

APPENDIX A

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.¹ 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,

¹ 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.² Suncadia has no public rights of way and has constructed its own complete telecommunications backbone and infrastructure.³

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.⁴ 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.⁵

6 ICS, a competitive local exchange carrier (CLEC)⁶ 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.⁷ ICS has also requested Commission approval to serve as a wireless Eligible Telecommunications Carrier (ETC) in Inland's service territory.⁸ 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.⁹

² 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.

³ Exhibit 31 T, pp. 5-6.

⁴ 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.

⁵ Inland Tariff filing, April 19, 2005.

⁶ ICS Opening Brief, p. 5.

⁷ Exhibit 19HC.

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

⁹ Public Counsel Opening Brief, p 21.

7 Inland currently provides only limited service to Suncadia's sales office¹⁰ 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.¹¹ Inland had hoped to be able to serve the entire resort and engaged in lengthy negotiations with Suncadia and its predecessor¹² 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' facilities¹³ and requested that Inland share revenues from its telecommunications operations with Suncadia.¹⁴

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.¹⁵ 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.¹⁶ In addition, the Commission has considered whether removal of a service would cause detrimental consequences for present and potential customers¹⁷ and whether the

¹⁰ Exhibit 31 T, p. 3.

¹¹ *Id.*, p. 2; TR 169.

¹² Inland Opening Brief, p. 1; Public Counsel Initial Brief, p. 7

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

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

¹⁵ RCW 80.01.020.

¹⁶ *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."

¹⁷ US West, p. 15

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

- 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.¹⁹
- 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, easement²⁰ 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

¹⁸ *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.

¹⁹ US West, p. 16.

²⁰ 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.²¹

- 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 infrastructure²² 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.²³
- 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.²⁴ Inland points out that Suncadia did not respond to Inland's initial offer to provide service over Suncadia's network.²⁵ 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.²⁶ 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.

²¹ Inland Opening Brief, p. 6.

²² TR 82-83; Inland Reply Brief, p. 16.

²³ Initial brief of Public Counsel, p. 22.

²⁴ Inland Reply brief, p. 16.

²⁵ *Id.*; see also Exhibit 33, pp. 1-2.

²⁶ *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.²⁷ 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 80.36.090,²⁸ 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.²⁹ 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.³⁰ Staff points to the testimony of Mr. Coonan about the uncertainty of the cost Inland would incur if it served over the ICS/Suncadia infrastructure³¹ 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.³²

²⁷ TR 47-48 (Coonan).

²⁸ 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.

²⁹ Inland Opening Brief, p. 6.

³⁰ 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.

³¹ TR 41-46; 89-80 (Coonan).

³² 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,³³ and that it is merely hypothetical that Inland could serve Suncadia by means of an agreement with ICS over the existing network.³⁴ In any event, Inland contends there is no evidence that there would be “very little” cost involved in interconnecting with the Suncadia infrastructure.³⁵
- 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.³⁶ 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,³⁷ pointing to the testimony of Mr. Coonan³⁸ as well as to correspondence between Inland and Suncadia. Inland contends that such sharing would violate RCW 80.36.170 and RCW 80.36.180³⁹ which prohibit the granting of rebates for regulated services.⁴⁰
- 23 Inland asserts that it receives \$21.03 per line per month from the USF⁴¹ 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.⁴²
- 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

³³ Inland Reply Brief, p. 22; Exhibit 7.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*, p. 8.

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

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

³⁹ These statutory provisions outlaw unreasonable rate discrimination and rate preferences.

⁴⁰ Inland Opening Brief, p. 2

⁴¹ Exhibit 13, citing to USAC Report HC04 for Second quarter, 2006.

⁴² Inland Reply Brief, p. 14.

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

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.⁴⁴ Inland provides a statement from Susan E. Weis, wife of Inland's President,⁴⁵ 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.⁴⁶

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.⁴⁷ 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

⁴³ See also, Public Counsel Initial Brief, fn. 6.

⁴⁴ Inland Opening Brief, p. 8.

⁴⁵ 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.

⁴⁶ Inland Reply Brief, p. 17, TR 123-124 (Coonan).

