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May 1, 2006

**VIA ELECTRONIC MAIL AND U.S. MAIL**

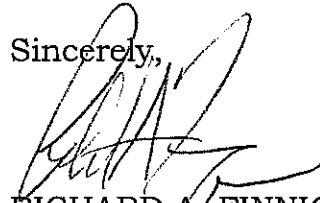
Filing Center  
Oregon Public Utility Commission  
550 Capitol Street NE, Ste 215  
Salem, OR 97301-2551

Re: UM 1217 – Reply Brief of the Oregon Telecommunications  
Association

Dear Sir/Madam:

Enclosed are the original and five copies of the Reply Brief of the Oregon  
Telecommunications Association and Certificate of Service.

Sincerely,



RICHARD A. FINNIGAN

RAF/km  
Enclosures

cc: Service List (w/encl., via e-mail and U.S. mail where specified)  
ALJ Christina Smith (w/encl., via e-mail and U.S. mail)  
Brant Wolf (w/encl., via e-mail)

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of Oregon Public Utility  
Commission Staff Investigation to Establish  
Requirements for Initial Designation and  
Recertification of Telecommunications  
Carriers Eligible to Receive Federal Universal  
Service Support

DOCKET NO. UM 1217

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REPLY BRIEF OF THE  
OREGON TELECOMMUNICATIONS ASSOCIATION

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The Oregon Telecommunications Association (“OTA”) submits its Reply Brief in this docket. The organization of this Reply Brief will be to respond directly to positions taken by various parties in their Opening Briefs. This Reply Brief will first address issues raised by Commission Staff, then issues raised by USCC/RCC and one item that appears in the Opening Brief of Cingular Wireless. This Reply Brief concludes with an update on activities in other states.

## I. REPLY TO STAFF

### 1. Local Usage Standard.

In its Opening Brief, Staff clarifies its position on the local usage portion of the standards for initial certification of an eligible telecommunications carrier (“ETC”). Staff states that its recommendation is that the Commission encourage all applicants to provide at least one unlimited local usage plan for low income customers and carry the burden of proof to show how the applicant’s calling plans are comparable to the underlying incumbent’s calling plans. Staff declines to recommend any particular amount of local usage that should be included, leaving the burden on the applicant to demonstrate comparability.

While this varies somewhat from the FCC’s standards, OTA has no objection to Staff’s formulation of this requirement.

### 2. Quality of Service Standards.

Staff<sup>1</sup> objects to OTA’s recommendation that quality of service standards apply to competitive ETCs, particularly wireless ETCs.<sup>2</sup> Staff mischaracterizes OTA’s recommendation as one which would “adopt identical uses just for parity’s sake.”<sup>3</sup> This is not what OTA’s

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<sup>1</sup> USCC/RCC joins in Staff’s arguments largely on identical reasoning.

<sup>2</sup> Wireline competitive ETCs would already have quality of service rules that apply to them, since the Commission has adopted quality of service rules for competitive local exchange carriers.

<sup>3</sup> Opening Brief at p. 6, l. 3 (internal quotations omitted).

recommendation contains. OTA recommends that the Commission adopt equivalent standards, not identical standards. The equivalent standards would take into account variations in technology. This is not fitting a square peg into a round hole. This is ensuring that all customers, whether served by an incumbent ETC or competitive ETC, receive the “quality services” that are the goal of Section 254 of the Telecommunications Act of 1996. The basic question to be asked is why should customers receive a lesser quality of service from wireless ETCs when those ETCs are to provide the mandated services and provide “quality service” through the use of the federal universal service funds that they receive?

In support of its position, Commission Staff also raises arguments about the legal authority to impose quality of service standards. Those arguments were addressed in OTA’s Opening Brief and the response need not be repeated here.

Commission Staff again raises the “vote with his [or her] feet”<sup>4</sup> concept for arguing that quality of service standards need not apply. This concept is predicated on the theory that a wireless customer is free to move his or her service to any other wireless provider that the customer may choose. What Staff’s theory fails to recognize is the fact that in the marketplace many wireless customers are stuck in long-term contracts with no ability to vote with their feet or otherwise. To paraphrase Albert Einstein, “Sometimes a beautiful theory is destroyed by an ugly fact.” The vote with one’s feet theory simply does not have the facts to support it.

### 3. Lifeline Services.

All parties agree that an applicant that seeks ETC status solely for the purpose of receiving Lifeline support for low-income customers should not have to provide a network build-out plan. In addition, OTA has suggested that the Commission consider developing a short form

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<sup>4</sup> Staff Opening Brief at p. 6, l. 14.

of application for such applicants. Commission Staff disagrees with OTA's suggestion.

It would seem consistent with efforts to serve public policy goals that is much be done as possible to encourage service to low-income customers. Verizon points out in its Opening Brief that the FCC currently is studying ways to encourage outreach to low-income customers.<sup>5</sup> OTA suggests that the Commission take the treatment of applicants for Lifeline support under advisement and once the FCC has issued its report on outreach programming, hold a workshop to consider both the results of the inquiry on outreach goals and how the application process for Lifeline ETC status can be streamlined.

4. Size of the Fund.

In a position that OTA has great difficulty understanding, Commission Staff continues to assert that the Commission should not be concerned about the resulting impact on USF funds in its consideration of applications for ETC status. As stated by Staff, "The Commission should not be concerned with the impact that any specific applicant would have on the fund, but should instead concentrate on the benefits that each ETC applicant would bring to Oregon consumers."<sup>6</sup> The Commission should keep in mind that all consumers pay into the federal universal service fund.

To say that it does not matter when considering an application what that may do to the federal fund is to ignore fiscal responsibility. How will that play in those states that are net contributors to the fund? Oregon is a net recipient from the federal universal service fund. Those states that pay in more than they receive have already raised concerns about the way in which other states view the fund. To cavalierly suggest that it is not an issue ignores an important consideration and is a slap in the face to other states and to consumers.

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<sup>5</sup> Verizon Opening Post-Hearing Brief at p. 8, l. 14-16.

<sup>6</sup> Staff Opening Brief at p. 8, l. 4-7.

Further, how is the position taken by Commission Staff in this docket consistent with the position that Commission Staff has taken very recently in UM 1017? In that docket, Commission Staff has held two workshops in the past month to consider ways to mitigate the size of the Oregon state universal service fund. The size of the fund only matters if it is a state fund?

The Commission can and should give a close look to where multiple designations of competitive ETCs is appropriate.

5. Disaggregation.

Staff recommends that the Commission order disaggregation to the wire center level and open a docket to consider how disaggregation should be conducted.<sup>7</sup> OTA answers that there is insufficient evidence in this record to make any decision on disaggregation.

The primary arguments advanced by Staff for disaggregation is that it sends the correct economic signals for entrance into the market<sup>8</sup> and that it is the answer to creamskimming.<sup>9</sup> While Staff may have a theoretical argument that disaggregation, if done correctly, can aid in the determination of which areas entry makes economic sense (to the extent that entry decisions predicated upon availability and use of universal service funds to enter a market makes economic sense to begin with). However, this theory ignores two facts.<sup>10</sup> First, it ignores how wireless networks are constructed to start with. The economic incentive for a wireless carrier to enter a market is predicated primarily upon the number of customers in that market and whether existing facilities sufficiently close (because of roaming or otherwise), to make additional investment

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<sup>7</sup> Staff Opening Brief at p. 9-10.

<sup>8</sup> Staff Opening Brief at p. 9, l. 25.

<sup>9</sup> Staff Opening Brief at p. 8, l. 21 – p. 9, l. 3.

<sup>10</sup> Since the theme of this Reply Brief appears to be the relationship of fact to theory, another way to put it is in the words of Sir Arthur Conan Doyle: "It is a capital mistake to theorize before one has data."

financially appropriate. Wireless carriers are not making decisions to enter new markets. They are making decisions about whether or not to expand existing markets.

Further, as pointed out by OTA in its Opening Brief, under the situation where a wireless ETC is serving an existing market with existing customers, there is a potential for windfall for the wireless ETC from disaggregation.<sup>11</sup> Disaggregation, from a practical level, does not send the “correct” economic signals for market entry.

The other practical issue Staff’s theory ignores is the fact that competitive ETC support, under current rules, is based on the incumbent’s costs, not the competitive ETC’s cost. This means the economic basis to make an entry decision is divorced from the cost of the entity making the decision. It is an artificial comparison under current rules, unrelated to the economics of market entry.

The second reason advanced by Commission Staff, that disaggregation is a solution to creamskimming, is incorrect. As the FCC noted on a much more developed record than exists in this docket, at best disaggregation is a partial answer. It is density analysis that must be used to address the creamskimming issue.<sup>12</sup>

6. Re-Certification – Proof of Advertising.

At pages 14 and 15 of its Opening Brief, Staff clarifies its position on advertising. Staff is no longer suggesting that a certain frequency of advertising be conducted. Rather, Staff proposes that as part of the re-certification process, the ETC demonstrate how it has advertised the supported services throughout all geographic areas that it serves. Based upon this clarification of position, OTA does not have an objection to the advertising standard as proposed

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<sup>11</sup> OTA Opening Brief at p. 14-15.

<sup>12</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (Released March 17, 2005) at Paragraphs 48-53.

by Staff.

7. IAS/ICLS Certification.

This issue may have become a case of making a mountain out of a mole hill. What OTA and Verizon have pointed out is that, as a matter of law, IAS and ICLS certifications are made to USAC and the FCC. This is very clearly set out in the FCC regulations. See, 47 C.F.R. §54.809 and 54.904. However, since it appears that all Staff is recommending is that companies provide copies of their certifications to the FCC in the annual state certification package, there probably is not an objection to including that information. It is public information in any event.

However, if Staff is suggesting that there is some substantive role for the Commission to play in IAS and ICLS certifications, then such position would run afoul of the federal regulations that place certification for IAS and ICLS in the hands of USAC and the FCC.

8. Reporting Requirements.

For some incumbent LECs, particularly cooperatives and some small commercial companies, Staff's recommendations would impose new reporting requirements in the form of the following: an annual service quality report, a report of the number of Lifeline customers and how Lifeline services were advertised, a service outage report and a trouble report.

OTA asserts that these additional reports are not necessary. The Commission has had a long experience with the way in which cooperatives and small commercial companies operate. The Commission is well aware that the quality of service provided by these companies is outstanding. This type of additional reporting is simply make work and does not fulfill any useful purpose.<sup>13</sup>

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<sup>13</sup> Remember, OTA's position is that once competitive ETCs provide the Commission with a similar base of experience, perhaps five years, so that the Commission has a similar level of confidence in the level of service provided by those companies, competitive ETCs could also be relieved of their reporting requirements for these items (assuming the quality of service was sufficient).



## II. USCC AND RCC POSITIONS

### 1. Opening Statement.

USCC and RCC take the first five pages of their Opening Brief to present a polemic on the role of the universal service fund in promoting competition and why wireless carriers should receive federal universal service support. These tired arguments fail to recognize that the pendulum has swung. Promoting competition cannot be the only or even the major reason for providing federal universal service funds to a competitive ETC.

### 2. Disaggregation.

USCC and RCC argue that required disaggregation of incumbent service areas provides the “proper incentive” for competitive ETC investment.<sup>14</sup> As noted above, OTA believes that this argument ignores the realities of how wireless carriers make their decisions for entering a particular market.

USCC and RCC also argue that OTA has not demonstrated the costs associated with disaggregation.<sup>15</sup> Although OTA pointed out a range of costs which would vary depending upon the nature of the records of the rural company,<sup>16</sup> to some extent USCC and RCC are correct. And, that is precisely the point that OTA is making: this record does not contain sufficient information on the costs or benefits in any quantitative or even meaningful qualitative basis to make a decision on disaggregation.

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<sup>14</sup> USCC/RCC Opening Brief beginning at p. 13, l. 19.

<sup>15</sup> USCC/RCC Opening Brief at p. 15, l. 16-17.

<sup>16</sup> Rural companies are required to keep records at a study area level, not wire center level. A few companies have done the work to develop wire center level records. For those companies, disaggregation is expensive, but not outrageous. For other rural companies, the expense of disaggregation is much higher.

USCC and RCC point to Mr. Wood's statements that in a matter of a few hours he came up with the disaggregation approach based upon cost proxy models.<sup>17</sup> OTA does not doubt that that might be the case. However, as pointed out in OTA's Opening Brief, the cost proxy models have been thoroughly discredited in their application to rural companies.

In the Rural Task Force Recommendation, the Rural Task Force found the following deficiencies with the FCC's Synthesis Model as it applies to rural telephone companies:

- The model produced line counts that were significantly different from the actual line counts served.
- The model did not accurately predict the number of route miles of plant needed to provide service.
- The model tended to overestimate aerial and underground plant and underestimate buried plant.
- The model significantly underestimated geographic areas served by wire center.
- The model significantly underestimated central office equipment investment.
- The model significantly understated network operations and customer operation expenses.

As a result, the Rural Task Force concluded, "It is the opinion of the Task Force that the current model is not an appropriate tool for determining the forward-looking costs of [rural telephone companies]."<sup>18</sup>

If one does not care about the results of disaggregation, it can be done cheaply.

However, inaccurate results do not provide correct economic signals. Further, inaccurate results

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<sup>17</sup> USCC/RCC Opening Brief at p. 15, l. 12-15.

<sup>18</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (Released September 29, 2000) at p. 18.

create opportunities for arbitrage.

Staff and USCC/RCC predicate their theory that disaggregation sends the correct economic signals for entry decisions. If that is the case, then back of the envelope calculations based upon a discredited model do not provide the correct economic signals and the argument by USCC and RCC that disaggregation is inexpensive is flawed.

3. Re-Certification Process.

USCC and RCC argue that incumbent ETCs should be required to provide the same network build-out information as competitive ETCs as part of the re-certification process. This argument completely ignores the fact that incumbent ETCs receive USF support for investment that the incumbent ETCs have made two years prior to the year in which they receive the federal universal service funds. This investment and expense information is supported by cost studies filed at the federal level. On the other hand, competitive ETCs receive funding based upon the incumbent's level of support, without a demonstration of what was spent.

In addition, incumbent ETCs already submit detailed reports to the Commission under Forms I, L and O. Form I is the Oregon separated results of operations for each company. This form contains a detailed breakout of the incumbent ETC's plant, depreciation and amortization. Form I also reports to the Commission a company's operating revenues and operating expenses by detail category.<sup>19</sup> Form L is the annual report describing the services and number of customers by service.<sup>20</sup> Annual report Form O is the annual total company and total Oregon operations report. It includes a balance sheet, an analysis of depreciation, an analysis of charges related to plant retired, long-term debt, income statement, number of employees, compensation

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<sup>19</sup> A copy of Form I is found in the record as RCC/19.

<sup>20</sup> A copy of Form L is found in the record as RCC/20.

to directors, officers and managers, and several other detailed reports.<sup>21</sup> Incumbent ETCs undergo annual cost reviews by Commission Staff as part of their access filings. Incumbent ETCs undergo review of their costs by Commission Staff when submitting data to justify support from the Oregon universal service fund. None of that information is available from a competitive ETC.

In addition to all of the foregoing, the Commission should keep in mind the legislative restrictions on its power when dealing with the small commercial incumbents. The legislature has declared in ORS 759.045 that the Commission must keep as an objective in any rules that it adopts affecting small incumbents that it is to minimize the regulatory burden on these utilities to the extent minimizing such regulatory burden is feasible and consistent with the public interest. Given all of the reporting information that is already provided to the Commission, the regulatory objectives set out in ORS 759.045 can be met for ETC purposes by reference to the materials and reviews already conducted. Additional reports for incumbent ETCs are not warranted.

Incumbent ETCs have demonstrated how their past investment and expenses through numerous filings at both the state and federal level. Competitive ETCs have made no demonstration of how they will spend the money. Requiring competitive ETCs to provide information concerning their network build-out plans only puts them on the same footing as the incumbent ETCs who have demonstrated through numerous financial reports how they have invested their money.<sup>22</sup>

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<sup>21</sup> A copy of Form O is found in the record as RCC/21.

<sup>22</sup> USCC and RCC also speculate that there are incumbents that receive high returns and may be making massive dividend distributions. USCC/RCC Opening Brief at p. 21, l. 1-8. That is based upon an exhibit (RCC/22) that came into the record on the basis that the Commission's witness had seen the report. However, the Commission witness had not reviewed the report, had not been part of its development and could not provide any foundation as to how the report was prepared. There is no evidence in this record as to how the returns were calculated. Further, it is just pure speculation that there are massive dividend distributions going on in the incumbent world. Speculation without foundation or any basis should be given no weight.

### III. CINGULAR WIRELESS

#### 1. Submission of Factual Information.

Cingular Wireless did not put any evidence on in this case. It presented no witness. Yet, in its Opening Brief, Cingular makes factual statements at page 8 of that Brief as to how it operates. Those statements are not supported by evidence in the record and must be completely disregarded.

### IV. ACTIVITY IN OTHER STATES

In a very recent decision, the Illinois Commerce Commission has considered the application of the FCC's ETC Designation Order to the ETC designation process in the State of Illinois.<sup>23</sup> In that Order, the Illinois Commerce Commission undertook a thorough analysis of certain applications for ETC status in light of the ETC Designation Order. For purposes of the proceeding in Oregon, the decisions reached by the Illinois Commerce Commission on quality of service and public interest analysis are worth reviewing.

On the issue of quality of service, there is a great deal of discussion in the Illinois case on what quality of service standards should apply to wireless ETC applicants. In the Illinois case, the wireless ETC applicants agreed to meet detailed quality of service standards. They further agreed to participate in a rulemaking to develop "equivalent" quality of service standards to those met by wireline incumbent companies. On that basis, the Illinois Commerce Commission approved the applications as they relate to quality of service issues.

