

REBUTTAL TESTIMONY
OF
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PRINCIPAL POLICY ADVISOR
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

Petition of Illinois Valley Cellular RSA 2-I,
RSA 2-I and RSA 2-III Partnerships For Designation as an Eligible
Telecommunication Carriers under 47 U.S.C. § 214(e)(2)

DOCKET NO. 04-0454, 04-0455, 04-0456
CONSOLIDATED

JULY 25, 2005

1 **Overview and Summary**

2

3 **Q. Please state your name and business address.**

4 A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.

6

7 **Q. Have you testified previously in this proceeding?**

8 A. Yes. I submitted direct testimony in Docket Nos. 04-0454, 04-0455 and
9 04-0456 on May 20, 2005. Those three dockets subsequently have been
10 consolidated.

11

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. My rebuttal testimony updates Staff's assessment of the application of
14 Illinois Valley Cellular RSA 2-I, RSA 2-II and RSA 2-III Partnerships
15 ("IVC") for eligible telecommunications carrier ("ETC") status. This rebuttal
16 testimony reflects and responds to rebuttal testimony filed by IVC and
17 other parties in this proceeding. In addition, rebuttal testimony is being
18 submitted on behalf of Staff by Ms. Schroll, Mr. Hanson and Mr.
19 McClerren. Dr. Zolnierek has not filed rebuttal testimony. As stated in his
20 direct testimony, his analysis did not suggest any potential
21 "creamskimming" issues.

22

23

24 **Q. Please summarize briefly the major conclusions and**
25 **recommendations contained in the rebuttal testimony of Mr.**
26 **Hanson, Mr. McClerren and Ms. Schroll.**

27 A. Mr. Hanson testifies that, in his opinion, the “ILEC Equivalent” rate plans
28 proposed by IVC meet the “local usage plan” comparability test set forth in
29 the FCC’s ETC Order. He recommends that the Commission require
30 ongoing provision of such plans as a condition for designation of IVC as
31 an ETC. Ms. Schroll testifies that, as a condition of ETC designation, IVC
32 should commit, and has committed, to abide by the requirements of the
33 Commission’s Code Part 728, and provisions of the Illinois Wireless
34 Emergency Telephone Safety Act.

35
36 Mr. McClerren addresses service quality and consumer protection issues,
37 particularly relating to Code Parts 730 and 735. He identifies mobility,
38 customer premises equipment, and installation as strengths of IVC’s ETC
39 application, and identifies weaknesses related to directories, call quality,
40 and contract term. Mr. McClerren is unable to recommend that the
41 Commission approve IVC’s petition as of this date. However, with IVC’s
42 stated acceptance of four conditions enumerated in his testimony, he
43 could recommend, with respect to his areas of responsibility, that the
44 Commission approve IVC’s petition, contingent upon continuing
45 satisfaction of all conditions set forth in his testimony.

46

47 **Q. Please summarize the overall conclusions and recommendations**
48 **contained in your initial (direct) testimony.**

49 A. I concluded that the Commission should apply requirements similar to
50 those set forth in the FCC's March 17, 2005 Report and Order in C.C
51 Docket 96-45 ("ETC Order")¹, as endorsed, modified or added to in the
52 testimony of Staff witnesses. I further concluded that, based on my own
53 analyses and those of other Staff members, IVC had not met the
54 conditions required to demonstrate that Commission designation of ETC
55 status for IVC would be in the public interest. Accordingly, Staff could not
56 recommend that the Commission grant IVC's application for ETC
57 designation.

58
59 **Q. Did IVC's witnesses address some of the concerns and issues raised**
60 **by Staff, and testify that, if granted ETC status, IVC would abide by**
61 **and adhere to key requirements and conditions?**

62 A. Yes. IVC's rebuttal testimony responded to a number of the concerns and
63 issues raised by Staff in its direct testimony.² Notably, IVC committed to
64 abide by a number of key service quality and consumer protection
65 requirements and standards discussed in the direct testimony of Mr.
66 McClerren. Among these are the following Illinois Commerce Commission
67 Code Parts:

¹ Federal Communications Commission, Report and Order ("ETC Order"), CC Docket No. 96-45, FCC 05-46, Released March 17, 2005.

