BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. INLAND TELEPHONE COMPANY, Respondent.	DOCKET NO. UT-050606 ANSWER OF COMMISSION STAFF TO INLAND'S PETITION FOR ADMINISTRATIVE REVIEW

1 The Staff of the Washington Utilities and Transportation Commission (Staff) submits this answer to the Petition for Administrative Review filed by Inland Telephone Company (Inland).

I. INTRODUCTION

2 In its Petition for Administrative Review (Petition), Inland argues that the Commission should reject the initial order and approve the company's proposed tariff revision. The arguments in the petition fail to establish, however, that Inland has met its burden of proof to show that the proposed tariff revision is fair, just, reasonable, and in the public interest. Inland's arguments lead to the conclusion that the benefits of preserving the status quo outweigh the speculative harms that Inland advances. The initial order properly preserves the status quo.

II. BACKGROUND

3 Inland's tariff revision proposes to remove from the Roslyn Exchange a portion of territory comprising the Suncadia resort. Inland is the incumbent provider of local wireline

telephone service in the Roslyn Exchange.[1] If the resort is built as planned, it will contain 2,800 single family homes, as well as golf courses and commercial businesses.[2] In its Petition, Inland speculates that many of the residences will be vacation homes or second homes, but the company cites to no evidence to support this assertion.[3] Inland currently provides tariffed service to Suncadia's resort facilities, such as its sales center, under a right of entry agreement with Suncadia.[4]

4 On April 1, 2006, Suncadia and ICS signed a contract providing that ICS will offer telecommunications services in the resort [redacted].[5] There is no evidence that after the contract was signed Inland engaged in negotiations with either ICS or Suncadia about accessing the Suncadia/ICS network should a resort resident or business desire service from Inland.[6]

III. ARGUMENT

A. Inland bears the burden of proof to show that its proposed tariff revision would be fair, just, reasonable, and in the public interest.

5 Inland bears the burden of proof to show that the tariff revision is fair, just, and reasonable, and in the public interest, and Judge Mace was correct in concluding that Inland did not meet its burden.

[1] Exh. No. 51TC 4:10-17 (Reynolds).
[2] Exh. No. 31T 2:27-3:1 (Eisenberg) and Exh. No. 51TC 5:16-17 (Reynolds).
[3] At ¶4. It is important to note, however, that a property bought initially as a second home may become the primary residence or may be purchased by a new buyer as a primary residence. In short, the character of a property and of a community can change over time.
[4] *See* TR 41:16-25 (Coonan); TR 149:19-25 (Eisenberg).
[5] Exh. No. 19C, *Fiber Optic Communications System and Services Agreement*.
[6] *See* TR 47:7–48:11 (Coonan) regarding no negotiation with ICS; TR 79:17-19 (Coonan) regarding no negotiation with Suncadia.

1. Inland bears the burden of proof.

6 In its Petition, Inland argues for the first time that statutory language, in particular RCW 80.04.130(4),[7] does not place the burden of proof on Inland for its proposed tariff revision.[8] Inland first referred to this issue in a footnote in its reply brief[9] and chose not to argue the issue until this late stage in the proceedings. Inland's argument is too late. The Commission expressly stated in the Complaint and Order Suspending Tariff Revisions that the burden rested on Inland.[10] Judge Mace reinforced this requirement in Order No. 05 Denying Motion for Summary Determination, where she ruled that the burden of proof is on Inland."[11] Staff consistently has maintained in its briefing that Inland bears the burden of proof.[12] Inland tacitly accepted the burden of proof when it filed its direct testimony first and accepted the procedural advantages of being entitled to file rebuttal testimony, which it did. By failing to timely object to the complaint, Judge Mace's Order No. 05, and the procedural schedule, while at the same time realizing the benefits of that schedule, Inland has waived its right to challenge the burden of proof issue.

7 Inland argues on the basis of general statutory construction principles that Inland does not bear the burden of proof, ignoring Commission precedent that is specifically on point. Inland posits that because the statutes are silent about who bears the burden of proof

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[7] Note that Inland cites RCW 80.04.130(2), but the language quoted in Inland's petition appears in subsection 4 of the statute: "At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company."

[8] Petition for Administrative Review of Inland Telephone Company at ¶64.

[9] Footnote 84, Reply Brief of Inland Telephone Company at page 27.

[10] Order No. 01, June 29, 2005, at ¶11 ("Inland has not yet demonstrated that the tariff revisions are in the public interest").