On the public interest test, the Illinois Commerce Commission undertook a density analysis. In approving the applications of the wireless ETCs, the Illinois Commission's decision was based on the finding that the wireless ETCs were proposing to serve the lower-density wire

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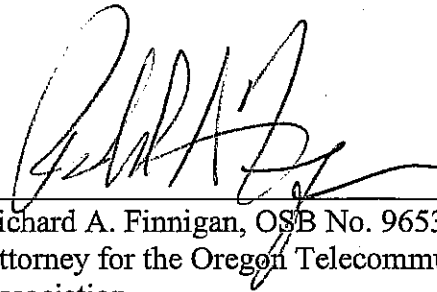
<sup>23</sup> Illinois Valley Cellular RSA 2-I Partnership, et al., Docket Nos. 04-0454, 04-0455 (Cons.) and 04-0456, Order (Illinois Commerce Commission, April 19, 2006), copy attached.

centers, not higher-density wire centers, of the rural telephone companies' service areas. Here is yet another state commission that views density analysis as an appropriate tool in the performance of the public interest test.

#### V. CONCLUSION

OTA appreciates the opportunity to be involved in this important docket. OTA expresses its appreciation to the consideration given to OTA's proposal set forth in its Opening Brief and this Reply Brief.

Dated this 1st day of May, 2006.



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Attorney for the Oregon Telecommunications  
Association

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Valley Cellular RSA 2-I Partnership	:		
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Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.	:	04-0454	
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Illinois Valley Cellular RSA 2-II Partnership	:	04-0455	(Cons.)
	:		
Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.	:		
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Illinois Valley Cellular RSA 2-III Partnership	:	04-0456	
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Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.	:		
	:		

ORDER

DATED: April 19, 2006





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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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ORDER

By the Commission:

**I. PROCEDURAL HISTORY; NATURE AND PURPOSE OF FILING**

Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership and Illinois Valley Cellular RSA 2-III Partnership (collectively “IVC” or “Applicants”) are holders of cellular licenses issued by the Federal Communications Commission (“FCC”).

In the instant proceedings before the Illinois Commerce Commission (“Commission” or “ICC”), each Applicant filed an application, as amended, seeking designation as an Eligible Telecommunications Carrier (“ETC”) for purposes of receiving federal Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, 47 U.S.C. 214(e)(2).

Eventually the three cases were consolidated. Prior to consolidation, petitions for leave to intervene were filed in one of more of the dockets by Illinois Bell Telephone Company (“SBC Illinois”); Tonica Telephone Company; (“Tonica”), McNabb Telephone Company (“McNabb”); the Illinois Independent Telephone Association (“IITA”); Mid-Century Telephone Cooperative, Inc. (“Mid-Century”), Gallatin River Communications L.L.C. (“Gallatin”), C-R Telephone Company (“C-R”), Frontier Communications of Illinois, Inc. (“Frontier - Illinois”), Frontier Communications - Prairie, Inc., (“Frontier - Prairie”) and Stelle Telephone Company (“Stelle”). These petitions for leave to intervene were granted.

Pursuant to due notice, prehearing conferences and hearings were held on various dates. Through their respective counsel IVC, SBC Illinois, IITA, Tonica, McNabb, C-R, Stelle, Gallatin, Frontier - Illinois, Frontier - Prairie and the Staff of the Illinois Commerce Commission (“ICC Staff” or “Staff”) entered appearances at the hearings. IVC presented the testimonies and exhibits of Michael K. Kurtis, an outside consultant, and Thomas Walsh, General Manager of Marseilles Cellular, Inc., the Network and Operating Partner of IVC.

The Staff presented the testimonies of Jeffrey H. Hoagg, Principal Policy Adviser; Dr. James Zolnierrek, Interim Manager, Policy Department; Samuel S. McClerren, Engineering Analyst; Mark A. Hanson, Rate Analyst; and Marci Schroll, 9-1-1 Program Manager, all of the Telecommunications Division. IITA and certain member companies presented the testimonies of Robert C. Schoonmaker, an outside consultant. SBC Illinois presented rebuttal testimony of James E. Stidham, Jr., Associate Director in Regulatory Planning and Policy.

IVC filed a draft order on December 29, 2005. At a hearing on that day, IITA, SBC Illinois, Gallatin and the Commission Staff indicated, through their respective counsel, that they had no objection to the draft order. Tr. 200-203. On January 5, 2006, the matter was marked “Heard and Taken.” A proposed order was issued by the administrative law judge. No exceptions were filed.

## **II. BACKGROUND**

IVC witness Michael Kurtis provided background testimony with respect to the formation of the three IVC Partnerships and the issuance of the cellular licenses for the IVC service area.

The issuance of cellular licenses by the FCC was based on geographic areas. The FCC first awarded licenses to Metropolitan Statistical Areas, as defined by Rand McNally. Those licenses were awarded on the basis of population with the largest MSAs being awarded licenses first. Once all MSAs were licensed, the FCC divided the remaining geographic area of the country into regional rural clusters of counties and defined them as Rural Service Areas (“RSA”). One of those rural service areas was Illinois RSA 2, which is served by the three IVC Partnerships. Illinois RSA 2 is comprised of Bureau, Putnam, LaSalle, Stark, Marshall, Livingston, Ford and Iroquois Counties.

The FCC awarded two cellular licenses in each geographic area. The A Block license was open to any applicant while the B Block license was open only to traditional telephone companies providing local exchange service in the particular market. The IVC license is a B Block license. The FCC awarded RSA licenses by lottery.

In Illinois RSA 2, there were a total of 12 incumbent local exchange carriers (“ILECs”) eligible to file for the B Block license that participated in the FCC application process. Nine of those ILECs were small rural telephone companies while the remaining three applicants at the time were larger incumbent local exchange carriers. A settlement was reached whereby RSA 2 would be divided into three separate markets along agreed-upon boundaries, and three separate partnerships were formed to be the licensee of each distinct market.

The rural ILECs collectively received 60% ownership while Centel received a minority 40% ownership of the 2-I Partnership. Centel received a 40% minority ownership of the 2-II Partnership and Ameritech received a 40% minority ownership of the 2-III Partnership. Marseilles Cellular, Inc, an affiliate of Marseilles Telephone Company and Metamora Telephone Company, is both the Network Partner and the Operating Partner for each of the three IVC Partnerships. While each IVC Partnership maintains its own customer base, subscribers receive “home” coverage throughout the three sub-markets that collectively comprise the RSA 2 market.

The IVC RSA 2-I Partnership provides commercial mobile radio service (“CMRS”) in Illinois RSA 2-I, Market No. 395B(1), which is comprised of portions of Bureau, Putnam and La Salle counties pursuant to its FCC cellular license (Call Sign KNKN583). The FCC licenses cellular systems on the basis of a Cellular Geographic Service Area (“CGSA”) and not on a per-site basis.

The CGSA is determined by applying FCC formulas to the operating parameters of a licensee’s cell sites to determine the Service Area Boundary (“SAB”) for each cell site, and then using the composite of the area encompassed within those SABs, as limited by the particular market boundary, to define the CGSA. Accordingly, only cell site locations with SABs that are used to form a part of the CGSA are listed on the FCC license. Additional cell sites having SABs that are wholly contained within the CGSA are not listed on the FCC license.

Within the area proposed for ETC designation in its Application, the IVC RSA 2-I Partnership operates 18 individual cellular base stations (“cell sites”) and provides service utilizing analog (“AMPS”), time division multiple access (“TDMA”) digital technology and code division multiple access (“CDMA”) digital technology. While this proceeding was pending, the IVC RSA 2-I Partnership constructed and began operating an additional cell site.

The IVC RSA 2-II Partnership provides CMRS in Illinois RSA 2-II, Market No. 395B(2), which is comprised of Marshall county as well as portions of Bureau, Putnam,

La Salle, Stark and Livingston counties pursuant to its FCC cellular license (Call Sign KNKN582). Within the area proposed for ETC designation in its Application, the IVC RSA 2-II Partnership operates seven individual cellular base stations, or cell sites), and provides service utilizing AMPS, TDMA digital technology and CDMA digital technology. One of those cell sites is located just outside of the IVC FCC-licensed service area and is owned by the IVC RSA 2-I Partnership but is used to provide service to the northeastern corner of the IVC proposed ETC service area. While this proceeding was pending, the IVC RSA 2-II Partnership constructed and began operating an additional cell site.

The IVC RSA 2-III Partnership provides CMRS in Illinois RSA 2-III, Market No. 395B(3), which is comprised of Ford and Iroquois counties as well as a portion of Livingston county pursuant to its FCC cellular license (Call Sign KNKN581). Within the area proposed for ETC designation in its Application, the IVC RSA 2-III Partnership operates 13 individual cellular base stations (cell sites) and provides service utilizing AMPS, TDMA digital technology and CDMA digital technology. While this proceeding was pending, the IVC RSA 2-III Partnership constructed and began operating an additional cell site.

The IVC network consists of a mobile switching office, identical in most respects to a traditional LEC end-office, and cell sites described as somewhat analogous to traditional LEC remote switching offices. The switch that serves the consolidated IVC network is fully redundant. The switch has its own battery back-up plant and is further backed-up with an emergency generator.

The 19 cell sites in IVC RSA 2-I are operated in conjunction with the seven cell sites in the IVC RSA 2-II market and the 13 cell sites in IVC RSA 2-III as part of a single network. The IVC cell sites are also redundant and equipped with battery back-up plants. The cell sites are also equipped with receptacles and manual transfer switches which enable IVC to take a portable generator to any cell site that experiences an extended power failure and “plug-in” a backup generator to recharge the battery plants.

Certain of the cell sites also serve as part of the consolidated network microwave “backbone” used for concentrating and carrying traffic between the various IVC cell sites and the IVC mobile switching office. These cell sites have dedicated generators and automatic transfer switches.

### **III. STATUTORY AUTHORITY; ETC REQUIREMENTS**

#### **A. Introduction**

As stated above, each of the IVC Partnerships seeks designation as an Eligible Telecommunications Carrier for purposes of receiving federal universal service support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996. Section 214(e) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 214(e) (the “Federal Act”), provides in pertinent part as follows:

(e) PROVISION OF UNIVERSAL SERVICE.—

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-  
- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

...

(4) RELINQUISHMENT OF UNIVERSAL SERVICE. 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. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. 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, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Under Section 214(e) of the Federal Act, a telecommunications carrier may be designated as an ETC and thereby receive universal service support so long as the carrier, throughout its service areas; (a) offers the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's service (including services offered by another ETC); and (b) advertises the availability of and charges for such services using media of general distribution.

Congress granted to state commissions the ability to designate a common carrier as an ETC, as set forth in Section 214(e)(2) of the Federal Act and implemented through Section 54.201(b) of the FCC's Rules, 47 CFR 54.201(b). Section 54.201(b) states that the Commission shall, on its own motion or upon request, designate a common carrier an ETC so long as the carrier meets the requirements of Section 54.201(d) of said rules, which restates the requirements found in Section 214(e)(1) of the Federal Act.

Section 214(e)(2) of the Federal Act and Section 54.201(c) of the FCC's Rules, 47 CFR 54.201(c), state that upon request and consistent with the public interest, convenience and necessity, the state Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area the Commission designates, provided each additional requesting carrier satisfies Section 214(e)(1) of the Act and Section 54.201(d) of the FCC's Rules. Before designating an additional ETC for an area served by a rural telephone company, the state Commission shall find that such designation is in the public interest.

Pursuant to Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), the following services and functions are to be offered by an ETC:

- (a) Voice grade access to the public switched network;



- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

ETCs must also provide Lifeline and Link-Up services and advertise the availability of Lifeline and LinkUp services in a manner reasonably designed to reach those likely to qualify for such services. 47 C.F.R. §§54.405; 54.411.

Section 254(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 254(b), defines the “Universal Service Principles” to guide regulatory bodies in preserving and advancing universal service. Section 254(b) of the Federal Act provides as follows:

(b) UNIVERSAL SERVICE PRINCIPLES.--The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.--Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.--Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.-- All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.--There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.--Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.--Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

Pursuant to Section 254(b)(7), the FCC adopted the following additional principle regarding competitive neutrality:

COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another. Report and Order in CC Docket No. 96-45, FCC 97-157 Issued May 8, 1997 (¶ 47).

## **B. FCC's ETC Order**

While the instant ICC dockets were pending, the FCC issued a Report and Order ("FCC ETC Order") clarifying existing requirements, and imposing additional requirements, which the FCC will use in evaluating applications for ETC designation on a going forward basis. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC-05-46 (March 17, 2005). In Paragraph 1, the FCC referred to these additional guidelines as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that these procedures serve as guidelines for state commissions to follow in their evaluation of ETC applications properly before those commissions. These additional guidelines are codified in 47 CFR §54.202.

State commissions are not bound by the guidelines in the FCC's ETC Order when they evaluate ETC applications. *Id.* at ¶¶58-64.

In the instant ICC proceedings, Staff and SBC Illinois witnesses testified that it would be appropriate for the Commission to analyze the IVC ETC applications under the guidelines in the FCC's ETC Order. IVC presented evidence intended to allow for such analysis.

Generally speaking, the guidelines in Paragraph 20 of the FCC's ETC Order require that the ETC applicant demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area;

(2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.

More specifically, the guidelines in the FCC's ETC Order require the following:

An ETC Applicant shall commit to provide **service throughout its proposed designated service area** to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(i).

The FCC explained the requirement more fully in Paragraph 22 of its ETC Order as follows:

[W]e agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service. . . . If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately.

In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.

An ETC Applicant shall submit a **five-year plan** that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. 47 CFR §54.202(a)(1)(ii).

The FCC explained the requirement more fully in Paragraph 23 of its ETC Order as follows:

[W]e require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation. Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support.

This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities.

An ETC Applicant shall demonstrate its ability to **remain functional in emergency situations**. 47 CFR §54.202(a)(2).

The FCC explained the requirement more fully in Paragraph 25 of its ETC Order as follows:

Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. We believe that functionality during emergency situations is an important consideration for the public interest.

An ETC Applicant shall demonstrate that it will satisfy applicable **consumer protection** and service quality standards. 47 CFR §54.202(a)(3).

The FCC explained the requirement more fully in Paragraphs 28 of its ETC Order as follows:

We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order and Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission. We will consider the sufficiency of other commitments on a case-by-case basis. . . . In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.

In Paragraph 31 of its ETC Order, the FCC further stated, "Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with section 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."

An ETC Applicant shall demonstrate that it offers a **local usage plan** comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. FCC ETC Order at Para. 32; 47 CFR §54.202(a)(4).

An ETC Applicant shall certify that the FCC may require it to provide **equal access** to long distance carriers if no other ETC is providing equal access within the service area. FCC ETC Order at Para 35; 47 CFR §54.202(a)(5).

The FCC has imposed certain **reporting** requirements in connection with the annual certification of ETCs. 47 CFR §54.209.

As indicated above, before designating an additional ETC for an area served by a **rural telephone company**, the state Commission must find such designation to be in the **public interest**, 47 U.S.C. Section 214(e)(2). In its ETC Order, Paragraph 40, the FCC clarified the public interest analysis for ETC designations by adopting the fact-specific public interest analysis developed in prior orders.

The FCC acknowledged that Congress did not establish specific criteria to be applied under the public interest test. The FCC stated that the public interest benefits of a particular ETC designation must be analyzed in a manner that is: (1) consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; (2) ensuring the availability of quality telecommunications services at just reasonable and affordable rates; and (3) promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high cost areas.

In cases before the FCC, the FCC stated that it would first consider a variety of factors in the overall ETC determination, including an examination of the benefits of

increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the FCC said it will also conduct a "creamskimming" analysis that compares the population density of each such wire center in which the ETC applicant seeks designation against that of all wire centers in the study area in which the ETC applicant does not seek designation. FCC ETC Order at Para 41; 47 CFR §54.202(c))

The FCC declined to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund, but it did identify the level of federal high-cost per-line support in a given wire center as one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in that wire center. ETC Order at Para 54-55.

It is clear from the FCC's ETC Order that the burden of proof rests with the ETC applicant. IVC draft order at 12. With respect to the public interest evaluation, the FCC stated, in paragraph 44, "In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant."

The FCC stated its belief that Section 214(e)(2) "demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law." The FCC noted, in paragraph 61, that states "are particularly well-equipped to determine their own ETC eligibility requirements." In the instant docket, The IITA and ICC Staff witnesses proposed additional criteria, in some circumstances beyond those in the FCC's ETC Order, to meet the public interest, and Staff has recommended that those commitments be treated as conditions of the Commission's grant of ETC status.

In addition, the ETC Order recognizes, in paragraph 72, that "state commissions possess the authority to revoke ETC designations for failure of an ETC to comply with the requirement of section 214(e) of the Act or any other conditions imposed by the state."

### **C. Parties' Positions**

According to IVC, since the instant dockets are cases of first impression before this Commission, IVC presented evidence intended to allow for the analysis of its ETC proposals under the guidelines in the FCC's ETC Order. IITA, the ICC Staff and SBC witnesses testified that it would be appropriate for the Commission to analyze the IVC applications under the guidelines in the FCC's ETC Order. IVC draft order at 13.

Given the discretion granted to state commissions in evaluating an ETC application Staff witness Jeff Hoagg provides the following rationale for following the federal guidelines in this matter in his direct testimony, Staff Ex. 1.0 at 7:

The requirements of the ETC Order are 'permissive' and are not binding upon this Commission in its evaluation of any application for ETC status. However, the FCC strongly encourages states to utilize the analyses and requirements contained in the ETC Order. Among other things, this would achieve a reasonable level of consistency in treatment of ETC applications across the nation. This argument, and others raised by the FCC in support of state utilization of its ETC Order requirements are, in my opinion, persuasive. In my opinion, the FCC requirements are, for the most part, appropriate and reasonable. Had the FCC not issued its ETC Order, I believe the Commission should have and would have determined to apply standards and requirements similar to those set forth in the ETC Order.

