

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Stanford Springel as Chapter 11 Trustee for the)
Bankruptcy Estate of Innovative Communication)
Corporation,)
Transferor and Assignor,)
and)
National Rural Utilities Cooperative Finance) WC Docket No. 09-82
Corporation and its Subsidiaries,)
Transferees and Assignees,)
Applications for Consent to Assign and Transfer)
Control)

ORDER

Adopted: December 7, 2009

Released: December 7, 2009

By the Chief, Wireline Competition Bureau; Chief, Media Bureau; Chief, Wireless Telecommunications Bureau; Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant authority, pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act),¹ to Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation (Trustee); Innovative Communication Corporation, acting by and through its Chapter 11 Trustee (ICC); and National Rural Utilities Cooperative Finance Corporation (CFC) to transfer control of ICC’s operating subsidiaries to CFC and its subsidiaries, as well as to assign certain authorizations and assets from ICC and the ICC operating subsidiaries to the CFC subsidiaries.² We find that the Applicants have demonstrated that the proposed transaction will

¹ 47 U.S.C. §§ 214, 310(d).

² The ICC operating subsidiaries related to the proposed transaction are: Vitelcom Cellular, Inc. (Innovative Wireless); ICC’s Innovative Business Systems Division (IBS); Innovative Long Distance, Inc. (ILD); Virgin Islands Telephone Corporation (Vitelco); Caribbean Communications Corp. d/b/a Innovative Cable TV-St. Thomas-St. John (Innovative Cable STT-STJ); St. Croix Cable TV, Inc. d/b/a Innovative Cable TV St. Croix (Innovative Cable STX, and together with Innovative Cable STT-STJ, Innovative Cable); ICC TV, Inc. d/b/a ICC TV2 (TV2); Group B-200, Inc.; and Atlantic Aircraft, Inc. The CFC special purpose subsidiaries for the proposed transaction are Caribbean Asset Holdings, LLC (CFC Holdco); DTR Holdings, LLC (CFC USVI Holdco); and VI PowerNet, LLC (VIPN). We refer to the transferors/assignors and transferees/assignees collectively as “Applicants.” Appendix A to this Order lists file numbers, authorizations, and licenses associated with the transfer of control and assignment applications. References in the text to transferees include assignees as well, except where context indicates otherwise.

serve the public interest, convenience, and necessity, and we reject the petitions to deny the applications and decline to impose conditions.

II. BACKGROUND

A. Transferor/Assignor

2. ICC is a U.S. Virgin Islands holding company. ICC and its wholly-owned subsidiaries hold section 214 and Title III licenses to provide wireline, wireless, and cable TV services in the U.S. Virgin Islands (St. Thomas, St. John, St. Croix, and Water Island). Applicants state that ICC was placed into involuntary Chapter 11 bankruptcy by the U.S. District Court of the U.S. Virgin Islands, Division of St. Thomas and St. John, Bankruptcy Division (Bankruptcy Court) on July 5, 2007 after its former chairman engaged in mismanagement and malfeasance associated with company assets, and the company defaulted on loans and third party debts.³ Applicants state that the chain of events leading to the bankruptcy left the ICC businesses without capital and in need of significant rehabilitation in order to provide telecommunications and cable TV services.⁴ On October 4, 2007, the Bankruptcy Court appointed Mr. Stanford Springel, a U.S. citizen, as the Chapter 11 Trustee for the bankruptcy estate of ICC.⁵ Applicants state that ICC operates currently under the direct and ultimate control of Mr. Springel as the Chapter 11 Trustee and that he has sought to stabilize the operating subsidiaries, improve their cash flow and ability to make network investments, and has overseen maintenance of the networks during the pendency of the bankruptcy proceedings.⁶

