DIRECT TESTIMONY

OF

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TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

IQ TELECOM, INC.

APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR PURPOSES OF RECEIVING FEDERAL UNIVERSAL SERVICE FUNDS PURSUANT TO SECTION 214(E)(2) OF THE TELECOMMUNIATIONS ACT OF 1996

ICC DOCKET NO. 10-0379

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I. Introduction

Q. Please state your name and business address.

A. My name is Qin Liu, and I am employed by the Illinois Commerce Commission ("Commission"). My business address is 160 North LaSalle, Suite C-800, Chicago, Illinois, 60601.

Q. Are you the same Qin Liu that provided direct testimony in this proceeding?

A. Yes.

Q. What is the purpose of your testimony?

A. IQ Telecom, Inc ("IQT" or "IQ Telecom") filed rebuttal testimony on May 16, 2011 ("IQ Rebuttal"). The purpose of this testimony is to respond to IQT's rebuttal testimony and present a recommendation to the Commission regarding IQT's petition for wireless ETC designation.

Q. Please summarize your findings and recommendations.

A. I first note that IQT has not presented anything in its rebuttal testimony to cause me to alter any of my recommendations in my direct testimony. Furthermore, based on my subsequent investigation of the assertions made in the company's rebuttal testimony, I have additional recommendations regarding IQT. I recommend the Commission find in summary as follows:

(1) IQT has systematically offered services that do not comport with the tariff or without filing tariff for such services.

(2) IQT has failed to contribute to the state USF. It was three months behind in payment as of June 1, 2011.

(3) IQT has failed to file Part 757 Report as required under Part 757. As of May 17, 2011, it had not filed its Part 757 Report for the first quarter of 2011.

(4) IQT has underreported revenues and underpaid its contribution to the federal USF.

(5) IQT have over-recovered its contribution costs [to the federal USF] from the customers

(6) IQT has offered services to its Lifeline customers in a discriminatory manner. The variation in services offered from forms to forms is not justifiable.

(7) IQT's Letter of Agency fails to meet the requirements of Section 13-902 of the IPUA.

(8) IQT has not produced or used proper forms to certify customers' Lifeline or Linkup eligibility and has failed to make reasonable efforts to inform its customers of the one-time restriction of federal Linkup support.

(9) IQT obtained ETC designation in Docket No. 08-0453 by various misrepresentation and misstatements of facts: (i) it used a discontinued

local plan as evidence that it provides comparable local services, and (ii) it provides inaccurate representation regarding the manner in which it provides services.

(10) IQT has improperly collected $1,966,337 in federal low income support between October 2008 and March 2011 for customers served through resale, and it continues to improperly collect federal low income support for customers served through resale.

(11) IQT has collected federal Linkup subsidies where it is not eligible to (e.g., for conversion).

(12) IQT has requested more in federal Linkup subsidies than it is entitled to.

(13) IQT has failed to pass through the full amount of Lifeline support.

(14) IQT has not managed both its Lifeline and Linkup Programs properly. It has made genuine efforts to get customers on the Lifeline program but has refused to make efforts to keep them on the program. In doing so, it has drained $1.2 million in federal Linkup support funds without much of the intended benefits to the customers, and has deprived 96% of the customers them of their eligibility for further Linkup support.

(15) IQT has not provided any wireless services for a period of ten months after it was granted the authority to provide wireless services.

For reasons listed above, I cannot reach the finding that it is in the public interest to grant IQT's wireless ETC designations. Therefore, I cannot recommend that the Commission grant IQT's wireless ETC designation sought in this proceeding.

II. Responses to IQT's Rebuttal Testimony

A. IQT failed to accurately present information in Docket No. 08-0453

1. IQT used a discontinued plan to obtain ETC designation

Q. How did IQT respond to the finding that it did not to make good faith effort to present evidence to support its ETC application in Docket No. 08-0453?

A. IQT submitted an ETC petition in Docket No. 08-0453 alleging the existence of the Basic Plan [unlimited local calling $29.99 per month], stopped offering it eight days later, and neglected to amend its petition or otherwise advise the ALJ, Staff or the Commission during the remainder of the proceeding. Staff Ex. 1.0 at 14-15. In its rebuttal, IQT does not dispute that it discontinued the Basic Plan eight days after it submitted the Basic Plan as evidence that it offered comparable local service. Neither does it dispute that it did not inform the Commission of the discontinuance. Additionally, IQT does not dispute that it continued to use the discontinued Basic Plan to obtain ETC designation during the remainder of the ETC proceeding. IQ Rebuttal at 6-7. Despite the undisputed facts, IQT contends that it made a good faith effort in presenting evidence to support its ETC petition in Docket No. 08-0453. Id.

Q. How did IQT attempt to show that it made a good faith effort to present evidence that it offers comparable local plan in Docket No. 08-0453?

A. In an attempt to show that it did make a good faith effort in presenting evidence that it offers comparable local service, IQT explains:

> In fact, IQT has always provided a basic plan satisfying the basic plan requirements for ETC designation. IQT's original petition on Docket 08-0453 stated that IQT offered a basic package to its end users comparable to AT&T at a monthly cost of $29.99. However, IQT increased the amount for the basic plan to $59.99 after completing a thorough analysis of the economic impact of the original pricing for the basic plan. IQ Rebuttal at 7.

Blaiming that it "has always provided a basic plan satisfying the basic plan requirement for ETC designation," IQT implies that the local plan that it has offered to customers since receiving ETC designation in October 2008, Local Package [unlimited local calling with two features at $56.99 per month], is comparable to the ILEC's local service. As shown below, a casual side-by-side comparison of the IQT and AT&T's local plans clearly shows that IQT's local plan, Local Package, does not compare favorably to those of AT&T's.

After obtaining ETC designation by alleging that it offered a local plan at $29.99 per month (which it had in fact discontinued), IQT in fact offered a local plan at $56.99 per month and now argues this local plan is comparable to that of the ILEC. This is both disingenuous and completely inaccurate.

Q. Has IQT presented any argument to support its assertion that it made a good faith effort in presenting evidence in Docket No. 08-0453?

A. Yes. In the attempt to show that it did make a good faith effort in presenting evidence in the ETC proceeding, IQT presents the "thorough economic analysis" defense:

> IQT's original petition on Docket 08-0453 stated that IQT offered a basic package to its end users comparable to AT&T at a monthly cost of $29.99. However, IQT increased the amount for the basic plan to $59.99 after completing a thorough analysis of the economic impact of the original pricing for the basic plan. The analysis revealed that IQT's cost to provide the basic plan package prohibited IQT from offering the basic plan at the originally designated rate. Accordingly, IQT could not continue the offering as originally intended. IQ Rebuttal at 7.

By increasing the rate to $59.99, IQT apparently refers to the monthly rate Deluxe Package [unlimited local calling with two features plus 500 toll minutes at $59.99 per month], which is equivalent to Local Package plus 500 toll minutes at additional $3 per month. IQT's "thorough economic analysis" argument, however, not only does not rebut, but further confirms, that it did not make a good faith effort in presenting evidence regarding its local plan in the ETC proceeding.

First and foremost, the reason behind the discontinuance of the Basic Plan has no bearing on whether IQT made a good faith effort to present evidence that it offers comparable local service in the ETC proceeding. What is relevant is IQT's decision not to disclose the discontinuance of the Basic Plan or the replacement local plan before the Commission rendered the decision on its ETC petition. Also important is the fact that IQT used the already discontinued local plan [Basic Plan] to obtain ETC designation during the remainder (i.e., starting from the 8th day) of the ETC proceeding. This cannot be considered as testament of a good faith effort.

The claim that IQT discontinued the Basic Plan [eight days after the submission of its ETC petition] after a thorough economic analysis allegedly revealed the Basic Plan to be economically unsound is at best unsupported. The

timing of IQT's economic analysis, which allegedly established the economic unsoundness of the Basic Plan not before, but within eight days following the submission of ETC petition, is suspect. In fact, IQT has not provided any concrete evidence (such as a copy of the analysis) that the so-called thorough economic analysis even exists or is not fiction created to explain away the fact that it used a discontinued or nonexistent plan to obtain ETC designation.

Putting aside the credibility of the claim that it happened to have completed the thorough economic analysis within eight days following the submission of the Basic Plan, this claim at least shows that IQT did not make a good faith effort to present evidence in the ETC proceeding. In particular, the claim – if true – shows that IQT did not ascertain the economic soundness of the Basic Plan [unlimited local calling $29.99 per month] before presenting it as evidence that it offers comparable local service. Using a local plan [Basic Plan] to obtain ETC designation before establishing the economic soundness of the plan is not testament of a good faith effort. Therefore, the "thorough economic analysis" claim not only does not rebut, but further confirms, that IQT did not make a good faith effort in presenting evidence regarding its local service in Docket No. 08-0453.

2. IQT failed to accurately inform the Commission of the manner in which it provides services

Q. How does IQT respond to the finding that it may not obtain federal low income support for the customers served through resale under the ETC designation granted in Docket No. 08-0453?

A. IQT does not dispute that it has claimed federal low income support for numerous customers served through resale. Neither does it dispute that it has served, through resale, the majority (more than 99%) of the customers for whom it has claimed federal low income support. Nonetheless, IQT claims that, under the ETC designation granted in Docket No. 08-0453, it may claim federal low income support for customers served through resale. In particular, it contends that it has met the facilities requirement by providing services to a de minimis portion of customers over leased facilities and thus it is entitled to obtain federal low income support for customers served through resale. In addition, IQT explains why it provides services to a predominant portion of its customers through resale:

> IQT's migration to resale arose primarily as a result of ILEC efforts to force the traffic of CLECs to resale, and not by choice. IQ Rebuttal at 13 (emphasis added).

With this explanation, IQT implies that it was providing services using leased facilities obtained as UNEs (i.e., UNE-P) before the ILEC forced the migration of its traffic to resale. It however does not enumerate the specific ILEC efforts that forced the migration of its traffic to resale or when such alleged efforts occurred.

Q. Has IQT subsequently provided information regarding the ILEC efforts that forced the migration of its traffic to resale?

A. Yes. In response to my inquiry regarding the ILEC efforts to force the migration of IQT's traffic from UNE-P to resale, IQT provides the following clarification:

> IQ Telecom's statement on page 13 [of rebuttal testimony] refers to AT&T's efforts to eliminate IQ Telecom's legal rights to lease network facilities as an **unbundled network elements platform** and AT&T's failure to offer an **unbundled network elements**

> **platform** on a cost basis, thereby forcing IQ Telecom to rely more on the resale of services. (**Emphasis added**) [1]
>
> … …
>
> To the extent that other ILECs supported AT&T's efforts referred to in the response to Staff Data Request QL-9.01 and have failed to offer an unbundled network elements platform on a cost basis, the answer [regarding AT&T] would apply to those ILECs also. [2]
>
> … …
>
> AT&T has persuaded the Federal Communications Commission to support its position. To IQ Telecom's knowledge, no court has found this to be unlawful. [3]

As IQT has never had an Interconnection Agreement with any other ILECs in Illinois, the ILEC that allegedly forced the migration of traffic [from UNE-P] to resale is presumably AT&T Illinois. IQT does not claim that AT&T has violated any laws, rules or regulations. The allegation that AT&T forced IQT to utilize resale to serve its customers seems to refer to AT&T's efforts to implement the FCC's Triennial Review Order ("TRO") and Triennial Review Remand Order ("TRRO").[4] In particular, it appears to refer to AT&T's efforts to implement the TRRO through the Interconnection Agreement ("ICA") and the First Amendment to the ICA.

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[1] See IQ Response to Staff DR QL-9.01 and QL-9.06.

[2] See IQ Response to Staff DR QL-9.02 and QL-9.07.

[3] See IQ Response to Staff DR QL-9.03 and QL-9.04.

[4] The FCC, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36 (rel., August 21, 2003, effective October 2, 2003) ("Triennial Review Order" or "TRO").

The FCC, Order on Remand, In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier, WC Docket No 04-313 and CC Docket No. 01- 338, FCC 04-0290 (rel. February 4, 2005; effective March 11, 2005) ("Triennial Review Remand Order" or "TRRO").

Q. Please explain how AT&T allegedly forced the migration of IQT's traffic to resale through implementation of the TRO and TRRO.

A. In the TRO and TRRO, the FCC relieved ILECs of the obligation to provide unbundled local switching ("ULS") for enterprise and mass markets, respectively. CLECs had used ULS exclusively in combination with unbundled [ILEC] loops and shared transport in an arrangement known as UNE-P. The TRO and TRRO rulings essentially meant that ILECs would no longer be required by law to offer CLECs combinations of loop, local switching, and shared transport at cost-based prices (i.e., UNE-P), for enterprise or mass market customers.[5]

The TRO and TRRO went into effect on October 2, 2003 and March 11, 2005, respectively. As of the effective date of the TRRO, CLECs may not utilize UNE-P to serve new customers. CLECs were also required to move the embedded customers to alternative arrangements during the 12-month transition period that ended March 11, 2006. The first amendment to the IQT/AT&T ICA ("First Amendment") amended the original Agreement by implementing the TRO related decisions and in particular the TRRO.[6] Under the First Amendment, AT&T is not required to provide UNE-P to IQT to serve customers for which IQT has generated <u>and</u> AT&T has accepted valid service orders for UNE-P on or after to March 11, 2005.[7]

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[5] However, CLECs may still obtain loop/switching/transport combinations from AT&T at market-based rates in an arrangement called Local Wholesale Complete ("LWC").

[6] See the First Amendment to IQT/AT&T's ICA.

[7] *See*, sections 0.1.12, 2.1.1, 2.1.3, 2.1.3.4 of the TRO/TRRO Attachment to the First Amendment.

Note that IQT's ICA (with AT&T) was approved by the Commission in Docket No. 06-0630 on October 25, 2006 and took effect ten days later on November 4, 2006. And the First Amendment was approved in Docket No. 06-0631 on November 21, 2006 and took effect ten days later on December 1, 2006. Both the ICA and First Amendment took effect long after the TRO and TRRO became effective and long after the transition period proscribed in the TRRO ended. So, IQT could not have utilized UNE-P to serve any (mass or enterprise market) customers. The assertion that AT&T forced the migration of its traffic (from UNE-P) to resale is totally absurd. The claim of "AT&T's efforts to eliminate IQ Telecom's legal rights to lease network facilities as an unbundled network elements platform" is also baseless, given that IQT has never had such legal rights since the effective dates of the ICA and First Amendment. AT&T could not have eliminated a legal right that IQT never had under the parties' ICA.

Q. Please explain how this has any bearing on whether IQT had not accurately presented evidence to support its ETC petition in Docket No. 08-0453.

A. The above discussion provides further evidence that IQT was not forthright with the Commission in the wireline ETC proceeding. Particularly, this suggests that IQT did not accurately inform the Commission regarding how it provides services and whether it met the facilities requirement of section 214(e)(1)(A).

Q. Please explain.

A. Based on IQT's rebuttal testimony and its subsequent responses to Staff Data Requests, the reason that it provides services through resale to almost all

customers is that it may not purchase UNE-P from AT&T under the ICA, as amended by the First Amendment. The First Amendment, however, took effect on December 1, 2006, nearly twenty months before IQT submitted its ETC petition in Docket No. 08-0453. By year's end 2006, and especially at the time it submitted its ETC petition in July 2008, IQT would have known the manner in which it would serve customers in the future – serving all or almost all customers through resale. Yet, in the ETC petition IQT unequivocally stated that it "offers all of the supported services enumerated under Section 254(c) using facilities obtained as UNEs from SBC" when attempting to show that it had met the facilities requirement for ETC designation. Staff Ex. 1.0 at 12 (emphasis added). It made no mention of the fact that it serves almost all of its customers through resale. Through this omission, IQT made a material misrepresentation of fact in the Petition regarding the manner in which it provides services.

By "using facilities obtained as UNEs from SBC", IQT appears to refer to combinations of loop, local switching, and transport (i.e., UNE-P) from AT&T.[8] As noted, IQT had no legal rights to purchase UNE-P from AT&T at any point after the effective dates of the ICA and First Amendment. It could not possibly have offered supported services using UNE-P obtained from SBC at the time it submitted the ETC petition.

As acknowledged, IQT serves almost all of its customers through resale and the remaining, small portion of customers over leased facilities. IQ Rebuttal

[8] *See also* IQT Responses to Staff DRs QL-9.01 to QL-9.07.

at 13. For example, IQT served, through resale, nearly 93% of its customers and more than 99.8% of its Lifeline customers, respectively, in the first eleven months of 2010. IQT served the remaining small portion of its customers over facilities leased from AT&T.[9] It is only accurate and correct to characterize IQT as it is: a carrier that serves almost all of its customers through resale and serves the remaining, small portion of its customers over leased facilities.

IQT inaccurately and incorrectly informed the Commission of the manner in which it provides services in an attempt to show that it met the facilities requirement for ETC designation. Providing services over leased facilities to a small or *de minimis* portion of customers is not sufficient to meet the facilities requirement for ETC designation. Had IQT disclosed the fact that it served almost all of its customers through resale, the Commission would likely have rejected its petition.

Q. Has the FCC considered the level of facilities required to meet the facilities requirement of section 214(e)(1)(A)?

A. Yes. The FCC has discussed the issues regarding the level of facilities required to meet the facilities requirement of section 214(e)(1)(A). In fact, the FCC addressed the issues in the Universal Service Order.[10] The FCC interpreted the term "facilities" to mean any "physical components of the telecommunications network that are used in the transmission or routing of the services designated for

[9] *See* IQT responses to Staff DRs QL-1.19 to QL-1.23. In fact, IQT reported "UNE-P" lines in its responses. The "UNE-P" lines must have been LWC lines, as IQT could not have used UNE-P from AT&T to serve customers since the effective dates of its ICA and First Amendment.

[10] The FCC, Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) ("USF Report and Order").

support under section 254(c)(1)." USF Report and Order at 151. Certainly, carriers may meet the facilities requirement by providing service wholly over their own facilities – i.e., providing each and every supported service over own facilities. Notwithstanding, the FCC found that section 214(e)(1)(A) does not require carriers to provide all supported services over their own facilities. Instead, carriers may satisfy the facilities requirement by providing at least one supported service over own facilities and the remaining supported services through resale:

> [We] find that the statute does not require a carrier to use its own facilities to provide each of the designated [supported] services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services.
>
> … …
>
> We conclude, therefore, that, if a carrier uses its own facilities to provide at least one of the designated services, and the carrier otherwise meets the definition of "facilities" adopted above, then the facilities requirement of section 214(e) is satisfied. For example, we conclude that a carrier could satisfy the facilities requirement by using its own facilities to provide access to operator services, while providing the remaining services designated for support through resale.

USF Report and Order at 169.

Generally speaking, the FCC has determined that carriers may satisfy the facilities requirement by providing any number – ranging from one to all – of the supported services over own facilities and by providing the remaining (if any) supported services through resale. Under no circumstances did the FCC interpret the statute's prescription of no minimum or specific level of facilities to mean that carriers may meet the facilities requirement in an area (such exchange) by providing services to any number (such as 1%) of the customers in the area (such

as exchange) over own facilities and the remainder (such as 99%) of the customers in the area (such as exchange) through resale.

Most importantly, the FCC has explicitly and emphatically proclaimed that carriers may not claim universal service support for those customers served through resale:

> [W]e conclude that a carrier that serves customers by reselling wholesale service may not receive universal service support for **those customers that it serves through resale alone**. USF Report and Order at 174 (**emphasis added**)

Clearly, carriers that serve some customers over own facilities and all other customers through resale may not claim universal service support for those customers that it serves through resale.

In summary, the FCC has determined that carriers may meet the facilities requirement by providing any number – ranging from one to all – of the supported services over own facilities and the remaining (if any) supported services through resale. But the FCC has not concluded that carriers may meet the facilities requirement in an area (such as exchange) by providing services to any number of customers in the area (such as exchange) over own facilities and the remaining portion of the customers in the area (such as exchange) through resale. Most importantly, the FCC has explicitly and emphatically concluded that a carrier may not claim federal universal service support for those customers that the carrier serves through resale.

Q. Had it provided an accurate and correct representation regarding the manner in which it provides service, would IQT have been designated as an ETC in Docket No. 08-0453?

A. Not likely. Had IQT provided an accurate and correct representation of the manner in which it provides services, Staff certainly would have opposed its ETC Petition. As noted, IQT provides all supported services to almost all of its customers through resale. Staff Ex. 1.0 at 62-63. It provides services to the remaining small portion of its customers through leased facilities. Id. As discussed below, a carrier that provides services to a portion of the customers through resale and to the remaining portion of the customers over own facilities does not provide services to customers using a combination of own facilities and resale. As a result, IQT does not meet the facilities requirement of section 214(e) in any area (or exchange) in Illinois.

Q. How did IQT attempt to show that it actually provides service using a combination of resale and owned leased facilities or UNEs?

A. In the attempt to disprove that it improperly obtained more than 99% of the federal low income support, IQT argues that it in fact provides service using a combination of its own facilities and resale:

> Section 54.201(d) of the Code of Federal Regulations, concerning low income support, permits a common carrier designated as an eligible telecommunications carrier to receive universal service support in accordance with Section 254 of the Act, provided the carrier offers services supported by federal universal service support mechanisms "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 ETC)." As demonstrated by the information provided in response to Staff Data requests, **IQT offered services using a combination of resale and owned leased facilities or UNEs**. IQT Rebuttal at 12-13 (**Emphasis Added**).

As noted above, the FCC has rejected this interpretation in 1997, concluding that: "a carrier that serves customers by reselling wholesale service may not receive universal service support for those customers that it serves through resale alone." USF Report and Order, ¶174 (emphasis added). The assertion that IQT offers service "using a combination of resale and owned leased facilities or UNEs" is self-serving, misguided, contrary to the FCC's conclusions on the subject, and contradicted by evidence on record. If – as is undoubtedly the case – IQT served 99.8% of its Lifeline customers through resale alone, it is very clearly in violation of the rule.

By asserting that it provides services through a combination of resale and leased facilities, IQT apparently means that it provides services to almost all customers through resale alone and to the remaining few customers over leased facilities. In other words, by combination, IQT refers to a combination of almost all customers served through resale alone and the remaining few customers served over leased facilities. However, this is not how the FCC interpreted the phrase "using its own facilities or a combination of its own facilities and resale."

As discussed earlier, the FCC has concluded that carriers may satisfy the facilities requirement by providing any number – ranging from one to all – of supported services over own/leased facilities and the remaining (if any) supported services through resale. USF Report and Order at 169. The FCC has not concluded that a carrier may satisfy the facilities requirement for an area (such as exchange) by providing services to any number of its customers in the area (such as exchange) over own facilities and the remaining number of its customers in the

area (such as exchange) over resale. In particular, the FCC has not concluded that a carrier may satisfy the facilities requirement for an area (such as exchange) by providing services to 1% of its customers in the area (such as exchange) over own facilities and the remaining 99% of its customers in the area (such as exchange) over resale.

IQT misapplied the term "combination" and as a result reached an erroneous interpretation of the statute, which is inconsistent with the FCC's conclusion. Moreover, under IQT's misguided reading of the statute, a carrier would satisfy the facilities requirement for an Illinois exchange if it provides supported services to one customer in the exchange over leased facilities. By providing supported services to one customer over leased facilities in any Illinois exchange, a carrier would be entitled to claim federal universal service support for all of its customers throughout the exchange. IQT's reading of the statute is not only inconsistent with the FCC's conclusion but it also effectively renders meaningless the facilities requirement of section 214(e)(1)(A).

Q. IQT contends that it is not required to maintain a certain percentage of resale or facilities-based customers. Do you have a comment?

A. Yes. In the attempt to disprove that it improperly obtained more than 99% of the federal low income support, IQT contends:

> [T]he rules do not require that the eligible telecommunications carrier maintain a certain percentage of resale market or UNEs. IQ Rebuttal at 13.

As noted above, this statement is flatly contrary to the law, inasmuch as the FCC has stated that ETCs cannot collect universal service support for those customers

served exclusively through resale. Nonetheless, IQT took the misguided position that it would satisfy the facilities requirement of section 214(e)(1)(A) in an area (such as exchange) if it provided supported services to one customer in the area (such as exchange) over leased facilities. As discussed, the FCC has interpreted the statute to mean that carriers may satisfy the facilities requirement by providing any number – ranging from one to all – of supported services over their own facilities and the remaining (if any) supported services through resale. The FCC has not concluded that a carrier may satisfy the facilities requirement for an area (such as exchange) by providing supported services to at least one customer in the area (such as exchange) over own facilities. Likewise, the FCC has not concluded that a carrier may satisfy the facilities requirement for an area (such as exchange) by providing supported services to any percentage of the customers in the area (such as exchange) over own facilities. IQT has chosen to ignore the FCC's interpretation of the statute and instead produced a self-serving and misguided reading of its own.

3. Summary

Q. Please summarize the factors that lead the Commission to designate IQT as an ETC.

A. Based on what has been uncovered in this proceeding, IQT obviously did not meet all the requirements for ETC designation in Docket No. 08-0453. First, IQT was unable to offer local service comparable to that of the ILEC's. Based upon IQT's own evidence, the Basic Plan [unlimited local calling at $29.99 per month] presented in its ETC petition as evidence that it offers a comparable local

plan turned out to be economically unsound for IQT. IQ Rebuttal at 7. But IQT did not inform the Commission of this fact nor did it present the residential plan which it apparently deemed to be economically sound, namely the Local Package [unlimited local callings with two features at $56.99], to show that it met the "comparable local plan" requirement for ETC designation.

Second, IQT did not meet the facilities requirement of section 214(e)(1)(A). IQT provides services to a predominant portion of its customers through resale and to the remaining small portion of its customers over leased facilities. But it did not and does not provide services throughout any area in Illinois using leased facilities or using combination of leased facilities and resale. Thus, it did not and does not meet the facilities requirement for the requested ETC areas in Docket No. 08-0453.

Although IQT failed to meet two crucial requirements for ETC designation it was able to convince the Commission that it met all requirements, by various misrepresentations and inaccurate statements of fact. IQT persuaded the ALJ, Staff and the Commission that it offers a comparable local by presenting a discontinued local plan (Basic Plan) – which it claimed to be economically unsound – as evidence that it offered comparable local service. It also represented to the ALJ, Staff and the Commission in the ETC petition that it offered supported services using UNEs obtained from SBC (i.e., UNE-P), which it had no the legal right to use at any point since the effective dates of its ICA or the First Amendment to the ICA. In short, the Staff recommended and the Commission

granted the ETC designation based upon IQT's numerous misrepresentations and inaccurate statements of material fact.

B IQT did not comply of section 501 of the Illinois Public Utilities Act ("IPUA")

1. IQT invokes a section 13-509 defense for its section 13-501 offense

Q. How does IQT attempt to explain away its noncompliance with section 13-501 of the IPUA?

A. First of all, IQT does not dispute the discrepancies between the services it offered to customers and the tariff on file with the Commission. Nonetheless, it denies that it has failed to comply with the tariff filing requirements of the Commission or section 13-501 of the IPUA:

> IQT does not agree that it failed to comply with the Commission's tariff filing requirements. IQ Rebuttal at 7.

It then attempts to justify the discrepancies between services offered to customers and the tariff on file with the Commission by invoking Section 13-509 of IPUA. Specifically, IQT states that its service offerings – in particular those that do not comport with the tariff on file with the Commission – are actually not subject to the tariff filing requirement of the Commission or Section 13-501. IQ Rebuttal at 7-8. Rather, IQT argues they are subject to Section 13-509 of the IPUA, and thus, IQT could not have failed to comply with the [inapplicable] tariff filing requirement of the Commission or Section 13-501 of the IPUA:

> Under the Section 13-509 of the Act (220 ILCS 5/13-509), IQT is authorized to provide these services [local, interexchange and resold services] to customers by agreement on such terms and for

> such rates and charges as are reasonable without regard to any tariffs it may have filed with the Commission with respect to such services. To the extent the services provided by IQ Telecom to its Lifeline and Linkup customers different from the IQT tariffs, the rates and terms were agreed in writing between IQT and the customer. IQ Telecom charges its customers according to the agreed terms and rates. IQ Rebuttal at 7-8.

Basically, IQT contends that its noncompliance with Section 13-501 is not really noncompliance: it was actually offering services under section 13-509 of the IPUA through individually negotiated contracts whenever it offered services that do not comport with the tariff on file with the Commission.

Q. Does IQT claim that it has complied with section 13-509 of the IPUA?

A. No. Even though it contends that it was offering services under Section 13-509, instead of Section 501, IQT concedes that that it may not have complied with Section 13-509 of the IPUA:

> IQT may have advertently omitted to file with the Commission list of services that IQT was authorized to provide on terms and rates that differed from the IQT tariffs. IQ Rebuttal at 7.

It has further specifically conceded that IQT has failed to comply with the requirement to file a list of such agreements within 30 days of execution as required under section 13-509 prior to June 15, 2010. Yet, it claimed:

> It followed the spirit of the Illinois statute authorizing competitive services to be offered on terms and rates that differed from the tariff by agreement, and complied with responding to Staff's requests for <u>copies of the agreements</u>, but recognizes that in advertently omitted to timely file a list of such agreements when previously required. IQ Rebuttal at 9 (<u>emphasis added</u>).

So, IQT contends that, regardless of its failure to comply with the statutory requirement of section 13-509, it has followed "the spirit" of the Illinois statue

(Section 13-509). However, contrary to its assertion, IQT has not provided, nor has Staff requested, any Section 13-509 agreements in this proceeding. What Staff has requested and IQT has provided are the Lifeline/Linkup Program Enrollment Forms. These forms do not constitute Section 13-509 agreements.

Q. Please explain why the enrollment forms do not constitute Section 13-509 agreements.

A. Part 757 requires that customers self-certify their eligibility for Lifeline support by completing a Lifeline/Linkup enrollment form. Carriers do not have to adopt the enrollment form contained in Exhibit E of Part 757. But they must provide enrollment forms that are adequate for customers to certify their eligibility. IQT has listed its two residential service packages in the mid section – which occupies about a quarter of the page – of its Lifeline/Linkup enrollment forms. By this, IQT proclaims that it has transformed its Section 13-501 residential services into section 13-509 residential services. Contrary to such wishful thinking, IQT has not, and could not have, transformed the Lifeline/Linkup enrollment forms into Section 13-509 agreements by listing the residential services on the forms.

Under Section 13-501 carriers may not offer services unless and until they have filed tariff (with the Commission) for such services. In other words, carriers must offer telecommunications services pursuant to the specific rates, terms and conditions of the tariff. Section 13-509, however, allows a carrier offering competitive telecommunication services to deviate from the tariffed provisions of

Section 13-501 on an Individual Case Basis (ICB).[11] Particularly, Section 13-509 allows a carrier to negotiate a contract with a particular customer for a rate that deviates from the tariffed rates. ICB contracts that deviate from tariffed offerings have, in the past, generally been for a large business customer or a data service. These offerings have contained a component of the service that is volume or distance driven. The amount of traffic or the distance of the service allows the carrier to deviate from a tariffed rate to an amount that makes a contract advantageous to both the carrier and the customer. The Commission has not seen ICB contracts for either residential or basic business services.[12] I am not an attorney, but it is my understanding that contract offerings for basic services could potentially be construed as discriminatory.

IQT's enrollment forms do not constitute individually negotiated contracts. To begin with, the enrollment forms do not contain all rates (recurring and nonrecurring), terms and conditions for the residential services offered, as required under Section 13-509. IQT's local exchange tariff contains all rates, terms and conditions for IQT's residential services and consists of more than 70 tariff sheets. It would definitely require more than one quarter of a page to spell

[11] This section of the PUA has been revised numerous times over the years with the general result being that the requirements on the companies have been relaxed. Initially, a copy of all contracts entered into between the companies and the customers were required to be filed with the Commission within 10 days of execution. The later requirements were that only a list of contracts was to be provided to the Commission with the Commission allowed to ask for copies of specific contracts. The latest (2010) rewrite of the PUA has relaxed the requirements even further to require the list of contracts only upon request of the Commission.

[12] The above information regarding Section 13-509 of the IPUA is provided by Staff tariff expert Kathy Stewart.

out all the rates, terms and conditions for IQT's residential services. IQT must know the number of tariff sheets in its local exchange tariff and must know how many pages it would take to spell out all the rates, terms and conditions for its residential services. IQT cannot reasonably contend that a quarter of the space on the one-page enrollment forms contains all rates, terms and conditions for the two residential services listed on the enrollment forms, and in fact, it does not.

Moreover, the enrollment forms are certainly not negotiated, and much less individually negotiated, as is required under Section 13-509. No negotiation occurred between any individual residential customer and IQT for the rates (nonrecurring or recurring), terms or conditions for the residential services listed on the enrollment forms. IQT has unilaterally set the specific rates, terms and conditions for its residential services. So, the Lifeline/Linkup enrollment forms do not and cannot constitute individually negotiated contracts under section 13-509 of the IPUA.

Q. Do you have any further comment regarding IQT's Section 13-509 defense?

A. Yes. The claim that IQT has offered services under Section 13-509 of the IPUA and has not violated Section 13-501 is refuted by its own hasty tariff filing between mid December 2010 and mid February 2011. During the two month period after I issued Data Requests regarding its tariffed services, IQT made more tariff filings than it did during the preceding seven years. It made two tariff filings between April 2003 and mid December 2010. In contrast, it made three tariff filings between mid December 2010 and mid February 2011 to remove

inconsistencies between the tariff and services listed on the Lifeline/Linkup enrollment forms. Staff Ex. 1.0 at 21-23. If IQT had been offering services under Section 13-509 as claimed, it would not have needed to bring the tariff in line with services allegedly offered under Section 13-509. IQT's hasty tariff filings refute the claim that the Company has been offering services under Section 13-509 and thus not are required to file tariff.

All in all, IQT's Section 13-509 defense is not credible or valid but is contradicted by its own hasty tariff filings. The misguided attempt to use Section 13-509 to cover up Section 13-501 violations is not testament of a good faith effort to address the Section 13-051 violations (i.e., offerings services that do not comport with the tariff).

2. IQT invokes an "it is the outside consultant's fault" defense

Q. Has IQT conceded that it has failed to comply with Section 13-501?

A. No. Despite the indisputable fact that it has systematically offered services that do not comport with the tariff, IQT nonetheless "does not agree that it failed to comply the Commission's tariff filing requirements." IQ Rebuttal at 7. In addition to the Section 13-509 defense discredited above, IQT has attempted to pass all the (remaining) blames for its noncompliance to its outside consultant:

> In fact, since receiving certification to operate by the Commission, IQT relied entirely upon such third party consultants, attorneys and experts to handle the tariff filing function. Only during this Docket did IQT become aware of any issues with the IQT tariffs or other filings in Illinois. IQ Rebuttal at 9.

… …

> IQT outsourced certain specialty functions under this [Lifeline/Linkup] program to third party experts. In this case, the consultant engaged to ensure tariff filing compliance, failed to perform this function satisfactorily. IQ Rebuttal at 16 (illustration added).

IQT basically asserts that it was the consultant – who was entrusted with tariff filing – that failed to bring tariff in line with the services that it offers, a fact that it professes to be unaware of until this proceeding. This assertion is equivalent to putting the cart before the horse. Section 13-501 clearly provides:

> No telecommunications carrier shall offer or provide telecommunications service unless and until a tariff is filed with the Commission which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges, or other geographical area or areas in which the service shall be offered or provided. 220 ILCS 5/13-501.

Under the explicit language of Section 13-501, IQT may not offer a service unless and until a tariff for such a service has been filed. In other words, it may not offer a service that does not comport with the tariff. The outside consultant's tardiness in filing the tariff does not explain why IQT has systematically offered that do not comport with tariff (i.e., untariffed services). The problem with IQT is not that its outside consultant failed to ensure tariff compliance but that IQT has systematically offered services before or without filing tariff for such services.

By claiming that it was totally ignorant of the fact that it has been systematically offering untariffed services (i.e., services that do not comport with the tariff), IQT effectively admits that it has been ignorant of the rates, terms and conditions of the tariff. If this was true, it only shows that IQT has never intended to comply with Section 13-501 or to offer services pursuant to the specific rates,

terms and conditions of the tariff. A carrier that intends to offer services pursuant to the specific rates, terms and conditions of the tariff would find it absolutely necessary to be familiar with the rates, terms and conditions of the tariff. IQT's professed ignorance can only suggest that it has never intended to offer services pursuant to the specific rates, terms and conditions of the tariff as required under Section 13-501.

Q. Please discuss the steps that IQT has allegedly taken to address its violation of Section 13-501 of the IPUA.

A. Having denied that it has failed to comply with Section 13-501, IQT proceeds to describe the steps it has taken to address the outside consultant's failure to bring tariff in line with the services it offers:

> Recognizing the importance of compliance with the Commission's requirements in response to the issues [noncompliance with tariff filing requirement] raised herein, IQT immediately terminated the previous tariff specialist and engaged new tariff filing specialists to assist in the area of tariff compliance, and increased executive involvement with entire tariff filing process. IQ Rebuttal at 9 (illustration added).

The steps that IQT allegedly has taken include one action and one pledge: <u>action</u>: it sacked its tariff consultant, replacing it with a new tariff consultant and <u>pledge</u>: it pledged more executive involvement. Interestingly, IQT has taken a singular action against the outside consultant but no action against any of its own senior management or president for IQT's own systematic regulatory failure. With this, IQ proclaims that none of the Company's senior management team or president is responsible for its long-standing practice of offering untariffed services or for the fact that the Company has been, supposedly, ignorant of the specific rates, terms

and conditions of the tariff. Somehow, the consultant has offered and provided untariffed services on behalf of the Company and without its knowledge. Somehow, the consultant has prevented the Company's senior management or president from knowing the specific rates, terms and conditions of the Company's own tariff. This is, at best, disingenuous, and not credible at all.

IQT's pledge of more executive involvement to ensure regulatory compliance rings hollow, in view of its refusal to take responsibility for its long-standing practice of offering untariffed services and its pledge of compliance in Docket No. 01-0333 and subsequent noncompliance. In Docket No. 01-0333, in an attempt to convince the Commission that it should be granted service authority, the Company made the following pledges:

> The Company, however, will file a tariff before it initiates telecommunications services.
>
> The Company will comply with all applicable Commission rules, regulations and orders, tariffs and other service requirements relevant to the provisions of telecommunication service.
>
> Docket No. 01-0333 Testimony of Shmikler at 5 and 7.

Once granted the requested service authority, the Company took the liberty of discharging itself of the obligation and pledge of filing tariff before initiating a service. Instead, it launched the long-standing practice of initiating services before or without filing a tariff for such services (i.e., offering untariffed services). Thus, the Commission should not take the Company's pledge as evidence that it has corrected its regulatory noncompliance. IQT must demonstrate that it has stayed in compliance with <u>all</u> laws, rules and regulations over a reasonably long period

of time (e.g., two or five years) before its claim of having turned over a new leaf can be accepted.

3. IQT invokes the "others did it too" defense

Q. To support the assertion that it did not fail to comply with Section 13-501, IQT claims that Midwestern Telecommunications, Inc. ("MTI") has offered services that do not comport with the tariff. IQ Rebuttal at 10. Do you have a comment?

A. Yes. In an attempt to argue that it did not fail to comply with Section 13-501, IQT invokes the "others did it too" defense. Specifically, it asserts that MTI has also offered services that do not comport with tariff. MTI's practice, however, has no bearing on whether IQT has violated Section 13-501. The fact that IQT is not alone — or has MTI constantly at its side — in offering untariffed services does not excuse IQT for offering services that do not comport with its tariff or constitutes a valid basis for overlooking IQT's violation of Section 13-501.

4. IQT has a dismal performance in tariff filing

Q. IQT claims that your testimony indicates that it has made "numerous tariff filings with the Commission since the filing of the Lifeline/Linkup tariff on April 4, 2003." Do have a comment?

A. Yes. IQT filed its initial Lifeline/Linkup tariff on April 4, 2003, more than five years before it submitted its ETC petition. Under Section 13-501, IQT is required to offer and provide services pursuant to the tariff. By filing a tariff for services that it did not offer, and in this case could not legally offer, IQT has failed to comply with the spirit of Section 13-501 and misled the Commission and customers. Moreover, IQT did not make "numerous tariff filings" prior to Staff's

inquiry regarding its tariffed services in early December (2010). The Company made two tariff filings during the more than seven year period between April 2003 and mid December 2010.

Furthermore, the Company has demonstrated a serious lack of competence regarding its tariff. Specifically, it did not keep accurate tariff filing records – it could not identify the dates when or what tariffs were filed with the Commission. Nor did it have in its possession copies of tariffs filed with the Commission. Numerous copies of tariffs provided to Staff have, in fact, never been filed with the Commission Staff Ex 1.0 at 21-29. Worst of all, IQT has professed not to know the contents of the tariff, and is thus unaware of the fact that it has been offering services that do not comport with the tariff.

C. Improperly Obtaining Federal Low Income Assistance

1. Obtaining federal low income support with no proper authorization

Q. Has IQT presented evidence or arguments that would alter the finding that it has obtained federal low income support without proper authorization from the Commission?

A. No, it has not. IQT sought ETC designation in Docket No. 08-0453 as a facilities-based telecommunications carrier that "offers all supported services enumerated under Section 254(c) using facilities obtained as UNEs from SBC" (emphasis added). However, IQT instead serves the overwhelming majority of its customers through resale and a small or *de minimis* fraction of its customers over leased facilities. IQ Rebuttal at 13. Additionally, IQT has been obtaining federal low income support for those customers that it serves through resale, which constitute

more than 99% of the customers in its Lifeline program. IQT does not deny any of these facts. Notwithstanding, it maintains, erroneously, that it has been obtaining federal low income support with proper authority from the Commission. In particular, IQT contends that the ETC designation granted in Docket No. 08-0453 permits or authorizes it to obtain federal low income support for those customers that it serves through resale – which represent more than 99% of the customers in the Lifeline program. Id at 6 and 12-13. This assertion is flatly contrary to the FCC's conclusions.

Q. What evidence or arguments has IQT presented to support its contention?

A. In the effort to validate the actions of obtaining federal low income support for customers served through resale, IQT contends:

> As a wireline carrier designated as an ETC for those areas it serves in Illinois, IQT is able to receive federal universal services funds to support its provision of universal services in Illinois. IQ Rebuttal at 6.
>
> … …
>
> Section 54.201(d) of the Code of Federal Regulations, concerning low income support, permits a common carrier designated as an eligible telecommunications carrier to receive universal service support in accordance with Section 254 of the Act, provided the carrier offers services supported by federal universal service support mechanisms "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 ETC)." As demonstrated by the information provided in response to Staff Data requests, <u>IQT offered services using a combination of resale and owned leased facilities or UNEs</u>. Staff correctly states that <u>IQT serves the majority of the customers through resale of another carrier's services. However, IQT's migration to resale arose primarily as a result of ILEC efforts to force the traffic of CLECs to resale, and not by choice. Moreover, the rules do not require that the eligible telecommunications carrier maintain a certain</u>

> percentage of resale or UNEs. IQ Rebuttal at 12-13 (emphasis added).

None of these arguments alter or disprove the fact that IQT has been improperly obtaining federal low income support for customers served through resale. The arguments are irrelevant to this finding, but they can be reduced to the following:

(1) It has met the specific requirements of section 214(e)(1)(A), and has been providing supported services using a combination of leased facilities and resale.

(2) The ETC designation [granted in Docket No. 08-0453] allows IQ Telecom to obtain federal low income support for: (i) customers served through resale, (ii) customers served over own facilities, and (iii) customers served through a combination of own facilities and resale.

Q. Has IQT indeed satisfied the specific requirement of section 214(e)(1)(A) as claimed?

A. No. The claim that IQT has been providing services using a combination of leased facilities and resale is categorically incorrect and reveals that IQT has incorrectly interpreted section 214(e)(1)(A). As it has acknowledged, IQ Telecom provides services to the great majority of its customers through resale and to the remaining, small portion of its customers over leased facilities [from SBC or AT&T.] IQ Rebuttal at 13. By combination, IQT appears to refer to a combination of (i) the majority of its customers served through resale and (ii) the few of its customers served over leased facilities. IQ Telecom contends that the federal rules [47 CFR 54.201(d)] allow it to satisfy the facilities requirement for

an area (such as exchange) by providing services to any portion, however small, of its customers over leased facilities and to the remaining portion of its customers through resale in the area (such as exchange):

> [T]he rules [47 CFR 54.201(d)] do not require that the eligible telecommunications carrier maintain a certain percentage of resale or UNEs. IQ Rebuttal at 12-13 (illustration added).

This interpretation, however, is absolutely contrary to the FCC's interpretation of section 214(e)(1)(A). It also renders meaningless the facilities requirement of section 214(e)(1)(A) of the federal Act. IQ Telecom essentially argues that it may meet the facilities requirement and obtain ETC designation for an area (such as exchange) by providing services to at least one customer (or 1% of its customers) in the area (such as exchange) over leased facilities and to the remaining customers in the area (such as exchange) through resale. And it may obtain federal low income support for customers in the area (such as exchange) served through resale, as long as it provides services to at least one customer (or 1% of its customers) in the area (such as exchange) over leased facilities. This is incorrect.

As discussed previously in this testimony, the FCC has recognized that 214(e)(1)(A) does not prescribe a minimum or specific level of facilities. The FCC has interpreted this to mean that carriers may satisfy the facilities requirement by providing any number – ranging from one to all – of supported services over a carrier's own or leased facilities and the remaining (if any) supported services through resale. Universal Service Order at 169. Under no circumstances has the FCC interpreted section 214(e)(1)(A) to mean that carriers

may meet the facilities requirement in an area (such as exchange) by providing services to any fraction (such as 1%) of the customers over own facilities and the remaining fraction (such as 99%) of the customers through resale in the area (such as exchange). The FCC's interpretation focuses on the supported services, not the customers. The claim that IQT has met the facilities requirement by providing services to a small or *de minimis* portion of its customers over leased facility and the remaining great majority of its customers through resale does not comport with the FCC's interpretation of the statue.

IQT's interpretation of section 214(e)(1)(A) and federal rules must be rejected. Likewise, the assertion that it has been providing services using a combination of leased facilities and resale, and thus has satisfied the facilities requirements, throughout the designated area must also be rejected.

Q. Does the ETC designation in the wireline ETC proceeding allow IQ Telecom to obtain federal low income support for customers served through resale as claimed?

A. No, it does not. In the effort to validate the actions of obtaining federal low income support for customers served through resale, IQ Telecom contends:

> As a wireline carrier designated as an ETC for those areas it serves in Illinois, IQT <u>is able to receive federal universal services funds</u> to support its provision of universal services in Illinois. IQ Rebuttal at 6 (<u>emphasis added</u>).

The claim that the ETC designation granted in Docket No. 05-0453 allows or authorizes IQ Telecom to obtain federal low income support for customers served through resale is categorically incorrect. In seeking ETC designation in Docket No. 08-0453, IQT alleged that it was a facilities-based telecommunications carrier

that "offers all supported services enumerated under Section 254(c) using facilities obtained as UNEs from SBC." It has obtained the wireline ETC designation by making various less-than-accurate representations regarding the local service that it offers and the manner in which it provides the local service. Putting aside the legitimacy of an ETC designation obtained in such a less-than-candid manner, the claim that the ETC designation granted in Docket No. 08-0453 allows IQ Telecom to receive federal low income support for customers served through resale is definitely incorrect. At most, if at all, the ETC designation may allow IQ Telecom to receive federal universal service support as a facilities-based carrier (i.e., for customers served over the company's own or leased facilities and for customers served through a combination of the company's own or leased facilities and resale). Under no circumstances does the ETC designation authorize IQ Telecom to receive federal low income support for customers served through resale, which represent more than 99% of the customers in IQT's Lifeline program.

As noted in Staff's direct testimony, IQ Telecom did not seek ETC designation in Docket No. 08-0453 as a wireline telecommunications reseller or as a wireless telecommunications carrier. Instead, it petitioned the Commission for ETC designation as a facilities-based telecommunications carrier that "offers all supported services enumerated under Section 254(c) using facilities obtained as UNEs from SBC." The ETC designation does not, and should not, allow IQ Telecom to obtain federal low income support for customers to whom it provides services through resale. As it did not seek designation as an eligible

telecommunications reseller in the wireline ETC proceeding, IQT cannot claim that the wireline ETC designation, somehow, allows it to receive federal low income support as a wireline telecommunications reseller (i.e., for customers served through resale).

Federal rule, 47 CFR §54.201(i), precludes the Commission from designating a telecommunications reseller as an ETC. And IQ Telecom has never sought or obtained forbearance from the facilities requirement from the FCC. Had it petitioned the Commission for designation as an eligible telecommunications reseller, IQT would have not been able to meet all requirements for ETC designation.

Most importantly, the FCC has expressly concluded that a carrier may not receive universal service support for <u>those</u> customers that it serves through resale:

> [W]e conclude that a carrier that serves customers by reselling wholesale service **<u>may not</u>** receive universal service support for **<u>those customers that it serves through resale alone</u>**. Universal Service Order at 174 (**<u>emphasis added</u>**).

This prohibition prevents carriers (such as IQT) from receiving federal universal service support that they would not have otherwise received (i.e., support for customers served through resale) by means of serving a few customers in an area (such as exchange) over own/leased facilities. The FCC has made it crystal clear that IQ Telecom may not claim federal universal service support for <u>those</u> customers that it serves through resale, which represent more than 99% of the customers in IQT's Lifeline program.

Q. Please provide the amounts of the federal low income support that IQ Telecom has improperly obtained and thus should return to the USAC.

A. Real that I estimated IQT's total receipts in federal low income support based on the Company's Part 757 Reports. Specifically, I calculated IQT's total receipts between October 2008 and December 2010 in Lifeline, Linkup and Toll Limitation Support (TLS) to be:

Lifeline Support	Linkup Support	TLS	Total Support
$539,136	$1,221,660	$334,776	$2,095,572

I have since obtained information from the USAC website regarding IQT's Projection Override and True-ups from October 2008 to April 2011. Based on the Projection Overrides and True-ups, I calculated the total receipts for different categories of supports:

Period	Lifeline	Linkup	TLS	Total
Oct 08 - Dec 10	$530,120.00	$1,223,700.00	$200,786.00	$1,954,606.00
Oct 08 - Mar 11	$552,172.00	$1,230,690.00	$203,337.00	$1,986,199.00

The calculated amounts include an original projection override and subsequent true-ups. My calculations based on Part 757 Reports produced fairly accurate estimates of the Company's receipts in Lifeline and Linkup support. But the estimate for Toll Limitation Support (TLS) is a little off. Recall that when calculating the TLS support, I assumed that all IQT's Lifeline customers subscribed to the Deluxe Package and none subscribed to the Local Package. The discrepancy between my Part 757 based estimates and USAC data indicates that not all IQT's Lifeline customers subscribed to the Deluxe Package or that IQT did not claim the Toll Limitation Support for all of its Lifeline customers.

Based on the Company's own data, IQT provides services through resale to 99.82% of its Lifeline customers in the first eleven months of 2010. Staff Ex. 1.0 at 56-57. The percentage of customers served through resale does not vary significantly from month to month. Thus, it is reasonable to conclude that IQT serves at least 99% of its Lifeline customers through resale since October 2008. As discussed, IQT is not eligible to receive any federal low income support for those customers that it serves through resale. So the amounts of federal low income support that it has received but not eligible to receive should be at least 99% of its total receipts from the USAC since 2008.

Total Amounts of Improperly Collected Federal Low Income Support				
Period	Lifeline	Linkup	TLS	Total
Oct 08- Dec 10	$524,818.80	$1,211,463.00	$198,778.14	$1,935,059.94
Oct 08 - Mar 11	$546,650.28	$1,218,383.10	$201,303.63	**$1,966,337.01**

As of March 2011, IQT has improperly collected a total of $1,966,337 in federal low income support. So the total amounts of its improper collections in federal low income support should be $1,966,337 plus any collections since March 2011 for customers served through resale. As the FCC has explicitly concluded that carriers such as IQT may <u>not</u> collect federal universal service support for those customers served through resale, the Company should be required to return the improperly collected support to the USAC.

I note that the improper collections in federal Linkup or Lifeline support discussed below should not have significant impact on the amounts calculated above. Specifically, they would only affect the total improper collection if they are associated with customers served over leased facilities. Given that facilities-

based customers represent only a de minimis portion of the total Lifeline customers, the improper collections discussed below should not have significant impact on the improper collections calculated above. Therefore, the total amounts that IQT should be required to pay back to the USAC should be $1,966,337 plus any collections since March 2011 for customers served through resale.

2. Obtaining federal Linkup support where it was Ineligible for Linkup support

Q. Has IQT conceded that it improperly obtained federal Linkup support for the 357 conversion Lifeline customers?

A. No. IQ Telecom disagrees that it improperly obtained federal Linkup support for the 357 conversion Lifeline customers. Instead, it maintains that it was eligible to receive (federal and state) Linkup support for the 357 conversion Lifeline customers. IQ Rebuttal at 13. In support of the assertion, IQ Telecom states the following:

> IQT conversions include customers who had service with another provider, or who moved into a location that had a dormant/suspended service from a previous tenant. IQT incurred costs for activating all such lines with the underlying carrier. As such, all such categorized customers pay IQT's customary line connection charge to commence service with IQT. In fact, the 357 customers identified by Staff, transferred from another CLEC and as new customers for IQT, each qualify for Linkup support. Staff incorrectly defines the customer's categorized as conversions in reaching the conclusion that IQT's request for support was inappropriate. IQT's only error in the process involving the conversions at issue remains the failure to request State support for the 357 customers at issue. IQ Rebuttal at 13 (emphasis added).

However, these arguments do not establish that IQT was eligible to receive Linkup support for the 357 conversion customers.

Q. Did you define "conversion customers" in reaching the finding that IQ Telecom was not eligible to receive Linkup support for the 357 conversion Lifeline customers?

A. Absolutely not. The assertion that I incorrectly defined the 357 conversion Lifeline customers is categorically false. I did not provide a definition of conversions, period. It was IQT that provided a description of the 357 conversion Lifeline customers. In the response to my request to explain why it did not claim state Linkup support for the 357 Lifeline customers, IQ Telecom stated:

> Explanation: We were not requesting support for conversions from the State, **only for new installation**.[13] (**Emphasis added**)

IQ Telecom's explanation unequivocally shows that IQT did not perform "new installation" for the 357 conversion Lifeline customers. Since it did not perform new installation for the 357 conversion customers, IQT was not and should not be eligible to receive federal (or state) Linkup support for providing subsidized installation services. So, it was based on IQT's own description that I concluded that IQT had improperly obtained federal Linkup support for the 357 conversion customers.

Q. Please tell us about IQT's revised description of the 357 conversion Lifeline customers.

A. IQ Telecom provides the following general description of conversion customers in the rebuttal testimony:

> IQT conversions include customers who had service with another provider, or who moved into a location that had a

[13] IQ Telecom Responses to Staff DR QL-5.02. See also, Staff Ex. 1.0 at 73.

> dormant/suspended service from a previous tenant. IQ Rebuttal at 13.

Under this description, the key characteristics of conversion customers appear to be that they had phone service before transferring to IQ Telecom or before relocation. IQ Telecom then particularly describes the 357 conversion Lifeline customers as customers that had transferred from another carrier:

> In fact, the 357 customers identified by Staff, transferred from another CLEC. IQ Rebuttal at 13.

Clearly, IQ Telecom has made a complete reversal in the description of the 357 conversion Lifeline customers. Under the original description, IQ Telecom did not perform new installations for the 357 conversion Lifeline customers.[14] Under the revised version, the 357 conversion Lifeline customers had transferred to IQ Telecom [from another CLEC] and were IQT's new customers that paid line connection charges and for whom IQ Telecom performed service activation. In short, under the revised version, IQ Telecom performed new installation for the 357 conversion Lifeline customers. IQ Rebuttal at 13.

Despite the complete reversal, IQ Telecom has not provided any evidence to support the revision in its statement of the facts. In particular, it has not provided any evidence that the 357 customers had transferred from another CLEC or that it had indeed performed service activation for the 357 conversion customers at the time of enrollment in its Lifeline program. In the absence of concrete and irrefutable evidence, IQT's revision of the facts must be rejected.

[14] IQ Telecom Responses to Staff DR QL-5.02. See also, Staff Ex. 1.0 at 73.

Q. Suppose that the 357 conversion Lifeline customers had transferred from another CLEC, would this means that IQT was eligible to receive Linkup support for the 357 conversion customers?

A. No. In the effort to justify its collection of federal Linkup support for the 357 conversion customers, IQT contends that the 357 conversion customers were its new customers and thus eligible for federal Linkup support:

> In fact, the 357 customers identified by Staff, transferred from another CLEC and as new customers for IQT, each qualify for Linkup support. IQ Rebuttal at 13.

This claim is directly contradicted by the eligibility requirements for federal Linkup support. IQT would be eligible to collect Linkup support if, and only if, the underlying customers are eligible for such support. A Lifeline customer is only eligible to receive Linkup support if he has not previously received Linkup support at his residential address.[15] If the 357 conversion customers had indeed transferred from another CLEC and thus were IQT's new customers, it does not follow that IQT or the customers would be eligible to receive federal Linkup support. Being IQT's new Lifeline customer does not mean that the customer is eligible for federal Linkup support, unless such customers have not previously obtained a Linkup subsidy at their current address. As IQT's Lifeline customers, the 357 conversion customers presumably participate in one or more federal proxy programs. Unless the CLEC from which the customers transferred was not a designated ETC, these customers must have been the CLEC's Lifeline

[15] 47 C.F.R §54.411(c) ("A carrier's Link Up program shall allow a consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously.")

customers (i.e., enrolled in the CLEC's Lifeline program) before transferring to IQT. Presumably, they had received federal Linkup support for commencing Lifeline service with the CLEC (or a previous carrier). Accordingly, they would not be eligible for further Linkup support for commencing Lifeline service with IQT. In this case, IQT would not and should not be eligible to receive Linkup support for the 357 conversion customers.

Transferring from another CLEC does not automatically establish the customers or IQT's eligibility for federal Linkup support. On the contrary, it increases the odds that the customers had received Linkup support before commencing service with IQT. That is, the fact that the customers had transferred from another CLEC means, if anything, that in all likelihood the customers have received Linkup support before commencing Lifeline service with IQT. Thus, neither the 357 conversion customers nor IQT would be eligible for Linkup support, federal or state.

Q. Do the costs incurred by IQT for activating service have bearings on IQT's eligibility for Linkup support?

A. No. In the effort to justify its collection of Linkup support for the 357 conversion Lifeline customers, IQT explains:

> IQT incurred costs for activating all such [conversion] lines. IQ Rebuttal at 13 (illustration added).

IQT seems to argue that since it incurred costs for activating service for the 357 conversion Lifeline customers, it would necessarily be eligible to receive Linkup support for these customers. This is incorrect. Federal Linkup support is not

intended to help a carrier to recover the costs that the carrier incurs for activating service for Lifeline customers. Federal Linkup support is intended to assist low income customers with the customers' costs of commencing phone service (i.e., the line connection charge). The costs that IQT incurs for activating service have no bearing on whether it is or should be eligible for Linkup support. The fact that IQT incurred costs for activating service for the 357 conversion customers does not in any way establish its eligibility to receive Linkup support for the 357 conversion customers. In fact, IQT may not collect a Linkup on behalf of any customer who has not changed primary residences.

Q. Does the customary charge paid by the 357 conversion Lifeline customers sufficiently establish IQT's eligibility for Linkup support?

A. No. In an effort to justify its collection of federal Linkup support for the 357 conversion customers, IQT explains:

> [A]ll such categorized [conversion] customers pay IQT's customary line connection charge to commence service with IQT. IQ Rebuttal at 13 (illustration added).

IQT appears to argue that since the 357 conversion Lifeline customers paid a line connection charge, the customers and IQT must be eligible to receive Linkup support for the 357 customers. Paying a non-zero customary charge, however, does not mean a Lifeline customer is eligible for Linkup support. For a Lifeline customer to be eligible to receive Linkup support, the customer must not have previously received Linkup support. Being IQT's new customers (transferring from another CLEC) does not mean that the customers have not previously received Linkup support at their current address. On the contrary, being IQT's

new Lifeline customers transferring from another CLEC would in all likelihood mean that the customers had received Linkup support before transferring to IQT and would be ineligible for Linkup support for commencing service with IQT, regardless of the non-zero customary charges paid by the customers for service activation.

Q. Please summarize IQT's arguments in support of its collection of federal Linkup support for the 357 conversion Lifeline customers.

A. IQT's arguments or efforts to support its collection of federal Linkup support for the 357 conversion customers are reduced to:

(1) IQT has made a complete reversal in describing the 357 conversion Lifeline customers. IQ Telecom did not perform any new installation for the 357 conversion customers under the original description. But it did perform new installation for the 357 conversion customers.

(2) Based on the revised fact, the 357 conversion customers had transferred from another CLEC, for whom IQT had performed new installation and who had paid a customary charge for service connection. Thus it was eligible for federal Linkup support.

Despite the complete reversal of the facts, IQT has not provided any evidence that the 357 conversion customers had indeed transferred from another CLEC or that it had performed new installations for these customers. However, transferring from another CLEC does not automatically establish the customers or IQT's eligibility for Linkup support. The fact that the customers had transferred from another CLEC means, if anything, that in all likelihood the customers have

received Linkup support before transferring to IQT. Thus, neither the 357 conversion customers nor IQT would be eligible to receive federal or state Linkup support.

Interestingly, throughout the entire discussion regarding its eligibility to collect Linkup support for the 357 conversion customers, IQT makes no mention of the one-time restriction forLinkup support. It does not even pretend to claim that none of the 357 conversion customers had previously received Linkup support prior to commencing (Lifeline) services with IQ Telecom. It has omitted the one-time restriction from the entire discussion as if it were not relevant.

3. Obtaining Inflated Amount of Federal Linkup Support

Q. Has IQT provided any evidence that would cause you to amend the finding that it had claimed more federal Linkup support than it was eligible?

A. No. Though it disagrees, IQT has presented nothing that would cause me to amend the finding that it has improperly claimed an inflated amount of federal Linkup support. In defense of its collection of inflated federal Linkup support, IQT states the following:

> Staff relies upon information contained in IQT tariffs in reaching the conclusion that IQT failed to request correct amounts for Federal Linkup support. As indicated previously, IQT outsourced certain specialty functions under this program to third party experts. In this case, the consultant engaged to ensure tariff filing compliance, failed to perform this function satisfactorily. As such, although IQT's tariff, filed in the applicable time period reviewed, stated an amount at or below $59.99, in practice, IQT invoiced an effective customary charge of $59.99. I attach invoices for non-lifeline customers showing a charged connection fee of $59.99 as Exhibit E. IQ Rebuttal at 14 (emphasis added).

Indeed, IQT did attach [to its rebuttal] invoices showing that it allegedly charged eight customers $59.99 for service activation supposedly performed 2010. However, this does not establish that it may collect federal Linkup support based on the untariffed charges for service activation.

IQ Telecom has repeatedly blamed its tariff consultant for the "tariff problem." Portraying IQT's violation of Section 13-501 as the consultant's failure to keep tariff up-to-date is a poor attempt to distract attention from the real issue. Section 13-501 explicitly states that carriers may not offer or provide a service until and unless they have filed a tariff for such a service. Under the plain language, IQ Telecom must offer and provide services that comport with the tariff on file with the Commission. Regardless of the consultant's performance, IQ Telecom has systematically provided services that do not comport with the tariff. Hence, the problem is not that IQ Telecom (or its consultant) has failed to keep its tariff up-to-date but that IQ Telecom has systematically offered and provided services that do not comport with the tariff.

As admitted, IQT has assessed, in violation of Section 13-501, a customary charge higher than the rates in its tariff. It now argues that it should be allowed to profit from its violations of Section 13-501. In particular, it should be allowed to claim federal Linkup support based on the higher, unauthorized and untariffed line connection charge. After having violated Section 13-501 and overcharged the customers, IQT has the audacity to imply that Staff should not have relied on the tariff or tariffed rates to determine the correct amount of federal Linkup support.

4. Failure to pass through the full amount of federal Lifeline support

Q. Has IQ Telecom been able to show that it passes through the first month Lifeline support?

A. No. Based on the Company's tariff, it offers a first month 100% discount for Local and Deluxe packages. Specifically, it offers its non-Lifeline customers a first month discount of $56.99 for Local and $59.99 for Deluxe packages, respectively.[16] To pass through Lifeline support would necessarily mean that the total first month discount for Lifeline customers should be $68.51 (= $56.99 + $11.52) and $76.49 (=$59.99 + $16.50). However, the total first month discount offered to Lifeline customers is $56.99 and $59.99 for Local and Deluxe packages, respectively.[17] To show that it has passed through the first month of Lifeline support, IQ Telecom explains:

> IQT passes through the full amount of Lifeline support requested or received from the customers. In addition, customers receive an additional discount on the first month of $43.49, which provides each customer with the first month at no cost or free. (The IQT rate is 59.99, minus Lifeline support of $16.50, minus IQT credit of $43.49= $0.00). IQ Rebuttal at 14.

IQT seems to have divided the total $59.99 first month discount to Lifeline customers into two portions: $16.50 Lifeline support (Deluxe) and additional first month discount of $43.49. An artificial division of the total first amount discount does not prove that it has passed through the first month Lifeline support. Instead, IQT must show that the difference between the total first month discount for

[16] See Sections 8.1.1 and 8.1.2.of IQ Telecom Local Exchange tariff.

[17] See Sections 8.1.1 and 8.1.2.of IQ Telecom Local Exchange tariff.

Lifeline customers (= Lifeline support + frontend discount) and the total first month discount for non-Lifeline customers is equal to the Lifeline discount. No matter how IQT slices it, the total first month discount for Lifeline customers is $59.99. So is the total first month discount for non-Lifeline customers. The difference is ZERO, not equal to Lifeline support of $16.50 (Deluxe) or $11.52 (Local). Hence, regardless of any arbitrary or artificial division of the total first month discount, IQT has not passed through the first month Lifeline support.

D. <u>IQ Telecom Lifeline/Linkup programs harm the consumers and are not in the public interest</u>

Q. Have the customers rendered a verdict on IQ Telecom's services?

A. Yes. Customers are generally the ultimate authority to judge whether a product or service is affordable, desirable or competitive. They reflect this judgment by their decision to commence service and their decision to terminate service. Recall that IQT has enrolled 40,714 Lifeline customers between October 2008 and December 2010, for which it procured <u>$1.2 million</u> in Linkup support from the USAC. Based on IQT's own data, 96% of the Lifeline customers enrolled in 2010 have ceased taking service from IQT within three months of commencing it. As it has been offering the same services since designated as an ETC in October 2008, there is no reason to believe that IQT had achieved lower churn rates before 2010. So, it is reasonable to conclude that 96% of the Lifeline customers have departed within three months since October 2008.

IQT has been offering a Local Package and a Deluxe Package in conjunction with the "First Month Free & $25 Second Month Credit" ("FF25SC")

discounts.[18] IQT offers Lifeline support in the amount of $11.52 (Local) or $16.50 (= $11.52 + $4.98 toll limitation support) (Deluxe).[19] Based on customers' phone bills, IQT issues the monthly phone bill (invoice date) a few days after the beginning date of the billing cycle, with the invoice date preceding the bill due date by ten days. This means that the due date for the third month bill would come after the tenth day of the third billing month. That 96% of the Lifeline customers no longer take service from IQT three months after they start doing so indicates that they must have dropped IQT before they had to pay the third month bills, which are billed based on the monthly service charge of $56.99 (Local) or $59.99 (Deluxe). Thus, the 96% of IQ Lifeline customers who cease taking service from IQ within three months have rendered a resounding verdict that the charge of $56.99 (Local) or $59.99 (Deluxe) for IQ Telecom's service is not affordable or competitive.

Q. Has IQ Telecom conceded that it does not offer local service comparable to that of the ILEC?

A. No. On contrary, it contends that it has always provided a local plan that satisfies the "local plan" requirement for designated ETCs. IQ Rebuttal at 7. Despite the claim, IQT has not shown, nor can it show, that it offers local service comparable to that of the ILECs. IQT offers two residential packages: a Local Package and Deluxe Package. The Local Package includes unlimited local calling with two

[18] See IQ Telecom Lifeline/Linkup Enrollment Forms and Sections 8.1.1 and 8.1.2 of the company's Local Exchange Tariff.

[19] See IQ Telecom Responses to Staff DRs QL-4.03.

calling features at $56.99 per month. The Deluxe Package includes all components of the Local Package plus a block of toll minutes at $59.99 per month. Deluxe Package is basically Local Package plus a toll block at additional $3.00 per month.[20] To show that it offers comparable local service, IQT must show that Local Package is comparable to the ILEC's local service.

IQT had the opportunity and obligation to make the showing that it offers local service comparable to that of the ILEC's in the wireline ETC proceeding. But, it decided to present the discontinued Basic Plan [including unlimited local calling at $29.99 per month] as evidence that it offers comparable local service throughout that proceeding. Despite the claim in this proceeding, IQT has not presented any comparative analysis to support the claim. Rather than making an IQT-versus-ILEC comparison, IQ Telecom has attempted to make an IQT-versus-MTI comparison:

> IQT's service package is competitive with other ETCs operating in Illinois, including MTI. For example, IQT Deluxe Package rate is $45.97, while a comparable MTI Supreme Package $44.97. IQ Rebuttal at 19.

IQ Telecom seems to contend that its local rates must be affordable, competitive or comparable because they mirror those of MTI's. However, MTI is a competitive local exchange carrier ("CLEC") in Illinois, not an ILEC. An eligible telecommunication carrier is required to offer local service comparable to that of

[20] See Sections 8.1.1 and 8.1.2 of IQ Telecom Local Exchange Tariffs, and Staff Ex. 1.0 at 33-36.

the ILEC's, not that of another CLEC.[21] Thus, showing that it offers a local usage plan similar to another CLEC does not in any way prove that IQT offers local service comparable to that of the serving ILEC's plan(s), or that it satisfies the "comparable local service" requirement for designated ETCs. IQT has never made the showing that it offers local service comparable to that of the ILEC's.

Q Had it performed a comparative analysis, could IQ Telecom have shown that it offers comparable local service?

A. No. Had it performed an IQT-versus-ILEC comparative analysis, IQT could not have shown that it offers local service comparable to that of the ILEC's, because it does not. A side-by-side comparison would unequivocally reveal that IQT does not currently offer, and since its October 2008 ETC designation has never offered, a local plan comparable to that of the ILEC's.

A proper comparative analysis for IQT's local services would entail a comparison of the total local charge assessed by IQ Telecom on the non-Lifeline customers to the total local charge assessed by the ILEC on the non-Lifeline customers. The total local charge includes the monthly local service charge as well as company surcharges. For example, IQ Telecom charges a FCC Authorized Line Charge of $4.52, a LNP surcharge of $0.28 and a FCC Regulatory surcharge of $0.02 on customers' phone bills. But none of these surcharges is a tax or fee levied by a government body. The proceedings from the

[21] 47 C.F.R. §54.202(a)(4) (A carrier seeking CETC designation shall "[d[emonstrate 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[.]")

charges go directly to IQ Telecom and are part of the gross receipts. Thus, a proper rate comparison should take into account the $4.82 surcharge levied by IQ Telecom and similar surcharges levied by the ILEC.

Q. Would you perform a comparative analysis for IQ Telecom?

A. Yes. As noted, IQ Telecom offers two residential service packages. The Local Package includes unlimited local calling and two calling features (Call Waiting and Caller ID with Name) at $56.99 per month. The Deluxe Package includes all components of Local Package plus a block of toll minutes (500 or 250) at $59.99 per month (i.e., at an additional $3.00 per month).[22] In addition, IQ Telecom assesses $4.82 (= $4.52 + $0.28 + $0.02) in company surcharge on customers' phone bills. The total monthly local charge is $61.81 (=$56.99 + $4.82).

AT&T on the other hand offers local service on a la carte basis as well as local plans. The three most economical local plans are:

(1) Consumer's Choice Basic

- 30 local calls per month, with additional local calls at 6¢ each;
- Monthly service charge: $3.05, $6.03 and $9.50 for Access Areas A, B and C, respectively.

(2) Consumer's Choice Extra:

- Unlimited local calling;

[22] The toll block includes 500 minutes on some enrollment forms between October 2008 and December 2010. The block includes 250 toll minutes on other enrollments form between September 2010 and December 2010. See Lifeline/Linkup enrollment forms as well as sections 8.1.1 and 8.1.2 of IQ Telecom Local Exchange Tariff.

- Monthly service charge: $10, $13, and $16 for Access Areas A, B and C, respectively.[23]

(2) Consumer's Choice Plus:

- Unlimited local calling with two calling features;[24]
- Monthly service charge: $16, $19 and $19.85 for Access Areas A, B and C, respectively.[25]

AT&T also charges a Federal Access Charge of $4.52, which is the same as the FCC Authorized Line Charge levied by IQT. Since IQT's company surcharge ($4.82) is close to AT&T's company surcharge ($4.52), I shall omit both carriers' company surcharges from the local rate comparison.

A review of IQT and AT&T's local plans reveals that IQT's local plan is not remotely comparable to any of the three AT&T plans. The Local Package is not comparable to AT&T's Consumer's Choice Basic or Consumer's Choice Extra in any way. The monthly service charge of $56.99 for Local Package is more than eighteen, nine, and six times as high as the monthly service charge for Consumer's Choice Basic in Access Areas A, B and C, respectively. And it is more than five, four, and three times as high as the monthly service charge for the Consumer's Choice Extra in Access Areas A, B and C, respectively. The Local

[23] These rates were based on AT&T's tariff filing effective on August 4, 2008. They have since been reduced. By the tariff filing effective June 29, 2010, the monthly rates for the Consumer's Choice Extra have been reduced from $10, $13, and $16 to $9, $12, and $15 for Access Areas A, B and C, respectively (i.e., one dollar less than the August 4, 2008 tariff rates).

[24] The two calling features are selected from: Call Waiting, Three Way Calling, Call Forwarding, Speed Calling 8, Automatic Callback, Repeat Dialing, Caller ID, Voice Mail with Voice Mail Feature Package.

[25] The rate for Access Area C was taken from AT&T's tariff filing effective on August 4, 2008. This rate has since been reduced. By the tariff filing effective June 29, 2010, the monthly rate for the Consumer's Choice Plus for Access Area C is reduced from $19.85 to $19.70.

Package is comparable to the Consumer's Choice Plus in package structure, in the sense that both include unlimited local calling and two central office features. But the similarities end there. The monthly service charge for the Local Package is more than or nearly three times as high as the monthly service charge for the Consumer's Choice Plus in Access Areas A-C.

Given the magnitude of disparity in rates, IQT cannot credibly claim that it offers local service comparable to that of the ILEC's. In fact, IQT tacitly admitted this by failing to disclose that it had discontinued the Basic Plan [unlimited local calling at $29.99 per month] and failing to present the Local Package – the replacement local plan – in the wireline ETC proceeding.

Q. How does IQ Telecom reconcile high churn rates with the claim that it offers affordable, desirable or competitive local service?

A. IQ Telecom contends that it offers affordable, competitive and comparable local service. Confronted with high churn rates, IQ Telecom contends that its high churn rates are normal by the industry standard:

> IQT experiences industry standard churn rate for Lifeline/Linkup customers. In fact, IQT and MTI churn rates are identical. IQ Rebuttal at 15.
>
> Indeed, the Testimony of Allen Cherry … … states that UTAC informed IQT, MTI and SOS Telecom by letter that UTAC has 'concerns and questions regarding their rapid increases in claims for reimbursement of installation waivers and apparent low rate of retention of recently-connected customers.'" Id. at 15-16.

IQ Telecom conveniently clarifies that the "industry" does not include AT&T.[26] It further claims that its high churn rates are standard among other CLECs, but cherry picks the comparable carriers whose churn rates advance this argument while ignoring the remaining CLECs in the market. What IQT does show is that its churn rates may mirror those of MTI. This, however, does not in any way mean that IQT's churn rates are acceptable. The fact that IQT is not alone has no bearing on whether its high churn rates are normal.

By excluding AT&T from the industry, IQT has tacitly admitted that AT&T, a traditional ILEC, is vastly more effective than IQT in retaining and serving low income customers in Illinois. This is not surprising, given that IQT simply does not offer local service that compares favorably to any of the three most economic local plans offered by AT&T.

Q. Has IQ Telecom presented additional arguments to reconcile high churn rates with the claim that it offers affordable, desirable and competitive local service?

A. Yes. IQ Telecom argues that high churn rates do not mean that it does not offer affordable, desirable and competitive local service. Instead, it contends that high churn rates are inherent of low income customers:

> The failure to retain such customers remains an issue inherent in the Lifeline/Linkup program in general, and not a result of how IQT manages the Lifeline programs. IQ Rebuttal at 16 (<u>emphasis added</u>).

[26] See IQ Rebuttal at 15, Footnote 2.

> The retention issue [high desertion rate] is pervasive in the Lifeline/Linkup customer segment, and is not a problem unique to IQT. .Id at 18 (illustration added).

IQ Telecom basically contends that it is not that its service is unaffordable, undesirable or not competitive but that it is the nature of the low income customers to quit within three months of enrollment. According to IQ Telecom, low income customers simply have the predisposition to ditch service providers, even when the services are affordable, desirable, and competitive. So, the high churn rates are beyond IQT's control, and thus not a result of how it manages the Lifeline program. By this, IQT disclaims all responsibility for the high churn rates. This claim is, again, without merit.

Between August 1, 2008 and September 9, 2008 when it was before the Commission seeking wireline ETC designation, IQ Telecom presented a <u>discontinued</u> local plan [unlimited local calling at $29.99 per month] as evidence that it offered local services comparable to that of the ILEC's. Since its designation as an ETC, IQ Telecom has been offering a Local Package [unlimited local calling with two calling features] at the monthly service charge of $56.99, which is almost twice as high as the monthly service charge of $29.99 pledged in the wireline ETC proceeding. IQ Telecom now has the audacity to blame the customers for refusing to pay the unaffordable, undesirable and less than competitive rates of $56.99 (Local) or $59.99 (Deluxe).

The fact that the customers bail out in droves before they have to pay the third month's bill, which is billed based on the rate of $56.99 (Local) or $59.99 (Deluxe), clearly shows that low income customers are rational and smart and

they simply refuse to pay the unaffordable and undesirable rates, not that low income customers are prone to ditch service providers even when services are affordable, desirable and competitive.

Q. Does IQ Telecom claim that the FF25SC discounts are intended to address retention issues?

A. Yes. In a vain effort to show that it has attempted to retain customers, IQ Telecom states:

> In an effort to address the retention issues, IQT offered the $43.49 credit first month and $25 credit the second month. IQ Rebuttal at 16.

By the "$43.49 first month credit and $25 credit the second month" IQ Telecom refers to the "First Month Free & $25 Second Month Credit" ("FF25SC") discounts. It basically claims that the FF25SC discounts are part of the effort to retain customers. This is blatantly untrue. Any efforts to retain customers would entail efforts to prevent existing customers from leaving. To prevent existing customers from leaving, IQ Telecom must make the rates in future months affordable, desirable and competitive. Specifically, it must make the rates affordable, desirable and competitive beyond the first month or two, especially in light of the rules governing Linkup service, which prevent customers from getting additional Linkup support at their existing address. The FF25SC discounts do not meet any of the standards for customer retention efforts. Instead of preventing customers from leaving the Lifeline program, the FF25SC discounts – along with affordable line connection – are intended to get the customers on the program. IQT has made no genuine efforts to retain customers, and proclaiming the

FF25SC discounts as the customer retention efforts appears to be nothing more than a desperate and vain attempt to show that it has made such efforts, which it did not.

IQ Telecom has been aware of that few (4%) of its customers are willing to pay the rate of $56.99 or $59.99 and that most (96%) of the customers would bail out by the time they have to pay phone bills based on the rate of $56.99 or $59.99. But it has made absolutely effort to reduce the rates from the unaffordable levels of $56.99 or $59.99. Having no customer retention efforts to speak of, IQ Telecom simply grabs at anything and proclaims it to be a customer retention effort.

Q. Does IQ Telecom claim to have taken any other actions to address retention issues?

A. Yes. In addition to the FF25SC discounts, IQ Telecom also claims to have done the following to retain customers:

> Further, IQT provides late notice letters and uses an IVR system ensure payment of bills. Finally, IQT provides hundreds of customers with payment grace period to accommodate the customers which require more time to make payment. No other carrier offered the combination of solutions and effort to tackle the Lifeline/Linkup retention issues. IQ Rebuttal at 16-17.

Similar to the FF25SC discounts, these two efforts would not prevent customers from leaving. Providing late notice letters and using IVR system to ensure the payment of bills may, or may not improve the likelihood that a customer pays his bill. Providing a grace period to accommodate customers might make it easier for customers to pay the bills at times. But a late notice letter, IVR system or a grace

period does not improve the affordability or desirability of IQ Telecom's unaffordable or/and undesirable services. In particular, none of them serves to reduce the monthly rate from the unaffordable and undesirable level of $56.99 or $59.99. Thus, they cannot be properly described as customer retention efforts. As expected, they did not prevent 96% of IQT's Lifeline customers from leaving within three months.

Q. Has IQ Telecom made any genuine effort to address the retention problems?

A. No. IQ Telecom has not claimed any customer retention efforts except those discredited ones described above. I note that IQ Telecom has been aware of that few (4%) of the customers are willing to pay the rate of $56.99 or $59.99 and that most (96%) of the customers cease taking service if it means having to pay the rate of $56.99 or $59.99. So, IQ Telecom must have understood that the rate of $56.99 or $59.99 is not affordable or desirable for most of the customers. Nonetheless, IQ Telecom has maintained the rate at the unaffordable level of $56.99 or $59.99 since October 2008. The refusal to adjust the unaffordable or/and undesirable rates is not testament of IQ Telecom's genuine desire to retain or to serve low income customers.

Q. Has IQ Telecom explained the difference between "couldn't afford" and "didn't pay"?

A. Yes. IQ Telecom has provided clarification regarding the "didn't pay" and "couldn't pay" customers in Table 9 of my direct testimony. Specifically, IQ Telecom explains that the "couldn't afford" group includes customers that could

not afford the services but called to request service termination. The "didn't pay" group includes customers that did not contact IQ Telecom for service termination but whose services were ultimately terminated due to nonpayment. IQ Rebuttal at 18. The clarification indicates that IQ Telecom's customers use different approaches to execute the decision to terminate service with IQ Telecom or the decision not to pay the unaffordable rates. Customers in the "couldn't afford" group carried out the decision by contacting IQ Telecom for service termination. The customers in the "didn't pay" group carried out the decision by not paying the bills. Needless to say, not paying the bills will ultimately result in service termination. IQ Rebuttal at 18. Thus, both groups of customers have achieved the desired objective of not paying the unaffordable monthly rate of $56.99 (Local) or $59.99 (Deluxe) or terminating service with IQ Telecom.

This clarification does not in any way alter the finding that IQ Telecom does not offer affordable, competitive or comparable local service. If the customers found the service affordable, desirable and competitive, they would not have ditched IQ Telecom and abandoned the services, unless they were moving out of IQT's designated service area. Regardless of the method (requesting service termination or forcing service termination by not paying the bills), customers abandon IQ Telecom because the service is unaffordable or undesirable.

Q. IQ Telecom claims that you criticized FF25SC discounts and claimed a sinister purpose behind the discounts. Do you agree?

A. No, I do not. IQ Telecom makes the following erroneous contention:

> Staff criticizes IQT's front-end discounts, including the $25 credit on the second month, claiming a sinister purpose behind such discounts. However, numerous carriers use such introductory period discounts for a variety of products, services and campaigns. Although unsuccessful, the special discounts illustrate genuine efforts by IQ Telecom to increase customer retention. IQ Rebuttal at 20 (emphasis added).

The assertion that I criticized the FF25SC discounts and claimed "a sinister purpose behind such discounts" is categorically incorrect. I have never claimed or implied that the FF25SC discounts taken in isolation would do harm (and I certainly did not use the word "sinister"). What I have criticized is that IQT uses the FF25SC discounts [along with affordable line connection] to lure or get customers on the Lifeline program and then drive them off the program by maintaining the monthly rate at the unaffordable level of $56.99 or $59.99. The three pieces together have produced the outcome: IQ Telecom has drained $1.2 million in federal Linkup support and $2 million in total federal low income support without much of the intended benefits to the customers, and 96% of the customers have been made worse off.

Q. Has IQ Telecom disproven Staff's clam that it set up the Lifeline/Linkup program primarily to collect federal Linkup support?

A. No. IQ Telecom disagrees that it has set up the Lifeline/Linkup program primarily to collect federal Linkup support from the USAC. To support the assertion, IQ Telecom offers the following arguments or evidence:

> IQT's customer acquisition goal extends beyond the initial Linkup subsidy. … … Had IQT pursued such a business model [i.e., primarily for the purpose of procuring Linkup support], and intend for the customers to disconnect quickly, IQT would never had offered either the $43.49 credit on the first month, or $25 credit on

> the second month. Staff's implications of such a sinister plan do not comport with actions taken by IQT to encourage customer retention, and certainly appear inconsistent with any successful business model. IQ Rebuttal at 20.

Interestingly, IQ Telecom presents the FF25SC discounts as evidence that it has not set up the Lifeline/Linkup program primarily to collect federal Linkup support. It reasons that had it set up the program to collect federal Linkup support, IQ Telecom would not have offered the FF25SC discounts and instead it would have charged the unaffordable rate of $56.99 or $59.99 from day one. That is, had it set up the program to collect federal Linkup support, it would have driven the customers off the program with the unaffordable rate of $56.99 or $59.99 within one month, instead of three. So, according to IQT, the two-month delay confirms that it has not set up the program to collect federal Linkup support.

Despite the claim, the FF25SC discounts do not show that IQ Telecom has not set up the Lifeline/Linkup program primarily to collect federal Linkup support. In fact, discounts (such as FF25SC) are important for a carrier to collect Linkup support, particularly if the carrier has no genuine desire to serve low income customers beyond Linkup support. Without discounts such as FF25SC, a carrier like IQ which does not offer affordable rates simply cannot get customers to take its service, and as a result, it would not be able to collect federal Linkup support.

IQ Telecom implies that had it not offered the FF25SC discounts, it could still enroll customers (and collect federal Linkup support). In other words, it could nonetheless persuade customers to sign the enrollment forms (and collect federal

Linkup support), even when the customers find the service unaffordable from day one. This is highly unlikely; as noted above, competing AT&T offerings are far less expensive.

If a carrier intends to retain customers after obtaining them, one would expect the carrier to make the service affordable, period, not just for a month or two. Making genuine efforts to get customers on the program but making no efforts to keep the customers on the program is not testament of IQ Telecom's genuine intention to retain or to serve low income customers.

The FF25SC discounts do not, in my opinion, constitute customer retention efforts; instead, they appear intended to win customers without regard to long-term retention. The FF25SC discounts are not inconsistent with the hypothesis that IQ Telecom has set up the program to collect federal Linkup support.

Q. IQ Telecom claims that it could not have set up the program to collect Linkup support because it passes through Linkup support. Do you agree?

A. No. In an effort to show that it has not set up the program to collect federal Linkup support, IQ Telecom explains:

> IQT fully passed through federal Linkup subsidies to the end user; as such, IQT could not remain in business relying only upon obtaining federal Linkup subsidies for customers at issue. IQ Rebuttal at 20.

IQ Telecom implies that since it has passed through Linkup support, it could not have profited from service activation for Lifeline customers and thus it could not have set up the program to collect Linkup support. This claim is incorrect.

Passing through federal Linkup support does not mean that IQ Telecom generates no profit from service activation for Lifeline customers. The federal Linkup program is intended to be revenue neutral. Carriers would receive the amount of revenues – equal to the customary charges – from service activation regardless of whether the customers are Lifeline or non-Lifeline customers. Revenues from service activation for non-Lifeline customers come from the customers. Revenues from service activation for Lifeline customers come from two sources: (i) from the USAC: federal Linkup support and (ii) the customer: customary charge net of federal Linkup support. So, service activation for Lifeline customers is not less profitable than it is for non-Lifeline customers. IQ Telecom is incorrect in implying that it could not have profited from service activation for Lifeline customers (and thus remained in business).

Q. Has IQ Telecom presented further arguments to show that it has not set up the program to collect Linkup support?

A. Yes. In an effort to show that it has not set up the program to collect federal Linkup support, IQ Telecom explains:

> IQT's business plan relied upon the retention of non-Lifeline customers and Lifeline customers to succeed. In fact, the majority of IQT's business during the 10/2008-12/2010 time period relates to non-Lifeline customers. For example, IQT collected $1.8 million payments from non-Lifeline customers from 10/2008 to 12/2010. During the same period, IQT received under $1,000,000 in lifeline customer payments. If other ETC participating in federal and state Lifeline/Linkup programs found the "profit center' identified by Staff, IQT did not. IQ Rebuttal at 20-21.

IQ Telecom reasons that it could not have set up the program to collect federal Linkup support because the majority of its business comes from non-Lifeline

customers. It is unclear how IQ Telecom has made the leap from the alleged fact that the majority of its business comes from non-Lifeline customers to the conclusion that it has no incentive to set up the program primarily to collect federal Linkup support.

The claim that the majority of its business comes from non-Lifeline customers is inconsistent with IQ Telecom's own data. IQ Telecom has collected about $2 million from the USAC between October 2008 and December 2010. Staff Ex. 1.0 at 70-71. Additionally, it received "under $1,000,000 in lifeline customer payments." IQ Rebuttal at 20-21. The total receipts from the Lifeline business (= receipts from the USAC + Lifeline customer payment) should be between $2 million and $3 million, exceeding the total receipts of $1.8 million from the non-Lifeline business. So, the claim that the majority of the business came from non-Lifeline customer is refuted by IQ Telecom's own data, measured by the number of customers. The majority of IQ Telecom's business in 2010 did not come from non-Lifeline customers either. For example, the average number of non-Lifeline customers is 1,592 each month for the first eleven months of 2010. In contrast, the average number of Lifeline customers is 3,905 each month for the same period. IQ Telecom's non-Lifeline customers were less than 30% of the total for the first eleven months in 2010.

Further, IQ's website suggests that it is primarily interested in serving Lifeline and Linkup customers. Its homepage reads:

> Welcome to IQ TEL Communications On-Line.

> We provide Life Line/ Link Up home phone services to qualifying participants of Government Programs.

The website then enumerates the Lifeline and Linkup proxy programs. Only after completing this list does it state that: [i]f y you do not qualify for any of these programs, please choose the standard package logo to sign up." The website likewise contains a large and prominent Lifeline / Linkup logo. IQ Telecom's claim that the majority of their business is related to non-Lifeline customers is clearly not borne out by the facts.

Q. IQ Telecom contends that you have failed to recognize that both customers and IQ Telecom would benefit when customers remain on the IQ Telecom program. Do you agree?

A. No. In defending the performance of its Lifeline/Linkup programs, IQ Telecom alleges that I have failed to realize that "both customers and IQT benefit when customers remain on the IQT program." IQ Rebuttal at 19. This claim is baseless and also refuted by what I have repeatedly argued in this proceeding.

As repeatedly stated, the universal goal of the federal low income program is to get customers on the program <u>and</u> to keep the customers on the program. Keeping customers on the program is an essential part of achieving the universal goal of the federal low income program. It is disingenuous of IQ Telecom to claim that I do not recognize the benefits [to customers] of keeping the customers on the program. The problem is not that I have failed to recognize the benefits [to customers] of keeping the customers on the program, but that IQ Telecom has made no effort to keep customers on the program. In fact, IQT Telecom has

induced customers to take its service through offering the discount, collected federal Linkup support, and then lost almost all of the customers.

I note that the federal low income program is intended to benefit low income customers, rather than carriers. Benefits accruing to carriers are not part of the consideration in determining whether to designate carriers as ETCs. The benefits accruing to IQ Telecom are not part of the decision.

Q. Did you commend IQT Telecom for its success in getting customers connected?

A. No. As I have repeatedly stated in this proceeding, IQ Telecom has won Lifeline customers but utterly failed to retain the customers on the program. In this context, my observation is not a commendation of IQ Telecom's performance, but rather a condemnation of it. By getting customers on the program for 90 days and thereafter losing them, IQ Telecom has drained about $2 million from the federal low income funds without the intended benefits inuring to the customers. Keeping customers connected for a month or two is not the goal of the federal Linkup program or how the federal Linkup funds should be spent.

Q. IQ Telecom claims to have successfully penetrated the low income market. Do you agree?

A. No. Market penetration in telecommunications refers to the percentage of households or customers that have a telephone or are connected to the PSTN. By successful penetration, IQ Telecom appears to refer the 40,714 customers that it

enrolled between October 2008 and December 2010, for which it has collected $1.2 million in Linkup support and about $2 million in total support from the USAC. IQ Telecom has forgotten the 96% Lifeline customers that it lost, and who are no longer eligible for Linkup support at their existing addresses. IQ Telecom's so-called successful penetration fails to account for 96% roll back in customers who it failed to retain.

Q. IQ Telecom claims that the Lifeline program has benefited the customers. Do you have comments?

A. Yes. In defending the Lifeline/Linkup programs, IQ Telecom contends:

> In successfully penetrating this [low income] market, IQT's program improved many lives by allowing Americans with limited means to have access to basic communications, and helped save lives by allowing consumers place emergency calls. In some instances, the customers denied services by AT&T sought refuge with IQT. IQT invested considerable resources in securing and retaining customers. IQ Rebuttal at 19.

Presumably, by improving many lives, IQ Telecom refers to the 4% of IQ customers that do not abandon IQ within three months. It is possible that IQ Telecom may have improved the lives of the about 1,600 (or 4%) customers that have enrolled in the program but do not abandon IQ within three months by using the federal low income funding (Lifeline and Linkup). It, however, collected federal Linkup support in the names of 40,714 customers, the 96% customers that remained with IQ Telecom for less than three months. It cannot honestly claim that it has improved the lives of the 96% customers. Nor can it honestly claim that it has achieved the universal service goal with respect to the 96% customers, because it did not. By commencing service with IQ Telecom, the 96% customers

have used up the one-time Linkup benefits at their existing addresses. By charging unaffordable rates IQ Telecom has caused 96% of its customers to abandon the program within three months. IQ Telecom has not improved the lives of this 96% customers, and collecting support for 40,714 customers to improve the lives of 1,600 customers, assuming that this is the case, is not a success story; rather, it is a dismal failure. Nor it is how the federal low income fund should be used.

Competitive ETCs often argue that they are more effective in promoting universal service because they enroll customers rejected by traditional local exchange carriers (ILECs). IQ Rebuttal at 16. There is, however, no concrete evidence to support this. In particular, IQ Telecom has not provided any concrete evidence that it has indeed enrolled customers denied services by AT&T or how many such customers it has enrolled, or most importantly, how long it has kept such customers on the program before its unaffordable rate caused them to leave the program.

Q. Please provide a summary of how IQ Telecom has harmed consumers and the public interest.

A. IQ Telecom has not provided any argument or evidence that would cause me to amend the finding that it has harmed consumers and the federal low income fund. The universal service goal of the federal low income program is to get customers connected <u>and</u> to make sure they stay connected. IQ Telecom has failed to achieve this. IQ Telecom is aware of that the majority (96%) of the Lifeline customers do not find the monthly rate of $56.99 and $59.99 affordable or

competitive. Nonetheless, it has refused to reduce the monthly rates from the unaffordable levels since October 2008. As a result, it has been systematically forcing customers off the program in droves with unaffordable rates. In doing so, IQ Telecom not only has failed the universal goal of the federal/state low income program but also has demonstrated that it has no genuine intention to serve and retain low income customers.

IQ Telecom has enrolled 40,714 Lifeline customers between October 2008 and December 2010, for which it has collected $1.2 million in federal Linkup support and $2 million in total federal low income support. Most of the Lifeline customers have bailed out in less than three months and by yearend 2010, only 3,077 remained. The Company has failed to retain the Lifeline customers by refusing to reduce the monthly rates from the unaffordable levels of $56.99 and $59.99. This failure has caused the USF fund to be used to subsidize the cost of commencing phone services that remain active for less than three months. This is a waste of federal Linkup assistance funds.

IQ Telecom's practice – getting customers on the program but not keeping the customers on the program – has also deprived the 96% low income customers of an affordable, or the only affordable, means to get connected to the PSTN. By failing to make customers fully aware of the one-time restriction for a Linkup subsidy and by offering $0.00 net installation charge and attractive introductory discounts (FF25SC), the Company has succeeded in getting the customers on the program. Yet, by refusing to offer affordable or competitive services beyond the

introductory period has compelled its customers to bail out in less than three months, thus making them ineligible for additional Linkup service.

E. IQT failed to comply with federal rules governing contribution and recovery of contribution

Q. You have discussed how IQT has wastefully spent federal USF funding and harmed the consumers. Has IQT contributed to the federal USF fund?

A. The Company asserts that does contribute to the federal USF fund, but it does not explicitly asserts that it has correctly contributed to the federal USF. IQ Rebuttal at 5. Indeed, it appears that it has not corrected contributed to the federal USF. The Universal Service Administration Corporation ("USAC") determines the federal USF contribution amount for each carrier on a quarterly basis based on information provided by carriers on FCC Form 499-Q (quarterly reporting worksheet), with annual true-up based on information on FCC Form 499-A (annual reporting worksheet). Underreporting of interstate/international revenues on Forms 499 would unavoidably cause the USAC to incorrectly assess smaller contributions.

Q. Has the Company accurately reported revenues on Forms 499?

A. No. Based on my review of its Form 499 filings, the Company has not accurately reported its *billed* revenues, which consist of total revenues billed to customers during the filing period with no allowance for uncollectibles, settlements or out-of-pocket adjustments.[27] I will present a few examples, some of which indicate

[27] *See*, Instructions for 2011 Telecommunications Reporting Worksheet (FCC Form 499-A), at 13.

that the Company has substantially underreported billed revenues, which would unavoidably result in the Company contributing a lower but incorrect amount to the federal USF. First, IQT reported $47,932 in billed access revenues on Line 304.1 and $1,753,760 in billed revenues from federal/state USF on line 308 of Form 499-A. But, it reported zero total revenues from resale on Line 315, though the total revenues on Line 315 is supposed to be the total of all amounts on Lines 303 through 314, not zero as the Company reported.[28] IQT has underreported revenues in all columns of Line 315 (Form 499-A).

Second, IQT reported $548,761 in "carrier's carrier" billed revenues on Line 115 of Form 499-Q for the fourth quarter of 2010. But it reported "0" on Line 115 for the three preceding quarters as well as for the subsequent quarter, respectively. This implies that IQT generated more than $0.5 million in billed revenues from wholesale in the fourth quarter of 2010. But it generated no such revenues in prior or subsequent quarters. While not impossible, this is rather irregular and does not appear to be consistent with the annual reporting worksheet Form 499-A.

Q. Please explain how IQT underreported revenues from federal/state USF support.

A. IQT is required to report its receipts from federal and state USF on Line 308 of Form 499-A and identify the interstate/international components in columns (d) and (e). The Company reported $1,753,760 in revenues from the federal/state

[28] See IQT FCC Form 499-A (for 2010 revenues) provided in responses to Staff DR QL-11.01.

USF but did not allocate any of them to the interstate (or international) column. As is known, the Company has received support from the federal USF. The entry in column (d) on Line 308 should be greater than zero. By leaving column (d) of Line 308 blank, the Company has essentially treated its revenue from the federal USF as intrastate revenues. This clearly is improper.

Q. Please explain how the Company underreported access revenues.

A. The Company reported $47,932 billed revenues from "per-minute" access service under the federal or state access tariff in column (a), Line 304.1, of Form 499-A. But it did not allocate any of the access revenues to interstate or international column. It must have generated some access revenues from originating or terminating interstate/international calls in 2010. It is inconceivable that none of IQT's customers made calls to out-out-state numbers, or received calls from out-of-state numbers, during the entire year of 2010. By leaving blank column (d) of Line 304.1, IQT effectively has treated all access revenues as intrastate revenues and thus underreported the interstate/international access revenues on Line 304.1.

Q. Please explain how IQT underreported revenues from federal/state USF fees on customers' bills.

A. Carriers are required to report revenues from federal/state USF fees on customers' bills on Line 403 (Form 499-A). The Company reported $934 in total billed revenues from federal/State USF fees in column (a) but entered zero in column (d). From the customers' bills, the Company charges federal as well as State USF

fees.[29] By entering zero in the interstate column (d), the Company has effectively treated its billed revenues from the federal USF fee on the customers' bills as intrastate revenues, which is inconsistent with the FCC guidelines:

> Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but may not be reported as intrastate revenues. Filers should report intrastate revenues on line 403 only to the extent that actual payments to state universal service programs were recovered by pass-through charges itemized on customers' bills.[30]

Moreover, the Company has substantially underreported the total billed revenues from federal/state USF fees in column (a) of Line 403. The billed revenues from federal/state USF fees should be the USF fees (on customers' bills) multiplied by customer line counts. Based on IQT's own data, the monthly average number of line counts for each quarter in 2010 is calculated and summarized in Table 1.

Table 1: Monthly Average Line Counts[31]

	2010 Q1	2010 Q2	2010 Q3	2010 Q4
Non-lifeline	1,768	1,824	1,264	1,379
Lifeline	1,875	3,128	6,257	4,264
Combined	3,643	4,952	7,522	5,643

The Company assessed a federal USF fee of $0.78, $0.73, $0.65 and $0.62, for the first, second, third and fourth quarters of 2010, respectively[32]. The Illinois

[29] See IQT Responses to Staff DRs QL-8.01 to QL-8.08.

[30] See, 2011 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 22.

[31] Note that in its responses to Staff DRs QL-1.19 to QL-1.21, IQT provided its Lifeline and non-Lifeline line counts for the first eleven months of 2010. We estimated the December line counts as follows: we assume that the Lifeline line counts from December would decline from the November line counts at the same rate at which the November line counts declined from the October line counts. The December 2010 Lifeline and non-Lifeline line counts are estimated to be 3,614 and 1,192, respectively. .

state USF fee is roughly $0.24 for the first three quarters and $0.38 for the fourth quarter in 2010.[33] The billed revenues from the State USF fee are calculated and presented in Table 2 below for each customer group (non-Lifeline, Lifeline and combined).

Table 2: Billed Revenues from State USF Fee on Customers' Bills					
	2010 Q1	2010 Q2	2010 Q3	2010 Q4	Total
IUSF fee	0.24	0.24	0.24	0.38	NA
Non-lifeline	$1,273	$1,313	$910	$1,572	$5,068
Lifeline	$1,350	$2,252	$4,505	$4,861	$12,968
Combined	$2,623	$3,565	$5,416	$6,433	$18,037

Similarly, the billed revenues from the federal USF fee are calculated and summarized in Table 3 below for each customer group (non-Lifeline, Lifeline and combined).

Table 3: Billed Revenues from Federal USF Fee on Customers' Bills					
	2010 Q1	2010 Q2	2010 Q3	2010 Q4	Total
FUSF fee	0.78	0.73	0.65	0.62	NA
Non-lifeline	$4,138	$3,994	$2,465	$2,565	$13,162
Lifeline	$4,388	$6,851	$12,202	$7,931	$31,371
Combined	$8,525	$10,845	$14,667	$10,495	$44,533

The billed revenues [from federal/state USF fees] should be $18,230 (=$5,068 + $13,162) from non-Lifeline customers, $44,340 (=$12,968 + $31,371) from

[32] See customers' phone bills provided in responses to Staff DRs QL-8.01 to QL-8.08.

[33] See customers' phone bills provided in responses to Staff DRs QL-8.01 to QL-8.08. The amount of state USF appears to be calculated based on the state USF contribution factor. But the itemized state USF surcharges on the phone bills examined by Staff vary little across customers. The most significant variation seems to be caused by the change in the contribution factor, which is determined for each October-September plan year.

Lifeline customers, and $62,570 (= $18,037 + $44,533) for all customers. The Company, however, reported only $934 on Line 403 in billed revenues from the federal/state USF fees, which is substantially below the billed revenues from any customer group (non-Lifeline, Lifeline or combined). Therefore, not only has the Company incorrectly treated revenues from the federal USF surcharge on customers' bills as intrastate revenues but it has also underreported the revenues from the federal/state USF surcharges by a huge margin.

Q. Please explain how IQT has underreported revenues from the subscriber line charge on customers' phone bills.

A. The Company charges a subscriber line charge (SLC) of $4.52 on customers' phone bills.[34] It is required to report the billed SLC revenues on Line 405 of Form 499-A.[35] IQT reported $17,497 in total billed SLC revenues. The subscriber line charge is assessed by the Company under its federal tariff and the SLC revenues should be identified as interstate revenues. The Company should have entered the total billed SLC revenues in both columns (a) and (d), but instead it entered zero in the interstate column (d).[36] So the Company has effectively treated the SLC

[34] See IQT Responses to Staff DRs QL-1.17 and QL-8.01 to QL-8.08.

[35] Prescribed Interexchange Carrier Charge ("PICC") levied by local exchange carriers on no-PIC customers should also be reported on Line 405. However, PICC was eliminated for residential lines and single-line business lines on July 1, 2000. If a multi-line business customer has not selected PIC for its telephone lines, the local telephone company may bill directly the multi-line business customer for the PICC. *See*, www.**fcc**.gov/cib/consumerfacts/**PICC**changes.html. But it is unlikely that a multi-line local exchange business customer would not select a PIC. Thus it is reasonable to assume that all or almost all billed revenues on line 405 are from the SLC (FCC Authorized Line Charge) on customers' phone bills.

Both federal SLC and PICC levied by a local exchange carrier on no-PIC customers are authorized (or billed under FCC tariff) and thus should be identified as interstate revenues.

[36] *See* IQT Form 499-A filing provided in response to Staff DR QL-11.01 on June 17, 2011.

revenues as intrastate revenues. As a result, it has substantially underreported the interstate revenues and the contribution base revenues. This would inevitably cause the USAC to assess a lower but incorrect contribution for the Company. Furthermore, the Company has also underreported the total billed SLC revenues in column (a) of Line 405. Using customers line counts in Table 1 above, the billed SLC revenues are calculated and presented in Table 4 for each customer group (non-Lifeline, Lifeline and combined).

Table 4: Billed Revenues from Subscriber Line Charge on Customers' Bills

	2010 Q1	2010 Q2	2010 Q3	2010 Q4	Total
SLC	4.52	4.52	4.52	4.52	NA
Non-lifeline	$23,979	$24,729	$17,144	$18,698	$84,550
Lifeline	$25,425	$42,420	$84,849	$57,817	$210,512
Combined	$49,404	$67,149	$101,994	$76,515	$295,062

The reported billed SLC revenues ($17,497) is 21% of the SLC revenues from non-Lifeline customers alone, 8% of the billed SLC revenuers from Lifeline customers alone. It is about 6% of the billed SLC revenues from all (non-Lifeline and Lifeline) customers. Thus, the Company has substantially underreported its billed SLC revenues in column (a) and (d) on Line 405. Therefore, the Company has not only improperly treated SLC revenues as intrastate revenues but it has also underreported the total billed SLC revenues and thus its contribution base revenues by a huge margin. This would unavoidably cause the USAC to assess a low and incorrect contribution for the Company.

Q. Has IQT underreported the billed revenues from Federal Regulatory and LNP fees on customers' phone bills?

A. IQT assesses a Line Number Portability (LNP) charge ($0.28) and a Federal Regulatory fee ($0.02) on customers' bills.[37] The LNP is authorized by the FCC for carriers to recover the cost of providing line number portability. Revenues from the LNP fee should be identified as interstate revenues.[38] Regarding the FCC Regulatory Fee ($0.02), IQT is "without knowledge of the entity" that assesses the fee.[39] IQT could not have possibly remitted the revenues from the FCC Regulatory Fee on customers' phone bills to any government body. This suggests that the FCC Regulatory Fee on customers' phone bills is not a fee or tax charged by any government body. Instead, it is a charge levied by IQT on the customers to recover its regulatory costs at the FCC. Accordingly, revenues from the FCC Regulatory Fee should also be identified as interstate revenues.

IQT assesses a total of $0.30 (=$0.28 + $0.02) on customers' phone bills in LNP and FCC Regulatory fees. Based on the customer line counts in Table 1 above, the billed revenues from the LNP/FCC Regulatory fees are calculated and presented in Table 5 below for each customer group (non-Lifeline, Lifeline and combined).

Table 5: Billed Revenues from LNP & FCC Regulatory Fees on Customers' Bills

	2010 Q1	2010 Q2	2010 Q3	2010 Q4	Total
LNP/FCC Reg. fee	0.30	0.30	0.30	0.30	NA
Non-lifeline	$1,592	$1,641	$1,138	$1,241	$5,612
Lifeline	$1,688	$2,816	$5,632	$3,837	$13,972
Combined	$3,279	$4,457	$6,770	$5,078	$19,584

[37] *See* IQT Responses to Staff DRs QL-1.17 and QL-8.01 to QL-8.08.

[38] *See* 2011 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 22.

[39] IQT Responses to Staff DR QL-4.07(A).

Form 499-A does not have a separate line on which to report billed revenues LNP or FCC regulatory fees. Thus, there is no sufficient information to determine whether IQT has underreported billed revenues from LNP/FCC Regulatory fees. However, as IQT has underreported billed revenues from all other surcharges on customers' phone bills (such as subscriber line charge, federal USF fee, state USF fee, etc,), presumably IQT has also underreported the billed revenues from LNP and FCC Regulatory fees. The Company is welcome to rebut this presumption by presenting concrete evidence to the contrary.

Q. Do you have a comment regarding IQT's underreporting of revenues on Form 499-A?

A. Yes. IQT has underreported billed revenues for 2010 by a large margin. Examples include billed revenues from subscriber line charge, federal/state USF fees, and LNP/FCC Regulatory fees on customers' phone bills. Under section 54.711 of the federal regulation, carriers are required to accurately provide revenue information on Form 499:

> **<u>An executive officer of the contributor</u>** must certify to the truth and accuracy of historical data included in the Telecommunications Reporting Worksheet. … … Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. 47 CFR 54.711 (**<u>emphasis added</u>**).

IQTs' executive is required to certify, and must have certified, that it has accurately and correctly reported revenue information on Form 499. Despite the certification, IQT has substantially underreported billed revenues on Form 499-A. And IQT cannot deflect the blame for the underreporting of revenues onto any

outside consultant either, as it did with its noncompliance of Section 13-501. It is inconceivable that IQT's executive did not know the correct amounts of billed revenues from various surcharges on its customers' bills. It is inconceivable that IQT's underreporting was caused by advertent errors. This is particularly so given that IQTs' executive has reviewed and certified to the truthfulness and accuracy of the information in the Forms.

Q. Please explain how IQT has violated the federal rules governing the recovery of contribution for the first two quarters of 2010.

A. Carriers are permitted to pass their contribution, or contribution cost, on to their customers in the form of a line item, often called the "Federal USF Fee" on the customers' bills. A carrier, however, may not collect through the federal USF fee on the customers' bills more than its contribution:

> Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor. 47 CFR 54.712(a).

Specifically, a carrier may not charge a federal USF fee on a customer's bill greater than the interstate telecommunications portion of the customer's bill multiplied by the USF contribution factor. This rule ensures that no customer will be burdened with more than his share of the carrier's contribution cost. This also ensures that the carrier may not recover from the customers more than what it contributes to the federal USF. For a carrier that does not contribute to the federal

USF, its contribution cost is zero. In this case, the carrier may not collect any revenues from its customers [through the federal USF fee] – i.e., the federal USF fee should be zero.

From its responses to Staff's inquiry, the Company did not contribute to the federal USF for either of the first two quarters in 2010.[40] Under the FCC rules, IQT may not assess a federal USF fee on customers' bills. So the federal USF fee on customers' phone bills should be ZERO for the first two quarters of 2010. But it was not. Instead, the Company assessed a federal USF fee of $0.78 and $0.73 for the first and second quarter of 2010, respectively.[41] The billed revenues from the federal USF fee are taken from Table 3 above and reproduced in Table 6.

Table 6: Federal USF Contribution versus Collection

	2010 Q1	2010 Q2
Federal USF Contribution	$0.00	$0.00
Billed revenues from federal USF fee on customer bills:		
Non-lifeline	$4,138	$3,994
Lifeline	$4,388	$6,851
Combined	$8,525	$10,845

Clearly, the Company has violated the federal rules governing the recovery of contribution costs – i.e., 47 CFR 54.712(a) – by assessing a nonzero federal USF fee while it was making zero contribution to the federal USF.

[40] See IQT responses to Staff DR QL-4.07(c)(1).

[41] IQT provided the phone bills for eight non-Lifeline customers in its responses to Staff DRs QL-8.01 to QL-8.08. The federal USF charges of $0.78 and $0.73 are taken from the phone bills of non-Lifeline customers.

Q. Please explain how IQT violated the federal rules regarding the recovery of contributions in the third/fourth quarters in 2010.

A. I first note that the Company provided the contribution amount for the third, but not for the fourth, quarter of 2010.[42] On Form 499-Q submitted on May 1 and August 1 of 2010, the Company provided projected interstate/international collected end user telecommunications revenues for the third and fourth quarters of 2010: $5,294 and $5,284. The third and fourth quarter projected revenues are extremely close with the difference being $10.00 or less than 0.2%. Additionally, the fourth quarter contribution factor is 12.9%, lower than the third quarter contribution factor of 13.6%. With a lower contribution factor and lower projected revenues, one can only infer that the fourth quarter required contribution could not have exceeded the third quarter contribution of $256.93. I shall use the third quarter contribution of $256.93 as a (conservative) estimate of the required contribution for the fourth quarter for the remainder of the discussion. The billed revenues are taken from Table 3 and presented in Table 7 for purposes of comparison.

Table 7: Federal USF Contribution versus Collection		
	2010 Q3	2010 Q4
Federal USF Contribution	$260	$260
Billed revenues from Federal USF fee on customer bills:		
Non-lifeline	$2,465	$2,565
Lifeline	$12,202	$7,931
Combined	$14,667	$10,495

[42] See IQT Responses to Staff DR QL-4.07(C)(1). The Company stated that the fourth quarter Form 499-Q was submitted and the statement was pending. So, it did not provide the contribution amount for the fourth quarter of 2010.

Clearly, the billed revenues from the federal USF fee on customers' phone bills exceed the Company's contribution for each of the two quarters in 2010 by a huge margin. Unless its collectible rate is less than 3% (or uncollectible rate is more than 97%), the Company would have definitely collected more from its customers through the federal USF fee than what it contributed to the federal USF in each of the two quarters.[43] Therefore, it has violated the federal rules governing the recovery of contribution costs, 47 CFR 54.712(a).

Q. Would true-ups or adjustments account for the huge gaps between what IQT collects from the federal USF fee and its contribution costs for any quarter in 2010?

A. No. Carriers are required to provide projected revenues or revenue projections on the quarterly reporting worksheets for the projection period starting two months after the filing date of the worksheets. The revenue projections are then used to calculate the required quarterly contributions for the projection period. Unlike long term (such as five year ahead) projections, carriers generally should be able to produce fairly accurate, short term revenue projections. Additionally, while the contribution factor is determined on a quarterly basis, it generally does not vary dramatically from one quarter to the next. While annual true-ups may often be necessary based on information provided on Form 499-A, the magnitude of the true-ups should be limited. In any given quarter, a carrier's contribution costs and federal USF surcharge may reflect adjustments to prior periods' contributions. However, the adjustments or true-ups cannot account for the huge gap between its

[43] I note that the Company reported zero uncollectible revenues in its Form 499 filing.

billed revenues [from the federal USF fee on customers' bills] and its contributions for any quarter in 2010. The gap is too wide to be accounted for by true-ups or adjustments. The most logical conclusion is that IQT has systematically over-recovered from its customers the contribution costs and thus violated the federal rules governing the recovery of contribution costs. This should remain the conclusion unless the Company presents irrefutable evidence to demonstrate that annual true-ups would have indeed accounted for the huge gap between its contribution costs and its billed revenues from the federal USF fees.

F. <u>Improper enrollment process and fraudulent enrollments</u>

Q. IQ Telecom contends that every customer accepted by IQ Telecom has authorized it to provide service. Is this accurate?

A. No. In defending its enrollment process, IQ Telecom claims:

> Yes, every end user customer accepted by IQT under the Lifeline/Linkup program authorized IQ Telecom to provide Lifeline or Linkup telephone service. IQ Rebuttal at 11.

The claim that IQT has been authorized to provide service to each and every customer accepted is not entirely accurately. As discussed below, some of IQT's enrollment forms were falsified. On some of these forms, residents residing at the addresses listed on the enrollment forms (thus on AT&T's work orders) confirmed that no such service orders were placed. Thus, work orders associated with these enrollment forms could not be filled. IQ Telecom must have known at some point – before filing its rebuttal testimony in this proceeding – that these

work orders could not be, and were not, filled. As such, it must have known at some point – before filing its rebuttal testimony in this proceeding – that some of the enrollment forms accepted by IQ Telecom were falsified or fraudulently filled.

Q. Please describe Exhibit H to IQ Telecom's rebuttal testimony.

A. IQ Telecom attached eight exhibits to its rebuttal testimony: Exhibits A-H. Exhibit H is the testimony of Allen Cherry on behalf of Universal Telephone Assistance Corporation ("UTAC") in Docket No. 10-0634.[44] UTAC witness Allen Cherry addressed the surges in reimbursement claims from the UTAC last year experienced by IQ Telecom and some other CLECs. These surges have substantially undermined the UTAC's ability to provide line connection assistance to qualifying customers at the level that had existed since 2007 (i.e., $12.00 or half of installation charge, whichever is smaller). As a result, the UTAC filed a petition with the Commission seeking relief. The Commission granted UTAC's petition and reduces the Illinois line connection assistance by more than half from $12.00 to $5.00.[45]

Q. Did IQ Telecom provide any reasons behind the surges in reimbursement claims from the UTAC experienced?

A. Yes. IQ Telecom attributes the surge in enrollments to its new marketing strategy:

[44] ICC, in the Universal Telephone Assistance Corporation, Petition for Redetermination of the Amount of Supplemental Assistance to be provided by Local Exchange Telecommunications Carriers, pursuant to 83 Ill. Adm. Code 757.200(e), Docket No. 10-0634.

[45] See ICC, Order, in the Universal Telephone Assistance Corporation, Petition for Redetermination of the Amount of Supplemental Assistance to be provided by Local Exchange Telecommunications Carriers, pursuant to 83 Ill. Adm. Code 757.200(e), ICC Docket No. 10-0634.

> Beginning in May 2010 IQ Telecom established a new marketing campaign to address increased competitive pressure in credit challenged residential market. The campaign offered first month free and free activation for lifeline customers. The campaign drove significant increase in IQT's new activation per month, beyond what we have seen in any campaign prior.[46]

However, the first month free and free activation could not have been the only factors behind the surge in disbursement claims. Contrary to IQ Telecom's claim, it did not start the "first month free" offer as part of the new marketing campaign in May 2010. Based on the enrollment forms provided by IQ Telecom, the "first month free" was introduced October 14, 2008, long before the "new marketing campaign" was launched in May 2010.[47] Likewise, IQ Telecom did not start its "free activation" offer with the new marketing campaign in May 2010. Instead, it offered "free activation" starting October 14, 2008 until December 31, 2010 when it suspended the Lifeline/Linkup program.[48] So neither the "first month free" nor "free activation" offer was started or introduced with the new marketing campaign in May 2010. These offerings could not have been the singular factors behind the surges in disbursement claims as IQ Telecom claims.

Q. Do you have a comment regarding IQ Telecom's new marketing campaign that was launched in May 2010?

A. Yes. IQ Telecom's new marketing campaign launched in May 2010 seems to have been "over-zealous" at times, to put it mildly. Specifically, this new

[46] See page 6 of Exhibit H (Testimony of Allen Cherry) to IQ Telecom Testimony (Gentile). See also IQ Telecom Response to UTAC Data Request #11, which was provided to Staff in response to Staff QL-1.01.

[47] See IQ Telecom Enrollment Forms Nos. 1 and 7, for example, of IQ Telecom Responses to Staff DR QL-4.01.

[48] See IQ Telecom Enrollment Forms No. 7, for example, of IQ Telecom Responses to Staff DR QL-4.01.

marketing campaign has, at times, resulted in the production of falsified or fraudulently completed enrollment forms.

Q. Please explain.

A. On November 18, 2010, Staff member George Light conducted a field inspection (ride-along) with AT&T's field truck performing wireline Lifeline installation orders for IQ Telecom. A detailed report of the field inspection is contained in Attachment A. On this ride along, AT&T attempted to fill twelve Lifeline service orders for IQ Telecom. It, however, was able to fill only one of the twelve Lifeline service orders. For eight of the twelve orders, residences at the addresses listed on the service orders (or accepted enrollment forms) stated that no such service order had been placed. In seven of these eight cases, the names on service orders (or enrollment forms) did not match the names of residents at the addresses and no service order had been placed by the residents at the addresses. In one of the eight cases, the name on service order matched the name on service order but the resident confirmed that no service order had been placed.

In one of the twelve cases, there was no answer at the premises and the contact number on the service order was out of service. In two of the twelve cases, there was no answer at the premises or at contact numbers.

While one may debate whether Service Orders Nos. 6, 11-12 (of Attachment A) are legitimate orders, it is clear that eight of the twelve orders (Service Order Nos. 1-5, 7 and 9-10 of Attachment A) are not legitimate orders.

Though these enrollment forms were accepted by IQ Telecom, they were not legitimately filled forms.

Q. Do you know which party (or parties) falsified the enrollment forms?

A. I have no knowledge the exact person or persons that were involved in falsifying the enrollment forms. But I note that customers that want to commence Lifeline service with IQ Telecom would have no incentive to falsify the enrollments. If the customers enter phony addresses on the enrollment forms, the customers obviously would not be able to receive wireline services at the phone addresses. Thus, customers that want to commence Lifeline services with IQ Telecom would not have perpetrated the falsification of enrollment forms. Customers that are not interested in commencing Lifeline service with IQ Telecom would not have any incentive to fill out any forms at all, fraudulently or truthfully, unless they want to send AT&T's utilities truck on a goose chase for the fun of it, which is extremely unlikely. Therefore, it seems that customers do not have any incentives to falsify a wireline Lifeline enrollment forms. This leaves one possibility – that is, IQ Telecom's marketing agents.

G. <u>Continuing Non-compliances</u>

Q. In your direct testimony, you addressed IQ Telecom's various non-compliance issues. Does IQ Telecom have any on-going non-compliance problems?

A. Yes. It appears that IQT's non-compliance is not a thing of the past. But rather, it is an on-going behavior. Here are two examples of IQ Telecom's on-going

non-compliance problems. First, IQ Telecom has failed to comply with Quarterly Report requirement of Code Part 757. Section 120 of Part 757 states:

> Each eligible telecommunications carrier shall maintain the data and information necessary to provide the information required in Exhibit A. Quarterly reports providing the information specified in Exhibit A shall be filed with the Chief Clerk of the Commission and the UTSAP Administrator within 30 days after each calendar quarter's end. (Emphasis added).

Thus, IQ Telecom should have filed its Part 757 quarterly report for the first quarter of 2011 by April 30, 2011 (i.e., 30 days after the quarter end or March 31, 2011). However, based on the Commission Clerk Office's record, IQ Telecom had not filed its Part 757 quarterly report for the first quarter of 2011 as of May 17, 2011. Thus, it has failed to comply with the filing requirement of Part 757.

Another example of IQT's ongoing noncompliance is that it has failed to keep its Illinois USF account current. Based on IUSF record, as of June 1, 2011, it had been three months behind in paying its assessments with an overdue amount of $1,896.

H. Failing the facilities requirement for wireless ETC designation

Q. IQ Telecom submitted the wireless ETC petition on June 10, 2011. Had IQ Telecom satisfy Section 214(e)(1)(A) as a wireless carrier as of June 10, 2010?

A. No, it has not. IQ Telecom filed a petition seeking certificate of wireless service authority on June 3, 2010, which was granted by the Commission on August 18, 2010.[49] IQ Telecom filed a petition seeking wireless ETC designation on June

[49] See IQ Telecom's application for wireless certificate of service authority and the Commission Order in Docket No. 10-0367.

10, 2010 (i.e., one week after submitting the wireless certificate petition). As of June 10, 2010, IQ Telecom had not been granted the authority to provide, and thus could not have provided, wireless service or wireless supported services in Illinois, through resale or using a combination of own facilities and resale. Nonetheless, IQ Telecom claimed, erroneously, in the wireless ETC application that IQ Telecom meets the requirement of Section 214(e)(1)(A) of the 1996 federal Act for wireless ETC designation, which it did not.

Q. **Has IQ Telecom met the requirement of section 214(e)(1)(A) of the 1996 federal Act as a wireless carrier as of today?**

A. No. In fact, IQ Telecom has not provided wireless service or supported wireless service to any Illinois customers since granted the authority to do so ten months ago (i.e., on August 18, 2010).[50] In particular, IQ Telecom does not provide wireless supported services throughout the requested ETC areas using their own facility or a combination of their own facility and resale as required under section 214(e)(1)(A). Thus, IQ Telecom has not met the requirement of section 214(e)(1)(A) as a wireless carrier in Illinois as of today, twelve months after claiming so in the ETC application.

The fact that it has not provided wireless service to any Illinois customers since it was granted service authority ten months earlier is not a positive testament for its ability to provide services or compete in the wireless service market in Illinois.

[50] IQ Response to Staff DR QL-8.09.

III. Staff Conclusion and Recommendation

Q. Please summarize your findings

A. I first note that IQT has not presented anything in its rebuttal testimony to cause me to alter any of my recommendations in my direct testimony. Furthermore, based on my subsequent investigation of the assertions made in the company's rebuttal testimony, I have additional recommendations regarding IQT. I recommend the Commission find in summary as follows:

(1) IQT has systematically offered services that do not comport with the tariff or without filing tariff for such services.

(2) IQT has failed to contribute to the state USF. It was three months behind in payment as of June 1, 2011.

(3) IQT has failed to file Part 757 Report as required under Part 757. As of May 17, 2011, it had not filed its Part 757 Report for the first quarter of 2011.

(4) IQT has underreported revenues and underpaid its contribution to the federal USF.

(5) IQT have over-recovered its contribution costs [to the federal USF] from the customers

(6) IQT has offered services to its Lifeline customers in a discriminatory manner. The variation in services offered from forms to forms is not justifiable.

(7) IQT's Letter of Agency fails to meet the requirements of Section 13-902 of the IPUA.

(8) IQT has not produced or used proper forms to certify customers' Lifeline or Linkup eligibility and has failed to make reasonable efforts to inform its customers of the one-time restriction of federal Linkup support.

(9) IQT obtained ETC designation in Docket No. 08-0453 by various misrepresentation and misstatements of facts: (i) it used a discontinued local plan as evidence that it provides comparable local services, and (ii) it provides inaccurate representation regarding the manner in which it provides services.

(10) IQT has improperly collected $1,966,337 in federal low income support between October 2008 and March 2011 for customers served through resale, and it continues to improperly collect federal low income support for customers served through resale.

(11) IQT has collected federal Linkup subsidies where it is not eligible to (e.g., for conversion).

(12) IQT has requested more in federal Linkup subsidies than it is entitled to.

(13) IQT has failed to pass through the full amount of Lifeline support.

(14) IQT has not managed both its Lifeline and Linkup Programs properly. It has made genuine efforts to get customers on the Lifeline program but has refused to make efforts to keep them on the program. In doing so, it has drained $1.2 million in federal Linkup support funds without much of the intended benefits to the customers, and has deprived 96% of the customers them of their eligibility for further Linkup support.

(15) IQT has not provided any wireless services for a period of ten months after it was granted the authority to provide wireless services.

Q. Please summarized your recommendations.

A. For reasons listed above, I cannot reach the finding that it is in the public interest to IQT's wireless ETC designations. Therefore, I cannot recommend that the Commission grant IQT wireless ETC designation sought in the proceeding.

Q. Does this conclude your testimony?

A. Yes.