

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UT-050606
TRANSPORTATION COMMISSION,	)	
	)	ORDER 08
Complainant,	)	
	)	
v.	)	INITIAL ORDER REJECTING
	)	PETITION FOR TARIFF
INLAND TELEPHONE COMPANY,	)	REVISION
	)	
Respondent.	)	
	)	
.....	)	

1 ***Synopsis:** This order recommends that the Commission reject Inland’s proposed tariff revision removing from its service territory the geographic area including the Suncadia Resort and adding other currently unserved territory.*

2 **NATURE OF PROCEEDING.** Docket UT-050606 involves the suspension of a tariff Inland Telephone Company (Inland) filed on April 19, 2005. The tariff provided for the removal from Inland’s service area the territory at the southern edge of the Roslyn exchange comprised of the Suncadia Resort and the addition of other territory north of the Roslyn exchange.<sup>1</sup> On June 29, 2005, the Commission suspended the proposed tariff revisions.

3 **APPEARANCES.** Richard A. Finnigan, attorney, Olympia, Washington, represents Inland. Judith Krebs, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel). Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”). John L. West and Richard M. Peterson, attorneys, Seattle, Washington,

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<sup>1</sup> No party objected to Inland’s proposed addition to its service territory, but because the tariff revision is a whole package and because there is no evidence on the record in support of the addition, the proposed addition must also be denied.

represent Suncadia LLC (Suncadia). Gregory J. Kopta, attorney, Seattle, Washington, represents Intelligent Community Services (ICS).

- 4 **BACKGROUND.** This case involves the provision of telecommunications service to Suncadia, a planned resort and development located near Roslyn, Washington. Suncadia may eventually include 2,800 single-family dwellings, three golf courses, and commercial businesses, for a total of about 4,000 connections.<sup>2</sup> Suncadia has no public rights of way and has constructed its own complete telecommunications backbone and infrastructure.<sup>3</sup>
- 5 Suncadia and the Roslyn exchange are currently within Inland's service territory. Inland is the incumbent local exchange carrier (ILEC) providing telecommunications service to the area (excluding, for the most part, the Suncadia area), with service to approximately 2,706 lines and channels in the area.<sup>4</sup> By its petition, Inland seeks to remove the Suncadia resort area from its service area and to add to its service area other unserved territory north of the Roslyn exchange.<sup>5</sup>
- 6 ICS, a competitive local exchange carrier (CLEC)<sup>6</sup> and an intervenor in this proceeding, entered an agreement with Suncadia to provide service to the whole development over Suncadia's infrastructure, paying Suncadia for the use of that infrastructure.<sup>7</sup> ICS has also requested Commission approval to serve as a wireless Eligible Telecommunications Carrier (ETC) in Inland's service territory.<sup>8</sup> An ETC designation is governed by 47 USC 214(e) and allows a carrier to become eligible for federal universal support funds (USF). The Commission has already approved three wireless ETCs for the Roslyn exchange.<sup>9</sup>

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<sup>2</sup> Exhibit 31 T, pp 2-3; Exhibit 51 TC, p. 5; as of September 8, 2005, Suncadia had sold 596 lots. Currently several houses are complete and over a hundred are under construction (TR 149- Eisenberg). Suncadia's sales center, golf courses, a pro shop, and a hotel are operating, and a restaurant have been completed; *see also* Exhibit 51TC, pp. 6 and 9.

<sup>3</sup> Exhibit 31 T, pp. 5-6.

<sup>4</sup> Exhibit 51 TC, pp. 3-4; *see also* Public Counsel Initial Brief, p. 13 on the history of the telecommunications franchise granted for service to the Roslyn exchange, including the area now known as Suncadia.

<sup>5</sup> Inland Tariff filing, April 19, 2005.

<sup>6</sup> ICS Opening Brief, p. 5.

<sup>7</sup> Exhibit 19HC.

<sup>8</sup> ICS Opening Brief, p. 6, Docket No. UT-053041, filed June 29, 2005.

<sup>9</sup> Public Counsel Opening Brief, p 21.