3. On April 9, 2009, the Bankruptcy Court authorized Mr. Springel and CFC to seek regulatory approvals for the proposed transaction.⁷ The Bankruptcy Court Order states, “[t]he Motion [to approve the sale] is granted and the sale of the Assets to the Buyer is hereby authorized on an interim basis, and such authorization shall become final upon a finding by the Court at the Final Sale Hearing that (a) all U.S. and/or foreign regulatory approvals required to transfer the Assets under the Agreement have been obtained and (b) all other findings and rulings to be made by the Court, as set forth in the Agreement, have been made”⁸

4. ICC itself holds Personal Communications Service, point-to-point microwave, and Advanced Wireless Service (AWS) licenses. The ICC operating entities (listed in footnote 2) provide the following services: ILD provides interstate and international services to and from the U.S. Virgin Islands; Vitelco is the incumbent local exchange carrier (LEC) in the U.S. Virgin Islands and holds common carrier point-to-point microwave, industrial/business pool-conventional, and paging and radiotelephone

³ Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority (Consolidated Application), WC Docket No. 09-82, Exhibit 1, Description of Proposed Transaction, Public Interest Showing, and Related Requests and Showings at 9-10 (filed May 20, 2009) (Public Interest Statement); Joint Opposition to Petition to Deny, WC Docket No. 09-82 at 14-15 (filed July 22, 2009) (Joint Opposition); Opposition to Atlantic Tele-Network, Inc. Petition to Deny or, Alternatively, to Grant With Conditions, WC Docket No. 09-82 at 13-14 (filed July 22, 2009) (Springel Opposition).

⁴ Public Interest Statement at ii, 15-17; Springel Opposition at 13-14. *See* Petition of Atlantic Tele-Network, Inc. to Deny or, Alternatively, to Grant With Conditions, WC Docket No. 09-82 (filed July 7, 2009) (ATN Petition) at 15-19.

⁵ *Order Approving Selection of Trustee*, Case No. 07-30012 (Bankr. V.I., Oct. 4, 2007).

⁶ Public Interest Statement at 16; Springel Opposition at 14-15.

⁷ *Interim Order (A) Approving Sale of Group 1 Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (C) Granting Related Relief*, Case No. 07-30012 (Bankr. V.I. Apr. 9, 2009) (*Interim Sale Order*).

⁸ *Id.* at 5.

licenses; IBS, an operating division of ICC, is primarily a telephone equipment provider, but provided pay telephone service in the U.S. Virgin Islands until September 2008 and has domestic common carrier transmission lines; Innovative Wireless is a commercial mobile radio services (CMRS) provider operating in the U.S. Virgin Islands and holds cellular licenses; Innovative Cable STT-STJ is the principal cable operator on St. Thomas and St. John and holds CARS licenses and a receive-only earth station authorization; Innovative Cable STX is the principal cable operator on St. Croix and holds an industrial/business pool-conventional license; TV2 is a local cable channel in the U.S. Virgin Islands and holds CARS licenses; Group B-200, Inc. owns an aircraft license;⁹ and Atlantic Aircraft, Inc. holds an aeronautical and fixed license.¹⁰

B. Transferees/Assignees

5. CFC, the purchaser in the proposed transaction, is a District of Columbia corporation that operates as a privately-owned, non-governmental financial institution offering financial services to its rural utility member-owners. As of fiscal year-end 2008, it had 1,538 members in 49 states, the District of Columbia, and two U.S. territories.¹¹ Applicants state that CFC is not a telecommunications provider and that no person or entity directly or indirectly owns 10 percent or more of the equity of CFC.¹² CFC Holdco, a Delaware limited liability company, is an umbrella holding company that CFC created for the purpose of acquiring the stock and assets of the ICC operating entities. CFC is CFC Holdco's sole member. CFC Holdco, in turn, is the sole member of CFC USVI Holdco, a U.S. Virgin Islands limited liability company organized to hold the U.S. Virgin Island interests of CFC Holdco.