⁴⁷ 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.”⁴⁸

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

⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.⁵¹
- 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.⁵²
- 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.⁵³ Staff also contends that the Federal Communications Commission and the UTC have found wireless service providers are not adequate substitutes for wireline service.⁵⁴ Since none of the

⁴⁹ 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).

⁵⁰ 47 C.F.R. §54.201.

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

⁵² Inland Reply Brief, pp. 3-4.

⁵³ Staff Initial Brief, p. 13.

⁵⁴ 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.⁵⁵ 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.⁵⁶ 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.⁵⁷ 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

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

⁵⁶ Staff Initial Brief, p. 15.

⁵⁷ *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.⁵⁸

- 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"⁵⁹ and that a state commission has the authority to ensure that all customers served by the withdrawing incumbent will continue to be served.⁶⁰ 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.⁶¹ ICS seeks to obtain universal service support for the services it will provide to Suncadia customers.⁶² 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."⁶³ Moreover, Inland suggests that the Commission has recently expressed interest in preventing such arbitrage of USF resources,⁶⁴ and that removal of Suncadia from Inland's territory would be consistent with the Commission's concerns on this issue.

⁵⁸ In re: Sprint, Docket UT-043120, p. 35.

⁵⁹ Opening Brief of Inland, p. 10.

⁶⁰ *Id.*

⁶¹ Reply Brief of Inland, pp. 11-13.

⁶² ICS Opening Brief, p. 14.

⁶³ Reply Brief of Inland, p. 12.

⁶⁴ *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.⁶⁵ 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."⁶⁶ 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.⁶⁷

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

⁶⁵ 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..."

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

⁶⁷ *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

A handwritten signature in black ink, appearing to read "A. S. Pendall FOR". The signature is written in a cursive style.

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

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

WASHINGTON UTILITIES AND	)	DOCKET UT-050606
TRANSPORTATION COMMISSION,)	
)	
Complainant,	)	ORDER 09
)	
v.)	
)	
INLAND TELEPHONE COMPANY,	)	FINAL ORDER AFFIRMING
	)	INITIAL ORDER; REJECTING
Respondent.	)	TARIFF REVISION
)	
.....)	

1 *Synopsis: This order affirms in full the result of an initial order in this docket. In doing so, this order rejects Inland's proposed tariff revision that would remove from its service area territory of a large new resort. The Commission finds that Inland did not adequately support its proposal.*

I. PROCEDURAL SETTING

2 **NATURE OF PROCEEDING.** On April 19, 2005, Inland Telephone Company ("Inland") filed a tariff that seeks to remove from its service territory the area in Inland's Roslyn exchange now occupied by a developing Suncadia Resort.¹ On June 29, 2005, the Commission suspended the proposed tariff revision and directed that it be set for hearing.

3 **HEARING AND INITIAL ORDER.** Hearing was held on April 27 and 28, 2006, at Olympia, Washington before Administrative Law Judge Theodora Mace. The Administrative Law Judge entered an initial order on August 3, 2006, in which she denied Inland's proposed tariff.

¹ The tariff would also add area north of the Roslyn exchange. No party objected to Inland's proposed addition to its service territory, but because the record contains no evidence in support of the addition, the proposed addition is also denied.

4 **PETITION FOR ADMINISTRATIVE REVIEW; ANSWERS.** Inland petitions for administrative review of the initial order, arguing that it met all necessary tests for approval of such a tariff. The Commission received answers from Commission Staff; Suncadia; ICS, a telecommunications provider now serving within the Suncadia territory, and Public Counsel. Inland replied to the answers.

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

II. FACTUAL SETTING

6 **BACKGROUND.** Inland is a small regulated telephone company based in Cle Elum, Washington, in the Cascade Mountains about 70 miles east of Seattle. It provides service to about 2,800 lines belonging to about 1,000 customers.

7 This case involves the provision of telecommunications service within the boundaries of Suncadia, a resort development of about 6,000 acres located near Roslyn, Washington, and within Inland's service territory. Suncadia may eventually include 2,800 single-family dwellings, three golf courses, and commercial businesses, for an estimated total of about 4,000 connections.² Suncadia has included no public rights of way within its boundaries, and has constructed its own complete telecommunications infrastructure.