7 Inland currently provides only limited service to Suncadia's sales office<sup>10</sup> under a June 1, 2005, agreement intended to insure Inland's continuation of its present tariffed services to Suncadia even if Suncadia is removed from Inland's service territory.<sup>11</sup> Inland had hoped to be able to serve the entire resort and engaged in lengthy negotiations with Suncadia and its predecessor<sup>12</sup> to provide service to the whole development. However, the parties reached an impasse when Suncadia refused to grant Inland a long-term easement for Inland's telecommunications' facilities<sup>13</sup> and requested that Inland share revenues from its telecommunications operations with Suncadia.<sup>14</sup>

8 As a result of the impasse, Inland filed this tariff revision requesting that Suncadia be removed from its service territory.

9 **APPLICABLE LAW.** Under RCW 80.36.230, the Commission has the power to set territorial and exchange boundaries for telecommunications companies. In setting such boundaries, the Commission must act in the public interest.<sup>15</sup> Under RCW 80.36.090, telecommunications carriers are required to provide service "upon reasonable notice...to all persons and corporations who may apply therefore and be reasonably entitled thereto..." In addition, RCW 80.36.080 requires that "rules and regulations of telecommunications companies...shall be fair, just, reasonable and sufficient."

10 In prior cases where the Commission has addressed whether to relieve a carrier of the obligation to serve in its prescribed service territory, the Commission has considered whether removal was fair, just, and reasonable and would serve the public interest.<sup>16</sup> In addition, the Commission has considered whether removal of a service would cause detrimental consequences for present and potential customers<sup>17</sup> and whether the

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<sup>10</sup> Exhibit 31 T, p. 3.

<sup>11</sup> *Id.*, p. 2; TR 169.

<sup>12</sup> Inland Opening Brief, p. 1; Public Counsel Initial Brief, p. 7

<sup>13</sup> Exhibit 1 T, p. 4; TR 137 and 173 (Eisenberg).

<sup>14</sup> Exhibit 1 T, pp. 3-4; Exhibits 2-3; TR 87-89.

<sup>15</sup> RCW 80.01.020.

<sup>16</sup> *See, WUTC v. U.S. West Communications, Inc.*, Docket No. UT-961638, Fourth Supplemental Order Rejecting Tariff Filing, January 16, 1998, p. 16, 20 (US West). In addition, under RCW 80.36.080, the Commission is generally required to insure that "rules and regulations of telecommunications...shall be fair, just, reasonable and sufficient."

<sup>17</sup> US West, p. 15

company's obligation to serve in its currently established service territory imposed "severe and unique economic burdens."<sup>18</sup>

- 11 Inland has the burden of proof to demonstrate whether the proposed excision of Suncadia from its service territory is fair, just, and reasonable and in the public interest.<sup>19</sup>
- 12 Inland argues the Commission should approve the tariff revision because: 1) Suncadia refuses to grant Inland a long term easement allowing physical access to customers in the Suncadia resort and Inland cannot therefore actually provide service; 2) Inland and its customers will suffer financial and other harms if Suncadia is permitted to remain part of Inland's service territory; 3) other carriers are authorized to serve the Suncadia area and ICS could be required to serve the resort under RCW 80.36.090; and 4) allowing the tariff revision would eliminate improper arbitrage of Universal Service Fund (USF) support by ICS. These arguments are addressed in the sections below.

**A. Is Inland's lack of a long-term easement sufficient to support approval of Inland's proposed tariff revision?**

- 13 The issue here is whether the failure of Suncadia to grant Inland a long term or permanent easement means that Inland lacks sufficient access to Suncadia's customers to render it unable to provide service in the Suncadia area. Inland contends that because Suncadia has built its own telecommunications infrastructure, which is operated by ICS, and will not grant Inland a permanent, or long-term, easement<sup>20</sup> allowing Inland to build its own telecommunications structure, Inland cannot physically serve any customers in Suncadia and thus is, for all intents and purposes, unable to fulfill its obligation to serve under RCW 80.36.090. Since this obligation applies to all the geographic territory in the company's service area, removal of

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<sup>18</sup> *Id.*, p. 20. In the US West order, the Commission also balanced the harms suffered by the incumbent carrier in carrying out its statutory obligation to serve under RCW 80.36.090 against the benefits the carrier received as a regulated carrier.

