suncadia is
16 not willing to grant any entity a utility easement for
17 communication services." Is that a correct reading of
18 what you've written?

19 A. Yes, it is.

20 Q. Do you remember writing that?

21 A. I sure do.

22 Q. Going on to Paragraph 3, you say, "Suncadia's
23 change in direction makes Inland's prior offer
24 obsolete." Do you see that?

25 A. I sure do.

0063

1 Q. So that's a correct reading of your letter.

2 A. That's correct.

3 Q. Is it fair to say that Inland's prior offer
4 that you were referring to included building a fiber to
5 the premises network from Suncadia through which Inland
6 would provide phone and other local services?

7 A. That's fair.

8 Q. Counsel for Staff drew your attention to
9 Exhibit 17, and that is the letter to Morning Star, I
10 believe?

11 MR. FINNIGAN: He no longer has that.

12 THE WITNESS: Thank you.

13 Q. (By Ms. Krebs) Is that related to the prior
14 proposal that you are referring to in that letter?

15 A. Prior to my letter here, we had made so many
16 different proposals with Suncadia and their
17 predecessors. It had been a moving target, and part of
18 the reason it was a moving target was in the early
19 years, Trendwest or Mountain Star or one of their
20 predecessors were unable to get all the things they
21 needed. They thought they were going to get water
22 rights and get them approved in the county so they
23 could continue and start selling lots, and they wanted
24 to be ready to move once they have those approvals.

25 So we have made so many different offers to

0064

1 them up until this point in time. This is probably
2 just one of the many offers we had made, but it had
3 been a moving target. When we came to an agreement
4 with their management that this was going to work, then
5 time passed and that was obsolete as well. The type of
6 technology is changing so rapidly.

7 Q. Let me be clear on the record. None of the
8 offers you had proposed up to the February 2005 letter
9 included Inland not installing fiber; is that correct?

10 A. Not to my knowledge, yes. If I'm not
11 mistaken, we were supposed to pay for that and also pay
12 for the connection to the customer's home without
13 charging the customer up until that point in time.

14 Q. So all prior proposals involve fiber to the
15 premises.

16 A. Subject to check. No, actually there were
17 some in the earlier years. I can't remember the name
18 of the company, but their slogan was, Turn your copper
19 to gold. You could bring all these advance services
20 over your copper using some new electronics they were
21 selling, and with one of Suncadia's predecessors, we
22 actually talked about that as a viable option. They
23 liked it at that time, because at that point, that was
24 futuristic.

25 Q. So given your description of turning copper

0065

1 into gold and fiber, what we are talking about is plant
2 that can carry more than just Plain Old Telephone
3 Service; is that correct?

4 A. That's correct.

5 Q. It could carry digital TV?

6 A. Fiber certainly could.

7 Q. It could carry broadband Internet?

8 A. Yes.

9 Q. It could carry alarm services?

10 A. It would provide the transport for those
11 alarm services, yes.

12 Q. Now, if Inland had installed and owned the
13 fiber, it could contract with third parties, correct,
14 to provide non wireline services or charge a fee to
15 these third parties for access over the fiber; correct?

16 A. I believe we could contract with them, but I
17 would check with our legal counsel to make sure we
18 could. Charging the fee, again, I would have to check
19 with legal counsel.

20 Q. Were those things that you entertained as a
21 possibility?

22 A. At one point in time we had.

23 Q. Now, one of the things that I've described so
24 far, did you consider either charging a fee for
25 third-party vendors or contracting with yourself to

0066

1 provide to Suncadia?

2 A. At some point in the discussions with the
3 Suncadia management, we did consider finding somebody
4 that might provide a service that we were not experts
5 at or didn't feel comfortable doing and doing it in a
6 way where we would resell it.

7 Q. What would that be?

8 A. For instance, the alarm monitoring, we
9 contract that out today, the actual monitoring of that.

10 Q. Who do you contract that out to?

11 A. I don't know. We've changed companies due to
12 customer complaints. I couldn't tell you the name. I
13 could obtain that information for you if it's
14 important.

15 Q. My understanding is that Inland's sister
16 affiliates to Western Elite include R&R Cable Company;
17 is that correct?

18 A. That is correct.

19 Q. Now, would R&R Cable Company provide the
20 cable services over the fiber network to Suncadia in
21 your prior proposal?

22 A. That was our intention.

23 Q. You said alarm services. My understanding
24 was that R&R Cable also provides alarm services. Is
25 that not correct?

0067

1 A. We do. The call center that the calls go
2 into when the alarm goes out, that we contract, so
3 there are pieces of that that we contract.

4 Q. But it would be R&R Cable that would be
5 contracting?

6 MR. FINNIGAN: Objection, ambiguous.
7 Contracting for what?

8 MS. KREBS: The additional services that
9 you've identified.

10 MR. FINNIGAN: Same objection.

11 JUDGE MACE: For example, the alarm service.

12 THE WITNESS: R&R Cable Company does business
13 as Inland Security in addition to R&R Cable, and for
14 the Inland Security piece, R&R Cable contracts with
15 this entity for actually answering and responding to
16 the alarms.

17 Q. (By Ms. Krebs) Thank you. Another sister
18 affiliate of Western Elite is Inland Long Distance, is
19 it not?

20 A. Yes, it is.

21 Q. Inland Long Distance would have been
22 providing long distance under your proposal to
23 Suncadia?

24 A. It would have been one of the companies along
25 with others under the equal access requirement.

0068

1 Q. And Inland Internet, I'm unclear. Is that
2 part of Inland Telephone Company?

3 A. Yes, it is.

4 Q. It is a nonregulated part of Inland
5 Telephone; is that correct?

6 A. That's correct.

7 Q. Inland Internet would be the Internet
8 provider you were proposing for Suncadia?

9 A. It would be one of many again.

10 Q. But in the proposal that you gave, it was
11 somewhat of a package proposal; correct?

12 A. We gave so many proposals. Again, the reason
13 I say it would be part, yes, Inland Internet would
14 provide service to those customers that requested it.
15 If we had built this plant, again, it's an avenue for
16 any Internet service provider in the area to get access
17 to the customer.

18 Q. Turning to Exhibit 23, which is Inland's
19 response to Staff Data Request No. 14, I'm going to ask
20 you to look at Page 46 of the attachment to that
21 exhibit. I've got the data request itself. Take your
22 time. It's Page 46 of that exhibit. Do you recognize
23 this letter? Have you seen it before?

24 JUDGE MACE: It actually starts with a
25 letter, because I see his pages. There is a letter

0069

1 that's dated September 17th, 2004. Why don't you flip
2 back a couple of pages.

3 (Discussion off the record.)

4 THE WITNESS: I'm with you now.

5 Q. (By Ms. Krebs) Let's start with the first
6 paragraph where it says, "Inland offered to Suncadia a
7 fiber to premises network. Said offer was for Inland
8 to pay for the infrastructure costs of the network,
9 fiber, Sonet notes, and optical network terminals, as
10 well as the cost of conduit material. That offer has
11 since expired when we did not receive the easement."
12 Do you see that?

13 A. I have.

14 Q. Have you seen this letter before?

15 MR. FINNIGAN: Objection. If I can
16 understand the purpose for which this is offered, I may
17 be wanting to withdraw the objection, but this is a
18 redaction of a much larger response to a data request,
19 and looking at it, I can't tell whether it's been taken
20 out of context or not. If there is other material that
21 should be with this, then there is no way for me to
22 evaluate it based upon that, and so I have to object as
23 being a redaction without the ability to determine
24 whether it's in or not in context.

25 JUDGE MACE: I think the question is whether

0070

1 he's ever seen it before, and I'll allow the answer to
2 that.

3 MR. FINNIGAN: I just didn't want to get too
4 far down the road.

5 THE WITNESS: Yes, I believe I've seen this
6 before.

7 Q. (By Ms. Krebs) Do you concur with the
8 statement that I've just read to you, that that's what
9 the offer was?

10 MR. FINNIGAN: Your Honor, I guess I'll have
11 to assert the objection. Like I said, if I can
12 understand the purpose for which it's being offered, I
13 may be able to withdraw the objection.

14 MS. KREBS: Your Honor, I offered to
15 Mr. Finnigan to let me just do my cross, and over lunch
16 if he feels there are documents that should be put in
17 the record, I will be happy to make copies. I didn't
18 think it would be necessary to put in paper what we are
19 going to put in evidence, but if he feels its necessary
20 after I'm done with my cross -- I see no reason why at
21 this point we need to slow down to offer the entire
22 when there is absolutely -- it doesn't even say
23 "attachment" on the document. It doesn't say
24 "enclosure." There is no evidence at all that this is
25 a contained document, the one that I'm discussing right

0071

1 now.

2 JUDGE MACE: We have a witness, and the
3 witness says he's familiar with this letter. I think
4 you can ask him the question, and if he doesn't know if
5 this is the offer that's referred to, then he can say
6 that, so I'll ask you to, Mr. Coonan, to go back to the
7 letter and look under Paragraph 1 where it says, "Said
8 offer was for Inland to install...", do you know what
9 offer that was?

10 THE WITNESS: I don't know which specific
11 offer that's referring to, no, Your Honor.

12 Q. (By Ms. Krebs) You said you knew about this
13 letter. When is it that you saw this letter?

14 A. I don't recall.

15 Q. Inland says in the third paragraph, and I'll
16 draw your attention to it, "To address the scope of
17 services, Inland Telephone or its affiliates are able
18 to provide local telephone service, long-distance
19 telephone service, Internet, cable television, private
20 networking and security system installation and
21 monitoring are all services we currently offer to
22 customers." Have I read that accurately?

23 A. Yes.

24 Q. At the time of this September 17, 2004,
25 letter, you were working at the company; correct?

0072

1 A. Yes.

2 Q. Is that an accurate statement as to that
3 date?

4 A. Your question is were we able to offer those
5 services at that date, my answer would be yes.

6 Q. In Inland's fiber to the premises proposal
7 that we've established has been consistent throughout
8 all of the back and forth; correct?

9 MR. FINNIGAN: Objection. That's not his
10 testimony. His testimony was that there are both fiber
11 and copper alternatives offered.

12 Q. What I heard you say -- I'm going to go back
13 to that because I think counsel has testified, so I
14 want to be clear on the record -- your testimony is you
15 were going to try to put in a special kind of copper
16 that had the ability to transport more than Plain Old
17 Telephone Service; correct?

18 A. That's wasn't my testimony. The copper is
19 the same copper that companies were using that was
20 actually in existence at that point in time. When I
21 referred to, "Turn you copper into gold," that was the
22 company that was trying to sell the electronic
23 equipment either already in the ground or even existing
24 customers, and that was their slogan to try to get you
25 to buy their products.

0073

1 Q. So they were end products. They weren't the
2 actual line itself.

3 A. That's correct.

4 Q. In terms of the standard form easement, and
5 I'm going to --

6 JUDGE MACE: Actually, Ms. Krebs, before you
7 launch into this next area, let's recess until 11
8 o'clock.

9 (Recess.)

10 JUDGE MACE: Let's be back on the record.
11 Ms. Krebs?

12 MS. KREBS: Thank you.

13 Q. (By Ms. Krebs) When we went off the record,
14 I was beginning to ask you about the easement that you
15 requested from Suncadia, and that would be Exhibit 32.
16 If you could turn to Exhibit 32, please.

17 A. (Witness complies.) I'm there.

18 Q. Are you familiar with this document?

19 A. Yes, I am.

20 Q. I direct your attention to the grant of
21 easement section at the bottom of the page.

22 A. Yes.

23 Q. And where it says, "Grantor, its successors
24 and assigns hereby grant to ITC its successors and
25 assigns a nonexclusive perpetual utility easement for

0074

1 communication services over, under, along, across and
2 through the real property of grantor to be depicted on
3 Exhibit A." Is that a correct reading of that?

4 A. Yes, it is.

5 Q. The easement that Inland was requesting was
6 for communication services; is that right?

7 A. It was an easement to place the facilities in
8 the ground that we were talking about at the time, the
9 fiber backbone and whatever else it took to get to the
10 customer's premises.