He further testified on pages 10-12:

In my opinion there are two overarching reasons to impose upon new ETC applicants obligations identical or similar to those imposed by the FCC. The first is to achieve better "targeting" of universal service support. The ETC Order requirements will help ensure that universal service support flows to uses that will directly benefit customers in these rural areas. This is the essence of the FCC's "five year plan" requirement, which is intended to ensure that universal service support received by a newly designated ETC is invested to upgrade, improve or extend facilities in ways that will directly benefit customers. I consider such a five-year investment plan, or an acceptable alternative, an essential 'bedrock' requirement for ETC designation for any new entrant.

The second compelling rationale is that these requirements will help ensure that customers in rural areas continue to have protections reflecting their unique circumstances, even as increased competitive entry is facilitated through new ETC designations. It is virtually axiomatic that competitive entry into the serving territories of existing ILECs will financially weaken these incumbent carriers to some (unknown) extent. The Commission must recognize that this is a largely unavoidable corollary to receipt of universal service funding by new entrants. This funding will facilitate new entrants' efforts to win customers from incumbent ILECs. In contrast to larger incumbent carriers, rural incumbent carriers generally have fewer resources to draw upon to offset such customer losses. Thus, increased competitive entry ultimately is accompanied by some danger that some incumbent rural carriers will not be able to fully maintain their traditional provider of last resort (POLR) status. The Commission thus should ensure that new entrant ETCs are reasonably well positioned to step into the role of POLR.

I would not suggest that new entrants must be in a position to do so from day one of receiving universal service support. Rather, ETC

obligations should be formulated, at least in part, to assist the newly designated ETC to generally prepare to undertake POLR obligations if needed in the future. I believe this is a fundamental objective of obligations contained in the FCC's ETC Order. This Commission's ETC requirements also should be designed to advance this basic objective.

#### **D. Commission Conclusions**

First, the Commission finds that in evaluating IVC's proposals for ETC designations, the minimum requirements to be met are the federal guidelines identified above. The Commission also finds that the FCC's ETC Order provides an appropriate analytical framework for considering ETC designation and for establishing whether IVC has shown its application is in the public interest. Furthermore, the IVC entities, as the applicants for ETC designation, bear the burden of proof to show that they have met each of the elements required for ETC designation and that such designation is in the public interest.

As discussed above, Section 214(e)(2) of the 1996 Act provides as follows:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, *in the case of an area served by a rural telephone company, . . . designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.* (Emphasis added)

Thus, the 1996 Act contemplates, at least for rural telephone companies, a public interest analysis for each study area before an additional ETC may be designated for an area served by a rural telephone company. That is, the Commission has the responsibility to analyze the public interest for each individual rural telephone study area. As the FCC stated in paragraph 43 of its recent ETC Order:

[A]lthough we adopt one set of criteria for evaluating the public interest for ETC designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or a non-rural carrier.



In conducting an evaluation for each study area, the Commission may appropriately consider such factors as comparisons to the LEC's local service offerings, the extent of competition in each area, IVC's existing service coverage and IVC's plans for future enhancements, rather than focusing on IVC's total statewide plans. Significantly, IVC has accepted Staff's position on the study area basis of the public interest analysis and has provided its testimony in a manner intended to allow that analysis. IVC Ex. 7.0 at 24-25.

The Commission is also mindful that that any ETC could, in fact, become a provider of last resort. That consideration, too, makes the FCC's ETC Order an appropriate baseline for consideration. Specifically, Section 241(e) of the federal Act states:

A State commission shall permit an ETC to relinquish its designation as such a carrier in any area served by more than one ETC. Any ETC that seeks to relinquish its ETC designation for an area served by more than one ETC shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an ETC to cease providing universal service in an area served by more than one ETC, the State commission shall require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to the remaining ETC or ETCs to permit the purchase or construction of adequate facilities by any remaining ETC. The state commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

As Mr. Hoagg observed on page 13 of his direct testimony, Staff Exhibit 1.0:

. . . [Section 241(e)] illustrates a basic precept of the 1996 Act concerning ETC status that is advanced by the FCC ETC Order. Accepting ETC designation is a weighty commitment. ETC designation is about more than simply receiving universal service funds if a carrier can show that it will provide rural customers with more choice in services. Section 214(e) effectively conveys the following message: once you're in, you can't simply opt out, as in a competitive market devoid of universal service support. Section 214(e) reflects the fact that rural customers require special consideration and requires that regulators should ensure they get it.

Section 254(f) explicitly allows "States [to] adopt regulations not inconsistent with the [FCC's] rules to preserve and advance Universal Service." *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (overturning a portion of FCC's universal service order that attempted to prohibit a state commission's imposition of additional ETC requirements). Consistent with Staff's testimony, it would be appropriate to consider the imposition of more stringent obligations than those

contained in the FCC ETC Order where the Commission finds that those obligations would serve the public interest in Illinois.

As Staff witness Hoagg observed, “. . . [T]he Commission may find that, in some issue areas, imposing more stringent obligations than those of the FCC ETC Order would serve the public interest in Illinois. It is, of course, free to do so. I note that the ETC Order recognizes the unique knowledge and familiarity with local conditions possessed by state commissions.” (Staff Ex. 1.0 at 9)

#### **IV. IVC’S PROPOSED ETC SERVICE AREAS**

##### **A. Introduction**

IVC witness Mr. Kurtis provided testimony and exhibits describing and depicting the FCC-licensed service areas and the proposed ETC-designated service area of each of the three IVC partnerships. Each proposed ETC-designated service area generally follows the boundary of its respective FCC-licensed service area with modifications to make the proposed ETC-designated service areas consistent with FCC precedent.

In determining the areas to include within its proposed ETC designated service area where a rural telephone company wire center boundary was crossed by the boundary of the IVC Partnership, IVC modified its proposed ETC-designated service area to follow the LEC wire center boundary based on the FCC’s *Virginia Cellular* order, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (January 22, 2004) (“*Virginia Cellular*”) and *Highland Cellular* order, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004), (“*Highland Cellular*”). In the *Highland Cellular* order, the FCC held that a proposed ETC service area may not specify an area below the wire center level for a rural LEC. *Highland Cellular* at ¶33. Accordingly, where the IVC FCC-licensed CGSA boundary crossed a rural LEC wire center, IVC modified its proposed ETC service area to include only entire wire centers.

IVC Exhibit 2.1 for each Applicant shows the areas for which the three IVC Partnerships seek ETC designation. IVC Exhibit 2.2 for each Applicant shows the proposed ETC service area of the particular IVC Partnership superimposed over a map depicting the various wire centers for the ILECs providing traditional wireline telephone service in these areas. IVC Exhibit 2.3 for each entity lists the LEC wire centers that are within the proposed ETC designated service area of each IVC Partnership. (IVC draft order at 21-22)

##### **B. IVC RSA 2-I Proposed ETC Designated Service Area**

The rural telephone companies, as defined by the Federal Act, with wire centers within the proposed ETC-designated service area of the IVC RSA 2-I Partnership are Frontier Communications of DePue, Inc. (“Frontier-DePue”), Marseilles Telephone Co. of Marseilles (“Marseilles”), McNabb Telephone Company (“McNabb”), Tonica Telephone Company (“Tonica”), and Citizens Telecom Co. Illinois - Frontier Citizens- IL

("Citizens"). SBC Illinois and Verizon North Inc - IL ("Verizon-North") are the non-rural telephone companies with wire centers in the IVC RSA 2-I proposed ETC designated service area.

Frontier-DePue and Marseilles have single wire center study areas that are located entirely within the boundaries of the IVC RSA 2-I FCC licensed CGSA. Therefore, both of these wire centers were included in the IVC RSA 2-I proposed ETC designated service area. Only a very small portion of the C-R Telephone Company Ransom wire center lies within the IVC RSA 2-I CGSA. Therefore, IVC excluded that wire center from its proposed ETC service area.

McNabb and Tonica have single wire center study areas that are not located entirely within the boundaries of the IVC RSA 2-I FCC licensed CGSA. The portions of the McNabb and Tonica wire centers that are within the IVC RSA 2-I CGSA are significant. Therefore, both of these wire centers were included in the IVC RSA 2-I proposed ETC-designated service area. The balance of the McNabb and Tonica wire centers are within the FCC-licensed CGSA area of the IVC RSA 2-II Partnership.

In its *Virginia Cellular* Order, the FCC made it clear that where a wire center lies partially beyond a wireless ETC's FCC-licensed CGSA, its obligations as an ETC may be met by providing service in those areas through agreements with other wireless carriers. The 19 cell sites in IVC RSA 2-I are operated in conjunction with the seven cell sites in the IVC RSA 2-II market and the 13 cell sites in IVC RSA 2-III as part of a single network. The areas of the McNabb and Tonica wire centers that lie beyond the IVC RSA 2-I CGSA will be served through agreement with IVC RSA 2-II using the consolidated IVC network.

Citizens has multiple wire centers, one of which, the Thomas ("Whiteside CO") wire center, is located entirely within the boundaries of the IVC RSA 2-I FCC-licensed CGSA. Therefore, IVC RSA 2-I included the Thomas (Whiteside CO) wire center in its proposed ETC-designated service area. The IVC RSA 2-I FCC-licensed CGSA includes only very small portions of the Tampico and Hooppole wire centers of Citizens. Therefore, IVC RSA 2-I excluded those two wire centers from its proposed ETC-designated service area.

IVC RSA 2-I proposes to redefine the Citizens service area for ETC purposes of allowing IVC to include the entire Thomas (Whiteside CO) wire center in its ETC-designated service area. IVC is not seeking to redefine the study area for Citizens. Rather, IVC RSA 2-I is seeking only to redefine the Citizens service area for purposes of designating itself as a competitive ETC in the one wire center as authorized by the FCC.

### **C. RSA 2-II Proposed ETC Service Area**

The rural telephone companies with wire centers within the IVC RSA 2-II proposed ETC-designated service area are Leonore Mutual Telephone Co. ("Leonore"),

McNabb Telephone Company (“McNabb”), Tonica Telephone Company (“Tonica”), C-R Telephone Co. (“C-R”), Gallatin River Communications (“Gallatin”), and Mid-Century Telephone Cooperative (“Mid-Century”). Verizon North Inc (“Verizon-North”) is the non-rural telephone company with wire centers in the IVC RSA 2-II proposed ETC-designated service area.

Leonore has a single wire center study area located entirely within the boundaries of the IVC RSA 2-II FCC licensed CGSA. Therefore, the Leonore wire center was included in the IVC RSA 2-II proposed ETC-designated service area. The IVC RSA 2-II FCC licensed CGSA includes a very small portion of the Frontier Communications of Prairie, Inc. (“Frontier-Prairie”) Flanagan wire center. Therefore, IVC RSA 2-II does not seek to include any portion of the Frontier-Prairie study area within the proposed ETC-designated service area.

McNabb and Tonica each have single wire center study areas that are not located entirely within the boundaries of the IVC RSA 2-II FCC-licensed CGSA. The portions of the McNabb and Tonica wire centers that are within the IVC RSA 2-II CGSA are significant. Therefore, these wire centers were included in the IVC RSA 2-II proposed ETC-designated service area. The balance of the McNabb and Tonica wire centers lie within the FCC licensed CGSA area of IVC RSA 2-I.

As stated above, the cell sites of IVC RSA 2-I and IVC RSA 2-II are operated as part of a single network, and the FCC in its *Virginia Cellular* Order made it clear that where a wire center lies partially beyond a wireless ETC’s FCC-licensed CGSA, it can meet its obligations as an ETC by providing service in those areas through agreements with other wireless carriers. Therefore the areas of the McNabb and Tonica wire centers that lie beyond the IVC RSA 2-II CGSA will be served through agreement with IVC RSA 2-I.

Mr. Kurtis addressed the fact that IVC RSA 2-I and IVC RSA 2-II are both seeking ETC designation for the McNabb and Tonica wire centers. He explained that USF support is based upon the number of subscribers an ETC carrier has, and that customers within the McNabb and Tonica wire centers receiving service on the consolidated IVC network will be designated as either an IVC RSA 2-I or IVC 2-II customer depending upon their billing addresses. Therefore only one of the IVC partnerships would be receiving USF support for any given customer, even though both partnerships would be designated as ETCs in that overlapping area.

C-R has a study area consisting of two wire centers, both of which are partially located within the boundaries of the IVC RSA 2-II FCC-licensed CGSA. IVC RSA 2-II proposes to include the entire study area of C-R, including both its Cornell and Ransom wire centers, within its ETC-designated service area. The portion of the C-R study area that is within the IVC RSA 2-II FCC licensed CGSA is significant. All but a small portion of the C-R study area is within either the CGSA of IVC RSA 2-II or one of the other IVC Partnerships, and as noted above, the cell sites of the three IVC Partnerships are

operated as a single CMRS network, collectively serving the area defined by the FCC as Illinois RSA 2.

The majority of the areas of the C-R wire centers that lie beyond the IVC RSA 2-II CGSA will be served through agreements with IVC RSA 2-I and IVC RSA 2-III using the consolidated IVC network. For the very small portion of the Ransom wire center of C-R that is not within the CGSA of one of the three IVC Partnerships, IVC will provide service through roaming agreements, which IVC has in place with CMRS licensees serving that area or resale agreements.

Gallatin has multiple wire centers. One of those centers, the Lacon wire center, is located entirely within the boundaries of the IVC RSA 2-I FCC-licensed CGSA. Therefore, IVC RSA 2-II included the Lacon wire center in its proposed ETC-designated service area. IVC RSA 2-II requests that the Gallatin service area be redefined to include only the Lacon wire center for purposes of the IVC RSA 2-II ETC designation. Similarly, the majority of the Lafayette wire center of Mid-Century is within the FCC-licensed CGSA, but other Mid-Century wire centers are not within the CGSA. Therefore, IVC RSA 2-II included the Mid-Century Lafayette wire center in its proposed ETC-designated service area, and it seeks to redefine the Mid-Century service area for purposes of the IVC RSA 2-II ETC designation.

#### **D. RSA 2-III Proposed ETC Service Area**

The rural telephone companies within the IVC RSA 2-III Partnership proposed ETC-designated service area are Stelle Telephone Co. ("Stelle"), C-R Telephone Co. ("C-R"), Frontier Communications of Prairie, Inc. ("Frontier-Prairie"), Frontier Communications of Illinois, Inc. ("Frontier-Illinois"), and Verizon South, Inc.-IL ("Verizon-South"). SBC Illinois is a non-rural telephone company.

Stelle has a single wire center study area located entirely within the boundaries of the IVC RSA 2-III FCC-licensed CGSA. Therefore, the Stelle wire center was included in the IVC RSA 2-III proposed ETC-designated service area. The IVC RSA 2-III FCC-licensed CGSA includes a very small portion of the Gridley Telephone Company ("Gridley") single wire center study area. Therefore, IVC RSA 2-III does not seek to include the Gridley study area within its proposed ETC-designated service area.

C-R has a study area consisting of two wire centers, both of which are partially located within the boundaries of the IVC RSA 2-III FCC-licensed CGSA. IVC RSA 2-III proposes to include the entire study area of C-R, including both its Cornell and Ransom wire centers, within its ETC-designated service area. The portion of the C-R study area that is within the IVC RSA 2-III FCC-licensed CGSA is significant. The majority of the areas of the C-R wire centers that lie beyond the IVC RSA 2-III CGSA will be served through agreements with IVC RSA 2-I and IVC RSA 2-II using the consolidated IVC network.

For the very small portion of the Ransom wire center of C-R that is not within the CGSA of one of the three IVC Partnerships, IVC will provide service through roaming agreements, which IVC has in place with CMRS licensees serving that area, or through resale agreements.

With respect to the fact that IVC RSA 2-II and IVC RSA 2-III are both seeking ETC designation for the C-R wire centers, USF support is based upon the number of subscribers an ETC carrier has. The customers within the C-R wire centers receiving service on the consolidated IVC network will be designated as either an IVC RSA 2-II or IVC 2-III customer depending upon their billing addresses. Therefore, only one of the IVC partnerships would be receiving USF support for any given customer, even though both partnerships would be designated as ETCs in that overlapping area.

Frontier-Prairie has a study area consisting of two wire centers, which are the Flanagan and Graymont wire centers. The Graymont wire center is located entirely within the boundaries of the IVC RSA 2-III FCC-licensed CGSA. The Flanagan wire center is located only partially within the IVC RSA 2-III CGSA, but the portion so located is substantial. Therefore, IVC proposes to include the entire study area of Frontier-Prairie within its ETC-designated service area. The portion of the Flanagan wire center that is not within the IVC RSA 2-III FCC-licensed CGSA is located within the IVC RSA 2-II CGSA, and will be served through an agreement with IVC RSA 2-II using the consolidated IVC network.

Frontier-Illinois has multiple wire centers located entirely within the boundaries of the IVC RSA 2-III FCC-licensed CGSA, those being the Cullom, Kempton and Saunemin wire centers. Therefore, IVC RSA 2-III included these wire centers in its proposed ETC-designated service area. Verizon South has multiple wire centers located entirely within the boundaries of the IVC RSA 2-III FCC-licensed CGSA. Those are the Danforth, Cissna Park, Woodland, Milford, Stockland and Wellington wire centers. Therefore, IVC RSA 2-III included those wire centers in its proposed ETC designated service area.

IVC RSA 2-III is licensed by the FCC to serve only a portion of the wire centers in the study areas of Frontier-Illinois and Verizon-South. IVC RSA 2-III's FCC-licensed service area encompasses the entire Danforth, Cissna Park, Woodland, Milford, Stockland and Wellington wire centers of Verizon South. IVC RSA 2-III proposes to redefine the Verizon-South service area to allow IVC RSA 2-III to be designated as an ETC in only these wire centers. With respect to Frontier-Illinois, the IVC RSA 2-III proposed ETC service area encompasses the entire Cullom, Kempton and Saunemin wire centers. IVC RSA 2-III proposes to redefine the Frontier-Illinois service area for ETC purposes.