[11] Order No. 05, February 16, 2006, at ¶16 ("where the tariff proposes to eliminate or curtail service, the burden of proof is on the public service company") and ¶19 ("this case involves an analogous situation").

[12] E.g., Initial Brief of Commission Staff at ¶19 ("Inland, as the moving party, bears the burden of showing that removing the territory…is fair, just reasonable, and in the public interest."); Reply Brief of Commission Staff at 22 ("Inland has not shown that…removing the resort area…would be fair, just, reasonable, and in the public interest. As a consequence of Inland's failure to carry its burden of proof, the Commission should reject Inland's proposed tariff revision.").

for a proposed tariff revision concerning items other than an "increase [in] any rate, charge, rental, or toll"[13] that the public service company should be relieved of the burden of proof.[14] Inland fails to cite any statutory authority, however, for placing the burden of proof on the Commission.[15] In the absence of statutory authority, the common law should apply. Under common law, the burden of proof rests on the party pleading affirmatively on an issue.[16] Furthermore, the Commission has held in just such a tariff revision—that is, not involving items such as rates, charges, rentals, or tolls—that the public service company bears the burden of proof.[17]

2. The standard is fair, just, reasonable and in the public interest.

8 In her decision on Staff's Motion for Summary Determination, Judge Mace articulated the standard for the boundary modification as "fair, just, reasonable, and in the public interest."[18] While no specific statute or regulation states that this is the standard for a tariff revision consisting of an exchange boundary modification, several statutes contain components of that standard.[19] Most important, however, this standard is the law of the case

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[13] RCW 80.04.130(4).
[14] Petition for Administrative Review of Inland Telephone Company at ¶64.
[15] *See id.* at ¶63-64.
[16] *See Wilder v. Nolte*, 195 Wash. 1, 14, 79 P.2d 682 (1938) ("he who affirms always has the burden"); *State v. Anderson*, 72 Wn. App. 253, 260, 863 P.2d 1370 (1993) ("a claimant generally has the burden of proving the facts necessary to sustain his or her claim"). *See also* 29 Am Jur 2d § 158:

> Courts often remark that the burdens of production and persuasion on an issue rest with the party that pleads the affirmative on the issue. […] It is often said that the burdens of production and persuasion lie upon the party who, absent meeting his burden, is not entitled to relief, or upon the party that would be unsuccessful if no evidence were introduced on either side. Similarly, courts often observe that the burdens of production and persuasion generally fall upon the party seeking a change in the status quo… " (citations omitted).

[17] *See WUTC v. US West*, Docket No. UT-961638, Fourth Supplemental Order Rejecting Tariff Filing, January 16, 1998, at pages 15, 20, 21, 22, and 27 (finding that US West failed to carry its burden of proof that its proposed tariff revision seeking to limit the company's obligation to serve was fair, just, and reasonable, and in the public interest).
[18] Docket No. UT-050606, Order No. 5, Order Denying Motion for Summary Determination, at ¶19. Note that the standard as enunciated in the decision does not include the term "sufficient."
[19] In RCW 80.01.040(3), the legislature sets out the general mandate of the Commission to "[r]egulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of…any utility service…including…telecommunications companies" (emphasis added). Another relevant statute states

and is supported by Commission precedent.

9 Regarding the law of the case, components of the standard were first stated in the Commission's Complaint and Order Suspending Tariff Revisions, which officially initiated the Commission's review of the tariff revision.[20] In that pleading, the Commission complained that "Inland has not demonstrated that the changes are fair, just, reasonable and sufficient"[21] and concluded that "Inland has not yet demonstrated that the tariff revisions are in the public interest."[22]

10 These components were amalgamated in Judge Mace's Order Denying Motion for Summary Determination.[23] That decision bases its application of this standard on a prior docket involving US West, in which the issue also did not fall squarely within the statutory language.[24] The *US West* docket involved a telecommunications company's proposed tariff revision to make its service obligations contingent on the availability of its facilities.[25] In its decision, the Commission stated that US West "[carried] the burden of proving that the proposed tariff revisions are fair, just, reasonable, and in the public interest." Judge Mace's order correctly analogized the situation in the *U.S. West* docket to the issue in this docket:

> In prior cases, the Commission has adopted a 'fair, just, reasonable, and in the public interest' test for determining whether to approve tariff revisions that eliminate or curtail service (citation omitted). Because this case involves an analogous situation, Inland's proposal

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that when a public service company files a tariff revision that effectively "[changes][19] any rate, charge, rental, or toll theretofore charged, the commission shall have power…to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof" (emphasis added). RCW 80.04.130. Finally, the legislature has decided that "[a]ll rates, tolls, contracts and charges, rules and regulations of telecommunications companies for messages, conversations, services rendered and equipment and facilities supplied…shall be fair, just reasonable and sufficient" (emphasis added). RCW 80.36.080.