11 Q. But the term is "communications services," is
12 it not?

13 A. For communications services, yes, I see that.

14 Q. Going back to your direct testimony, Page 5,
15 look at Lines 18 through 23. Do you have that in front
16 of you?

17 A. Yes, I do.

18 Q. You say, "We need an easement for a very long
19 period of time in order to be able to be there and
20 provide service to customers. We access our customers
21 physically in one of two ways." Do you see that?

22 A. Yes, I do.

23 Q. "We either access them through public rights
24 of way where we have a franchise that entitles us to
25 put our equipment in the public rights of way, or we

0075

1 access them through standard utility easements over
2 private property which are perpetual in nature." Is
3 that an accurate reading?

4 A. Yes, it is.

5 Q. Now, do all of your -- this has been
6 identified as a standard easement that you propose. Is
7 that a correct characterization?

8 JUDGE MACE: You are talking now about
9 Exhibit 32?

10 THE WITNESS: Yes.

11 Q. (By Ms. Krebs) That is the standard easement
12 you propose?

13 A. There has been many years that Inland
14 Telephone before I was there. Without looking at every
15 easement, I couldn't say without absolute certainty it
16 is the standard, but it is standard for us to ask for
17 perpetual easements when we get any type of easement
18 with any private property.

19 Q. Is it standard to ask for perpetual easements
20 for communications services?

21 A. Yes, to provide communication services over
22 private property, yes.

23 Q. I draw your attention back to Exhibit 33, and
24 that's the February 15th, 2005 letter. Do you have
25 that in front of you?

0076

1 A. Yes, I do.

2 Q. It appears from this letter that Suncadia
3 decided against Inland installing and owning the fiber
4 to the premises that you had been negotiating; is that
5 correct?

6 A. At this point in time, yes, that was our
7 understanding.

8 Q. And Suncadia also decided not to give you the
9 easement you had proposed; correct?

10 A. Yes.

11 Q. And that's the easement that we just looked
12 at, Exhibit 32.

13 A. That's correct.

14 Q. Looking at the February 15th letter, and this
15 is a letter you wrote, you say, "Based on a discussion
16 with my board, Inland believes the process to
17 administer Suncadia's new approach would be very
18 cumbersome if Inland were to provide the entire myriad
19 of services Suncadia is requesting, and therefore is
20 not inclined to submit a proposal to do so." Do you
21 see that?

22 A. I see that.

23 Q. In fact, you did not submit a proposal, did
24 you?

25 A. Oh, we've submitted lots of proposals.

0077

1 Q. After this letter.

2 A. I don't know if any further discussions took
3 place regarding Inland providing service after this
4 letter. I can't recall.

5 Q. This is February 15th, 2005. This is just a
6 year ago February. You don't recall whether or not
7 there was another proposal that Inland had made after
8 this?

9 A. I don't recall. I don't believe there was
10 one, but I don't recall. Within this letter though, if
11 you continue on, we did propose to provide a choice for
12 their customers.

13 Q. Thank you. That's where I'm going next.
14 Turn back to Paragraph 4. I'll start from the
15 sentence, "However, Inland and its affiliates are
16 interested in providing Suncadia with the ability to
17 offer its homeowners a choice for those services Inland
18 and/or its affiliates provide. Those services include
19 telephone, Internet, broadband DSL, alarm monitoring,
20 and cable television. This could be accomplished
21 through an agreement with Suncadia whereby Suncadia
22 allows Inland and/or its affiliates to access
23 Suncadia's network." Do you see that?

24 A. Yes.

25 Q. That's a correct reading of your letter.

0078

1 MR. FINNIGAN: Objection. She inserted the
2 word "to" in front of "access."

3 Q. I'm sorry. Striking the word "to" before the
4 word "access"; is that correct?

5 A. Yes.

6 Q. Now, I want to be clear. In that
7 identification, those services include telephone. Does
8 that include local as well as long distance?

9 A. We would certainly be willing to provide
10 that. At the time I wrote this, I don't recall if I
11 specifically intended that, but I can't imagine why we
12 wouldn't have included that.

13 Q. You testified earlier that you thought that
14 essentially if you could get a reasonable fee or pay a
15 reasonable fee to lease access or pay a reasonable fee
16 to Suncadia, you would consider doing that, correct, to
17 provide these services?

18 A. I don't know if that's my testimony, but
19 something similar to that. If we could structure an
20 arrangement with Suncadia so we could access their
21 customers, we would certainly be interested today in
22 providing these services to their customers.

23 Q. Going to the last paragraph of that letter,
24 you say, "Please contact me at your earliest
25 convenience if you are interested in providing your

0079

1 homeowners a choice so that we may discuss the fees
2 Suncadia will be charging for access to its network."
3 Is that accurate?

4 A. Yes.

5 Q. And as we've just discussed, Inland was
6 willing to negotiate fee for access to the network.

7 A. We were willing to discuss how we would
8 create an arrangement whereby we get access. I'm
9 assuming Suncadia would want to charge some type of
10 fee. It was pretty obvious that Suncadia saw this as a
11 revenue opportunity and wanted to get a share of the
12 revenue somehow. So we knew, at least we believed,
13 there would be no way for us to access that network
14 without paying some type of fee to Suncadia.

15 Q. Did you, in fact, ever begin negotiating
16 those fees?

17 A. I don't recall Suncadia ever getting back to
18 me after I sent them this letter pursuing giving their
19 customers that choice.

20 Q. Going back to your testimony again, Page 2,
21 Lines 17 through 23 that we discussed earlier, just so
22 you can look at it again, we identified especially the
23 last three sentences in which you acknowledged that you
24 testified that without access, it would be impossible
25 for Inland to provide service. Do you recall that

0080

1 testimony?

2 A. I do.

3 Q. Isn't it true that you could have provided
4 service just as we've discussed by accessing the
5 network that Suncadia had created?

6 A. I'll go back to the document you just asked
7 me about. It appears to me Suncadia wants a de facto
8 monopoly. If they don't allow us to have access to
9 their network or they don't give us an easement that we
10 are used to getting from all other customers that are
11 private property owners, we can't access that customer.

12 Q. So I want to break that down a little bit.
13 Much of your testimony is centered on not being able to
14 receive an easement that you would require in order to
15 be able to access customers; is that correct?

16 A. That's a portion of our testimony, yes.

17 Q. Part of that testimony, and correct me if I'm
18 wrong, is that a perpetual easement is required because
19 if you were going to install plant, you need to be able
20 to upkeep the plant and protect your investment. Is
21 that an accurate characterization of your testimony?

22 A. Yes, and if I could add.

23 Q. Yes, please.

24 A. If we were to serve the resort with our own
25 facilities and install those facilities, it wouldn't be

0081

1 done in a day or a month or even a year. This is a
2 long-term development, so pieces of the investment
3 would be made over time, and with the depreciation
4 lives that are prescribed by the Commission, it takes
5 us several years to recover a lot of that investment.

6 So assuming we put the backbone in in year
7 one, year two we add plant for 20 homes, year three,
8 another additional 50 homes, year four, something new
9 comes along with technology we have to add, it keeps
10 pushing that recovery period out another 20 years in
11 some cases or greater. So therefore, we couldn't make
12 that type of investment without a perpetual easement.
13 It's not good business sense to do so.

14 Q. Isn't it true now that Suncadia and ICS will
15 likely lay all of the fiber to the premises that Inland
16 would be unlikely to seek an easement as a way of
17 providing service?

18 A. Without access to their facilities, it's
19 tough to answer that question. If we don't have access
20 to their facilities, we can't access the customers
21 without an easement to get directly to the customer
22 with our own plant.

23 Q. My question is given that ICS and Suncadia
24 appear to have installed a fiber to the premises
25 network or are in the process of doing so, would

0082

1 Inland, if it had a perpetual easement for commercial
2 services, install another duplicative plant?

3 A. The way we conduct our business is we first
4 approach Suncadia. Theoretically, if those things
5 happen, and one, I understand if we had a perpetual
6 easement, if we went to Suncadia and their agreement
7 was too onerous or we determined it was cost
8 prohibitive, we would probably not try to access their
9 facilities without making a duplicative investment.

10 In that case, we would then have to utilize
11 the easement that we are asking for to get to that
12 customer that asked for service from us because we are
13 obligated to serve customers in the exchange boundary
14 maps that are on file with the Commission, and that's a
15 big part of our problem. We are obligated to do
16 something we are not able to today and haven't been
17 able to do in the past with customer requests.

18 Q. I want to be very clear in this testimony
19 though. You do not require an easement to service
20 customers if, in fact, someone else has installed the
21 fiber to the premises network; correct?

22 A. I need some specifics or we need to frame
23 that question.

24 Q. I guess it's an either/or question. In order
25 to access customers, you either need to lay your own

0083

1 line or use someone elses. Is that an accurate
2 statement?

3 A. Yes.

4 Q. Now, what I'm trying to understand is why you
5 still feel that it is important to have an easement if,
6 in fact, there is an existing fiber network.

7 A. I believe I answered that. If we cannot
8 access that hypothetical, will Suncadia let us access
9 their network? We don't know. If they say yes, what
10 will they charge us? If that fee is so excessive, it
11 may make more sense to lay our own facilities in the
12 ground.

13 Q. Okay. I'll call your attention to Exhibit
14 21, and that's Staff Data Request No. 11. If you could
15 look at Page 2 of 12.

16 A. My exhibits aren't numbered the same as
17 yours.

18 MR. FINNIGAN: It's in the materials from
19 Public Counsel.

20 THE WITNESS: I'm there.

21 Q. (By Ms. Krebs) I'm looking at the first
22 sentence, and are you familiar with this document?

23 A. You know, I'm not.

24 Q. So you've never seen it before?

25 A. I've seen it now, when Rick gave this to me

0084

1 this morning, this packet.

2 Q. Are you aware of this project, MC-10?

3 A. I'm not.

4 Q. Let's see whether or not you can help me
5 understand this first. "Inland Telephone Company will
6 install primary telephone line within the Forest Ridge
7 large lot plat as shown on PSE design map dated and
8 approved June 8th, 2005." Do you see that?

9 A. I do see that.

10 Q. Is primary telephone line, do you know if
11 that's copper?

12 A. I wasn't involved in this document. I don't
13 know what Doug Weis, who signed this on behalf of
14 Inland Telephone Company, intended.

15 Q. I'm going to ask you to look at your
16 testimony on Page 5, and I'm going to direct you
17 specifically to Lines 14 through 15, and essentially,
18 I'm going to try to boil it down so I don't have to
19 read the entire paragraph, but why don't you review it
20 for me.

21 A. You would like me to review the entire
22 answer?

23 Q. Just go ahead and review it for yourself so
24 you know what you say.

25 A. (Witness complies.) Okay, I've finished

0085

1 reading it.

2 Q. You say in Lines 4 and 5, "It became clear to
3 us that customers might expect that Inland is the
4 responsible entity for providing service and contact
5 Inland for service." Is that your testimony?

6 A. Yes, it is.

7 Q. I'm going to jump forward to Line 9. "To the
8 extent that either the customer believes Inland is
9 stringing them along or Suncadia describes Inland as
10 being unreasonable, then Inland's image is tarnished.
11 Part of our overall offering of quality service to our
12 customers is offering an image of a company that is
13 cooperative and willing to help its customers. If that
14 image is going to be tarnished, then the overall
15 customer base may not have the same view of Inland as
16 it holds today. This is a very important issue to
17 Inland." Is that an accurate reading of what you
18 wrote?

19 A. Yes.

20 Q. You use the term "overall customer base" in
21 your testimony, and I just want to ask you, by "overall
22 customer base," you mean customers for both Inland's
23 wire line services and its nonregulated services;
24 correct?

25 A. Yes, focusing on the telephone piece here,

0086

1 but yes, because we are in a small community where
2 everybody knows everybody's business or think they do
3 in small towns. I can give you an example.

4 This talks about a request from a customer
5 contacted Qwest and wanted service, and they said, Oh,
6 you are in Inland's exchange territory. You need to
7 contact them, and when they contacted us, we could not
8 access the customer. We explained to them that we
9 didn't have an easement with Suncadia and maybe they
10 could contact Suncadia and let them know they are
11 interested in our service and obtain service from us at
12 that time.