<sup>19</sup> US West, p. 16.

<sup>20</sup> Inland claims that it sought only a standard telecommunications easement from Suncadia during negotiations over the easement. Ex. 1T, pp. 5- 6.

Suncadia from Inland's service territory simply honors the reality that Inland cannot physically serve that area.<sup>21</sup>

- 14 Both Public Counsel and Staff reject Inland's arguments. Public Counsel points out that Inland could provide service to Suncadia customers over Suncadia's infrastructure<sup>22</sup> and that RCW 80.36.090 does not automatically require a carrier to provide service on request, but only when a potential customer is "reasonably" entitled to service.<sup>23</sup>
- 15 Inland counters that it is unlikely Inland would be able to reach an agreement allowing it to serve Suncadia, over the Suncadia infrastructure, on reasonable terms and conditions.<sup>24</sup> Inland points out that Suncadia did not respond to Inland's initial offer to provide service over Suncadia's network.<sup>25</sup> Inland further points out that Mr. Eisenberg, Suncadia's Senior Vice-President, testified that any agreement that might be reached would be subject to Suncadia's approval as to rates and would require a revenue sharing term.<sup>26</sup> Inland asserts that revenue sharing created the impasse between Suncadia and Inland in the first place.
- 16 **DISCUSSION.** Inland's lack of physical access to customers through a long term easement does not support approval of the proposed tariff revision. The record shows that Inland could provide service to Suncadia customers on a third party basis over Suncadia's network, and in fact offered to do so, thus obviating the need for Inland to construct a duplicate physical network to access those customers. While providing service on a third-party basis might prevent Inland from recovering a greater profit, or from recovering revenues from tariffed rates, third-party access is no different from the access used by CLECs to serve customers over another carrier's network. That Inland would prefer to operate in the traditional manner of ILECs and have a permanent easement to build its own network does not mean that it could not provide service over the existing Suncadia network.

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<sup>21</sup> Inland Opening Brief, p. 6.

<sup>22</sup> TR 82-83; Inland Reply Brief, p. 16.

<sup>23</sup> Initial brief of Public Counsel, p. 22.

<sup>24</sup> Inland Reply brief, p. 16.

<sup>25</sup> *Id.*; see also Exhibit 33, pp. 1-2.

<sup>26</sup> *Id.*, p. 16; TR 155, 191.

17 Inland's claim that the parties (Inland, Suncadia and ICS) would not be able to agree on reasonable terms and conditions for third party service by Inland is speculative because the parties have never attempted to negotiate such an agreement.<sup>27</sup> The initial negotiations between the parties were premised on Inland's construction of its own infrastructure.

18 In summary, Inland has failed to show that lack of physical access to Suncadia dictates approval of the proposed tariff revision.

**B. If Inland is required to continue serving the Suncadia area subject to RCW 80.36.090, will it and its customers suffer harm that should cause the Commission to approve the tariff revision?**

19 *Cost burden.* Inland argues that as the carrier of last resort under RCW 80.36.090,<sup>28</sup> it would be required to its detriment to maintain sufficient inventory to quickly provide service to Suncadia should the resort's private telecommunications system fail for some reason.<sup>29</sup> Inland claims maintaining a ready inventory would impose an unfair financial burden on its customers that would be eliminated if the Commission allowed removal of Suncadia from its service territory.

20 Both Staff and Public Counsel reject Inland's claims of harm. They observe that providing service over Suncadia's already constructed network would not require Inland to maintain significant inventories of its own equipment to provide service should it be required.<sup>30</sup> Staff points to the testimony of Mr. Coonan about the uncertainty of the cost Inland would incur if it served over the ICS/Suncadia infrastructure<sup>31</sup> and to the testimony of Mr. Eisenberg stating that the cost of connecting to the existing network would be less than the cost of building the entire network from scratch.<sup>32</sup>

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<sup>27</sup> TR 47-48 (Coonan).