² As of September 8, 2005, Suncadia had sold 596 lots. Several houses are complete and over a hundred are under construction. Suncadia's sales center, golf courses, a pro shop, and a hotel are operating, and a restaurant has been completed.

- 8 Inland is the incumbent local exchange carrier (ILEC) providing telecommunications service to the area.³ With one exception, Inland provides no service within the Suncadia boundaries, as the land was previously undeveloped. The exception is service to Suncadia's business offices. By its petition, Inland seeks to remove the Suncadia resort area from its service territory.
- 9 Intelligent Community Services (ICS) is a competitive local exchange carrier (CLEC) and an intervenor in this proceeding. It has entered an agreement with Suncadia to provide service within the whole development, using Suncadia's infrastructure and paying Suncadia for the use of that infrastructure. ICS has also requested Commission approval to serve as a wireless Eligible Telecommunications Carrier (ETC) throughout Inland's service territory.⁴ An ETC designation, governed by 47 USC § 214(e), allows a carrier to become eligible for federal universal support funds (USF). The Commission has previously approved three wireless ETCs for the Roslyn exchange.
- 10 Inland currently provides only limited service to Suncadia's sales office under a June 1, 2005 agreement intended to ensure Inland's continuation of its present tariffed services to Suncadia even if Suncadia is removed from Inland's service territory. Inland engaged in discussions with Suncadia about providing service to the whole development. The parties reached an impasse. Inland did not offer to provide the full range of telecommunications services that Suncadia wanted for its residents. For its part, Suncadia refused to grant Inland a long-term easement for Inland's telecommunications facilities and requested that Inland pay a fee based at least in part on Inland's revenues from operations using the Suncadia infrastructure.
- 11 As a result of the impasse, Inland filed this tariff revision requesting that Suncadia be removed from its service territory.

³ Public Counsel's Initial Brief to the Administrative Law Judge, p. 13, describes the history of the telecommunications franchise granted for service to the Roslyn exchange, including the area now known as Suncadia.

⁴ Docket UT-053041, filed June 29, 2005. The matter has been held pending the outcome of this proceeding.

III. CONTENTIONS, ANALYSIS, AND CONCLUSIONS

12 In summary, we find that Inland has failed to demonstrate that it meets the applicable standards for vacating service territory, and therefore its proposed tariff should be rejected.

A. APPLICABLE STANDARDS.

13 The initial order determined that a carrier seeking to vacate territory must demonstrate that the result is consistent with the public interest. In this setting, that means the Commission considers whether the post-vacation result would help or harm the public and potential customers within the territory proposed, and whether it would help or harm the carrier and its ability to provide service.

14 Inland disputes the application of a public interest test, asking in its reply brief for citations to such a test. We find numerous appropriate sources for a public interest test, and for the dimensions of its application here, in the initial order and in the briefs opposing Inland's position.

15 The Commission has a basic statutory mandate to regulate in the public interest.⁵ As the initial order notes in the context of furthering the goal of widespread service, the courts have defined the public interest as a "broad concept encompassing the welfare of present and future consumers, stakeholders and the general public."⁶

16 In determining whether the public interest is served, we must consider the telecommunications policy declaration in RCW 80.36.300, requiring the Commission to consider the preservation of affordable universal service; the maintenance of efficient available telecommunications service; whether customers pay reasonable charges for service; whether cross-subsidization of non-regulated services is avoided; whether diversity of suppliers is promoted; and, whether flexible regulation of competitive services is permitted.

⁵ 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..."

⁶ *Washington Independent Telephone Association v. WUTC (WITA)*, 149 Wn.2d. 17, 28, fn. 3 (2003).