13 I'm going to paraphrase, but what we heard
14 back from the customer is when they spoke to Suncadia,
15 Suncadia had issues with Inland. That type of stuff
16 doesn't sit well with us or prospective customers in
17 the area. If that customer were to go and talk to
18 others, which they do, that's the type of thing we were
19 very concerned about, because we try to do everything
20 in our power to take care of our customers.

21 Q. You refer to that person as a customer, but
22 they are, in fact, not a customer.

23 A. It's a prospective customer.

24 Q. But that's a prospective customer for
25 potentially nonregulated services.

0087

1 A. They had asked for Plain Old Telephone
2 Service.

3 Q. Turning to Page 3, Lines 9 through 11, you
4 say, "Essentially, what it boiled down to is that
5 unless Inland agreed to some form of revenue sharing
6 for telecommunication services, Suncadia was not going
7 to allow Inland to serve the resort." Is that an
8 accurate reading of what you wrote?

9 A. Yes, it is.

10 Q. I ask you to turn to Exhibit 2, which is the
11 August 27 letter. I'm assuming because this was
12 attached to your testimony, you are aware of this
13 letter. You've identified it. I just want to ask you
14 a couple of questions about it.

15 A. This is the August 27th, 2004 letter?

16 Q. Yes. My understanding is that this letter is
17 attached to your testimony because it is a
18 representation of what you believe were some
19 unreasonable demands that Suncadia was making for
20 revenue sharing. Is that an accurate statement?

21 A. You say "unreasonable demand." I
22 characterize it as sharing of revenues that we couldn't
23 do. Our legal counsel advised us that it wasn't legal
24 to share revenues from regulated services.

25 Q. I ask you to turn to Exhibit 23, and

0088

1 actually, keep that exhibit around because we are going
2 to go back to it so we don't have to go find it again,
3 and I call your attention back to Exhibit 23, Page 46.

4 A. Okay.

5 Q. Now, I draw your attention to where Inland
6 says, "It has always been Inland's contention that any
7 revenue sharing may only be accomplished on
8 nonregulated lines of business and then only after a
9 certain level of penetration is achieved, which is yet
10 to be determined." Is that accurate?

11 A. That's an accurate reading, yes.

12 Q. Are you aware of the accuracy of that
13 statement? Was that Inland's position?

14 A. Yes. That has been Inland's position
15 consistently.

16 Q. Going back to Exhibit 2, can you tell me
17 where in this exhibit Suncadia asks for revenue sharing
18 for particularly regulated activities?

19 A. If you look at the second paragraph of the
20 letter, I believe it's the second sentence of that
21 paragraph, it says, "Inland will guarantee pricing of
22 services to us and to our business and homeowners,
23 revenue sharing to Suncadia, agreement to accommodate
24 as Suncadia's third-party vendors who are prepared to
25 provide revenue sharing for access to customers in the

0089

1 community we are creating."

2 Up until this point in time, the revenue
3 sharing Suncadia wanted included everything, and if I'm
4 not mistaken, there is a proposed memorandum of
5 understanding in my documents here that will illustrate
6 that where they say we will do the following things,
7 and if I could find that document, I could show you.
8 So when I read this letter, although it doesn't
9 specifically say revenue sharing of regulated, I read
10 that into that.

11 Q. So just to be clear, you were willing to
12 revenue share for your unregulated businesses; correct?

13 A. We were willing to discuss that, and again,
14 if the amount Suncadia wanted was reasonable so we
15 could still make a profit, yes, we would. That
16 discussion never completely took place.

17 Q. Now, we discussed a little bit about Inland's
18 willingness to provide service to customers over
19 Suncadia and ICS's potential network at a reasonable
20 fee. Do you recall that testimony?

21 A. I do.

22 Q. If Inland received access, and by "access," I
23 mean not an easement, but rather over the facilities of
24 Suncadia and ICS with reasonable terms and conditions
25 to any residents or business in Suncadia that is not

0090

1 currently being served by ICS or Suncadia, what plant
2 would you need to service those folks?

3 A. I'm assuming you mean they have, "they,"
4 Suncadia and ICS combined, get all the way to the
5 customer's premises and have a connection to the home.

6 Q. Yes.

7 A. It would depend on, and I would have to
8 consult with my engineers, as to how we would
9 interconnect with their facilities. There would be
10 some sort of plant necessary to interconnect. What
11 that is, I couldn't tell you.

12 Q. Could Inland do that interconnection,
13 assuming all of the legal and financial obstacles are
14 out of the way, physically, could you do that
15 interconnection within 12 months?

16 A. I would have to check with my engineer, with
17 my legal counsel, make sure everything is, number one,
18 it's structured properly, and number two, is the
19 equipment available. I'm not an engineer, so I'm
20 getting into an area I'm not comfortable talking about.
21 We can do most anything in 12 months; "we," being
22 Inland Telephone.

23 Q. Is Inland currently party to any
24 interconnection agreements?

25 A. I believe we had some wireless

0091

1 interconnection agreements. That's subject to check.

2 MS. KREBS: I'm just going to do housekeeping
3 now for admissions.

4 JUDGE MACE: Okay. You said you were
5 withdrawing Exhibit 20; is that correct?

6 MS. KREBS: Yes. I would like to move for
7 the admission of Exhibit 21, which is Inland's response
8 to DR-11 --

9 JUDGE MACE: Can you give me all the
10 cross-exhibits that you intend to offer at this point?

11 MS. KREBS: 21, 22, 23, and I know
12 Mr. Finnigan -- why don't we put 23 aside, so 21, 22,
13 24, 25, 26, and that's it.

14 JUDGE MACE: Is there any objection to the
15 admission of any of those exhibits?

16 MR. FINNIGAN: I don't think so, but let me
17 have a second because most of those weren't identified
18 by the witness.

19 MS. KREBS: I'm just assuming you're going to
20 adopt your DR responses per an earlier discussion.

21 MR. FINNIGAN: Give me a second. I don't
22 think I have any objection. I just want to see what
23 they are. I don't have any objection to the admission
24 of those exhibits.

25 JUDGE MACE: I'll admit 21, 22, 24, 25, and

0092

1 26. Ms. Krebs, you said you were also going to offer
2 23.

3 MS. KREBS: Yes, and I did not take the
4 witness through all of 23, and I don't think it's
5 necessary for me to do that. I am willing to talk with
6 Mr. Finnigan during lunch and see if we can pare it
7 down, either pare it down or put the whole thing in.

8 JUDGE MACE: Mr. Finnigan, this could be
9 resolved if you had an answer as to why you were
10 objecting to the admission of Exhibit 23 as submitted.

11 MR. FINNIGAN: I don't have an objection to
12 the admission of Pages 46 and 48 that she crossed
13 Mr. Coonan on, but I think if Ms. Krebs has suggested
14 that she and I consult regarding the remainder of the
15 exhibit.

16 JUDGE MACE: I'll allow you to talk about
17 that over lunch, and we will back to this.

18 MS. KREBS: Thank you.

19 JUDGE MACE: You are not offering 27.

20 MS. KREBS: Not at this time. I will be for
21 Mr. Eisenberg.

22 JUDGE MACE: Does that conclude your
23 cross-examination?

24 MS. KREBS: That does conclude my
25 cross-examination. Thank you.

0093

1 JUDGE MACE: Mr. Kopta?

2

3

4

CROSS-EXAMINATION

5 BY MR. KOPTA:

6 Q. Thank you, Your Honor. Good morning,

7 Mr. Coonan. Greg Kopta representing ICS.

8 First of all, a follow-up on something that

9 Ms. Krebs asked you about, and I believe in response to

10 one of her questions, you were concerned that Suncadia

11 wants a de facto monopoly based on your inability to

12 get access to their network or prevent them granting

13 you an easement. Do you recall that discussion with

14 her?

15 A. I do.

16 Q. Have you had any contact with ICS in terms of

17 being able to access Suncadia's network through them?

18 A. We haven't.

19 Q. If you would please return to your reply

20 testimony, which is Exhibit 5-T, and specifically, I

21 would like you to look at Page 6.

22 A. (Witness complies.)

23 Q. Beginning at the top of this page, your are

24 discussing what you interpret as Staff's proposal that

25 perhaps Inland would want to operate the Suncadia

0094

1 Resort as a CLEC rather than an ILEC. Is that a fair
2 characterization of what you are talking about in your
3 testimony?

4 A. Yes.

5 Q. And on Line 8, you have a sentence that says,
6 "Agreements have to be negotiated with ILEC's for the
7 exchange of traffic"; is that correct?

8 A. That's correct.

9 Q. If you would please turn to Exhibit 8, which
10 is Inland's response to ICS Data Request No. 1. Do you
11 have that in front of you, Exhibit 8?

12 A. I do.

13 Q. In this request, Inland was asked to identify
14 ILEC's with which Inland would need to have the type of
15 agreement you reference in your testimony; is that
16 correct?

17 A. The type of agreement?

18 Q. Agreements to be negotiated with ILEC's for
19 the exchange of traffic.

20 A. Yes.

21 Q. And the ILEC identified there is Qwest; is
22 that correct?

23 A. ILEC identified where?

24 Q. In the response.

25 MR. FINNIGAN: The response to the data

0095

1 request, not your response to the question.

2 Q. The response to the data request in
3 Exhibit 8.

4 JUDGE MACE: If you look at Exhibit 8, it
5 says "Data Request No. 1", and it states the request,
6 and then underneath, it says "response," that first
7 paragraph. Do you see that?

8 THE WITNESS: I do.

9 JUDGE MACE: And I think Qwest is mentioned
10 in there.

11 THE WITNESS: I see that, yes.

12 Q. (By Mr. Kopta) My question is whether Inland
13 currently has any traffic exchange agreement with
14 Qwest.

15 A. I don't know if we do.

16 Q. Is the portion of Qwest's service territory
17 that lies within the Suncadia Resort part of a local
18 calling area that Inland serves?

19 A. I'm having trouble with this question, saying
20 "Inland serves," because we don't serve any of Qwest's
21 area. Was your reference to what we serve to the local
22 calling area, the area as we know it in our industry?

23 Q. Sure.

24 A. If those numbers are 647 numbers, the Qwest
25 portion of Suncadia's territory, if those are 647

0096

1 numbers, yes, then we have extended area of service
2 arrangement whereby that is part of the local calling
3 area.

4 Q. Would that be different than a traffic
5 exchange agreement?

6 A. I would have to ask counsel. I would believe
7 so. Those extended area of service agreements were
8 implemented a long time ago, probably even before I
9 started working at Inland Telephone.

10 Q. While we are on that subject, if Inland were
11 permitted by the Commission to redefine its service
12 territory to exclude the Suncadia Resort, would calls
13 from Suncadia residents to Inland customers be local
14 calls?

15 A. I can't answer. I guess the Commission would
16 have to answer that.

17 Q. In the question and in your testimony, you
18 refer to agreements for the exchange of traffic, but in
19 the response, there is a reference to an
20 interconnection agreement. That's near the bottom of
21 that first paragraph of response in Exhibit 8. Do you
22 see that there, the term "interconnection agreement"?

23 A. I see that.

24 Q. Do you distinguish between those two things,
25 an interconnection agreement and the agreement for

0097

1 exchange of traffic?

2 A. Again, I would have to talk to my counsel
3 about that. I know there are different types of
4 agreements that are out there today, and I'm getting
5 into a legal area that I'm not comfortable trying to
6 address because I just don't know.

7 Q. Would you turn to Exhibit 9, which is ICS
8 Data Request No. 2?

9 A. I'm there.

10 Q. I believe that your counsel and I will need
11 to discuss this with the judge before we proceed if
12 Inland is going to stand on its objection to this data
13 request.

14 JUDGE MACE: Off the record.

15 (Discussion off the record.)

16 Q. (By Mr. Kopta) This request asks for a copy
17 of the rates, terms, and conditions under which Inland
18 currently offers or is willing to exchange traffic with
19 a CLEC providing local service to residents in the
20 Suncadia resort area. Does Inland have such rates,
21 terms, and conditions?

22 A. At the time of this response, there was no
23 CLEC's in the area, and I don't know if ICS is a CLEC.
24 I believe they are.

25 Q. In the response, it's stated that Inland has

0098

1 not received a bona fide request for interconnection
2 from any CLEC providing local service to residents in
3 the Suncadia Resort area.