<sup>28</sup> It is noteworthy that RCW 80.36.090 does not use the phrase "carrier of last resort" but rather requires "every telecommunications company" to provide service on demand, upon "reasonable" notice, and to those "reasonably entitled" to service.

<sup>29</sup> Inland Opening Brief, p. 6.

<sup>30</sup> Inland states in its Opening Brief, pp. 5- 6, that it is highly unlikely that a complete, sudden and catastrophic business failure or destruction of Suncadia's infrastructure is unlikely.

<sup>31</sup> TR 41-46; 89-80 (Coonan).

<sup>32</sup> Staff Initial Brief, p. 4; TR 114 (Coonan).

- 21 Inland responds that, to the contrary, the evidence shows that the cost of serving Suncadia would be significant,<sup>33</sup> and that it is merely hypothetical that Inland could serve Suncadia by means of an agreement with ICS over the existing network.<sup>34</sup> In any event, Inland contends there is no evidence that there would be “very little” cost involved in interconnecting with the Suncadia infrastructure.<sup>35</sup>
- 22 **Revenue sharing.** Inland further asserts that requiring it to provide service by means of an agreement with Suncadia/ICS would lead to improper sharing of revenue with Suncadia.<sup>36</sup> Inland states that during negotiations with Suncadia, the resort demanded that Inland pay Suncadia a portion of regulated revenues Inland received from telecommunications and related services,<sup>37</sup> pointing to the testimony of Mr. Coonan<sup>38</sup> as well as to correspondence between Inland and Suncadia. Inland contends that such sharing would violate RCW 80.36.170 and RCW 80.36.180<sup>39</sup> which prohibit the granting of rebates for regulated services.<sup>40</sup>
- 23 Inland asserts that it receives \$21.03 per line per month from the USF<sup>41</sup> and that Suncadia’s demand for revenue sharing might result in the improper sharing of USF revenues with a private developer.
- 24 Inland also contends that if the sharing of basic service revenues was required in order to enable Inland to serve Suncadia, either the rates of Suncadia residents would have to be higher than those of the remainder of Inland’s customers, or Inland’s other customers would be subsidizing Suncadia service.<sup>42</sup>
- 25 Both Staff and Public Counsel also dismiss Inland’s argument that improper sharing of revenues would be required by Suncadia, pointing to the testimony of Mr. Coonan, Inland’s Treasurer, that Inland could agree to lawful revenue sharing and that Inland was considering some form of sharing during negotiations (TR 89); and the testimony

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<sup>33</sup> Inland Reply Brief, p. 22; Exhibit 7.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, p. 8.

<sup>37</sup> Ex. 1T, pp 3-4; Exs. 2 and 3; TR 87-89 (Coonan).

<sup>38</sup> Ex. 1T, pp. 3-4, Ex. 2, Ex 33; TR 120-122 (Coonan).

<sup>39</sup> These statutory provisions outlaw unreasonable rate discrimination and rate preferences.

<sup>40</sup> Inland Opening Brief, p. 2

<sup>41</sup> Exhibit 13, citing to USAC Report HC04 for Second quarter, 2006.

<sup>42</sup> Inland Reply Brief, p. 14.

of Mr. Eisenberg, who stated that Suncadia would not insist on revenue sharing that was unlawful (TR 189).<sup>43</sup>

26 **Reputation.** Finally, Inland claims that its reputation will be harmed if Suncadia remains in Inland's service territory because Suncadia residents requesting service might be misinformed as to the reasons why Inland cannot serve.<sup>44</sup> Inland provides a statement from Susan E. Weis, wife of Inland's President,<sup>45</sup> identifying the Weis's as Suncadia property owners. Mrs. Weis states that during a property owners meeting she attended, Suncadia stated that the local provider (Inland) would not be providing service to Suncadia because Inland was unable to provide the expected quality of service. Inland also asserts that if it should become a third party provider to Suncadia, its reputation could suffer if it ICS impedes or prevents Inland in the performance of customer repairs.<sup>46</sup>

27 Staff and Public Counsel argue that Inland's claim of harm to reputation lacks substance because there were no first hand accounts and only one customer was reported to have been affected by Inland's inability to serve Suncadia.<sup>47</sup> Staff and Public Counsel did not have an opportunity to respond to Mrs. Weis's declaration because it was filed with Inland's reply brief.