- 17 RCW 80.36.230 gives the Commission the power to set territorial and exchange boundaries for telecommunications companies. In setting such boundaries, the Commission must act consistently with the basic policy direction to act in the public interest.⁷ Under RCW 80.36.090, telecommunications carriers are required to provide service “upon reasonable notice...to all persons and corporations who may apply therefor and be reasonably entitled thereto...” In addition, RCW 80.36.080 requires that “rules and regulations of telecommunications companies [here including tariffs defining service territories] ...shall be fair, just, reasonable and sufficient.”
- 18 In a prior case, the Commission addressed whether to allow a carrier to reduce its prescribed service territory.⁸ There, we considered whether removal was fair, just, and reasonable and would serve the public interest. The Commission considered whether removal of a service would cause detrimental consequences for present and potential customers⁹ and whether a company’s obligation to serve in its currently established service territory imposed “severe and unique economic burdens” on the company.¹⁰
- 19 The appropriate test for consideration in this matter is whether the proposed excision of Suncadia from Inland’s service territory is fair, just, and reasonable and in the public interest. In determining whether Inland meets that test, we will consider the effect of the proposal on Inland, its customers, and potential customers in the territory sought for deletion.

⁷ RCW 80.01.040.

⁸ 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*). The initial order expressed reservations against unqualified citation to the *US WEST* decision because of changes in the telephone regulatory environment since that matter was decided; we agree, but find that in general terms the approach of the order remains appropriate in this matter.

⁹ *US WEST*, p. 15.

¹⁰ *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.

B. BURDEN OF PROOF

- 20 Inland argues that it has only a “burden of initial proceeding,” as opposed to a burden of proof, and must only come forward with evidence supporting its proposal in order to prevail. We disagree.
- 21 As Commission Staff points out, the Commission has previously placed the burden of proof on a carrier proposing a reduction of its service territory. In addition, Inland cites no authority for placing the burden of proof on the Commission and reversing the rule of law that the proponent of change bear the burden of persuasion.¹¹

C. APPLICATION OF THE PUBLIC INTEREST TESTS

- 22 Inland argues the Commission should approve the tariff revision because: 1) Suncadia refuses to grant Inland a long term easement or enter into an appropriate contract 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 eligible telecommunications 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 alleged arbitrage of Universal Service Fund (USF) support by ICS.
- 23 We find that Inland has failed to prove its assertions as to any of these contentions.

¹¹ See *Wilder v. Nolte*, 195 Wash. 1, 14, 79 P.2d 682 (1938) (“[H]e 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).

1. Long-term easement and lack of contract permitting service.

24 Inland argues that because Suncadia did not grant Inland a long-term easement allowing Inland to build its own telecommunications infrastructure, Inland cannot physically serve any customers in Suncadia unless it pursues a condemnation action under RCW 80.36.010 – with all the litigation and use costs associated with the action. Inland argues that thus it is for all intents and purposes unable to fulfill its obligation to serve anywhere within Suncadia’s borders under RCW 80.36.090.

25 We reject Inland’s arguments.

26 First, 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. Inland does not now know the situation it would face—whether an applicant would be reasonably entitled to service and exactly what barriers Inland would face in providing service. The evidence does not resolve those questions, and we must await actual events or other demonstration that specific barriers are probable. The evidence on this record does not support any such finding.

27 Second, Inland could provide service to Suncadia customers over Suncadia’s infrastructure. Inland argues that an agreement allowing it to serve Suncadia, over the Suncadia infrastructure, is unlikely on reasonable terms and conditions.¹² Inland cites to asserted challenges during its initial discussions with Suncadia as proving the likelihood that it would be unable to secure access. We reject its contentions.

28 Inland’s discussions with Suncadia, as shown on the record, consisted largely of trading statements of interest and position, rather than serious negotiations in good faith. The fact that such discussions failed to produce results are not persuasive evidence that results are unobtainable. The initial negotiations between the parties were premised on Inland’s construction of its own infrastructure. Inland’s claim that the parties (Inland, Suncadia and ICS) would not be able to agree on reasonable terms

¹² Inland Reply brief, p. 16.

and conditions for third party service by Inland is speculative because the parties have never attempted to negotiate such an agreement.¹³

29 Inland has failed to demonstrate that lack of physical access to Suncadia by easement supports approval of the proposed tariff revision.