[20] Docket No. UT-050606, Order No. 01, Complaint and Order Suspending Tariff Revisions, at ¶¶5 and 11.

[21] *Id.* at ¶5.

[22] *Id.* at ¶11.

[23] Docket No. UT-050606, Order No. 5, Order Denying Motion for Summary Determination, at ¶19.

[24] *See WUTC v. US West*, Docket No. UT-961638, Fourth Supplemental Order Rejecting Tariff Filing, January 16, 1998, at page 20.

[25] *See id.*

> to end its obligation to serve the Suncadia area, the same test should apply in this proceeding. In light of the Commission's adoption of that standard, Inland's argument that the tariff does not propose a rate change is inapposite.[26]

Because the Commission specifically adopted the "fair, just, reasonable, and in the public interest" test in this proceeding, this standard is the law of the case and must be followed.

B. Inland has failed to satisfy its burden of proof.

11 In order to demonstrate that its proposed tariff revision is fair, just, reasonable, and in the public interest, Inland must show the following: (1) the proposed exchange boundary modification would be fair, just, and reasonable to present and future customers as well as to the public service company,[27] (2) the modification would serve the public interest, taking into account the interests of the stakeholders (including the public service company) and the general public as well as present and future consumers,[28] and (3) continuing its obligation to serve in the Roslyn Exchange would impose a severe and unique economic burden on Inland.[29] Inland cannot meet this burden because the alleged harm Inland identifies is speculative, whereas removing Inland's obligation to serve certainly would deprive future resort customers of the right to tariffed service. Furthermore, the loss of the incumbent local exchange carrier (ILEC) in the Roslyn Exchange could have a detrimental effect on telecommunications provider choice in the Suncadia resort.

[26] Docket No. UT-050606, Order No. 5, Order Denying Motion for Summary Determination, at ¶19.
[27] *See WUTC v. US West*, Docket No. UT-961638, Fourth Supplemental Order Rejecting Tariff Filing, January 16, 1998, at page 15.
[28] *See Washington Indep. Tel. Ass'n v. WUTC,* 149 Wn.2d 17, 28-29 (2003).
[29] *See WUTC v. US West*, Fourth Supplemental Order at page 20.

1. Retaining the status quo does not impose severe and unique harm on Inland.

12 Every telecommunications provider operating in the state of Washington, and not just Inland, is subject to the same obligation: to furnish telephone service to all persons and corporations who are reasonably entitled to it.[30] In its petition, Inland argues that it cannot serve over the Suncadia/ICS network because negotiations have failed and the parties will not be able to come to mutually agreeable terms.[31] Inland further argues that the costs of accessing the Suncadia/ICS network to serve the resort could unbalance its finances.[32] The speculative nature of these alleged harms, however, render them too far removed to be either "severe" or "unique."

a. Inland's tale, "The Fiction of the Lack of Negotiations," fails to document the reality that the company parties have not discussed Inland service over a future Suncadia/ICS network.

13 Inland and Suncadia discussed over a period of years the possibility of Inland providing future telecommunications service throughout the Suncadia resort.[33] Eventually, Suncadia decided to install and own the telecommunications backbone.[34] In 2004, Suncadia began to talk to telecommunications providers other than Inland about providing service to the resort.[35] In February 2005, Inland sent Suncadia a letter in which Inland suggested it could provide various services to the resort using Suncadia's infrastructure.[36] Suncadia did not respond to the letter.[37] On the basis of the foregoing history, Inland contends that negotiations with Suncadia concerning new Inland service in the Suncadia resort already

[30] *See* RCW 80.36.090.
[31] Petition for Administrative Review of Inland Telephone Company at ¶20-21.
[32] Petition for Administrative Review of Inland Telephone Company at ¶31.
[33] Exh. No. 1T 3:5-7 (Coonan).
[34] *See* TR 174:6-9 (Eisenberg) and TR 45:23-25 (Coonan).
[35] Exh. No. 31T 3:6-10 (Eisenberg).
[36] Exh. No. 33.
[37] *See* TR 79:17-19 (Coonan).