28 **DISCUSSION. Cost burden.** The record demonstrates that Inland could provide service over the already existing network by means of an interconnection agreement with ICS and Suncadia. It is only speculation that the parties would be unable to negotiate reasonable terms and conditions because no negotiations have as yet even been attempted. With respect to any cost burden third party service would impose on Inland, it is intuitive that service to Suncadia over the existing network would be less costly than construction of a duplicate telecommunications network. Nor would Inland need to maintain a costly inventory of equipment and facilities in readiness to serve Suncadia in the event of an emergency demand for service, because there is

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<sup>43</sup> See also, Public Counsel Initial Brief, fn. 6.

<sup>44</sup> Inland Opening Brief, p. 8.

<sup>45</sup> See attachment to Inland Reply Brief, Declaration of Susan E. Weis. Inland requests that Mrs. Weis's Declaration be made a late filed exhibit. The request will be conditionally granted because it is relevant to Inland's reputation claim, but the statement carries minimal weight given the other parties' inability to cross-examine.

<sup>46</sup> Inland Reply Brief, p. 17, TR 123-124 (Coonan).

<sup>47</sup> Public Counsel Initial Brief, p. 16.



little likelihood that the new Suncadia infrastructure will fail or become unavailable and because Inland has recourse under RCW 80.36.080 if any request for service is “unreasonable.”<sup>48</sup>

29 **Revenue sharing.** The record is clear that Inland would agree to lawful revenue sharing and Suncadia would not require unlawful revenue sharing. Lawful revenue sharing presumably would not include the sharing of revenues from basic services, thus eliminating Inland’s argument that customers outside Suncadia would subsidize Suncadia customers, or that Suncadia customers would be charged more for regulated service. While the Suncadia revenue sharing requirement might increase the cost to serve in the resort, Inland would have the option to reduce other costs to accommodate the need to keep rates equal. With regard to the sharing of USF support dollars, Inland has provided no evidence that Suncadia’s revenue sharing request actually involved such revenues, or that an agreement with Suncadia would require the sharing of such revenues.

30 **Reputation.** Inland’s evidence on the issue of harm to its reputation is thin. Only one customer was initially said to have complained about Inland’s inability to provide service. Moreover, the declaration from Mrs. Weis was supplied by Inland with its reply brief and the parties have had no chance to respond to its substance. Mrs. Weis’s statement shows that she herself attended the property owners meeting and presumably had an opportunity to provide accurate information about Inland’s ability to serve the resort. Finally, Inland’s complaints about being at the mercy of ICS and Suncadia as to rates and service quality are unconvincing. Such concerns are important ones, but are not different than those faced by any third party provider. Both rates and service quality are areas where properly negotiated terms can alleviate concerns on all sides.

31 **Conclusion.** Taken as a whole, Inland has failed to show that it would suffer the type of harm that would support Commission approval of its proposed tariff. The arguments regarding harm to Inland underline the fact that while Inland could serve Suncadia as a third party provider without substantial financial or other harm, whether it could actually reach agreement with Suncadia has not been tested. Whether or not such an agreement can be reached, the issue remains whether it would serve the

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<sup>48</sup> Inland Opening Brief, p. 5.

public interest to maintain Inland's obligation as an ILEC to serve the Suncadia area under RCW 80.36.090.