² In addition to its rebuttal testimony, IVC has provided clarification regarding several key issues in its responses to Staff Data Request Nos. JH-1.0 – JH -7.0. These are displayed in Attachment A appended to this testimony.

- 68 • Code Part 730.305
- 69 • Code Part 730.325
- 70 • Code Part 730.340
- 71 • Code Part 730.400
- 72 • Code Part 730.510 (provided IVC adheres to Docket No. 04-0209
- 73 documentation procedures)
- 74 • Code Part 730.520
- 75 • Code Part 735.80
- 76 • Code Part 735.100
- 77 • Code Part 735.110
- 78 • Code Part 735.120
- 79 • Code Part 735.130
- 80 • Code Part 735.140
- 81 • Code Part 735.170
- 82 • Code Part 735.190
- 83 • Code Part 735.200
- 84 • Code Part 735.220
- 85 • Code Part 735.230
- 86

87 Staff further understands that, among other things, IVC has committed to
88 the following as conditions for attaining ETC status:

- 89 • to make all annual certification, reporting and informational filings to
- 90 the Commission as set forth in the FCC's ETC Order (including
- 91 detailed coverage maps);
- 92 • to provide certain "ILEC equivalent" calling plans;
- 93 • to provide subscribers to ILEC equivalent calling plans and Lifeline
- 94 subscribers "equal access" to interexchange carriers of their choice;
- 95 • to abide by the requirements of Commission Code Part 728, and
- 96 provisions of the Illinois Wireless Emergency Telephone Safety Act;
- 97 • to advertise service availability in all local circulation newspapers in
- 98 the IVC serving area no less than twice annually, and to provide

- 99 informative brochures regarding service availability at each of its
100 retail locations and authorized agent locations;
- 101 • to disseminate information regarding Lifeline and Link Up services
102 in locations where qualified, unserved consumers are likely to find
103 such information useful, such as unemployment and welfare offices
104 within the designated ETC service area;
 - 105 • to provide service to requesting customers, consistent with the
106 manners specified in the FCC's ETC Order, both within and outside
107 the coverage area of IVC's existing network;
 - 108 • to provide a five year investment spending plan containing all
109 detailed information as specified in the FCC's ETC Order;
 - 110 • to provide prior written notice to the Commission of any material
111 changes in IVC's five year investment plan;
 - 112 • to provide, on an annual basis, detailed explanations, as set forth
113 in the ETC Order, in the event any targets of IVC's five year plan
114 are not met;

115

116 All of the above should be treated as required conditions and
117 commitments for a Commission grant of ETC status.

118

119 Moreover, IVC has clarified its positions or provided additional information
120 concerning the following issue areas:

- 121 • Provision of a true-up or reconciliation between the total dollar
122 amount of federal Universal Service Fund (“USF”) funding projected
123 to be received and the projected expenditures of USF funds in its
124 five year investment plan;
- 125 • Further information and clarification regarding the adequacy of
126 projected improvements in its network coverage for the various
127 study areas from which it would derive USF funds.

128

129 **Q. Have the fundamental conclusions and recommendation contained**
130 **in your direct testimony changed as a result of IVC’s rebuttal**
131 **testimony?**

132 A. Not at this point. IVC has made significant progress in showing it will meet
133 the requirements and conditions appropriate for a grant of ETC
134 designation. In my opinion, however, IVC has not yet completely satisfied
135 all of the conditions and requirements necessary to demonstrate
136 completely that granting its application for ETC designation would be in
137 the public interest. Several outstanding issues remain that have not yet
138 been adequately addressed by IVC.

139

140 If and when these outstanding issues are addressed adequately, I
141 anticipate Staff would be in a position to recommend that the Commission
142 approve IVC’s ETC application. In that event, I would recommend that
143 any Commission Order conferring ETC status upon IVC explicitly make
144 that designation contingent upon satisfaction of all standards, conditions

145 and requirements set forth by Staff. I would further recommend that any
146 Commission Order granting ETC status explicitly condition the
147 maintenance of such status upon ongoing satisfaction of the
148 Commission's standards, conditions and requirements for each affected
149 ILEC study area. Moreover, I would recommend that the Commission
150 explicitly require IVC to comply with all applicable statutes and rules, as
151 applied by Staff in its public interest analysis, on a going forward basis,
152 including any amendments thereto. If IVC cannot comply with any
153 applicable statute or rule that is amended after it is granted ETC status,
154 IVC should be required to notify the Commission, requesting initiation of a
155 proceeding to review its compliance with the amended statute, rule or
156 requirement at issue.

157

158 **Q. Please summarize the major conditions and requirements which, in**
159 **your opinion, remain to be satisfied by IVC.**

160 A. These issues are discussed below in this rebuttal testimony. IVC should
161 adequately address the additional issues I raise herein, and should also
162 satisfy the requirements and conditions discussed in the rebuttal
163 testimonies of Mr. McClerren, Ms. Schroll, and Mr. Hanson.

164

165 As previously noted, Mr. Hanson recommends that the Commission
166 require ongoing provision of "ILEC equivalent" rate and calling plans as a
167 condition for designation of IVC as an ETC. Ms. Schroll recommends that,
168 as a condition for ETC status, IVC comply with the Illinois Wireless

169 Telephone Safety Act and Code Part 728 on a going forward basis,
170 including any amendments thereto. She further recommends that if, in
171 IVC's view, an amendment is inconsistent with FCC requirements
172 regarding emergency telephone services, or imposes technical obligations
173 associated with provisioning such services that differ from those imposed
174 by the FCC, then IVC may petition the Commission for the initiation of an
175 investigation of its ETC status.

176
177 Mr. McClerren testifies that he can recommend, for his areas of
178 responsibility, that the Commission approve IVC's ETC application if IVC
179 expressly states its acceptance of the following four additional conditions:

- 180 1. In many instances, IVC has indicated that it "can comply with this
181 requirement." It is appropriate for IVC to affirmatively state (in
182 surrebuttal testimony) that, as a condition for approval of its ETC
183 application, IVC will comply with all such conditions.
184
- 185 2. IVC agrees to participate in a rulemaking designed to address
186 differences between cellular and wireline service labeled as
187 "unresolved," and further agrees to accept and support the efforts
188 of that collaborative workshop. This rulemaking will focus on
189 cellular companies operating as ETC carriers, and will address the
190 issues of dropped calls or weak signal, which are cellular issues not
191 covered by Part 730. The rulemaking will be scheduled such that a
192 proposed order will be finished within 6 months of the completion of
193 this proceeding. Upon completion of this rulemaking, compliance
194 with Parts 730 and 735 will no longer be required, as the new rule
195 will address the pertinent parts for ETC cellular carriers. IVC
196 should acknowledge that the Commission will consider compliance
197 with newly promulgated rules when filing the state certification of
198 support for rural carriers, pursuant to Section 54.314 of the Code of
199 Federal Regulations³, and when making the corresponding
200 determination of whether IVC should retain its eligible
201 telecommunications carrier designation.
202

³ 47 CFR 54.314

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

216
217 4. IVC accepts, without equivocation, potential carrier of last resort
218 ("COLR") responsibilities upon the failure of the ILEC to continue
219 COLR responsibilities.
220

221 As an additional general matter, I recommend (absent a persuasive
222 showing to the contrary), that the Commission require IVC to notify it of
223 any future material changes in IVC's status that concern or impact any of
224 the conditions and requirements the Commission imposes upon the
225 company in any Order granting ETC status.

226

227 **Response to Rebuttal Testimony of Michael Kurtis**

228

229 **Q. Mr. Kurtis takes issue with your concern that IVC's proposed five-**
230 **year investment/spending plan would be subject to change at IVC's**
231 **discretion, and your related recommendation that any change in that**
232 **plan should be subject to prior Commission approval. Please**
233 **respond.**

234 A. Mr. Kurtis raises good points in rebuttal to these aspects of my testimony.
235 His arguments persuade me that the concerns and recommendation set
236 forth in my direct testimony on this topic are not consistent with the level of
237 flexibility required in a long term investment plan. I note that Mr. Stidham
238 lodges essentially the same objections to this aspect of my direct
239 testimony as does Mr. Kurtis.⁴ I therefore no longer recommend that the
240 Commission require that it approve material changes to IVC's investment
241 plan prior to implementation of such changes.

242

243 A key point made by Mr. Kurtis and Mr. Stidham is that the Commission
244 may decline to endorse a carrier's ETC "certification" (that ETC funds
245 have been properly utilized) at the time of the carrier's annual certification,
246 if warranted by inappropriate changes in investment spending. I agree
247 with their apparent view that this, in conjunction with the Commission's
248 ultimate authority to revoke ETC designation, likely constitutes strong
249 incentives to maintain appropriate investment expenditures, and provide
250 sufficient remedies for any inappropriate changes in investment spending.
251 However, I also believe that ready and timely access to information is
252 necessary for this to be effective. Absent persuasive arguments to the
253 contrary, I believe the Commission should require IVC to notify it of any
254 material changes in IVC's investment plan at the time such changes might
255 occur. I do not believe this would impose any undue burden upon IVC.

⁴ SBC Exhibit 1.0 at 11-12.

256 IVC should confirm in surrebuttal testimony acceptance of this condition
257 for Commission approval of its ETC application.

258

259 **Response to Rebuttal Testimony of Thomas Walsh**

260

261 **Q. At lines 1226-1229 of his rebuttal testimony, Mr. Walsh argues that**
262 **conducting the required public interest analysis on a study area-by-**
263 **study area basis effectively would preclude wireless carriers from**
264 **gaining ETC status. Do you agree?**

265 **A.** No. I might agree with Mr. Walsh if such “disaggregated” analysis were
266 conducted in a mechanical or rote fashion, for example, treating wireless
267 applicants in precisely the same manner as a wireline applicant. But that
268 is certainly not what I recommend to the Commission. The public interest
269 analysis of an ETC application requires weighing and balancing the
270 particular (and perhaps unique) benefits and “disbenefits” associated with
271 each application. This is inherently a case-specific matter, requiring
272 consideration of specific circumstances. This remains true even though
273 there exist a number of threshold requirements and conditions - including
274 those set forth in the FCC’s ETC order - that appropriately apply to all
275 ETC applicants.

276

277 I believe that in surrebuttal testimony, IVC should revise the opinion
278 expressed by Mr. Walsh. IVC should acknowledge that a study area-by-
279 study area public interest analysis can be and/or is appropriate for

280 evaluation of an ETC application submitted by a wireless carrier, provided
281 the evaluation is conducted in a technology-neutral manner, with
282 appropriate recognition of any unique attributes of wireless technologies.
283

284 **Q. At lines 1226-1233 of his rebuttal testimony, Mr. Walsh notes that IVC**
285 **operates only in rural Illinois, pointing out that any USF funding IVC**
286 **may receive necessarily could be spent only in rural Illinois. In your**
287 **view, should the Commission consider this fact in evaluating IVC's**
288 **ETC application?**

289 A. Yes. This is a good example of a particular or unique circumstance that
290 the Commission should weigh in conducting its public interest examination
291 of an ETC application. The potential benefits associated with IVC's "rural
292 Illinois only" operations and orientation cannot be quantified. But I believe
293 they can be expected to be tangible. At minimum, IVC can be expected to
294 be more cognizant of and responsive to customer needs than they might
295 otherwise be due to their "rural Illinois only" operations.

296
297 **Q. At lines 1236-1237 of his rebuttal testimony, Mr. Walsh asserts that**
298 **IVC's application "...sets the benchmark by which all other ETC**
299 **filings can be judged." Please comment on this statement.**

300 A. In important respects, I agree with this statement, although perhaps not
301 precisely as Mr. Walsh intended it. It appears that IVC's application will be
302 the first wireless ETC application ruled on by the Commission. Since it is
303 likely to some degree to set a template for subsequent wireless carrier

304 ETC applications, it is even more important that IVC satisfy completely all
305 appropriate conditions and requirements, and that the Commission hold
306 IVC's application to appropriately high standards.

307

308 I believe that IVC has been making serious and sincere efforts to meet
309 appropriate standards and conditions as these have been set forth in this
310 proceeding. It appears to me that if the company continues to do so, the
311 Commission ultimately should be able to conclude that granting IVC's ETC
312 application would serve the public interest.

313

314 **Response to Rebuttal Testimony of Robert Schoonmaker**

315

316 **Q. At lines 166-169 of his rebuttal testimony, Mr. Schoonmaker**
317 **reiterates his view that a study area level analysis (of public interest**
318 **considerations) is required by the 1996 Act, and that the FCC's ETC**
319 **Order interprets and endorses the study area level requirement. Do**
320 **you agree with this assessment?**

321 A. Yes. Most significantly, Section 214(e)(2) requires the following:

322 Upon request and consistent with the public interest,
323 convenience, and necessity, the State commission may, *in*
324 *the case of an area served by a rural telephone company,*
325 *and shall, in the case of all other areas,* designate more than
326 one common carrier as an eligible telecommunications
327 carrier for a service area designated by the State
328 commission, so long as each additional requesting carrier
329 meets the requirements of paragraph (1). *Before designating*
330 *an additional eligible telecommunications carrier for an area*
331 *served by a rural telephone company, the State commission*
332 *shall find that the designation is in the public interest.*

333 (emphasis added)
334

335 While I underscore that I am not an attorney, my understanding is the
336 1996 Act contemplates, at least for “rural” telephone companies, a study
337 area-by-study area public interest analysis of IVC’s application.
338

339 **Q. At lines 187-201 of his rebuttal testimony, Mr. Schoonmaker**
340 **addresses the question of the degree to which IVC’s ETC-based**
341 **investment spending should be correlated or “matched” to the**
342 **geographic areas from which USF receipts are derived. He**
343 **concludes that over the five-year investment plan period, each area**
344 **from which USF funds are derived should receive some benefits of**
345 **such funding. Do you agree?**

346 **A.** Yes. In my opinion, this is an appropriate principle that should be a factor
347 in the Commission’s analysis of any ETC investment spending plan.
348 However, I do not believe this should be an absolute requirement, with no
349 possible exception or deviation permitted. An ETC applicant such as IVC
350 should have the opportunity to argue that its application satisfies the public
351 interest despite deviation from, or a failure to completely conform to or
352 abide by this basic principle. As with all other aspects of an ETC
353 application, the burden of proof remains with the applicant, and only if the
354 applicant persuades the Commission on this point should an ETC
355 designation be granted under such circumstances.
356

357 The FCC's requirements are instructive in this regard, since generally
358 there is a close link between spending and improvements in service to
359 customers:

360
361 To demonstrate that supported improvements in service
362 will be made throughout the service area, applicants
363 should provide this information [i.e., information
364 contained in the five year plan] for each wire center in
365 each service area for which they expect to receive
366 universal service support, or an explanation of why
367 service improvements in a particular wire center are not
368 needed and how funding will otherwise be used to further
369 the provision of supported services in that area.⁵
370

371 I ask that IVC respond directly to my position on this issue in surrebuttal
372 testimony, either confirming that its five-year investment plan projects
373 some positive level of spending of USF funds in each ILEC study area at
374 issue, or provide specific argument or documentation why no such
375 spending is appropriate or required for a particular ILEC study area.

376

377 **Q. Does this conclude your rebuttal testimony?**

378 A. Yes.

⁵ ETC Order at par. 23.