have failed.[38] In its Petition, Inland also claims that ICS will not negotiate with Inland.[39] The evidence of the "offer and lack of response" Inland cites is Inland's June 2005 letter to ICS objecting to ICS' interconnection request.[40] The record reveals, however, that Inland has never discussed providing service to the resort over a future Suncadia/ICS network with ICS.[41]

14 The problem with Inland's position is that the failed negotiations Inland cites date back to February 2005[42] and June 2005[43] respectively, approximately a year before ICS contracted with Suncadia to provide telecommunications service to the resort. In fact, at the time of Inland's communication with ICS, Suncadia and ICS did not have the contract that they signed in April 2006. Consequently, negotiation for access by Inland to ICS lines would not have been likely.[44] Any negotiations that occurred before the Suncadia-ICS contract was signed occurred under a different set of circumstances and are not dispositive of the outcome of future negotiations.

15 Inland notes in its Petition that Suncadia still has not responded to Inland's offer to talk.[45] This is hardly surprising, however, given that Inland's unanswered offer to negotiate was extended in February 2005. At that time, Suncadia had not yet negotiated a contract

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[38] *See* Petition for Administrative Review of Inland Telephone Company at ¶17.
[39] *Id.* at ¶20.
[40] *See* Petition for Administrative Review of Inland Telephone Company at ¶20, *citing* Exh. No. 14. (If you are planning to serve Suncadia and Inland is withdrawing from Suncadia, perhaps all that is needed is a traffic exchange agreement. We would be more than happy to talk to you about the terms of a traffic exchange agreement between non-competing providers. However, we are not willing to negotiate an interconnection agreement under Section 251(c) and Section 252 that removes the rural exemption that is currently in place for Inland Telephone Company.").
[41] See TR 48:7-11 (Coonan).
[42] *See* Exh. No. 33.
[43] *See* Exh. No. 14.
[44] In fact, the negotiation with ICS that Inland refers to concerns ICS' interconnection proposal and did not include any discussion of new service provided by Inland to the Suncadia resort. See Exh. No. 14.
[45] Petition for Administrative Review of Inland Telephone Company at ¶17.

with ICS to serve the resort area.[46] If Inland ultimately were to prevail in this docket, the circumstances under which the parties would be negotiating once again would be different. Again, if a resort resident or business asked Inland for service, such a request could also change the negotiating field. Ultimately, it is unknown how negotiations will fare because they have not happened since April 2006 when Suncadia and ICS signed their contract.

16 Inland argues on the one hand that it will not be able to negotiate access to the Suncadia/ICS network[47] and worries on the other hand that it could be forced to access the network under disagreeable terms.[48] Obviously, these scenarios are mutually exclusive. The fact that either one is possible reveals the speculative nature of the burdens Inland presents and illustrates the premature nature of this proposed tariff revision.

b. Inland's argument about the costs of serving over the Suncadia/ICS network is speculative.

17 Inland complains that the initial order relies on "intuition" rather than the record for its conclusion that service to Suncadia over the network would cost less than installing duplicative plant,[49] although Inland provided no evidence of what the costs of such service would be.[50] Inland then argues that "[i]t is highly conceivable" that Suncadia, LLC, based on its desire to recover its investment quickly, "might require a monthly recurring cost from Inland that would be greater than Inland's depreciation expense and other costs for its investment."[51] This is pure speculation on Inland's part, because the parties have not

[46] Exh. No. 31R 4:26–5:3 (Eisenberg).
[47] *See, e.g.,* Petition for Administrative Review of Inland Telephone Company at ¶22 (both Suncadia and ICS would have to agree to terms, and any agreement would require revenue sharing) and at ¶¶27-28 (Inland contends that it could not "bring unsuccessful negotiations before the Commission for arbitration").
[48] *See, e.g.,* Petition for Administrative Review of Inland Telephone Company at ¶24 (revenue sharing) and ¶31 (cost of access).
[49] Petition for Administrative Review of Inland Telephone Company at ¶31.
[50] At hearing, Inland's witness stated only, "There would be some sort of plant necessary to interconnect. What that is, I couldn't tell you." TR 89:22 – 90:11 (Coonan).
[51] Petition for Administrative Review of Inland Telephone Company at ¶31.

negotiated the costs of Inland's access to the Suncadia/ICS network. Due to the dearth of testimony on costs, Judge Mace was fully justified in relying in the initial order on common sense to reach a decision. The Commission should reject Inland's invitation to replace common sense with speculation.