**C. Has Inland demonstrated that the public interest would be served by granting the request to remove Suncadia from Inland's service territory?**

- 32 Inland claims that its tariff revision would serve the public interest because there are alternative service providers authorized to serve Suncadia. Inland points out that three wireless carriers have been designated as to serve the Roslyn exchange: Sprint PCS, Cingular, and United States Cellular Corporation.<sup>49</sup> Inland asserts that federal rules require such carriers to certify that they are able to offer basic telecommunications service throughout the areas they seek to serve.<sup>50</sup> Inland points out that, unlike wireline carriers, wireless carriers need not have physical access to each customer in order to provide service and may still be eligible, as ETCs, to receive federal universal service support for their operations. Inland further notes that Suncadia's owner, Mr. Eisenberg, specifically testified that one of the ETCs – Cingular – actually provides wireless service to the resort.<sup>51</sup>
- 33 In addition, Inland contends that since ICS is the sole carrier able to serve the Suncadia, the Commission can direct ICS to provide carrier of last resort service under RCW 80.36.090 as well as other statutory provisions and Commission rules.<sup>52</sup>
- 34 Staff contends that the removal of Suncadia would violate RCW 80.36.300 because it would decrease the availability of telecommunications service in the area—there would be only one Suncadia wireline provider left, ICS.<sup>53</sup> Staff also contends that the Federal Communications Commission and the UTC have found wireless service providers are not adequate substitutes for wireline service.<sup>54</sup> Since none of the

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<sup>49</sup> See, *In re: Spring Corporation Petition for Designation as an ETC*, Docket No. UT-043120 (January 27, 2005); *In re: AT&T Petition for Designation as an ETC*, Docket No. UT043011 (May 2, 2005); and *In re: U.S. Cellular Petition for Designation as an ETC*, Docket No. UT-970345 (January 27, 2001).

<sup>50</sup> 47 C.F.R. §54.201.

<sup>51</sup> TR 189 (Eisenberg). An ETC designation does not, in and of itself, signify that a carrier is actually providing service.

<sup>52</sup> Inland Reply Brief, pp. 3-4.

<sup>53</sup> Staff Initial Brief, p. 13.

<sup>54</sup> Staff Initial Brief, p. 21.FCC Triennial Review Order, August 21, 2003, ¶245

remaining providers would supply tariffed service, resort customers would not be able to obtain service at fair, just, reasonable and sufficient rates.

35 Staff and Public Counsel also spotlight the effect of the tariff revision on the designation and service obligations of ETCs. Because an ETC designation is contingent on providing service in an incumbent carrier's established territorial limits, removal of Suncadia from Inland's territory would affect future ETC designations for the resort.<sup>55</sup> Also, Staff points out that under federal law it is not clear whether the removal of Suncadia would also effect whether ETCs currently designated to serve the area would remain eligible to receive USF support. Staff argues that the basis for calculating USF support for Suncadia ETCs would be eliminated since USF support is calculated based on the investment by the incumbent carrier, in this case Inland.<sup>56</sup> Staff asserts that if Suncadia were no longer part of an exchange, then there would be no incumbent investment on which to base the calculation.

36 Staff contends that while the Commission may have the authority to decide the scope of an ETC's obligation to serve an area after the area has been removed from an incumbent's exchange, this docket is not the correct forum for making such a determination because of its limited scope. Staff further asserts that only the FCC has jurisdiction to decide whether USF support would remain available to ETCs when incumbent carriers pull out of their original service territories. Therefore, Staff contends that Commission approval of Inland's request to remove Suncadia is premature and should be postponed until the FCC provides greater clarity about the direction it will take on this issue.

37 Public Counsel points out that in a prior *US West* case, the Commission considered the effect on current and prospective customers in determining whether to allow the company to eliminate or curtail service.<sup>57</sup> Public Counsel also argues that under *US West*, the Commission determined that an ILEC must show that it will experience substantial harm balanced against the benefits accorded it as the de facto provider of monopoly communications services in its territory. Public Counsel notes that contrary to Inland's claim that wireless ETCs may serve Suncadia, the Commission

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<sup>55</sup> Staff Initial Brief, p. 15, 22; Staff Reply Brief, pp. 8-12; Public Counsel Reply Brief, p. 12.

<sup>56</sup> Staff Initial Brief, p. 15.

<sup>57</sup> *WUTC v. US West*, Docket UT-961638, Fourth Supplemental Order (January 16, 1998), pp. 15-16 (*US West*).

has recognized the inability of a wireless ETC to serve in every portion of an area for which it seeks designation.<sup>58</sup>

- 38 Inland counters that the concern about the effect on an ETC's obligation to serve an area if it no longer is part of an incumbent's territory is ill-founded. Inland claims that 47 U.S.C. §214(e)(4) contemplates that an "underlying ILEC may withdraw from ETC obligations for a physical portion of its service area"<sup>59</sup> and that a state commission has the authority to ensure that all customers served by the withdrawing incumbent will continue to be served.<sup>60</sup> Therefore, Inland argues the UTC may require an ETC that the Commission has already designated to serve in Inland's current service territory to continue to serve that territory, whether Inland is the incumbent or not.
- 39 Inland also argues that removal of Suncadia would prevent arbitrage of universal service funds by ICS.<sup>61</sup> ICS seeks to obtain universal service support for the services it will provide to Suncadia customers.<sup>62</sup> Since USF support is calculated based on Inland's cost of service for a sparsely populated rural area, ICS would receive a high level of support for serving the densely populated (and likely much less expensive to serve) Suncadia resort. Inland suggests this result would be "abhorrent to anyone concerned about the public policies concerning universal service."<sup>63</sup> Moreover, Inland suggests that the Commission has recently expressed interest in preventing such arbitrage of USF resources,<sup>64</sup> and that removal of Suncadia from Inland's territory would be consistent with the Commission's concerns on this issue.

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<sup>58</sup> In re: Sprint, Docket UT-043120, p. 35.

<sup>59</sup> Opening Brief of Inland, p. 10.

<sup>60</sup> *Id.*

<sup>61</sup> Reply Brief of Inland, pp. 11-13.

<sup>62</sup> ICS Opening Brief, p. 14.

<sup>63</sup> Reply Brief of Inland, p. 12.

<sup>64</sup> *Id.*; Inland asks that the Commission take official notice of the discussions contained in tapes of the Commission's May 17 and June 6, 2006 open meetings where the Commission addressed these concerns. The Commission's rule governing official notice is WAC 480-07-495. Because the Commissioners addressed their concerns about USF support on the record during the Open Meetings, notice is taken of those discussions, noting that the Commissioners made no decisions on the issue.

- 40 **DISCUSSION.** The Commission’s mandate to regulate in the public interest is rooted in the facts of a particular case.<sup>65</sup> The courts have defined the public interest, in the context of designating ETCs, as a “broad concept encompassing the welfare of present and future consumers, stakeholders and the general public.”<sup>66</sup> The Commission has addressed the public interest in the US West case which involved US West’s (now Qwest’s) petition to release the company from its obligation to provide certain services within set time frames. In *US West*, the Commission stated that the public interest was served when resulting rates were fair, just, reasonable and sufficient; when affordable universal service and diversity of providers was preserved; and when the economic burdens on the company outweigh the benefits it receives as a de facto monopoly provider.<sup>67</sup>
- 41 In addition, in determining whether the public interest is served, the Commission must consider the legislature’s telecommunications policy declaration contained in RCW 80.36.300. The policy declaration requires the Commission to consider the preservation of affordable universal service; the maintenance of efficient available telecommunications service; that customers pay reasonable charges for service; that cross-subsidization of non-regulated services is avoided; that diversity of suppliers is promoted; and, that flexible regulation of competitive services is permitted.
- 42 Overall, Inland has failed to show that removal of Suncadia from its service territory would serve the public interest. Of primary concern is the detrimental effect on the availability of service from ETC designees should the Commission approve Inland’s proposed tariff revision. Inland has failed to show that service from ETCs, including ICS, would continue to be available in Suncadia, or that those providers would be able to receive crucial USF support required to enable them to serve the area. If the Commission lifted Inland’s continuing obligation to serve, the Suncadia area might find itself with no carrier able to serve or to be designated to serve, in violation of the

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<sup>65</sup> RCW 80.01.040 states that the Commission “shall: (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation...”

<sup>66</sup> *Washington Independent Telephone Association v. WUTC (WITA)*, 149 Wn.2d. 17, 28, fn. 3 (2003).

<sup>67</sup> *US West*, Fourth Supplemental Order, pp. 15-16, 22-24; because the telecommunications industry has changed so dramatically in recent years, and because in this case Inland has never actually served Suncadia, except for its minimal service to the Suncadia sales office, it is not clear that balancing harms against the benefits of de facto monopoly provider status is beneficial to a decision here.

telecommunications policy stated in RCW 80.36.300 (2) requiring the Commission to assure the “availability of telecommunications service.”

- 43 The Commission understands there is a potential for arbitrage of USF funds by ICS should it be designated an ETC to serve Suncadia. Nevertheless, this docket is not the appropriate forum to address such concerns. Indeed, since USF funds are federal in nature, the resolution to the question must involve determinations made at the federal level. For purposes of this docket, the potential for arbitrage is insufficient to overcome the detriment to availability of telecommunications services should Inland’s withdrawal prevent future ETC designations for the area.
- 44 Inland’s contention that the Commission should require ICS to serve Suncadia pursuant to RCW 80.36.090, in effect making ICS the incumbent carrier, is intriguing but inappropriate for the narrow scope of this docket. ICS’s petition for ETC status might be the more appropriate place to address the issue, or another proceeding the Commission might designate that would have the benefit of a more complete record.
- 45 Inland has also failed to demonstrate that wireless service to the area would provide adequate “available” service, comparable to wireline service. The FCC has stated that wireless service does not yet rise to the quality level of wireline, in particular with regard to the provision of 911 emergency call service. Moreover, the record demonstrates that only one wireless carrier, Cingular, actually serves Suncadia, regardless of how many ETCs may have been designated to serve the area. Finally, the Commission has recognized ETCs’ initial inability to provide ubiquitous service in their territories until they are able to tap into USF support funds.
- 46 **CONCLUSION.** In conclusion, Inland has failed to meet its burden of proof which requires a demonstration that removal of Suncadia from its service territory would serve the public interest and would be fair, just and reasonable. Inland’s proposed tariff revision is rejected.

**FINDINGS OF FACT**

- 47 (1) The Washington Utilities and Transportation Commission has the authority pursuant to statute to regulate the rates, rules, regulations, and practices of public service companies, including telecommunications companies.
- 48 (2) The Washington Utilities and Transportation Commission has the authority pursuant to statute to establish the service territories of telecommunications companies subject to its jurisdiction.
- 49 (3) Inland is a telecommunications company within the jurisdiction of the Washington Utilities and Transportation Commission.
- 50 (4) Suncadia is a private resort development located within Inland's Roslyn exchange.
- 51 (5) Suncadia has constructed its own telecommunications infrastructure within the resort area and has contracted with ICS to provide telecommunications service to customers within the resort area.
- 52 (6) ICS is a competitive local exchange carrier that has contracted with Suncadia to provide telecommunications service to the resort.
- 53 (7) ICS has filed a petition with the Commission requesting that it be designated an ETC for the Roslyn exchange, including Suncadia.
- 54 (8) Inland filed a proposed revision of its tariffs that would remove Suncadia from Inland's service territory.
- 55 (9) Inland bears the burden of proof to show that the proposed tariff revision would serve the public interest, and would be fair, just, and reasonable.
- 56 (10) Inland provided insufficient evidence to meet its burden of proof.

**CONCLUSIONS OF LAW**

- 57 (1) The Washington Utilities and Transportation Commission has jurisdiction over  
the subject matter of this proceeding and the parties.
- 58 (2) Inland has failed to carry its burden of proof that its proposed tariff revisions  
are fair, just, and reasonable and in the public interest.
- 59 (3) Inland's proposed tariff revision removing Suncadia from Inland's service  
territory should be rejected.

**ORDER**

60 IT IS ORDERED That Inland's proposed tariff revision is rejected .

Dated at Olympia, Washington, and effective August 3, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE  
Administrative Law Judge

**NOTICE TO THE PARTIES**

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.



WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and six copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250