2. Potential harm to Inland and its customers.

30 **A. Cost burden.** Inland argues that costs of condemnation or construction for a small customer base would be prohibitive, and that costs for service over Suncadia's infrastructure might require it to increase charges to customers within the Suncadia borders. We reject these arguments.

31 Under WAC 480-120-061(1)(h)¹⁴ the costs of securing an easement would fall on the customers requiring it. Inland has not identified any costs that would probably result from rejection of its tariffs, nor has it identified the probable magnitude of such costs to ascertain whether they would be severe and unique. Inland has not demonstrated how costs to provide service using another company's infrastructure would differ—if they actually were higher than average costs—from costs to service any other high-cost or low-cost customer.¹⁵

32 **B. Revenue sharing.** Inland contends that the initial order acknowledged that revenue sharing would be required if Inland agreed to serve Suncadia customers over the resort's infrastructure, and it argues that sharing of revenue for basic services is presumably unlawful. Inland alleges that because a confidential agreement between Suncadia and ICS requires sharing of basic service revenues, Inland would also be

¹³ TR 47-48 (Coonan).

¹⁴ That subsection reads,

(1) A company may refuse to connect with, or provide service to, an applicant under the following conditions: (h) When all necessary rights of way, easements, and permits have not been secured. The company is responsible for securing all necessary public rights of way, easements, and permits, including rights of way on every highway as defined in RCW 36.75.010(11) or created under RCW 36.75.070 or 36.75.080. The applicant is responsible for securing all necessary rights of way or easements on private property, including private roads or driveways as defined in RCW 36.75.010(10). A private road or driveway is one that has been ascertained by the company not to be public.

¹⁵ Inland challenged an "intuitive" statement in the discussion portion of the initial order. As we find a lack of evidence for any finding on this topic, the statement in the order carries no weight and we do not consider it.

required to share basic service revenues—unlawfully—if it entered into an agreement with either Suncadia or ICS.

33 Because Inland has not entered into any agreement to serve Suncadia, it is not certain whether or what type of revenue sharing might exist. Inland does not provide either facts or law that would demonstrate that it could only serve customers in Suncadia by entering an unlawful agreement.¹⁶ Without any clearly framed contract provisions before us, it is premature to decide that impropriety exists.

34 **C. Conclusion.** We conclude that Inland has failed to show it or its customers would suffer any harm that would support our approval of its proposed tariff.

3. Potential harm to the public interest.

35 **A. Alternative telecommunications suppliers.** Inland asserts error in the initial order's failure to find that alternative telecommunications suppliers would adequately meet the needs of customers within Suncadia's borders. Inland says that its proposal would not change service availability in the Suncadia territory.

36 **i. The "no change" argument.** Inland says first that it has not been providing service there anyway, and likely will not be able to do so in the future.

37 Inland is correct that it is currently not providing tariffed telephone service in Suncadia (except Inland's service to the Suncadia business offices) and that it is unlikely that Inland will be able to provide wireline service with its own network, at least in the near future. However, as the designated incumbent in the territory, Inland has had an obligation to provide tariffed service within the Roslyn exchange. If its proposal is approved, no carrier will have that obligation and customers will not have the same rights to service that they do with a tariffed incumbent. Even the availability of Inland as a possible carrier of last resort, whether or not it ultimately provides

¹⁶ Inland contends that such sharing would violate RCW 80.36.170 and RCW 80.36.180, which forbid unreasonable rate discrimination and rate preferences. Inland's argument might be valid, or it might fall if the arrangement is seen as indistinguishable from other situations in which costs for service to different customers are different. There is simply no evidence in the record to support a decision. Similarly, Inland's contention that revenue-based charges might amount to unlawful sharing of Universal Service Fund (USF) revenues may differ with both facts and perspectives, and are not adequately posed or argued for resolution in this docket.

wireline service within the Suncadia territory, could have a beneficial effect on service availability and cost within the affected area.

38 *ii. The wireless option.* Inland also argues that removing it as the designated incumbent would not harm the public interest because Section 214(e)(1) (of Title 47, U. S. Code) requires an ETC to serve throughout its service territory. Inland argues that three wireless carriers, Sprint PCS, Cingular, and United States Cellular Corporation, have been designated to serve the Roslyn exchange¹⁷ and can fill any needs of Suncadia customers. Staff and Public Counsel assert that wireless service is not the equivalent of wireline service, and argue that the FCC has acknowledged as much. They point to difficulties with wireless provision of enhanced 911 service, as an example.

39 We find, as did the initial order, that ETC provision of wireless service is not the equivalent of incumbent wireline service.

40 *iii. Uncertainty of ETC designees' responsibilities and eligibility for USF funding.* 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" and that a state commission has the authority to ensure that all customers served by the withdrawing incumbent will continue to be served. Inland cites no foundation for its contention and we find none. Section 214(e)(4) doesn't appear to address an incumbent's withdrawal, nor the consequences of removing territory from the original service area used to create ETC designations.¹⁸

41 Commission Staff and Public Counsel also argue that if Inland is not the incumbent within Suncadia's boundaries, the level of USF funding for ETCs is in doubt. The boundaries of an incumbent's exchange at the time of an ETC's designation become

¹⁷ See, *In re Sprint 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. UT-043011 (May 2, 2005); and *In re U.S. Cellular Petition for Designation as an ETC*, Docket No. UT-970345 (January 27, 2001).

¹⁸ Section 214(e)(4) reads in part: "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."

the ETC's service area. It is unclear what happens to the ETC's service areas if the incumbent's boundaries change.

42 In addition, they argue, USF funding for ETCs is based on the costs of the incumbent. If there is no incumbent for the Suncadia territory, the level and even existence of funding for ETCs operating in the territory may be in doubt. They point out that in a recent instance, setting the level of USF funding after designating a new incumbent for vacated territory took at least three years.¹⁹

43 We find that the status of ETCs serving Suncadia's territory and the availability to those ETCs of federal universal support would be uncertain if Inland removed Suncadia from its service territory. This uncertainty may create a potentially adverse effect on the availability of service to residents of Suncadia and resort customers.

44 At the very least, we find major uncertainties in the record that Inland has failed to cure with evidence or citations on its own behalf. The parties provided no FCC authority addressing the issue of how the Universal Service Administrative Company (USAC) would calculate ETC high cost support without relying on the embedded costs in the incumbent's service territory. It is possible that ETCs, including wireless carriers who are not parties to this proceeding, could completely lose support or have less support from the high cost fund since there may be no incumbent upon which to calculate support.

45 We find that Inland has failed to support with credible evidence its contentions that its vacation of territory would serve the public interest.

B. Designation of ICS as a replacement incumbent.

46 Inland contends that since ICS is the sole carrier able to serve 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.

¹⁹ Petition of M&L Enterprises, Inc., d/b/a Skyline Telephone Company for Designation as an Eligible Telecommunications Company, Docket UT-013022.

47 That may be, however, this docket is not sufficiently noticed nor is the record sufficient to make such a decision necessary or proper.

C. Arbitrage.

48 Inland argues that deleting Suncadia from its territory would be an advantage to the public, as it would prevent ICS from arbitrating universal service funds. ICS seeks to obtain universal service support for the services it will provide to Suncadia customers. Inland contends that 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 consequently much less expensive to serve) Suncadia resort territory. The result, Inland contends, is ICS' entitlement to funding that far exceeds its costs of providing service and a waste of federal USF monies.

49 Arbitrage is an important issue, and the Commission has indicated concern about the possibility of arbitrage.²⁰ However, we find several persuasive reasons not to rule on the contention in this docket. First, the administration of federal USF funds is governed by federal law and rules, under the purview of USAC. This record does not demonstrate that Commission action would be appropriate. Second, this is not a proper proceeding in which to address the issue, because it is an ancillary issue with only marginal relevance to Inland's proposal. Finally, there is a surfeit of speculation and a paucity of evidence in support of the contention. Inland has not proved that this issue, alone or in combination with other matters, warrants the action that Inland proposes.

IV. CONCLUSION

50 Inland has failed to meet its burden of proof. It has provided no adequate demonstration that removal of the Suncadia area from Inland's service territory would serve the public interest and would be fair, just and reasonable or consistent with the public interest. Inland's proposed tariff revision is rejected.

²⁰ No party objected to the taking of official notice in the initial order, at p. 12, footnote 64, of the tapes of the Commission's May 17 and June 6, 2006, open meetings for Commissioner expressions of concern.

V. FINDINGS OF FACT

- 51 (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.
- 52 (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.
- 53 (3) Inland is a telecommunications company within the jurisdiction of the Washington Utilities and Transportation Commission.
- 54 (4) Suncadia is a private resort development covering approximately 6,000 acres, located within Inland's Roslyn exchange.
- 55 (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. It expects that about 2,000 customers in its service territory will eventually require service through about 4,000 lines.
- 56 (6) ICS is a competitive local exchange carrier that has contracted with Suncadia to provide telecommunications service to customers located within the boundaries of the resort, over Suncadia's facilities.
- 57 (7) On April 19, 2005, Inland filed a proposed revision of its tariffs that would remove Suncadia from Inland's service territory.
- 58 (8) ICS has filed a petition with the Commission, designated Docket UT-053041, requesting that it be designated an eligible telecommunications carrier (ETC) for the Roslyn exchange, including Suncadia. The petition has been held pending a final decision in this docket.

- 59 (9) Inland's lack of an easement to construct its own facilities for telecommunications access to properties within Suncadia's boundaries does not prevent it from providing service.
- 60 (10) Inland has not demonstrated that it would probably be unable, if its boundaries were not changed, to secure access on reasonable terms for provision of service to connections within the Suncadia resort's boundaries.
- 61 (11) Inland has not demonstrated that acceptance of its proposed tariff amendment would prevent substantial costs to Inland or its customers.
- 62 (12) Accepting Inland's proposed tariff would remove access from the Suncadia resort territory to tariffed service by a carrier of last resort.
- 63 (13) Wireless carriers do not provide the same quality of service as wireline carriers.
- 64 (14) Removal of the Suncadia territory from Inland's service area could adversely affect the territories, and eligibility for full or partial universal service funding (USF), of designated eligible telecommunications carriers (ETCs). That eventuality could jeopardize the availability of services to customers within the Suncadia resort boundaries.
- 65 (15) The evidence in this proceeding is not sufficient to support consideration of ICS as a replacement incumbent carrier within the Suncadia resort boundaries.

VI. CONCLUSIONS OF LAW

- 66 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and the parties to, this proceeding and the parties.
- 67 (2) 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.

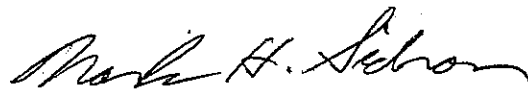
- 68 (3) Inland provided insufficient evidence to meet its burden of proof in support of
its proposed tariff.
- 69 (4) This proceeding is not an appropriate vehicle to consider ICS as a replacement
incumbent carrier within the Suncadia resort boundaries.
- 70 (5) Inland's proposed tariff revision to remove Suncadia from Inland's service
territory should be rejected.

VII. ORDER

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

Dated at Olympia, Washington, and effective November 29, 2006.

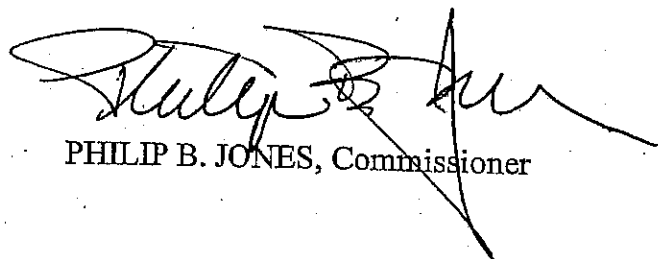
WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION



MARK H. SIDRAN, Chairman



PATRICK J. OSHIE, Commissioner



PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

GLOSSARY

TERM	DESCRIPTION
CLEC	Competitive local exchange company. Not an ILEC, and generally subject to very limited regulation.
ETC	Eligible telecommunications carrier.
ILEC	Incumbent local exchange company; a company in operation at the time the Act was enacted (August 1996).
USAC	Universal service administrative company
USF	Universal support funds.