#### **E. Coverage in IVC Designated Service Areas**

Evaluating IVC's current coverage in its designated service areas is relevant to this Commission's public interest determination. (IVC draft order at 28) IVC has

facilitated the review of its current coverage through the evidence it has presented in this docket.

IVC and IITA have presented somewhat conflicting evidence on the appropriate signal strength to use in the Commission's analysis of this issue. IITA takes the position that the appropriate signal strength level is -75 dBm. IVC takes the position that the appropriate floor below which a wireless handset would not operate with an acceptable level of quality is -95 dBm, and that the appropriate level for planning purposes in this case is -85 dBm. IVC draft order at 28.

In evaluating IVC's current service, IITA said the Commission should note that Section 245(b)(3) of the Act describes the purpose of universal service funding as providing access for all consumers -- including those in rural, insular and high-cost areas -- telecommunications services that are reasonably comparable to the rates and service available in urban areas. More specifically, Section 245(b)(3) provides in part:

(b) UNIVERSAL SERVICE PRINCIPLES.--The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

...

(3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Having reviewed the record, the Commission is cognizant of the fact that there is no clearly established signal level to use as a benchmark for CMRS services "in urban areas" or elsewhere, and the Commission does not propose to set one in this proceeding. Nonetheless, in order to put the evaluation in context, the Commission notes that even accepting IITA's position that service in most urban areas is targeted at -75 dBm, and applying that "urban level" of service here, the evidence shows that IVC's coverage over most of its service areas is adequate.

Specifically, the coverage maps provided by IITA, as Attachment 1.15.3, 1.16.3, 1.17.3, 1.18.3 and 1.19.3 to IITA Ex. 1.0 in each docket, purport to show that the McNabb, Tonica, Cornell, Ransom and Stelle rural exchanges have approximately the following percentage of homes and area with an urban signal level or better.

Exchange	% households at -75 dBm or better	% area at -75 dBm or better
McNabb	100%	100%

Tonica	100%	100%
Cornell	69%	56%
Ransom	75%	55%
Stelle	99%	96%

IVC provided coverage maps for the other study areas at issue here showing coverage comparable to the foregoing. IVC Ex. 6.0 at Attachment 1B-4B.

It is also noted that IVC and IITA presented conflicting evidence on the existing and proposed future coverage of the LaFayette exchange of Mid-Century. IVC draft order at 29. The Commission makes no findings in this docket with respect to those issues.

## V. EVIDENCE REGARDING ETC REQUIREMENTS

### A. Requirement to Provide USF Supported Services

#### 1. Evidence Presented

As noted above, Section 214(e)(1)(A) of the Federal Act provides that an ETC shall, throughout the designated service area, “offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier.”

Section 54.101(a) of the FCC’s rules, 47 CFR 54.101(a), identifies nine services and functions that are supported by federal universal support mechanisms and are to be offered by an ETC. IVC witness Thomas Walsh, who is the General Manager of the Network and Operating Partner of each of the three IVC Partnerships, presented testimony regarding the services provided by IVC as they relate to the nine supported services and functions.

The first function identified in Section 54.101(a) is **voice-grade access to the public switched network**. Under the FCC rules, voice-grade access means the ability to make and receive phone calls, within a bandwidth of approximately 2700 Hertz, within the 300 to 3000 Hertz frequency range. As an existing cellular service provider in Illinois, IVC provides voice-grade access to the public switched network.

Through interconnection with incumbent local exchange carriers, IVC is able to originate and terminate telephone service for all of its subscribers. All customers of IVC are able to place and receive calls on the public switched network within the specified bandwidth. IVC provides the foregoing service using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to provide CMRS to its existing subscribers.



The second service is identified as **local usage**. The FCC has not quantified any minimum amount of local usage required to be included in a universal service offering. IVC's service includes local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges. The service allows for a bundle of local calling minutes for a flat-rated monthly charge. IVC currently offers several service plans that include varying amounts of local usage.

IVC proposed a number of new service plans in this proceeding in connection with its request for ETC designation. These plans include two ILEC-Equivalent plans with discounted rates and unlimited in-bound and out-bound local usage within a more limited calling scope equivalent to the calling scope offered by the incumbent local exchange carriers who operate in IVC's proposed ETC-designated service area.

ICC Staff witness Mark Hanson testified that an ETC applicant, like IVC, must offer rate plans and local usage comparable to the service plans offered by the incumbent LEC in the area. He initially proposed an analysis to determine the appropriate rates and levels of local usage to be deemed comparable to the rates and levels of local usage offered by the incumbent LECs in IVC's proposed ETC-designated service area.

IITA witness Mr. Schoonmaker also suggested that designation of IVC as an ETC would not be in the public interest unless its service plans have rates comparable to those of the incumbent LECs.

IVC presented a series of rate analyses comparing its existing and proposed rate plans and local usage offerings to those of each incumbent LEC in the proposed ETC designated service area as IVC Exhibits 5.1, 5.2 and 5.3. These analyses purport to show that IVC's existing and proposed rate plans and local usage offerings compare favorably to those of the incumbent LECs. Mr. Walsh also testified out that IVC's rate plans compare favorably to the \$20.39 "affordable rate" that the Commission set for Illinois' small, rural telephone companies for Illinois Universal Service Fund purposes in ICC Docket Nos. 00-0233/00-0335 Consolidated, and to the 400 minutes of local usage that was assumed in setting the affordable rate.

Following IVC's indication of its intent to offer two local service offerings identified as "ILEC Equivalent Plans", both Mr. Hanson and Mr. Schoonmaker agreed that these proposed IVC service plans compare favorably to those of the incumbent LECs in each of the ILEC study areas and would bring benefits to Illinois consumers from lower prices if IVC's ETC applications were granted. Both suggested that the offering of the ILEC Equivalent Plans be made a condition of the order designating the three IVC Partnerships as ETCs. IVC has agreed to the inclusion of this condition.

The third service is **Dual Tone Multi-frequency Signaling** or its Functional Equivalent. Dual tone multi-frequency signaling ("DTMF") is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to

provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement.

IVC currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling. IVC draft order at 32. Staff offered no evidence or argument in opposition to IVC's evidence regarding this supported service.

The fourth service is "**single-party service**", which means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. The FCC has concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user's particular transmission.

IVC provides a dedicated message path for the length of all customer calls. Staff provided no evidence or argument in opposition to IVC's evidence regarding this supported service.

The fifth supported service is **access to emergency service** through the dialing of "9-1-1." The ability to reach a public emergency service provider through dialing 9-1-1 is a required universal service offering. IVC has coordinated 9-1-1 call routing with the local emergency officials and the Illinois State Police. IVC customers can reach an emergency dispatch, or public safety answering point ("PSAP"), by dialing "9-1-1," which will route the call to the appropriate PSAP.

IVC states that enhanced 9-1-1 ("E9-1-1"), which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is required only if a public emergency service provider makes arrangements with the local provider for delivery of such information. Mr. Walsh testified that IVC routes 9-1-1 calls for anyone dialing 9-1-1 on the IVC network whether they are an IVC customer, a valid roamer or even a caller not otherwise considered to be a valid user of any cellular network.

The FCC, public safety officials and the wireless industry have been working to enhance this basic 9-1-1 call routing. The enhanced or E9-1-1 service was rolled out in two phases. Phase I provides the PSAP with the location of the cell site on which the call originated as well as the call-back telephone number of the handset used to place the call. Phase II E9-1-1 service provides the PSAP with the same information as the Phase I service, except that instead of providing the location of the cell site on which the call was placed, Phase II service provides the actual location of the handset that placed the call.

The IVC network pinpoints the location of the handset by using the satellite-based locating technology ("GPS") much the way that car-based navigational systems can plot the location of a vehicle. Handsets equipped with GPS receivers transmit information received from the GPS satellites to the IVC network which processes that raw data and calculates the geographic location of the handset. This locational

information is then forwarded on to the PSAP. Virtually all handsets currently being sold by IVC and most other CDMA-based service providers nation-wide are GPS-capable. FCC rules require that these types of systems be able to provide locational information accurate to within 150 meters for 95% of the calls and 50 meters for 67% of the calls. The IVC network is capable of meeting these requirements and transmitting the data to the PSAP.

IVC's network is capable of providing Phase I and Phase II E9-1-1 services as a function of the capabilities of each PSAP throughout the IVC service area. However, the PSAP must have the technological capability to receive and process the data that the IVC system is sending. Mr. Walsh identified the PSAPs within the proposed ETC designated area that have the technical capability to receive Basic 9-1-1 service, Phase I E9-1-1 and Phase II E9-1-1 service. Mr. Walsh also testified that for areas where no PSAP is assigned to handle emergency calls from an IVC radio tower, IVC has made arrangements to route all such 9-1-1 calls to the Illinois State Police.

ICC Staff witness Marci Schroll initially raised an issue about whether IVC was in compliance with the Illinois wireless 9-1-1 statute and rules, and whether IVC would commit to continue to comply with future amendments to the Illinois wireless 9-1-1 statute and rules.

In response, Mr. Walsh testified that IVC is in compliance with Illinois wireless 9-1-1 statutes and rules. IVC has also committed to comply with future amendments to the Illinois 9-1-1 statute and rules, with one caveat. IVC does not believe it is appropriate to commit to comply with a future amendment to the Illinois 9-1-1 statute or rules if compliance with that amendment would cause IVC to violate the Federal 9-1-1 statute and rules or if the Illinois statute or rule are found by a court or other body of competent jurisdiction to be preempted by the Federal 9-1-1 statute or rules. IVC also committed to notify the ICC if an actual conflict arises in the future between federal and Illinois law on wireless 9-1-1 service due to a change in either the Illinois or Federal law.

In her final testimony, Ms. Schroll indicated that the IVC commitments are acceptable.

The sixth USF supported service is **access to operator services**, defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.

IVC currently offers its subscribers access to operator services for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls. Customers may also obtain related information throughout IVC's requested designated ETC service area. Staff offered no opposition to IVC's evidence regarding this supported service. (IVC draft order at 35)

The seventh supported service is **access to interexchange service**. An ETC providing universal service must offer consumers access to interexchange service to

place or receive toll or interexchange calls. Interexchange service access entails access to live or automatic operator assistance for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third-party calls, as well as obtaining related information.

IVC has direct interconnection to multiple access tandems for delivering traffic to all offices subtending those tandems as well as direct interconnection to local exchange carrier end offices where traffic levels so justify. In addition, IVC provides indirect access to one or more interexchange carriers (“IXC”), for access to any other exchanges. As a result, IVC provides all of its customers with the ability to make and receive interexchange or toll calls through the interconnection arrangements it has with its IXCs.

Staff advanced no position in opposition to IVC’s evidence regarding this supported service.

The eighth service is **access to directory service**. The ability to place a call to directory assistance is a required service offering of an ETC. IVC provides all of its customers with access to information contained in directory listings by dialing “4-1-1” or “555-1212.” Staff provided no position in opposition to IVC’s evidence regarding this supported service.

The ninth supported service is **Toll Limitation for Qualifying Low-Income Customers** (Lifeline and Link-Up Services). Under FCC Rules, ETCs must offer “Toll Limitation,” a term the FCC has defined to include either “Toll Blocking” or Toll Control, but it does not at this time require both, to qualifying Lifeline and Link-Up universal service customers at no charge.

Toll Blocking allows customers to block the completion of outgoing toll calls. Toll Control allows the customer to limit the dollar amount of toll charges a subscriber can incur during a billing period. If enrolled in the Federal Lifeline or Link-Up programs, a customer may choose to have IVC block all attempted toll calls originating from the customer’s phone.

Mr. Walsh testified that IVC does not currently offer Lifeline or Link-Up services, but it has committed to do so. The IVC network is capable of providing Toll Blocking services. Currently, IVC provides Toll Blocking services for international calls. Mr. Walsh made a commitment on behalf of IVC to utilize the same Toll Blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

## 2. Commission Conclusion

As noted above, the FCC has identified nine services and functions that are supported by federal universal support mechanisms and are to be offered by an ETC.

Evidence regarding IVC's willingness and ability to provide these services is summarized above.

In response to concerns raised by Staff and other parties, IVC has agreed to a number of conditions and commitments in this proceeding, as identified in this Order and in the record. Subject to and in reliance on all such conditions and commitments, wherever they may appear, the Commission finds that IVC has made a commitment to offer, and does have or will have the capability to provide, each of the nine supported services in each of the study areas for which it seeks ETC status using either its own facilities or a combination of its own facilities and another carrier's services.

## **B. Advertising of Availability of Services**

As noted above, Section 214(e)(1)(B) of the Federal Act of 1996 provides that an ETC shall, throughout the designated service area, "advertise the availability of such services and the charges therefor using media of general distribution."

IVC witness Mr. Walsh testified that IVC currently advertises the availability of its services, and he made a commitment on behalf of IVC to advertise to the public, in IVC's ETC-designated area, the offering by ITC of the supported universal services and the charges therefor. Mr. Walsh identified a number of local newspapers of general circulation in the ETC-designated area where IVC advertises weekly, and a number of local radio stations on which IVC runs advertisements.

None of the parties or the ICC Staff questioned IVC's evidence that it will advertise the availability of the supported universal services.

With regard to the advertising of the availability of lifeline and link-up services, Mr. Walsh described two reduced-price Lifeline Plans that IVC would offer to Lifeline-eligible subscribers. Under these plans, the customers would be allowed to presubscribe to an IXC of their choosing. As an alternative to those two plans, IVC would offer Lifeline-eligible subscribers a discount off the standard monthly rates for any of its other rate plans.

Mr. Walsh also described the discount that IVC would offer Link-Up eligible subscribers with respect to activation fees and a deferred payment schedule that would be made available for such eligible subscribers.

Mr. Walsh made a commitment on behalf of IVC to advertise the availability of Lifeline and Link-Up services. In addition to the standard forms of advertising identified above for its existing services, IVC would disseminate information regarding its Lifeline and Link-Up services to potential customers of those services by disseminating information in locations such as unemployment and welfare offices within the ETC-designated area.

None of the parties or Staff questioned IVC's evidence that it will advertise the availability of the supported universal services. Staff found IVC's commitments to be satisfactory, and recommended that they be included as a condition of granting ETC to IVC.

The Commission has reviewed the record on these issues. With respect to advertising the availability of the supported services within the meaning of Section 214(e)(1)(B) of the 1996 Act, the Commission finds that IVC has shown that it will "advertise the availability of such services and the charges therefor using media of general distribution."

With regard to lifeline service, the Commission concludes that IVC has demonstrated that it satisfies the requirement of CFR §54.405 to make available lifeline service, as defined in §54.401, to qualifying low-income consumers, and to publicize the availability of such service in a manner reasonably designed to reach those likely to qualify for the service.

The Commission also concludes that IVC has demonstrated that it satisfies the requirement of CFR §54.411 to make Link-Up services available as part of its obligation set forth in CFR §54.101(a)(9) and 54.101(b).

Finally, the Commission concludes that the commitments made by IVC on the above issues shall be added to the list of conditions being imposed in this Order.

### **C. Commitment to Provide Service throughout ETC-Designated Area**

As noted above, under FCC guidelines, an ETC Applicant must commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. FCC ETC Order at Para 22; 47 CFR §54.202(a)(1)(i).

IVC presented evidence of its ability and commitment to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service. IVC asserts that the evidence of its existing system and services, its proposed expansion plans and its financial statements, IVC Proprietary Exhibits 5.7, 5.8 and 5.9, demonstrate IVC's ability to provide service throughout the proposed ETC-designated area.

In its Report and Order the FCC stated, "In addition, we encourage states to follow the Joint Board's proposal that any build-out commitments adopted by states be harmonized with any existing policies regarding line extensions and carrier of last resort obligations."

Consistent with that principle, Staff witness Mr. Hoagg testified, "Section 214(e) effectively conveys the following message: once you're in, you can't simply opt out, as in a competitive market devoid of universal service support." The CLEC or a wireless

carrier seeking ETC designation should show that they can provide the designated services and otherwise meet the minimum standards set forth in the FCC's ETC Order and other requirements determined by the Commission to provide for the public interest.

Through Mr. Walsh, IVC made a commitment to provide service throughout its designated service area to all customers who make a reasonable request for service using the standard in paragraph 22 of the FCC's ETC Order. He stated that if IVC's network already passes or covers the potential customer's premises, IVC will provide service immediately.

For those instances where a request comes from a potential customer within IVC's licensed service area but outside its existing network coverage or where signal strength is weak, IVC will provide service within a reasonable period of time if service can be provided at a reasonable cost utilizing one or more of the following methods: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

Finally, Mr. Walsh stated that if IVC determines that it cannot serve the customer using one or more of these methods, then IVC will report the unfulfilled request to the Commission within 30 days after making such determination. (IVC draft order at 39)

Having reviewed the record, the Commission concludes that IVC presented sufficient evidence demonstrating its ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service, and to potential customers located within its service area but outside its existing network coverage. In addition, the Commission accepts the commitment IVC has made to provide service in compliance with the standards set forth in the FCC's ETC order and 47 CFR 54.202.

## **D. Five-Year Network Improvement Plan**

### **1. Introduction**

As explained above, under FCC guidelines, an ETC Applicant must submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. ETC Order at Para 23; 47 CFR §54.202(a)(1)(ii). The parties suggest, for purposes of this proceeding, that those guidelines be applied in assessing IVC's request for ETC designation in this order.

Staff witness Mr. Hoagg testified that a five-year investment plan as called for by the FCC's ETC Order, or an acceptable alternative, is "an essential bedrock requirement for ETC designation for any new entrant" in order to achieve "better

targeting” of USF. This information provides state commissions with detailed specific information to perform its public interest analysis. As further discussed by Mr. Hoagg, the essence of the five-year plan is to ensure that support received by a “newly designated ETC is invested to upgrade, improve or extend facilities in ways that will directly benefit customers” in order “to achieve better ‘targeting’ of universal service support.” Staff Ex. 1.0 at 11-12.