2. Inland has not demonstrated that modifying the exchange boundary is fair, just, and reasonable to present and future consumers and other stakeholders, and in the public interest.

18 As we explain below, permitting Inland to withdraw its service obligations from the resort area would not be fair, just, and reasonable to future ratepayers in the resort or to other stakeholders and is not justified by the fact that Inland likely will have to pay access fees to serve over the Suncadia/ICS network. In addition, removing the resort from Inland's Roslyn Exchange would frustrate the policies articulated by the legislature in RCW 80.36.300. With respect to the effect of the proposed tariff revision on these policies, Staff rests on its briefing in its initial and reply briefs.[52]

a. If Inland sheds its obligation to serve the Suncadia resort, future resort ratepayers will lose their right to tariffed service.

19 As the situation currently stands, Inland is the only provider of tariffed local telephone service at the Suncadia resort. If the resort area were to be excised from Inland's service area, future resort ratepayers would lose their right to such service. Inland complains in its petition that its obligation to serve is no more than a "paper" obligation, because third parties have prevented it from being able to physically serve customers.[53] Once again, however, Inland relies on speculation. Indeed the record shows that Inland's ability to serve over the Suncadia/ICS network has not been tested and may not be until a

[52] *See* Initial Brief of Commission Staff at ¶¶22-27 and Reply Brief of Commission Staff at ¶21.
[53] Petition for Administrative Review of Inland Telephone Company at ¶34.

resort resident or business requests service from Inland.[54] Moreover, the parties might negotiate access before an actual service request, or they might not. So long as Inland is the only tariffed provider in the resort area, it must continue to try to meet its obligation under RCW 80.36.090 to meet reasonable requests for service. At this point in time, Inland has not attempted to fulfill a service request over the Suncadia/ICS network, and Inland has no such service requests to evaluate for reasonableness. Consequently, the situation simply is not ripe for the proposed tariff revision's drastic solution to a problem that does not exist and may never arise.

b. The fact that Inland would have to pay to interconnect with the Suncadia/ICS network in order to serve resort customers does not justify relieving Inland of its obligation to serve.

20 Although Inland takes issue in its Petition with the conclusions that the initial order draws regarding "revenue sharing,"[55] the company has not been able to show that this term tips the balance in favor of removing the resort from the Roslyn Exchange. First, it is only speculation to assume that the access fee will be based on the revenue realized through access. Second, Suncadia's witness testified that Suncadia would seek revenue sharing with Inland only "to the extent that it's allowed under law."[56] Finally, even though the initial order states, "Lawful revenue sharing presumably would not include the sharing of revenues from basic services," it is by no means certain that this presumption states the law: The initial order provides no authority for this statement.

[54] *See* TR 47:7–48:11 (Coonan) (Inland has not discussed using future ICS lines in the resort with ICS); TR 79:17-19 (Coonan) (Suncadia and Inland have not negotiated since Inland sent Suncadia a letter in February 2005 to which Suncadia did not respond).
[55] Petition for Administrative Review of Inland Telephone Company at ¶¶23-25.
[56] TR 191:25–192:8 (Eisenberg).

21 In its Petition, Inland suggests that, if it were to access customers over the Suncadia/ICS network, Suncadia, through access terms, effectively would be setting rates.[57] While it is true that access fees would represent a cost of providing service—much like other costs of operation, such as electric power, that Inland cannot fully control—Inland's position is supported only by speculation.

22 Inland also decries the "concept of Suncadia, LLC's approval of rates," but the basis of its criticism is unclear. [redacted]

23 Indeed, if Inland serves the resort over the Suncadia/ICS network, this might require less plant and equipment investment than Inland uses in other areas of its service territory. Inland could still earn a reasonable return on its investment even after paying a fee to access the network. In the end, because Inland's terms of access have not been negotiated, and because it is unclear in the absence of a ratemaking accounting analysis whether or how access fees would affect cost of service, Inland has not shown that paying to access Suncadia/ICS lines would harm Inland, let alone its customers or future ratepayers.

c. Removing the resort area from the Roslyn Exchange would create uncertainty for wireless ETC service in the resort.