4 A. Yes.

5 Q. ICS did request interconnection negotiations
6 with Inland though, has it not?

7 A. I recall seeing a letter that ICS sent to
8 Inland Telephone, and based on the advice of my
9 counsel, that was not a bona fide request.

10 Q. Let's turn to Exhibit 14. I'll give you a
11 moment to look at that letter.

12 A. Thank you.

13 Q. Have you seen this letter before?

14 A. Yes, I have.

15 Q. Is this what you were referring to in terms
16 of Inland's response to ICS's request for negotiations
17 of an interconnection agreement?

18 A. If you are referring to my prior testimony
19 where I said I recalled seeing a letter that I
20 understand not to be a bona fide request, yes, this is
21 it.

22 Q. If you would turn to the second page of that
23 letter, the only full paragraph on that page, and about
24 almost right in the middle of that paragraph there is a
25 sentence that says, "We would be more than happy to

0099

1 talk to you about the terms of a traffic exchange
2 agreement between noncompeting providers."

3 A. I see that.

4 Q. Is Inland only willing to offer traffic
5 exchange agreement to ICS as a noncompeting provider?

6 MR. FINNIGAN: Objection. The objection
7 calls for Mr. Coonan to speculate about a state of
8 facts that has not occurred, and it further asks him to
9 make a commitment on behalf of the Company where he's
10 identified the Company needs to consult with
11 counsel about what Inland's future position may be.

12 MR. KOPTA: I'm trying to clarify this letter
13 where they are offering to talk about terms of traffic
14 exchange agreements between noncompeting providers, and
15 I'm asking the corollary, are they willing to talk
16 about a traffic exchange agreement between competing
17 providers.

18 JUDGE MACE: I will allow him to answer.

19 THE WITNESS: I would before I respond to
20 that. If ICS had contacted us, I would say, let me get
21 back to you and I will consult with my legal counsel,
22 because when it comes to these interconnection
23 agreements, I believe that my counsel knows what he's
24 talking about.

25 If he says this is not a bona fide request,

0100

1 I'm not positive as to why. I don't understand all the
2 legal reasons behind that, and likewise, I would have
3 to consult with Mr. Finnigan and say, There is a
4 request. What do you think, and then I would get back
5 with the phone company saying either we would or
6 wouldn't, but I would need to consult with Mr. Finnigan
7 first.

8 Q. You are aware that ICS has agreed with
9 Suncadia to provide local telephone service to the
10 residents of the Suncadia Resort.

11 A. I learned that there is an agreement there
12 today. That's what I've heard here.

13 Q. As we sit here today, the Suncadia Resort, or
14 most of it, is within Inland's service territory; is
15 that correct?

16 A. I believe that's correct.

17 Q. From a technical perspective, are you aware
18 whether it would be possible for customers served by
19 ICS, call customers served by Inland if the two
20 companies don't have an agreement to exchange traffic?

21 A. I don't know.

22 Q. Would you turn to Exhibit 34, which is one of
23 the exhibits to Mr. Eisenberg's testimony?
24 Specifically, it's the telecommunications service
25 agreement between Suncadia and Inland

0101

1 Telecommunications.

2 A. (Witness complies.) Okay.

3 Q. You signed this agreement on behalf of Inland
4 Telephone Company; is that correct?

5 A. Yes, I did.

6 Q. So you are familiar with this agreement?

7 A. Yes.

8 Q. Would you turn to the second page of the
9 Agreement, and I draw your attention to Paragraph 3.

10 A. Okay.

11 Q. I'll give you a moment to read that section.

12 A. (Witness complies.) I've read it.

13 Q. Does this paragraph, now that you've looked
14 at it recently, change your answers i terms of your
15 willingness to negotiate a traffic exchange agreement
16 with ICS?

17 A. Well, this agreement is not effective unless
18 our filing is approved, so this is kind of a
19 preagreement. If filing were approved in this
20 instance, then this would come into effect, and at in
21 that point in time, we would honor our commitment here
22 to negotiate with ICS.

23 Q. So it would only be in circumstances, as I
24 understand it, where ICS and Inland would not be
25 competing if the Commission actually allowed Inland to

0102

1 change its exchange boundaries to no longer include the
2 Suncadia Resort; is that correct?

3 A. I don't think so. Again, I would have to
4 talk to counsel. Had ICS contacted Inland at any point
5 along the way discussing negotiations, I would have got
6 counsel involved.

7 Q. I believe in Exhibit 14, there is a reference
8 to counsel in terms of ICS's request for negotiations;
9 is that correct, or do you remember?

10 A. I don't remember.

11 Q. The document speaks for itself, so don't
12 worry about that. While we are on this document, look
13 at Section 2, which is additional services. Again, I
14 will give you a moment to read that.

15 A. (Witness complies.)

16 Q. I'll read a portion of the first sentence of
17 this section: "Inland shall provide additional
18 services to the property through Suncadia or its
19 affiliates or contractors, including other
20 telecommunications companies or a party to an
21 interconnection agreement with Inland."

22 This is going back to where we talked about
23 the distinction between interconnection agreement and
24 traffic exchange agreement, and in this document, both
25 terms are used. If you notice in Section 2, the term

0103

1 "interconnection agreement" is used. In Section 3, the
2 term "traffic exchange agreement" is used.

3 A. Okay.

4 Q. Is your understanding of this agreement that
5 those are two different types of agreement?

6 A. I believe so. Again, I would have to confer
7 with counsel to confirm my answer.

8 Q. Do you have an understanding of what the
9 difference is between an interconnection agreement and
10 a traffic exchange agreement?

11 A. No. Again, that's why I would have a
12 discussion with counsel so he could educate me.

13 JUDGE MACE: It's past noon. Let's be off
14 the record.

15 (Discussion off the record.)

16 Q. (By Mr. Kopta) Mr. Coonan, if you would turn
17 to Exhibit 15, which is a cover letter from your
18 counsel and a traffic exchange agreement by and between
19 Inland Telephone Company and AT&T Wireless Services.

20 A. I have that.

21 Q. Are you familiar with this agreement?

22 A. I don't recall reading it before, but I do
23 recognize it's a document that was signed by Doug Weis,
24 president of Inland Telephone Company.

25 Q. I believe you referred earlier to your belief

0104

1 that Inland does have an agreement between Internet
2 wireless carriers.

3 A. That's correct.

4 Q. This would be one of those agreements?

5 A. Yes.

6 Q. Does Inland consider AT&T Wireless, or what
7 is now Cingular Wireless, to be a noncompeting
8 provider?

9 A. Cingular, I believe they have cellular
10 service in our territory, and they've been designated,
11 I believe, as an ETC, and they would be a competing
12 provider of telephone service.

13 Q. Do you know whether Inland would be willing
14 to offer the same terms and conditions of this traffic
15 exchange agreement to ICS?

16 MR. FINNIGAN: Objection, calls for a legal
17 conclusion and analysis by Mr. Coonan.

18 MR. KOPTA: I'm not asking for a legal
19 conclusion. I'm simply asking whether Inland will be
20 willing to offer the same terms and conditions to ICS.

21 JUDGE MACE: I'll allow the answer.

22 THE WITNESS: If ICS were to call me
23 hypothetically and say, Would you honor these terms and
24 conditions, I would refer to legal counsel and get back
25 to ICS.

0105

1 Q. (By Mr. Kopta) If you would please return to
2 your reply testimony, Exhibit 5-T, and in this case, I
3 would like you to turn to Page 10.

4 A. I'm there.

5 Q. And I will direct your attention to the
6 sentence that begins on Line 13. It states, "Further,
7 ICS would be eligible to seek designation as an ETC for
8 the Suncadia Resort area." Do you see where I'm
9 referring?

10 A. I do.

11 Q. Now, if you would please turn to Exhibit 12,
12 which is a response from Inland to ICS, Data Request
13 No. 5.

14 A. Okay.

15 MR. KOPTA: And again, I will ask counsel if
16 --

17 MR. FINNIGAN: This one will maintain our
18 objection if it calls simply for a legal conclusion
19 from the witness.

20 MR. KOPTA: Your Honor, I'm merely trying to
21 understand what Mr. Coonan is saying in his reply
22 testimony on Page 10 at the sentence beginning on
23 Line 13.

24 MR. FINNIGAN: Those are two different
25 subjects. One is where Inland still has the Suncadia

0106

1 Resort within it, and the second one is where the
2 resort area is not within Inland's telephone area, and
3 those have two different legal consequences and are two
4 different factual situations.

5 JUDGE MACE: I would like him to explain in
6 his testimony the statement, "ICS would be eligible to
7 seek designation as an ETC for the Suncadia Resort
8 area." I would like to have you explain that
9 statement.

10 MR. FINNIGAN: I have no problem with that.

11 THE WITNESS: Okay. My understanding of an
12 ETC is that you go to the Commission. You make a
13 filing to become an ETC in an area, and if you are
14 granted ETC status, then you are allowed to make an
15 application and receive funds from the Universal
16 Service fund.

17 Q. (By Mr. Kopta) Were you contemplating that
18 ICS would be able to do this if Inland withdraws from
19 the Suncadia Resort area?

20 A. I don't think the Commission has ever
21 answered that question.

22 Q. I'm just trying to understand in your
23 testimony. Are you just saying that ICS could seeking
24 designation as an ETC for the Suncadia Resort area in
25 general, or was it specific to whether or not Inland

0107

1 was also obligated to serve in the Suncadia Resort
2 area?

3 A. I believe the way it works today is when an
4 ETC or a company is designated as an ETC in a certain
5 area, and let's use in this example the Roslyn exchange
6 or the Inland Telephone Company service area, then it's
7 allowed to receive the same level of support on a per
8 line basis from the Universal Service Fund that Inland
9 Telephone Company receives. Does that answer your
10 question?

11 Q. Not entirely. Would that be the case if
12 Inland were not or if the Suncadia Resort were not
13 within the Roslyn exchange territory or the Inland
14 territory?

15 A. I would have to answer that two ways. If the
16 Suncadia area had never been in the Roslyn exchange
17 territory, I don't know what the Commission would do as
18 far as granting ETC status to ICS. However, ICS could
19 apply to become a LEC if it were unserved territory, so
20 some hypotheticals there.

21 If this territory is removed, again, I don't
22 think the Commission has ruled on that particular set
23 of facts or circumstances as to whether or not you
24 would still recover those costs based on Inland's
25 costs, not your own, or if they would say you are no

0108

1 longer eligible to receive UFS funds. That's up to the
2 Commission. I don't know how to answer that other than
3 how I just answered it.

4 Q. So again, going back to the statement in your
5 testimony, ICS would be eligible to seek designation as
6 an ETC in the Suncadia Resort area, as far as you know,
7 that statement would only be true if Inland were also
8 serving that same area?

9 A. I don't think that's what my testimony was.
10 I think I just said that there is a set of
11 circumstances where maybe the Commission would allow
12 ICS to still receive Universal Service Funds. Whether
13 we are there or not, I don't know. Again, I don't
14 think the Commission has ruled on that set of
15 circumstances.

16 Q. Okay. In the rest of that paragraph, you are
17 discussing more about the ramifications of ICS
18 obtaining that support, and if you would, please,
19 turning to Exhibit 13, which is Inland's response to
20 ICS Data Response No. 6.

21 A. Okay.

22 Q. I note that like the other responses, this
23 was prepared by your counsel, but I understand you are
24 able to answer questions about this response.

25 A. Yes.

0109

1 Q. The first thing I would like you to look at
2 is on the sixth line down, the sentence that begins
3 near the end of that line, "To explain, in the area
4 outside of the Suncadia Resort area, ICS could simply
5 seek to resell Inland's facilities."

6 A. I see that.

7 Q. Does Inland offer services or facilities on a
8 resold basis to other carriers?

9 MR. FINNIGAN: I'll note an objection for the
10 record. That calls for a legal conclusion as to the
11 language under Section 251(b).

12 MR. KOPTA: I'm simply asking a clarification
13 of this statement in his testimony in this exhibit that
14 ICS does seek to resell Inland's facilities.

15 JUDGE MACE: I think he should be able to
16 answer the question. Go ahead.

17 THE WITNESS: Would you ask the question one
18 more time, please?

19 Q. (By Mr. Kopta) Sure. Does Inland offer
20 services or facilities for resale to other carriers?

21 A. I'm not aware of whether we are doing it. If
22 we are obligated to do it, we would offer, and, of
23 course, I would seek legal counsel's advice on that.

24 Q. Could you explain to me then what this
25 sentence means when you say that ICS could simply seek

0110

1 so resell Inland's facilities?

2 A. It says what it says. ICS would come to
3 Inland and ask to be able to purchase services at a
4 wholesale for resale, in which case I would assume we
5 would then in turn come to some sort of agreement with
6 ICS whereby ICS would be able to use our existing
7 facilities and resell the services without having to
8 make those duplicative investments I described earlier
9 in my previous testimony to Public Counsel.

10 Q. And Inland would be willing to negotiate and
11 enter into such a resale agreement with ICS?

12 A. We would be willing to renegotiate, and to
13 the extent it is satisfactory, yes, we would then be
14 willing to enter into it. I would have to, again, get
15 counsel involved, as I do with all the agreements I
16 work with.

17 Q. The next sentence after that one starts at
18 the beginning of the seventh line, "This would impose
19 additional costs on Inland. At a minimum, the
20 administrative costs associated with such resale."

21 A. I see that.

22 Q. So what you are saying here is that providing
23 services to ICS on a resold basis would increase
24 Inland's costs?

25 A. Yes.

0111

1 Q. Are you aware of how the resale discount is
2 calculated under the Telecommunications Act of 1996?

3 A. I am not.

4 Q. So you are not aware of whether or not there
5 are -- that are voided by the company, by providing
6 services through resale as opposed to on a retail
7 basis?

8 A. I am not aware of that.

9 Q. So what administrative costs did you have in
10 mind that would be imposed on Inland?

11 A. The fact that we would be paying our attorney
12 to negotiate or assist us in negotiation agreement.
13 It's like any other endeavor. The first time we go
14 through it, I would then personally learn all those
15 costs.

16 To my knowledge, having not gone through a
17 resale agreement, I don't know, but I know any time you
18 do something new, there is a lot of costs. There is my
19 time that would be involved, discussions with
20 Mr. Finnigan, my time discussing things with my
21 engineering staff to see if there is any special
22 requirements, any special equipment, so those are the
23 type of administrative costs I'm referring to. There
24 may be others that I would learn along the way.

25 Q. And there may be cost savings by providing

0112

1 service by wholesale instead of retail as well,
2 possibly.

3 A. If you could give me an example, I might
4 agree with you. I'm not sure what types of savings we
5 might see.

6 Q. Instead of billing 43 different individuals,
7 for example, you wouldn't have 43 different resold
8 services. You would be billing it only to a single
9 individual.

10 A. I would agree with that.

11 Q. Then if you would look at the bottom of this
12 first page, Exhibit 13, the very last line, and I'm
13 starting mid sentence about the middle of the line:
14 "To the extent that ICS incurs costs of less than
15 \$36.01 per month to serve within the Suncadia Resort
16 area..."

17 A. I see that.

18 Q. Am I correct that Inland hasn't estimated the
19 costs to serve the Suncadia Resort area?

20 A. If you recall in my earlier testimony, we did
21 several cost estimates, rough, to try to address
22 Suncadia's requests, and it had been a moving target,
23 so we have prepared cost estimates. My testimony is
24 that we haven't. It's not that we have not. The
25 testimony is here. There is an exhibit from the Martin

0113

1 Group at one point and things such as that, so I don't
2 recall testifying that we have not prepared cost
3 estimates.

4 Q. Let's look at Exhibit 7, which is attached to
5 your reply testimony, specifically on Page 3 of 21.

6 A. I'm there.

7 Q. If you look at Page 1 of 21, this exhibit is
8 Inland's response to Staff Data Request No. 12, and the
9 request states, "Please provide an estimate of the
10 costs associated with serving Suncadia's residential
11 customers over the next two years, including cost of
12 service and construction of new plant." Did I read
13 that correctly?

14 A. Yes.

15 Q. And you have response that goes on for a
16 couple of pages. It also has the attachment of a study
17 you were just discussing, but then on Page 3, the last
18 sentence of the response states, "The figures set out
19 above represent rough estimates and may not be used as
20 a calculation of the actual cost to provide service."

21 A. I see that.

22 Q. So am I correct in saying that your testimony
23 is that Inland has not calculated the actual cost to
24 provide service in the Suncadia Resort area?

25 A. We haven't estimated the actual cost. That

0114

1 can only be determined if we were to service and when
2 costs were known.

3 Q. Have you made any study of the cost ICS will
4 incur to service the Suncadia Resort area?

5 A. I've actually talked to a few of the property
6 owners yesterday that have built a home, in particular,
7 Dave and Janet Sandona (phonetic), and I learned from
8 them that ICS had offered to provide services to them,
9 and they would be charged approximately \$4,000 to get
10 the connection from the Suncadia-owned fiber to the
11 home.

12 Now, I would assume that probably would cover
13 most of ICS's cost of constructing what I refer to as
14 the drop and also the electronics that would be
15 necessary to make that connection work within
16 conjunction with fiber. So from that discussion, I
17 understand that Suncadia will have very little cost
18 with respect to that portion of the network.

19 In addition, if they are utilizing Suncadia's
20 backbone fiber, there is no cost in terms of capital
21 construction that I'm aware of to ICS. So ICS's costs,
22 in my opinion, will be significantly less than if
23 Inland were to build out there its own network and own
24 it. It's also totally different than Inland's costs in
25 its Roslyn exchange that's in place today.

0115

1 MS. KREBS: I'm just going to object to the
2 hearsay testimony just as it goes to the truth of the
3 matter asserted that there was request for \$4,000.

4 JUDGE MACE: Any response?

5 MR. FINNIGAN: It was responsive to the
6 question, whether Mr. Coonan was aware of the costs for
7 ICS to provide service to the area.

8 MS. KREBS: I believe the question was was
9 there a study done by Inland, which would be primarily
10 foundational knowledge that the Company would have and
11 he would be able to testify to, but reporting what
12 someone else said about ICS's costs is clearly hearsay
13 and shouldn't be offered.

14 JUDGE MACE: I'm not going to allow it for
15 the truth of the matter asserted. It's anecdotal.
16 Let's put it that way, and it's some information for
17 the Commission, but I don't know how much weight we
18 could give it because costs might be different for
19 different customers. We can weigh it for what its
20 worth.

21 Q. (By Mr. Kopta) You would agree though that
22 ICS has other costs. For example, they have to have a
23 switch.

24 A. I don't know that. I don't know what type of
25 arrangement ICS has developed with Suncadia. I know

0116

1 Suncadia has some type of PBX or switch. I don't know
2 if Suncadia is going to make that available to ICS as
3 well. I'm not privy to the negotiations between ICS
4 and Suncadia.

5 Q. So a PBX is equivalent to a switch, in your
6 view?

7 A. I know that years ago, Inland Telephone
8 looked at a Mitel switch, and my engineer said it was
9 really pretty much like a glorified PBX, but the size
10 of the switches were getting smaller and smaller, but
11 it worked as a switch. It would do what our other old
12 switch at the time, which was a Northern Telco switch,
13 it would do all the things it would do and then some.

14 So again, I don't know if Suncadia may
15 purchase that, lease it to ICS. I have no idea what
16 ICS has structured with Suncadia, so it's really
17 difficult to answer your question.

18 Q. Basically what I'm getting at is you really
19 don't know what ICS's costs are to serve residents in
20 the Suncadia Resort area.

21 A. I don't know.

22 MR. KOPTA: That's all my questions for you.
23 Thank you, sir.

24 JUDGE MACE: How about exhibits?

25 MR. KOPTA: I was just going to run through

0117

1 them. I would offer Exhibits 8, 9, 12, 13, 14, and 15.

2 JUDGE MACE: Is there any objection to the
3 admission of those exhibits?

4 MR. FINNIGAN: I do object to Exhibit 12.

5 JUDGE MACE: On what grounds?

6 MR. FINNIGAN: The response is that the data
7 request calls for a legal conclusion. The exhibit
8 itself is essentially the objection. I don't know that
9 it's helpful to have an objection as an exhibit.

10 JUDGE MACE: Mr. Kopta?

11 MR. KOPTA: I won't offer 12, but I will
12 offer 11, even though we didn't talk about it.

13 JUDGE MACE: Any objection to 11?

14 MR. FINNIGAN: No.

15 JUDGE MACE: Then I will admit Exhibits 8, 9,
16 11, 13, 14, and 15, noting that Exhibit 12 is not
17 offered and Exhibit 10 is not offered.

18 MR. KOPTA: That's correct. Thank you, Your
19 Honor.

20 JUDGE MACE: Let's recess for lunch, and I
21 want to propose that we come back and be ready to start
22 at around two o'clock

23

24

25

0118

1

(Lunch recess 12:30 - 2:00)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0119

1

AFTERNOON SESSION

2

(2:00 p.m. - 4:35 p.m.)

3

JUDGE MACE: Let's be back on the record. I

4

understand, Mr. Finnigan, you have a preliminary

5

matter?

6

MR. FINNIGAN: As a way of trying to shorten

7

redirect and move this along, I conferred with

8

Ms. Cameron-Rulkowski as to when she asked Mr. Coonan

9

questions about providing POTS-only service in the

10

Suncadia area using the facilities that are in place,

11

did she intend to mean the tariff services that are in

12

Inland's local service tariff, and she responded that

13

that was correct.

14

MS. CAMERON-RULKOWSKI: I intended asking

15

about referring to local service.

16

MR. FINNIGAN: So with that clarification, I

17

don't need to go through a lot of redirect.

18

MS. CAMERON-RULKOWSKI: Just to clarify for

19

my purposes then, the answer to that question, would

20

Inland in light of the fact there is a contract with

21

ICS be willing to provide POTS-only service, Plain Old

22

Telephone Service, to the resort.

23

THE WITNESS: All the ancillary things that

24

are in our tariff?

25

MS. CAMERON-RULKOWSKI: Call-waiting will be

0120

1 fine.

2 THE WITNESS: Yes.

3 JUDGE MACE: Very well.

4 MR. FINNIGAN: I'll proceed then.

5

6

7

REDIRECT EXAMINATION

8 BY MR. FINNIGAN:

9 Q. Mr. Coonan, you were asked some questions
10 about Exhibit 18, which is that two-page list of
11 services that Inland and R&R Cable had available.

12 A. Yes.

13 Q. Do you understand that list of services to be
14 an exhaustive list of services that are offered by
15 Inland?

16 A. I don't believe it's exhaustive.

17 Q. You were asked questions about revenue
18 sharing from various services. Do you remember those
19 questions?

20 A. I do.

21 Q. Was it ever Inland's intent to share revenue
22 that Inland receives from long distance services with
23 Suncadia?

24 A. No, and maybe I should explain.

25 Q. Please.

0121

1 A. I believe in one letter, we talked about
2 revenue sharing, and we put in parenthesis, we said,
3 "e.g., long distance," I believe is how that was
4 phrased, and up to that point in time, one of
5 Suncadia's consultants had asked that we use a
6 particular long-distance company, buy their long
7 distance and resell it through Inland Long Distance.

8 If you actually look at their exhibit -- my
9 exhibit numbers are different, but it's the Memorandum
10 of Understanding. It would be the exhibit that has
11 JPC-3 written on it.

12 MS. KREBS: That's Exhibit 3?

13 THE WITNESS: Yes.

14 JUDGE MACE: Yes. I guess for the record
15 that is JPC-3.

16 THE WITNESS: On Page 2 of 4 of the
17 Memorandum of Understanding, if you look at Item No. 5,
18 Suncadia was basically -- I won't say dictating, but
19 Inland we want you to use, and if you look at 5(b)(1),
20 it says, "Inland agrees to provide the following
21 services in Phase 1. B, long distance (LD) service,
22 and one, purchase LD services through PSI network.
23 Then there is a little "a" that reads, "Further, PSI
24 Network will pay the revenue-shared portion to Mountain
25 Star directly."

0122

1 So we had understood that that was something
2 Suncadia wanted, and we were willing to purchase those
3 services through PSI, and that's why in my letter it
4 included long distance as well as revenue-sharing
5 items. It was going to be accomplished through PSI,
6 not through Inland.

7 Q. So that means that the retail revenue that
8 Inland would receive from long-distance services would
9 be retained by Inland and not shared with Suncadia?

10 A. That's correct.

11 Q. You were asked a series of questions about
12 fiber-optic cable and copper cable and the services
13 that could be provided. Do you remember the questions
14 along those lines?

15 A. Yes, I do.

16 Q. Can copper cable carry more than POTS
17 service?

18 A. Yes, it can.

19 Q. Can copper cable carry alarm monitoring
20 services?

21 A. Yes.

22 Q. Can copper cable carry long-distance
23 services?

24 A. Yes.

25 Q. Can copper cable carry Internet services?

0123

1 A. Yes.

2 Q. Can copper cable carry cable TV services?

3 A. Yes.

4 Q. You were asked a series of questions about

5 Inland's willingness to use the Suncadia ICS

6 facilities, whatever they might be. Do you remember

7 those questions?

8 A. Yes, I do.

9 Q. And you addressed some concerns that Inland
10 might have. In addition to the concerns you addressed,

11 is there any concern about maintenance or repair of
12 those facilities?

13 A. Yes, there would be. Probably the best way
14 to illustrate that is to give an example of what has
15 happened to Inland in the past when Inland doesn't have
16 control over those types of facilities.

17 We have a Dewatto exchange. Many years
18 ago -- it was right before Thanksgiving weekend -- the
19 way the Dewatto exchange connected to the world, it
20 connected with Qwest. At the time, I believe it was
21 Pacific Northwest Bell. I'm not sure. That's subject
22 to check, but Qwest had a problem on their end of the
23 facilities. We were made aware of it, and when that
24 happened, our customers in the Dewatto exchange could
25 only talk to one another. They couldn't talk to the

0124

1 world.

2 We contacted Qwest and said we found out the
3 problem is not on our end. It must be on your end.
4 They found the problem. We offered to send our techs
5 out. We'll help you get this restored. It's the
6 Thanksgiving weekend, and they refused to let us test
7 their facilities, and as our customers went for three
8 or four days without service to the world, they could
9 talk to one another, and that's the type of thing that
10 we would have to assure we have access to those
11 facilities. We would have to get in and repair,
12 troubleshoot so we could fix a situation like that as
13 quickly as possible and not have to be at somebody
14 else's mercy.

15 Q. You were asked some questions about Inland's
16 traffic exchange agreement with AT&T Wireless, now
17 Cingular. Do you remember those questions?

18 A. Yes.

19 Q. Could you describe the type of connection
20 that Inland has with Cingular?

21 A. I would describe that as an indirect
22 connection, meaning that traffic goes through an access
23 tandem and is delivered to us with all sorts of other
24 traffic.

25 Q. Does Inland have a direct connection with

0125

1 Cingular?

2 A. No.

3 Q. You were asked some questions concerning a
4 letter Inland sent to ICS in June of 2005. Do you
5 remember those questions?

6 A. Which letter?

7 Q. Concerning ICS's request. Let me get the
8 exhibit. That will help. Exhibit 14.

9 A. That's the letter from Greg Maras to Jeff
10 Tilleman?

11 Q. Correct.

12 A. Yes, I have that.

13 Q. Has ICS communicated to Inland since the date
14 of that letter?

15 A. Other than counsel communicating with me
16 today, no.

17 MR. FINNIGAN: That completes my redirect.

18 JUDGE MACE: Staff, any recross?

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

20 MS. KREBS: No, Your Honor.

21 MR. KOPTA: Nothing from me.

22 JUDGE MACE: I guess we did have that one
23 exhibit outstanding, but you said you wanted to wait
24 until after the break?

25 MR. FINNIGAN: Ms. Krebs was kind enough to

0126

1 organize it so I could review it. I got it just before
2 we began again at two o'clock, so I just need a few
3 minutes to look at it at a break.

4 JUDGE MACE: Thank you. You are excused.

5 Mr. Eisenberg?

6

7 Whereupon,

8 PAUL J. EISENBERG,

9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MR. WEST:

14 Q. Will you please state your name and business
15 address?

16 A. It's Paul Eisenberg, 109 South First Avenue,
17 Roslyn, Washington, 98941.

18 Q. And your employer and your position?

19 A. I work for an umbrella company, Lowe
20 Enterprises, and our subsidiary for the project is
21 Suncadia, LLC.

22 Q. Mr. Eisenberg, did you prepare testimony in
23 this docket?

24 A. I did.

25 Q. And that testimony has been marked as Exhibit

0127

1 T-31 through 35?

2 A. Yes.

3 Q. Do you have any additions or corrections to
4 that testimony you prepared?

5 A. The only change since this was given is that
6 the agreement with ICS has been signed, definitive
7 agreement, and is in force now.

8 Q. If I were to ask you the same questions today
9 that appear in these exhibits, would your answers as
10 corrected be the same?

11 A. They would.

12 Q. And in your opinion, are these exhibits true
13 and correct?

14 A. I believe they are.

15 MR. WEST: Your Honor, I move the admission
16 of T-31 through 35.

17 JUDGE MACE: Is there any objection to the
18 admission of those exhibits? I'll admit them.

19 MR. WEST: The witness is available for
20 cross.

21

22

23 CROSS-EXAMINATION

24 BY MS. CAMERON-RULKOWSKI:

25 Q. Good afternoon. I would like you to refer to

0128

1 Exhibit No. 55. These are excerpts of the HUD reports
2 that Suncadia provided prospective purchasers.

3 A. I think I've got a different numbering
4 system.

5 Q. It is also Exhibit No. 5 in Staff Witness
6 Debra Reynolds' testimony, so DJR-5. Are you familiar
7 with these portions of the HUD reports?

8 A. Yes, I am.

9 Q. Can you tell me which telecommunications
10 provider is listed in the HUD report dated October
11 18th, 2004?

12 A. In this one, we said it would be ICS or an
13 equivalent service provider. I'm sorry. I flipped to
14 the next page, and that's the May one. On this one,
15 Inland telephone service will be available to the
16 subdivision and will be supplied by Inland Telephone
17 Company.

18 Q. Thank you. In the subsequent HUD report,
19 could you tell me which telecommunications provider is
20 listed there, and this is the report dated May 4, 2005,
21 and I can refer you to that first paragraph under
22 "telephone" in the middle of the page.

23 A. Yes. We said, "Telephone service will be
24 available to the subdivision and will be supplied by
25 Intelligent Community Services, Inc, ICS, a competitive

0129

1 local exchange company, or CLEC, or an equivalent
2 service provider."

3 Q. Thank you. So Suncadia has changed its mind
4 in the past about telecommunications providers to the
5 resort; correct?

6 A. That's correct.

7 Q. Thank you. Now I have a question about the
8 contract that was recently entered into by Suncadia and
9 ICS regarding telecommunication service to Suncadia
10 resort.

11 MR. WEST: Are we talking about the
12 confidential contract?

13 MS. CAMERON-RULKOWSKI: Yes, we are.

14 MR. WEST: The question I have is, are there
15 people in the room that are not parties to the
16 confidentiality agreement and whether we need to have a
17 discussion as to what the scope of the questioning will
18 be and whether some people need to be excused.

19 MS. CAMERON-RULKOWSKI: I believe my first
20 question is general, and then I do have a couple of
21 specific questions for which we may need to have people
22 who are not under the protective order not be present.

23 JUDGE MACE: Go ahead.

24 Q. (By Ms. Cameron-Rulkowski) If you would like
25 to refer to the contract, it is Exhibit 19-C.

0130

1 A. I've got it.

2 Q. Are you familiar with the contract?

3 A. I am.

4 Q. If you want to take a moment to look at it,
5 could you tell me if this is a true and accurate copy
6 of the fiber-optic communications system and service
7 contract entered into April 1st, 2006, by Suncadia and
8 ICS?

9 A. It looks like it is with the redactions that
10 have been made to it.

11 Q. Thank you.

12 JUDGE MACE: So are we at a point where we
13 need to make sure there is no unauthorized person in
14 the room? Everybody is okay? All right.

15 (The following pages, 131-157, are contained in a
16 separate confidential transcript.)

17 (Pages 158-166 are contained in a separate highly
18 confidential file.)

19

20

21

22

23

24

25

0131

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0132

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0133

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0134

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0135

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0136

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0137

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0138

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0139

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0140

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0141

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0142

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0143

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0144

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0145

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0146

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0147

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0148

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0149

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0150

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0151

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0152

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0153

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0154

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0155

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0156

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0157

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0158

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0159

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0160

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0161

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0162

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0163

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0164

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0165

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0166

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0167

1 (End of highly confidential portion.)

2 MS. CAMERON-RULKOWSKI: I would like to move
3 for admission at this time of Exhibit 19-C, which is
4 the contract between ICS and Suncadia for
5 telecommunications service to the resort.

6 JUDGE MACE: Any objection?

7 MS. KREBS: I'm just going to point out it's
8 19-HC.

9 JUDGE MACE: I'll admit it. Let's take a
10 five-minute recess.

11 (Recess.)

12 JUDGE MACE: Counsel for Inland and for
13 Public Counsel have agreed that Public Counsel will
14 supply a new copy of Exhibit 23 with some pages
15 eliminated and that then the exhibit will be acceptable
16 to Inland and there will be no objection to its
17 admission; is that correct?

18 MS. KREBS: That's correct, Your Honor.

19 JUDGE MACE: So I'll look forward to getting
20 that tomorrow. So then now, Ms. Krebs, go ahead with
21 your cross-examination of Mr. Eisenberg.

22

23

24 CROSS-EXAMINATION

25 BY MS. KREBS:

0168

1 Q. My name is Judy Krebs, and I'm an assistant
2 attorney general representing the public counsel
3 section of the attorney general's office, and I'm going
4 to have some questions for you today.

5 I wanted to start with something I think is
6 somewhat surprisingly unclear from your testimony,
7 which is besides the contract that you have with
8 Inland, why are you and Suncadia supporting this docket
9 or this tariff change?

10 A. It's a matter of contract between ourselves
11 and Inland. We wanted to be certain of continued
12 service for our project. We rely on telecommunications
13 service, and in the event the docket was approved, we
14 would have uninterrupted telecommunications support for
15 our sales center and operation, and so we entered into
16 a negotiation with Inland and agreed that that was our
17 primary concern about removal in the service area is
18 that we might suddenly find ourselves without a
19 telephone or Internet access and be able to conduct our
20 business. So that concern was resolved by the terms of
21 that agreement we negotiated for continuing support of
22 our facilities if this docket was approved.

23 Q. Now, I want to unpackage that a little bit.
24 You and Suncadia as a business requested phone service
25 from Inland; is that correct?

0169

1 A. That's correct. Our first facility on-site
2 was what we call the Discovery Center, sales center.
3 Inland provided 50 or 100 pair of cable of telephone
4 lines and support T-1 so we could get that facility up
5 and operating, and at that time, we were still in
6 negotiation with Inland with the expectation that when
7 that was done that they would ultimately be the service
8 provider.

9 Q. So I guess my question is, why Suncadia for
10 its own business lines felt that it was necessary to
11 obtain service from Inland via contract as opposed to
12 tariff?

13 A. We actually obtained the service, as I recall
14 and understand under tariff, if it's a service that's
15 been in place, and this issue only arose when Inland
16 proposed to remove us from the service district, and
17 therefore, the tariff would no longer apply to us if
18 this docket was approved.

19 So our dilemma was whether to oppose this
20 docket or to try to protect our business interests, and
21 so we entered into a negotiation and reached an
22 agreement with Inland that if this docket was, in fact,
23 successful and the tariff no longer applied for those
24 services that Inland was delivering to us that our
25 services would continue on the same rates and

0170

1 conditions that it had been under the tariff.

2 That's why that agreement says it only
3 becomes effective if this docket is approved, and then
4 that becomes our protection. At the point in time we
5 did that, we didn't know other than Inland how we would
6 obtain services. We were a long way from where we are
7 today.

8 Q. I understand you have a contractual
9 obligation and I don't want to interfere with that
10 contractual obligation so I'm going to ask a
11 hypothetical. Now that ICS is on the ground and able
12 to serve, what is preventing you from withdrawing from
13 Inland?

14 A. The question was asked earlier about the
15 redundancy of service, and we want to have two discreet
16 ways of keeping our phone system and communications
17 operating. Inland is one of those routes for the
18 emergency level of communication, so even if ICS -- and
19 their primary loop out right now would be going through
20 Qwest, I believe it is, adding one direction onto one
21 system, and then the other direction is to go onto
22 Inland's system, and then if there is a disruption or
23 failure, we still have a way to maintain our
24 communications for E-911 and other emergency
25 communications. So for us, it's a matter of public

0171

1 safety, really, and our responsibility in building this
2 system and delivering services to the community.

3 Q. But that would be just for Suncadia as a
4 business; correct?

5 A. Right now, we have been using it only for our
6 business, but the intent was it would also then, as
7 this system came on, become the secondary route out
8 that's already in place, that we would switch some
9 services and then pick up some of that capacity that
10 would be used for this secondary route for the system
11 ICS is operating to have a second communication.

12 So our internal system goes out through -- we
13 have our own private switch, so all of the facilities
14 we operate for ourselves, we haven't determined how we
15 are going to route that. Our hope is a good deal of
16 those services will go through ICS, and we've provided
17 for that with them. We are just getting to the point
18 of having operational systems, so we still have
19 business decisions to make, but Inland's role would
20 then for us, the importance for us in having that kind
21 of activity is really for the redundancy is safety.

22 Q. I just want to be very clear. So the
23 ultimate concern of why that contract was executed
24 after Inland filed for removal of the Suncadia Resort
25 from its service territory was to preserve the rates,

0172

1 terms, conditions that were in effect or currently.

2 A. Correct.

3 Q. I guess my question coming full up to speed,
4 and I don't know how this jives with your last answer
5 regarding secondary lines, is would you have an
6 objection to granting Inland a perpetual easement for
7 the laying of copper line?

8 A. Within the MPR?

9 Q. The question was going forward at this point
10 in time, would Suncadia grant to Inland a perpetual
11 easement for it to lay copper line in the MPR area?

12 A. Probably not for two reasons. The first is
13 the issue of perpetuity, and an easement like that
14 perpetuity is a long time. It was one of the issues
15 that we were not able to resolve the last time around,
16 and our concerns are the same.

17 The second one is that at this point in the
18 developement of the project, the damage and disruption
19 to the work that we've put in place in trying to find a
20 way to run an additional utility through the heart of
21 the project would be very difficult and very expensive
22 and very damaging, at least to one of the second issues
23 we weren't able to resolve the last time around on the
24 easement, which is our ability to reasonably control
25 when, where, and how and any restoration, and the

0173

1 repair would be done to our satisfaction.

2 Q. My next question is -- I don't think this was
3 completely clear from the earlier discussion -- would
4 Suncadia be willing to charge Inland a reasonable fee
5 to lease its lines?

6 A. We would -- I think if I understand the
7 question, would we allow Inland to have access over the
8 backbone system that we've constructed and that ICS is
9 operating on reasonable terms, I think we would. We
10 would have to negotiate those terms with both ICS and
11 Inland, but assuming we could resolve all the business
12 issues and investment issues, that would be in keeping
13 with the anticipated third-party providers that might
14 be on that system.

15 Q. Would that be a consideration for just
16 wireline services, local wireline service, or would you
17 consider Internet, cable, alarm system type services as
18 well?

19 A. I think at this point, we would want to be
20 very careful not to violate the terms or the spirit of
21 the agreement we've entered into with ICS or to
22 undermine that in any way, so we would have to consider
23 that pretty carefully. I don't think I can give you a
24 definitive answer sitting here right now.

25 MS. KREBS: I have nothing further.

0174

1 JUDGE MACE: Ms. Krebs, are you going to
2 offer Exhibit 36?

3 MS. KREBS: No. I'm going to withdraw.

4 JUDGE MACE: That means you are withdrawing
5 27 too.

6 MS. KREBS: Yes, exactly. Thank you.

7

8

9 CROSS-EXAMINATION

10 BY MR. FINNIGAN:

11 Q. Mr. Eisenberg, would you first turn to Page 3
12 of your testimony, Line 10?

13 A. Okay.

14 Q. Is that first company, Quest, Q-u-e-s-t, is
15 that different than the Qwest that provides service?

16 A. It's a typo.

17 Q. The reason I asked, there is another company
18 that spells its name that way. So that should be
19 Q-w-e-s-t?

20 A. Yes.

21 Q. As I understand your testimony here this
22 afternoon, there is access to Qwest in place today; is
23 that correct?

24 A. I believe that that's the case. I know the
25 route exists, and the last time I talked to my staff

0175

1 about it, they had been resolving some technical
2 connectivity issues. I think those have been resolved,
3 but I haven't explicitly verified that, but I believe
4 they are now connected.

5 Q. Is Qwest going to be offering local services
6 within the Suncadia Resort area?

7 A. Not that I'm aware of. In our discussions
8 with them, they didn't seem to think we would be
9 interested in expanding services of any kind at the
10 time.

11 Q. This route to Qwest that you've identified, I
12 think you said that it would be a route to the PSAP for
13 911 purposes?

14 A. It's actually the route to connectivity to
15 the outside world, basically. I'm not sure where the
16 PSAP is, but it's somewhere out there connected on the
17 system, but this is -- Qwest has a switch or a facility
18 or point of connection that is along SR-903 near where
19 our property connects to 903 with power line easements,
20 and so from the location where ICS's NOC is located,
21 it's a relatively short distance down that power line
22 to that Qwest facility, which is the closest. I think
23 it's called point of connection.

24 Q. What I would like to do is ask you some
25 questions about what that route can be used for, and as

0176

1 I understood it, one of those uses would be to access
2 the PSAP for 911 purposes; was that correct?

3 A. That is correct.

4 Q. Would that route also be used to provide toll
5 or long-distance services?

6 A. It could be.

7 Q. Are you familiar with what's called a
8 "tandem" in the telecommunications world?

9 A. No, I'm not.

10 Q. You've identified in your testimony at
11 Page 3, Line 10, that there were also discussions with
12 Charter Communications; is that right?

13 A. That's correct.

14 Q. Is Charter going to be offering
15 telecommunications services in the Suncadia Resort
16 area?

17 A. No. We were not successful in our
18 discussions with them.

19 Q. Are they going to be offering cable TV
20 services in the Suncadia area?

21 A. No that I'm aware of.

22 Q. And you said you had discussions with Sprint.
23 Is Sprint going to be offering services within the
24 Suncadia Resort area?

25 A. Not that I'm aware of. These discussions

0177

1 were about the role that ICS ultimately fills, so this
2 comment is just to indicate that we were having
3 discussions with numerous people to provide the
4 telecommunications services that ICS is now providing.

5 Q. I want to make sure I understand what you
6 just said. Are you saying that you talked to Sprint
7 about being the backbone provider for service or for
8 providing the services locally?

9 A. To operate the system to -- I believe at this
10 point, we determined we were going to build the
11 backbone in terms of fiber and conduit ourselves, but
12 we don't want to operate it or go out and buy resell
13 services or form a CLEC.

14 So we are looking for a CLEC that could come
15 in and do the same kind of things we had been
16 negotiating with Inland about and basically operate and
17 build the system, do the connections and things that
18 that service provider does under that arrangement.

19 Q. So it's in that context you were talking
20 about with Sprint, the context you've just described.

21 A. Yes.

22 JUDGE MACE: Let be off the record for a
23 moment.

24 (Discussion off the record.)

25 (Pause in the proceedings.)

0178

1 Q. (By Mr. Finnigan) Mr. Eisenberg, would you
2 look at Exhibits 37, 38, 39 and 40?

3 A. Okay.

4 Q. Do you recognize Exhibit 37 as the narrative
5 response to Data Request No. 1?

6 A. Yes.

7 Q. And you recognize Exhibits 38, 39, and 40 as
8 three of the documents that were provided in response
9 to Data Request No. 1?

10 A. I do.

11 Q. And those three documents are easements
12 within the Suncadia Resort area; is that correct?

13 A. One of them is, actually, I think, on the
14 UGA.

15 Q. That would be --

16 A. Within our development.

17 Q. They are within your development?

18 A. Yes. It may not be all contained in the MPR,
19 the master plan resort. It may grow off on the urban
20 area parcel.

21 Q. Would it be correct that it's Exhibit 40 that
22 might be outside of the MPR?

23 A. Correct.

24 Q. I think your typographical error on esthetics
25 is on Line 25 of Page 3; correct?

0179

1 A. Yes, it is.

2 Q. Would you take a look at Exhibit 38, please?

3 A. Okay.

4 Q. And that's one of the easements; is that
5 correct?

6 A. Correct.

7 Q. And this is an easement granted by Morning
8 Star Resort to Puget Sound Energy?

9 A. Granted by Mountain Star.

10 Q. I'm sorry, Mountain Star?

11 A. Yes, to PSE.

12 Q. And Mountain Star is your predecessor in
13 interest for this property?

14 A. Yes. Technically, I believe it's just a name
15 change as opposed to a new entity. We rebranded.

16 Q. So Suncadia, LLC, was actually Mountain Star
17 Resort Development, LLC, at one point in time?

18 A. I believe that's technically what happened.
19 We changed the name of the entity along with our
20 rebranding.

21 Q. You would agree that this easement is a
22 perpetual easement?

23 A. It is.

24 Q. If you would look at Exhibit 39, that's an
25 easement between Trendwest Investments and Puget Sound

0180

1 Energy; is that correct?

2 A. Yes, that's correct.

3 Q. Now, am I correct that Trendwest Investments
4 was a predecessor in interest?

5 A. That is correct.

6 Q. And you would agree that this easement is a
7 perpetual easement.

8 A. Yes.

9 Q. Would you now look at Exhibit 41, please?

10 A. Okay.

11 Q. And you recognize Exhibit 41 as Suncadia's
12 response to Data Request No. 2 from Inland?

13 A. Correct. I'm looking at the supplemented
14 version. September 8th, 2005, was the original date
15 with a supplement April 24th, 2006.

16 MR. FINNIGAN: I don't know that I
17 distributed this.

18 JUDGE MACE: I don't have the supplement.

19 MR. FINNIGAN: May I see the supplement,
20 please?

21 THE WITNESS: (Witness complies.)

22 Q. (By Mr. Finnigan) Okay, so there is an
23 updated map.

24 A. Correct.

25 Q. Was that the purpose of the supplement?

0181

1 A. Yes. We were asked to provide certain
2 information, and we were trying to update some work in
3 progress, so we were trying to get the most current
4 information.

5 Q. Would you look at Exhibit 42, please?

6 A. Okay.

7 Q. Do you recognize this as an excerpt from the
8 HUD disclosure statement of May 4th, 2005?

9 A. Yes.

10 Q. Would you look under the heading of
11 "telephone"?

12 A. Okay.

13 Q. And the first paragraph, the last sentence,
14 says, "ICS will be reselling services supplied by
15 Washington Utilities and Transportation Commission
16 regulated utility due to be determined by ICS." Do you
17 see that?

18 A. Yes.

19 Q. What did you mean by that sentence?

20 A. I didn't actually write this, but this was
21 done by our consultants and attorneys that handle
22 disclosures, and I believe the intent is that ICS will
23 be the service provider, ICS or an equivalent service
24 provider will be selling services and that they are a
25 regulated utility.

0182

1 Q. And when you say "they," who do you mean?

2 A. ICS.

3 Q. To your understanding, whose services would
4 ICS be reselling?

5 A. Potentially Internet access, cable
6 television, video on demand, security services, but in
7 this particular case, this is really more focused, I
8 guess. This would be long distance, which they would
9 presumably contract with a third party to provide
10 international long distance, local long distance,
11 interstate, all of that stuff.

12 Q. Was there any intent that ICS would be
13 reselling local telecommunications services?

14 A. I don't think that was the intent.

15 Q. The language doesn't make it particularly
16 clear one way or the other, does it?

17 A. No, it doesn't.

18 Q. Would you please turn to Exhibit 43?

19 A. Yes.

20 Q. Do you recognize that as Suncadia's response
21 to Data Request No. 24?

22 A. Yes, it is.

23 Q. Would you look at the last sentence of the
24 response, please?

25 A. Okay.

0183

1 Q. What is meant by "911 information services"?

2 A. 911 in this says to residents, and it really
3 is for phone services. We have an inn with 18 guest
4 rooms, two golf courses, a number of facilities that we
5 are operating, and we need 911 services to go out if
6 there is a 911 call. They have to be able to identify
7 where the call originated, so it gets fairly technical,
8 but in order to track that through our switch that was
9 operating, ICS was doing the work, and we had tried to
10 do this and get it to work through Inland's system, but
11 we had difficulties for an extended period of time and
12 were not able to get the identification of where a
13 caller would be and could pass through the system
14 correctly, so ultimately, ICS stepped in for us and was
15 able to make that work and get the information to route
16 all the way through, and some of that was coordination
17 work with Inland and some of it was in various systems,
18 but they were actually managing as a database, and
19 whenever a new phone is hooked up, they have to inform
20 all the parties if they get a call from this number, it
21 means at this building at this address and the
22 call-back to respond if there is a call dropped, it's
23 this phone number, and it's all system, of which I'm
24 probably scratching the surface of about how emergency
25 calls, the digital information about where it comes

0184

1 from, gets transmitted through the system and shows up
2 at the emergency response center.

3 It's critical to us operating an inn with 18
4 guest rooms that we absolutely know if an emergency
5 call originates out of one of those rooms or one of our
6 guests that one, we know about it as quickly as
7 possible and can respond, and number two, that we get
8 the help that they need immediately that caused the
9 call in the first place.

10 Q. So you are saying that the response to this
11 data request to the extent it refers to residents in
12 the Suncadia Resort area is incorrect; is that correct?

13 A. Yeah. It really should have been for
14 telephone systems at this point.

15 Q. And what you mean by "information services"
16 is the management of the 911 database; is that correct?

17 A. Correct. The question was what services were
18 they providing. I was trying to fully disclose all of
19 our business relationships with them.

20 Q. Who owns the PBX that you reference, Suncadia
21 or ICS?

22 A. Suncadia.

23 Q. This is probably confidential so I don't want
24 to disclose the manufacturer of that PBX, but would you
25 agree that that is a fairly sophisticated piece of

0185

1 equipment?

2 A. It is. It's a state-of-the-art telephone
3 switch intended to support all the operations of our
4 resort, not the community at large but of our
5 facilities spread out over significant number of
6 locations.

7 Q. Would you look at Exhibit 44, please? Do you
8 recognize that as Suncadia's response to Data Request
9 25 from Inland?

10 A. Correct.

11 Q. You earlier indicated that it's your intent
12 that in addition to providing 911 services through
13 Qwest that 911 services would be provided by ICS
14 through Inland? Isn't that something you testified to
15 a little earlier today?

16 A. Some of our 911 database goes through Inland.
17 That's the route that it follows to get to Intrado, and
18 that I believe is where the calls are actually handled.

19 MR. FINNIGAN: May I use the chart?

20 JUDGE MACE: Sure.

21 Q. Mr. Eisenberg, do you know where the PSAP is
22 located?

23 A. I don't.

24 Q. Do you understand that there is one PSAP for
25 Kittitas County? We need a yes or no for your answer.

0186

1 A. Yes.

2 Q. And so you would agree that whether you go
3 through Inland or through Qwest initially, eventually
4 there is only one point that that call goes to; is that
5 correct?

6 A. Correct.

7 Q. So once it reaches a point that it is, for
8 illustration purposes on this map here, if there is a
9 cable break after that point, there is no redundancy;
10 is that correct?

11 A. I don't know that your drawing is correct. I
12 presume that this bigger system is more of a network
13 than a single connection. I don't know that. I can't
14 respond to it because I just don't know how the routes
15 work out there in the bigger world.

16 JUDGE MACE: For the record, I'm going to
17 take this piece of paper and make it Bench Exhibit
18 No. 1. It will be No. 50 and our Exhibit list.

19 MS. KREBS: Your Honor, I appreciate that.
20 Could we get a clarification of what the round circle
21 is at the bottom, the diamond, what exactly that is?

22 MR. FINNIGAN: It's the point at which Inland
23 sends its 911 trunk meets with Qwest to route to the
24 PSAP.

25 MS. KREBS: Okay.

0187

1 JUDGE MACE: This is the 911 trunk that I'm
2 identifying now; this right here? (Indicating.)

3 MR. FINNIGAN: Yes.

4 JUDGE MACE: And this is just Qwest's system.
5 It's not a particular trunk of any kind.

6 MR. FINNIGAN: It would be a 911 trunk that
7 ICS would arrange with Qwest.

8 JUDGE MACE: Let the record show that this
9 diagram on the right-hand side there is a designation,
10 Inland, and a line that runs to a dot, that's a 911
11 trunk that Inland is responsible for?

12 MR. FINNIGAN: That Inland has arranged with
13 the PSAP, yes.

14 MS. KREBS: I'm sorry. I'm not clear on what
15 -- I'm having trouble defining between what
16 Mr. Eisenberg testified to and what Mr. Finnigan is
17 representing to be the case.

18 MR. FINNIGAN: Ultimately what Mr. Eisenberg
19 said is he's not familiar with how it works, so at that
20 point, I stopped.

21 MS. KREBS: Okay.

22 JUDGE MACE: I just want to make sure that
23 this is what Mr. Finnigan was describing, whether or
24 not Mr. Eisenberg could talk about it. So in the
25 left-hand side of the diagram, there is a point at the

0188

1 edge of a rectangle or triangle that says "Qwest," and
2 then there is a line that moves down to that same dot,
3 and that also represents a 911 trunk that ICS would
4 arrange with Qwest for.

5 MR. FINNIGAN: That's correct.

6 MS. CAMERON-RULKOWSKI: I need a
7 clarification as well. Where the line from Inland goes
8 to Suncadia, did you mean that's the demarcation and --
9 that's not clear to me why they are going into
10 different parts of the resort. Did you draw that on
11 purpose?

12 MR. FINNIGAN: No. It's a conceptual
13 drawing. It's not a literal drawing.

14 JUDGE MACE: I say it's a very conceptual
15 drawing. Anything more on this diagram?

16 MR. FINNIGAN: No. I stopped when the
17 witness said he did not have knowledge.

18 THE WITNESS: The question was what services
19 are being provided. I attempted to describe them. I
20 didn't mean to launch into a technical description of
21 it.

22 Q. (By Mr. Finnigan) Would you turn to Exhibit
23 45, please?

24 A. Okay.

25 MR. WEST: Just one moment.

0189

1 MR. FINNIGAN: This one I put the supplement
2 in because I recognized it was an exhibit.

3 Q. Do you recognize this as the response and
4 supplemental response to Data Request No. 27 from
5 Inland?

6 A. It is.

7 Q. And Suncadia has wireless service at the
8 Suncadia Resort from Cingular; is that correct?

9 A. Yes. We have a service for our company for
10 all of our employees for operating business.

11 Q. And that service is functional on the resort
12 property; is that correct?

13 A. It is.

14 Q. And in fact, I think you mentioned that it
15 was your understanding that some of the residents had
16 wireless service on the resort lots.

17 A. Correct.

18 JUDGE MACE: So Mr. Finnigan, you are saying
19 there is a supplemental additional part to this
20 exhibit?

21 MR. FINNIGAN: Yes, and I sent that in
22 yesterday afternoon by e-mail with the PDF copies to
23 everybody.

24 JUDGE MACE: I'll look for it.

25 THE WITNESS: We were just clarifying that

0190

1 AT&T and Inland --

2 Q. (By Mr. Finnigan) Would you turn to Exhibit
3 49, please? Do you recognize that as Suncadia's
4 original and supplemental response to Data Request
5 No. 4?

6 A. I do. I'm looking at the supplemented
7 version?

8 Q. Sure. Attached to the narrative response are
9 two pages from the HUD disclosure statement of October
10 2nd, 2005. Do you recognize those?

11 A. Yes.

12 Q. Under "telephone," this disclosure statement
13 contains a substantially similar statement about the
14 provision of telephone service that was in the earlier
15 disclosure statement; is that correct?

16 A. That's correct.

17 Q. The difference is that this particular HUD
18 disclosure statement applies to Phase 3 of the Suncadia
19 development or the other disclosure statement apply to
20 the earlier phase?

21 A. This particular version is an update adding
22 additional platted areas to Phase 3, which is divisions
23 one through five and six through nine; that's correct.

24 Q. Otherwise known as Tumble Creek.

25 A. Yes.

0191

1 Q. You also mentioned in response to questions
2 earlier that there was access to Level 3? I think you
3 described it as their cross-country fiber route?

4 A. That's our plan and hope is that ICS will be
5 able to access that. I'm not sure there is certainty
6 to that yet, but that's one of the reasons why we rely
7 on the Inland route as our secondary route in the
8 interim. I don't know the current status of that work.

9 Q. So at this point, it may just be an
10 expectation, not an actuality?

11 A. That's correct.

12 Q. Ms. Krebs asked if you would be willing to
13 enter into an agreement to lease access to Suncadia's
14 facilities on reasonable terms and conditions. Do you
15 remember those questions?

16 A. I do.

17 Q. Do you have an understanding that parties may
18 agree as to what constitutes reasonable terms and
19 conditions?

20 A. Yes, that parties may agree or disagree.

21 Q. In fact, very often, agreements can't be
22 reached because parties disagree as to what's
23 reasonable.

24 A. Correct.

25 Q. Would one of the reasonable terms and

0192

1 conditions be the expectation of revenue sharing?

2 A. Again, to the extent that it's allowed under
3 the law, yes, and the reason for that is we made a
4 substantial investment in the conduits and the
5 fiber-optic cable that is distributed through the
6 community, and we are entitled to earn a reasonable
7 return on that investment which we will continue to own
8 and operate.

9 We licensed that to ICS, and part of that was
10 economics, and we don't want to do anything that would
11 undermine that or damage our ability to earn a return
12 on that part of the investment.

13 Q. So do I understand what you've just said that
14 in addition to Inland and Suncadia having to agree as
15 to what constitutes reasonable terms and conditions,
16 Suncadia's concern would be that an agreement with
17 Inland would undermine its agreement and revenue stream
18 from ICS?

19 A. I believe my testimony earlier to that
20 question was that any arrangement like that would
21 involve a three-way negotiation that would include ICS
22 who is licensed to operate that, so we would have to
23 jointly work out those terms and agree to them.

24 Q. So that goes back to your discussion about
25 accessing the facilities through -- the term you used

0193

1 was "head-end." Is that what you are referring to?

2 A. Yes, that's correct.

3 Q. So that's the context that you would put
4 around your responses to Ms. Kreb's from earlier.

5 A. Correct.

6 MR. FINNIGAN: That completes my
7 cross-examination of Mr. Eisenberg, and I would offer
8 Exhibits 37, 38, 39, 40, 41, 42, 43, 44, 45, and 49.

9 MR. WEST: Just to clarify, 37 I think has
10 already been admitted under confidentiality; is that
11 correct?

12 MR. FINNIGAN: No. That would be Exhibit
13 48-C, and I didn't offer --

14 MR. WEST: I beg your pardon.

15 JUDGE MACE: The following exhibits are
16 offered: No. 37, 38, 39, 40, 41, 42, 43, 44, 45, and
17 49. Any objections to the admission of those exhibits?
18 Hearing no objection, I'll admit them at this time, and
19 then Mr. Finnigan, is my understanding correct that 46,
20 47, 48, and 48-C are withdrawn or not offered?

21 MR. FINNIGAN: They are not offered. 48-C is
22 duplicative of 19-HC.

23 JUDGE MACE: Redirect?

24 MR. WEST: No redirect, Your Honor.

25 JUDGE MACE: Thank you, Mr. Eisenberg. You

0194

1 are excused. Let's go off the record.

2 (Discussion off the record.)

3 JUDGE MACE: We are going to adjourn right
4 now since we are coming to the end of our hearing day,
5 and we will resume tomorrow morning at 9:30 with
6 Mr. Shirley and then go ahead with Ms. Reynolds and
7 hopefully finish tomorrow morning. Is there anything
8 else we need to address at this point? We are off the
9 record.

10 (Hearing adjourned at 4:35 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25