Generally, the FCC suggested that the five-year network improvement plan specifically describe proposed improvements or upgrades “on a wire center-by-wire center basis throughout its designated service area.” Also, the FCC implicitly invited state commissions to develop their own approach when the FCC rejected suggestions for uniformity and instead stated that its approach accounts for “unique circumstances” and “allows consideration of fact-specific circumstances of the carrier and the designated service area.” FCC ETC Order at Para 23-24.

## **2. Evidence Presented**

IVC presented evidence describing how it will use universal service support to improve service within the service areas for which it seeks designation as part of its five-year network improvement plan. The broader network improvement plan presented by IVC, which was part of testimony that was pre-filed prior to the issuance of the FCC’s ETC Order, included the construction, maintenance and operation of a total of 19 new cell towers within the proposed ETC-designated service area. IVC presented diagrams comparing the existing coverage area to the coverage area that would result at the conclusion of the network improvement plan. IVC Ex. 6.0, Attachments 4A and 6.

The new cell towers to be constructed under the network improvement plan were divided into two groups for each of the three IVC partnerships. The first group consists of cell sites IVC believes can be justified economically, and which it intends to construct from existing cash flows and revenues, even without USF support. The second group consists of cell sites that IVC does not believe would be justified economically but which it would construct using USF support if the three IVC partnerships are designated as ETCs. IVC presented proprietary Exhibits 5.4, 5.5 and 5.6 showing the cost analysis used to differentiate between the “USF cell sites” and the “non-USF cell sites.”

While the case was pending, IVC constructed three of the non-USF cell sites, one in each of the three IVC partnerships’ service areas. Excluding the three new cell sites constructed during the pendency of this proceeding, the network improvement plan includes nine new cell sites for IVC RSA 2-I, three of which are designated for construction only with USF support, four new cell sites for IVC RSA 2-II, three of which are designated for construction only with USF support, and three new cell sites for IVC RSA 2-III, two of which are designated for construction only with USF support. The location for each proposed new cell site was set forth in proprietary IVC Exhibits 1.5.

IVC presented the projected capital and operating costs associated with each proposed new cell tower in proprietary IVC Exhibit 4.1 for each RSA. For each RSA,



IVC also presented Proprietary IVC Exhibit 3.1, which showed (1) each individual wire center within IVC's proposed ETC designated area that would receive capacity enhancement from each new cell tower, and (2) the population that would be covered by each new cell tower. The notes at the end of proprietary Exhibits 3.1 identify the number of wire centers that would not receive service enhancement from the new cell towers. The individual wire centers within the IVC proposed ETC-designated area that would not receive service enhancement from the new cell towers can be identified by comparing the wire center lists in the proprietary Exhibit 3.1s with the wire center lists in IVC Exhibits 2.3.

The record also contains evidence showing the projected construction start date and in service date for the USF cell towers (Staff Exhibit 6.0, Attachment A Proprietary), the projected amount of USF support that each IVC Partnership expected to receive (IITA Exhibit 1.0, Attachment 1.4), and the projected expenditure of USF support in connection with the construction, maintenance and operation of the proposed new USF towers over the next five years (Staff Exhibit 6.0, Attachment A Proprietary).

While IVC's five-year network improvement plan does not call for a cell tower to be constructed in each wire center within the proposed ETC-designated area, IVC witness Mr. Walsh testified that there is not a need for service improvements in wire centers where the existing cell towers are providing sufficient signal strength. In paragraph 23 of its ETC Order, the FCC stated:

To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities.

Mr. Walsh testified that most of the wire centers that will not receive service enhancement from the proposed new cell towers do not yet require network enhancement because IVC's existing cell towers are providing sufficient signal strength. Some of these wire centers have existing cell towers in them already, and others are in close proximity to other wire centers that have existing cell towers. He said this proximity benefit is one of the technological differences between wireless service and landline service. A single cell site can provide service to multiple wire centers, unlike landline service where facilities must actually be constructed in the wire center to be of any benefit to the wire center. IVC draft order at 43.

IVC has placed into service 39 cell towers throughout its proposed ETC service area, but it does not have a cell tower in each wire center in its service area. IVC has committed to construct 16 new cell towers during the next five years. Even with these additional 16 cell towers, IVC will not have a cell tower in each wire center in its service

area. There are 115 wire centers in the proposed ETC designated area. The list of wire centers for each of the three IVC Partnerships is shown in the respective IVC Exhibits 2.3. There are 11 additional wire centers that are partially within IVC's combined FCC-licensed service area, but which IVC eliminated from its proposed ETC-designated area.

Mr. Walsh testified that cell towers represent a substantial capital investment, and that it is not reasonable to expect a wireless carrier to have a cell tower in each every wire center in its service area. Also, he asserted, a cell tower in each wire center in a wireless carrier's service area is not required for the carrier to provide quality service. Radio signals from a single location traverse multiple wire centers. IVC has provided information to the ICC Staff, which was included with the rebuttal testimony of Staff witness Mr. Hoagg in Staff Exhibit 6.0. It shows the level of USF support that IVC expects during the next five years and how it will be allocated among the eight new cell towers proposed to be constructed with USF support. The expected USF support will be completely expended in connection with the construction of these eight cell towers.

With regard to the 19 exchanges that would not directly benefit from the new tower construction, Mr. Walsh identified the ones that currently receive adequate service, and the ones that do not. His testimony about those exchanges that will not be impacted by towers included in the five-year plan, and the coverage maps presented as Attachments 4A and 4B to IVC Exhibit 6.0, and proprietary Attachment 6 to IVC Exhibit 6.0, may be summarized as follows:

Exchanges Not Impacted By Five-Year Plan		
Exchange	Adequately served by tower(s) in:	Could Benefit from Signal Enhancement
Walnut	Walnut	
Cabery		✓
Campus		✓
Chatsworth	Forrest	
Colfax	Gibson City	
Cropsey	North Fairbury	
Elliott	Gibson City	
Emington		✓
Melvin	Melvin	
Piper City	Piper City/Gillman	
Reddick	Dwight	
Sibley	Melvin/Gibson City	
Strawn	Forrest	

Dwight	Dwight	
Gardner	Dwight	
Gibson City	Gibson City	
Hopkins Park-Momence		✓
Cullom	Piper City/Gillman	
Kempton		✓

Mr. Walsh stated that cell towers that would benefit these areas were not included in the five-year plan because there simply are not sufficient USF funds to enable IVC to provide network enhancements to all wire centers during the initial five years of USF support.

The level of USF support that IVC can draw is not based upon IVC's cost of service, but rather is limited to the level of per-line support received by the underlying ILEC. He said the analysis of the eight proposed USF cell towers to be constructed and placed in service during the first five-year network enhancement plan shows that 100% of the anticipated USF support will be expended on these USF cell towers. Mr. Walsh testified that future enhancements for these areas and others will come in the form of capacity expansions or new cell towers in subsequent five-year network enhancement plans.

ICC Staff and IITA initially questioned whether IVC had provided all the required information in connection with its five-year plan. Following the submission of supplemental information by IVC, including the USF spending analysis, the ICC Staff no longer questions the sufficiency of IVC's five-year network improvement plan; however, IITA continues to question whether IVC's five-year plan sufficiently addresses the wire center-by-wire center language in the FCC's ETC Order.

In summary, as part of its five-year plan, IVC committed to place 16 new cell towers, eight of which are dependent on USF funding, that would improve the service to 96 out of 115 wire centers covered by its proposed ETC designation. This would leave 19 exchanges not benefited by the towers built under the five-year plan. Of these, IVC asserts, 14 already receive adequate signal coverage from existing towers.

### **3. Commission Conclusion**

Under FCC guidelines, an ETC Applicant must submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. The parties suggest, and the Commission agrees, that for purposes of this proceeding, those guidelines should be applied in assessing IVC's request for ETC designation in this order.

IVC provided a five-year plan describing proposed improvements to its network on a wire center-by-wire center basis. IVC's plan describes the construction of 16 new cell towers during the next five years. IVC's application included diagrams showing the specific geographic areas impacted by the improvements.

IVC also provided projected start and completion dates for each improvement and cost estimates of the investment in those projects that would use funds from high-cost support. IVC's five-year plan demonstrates how high-cost support will be used for service improvements that would not occur absent receipt of such support. Overall, IVC demonstrated that signal quality in 96 of its 115 wire centers would benefit from the new cell towers.

Of the 19 wire centers that will not benefit from the new construction, IVC provided an adequate explanation of why 14 of those do not require system improvements at this time. IVC also adequately explained why the USF funds they expect to collect will not be sufficient to support upgrades of the under-served wire centers as part of the five-year plan. In addition, the Commission requires that any surplus universal service funds received shall be directed first to those under-served study areas, and that all of the non-benefiting wire centers will receive priority for additional build-out in subsequent five-year plans.

#### **E. Ability to Remain Functional in Emergency Situations**

As explained above, under FCC guidelines, an ETC Applicant must demonstrate its ability to remain functional in emergency situations. 47 CFR §54.202(a)(2); FCC ETC Order at Para 25.

IVC has presented evidence intended to demonstrate that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. Mr. Walsh testified that IVC's mobile switching office and each of the IVC cell sites is fully redundant; they have battery back-up plants and either emergency generators with automatic transfer switches or receptacles and manual transfer switches which enable a portable generator to plugged in to recharge the battery plants.

He also testified that the entire consolidated IVC network is monitored to check for proper operations at all times. The redundant network design allows the system to avoid most customer-affecting service outages since, in the event of a failure, the redundant facilities are designed to automatically take over primary operation and an alarm is sounded at the mobile switching office. IVC has an alarm system that automatically notifies a remote monitoring center of the outage and the service technicians during after-hours emergencies. IVC has technicians on call 24 hours per day and 7 days a week. IVC also stocks a full complement of spare parts for all network components.

IITA witness Mr. Schoonmaker presented testimony initially questioning, among other things, IVC's lack of evidence addressing its ability to reroute traffic around damaged facilities and its capability to manage traffic spikes.

IVC witness Mr. Kurtis addressed these matters in his rebuttal testimony. IVC draft order at 47-48 He testified that each cell site provides radio coverage to a fixed geographic service area, that these service areas have a high degree of overlapping coverage, and that the overlapping coverage allows IVC to manage peak demand loads as well as providing a level of redundancy not found in the context of the traditional landline local loop.

Mr. Kurtis also said there is no place in the IVC network where a cell site lacks at least some degree of overlap with another cell site. Therefore, even in the case where an unusual demand appears at a location where there is only one cell capable of providing coverage, the IVC network has the ability to shed the traffic being carried by the heavily-used cell site in the areas where there is cell overlap. That way, the cell site experiencing unusual demand can devote all of its capacity to the area where there is no overlap. Mr. Kurtis testified that the IVC network is configured to perform this "load shedding" function automatically, and he described in detail the process that the network performs to monitor, manage and shed traffic.

Mr. Kurtis stated that the cell coverage overlap and redundancy allow IVC to reroute traffic around damaged facilities. With the CDMA technology, a call in progress in an area of overlap between cell sites is typically handled by more than one cell site even when the mobile unit is stationary. This is commonly referred to as "soft" handoff. The call is simultaneously "taking place" through multiple cell sites. In this situation, the loss of signal from any one cell does not drop the call. Similarly, Mr. Kurtis testified that in the rare event of a cell site outage, the subscriber can still receive service from any other cell capable of providing service to the location where the subscriber is located.

In his direct testimony, Staff witness Mr. McClerren raised a question about whether IVC is meeting or is willing to meet the requirements of Sections 730.325 and 730.550 of the Commission's rules regarding emergency power requirements for central offices and requirements to notify the Commission of a central office failure or isolation of an exchange due to toll circuit failure. 83 Ill. Adm. Code 730.

In response, regarding Section 730.325, Mr. Walsh testified that the IVC mobile telephone switching office, which is the functional equivalent to an ILEC central office, has a battery backup plant and a permanently installed emergency power generator sufficient to meet the requirements of this code section. He said IVC also maintains sufficient fuel stores, sufficiently exercises the generator, and has the requisite test records to meet the requirements of this code section. Mr. Walsh also committed on behalf of IVC to provide the ICC with the notification specified in Section 730.550 and to otherwise meet the requirements of this code section.

In rebuttal testimony, Mr. McClerren stated, based on IVC's responses, that the Section 730.325 and 730.550 issues are resolved.

Based on the record as summarized above, including the commitments made by IVC, the Commission finds that IVC has demonstrated its ability to remain functional in emergency situations.

## **F. Consumer Protection and Service Quality Standards**

### **1. Introduction**

Under FCC guidelines, an ETC Applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 CFR §54.202(a)(3); FCC ETC Order at Para 28.

The FCC indicated in paragraph 28 of its ETC Order and in prior orders that a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service would satisfy the FCC's review of this requirement for a wireless ETC applicant. In this proceeding, IVC has made a commitment to comply with the provisions of that Code. IVC has also committed to report information on consumer complaints per 1,000 handsets on an annual basis consistent with what would be required if IVC's applications were pending before the FCC. IVC draft order at 48-49.

Mr. Walsh also provided evidence about IVC's customer service practices and its track record in meeting the expectations of its wireless customers. He also described the customer care programs IVC has implemented. IVC and its authorized agents have more than 40 points of presence throughout the area served by the consolidated IVC network. Several of the IVC retail outlets, as well as the IVC agent locations, have extended service hours including evenings and weekends. An IVC customer can go to any of these 40 locations to activate service or to receive assistance if they are encountering problems with their mobile handset or their wireless service.

When the problem is with the customer's handset, IVC provides the customer with a free loaner phone that the customer may use until the handset can be repaired or replaced. An IVC customer can drop their phone off for service and pick up the free loaner at any of these 40 locations. In addition, IVC operates seven service vans that can be dispatched to a customer location to provide repair or replacement service in the field. IVC staffs its trouble lines with live service operators to give the customer "someone to talk to" during normal business hours. IVC draft order at 50.

Mr. Walsh said the best indication that a business in a competitive industry is providing quality service is longevity and continued growth of its customer base. He testified that IVC began providing wireless telecommunications service in 1992, that its number of customers has grown significantly, and that its customer retention rate is in

the top 5% of the nation. In his opinion, these facts show that IVC subscribers are receiving adequate telecommunications services.

## **2. Staff and IITA**

In its ETC Order, paragraph 31, the FCC stated that Section 332(c)(3) specifically allows states to regulate CMRS terms and conditions, not dealing with rates and entry, in order to preserve and advance universal service. Further, the FCC encouraged states to consider consumer protection in the wireless context as a prerequisite for obtaining ETC designation from the state. The FCC invited state commissions either to use the FCC's framework or to impose their own requirements to ensure consumer protection and service quality.

Staff witness Mr. McClerren testified that there must be enough service quality and consumer protections in a wireless ETC designation to assure the ICC that Illinois consumers will have adequate telecommunication services. IVC draft order at 50.

In that context, Mr. McClerren evaluated the advantages and disadvantages of IVC's services. He recommended that IVC be required to meet additional consumer protection and service quality standards, and that IVC agree to comply with a number of sections of the ICC's rules in Code Parts 730 and 735 that are applicable to landline carriers in Illinois.

Specifically, Mr. McClerren requested that IVC indicate whether it is presently complying with, would be willing to make changes as required to comply with, or would be unable or unwilling to comply with the requirements of the following sections of Code Parts 730 and 735: Sections 735.70, 735.80, 735.100, 735.120, 735.130, 735.140, 735.150, 735.160, 735.170, 735.180, 735.190, 735.200, 735.220 and 735.230 of Code Part 735; and Sections 730.115, 730.305, 730.340, 730.400, 730.405, 730.410, 730.415, 730.420, 730.425, 730.430, 730.435, 730.440, 730.445, 730.450, 730.500, 730.510, 730.520, 730.535, 730.540 and 730.545 of Code Part 730.

He also testified that it would be appropriate to establish standards for wireless ETCs with respect to dropped calls and weak signal.

IITA witness Mr. Schoonmaker also testified that IVC should commit to meeting these sections of Code Parts 730 and 735 and/or that standards for dropped calls and weak signal be established for wireless ETCs.

Mr. McClerren responded to IVC witness Walsh's position that the best indication that a business in a competitive industry is providing quality service is longevity and continued growth of its customer base. In his rebuttal testimony, Mr. McClerren stated that if wireline and cellular technologies were identical, with the same operating characteristics and industry practices, then Staff would be much more inclined to endorse Mr. Walsh's position about the importance of longevity and growth of customer

base to service quality assessment. However, it is clear that wireline and cellular technologies are not identical, nor are the practices of the two industries identical.

In Mr. McClerren's view, the ability to substitute cellular service for wireline service is central to this proceeding. The fact that IVC is successful as a cellular company is not at issue. Rather, the Commission must assess if Illinois customers will receive adequate telecommunications service through IVC's cellular facilities, as they are accustomed to receiving through wireline facilities. Given that Code Parts 730 and 735 define telecommunications service in Illinois, it is Staff's position that IVC must demonstrate its ability and willingness to comply with those Code Parts. Staff Ex. 7.0 at 19-22.

In addition, Staff witness McClerren commented on the advantages and disadvantages of IVC's cellular service relative to wireline service. Regarding advantages, the mobility provided by a cellular phone is useful to telephone customers. With cellular service, the customer is able to place and receive telephone calls without having to be in a single fixed location. Having CPE, or handsets, provided by the cellular company is also an advantage over wireline service. The cost of the handset is factored into the rates, so the customer does not have to purchase a telephone separately.

Also, if the handset is not operating properly, IVC will either fix the handset at its customer centers or provide a loaner phone while it is being fixed. Mr. McClerren said another advantage of cellular service is that timeliness of installation is inherently superior to wireline service. If a customer wants telephone service from a cellular provider, the service will frequently be provided, or "activated", in a matter of minutes. A wireline provider may need days to install service. *Id.*

Mr. McClerren also addressed Staff's concerns regarding the disadvantages of IVC's cellular service relative to wireline service, including the lack of a directory or telephone listing could limit the access the cellular customer has to the network. To the extent the customer accepts the service contract with the full understanding that they will not receive a directory, that their number will be unlisted, and that the customer's knowledge of those facts is documented, Mr. McClerren's concern is greatly alleviated.

Mr. McClerren also testified that the quality of a cellular call relative to a wireline call has not been adequately addressed in this proceeding. Call quality may be manifested in clarity, signal strength, or dropped calls. To some extent, this concern is reduced by the willingness of IVC to allow customers to effectively try out their cellular service for 30 days under their trial period for new service. Presumably, the customer will be able to take a cellular phone home, and if it is unsatisfactory, IVC will not impose an early termination fee for service cancellation. However, it remains unclear whether dropped calls will be identified as an issue during the trial period, and whether signal strengths at a location may vary during different parts of the year.



Another significant disadvantage of cellular service relative to wireline service is contract term. Effectively, other than the trial period of 30 days, customers are contractually locked into a longer term, such as 12 months or longer. If the customer terminates service with IVC prior to expiration of the 12-month contract term, there may be a significant financial penalty.

IVC suggests the term is required to guarantee payment for the handset; however, the fact remains that if, for example, a person has to move after six months of cellular service, there may be a substantial penalty for that cellular customer. Wireline customers would not have a similar penalty under the same scenario. In its rebuttal testimony, Mr. McClerren recommended that this issue be addressed in a future rulemaking regarding ETCs.

### **3. Rebuttal Testimony**

In his rebuttal testimony, Mr. Walsh addressed the Code Part sections discussed by Mr. McClerren. For those sections that do not fit well with competitive wireless service, and with respect to dropped calls and weak signals, Mr. Walsh and Mr. Kurtis suggested that a rulemaking should be conducted to address the appropriate standards for wireless ETCs in Illinois. Mr. Walsh committed on behalf of IVC to participate in such a rulemaking, including related workshops with the ICC Staff and industry participants.

Mr. McClerren and Mr. Schoonmaker agreed in their rebuttal testimonies that a rulemaking to establish standards for wireless ETCs would be appropriate.

According to Mr. Walsh, IVC presently meets the standards in each of the identified Part 735 sections and subsections, except 735.70(b)(1)(G), 735.70(h)(1) and (2), 735.70(i)(1), (2) and (3), 735.70 (f), 735.80, 735.100(b), 735.100(e), 735.120, 735.130(c)(1), 735.140, 735.150(d), 735.160(d), 735.170, 735.180, 735.200, 735.220 and 735.230.

For Part 730, he testified that IVC presently meets the standard in each of the identified sections and subsections, except 730.510, 730.520, 730.535(a), (b) and (c), 730.540, 730.545, 730.115 and portions of 730.500.

Mr. Walsh has committed on behalf of IVC to make changes to its existing practices in order to meet the standards in Sections 735.70(h)(1) and (2), 735.70(i)(1), (2) and (3), 735.70 (f), 735.80, 735.100(b), 735.100(e), 735.120, 735.130(c)(1), 735.140, 735.170, 735.200, 735.220, 735.230 and 730.520.

With respect to 735.80, Deferred Payment Agreements will be offered to subscribers with the additional requirement that the subscriber's rate plan be changed to an IVC ILEC-Equivalent Plan during the agreement period. The change in rate plan designation is necessary to limit the customer's exposure to additional charges from roaming and toll while retiring the delinquent amount.

With respect to 735.130(c)(1), IVC is willing to make the necessary changes to meet this requirement. IVC currently provides service to a class of credit customer that does not require a deposit but is a borderline credit risk. For this class of customer, IVC allows the customer to enjoy the wireless service offering selected; however, if payment is not made on or before the due date, the service is disconnected the following workday. IVC is willing to automatically change the subscriber to the IVC ILEC-equivalent rate plan at the time of non-payment, and mail or deliver the written notice of discontinuance following the procedures in Section 735.130(c)(1).

With respect to 735.140, IVC would provide residential service in a medical context if it becomes the only ETC in a service area, provided that IVC would offer such subject to the additional requirement that the subscriber's rate plan be changed to an IVC ILEC-Equivalent Plan during the period of such service.

With respect to Section 735.200, complaints for wireless carriers are currently handled before the FCC and governed by its provisions. IVC does not have a problem following the procedures set forth in this code section to the extent that the matter underlying the complaint is not a matter which has been pre-empted by the FCC and to the extent that any proposed resolution would not require IVC to violate any applicable term or provision of its FCC license, the Communications Act of 1934, as amended, or any FCC rule and regulation. IVC draft order at 55.

With respect to Sections 735.70(b)(1)(G), 735.150(d), 735.160(d), 735.180, 730.510, 730.535(a), (b) and (c), 730.540, 730.545, 730.115, 730.405, 730.410, 730.415, 730.420, 730.425, 730.430, 730.435, 730.440, 730.445, 730.450 and 730.500, Mr. Walsh indicated why, in his opinion, the standard was either inapplicable to IVC and other wireless carriers or why the standard should not be imposed on IVC.

Specifically, IVC does not believe the portions of subsection 735.70(b)(1)(G) regarding collect calls and/or third party calls can be applied to IVC's situation because those types of calls are not handled by IVC. Rather, they are automatically outsourced to a third-party service provider that allows those type of calls to be debited to the customers credit card. Section 735.70(b)(1)(G) applies only if the carrier has assumed responsibility of collection for toll calls. For most of its calling plans, IVC offers bundled toll at no extra charge such that customers will not likely be making collect or third party such calls. As a result, IVC has not assumed the responsibility of collection for such and third party calls. IVC draft order at 55.

With respect to Sections 735.150(d) and 735.160(d), IVC states that it does have reasonable NSF and late payment charges, but they have not been approved by the ICC as part of a tariff because IVC does not file tariffs.

With respect to Section 735.180, IVC's initial position was that the Commission should not impose compliance with this rule on IVC as a condition of granting ETC designation. IVC represents that wireless carriers do not publish telephone directories.

Mr. Walsh testified that there was a recent proposal for wireless carriers to do so but customer backlash resulted in that proposal being abandoned. IVC believes wireless customers do not want their numbers published and that it is reasonable for IVC to honor their wishes. IVC's position is that it should not publish any such directory or list a subscriber number in a directory published by others, without the customer's expressed consent.

With respect to Section 730.510, Mr. Walsh testified that IVC does not presently have the equipment necessary to record average answer time for operator-assisted calls, calls to its business offices or calls to its repair offices. Therefore, even though IVC believes that it meets these requirements, it does not have the ability to prove compliance without expending large sums of money on equipment or on additional employees whose sole job it is to monitor answer times manually. IVC's position is that such a requirement would be unreasonable in light of the fact that this aspect of the quality of IVC's service is effectively regulated by competition from other wireless carriers.

In addition, Mr. Walsh testified that most if not all of the small ILECs in its service area have requested a limited waiver of the requirements of this section. At the time he filed testimony, Mr. Walsh said these requests were pending in the consolidated dockets 04-0209 et seq., and the small ILECs in those dockets have accepted a settlement proposal from the ICC Staff for a modified application of the rule. Mr. Walsh indicated that IVC would be willing to follow the same procedures identified by the ICC Staff in those dockets in connection with an ETC designation.

With respect to Section 730.535, it is IVC's position that it complies with subsections (d) and (e), but that subsections (a), (b) and (c) are landline system requirements that cannot be applied to wireless service. IVC's position is the similar with respect to Sections 730.540, 730.545, 730.115 and 730.500.

With respect to Section 730.540, wireless services do not require installation or customer premises access. Accordingly, IVC does not see this provision as being applicable in the context of its ETC filing. The equivalent function in a wireless service scenario is the activation of the wireless handset. Mr. Walsh testified that activation is immediate, once the phone is properly programmed and the application process is complete and that the whole activation process typically takes less than 30 minutes.

IVC's position is that if the ICC were to require IVC to report, it would comply; however, IVC would propose that such reporting include any activations that were delayed by over 96 hours, which is the FCC standard guideline for number portability of a landline number being ported into a wireless carrier. IVC draft order at 57.

With respect to Section 730.545, IVC believes these provisions are drafted in the context of fixed, landline services relating primarily to "local loop" issues. In the wireless context, the "local loop" is essentially the subscriber's handset. A single cell site outage would affect all customers in that cell's service area. Accordingly, such an outage, while

rare, would be expected to affect more than 100 customers. IVC believes the metrics in this section are inapplicable in the wireless context. IVC suggests that more appropriate metrics be developed in a rulemaking proceeding after appropriate opportunity for industry comment if the Commission wishes to impose similar requirements on wireless carriers that are designated as ETCs.

With respect to Section 730.115, IVC says wireless-specific reporting measures should be developed in a rulemaking proceeding after appropriate opportunity for industry comment if the Commission wishes to impose similar requirements on wireless carriers that are designated as ETCs, instead of trying to fit wireless services into an ILEC reporting format. IVC is willing to make reasonable reports to the Commission in accordance with specific sections of the rule as indicated in the above testimony to the extent those sections can reasonably be applied to wireless service.

With respect to Sections 730.405, 730.410, 730.415, 730.420, 730.425, 730.430, 730.435, 730.440, 730.445 and 730.450 regarding Call Data Records, Mr. Walsh testified that the IVC MTSO is a digital switch that internally measures traffic and records call data records, and that IVC does not operate a separate recording device. He testified that the IVC MTSO records the data required by code Sections 730.405 and meets the procedures set forth in Sections 730.410 and 730.420.

With respect to Section 730.500 and adequacy of service, Mr. Walsh testified that IVC meets the provisions of this code section as they relate to code section 730.520. He believes the code provision requirements of Section 730.525 which are incorporated into code section 730.500 relate only to requirements for local loop facilities which IVC believes are not applicable in a wireless environment. Similarly, the provisions of subsection (c) of 730.500 relate to local loop facilities, and IVC believes they are not applicable in a wireless environment.

#### **4. Final Positions of Parties**

In his rebuttal testimony, Mr. McClerren indicated that he was satisfied with IVC's responses on a significant number of sections of Code Parts 730 and 735, namely 730.305, 730.325, 730.340, 730.400, 730.510 (provided IVC adheres to Docket No. 04-0209 documentation procedures), 730.520, 730.550, 735.80, 735.100, 735.110, 735.120, 735.130, 735.140, 735.170, 735.190, 735.200, 735.220 and 735.230.

He also identified as unresolved the code part sections where IVC had not either indicated that it was meeting the standard or agreed to make changes in order to meet the standard.

Based on his belief that IVC had taken many positive steps to meet Staff's concerns, Mr. McClerren stated in his rebuttal testimony that he would recommend approval of IVC's applications if IVC made certain additional commitments. ICC Staff Ex. 7.0 at 22-24. Mr. McClerren's statement reads, "With IVC's stated acceptance of

the following conditions in their surrebuttal testimony, I will recommend that the Commission approve IVC's petition:

1. In many instances noted herein, IVC has indicated that it "can comply with this requirement." It is appropriate for IVC to affirmatively state that, as a condition for ICC approval of its ETC application, that IVC will comply with those sections it has previously stated it can comply with in this proceeding, and that it will comply with those sections on a going-forward basis.

2. IVC agrees to participate in a rulemaking related to the ETC designation process in Illinois, and further agrees to accept and support the efforts of any collaborative workshops associated with the rulemaking. Staff anticipates that such a rulemaking would focus on cellular companies operating as ETC carriers, and will address the issues of dropped calls or weak signal, which are cellular issues not covered by Part 730. Staff also anticipates that such a rulemaking will be coordinated so that a proposed order will be finished within 6 months of the completion of the instant proceeding. Upon completion of the ETC designation process rulemaking, compliance with Parts 730 and 735 will no longer be required, as the new rule will address the pertinent parts for ETC cellular carriers. IVC should acknowledge that the Commission will consider compliance with newly promulgated rules when filing the state certification of support for rural carriers, pursuant to Section 54.314 of the Code of Federal Regulations, and when making the corresponding determination of whether IVC should retain its eligible communications carrier designation.

3. IVC agrees that, prior to entering into a contract with a customer, IVC will provide a written disclosure to the customer explaining that it will not provide a telephone directory to the customer, as is otherwise required under Code Part 735.180(a) and (d), and that the customer's telephone number will not be published in any telephone directory. IVC shall also obtain a written acknowledgment from the customer that he/she has received, read and understood the aforementioned notice, and does not object to IVC not providing him/her with a directory, and further does not object to IVC not causing his/her telephone number to be published in any telephone directory. Such disclosure and acknowledgement shall be made in a type face of 10-point or larger, and shall be otherwise clear and conspicuous.

4. IVC states once again, without equivocation, that it will accept carrier of last resort ("COLR") responsibilities upon the failure of the ILEC to continue COLR responsibilities."

In Mr. Walsh's surrebuttal testimony, IVC made the additional commitments, agreements, statements and acknowledgements, and accepted the conditions for ICC approval of its ETC applications, as proposed by Mr. McClerren, with only one point of clarification. IVC Ex. 7.0 at 29. Mr. Walsh also stated that IVC was willing to participate in the proposed rulemaking and to work in good faith with the Staff and other parties to develop appropriate rules for consumer protection and service quality standards for wireless ETCs.

IVC sought clarification that Mr. McClerren was not asking IVC to waive in advance, sight unseen, its right to challenge the appropriateness of positions the ICC Staff might take in the rulemaking workshops in the future. In his final testimony, Mr. McClerren agreed with that clarification.

IITA witness Mr. Schoonmaker also commented favorably regarding IVC's responses to the Code Part 730 and 735 issues. He suggested that IVC should agree to conditions in the final order in this case requiring IVC to comply with the sections that it agreed to comply with. IVC draft order at 61; IITA Ex. 2.0 at 12-13. IVC has made that commitment. Mr. Schoonmaker also commented favorably with respect to the prospect of a rulemaking for consumer protection and service quality standards for wireless ETCs. IITA Ex. 2.0 at 14. IVC has committed to participate in such a rulemaking.

## **5. Commission Conclusions**

Under FCC guidelines, an ETC Applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.

In the instant proceeding, Staff and IITA raised a number of concerns with respect to IVC's willingness and ability to meet the standards in 83 Illinois Administrative Code Parts 730 and 735.

On rebuttal, IVC provided additional information. In some instances, IVC explained how it already meets those standards. In other instances, IVC made commitments to meet the standards and explained how it would do so. In surrebuttal, IVC made several additional commitments suggested by Staff witness Mr. McClerren. For some Code Part subsections, IVC explained why it regards the standards as inapplicable to cellular carriers.

The Commission concludes that IVC has demonstrated that it will satisfy appropriate consumer protection and service quality standards. This finding is conditioned on IVC's continuing compliance with the commitments it made in the record, including the additional commitments proposed by Mr. McClerren, as set forth above. These standards are the ones the Commission expects IVC to meet or exceed.

With regard to the requirements of Section 730.510 of Part 730, the Commission finds that IVC shall comply with the procedures adopted in the Commission's Order of January 4, 2006, in Docket Nos. 04-0209 et seq.

Lastly, as noted above, some of the commitments made by IVC in this docket involve participation in a future rulemaking proceeding. For clarification, the Commission observes that such a rulemaking proceeding is not actually being initiated by the instant Order.

### **G. Local Usage/Rate Plans**

As indicated above, under FCC guidelines, an ETC Applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. FCC ETC Order at Para 32; 47 CFR §54.202(a)(4).

IVC presented evidence purportedly demonstrating that it offers local usage plans comparable to the service plans offered by the incumbent LECs in the wire centers for which it seeks ETC designation. IVC's existing service plans and rates are set forth in IVC Exhibits 1.3. IVC's existing calling plans, other than the Safe and Sound Plans, include Caller ID, Call Waiting, Call Forwarding and Three-Way Calling at no additional charge.

IVC's existing calling plans also include unlimited long distance calling with no additional charge other than airtime minutes. The service allows for a bundle of airtime minutes for a flat-rated monthly charge. IVC currently offers several service plans that include varying amounts of airtime minutes. The different plans have different volumes of minutes and different rates. IVC draft order at 61-62.

IVC proposed a number of new service plans in this proceeding in connection with its request for ETC designation, including two plans which it designated as ILEC-Equivalent Plans and two Lifeline plans with discounted rates and unlimited local usage within a more limited calling scope equivalent to the calling scope offered by the incumbent LECs in its proposed ETC-designated service area.

IVC committed to offer two ILEC-Equivalent Plans based upon the Lifeline Plans discussed above that would more closely mirror the type service offerings that ILEC subscribers currently receive. The first ILEC-Equivalent Plan would be at a rate of \$17.95 and would allow for unlimited outbound calling to any number rated to the service area of a subscriber's underlying ILEC and unlimited inbound calling. Included in this price are call waiting, call forwarding, three-way calling, caller ID and mobility within the IVC cell site or sites that serve the subscriber's home ILEC calling area.

The second plan, priced at \$21.95, includes the same features but offers local calling and mobility throughout the IVC service area. Under both of these ILEC-

Equivalent Plans, the customer would be allowed to presubscribe to an IXC of their choosing.

ICC Staff witness Mark Hanson testified that an ETC applicant, like IVC, must offer rate plans and local usage comparable to the service plans offered by the incumbent LEC in the area. He initially proposed an analysis to determine the appropriate rates and levels of local usage to be deemed comparable to the rates and levels of local usage offered by the incumbent LECs in IVC's proposed ETC-designated service area.

IITA witness Mr. Schoonmaker also suggested that designation of IVC as an ETC would not be in the public interest unless its service plans have rates comparable to those of the incumbent LECs. He also provided on a study area basis the local rates for the IITA members participating in these dockets.

IVC presented a series of rate analyses comparing its existing and proposed rate plans and local usage offerings to those of each incumbent LEC in the proposed ETC-designated service area as IVC Exhibits 5.1, 5.2 and 5.3. IVC says these analyses show IVC's existing and proposed rate plans and local usage offerings compare favorably to those of the incumbent LECs. Mr. Walsh also stated that IVC's rate plans are favorably comparable to the \$20.39 "affordable rate" that the Commission set for Illinois' small, rural telephone companies for Illinois Universal Service Fund purposes in ICC Docket Nos. 00-0233/00-0335 Consolidated.

Following IVC's indication of its intent to offer the ILEC-Equivalent Plans, both Mr. Hanson and Mr. Schoonmaker agreed that those IVC service plans compared favorably with those of the incumbent LECs and would bring benefits to Illinois consumers from lower prices. Mr. Hanson testified that the so-called ILEC-Equivalent Plans do satisfy the FCC's requirement that an ETC "demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation."

Therefore, both suggested that the offering of the ILEC-Equivalent Plans be made a condition of the order designating the three IVC Partnerships as ETCs. Mr. Hanson recommended that IVC, on an annual basis, be required to file an affidavit from an officer of the company stating that it is continuing to offer the ILEC-Equivalent Plans. This affidavit should be filed at the same time IVC files any other information for any reporting requirements necessary to maintain ETC status.

Having reviewed the record, the Commission concludes that IVC has demonstrated that it offers local usage plans comparable to the service plans offered by the incumbent LECs in the wire centers for which it seeks ETC designation. The rates IVC proposes are comparable to the individual study area evidence provided by IVC.

In recognition of the parties' efforts to resolve this issue, this Commission finds that that IVC's agreement to offer service plans, which it calls ILEC-Equivalent Plans,



should be a condition imposed upon IVC's applications for ETC designation. IVC has agreed to the inclusion of this condition, and the Commission will impose it in this order.

#### **H. Carrier of Last Resort - Equal Access Requirement**

Under FCC guidelines, an ETC Applicant shall certify its acknowledgement that the FCC may require it to provide equal access to long distance carriers if no other ETC is providing equal access within the service area. FCC ETC Order at Para 35; 47 CFR §54.202(a)(5).

IVC acknowledged that the FCC or ICC may require it to provide equal access to long distance carriers if all other ETCs withdraw from the market. Since the majority of IVC's calling plans include long distance calling at no additional charge other than air-time minutes, it does not expect that any customers will wish to select a different long distance provider. If a customer did select such an option, the customer would be responsible for any toll charges that the selected long distance provider imposed.

Mr. Walsh made a commitment on behalf of IVC to offer equal access to long distance carriers in order to allow a subscriber that elects to pay its own toll charges to pre-select its long distance carrier for all toll calls the customer originates. This commitment applies to its ILEC-Equivalent Plans, without regard to whether the ILEC maintained its ETC designation, and in the event the customer's ILEC drops its ETC designation. IVC Ex. 5.0 at 19-20.

The ICC Staff and IITA initially challenged IVC's commitment on this matter; however, based upon IVC's clarification of the commitment, this issue is no longer in dispute.

Having reviewed the record, the Commission finds that the acknowledgement and commitments made on the record by IVC are sufficient to satisfy the subject requirements for purposes of this proceeding.

#### **I. Annual Reporting and Certification Requirements**

In paragraph 69 of its ETC Order, and in 47 CFR 54.209, the FCC has identified certain annual reporting requirements in connection with the annual certification of ETCs as follows:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) the number of complaints per 1,000 handsets or lines;

(5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

(6) certification that the ETC is able to function in emergency situations;

(7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

Staff witness Mr. Hoagg identified an additional annual reporting requirement from paragraph 23 of the FCC ETC Order as follows:

In connection with its annual reporting obligations, an ETC applicant must submit] coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received. In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.

Mr. Walsh made a commitment on behalf of IVC to comply with all of the annual reporting requirements identified by Mr. Hoagg. IVC Ex. 7.0 at 32.

Having reviewed the record, the Commission concludes that IVC must file reports with the Commission on an annual basis, consistent with IVC's commitment, as described above.

## **VI. PUBLIC INTEREST ANALYSIS**

### **A. Introduction**

In its ETC Order, the FCC encouraged state commissions to implement the FCC's framework for analyzing the public interest so as promote a consistent approach among the states in applying the universal service principles of preserving and advancing universal service and competitive neutrality, and improving the long-term sustainability of the USF. FCC ETC Order at Para 19, 58.

The FCC acknowledged that state commissions may use and have used additional factors in their public interest analysis. The burden of proving whether an Applicant's service is in the public interest is on the Applicant. Finally, the FCC stressed that although it has set forth criteria for evaluating public interest, it and state commissions may conduct the analysis differently, or reach a different outcome, depending on the area being served by the Applicant. *Id.* at Para 40, 43-44, 60.

The FCC indicated that it would continue to balance the following factors in performing its public interest analysis for ETC applicants:

- (1) **Consumer Choice:** The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas. The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.
- (2) **Advantages and Disadvantages of Particular Service Offering:** The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission also examines disadvantages such as dropped call rates and poor coverage.

In addition to the balancing of the foregoing factors, the FCC conducts a “creamskimming” analysis in areas for which an applicant seeks designation below the study area level of a rural telephone company. The FCC compares the population density of each wire center in which the ETC applicant seeks designation to that of the wire centers in the study area in which the ETC applicant does not seek designation. FCC ETC Order at Para 41.

The FCC also suggests that a state commission may consider limiting the number of ETCs due to the strain on the federal USF by examining per-line USF support received by the individual LEC, on a case-by-case approach. The FCC, however, declined to adopt a specific national per-line support benchmark to be applied in analyzing the strain on the federal USF. *Id.* at Para 55-56.

## **B. Positions of Parties**

### **1. IVC Position**

IVC presented evidence intended to demonstrate that designation of the three IVC Partnerships as additional eligible telecommunications carriers in the rural and non-rural exchanges within their respective proposed ETC designated service areas is in the public interest. IVC offers a wide selection of calling plans that offer mobility, a substantially larger calling area than the incumbent landline LECs in the proposed ETC designated area, and long distance calling at no additional toll charge. These plans are available in each wire center within IVC’s service area.

As discussed above, IVC has committed to offer reduced rate calling plans, including two ILEC-Equivalent Plans, that include unlimited in-bound and out-bound calling and are comparable to the rate and usage plans offered by the incumbent LEC in its service area. These reduced rate calling plans will be available in each wire center within IVC’s service area.

IVC also observes that it is a small, wireless carrier that serves mainly rural areas in the State of Illinois. IVC’s FCC-licensed service area is located entirely within Illinois. All USF funds that it will receive as an ETC will be expended in connection with new facilities to be constructed in, and that will provide benefits to, rural areas in Illinois. IVC draft order at 71.

IVC has continued throughout the years to expand and improve its network coverage area in the rural portions of its service area, and IVC has committed to make even more network improvements for the benefit of Illinois citizens located or traveling in its rural service area using both USF support and its own capital.

While not every wire center in IVC’s proposed ETC designated area will benefit from the new cell towers to be constructed with USF support under its first five-year plan, the vast majority of those wire centers have sufficient coverage from existing IVC

cell sites or from proposed new cell sites that will be constructed using IVC non-USF cash flows and revenues. IVC has committed that the remaining wire centers will receive service enhancements from facilities to be constructed during its next five-year plan.

IVC also offers customer-oriented service features including its 30-day trial period to try out the IVC network at no financial risk. These features are available for customers in each wire center within IVC's service area. IVC also has numerous points of contact to serve the customers needs. In addition to its own customer service offerings, IVC has committed to abide by the same types of consumer protection and service quality standards that the ILECs are subject to. IVC also offers access to emergency services using state of the art processes when consumers are away from their landline phones.

With respect to the long term sustainability of the Universal Service Fund, and the issue of whether the per-line high cost support level in rural telephone company service areas alone should outweigh all other factors in favor of denying competitive ETC designations for study areas served by rural telephone companies, IVC takes the position that the FCC has imposed new more rigorous ETC rules at least in part to protect the long term sustainability of the Fund. Therefore, IVC concludes that denying every competitive ETC designation for rural telephone company areas is neither necessary nor appropriate. IVC draft order at 72.

## **2. IITA Position**

IITA witness Mr. Schoonmaker questioned whether designation of the three IVC Partnerships as ETCs is in the public interest. For example, if IVC does not use USF support, especially in the study areas from which it would receive USF funds, to reach remote areas beyond its existing coverage area, then Illinois consumers will not reap the public benefit commensurate with the public costs. In support of this statement, Mr. Schoonmaker explained on pages 49-50 of his direct testimony:

Under the current environment, when there is more than one ETC, an ILEC that makes the decision to make more investment in telecommunications infrastructure must take into consideration that the increased investment it makes, resulting in additional USF support to the ILEC, will result in more USF support to the competitive ETC. The critical difference is that the ILEC will be getting the funding to recover a portion of the actual cost of the investment already made, while the competitor gets the money as a windfall without any tie to additional investment.

In addition, given that the ILEC no longer has any assurance that high cost customers will remain with the ILEC long enough for it to recover an investment that typically spans 20-25 years (the average service lives for cable and wire plant), there is a disincentive to invest in these longer-term investments. Therefore, the ILEC faces a conundrum or "Catch-22"

situation where its investments yield additional support for its competitor, who does not face the same costs, and the ILEC's risk associated with recovering the investment is thereby magnified. This does provide the ILEC a disincentive to invest in additional infrastructure.

Consistent with his position, Mr. Schoonmaker cited the following statement by FCC Chairman Kevin Martin, recognizing this aspect in his concern of using USF to create "competition" in high-cost areas:

I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.  
2nd R&O and FNPRM in CC Docket 00-256, 15th R&O in CC Docket 96-45 and R&O in CC Dockets 98-77 and 98-166, released Nov. 8, 2001, Separate Statement of Commissioner Kevin J. Martin.

Mr. Schoonmaker has acknowledged that IVC's ETC proposals have certain favorable qualities, including IVC's commitments to comply with customer service and service quality standards substantially similar or identical to the consumer protection and service quality standards applicable to landline ILECs, IVC's commitment to participate in workshops and a rulemaking specific to such standards for wireless carriers, and IVC's two reduced rate ILEC Equivalent Plans; however, he has not indicated that he believes ETC designation to be in the public interest.

Mr. Schoonmaker's position that ETC designation might not be in the public interest is based on his interpretation of the wire center-by-wire center language from the FCC's ETC Order, and on his suggestion that in order to protect the long term sustainability of the USF if the per line support in the IITA member company wire centers or study areas is sufficiently high, no competitive ETCs should be designated for those wire centers or study areas. IVC draft order at 74.

Mr. Schoonmaker ultimately encouraged the Commission to recognize that the determination of ETC status is something that needs to be done on an individual study area basis, even though there are a large number of study areas that are encompassed in this case. The legal standards in some cases, and the factual situations, vary between companies and study areas, and the Commission needs to focus on those issues related to each individual study area.

Mr. Schoonmaker also emphasized that while the FCC has adopted rules that they have imposed upon themselves to follow, and those rules provide, in many cases, good guidelines for the Commission to follow, such rules are not binding upon the ICC which is free to make its own determinations based on its perception of the "public interest." IVC draft order at 75.

### 3. Staff Position

Staff recommended that the Commission conduct its public interest analysis broadly along the same lines applied by the FCC, and that analyses conducted at the study area level is not inconsistent with the 1996 Act and the state and federal requirements. Staff Ex. 1.0 at 20.

In Staff's initial analysis, Mr. Hoagg testified that IVC's failure to meet the eligibility requirements discussed in the ETC Order demonstrated that it was not in the public interest to grant IVC's request. Mr. Hoagg's analysis focused on requirements concerning the five-year plan (CFR §54.202(a)(1)(ii)), a commitment to provide service throughout its proposed designated service area to all customers (CFR §54.202(a)(1)ii)), and annual reports (CFR §54.209).

In rebuttal testimony, Mr. Hoagg stated that IVC had made significant progress in showing it will meet the requirements and conditions for granting an ETC designation, but that its showing was still not satisfactory. Staff Ex. 8.0 at 6-7.

Mr. Hoagg recommended that the Commission grant ETC status upon the condition that IVC satisfies the standards, conditions and requirements proposed by Staff and the ETC requirements in each ILEC study area. In addition, Mr. Hoagg testified that IVC should comply with all applicable statutes and rules. Since IVC agreed to comply with Staff's standards, conditions and requirements, the Staff witnesses agreed that granting the ETC designation would be in the public interest.

In Mr. Hoagg's view, the fact that IVC operates only in rural Illinois is a unique circumstance that the Commission should weigh in conducting its public interest examination. While the potential benefits associated with IVC's "rural Illinois only" operations and orientation cannot be quantified, they can be expected to be tangible. At a minimum, Mr. Hoagg concludes, IVC can be expected to be more cognizant of and responsive to customer needs than they might otherwise be due to their "rural Illinois only" operations.

### C. Creamskimming Analysis

#### 1. IVC Position

IVC has proposed a number of re-definitions of rural telephone company service areas to include only specified wire centers for purposes of the IVC RSA 2-II ETC designation.

IVC is not seeking to redefine the study area for the rural telephone companies. Rather, IVC is seeking only to redefine the LEC service areas for purposes of designating IVC as a competitive ETC. As the FCC explained in *Virginia Cellular*, the proposed service area redefinition would have no impact on the rural LEC reporting or administrative obligations. Specifically, the FCC found that redefining the rural

telephone company service areas would not require rural telephone companies to determine their costs on any basis other than the study area level. The redefinition, therefore, only enables IVC, as an ETC, to serve an area that is smaller than the entire ILEC study area.

The level of support received by the rural ILEC in any given wire center is based on its cost to provide service throughout the ILEC study area. Where, as here, a competitive ETC seeks to only include a portion of the ILEC study area in its ETC service area, there is concern that a competitive ETC may be providing service to only the lower-cost portion of the ILEC study area while receiving support based upon an overall higher average cost that is spread across the entire LEC study area.

Relying upon the *Virginia Cellular* and *Highland Cellular* orders, IVC explained how the FCC examined the relative population densities for the portions of the study areas for each LEC that lie within the proposed competitive ETC service area as compared to the population densities of the entire LEC study area. Where the average population density of the wire centers in which a carrier seeks ETC designation is significantly higher than the average population density for the remaining wire centers may reveal whether cream skimming has occurred, i.e. the applicant is seeking to serve only low-cost areas to the exclusion of high-cost areas.

In addition, the FCC has acknowledged that there is no bright-line test for creamskimming, and that the analysis should account for “. . . variations in population distributions, geographic characteristics and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis.” ETC Order at Para 53.

In the instant proceeding, IVC RSA 2-I proposes to redefine the Citizens service area to include only the Thomas (Whiteside CO) wire center for ETC purposes. Mr. Kurtis presented evidence showing that the population density in the IVC RSA 2-I proposed ETC designated area is 7.43 people per mile as compared to Citizens’ study-wide average population density of 35.63 people per square mile. Accordingly, any level of support based upon the entire Citizens study area would have been determined on the average cost of providing service to a population density of 35.63.

The population density within the portion of the Citizens study area that lies within IVC’s proposed ETC service area is approximately one-fifth of the population density of the entire Citizens’ study area, and the portion of the Citizens’ study area which IVC seeks to include in its ETC designated service area would be expected to have a higher cost of service than the average upon which the level of USF support is based. Mr. Kurtis concluded that since the proposed redefined service area represents a population density well below the average population density upon which the level of USF support for the ILEC was based, there would be no creamskimming issue presented by the proposed redefinition of the Citizens service area.



IVC RSA 2-II proposes to redefine the Mid-Century service area to include only the Lafayette wire center for ETC purposes. The population density in the proposed competitive ETC service area is 9.83 people per square mile as compared to a Mid-Century's study-wide average population density of 14.39 people per square mile. Mr. Kurtis concluded that since the proposed redefined service area represents a population density well below the average population density upon which the level of USF support for the ILEC was based, there would be no creamskimming issue presented by the proposed redefinition of the Mid-Century service area for purposes of designating IVC RSA 2-II as an ETC in its proposed ETC designated service area.

IVC RSA 2-II proposes to redefine the Gallatin service area to include only the Lacon wire center for ETC purposes. The population density in the proposed IVC RSA 2-II service area is 68.04 people per mile as compared to a Gallatin's study area-wide average population density of 108.88 people per square mile.

Mr. Kurtis concluded that since the population density within the portion of the Gallatin study area that lies within IVC's proposed ETC service area is less than two-thirds of the population density of the entire Gallatin study area, the portion of the Gallatin study area which IVC RSA 2-II seeks to include in its ETC designated service area would be expected to have a higher cost of service than the average upon which the level of USF support is based. Thus, there would be no creamskimming issue presented by the proposed redefinition of the Gallatin service area for purposes of designating IVC RSA 2-II as an ETC in its proposed ETC designated service area.

In the case of the proposed redefinition of the Frontier-Illinois service area by IVC RSA 2-III, the population density in the proposed IVC service area is 13.7 people per mile as compared to a Frontier-Illinois study-wide average population density of 34.01 people per square mile. Since the proposed redefined service area represents a population density well below the average population density upon which the level of USF support for the ILEC was based, Mr. Kurtis concluded that there would be no creamskimming issue presented by the proposed redefinition of the Frontier-Illinois service area for purposes of designating IVC RSA 2-III as an ETC in its proposed ETC designated service area.

Finally, in the case of the proposed redefinition of the Verizon-South service area, the population density in the proposed CETC service area is 17.8 people per square mile as compared to a Verizon-South study area-wide average population density of 36.75 people per square mile.

Accordingly, Mr. Kurtis concluded that since the population density within the portion of the Verizon-South study area that lies within IVC's proposed ETC service area is less than one-half of the population density of the entire Verizon-South study area, the portion of the Verizon-South study area which IVC seeks to include in its ETC designated service area would be expected to have a higher cost of service than the average upon which the level of USF support is based. Hence, there would be no creamskimming issue presented by the proposed redefinition of the Verizon South

service area for purposes of designating IVC RSA 2-III as an ETC in its proposed ETC designated service area.

## **2. Staff Analysis**

Staff witness Dr. Zolnierek summarized the FCC's position on such redefinitions and creamskimming as follows:

As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the Virginia Cellular ETC Designation Order and the Highland Cellular ETC Designation Order. As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act. FCC ETC Order at Para 48.

According to the FCC, creamskimming arises when an ETC seeks designation in a disproportionate share of high-density wire centers in an incumbent LEC's service area. Dr. Zolnierek noted that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Therefore, his analysis is limited to the wire centers in the rural service areas.

Dr. Zolnierek conducted an independent creamskimming analysis of the population per square mile for each of the wire centers located within the IVC proposed ETC-designated service area, including the Citizens wire center included in the proposed ETC designated area of IVC RSA 2-I, the Gallatin and Mid-Century wire centers included in the proposed ETC designated area of IVC RSA 2-II, and Frontier Illinois and Verizon South wire centers included in the proposed ETC designated area of IVC RSA 2-III.

With respect to each such wire center, the average population density of the portion of the rural telephone company service area that IVC proposes to include as part of its designated ETC area is below the average population density of the portion of the rural telephone company service area that IVC does not propose to include as part of its designated ETC area, and is also below the average population density of the entire rural telephone company service area. Therefore, Dr. Zolnierek concluded that there were no potential creamskimming issues related to IVC's proposal to redefine the service areas of RSA 2-I, RSA 2-II and RSA 2-III.

## **D. Commission Conclusions**

The Commission has been given broad discretion in analyzing whether the designation of additional carrier as an eligible telecommunications carrier in a given

area, thereby allowing the carrier to seek Universal Service funding support, is in the public interest.

In this regard, the parties and Staff have agreed, and the Commission concurs, that the federal guidelines as described in the FCC's ETC Order should be the minimum guidelines applied in this proceeding. Section 214(e)(2) of the Federal Act of 1996 places special emphasis on areas served by rural carriers. It provides, in part, "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."

As indicated by the parties and discussed above, a public interest analysis in the context of ETC applications involves the balancing of a number of factors.

One such factor is the benefits of increased customer choice, although that value alone is unlikely to satisfy the public interest test. In the instant proceeding, the designation of IVC as an ETC will increase customer choice in the areas requested.

Another set of factors is the advantages and disadvantages of the particular service offering. In terms of benefits, IVC's offering will provide mobility, the possibility of fewer toll charges, increased availability of some "premium" services, and increased access to emergency services.

With regard to disadvantages such as dropped call rates and poor coverage that can be associated with wireless service, IVC has committed to undertake substantial network improvements intended to improve coverage in rural areas. IVC's various commitments to service quality will also serve to minimize these disadvantages and will provide this Commission with information necessary to monitor its performance.

Another disadvantage identified by Staff witness Mr. Hoagg is that adding ETCs in the study areas of rural carriers has the probable effect of increasing the costs to the existing ETC by reducing the number of lines served by the existing rural LEC and, consequently, the number of lines over which the fixed costs of the rural LEC can be spread. On the other hand, because IVC is an Illinois-specific carrier, whatever network investment it makes will likely benefit rural customers.

As noted above, as part of the public interest assessment in this docket, creamskimming analyses were performed. Such an analysis is relevant where, as here, a competitive ETC seeks to only include a portion of the ILEC study area in its ETC service area. The concern is that a competitive ETC may be providing service to only the lower-cost portion of the ILEC study area while receiving support based upon an overall higher average cost that is spread across the entire LEC study area.

Staff witness Dr. Zolnierек explained that creamskimming arises when an ETC seeks designation in a disproportionate share of high-density wire centers in an incumbent LEC's service area. He stated that a creamskimming analysis is

unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Therefore, his analysis is limited to the wire centers in the rural service areas.

Dr. Zolnierек conducted an independent creamskimming analysis of the population per square mile for each of the wire centers located within the IVC proposed ETC-designated service area. With respect to each such wire center, he found that the average population density of the portion of the rural telephone company service area that IVC proposes to include in its designated ETC area is below both (1) the average population density of the portion of the rural telephone company service area that IVC does not propose to include, and (2) the average population density of the entire rural telephone company service area.

Therefore, Dr. Zolnierек concluded, and the Commission agrees, that there are no potential creamskimming issues related to IVC's proposal to redefine the service areas of RSA 2-I, RSA 2-II and RSA 2-III.

Based on the record, and subject to the commitments and conditions found appropriate herein, the Commission concludes that the three IVC Partnerships have shown that their designation as additional ETCs is in the public interest for each of the ILEC service areas within their proposed ETC designated areas.

For purposes of the instant dockets, this public interest finding is made with respect to both the rural telephone company and non-rural telephone company service areas contained in whole or in part within the IVC-proposed ETC-designated service areas. While the FCC indicated that the public interest analysis could be conducted or concluded differently depending upon whether the area served was that of a rural or non-rural telephone company, the Commission need not determine in this Order whether to apply the public interest analysis differently as between rural and non-rural telephone company areas.

## **VII. OVERALL CONCLUSIONS**

As explained above, the Commission has found that the requirements in Section 214(e) of the Federal Act of 1996 and the FCC's ETC Order and rules provide appropriate minimum guidelines for this Commission in evaluating the ETC applications in this proceeding.

In view of the determinations on the issues made above, which will not be repeated here, and subject to the commitments and conditions found appropriate herein, the Commission finds that each of the three IVC Partnerships has made the necessary showings contemplated in Section 214(e) and the FCC's ETC Order and rules. Accordingly, they should be designated as eligible telecommunications carriers in each of the requested study areas for purposes of receiving federal Universal Service Fund support, subject to the conditions imposed below.

The Commission also observes that the findings herein are based on the record in this proceeding, and in large part are reflective of the eventual concurrence of the parties on ultimate conclusions. As such, the findings are not intended to create any presumptions with respect to any future applications for designation as ETCs.

## **VIII. COMMITMENTS AND CONDITIONS**

The three IVC Partnerships have made a number of voluntary commitments that are discussed in this Order and are listed below. Staff, and in some instances IITA, have recommended that these commitments be made conditions to the Order.

The Commission concludes that the commitments set forth below are necessary and appropriate conditions with which Applicants should comply in connection with their designation as eligible telecommunications carriers, and specifically the public interest analysis. Accordingly, the Commission adopts each of the following commitments as conditions to this Order and to the ETC designation granted to each of the Applicants.

1. Each of the three IVC Partnerships shall comply with the Illinois Wireless Emergency Telephone Safety Act and 83 Ill. Adm. Code Part 728, including future amendments thereto subject to the caveat and additional commitments set forth in this Order. The IVC Partnerships shall notify the Commission if a conflict arises in the future between federal and Illinois law regarding the wireless 9-1-1 service due to a change in either Illinois or federal law.
2. Each of the three IVC Partnerships shall advertise to the public in their respective ETC-designated area the fact that it is offering the supported universal services and the charges for those services in local circulation newspapers in each Applicant's serving areas no less than twice annually. Each shall also post such information on its website and shall have informative brochures regarding such service available in each of its retail locations and each of its authorized agent locations.
3. Each of the three IVC Partnerships shall offer Lifeline and Link-Up services and advertise the availability of such services consistent with the advertising requirements set forth in Condition 2 above. In addition, each IVC Partnership shall disseminate information regarding its Lifeline and Link-Up Services in locations where qualified, unserved consumers are likely to find such information useful, such as unemployment and welfare offices within its ETC designated service area.
4. Each of the three IVC Partnerships shall provide Lifeline subscribers "equal access" to interexchange carriers of their choice subject to the caveat that the subscribers shall be responsible to pay its toll charges directly to the selected IXC.

5. Each of the three IVC Partnerships shall abide by its commitment to provide service throughout its ETC-designated service area to all customers who make a reasonable request for service using the standards set forth in paragraph 22 of the FCC ETC Order. Specifically, if IVC's network already passes or covers the potential customer's premises, IVC shall provide service immediately.

If a request comes from a potential customer within IVC's ETC designated area but outside its existing network coverage or where signal strength is weak, IVC will provide service within a reasonable period of time if service can be provided at a reasonable cost utilizing one or more of the following methods: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. Finally, if IVC determines that it cannot serve the customer using one or more of these methods, then IVC will report the unfulfilled request to the Commission within 30 days after making such determination.

6. Each of the three IVC Partnerships shall abide by its commitment to comply with 83 Ill. Adm. Code Sections 730.325 and 730.550 with regard to Emergency Power Requirements and Notification to the Commission of Minor and Major Outages as set forth in this Order.

7. Each of the three IVC Partnerships shall abide by its commitment to participate in any rulemaking proceeding to be initiated by the Commission with respect to consumer protection and service quality standards for wireless ETCs as discussed and set forth in this Order.

8. Until such time as the Commission shall enter a final order implementing an administrative rule regarding consumer protection and service quality standards for wireless carriers that are designated as eligible telecommunications carriers, each of the three IVC Partnerships shall comply with and meet the standards otherwise applicable to local exchange carriers contained in the following sections of 83 Ill. Adm. Code Parts 730 and 735, including making necessary changes to its existing practices to meet certain of such standards, and subject to the caveats with respect to certain of such standards as discussed in this Order. The subsections subject to this commitment are:

- Section 735.70 except 735.70(b)(1)(G)--Customer Billing;
- Section 735.80--Deferred Payment Agreements;
- Section 735.100 except 735.100(e)--Applicants Service;
- Section 735.110--Present Customers Regarding Deposits;

- Section 735.120--Deposits;
- Section 735.130--Continuance of Service;
- Section 735.140--Illness Provision;
- Section 735.150 except 735.150(d)--Payment for Service;
- Section 735.160 except 735.160(d)--Past Due Bills;
- Section 735.170--Service Restoral Charge;
- Section 735.190--Dispute Procedures;
- Section 735.200--Commission Complaint Procedures;
- Section 735.220--Second Language;
- Section 735.230--Customer Information Booklet;
- Section 730.510 (using the documentation and reporting procedures for small ILECs set forth in Consolidated Docket Nos. 04-0209, et seq.)--Answering Time regarding Operator and Business and Repair Office Answer Times;
- Section 730.520--Interoffice Trunks;
- Section 730.535(d) and (e)--Interruptions of Service;
- Section 730.540--Installation Requests;
- Section 730.305--Maintenance of Plant and Equipment;
- Section 730.340--Incorporation of National Codes and Standards Regarding Grounding and Bodily Maintenance;
- Section 730.440--Provisions for Testing Regarding Testing Facilities;
- Section 730.405--Call Data Records;
- Section 730.410--Call Data Reading Intervals;
- Section 730.420--Call Data Reporting Equipment Requirements;
- Section 730.500 (only as it relates to Section 730.520)--Adequacy of Service.

9. Each of the three IVC Partnerships shall, prior to entering into a contract with a customer, provide a written disclosure to the customer explaining that it will not provide a telephone directory to the customer and that the customer's telephone number will not be published in any telephone directory. At such time the IVC Partnership shall obtain a written acknowledgement from the customer indicating that the customer has received, read and understood the aforementioned notice and does not object to the Partnership not providing him/her with a directory and further indicating that he/she does not object to Applicant not causing his/her telephone number to be published in any telephone directory. Such disclosure and acknowledgement shall be made in a typeface of 10 Point, or larger, and shall be otherwise clear and conspicuous.

10. Each of the three IVC Partnerships shall offer its proposed "ILEC Equivalent Service Plans" with unlimited in-bound and out-bound local usage as described in this Order, provided this condition does not require the IVC Partnerships to offer such service at any particular rate after the fifth anniversary of the effective date of this Order. Prior to such fifth

anniversary the IVC Partnerships shall offer ILEC Equivalent Service Plans at the rates identified in this Order.

11. Each of the three IVC Partnerships shall provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

12. On or before August 1 of each year, each of the three IVC Partnerships shall submit reports to the Manager of the Commission's Telecommunications Division certifying, reporting and providing information as required by paragraphs 23 and 69 of the FCC ETC Order and 47 CFR §54.209, and discussed in the instant Order. To the extent that any such information is proprietary, it may be submitted and shall be treated as proprietary and confidential under appropriate motions.

13. Each of the three IVC Partnerships shall provide prior written notice to the Commission of any material changes in the respective Applicant's five-year investment plan.

14. Each of the three IVC Partnerships will provide, on an annual basis, detailed explanations, as set forth in the ETC Order, in the event any targets of IVC's five-year plan are not met.

15. Each of the three IVC Partnerships shall abide by its carrier of last resort commitments if and to the extent that the incumbent ILEC in one or more wire centers relinquishes its ETC designation.

16. Each of the three IVC Partnerships will comply with all applicable statutes and rules affecting ETC status and obligations thereunder.

## **IX. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, after reviewing the record herein, is of the opinion and finds that:

- (1) Illinois Valley Cellular RSA 2-I Partnership, Illinois Valley Cellular RSA 2-II Partnership, and Illinois Valley Cellular RSA 2-III Partnership are Illinois partnerships and providers of CMRS services in Illinois;
- (2) the Commission has jurisdiction over the Applicants and the subject matter of this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;



- (4) the conditions found appropriate in this Order should be imposed in connection with the ETC designations to be granted herein, and the granting of such designations are subject to compliance with those conditions;
- (5) IVC RSA 2-I Partnership should be designated as an Eligible Telecommunications Carrier for purposes of receiving support from the Federal Universal Service Fund with respect to the designated ETC service area shown in IVC 2-I Exhibit 2.1, including the wire centers listed in IVC 2-I Exhibit 2.3, copies of which were attached to IVC's draft order filed December 29, 2005 as Appendices A1 and A2;
- (6) IVC RSA 2-II Partnership should be designated as an Eligible Telecommunications Carrier for purposes of receiving support from the Federal Universal Service Fund with respect to the designated ETC service area shown in IVC 2-II Exhibit 2.1, including the wire centers listed in IVC 2-II Exhibit 2.3, copies of which were attached to IVC's draft order as Appendices B1 and B2;
- (7) IVC RSA 2-III Partnership should be designated as an Eligible Telecommunications Carrier for purposes of receiving support from the Federal Universal Service Fund with respect to the designated ETC service area shown in IVC 2-III Exhibit 2.1, including the wire centers listed in IVC 2-III Exhibit 2.3, copies of which were attached to IVC's draft order as Appendices C1 and C2.

IT IS THEREFORE ORDERED that Illinois Valley Cellular RSA 2-I is hereby designated, effective as of the date of this Order, as an eligible telecommunications carriers for purposes of receiving federal Universal Service support in the ETC-designated service areas depicted in IVC 2-I Exhibit 2.1, including the wire centers listed in IVC 2-I Exhibit 2.3, pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Illinois Valley Cellular RSA 2-II is hereby designated, effective as of the date of this Order, as an eligible telecommunications carriers for purposes of receiving federal Universal Service support in the ETC-designated service areas depicted in IVC 2-II Exhibit 2.1, including the wire centers listed in IVC 2-II Exhibit 2.3, pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Illinois Valley Cellular RSA 2-III is hereby designated, effective as of the date of this Order, as an eligible telecommunications carriers for purposes of receiving federal Universal Service support in the ETC-designated service areas depicted in IVC 2-III Exhibit 2.1, including the wire centers listed in IVC 2-III Exhibit 2.3, pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Illinois Valley Cellular RSA 2-I, Illinois Valley Cellular RSA 2-II and Illinois Valley Cellular RSA 2-III shall comply with the conditions set forth in Section VIII of this Order.

IT IS FURTHER ORDERED that the proposed redefinition of the Citizens Telecom Co. Illinois - Frontier Citizens - IL service area to include only the Thompson (White CO) wire center for purposes of designating Illinois Valley Cellular RSA 2-I as an ETC is hereby certified to the FCC as appropriate, and IVC is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinition for ETC designation purposes.

IT IS FURTHER ORDERED that the proposed redefinition of the Mid-Century Telephone Cooperative service area to include only the Lafayette wire center and of the Gallatin River Communications service area to include only the Lacon wire center for purposes of designating Illinois Valley Cellular RSA 2-II as an ETC is hereby certified to the FCC as appropriate, and IVC is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that the proposed redefinition of the Verizon South, Inc. - IL service area to include only the Danforth, Cissna Park, Woodland, Milford, Stockland and Wellington wire centers and of the Frontier Communications of Illinois, Inc. service area to include only the Cullom, Kempton and Saunemin wire centers for purposes of designating Illinois Valley Cellular RSA 2-III as an ETC is hereby certified to the FCC as appropriate, and IVC is hereby authorized by this Commission to take all necessary steps to seek FCC concurrence in said service area redefinitions for ETC designation purposes.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 19th day of April, 2006.

(SIGNED) CHARLES E. BOX

Chairman

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**CERTIFICATE OF SERVICE**  
**UM 1217**

I certify that I have this day served the foregoing Reply Brief of the Oregon  
Telecommunications Association by electronic mail and U.S. mail to the following:

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I further certify that I have this day served the foregoing Reply Brief of the Oregon  
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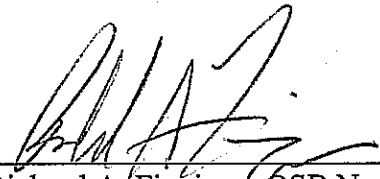
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Dated at Olympia, Washington, this 1st day of May, 2006.

  
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