24 If the Commission removed the resort area from the Roslyn Exchange, it is not

[57] Petition for Administrative Review of Inland Telephone Company at ¶22.
[58] TR 154:23–157:12 (Eisenberg).
[59] *See* RCW 80.36.080.

certain that the wireless ETCs designated for that area would remain obligated to serve because the effect of removing part of an exchange from an incumbent's service area on the ETCs' obligations is unclear.[60] In its Petition, Inland attempts to argue that the federal statute governing ETC requirements provides a clear answer to the question here.[61] Inland is wrong. In fact, the statute states nothing whatsoever about the situation in which an *incumbent* ETC withdraws, or what happens when territory is removed, from the original service area for which "surviving" ETCs were designated.[62] Removing the resort area from the Roslyn Exchange creates uncertainty for the wireless ETCs as well as for their existing and potential customers. This harm is not outweighed by the speculative harms Inland tries to advance.

d. The Commission should not remove Inland's obligation to serve because effective competition is not present.

25 Removing Inland's obligation to serve in the resort area also is not fair, just, reasonable, and in the public interest because effective competition is not present in the resort area.[63] Although Inland might argue that removing the resort from the Roslyn Exchange would have no effect on competition because of its alleged inability to serve, this argument is flawed because Inland has not yet had cause to try to serve over the

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[60] Exh. No. 61T 7:13-18 (Shirley).
[61] Petition for Administrative Review of Inland Telephone Company at ¶41, *citing* 47 U.S.C. §214(e)(4).
[62] *See* 47 U.S.C. § 214(e)(4), the relevant portion of which provides as follows:
A State commission…shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. […] Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission…shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served… .
[63] *See* Docket No. UT-031191, Order No. 01, *Order Granting Petition to Remove Conditions on Competitive Classification and Waiving Securities, Transfers of Property and Affiliated Interests Statutes and Rules superseded by WAC 480-121-063,* ¶¶4 and 13 (in petition to remove an obligation-to-serve condition imposed when company was competitively classified, Commission considered evidence of market power, access by competitors to the market, whether carrier had a significant captive customer base, and whether there were reasonably available alternatives to the carrier).

Suncadia/ICS network. Without a right to service from Inland, resort residents and businesses would have one fewer choice. Furthermore, wireless service that is available in the resort does not constitute a substitute for wireline service.[64] It is not necessarily even a reasonable alternative.[65]

e. Because the Universal Service Fund issues in this docket affect more stakeholders than just the parties, this docket is not the place to address these issues.

26 Universal service fund (USF) distributions are calculated based on the incumbent's investment in its service territory, and the federal government would need to decide how and whether to distribute universal service funds in a territory outside the service area of an incumbent LEC.[66] If Inland's proposed tariff revision is granted, that could have direct, material effects on stakeholders not represented in this docket. Therefore, the issues raised by Inland's proposed tariff revision should be addressed in a forum that includes the stakeholders to be directly affected.

[64] *See* FCC Triennial Review Order, August 21, 2003, at ¶245 (stating that neither wireless nor cable service is yet a substitute for wireline service).
[65] *See* CC Docket No. 94-102, *In the matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (in which the FCC repeatedly has extended compliance deadlines for E-911 requirements for cellular providers). See, e.g., Inland Cellular's petition in this docket, filed by Greg Maras (Secretary of Inland Telephone Company), requesting a limited waiver of E-911 rules because of concerns about Inland Cellular's ability to timely comply. Because of its participation in this docket, Inland must be aware of the difficulties present in achieving compliance, especially, with Phase II of the E-911 requirements. Consequently, Inland's challenge in paragraph 43 of its Petition, based on the lack of a citation in the initial order, of the conclusion 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" seems unwarranted.
[66] Exh. No. 61T 6:4-11 (Shirley).

VI. CONCLUSION

27 Inland has the burden of proof in this case. Inland not met its burden of showing that, with respect to the stakeholders, consumers, and the general public, removing the resort area from the Roslyn Exchange would be fair, just, reasonable, and in the public interest. In particular, Inland has failed to demonstrate the presence of harms that outweigh the benefits of preserving the status quo. Inland's arguments related to its inability to serve, as well as the harms that it alleges will accrue to both Inland and the public interest, are founded on speculation. By contrast, the loss to future resort residents and businesses of the right to tariffed service is a real loss. Consequently, the Commission should reject Inland's proposed tariff revision.

28 DATED this 14th day of September, 2006.

Respectfully submitted,

ROB MCKENNA
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission