

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UT-050606
Complainant,)	
)	OPENING BRIEF OF INTELLIGENT COMMUNITY SERVICES, INC.
v.)	
)	
INLAND TELEPHONE COMPANY,)	
)	
Respondent.)	
)	

1. Intelligent Community Services, Inc. (“ICS”) provides the following opening brief. For the reasons discussed in this brief, ICS urges the Commission to reject the filing of Inland Telephone Company (“Inland”) seeking to exclude the Suncadia resort area from Inland’s Roslyn Exchange.

DISCUSSION

A. Inland Has Failed to Demonstrate That Excluding the Suncadia Resort Area From the Roslyn Exchange Is Fair, Just, Reasonable, and Sufficient.

2. The Commission has “the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications.” RCW 80.36.230. The legislature has not established specific factors for the Commission to consider in prescribing such boundaries but generally requires that all “rules and regulations of telecommunications companies for . . . services rendered and equipment and facilities supplied . . . shall be fair, just, reasonable, and sufficient.” RCW 80.36.080. Inland’s proposed changes to its Roslyn exchange area boundaries to exclude the Suncadia resort area are not fair, just, reasonable, and sufficient.

3. Inland's sole purported justification for its proposed tariff revision is that Inland has been unable to negotiate a right of way agreement with Suncadia that would permit Inland to construct its own facilities within the resort area. As Staff suggests in its testimony, this is nothing more than a private dispute between Inland and Suncadia that in no way justifies the drastic step of redefining the Roslyn exchange boundaries. Permitting Inland to exclude an entity from its service territory simply because Inland cannot obtain the access terms it desires would give Inland enormous bargaining power in its dealings with landowners currently within its service territory. Such a decision, moreover, would establish a potentially dangerous and unwarranted precedent for improper resolution of future disputes between incumbent local exchange carriers ("ILECs") and their existing or potential customers.

4. The facts of this case highlight the unreasonableness of Inland's proposed action. Inland contends that in order to construct facilities to serve end user customers, it requires a perpetual easement for physical access to those customers' premises and that Suncadia has effectively prevented Inland from obtaining such access. That contention simply is not sustainable on several grounds.

5. First, Inland may prefer to construct its own facilities, but that is not a prerequisite to Inland's ability to offer service. Competing local exchange carriers ("CLECs") have long served customers using facilities provided by other entities. Suncadia has chosen to build its own fiber infrastructure on its property and to require any company offering telecommunications services to residents to use those facilities, rather than construct its own. Inland has produced no evidence to prove that such a requirement is unreasonable in general, or that the facilities that Suncadia specifically has installed are in any way

deficient for the provision of telecommunications services that meet or exceed the Commission's or Inland's service quality standards. Indeed, Inland expressed a willingness to negotiate with Suncadia to use those facilities to provide service to resort residents. Ex. 33 (Feb. 15, 2005 letter); Tr. at 78-79 (Inland Coonan Cross). Inland's thwarted desire for a perpetual easement to construct its own network, therefore, is not sufficient grounds to exclude Suncadia residents from Inland's local exchange service territory.

6. Second, Inland has failed to demonstrate that Suncadia is unwilling to negotiate reasonable terms and conditions for access to its network infrastructure. To the contrary, ICS and Suncadia have reached an agreement for just such access. Ex. 19. Inland has produced no evidence to demonstrate that any terms and conditions on which Suncadia insisted are unreasonable. Rather, the only condition to which Inland has specifically objected was Suncadia's request for revenue sharing, based on Inland's view of "the sharing of revenue from regulated services as an impermissible activity under the statutes that control our activities." Ex. 1T (Inland Coonan Direct) at 3, lines 22-23. Suncadia's witness, however, testified that it would expect revenue sharing only "to the extent that it's allowed under the law." Tr. at 192, lines 2-3 (Suncadia Eisenberg Cross). If Inland can demonstrate that revenue sharing is unlawful, therefore, the record evidence demonstrates that Suncadia would not insist on the sole condition to which Inland objects.

7. Inland, moreover, has not even attempted to contact ICS to negotiate access to Suncadia residents through them. Tr. at 93, lines 16-18 (Inland Coonan Cross). Suncadia remains willing to "allow Inland to have access over the backbone system that [Suncadia

has] constructed and that ICS is operating on reasonable terms.” Tr. at 173 (Suncadia Eisenberg Cross). ICS is also willing to negotiate such access. Inland thus has failed to prove that it has legitimately been, or currently is, unable to obtain the access needed to offer local exchange service to Suncadia residents.

8. Finally, even if Inland could show that it cannot access Suncadia residents to provide service – which Inland has not shown and cannot show – Inland has offered no legitimate basis for redefining its Roslyn exchange to exclude Suncadia on that basis alone. Commission rules permit a carrier to refuse to provide service to a customer if the carrier cannot reasonably access that customer. WAC 480-120-061(1)(h) & 480-120-071. Inland does not dispute that fact but claims that its image will be tarnished if customers somehow believe that “Inland is stringing them along or Suncadia describes Inland as being unreasonable.” Ex. 1T (Inland Coonan Direct) at 5, lines 10-11. These hypothetical concerns can be addressed through notices to Suncadia residents and working with Suncadia and the Commission to ensure that residents are accurately informed of the unavailability of, or limitations on, local service from Inland. Such concerns, however, do not merit the draconian solution of entirely excluding the Suncadia resort area from Inland’s service territory.

9. Inland has not proven – and cannot prove – that it is unable to obtain sufficient access to Suncadia residents to offer them local exchange services or that any inability to obtain such access would cause substantial harm to the company. Inland has shown only that it has not been able to obtain the deal it wants from Suncadia. Such a showing does not justify Inland’s proposal to exclude Suncadia from the Roslyn exchange, and thus Inland’s tariff revision to do just that is not fair, just, reasonable, and sufficient.

B. Removal of Suncadia From the Roslyn Exchange Will Negatively Impact the Public Interest.

10. Inland not only has failed to justify its tariff filing but ignores the negative consequences of excluding the Suncadia resort area from the Roslyn exchange. That area would not be served by an ILEC as the result of such an exclusion, which raises a variety of unresolved and potentially serious issues.
11. One such impact is the effect on Suncadia residents. ICS reached an agreement with Suncadia to provide telecommunications services to those residents but executed that agreement as a CLEC with the expectation of serving a portion of Inland's Roslyn exchange. If the Suncadia resort area is removed from that exchange, calls between resort residents and residents and businesses in the nearby town of Roslyn (and in the remainder of the reconfigured Roslyn exchange) technically would be interexchange calls. Inland's response to whether these would be treated as local or toll calls was, "I can't answer. I guess the Commission would have to answer that." Tr. at 96, lines 10-16 (Inland Coonan Cross). Such a sanguine position is cold comfort to customers in the existing Roslyn exchange who could face having to pay toll charges or higher local phone rates to fund extended area service ("EAS") if the Suncadia resort area is no longer part of the Roslyn exchange.
12. ICS would also be directly impacted. ICS is a CLEC and is not willing to serve the Suncadia resort area as an ILEC. The Commission, however, has yet to determine what form of regulation would apply to a CLEC that suddenly finds itself serving customers in part of an ILEC exchange that the ILEC removes from that exchange. Inland expresses concern that "ICS could become a *de facto* monopoly without any restraints imposed by competition or by Commission review of tariff filings," Ex. 5T

(Inland Coonan Reply) at 10, lines 11-13, but Inland proposes to create such a possibility by abandoning that portion of its service territory.

13. The exclusion of the Suncadia resort area from the Roslyn exchange will also impact the terms and conditions under which ICS can interconnect with Inland's network and obtain services. With respect to the Suncadia resort area, ICS would not be a local competitor of Inland and thus would be unable to take advantage of the provisions in Sections 251 and 252 of the Telecommunications Act of 1996 ("Act") establishing ILEC obligations to CLECs. ICS thus could be in the same position as a long distance provider or even an end user customer when seeking access to Inland's network. In the agreement between Inland and Suncadia, if it becomes effective, Inland has agreed "to diligently pursue negotiation and documentation of traffic exchange agreements with Suncadia's telecommunications contractors as requested," Ex. 34, but that undertaking is virtually meaningless. Even "diligently" pursuing negotiation will not necessarily result in a traffic exchange agreement with reasonable terms and conditions, and the ability of ICS, as a non-party to the Inland-Suncadia agreement, to enforce even that inherently unenforceable requirement in that agreement is suspect at best.

14. In addition, ICS may be precluded from access to universal service funds. ICS has applied for designation as an eligible telecommunications carrier ("ETC"), but such a designation would be meaningless if the Roslyn exchange no longer includes the Suncadia resort area. As Staff explained in its testimony,

The absence of an incumbent, and therefore the absence of a known amount of federal support on which support calculations for non-incumbent ETCs may be based, would seem to create a problem for determining what, if any, amount of support would be provided to the non-incumbent ETC. Whether or not support would be paid under this

circumstance would be a decision by the FCC and I find nothing in the FCC rules on which I can rely for a prediction about its decision.

Ex. 61T (Staff Shirley Direct) at 6, lines 4-11. This problem would extend to the wireless carriers that the Commission previously designated as ETCs in the Roslyn exchange, broadening the negative impact of the reconfiguration of that exchange.

15. The exclusion of the Suncadia resort area from the Roslyn exchange thus would raise unprecedented questions of broad public impact. Such action potentially could increase the rates of customers in the existing Roslyn exchange, as well as hamper or unduly burden the ability of ICS to obtain the access to Inland's network necessary to provide service to Suncadia residents. ICS and existing wireless ETCs could also be restricted from receiving federal universal service support in an area for which such support currently is available. Such consequences are not consistent with the public interest.

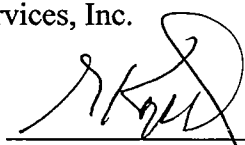
CONCLUSION

16. Inland has failed to prove that revising the boundaries of the Roslyn exchange to remove the Suncadia resort area is fair, just, reasonable and sufficient. To the contrary, the record evidence demonstrates that such a boundary revision would negatively impact the public interest. The Commission, therefore, should reject the proposed tariff revision.

DATED this 5th day of June, 2006.

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