6. Applicants state that the Rural Telephone Finance Cooperative (RTFC), a District of Columbia corporation, is a privately-owned, non-governmental lending cooperative for rural utilities and the principal secured creditor of debtor ICC in the ongoing bankruptcy proceedings. CFC founded RTFC, manages it, and funds it, although RTFC is governed by a board of directors that is separate and independent from CFC's board.¹³

C. Description of the Transaction

7. The Bankruptcy Court approved the sale of the ICC subsidiaries in three groups. The ICC U.S. Virgin Islands telecommunications and cable assets that are included in the proposed transaction are in the Group One assets, which also include the telecommunications and cable television businesses of ICC located in the British Virgin Islands and the Netherlands Antilles.¹⁴ On March 13, 2009, the Trustee and RTFC signed a stock and asset purchase agreement to implement RTFC's credit bid for the ICC subsidiaries. The Applicants state that the Trustee, in his business judgment, deemed the RTFC bid to be the highest and best bid for the asset groups.¹⁵ They state that no other party submitted a sufficient bid for

⁹ Aircraft licenses may not be assigned or transferred. *See* 47 C.F.R. § 1.948(b)(5).

¹⁰ All of these operating entities are U.S. Virgin Islands corporations, except for Group B-200, which is a Puerto Rico corporation. Applicants state that the operating entities are direct subsidiaries of ICC, but are not, themselves, in bankruptcy.

¹¹ Applicants state that CFC's consolidated membership consists of 511 telecommunications providers, in addition to electric utilities and other entities. Public Interest Statement at 5-6.

¹² Consolidated Application at 6.

¹³ Public Interest Statement at 6-7.

¹⁴ *Id.* at 11-15. The Group Two assets consist of cable television operations in Martinique, Guadeloupe, and France, and the Group Three assets consist of a U.S. Virgin Islands daily newspaper. The sale of the Group Two and Group Three assets were consummated in 2008. *Id.*

¹⁵ *Id.* at 11.

all or part of the Group One assets.¹⁶ On April 3, 2009, RTFC notified the Bankruptcy Court that it had designated CFC Holdco and CFC USVI Holdco as the purchaser entities with respect to the ICC U.S. Virgin Islands businesses.

8. Prior to the consummation of the proposed transaction, RTFC will consummate assignments to CFC of its acquisition rights under the purchase agreement between RTFC and the Trustee. Pursuant to the terms of the proposed transaction, a CFC subsidiary will acquire all the outstanding stock and assets of ICC's existing subsidiaries. CFC will not acquire the stock of ICC itself, but will acquire some ICC assets. All of the ICC operating entities will become wholly-owned subsidiaries of CFC USVI Holdco.¹⁷

9. The Applicants assert that the transaction will serve the public interest. Specifically, they state that: (1) CFC is a solvent and stable entity with broad experience in dealing with rural utilities, including rural telephone companies, and can offer the ICC subsidiaries access to necessary capital; (2) ICC and its operating subsidiaries currently have limited capital and substantial indebtedness, and the proposed transaction will permit the ICC subsidiaries to focus on rehabilitating and improving their quality of service for telecommunications and cable TV services upon emerging from bankruptcy; (3) CFC will take steps to improve disaster planning and recovery operations for the ICC subsidiaries' telecommunications and cable television infrastructure, which is particularly critical in the hurricane-vulnerable U.S. Virgin Islands; and (4) the proposed transaction will enhance competition in the provision of wireline, wireless, and cable television services by strengthening the economic foundation of the ICC subsidiaries and enabling them to become more robust competitors. The Applicants further assert that the proposed transaction will not harm competition or create any new combinations in the U.S. Virgin Islands' wireline, mobile/broadband, or multichannel video programming markets.¹⁸

D. Comments on the Transaction

10. On June 5, 2009, the Wireline Competition Bureau released a public notice seeking comments and reply comments on the proposed transaction.¹⁹ Atlantic Tele-Network, Inc. (ATN), a wireless data provider in the U.S. Virgin Islands and a participant in the bankruptcy auction for the sale of certain of the ICC assets,²⁰ filed a petition to deny or, alternatively, to grant with conditions. ATN contends that, unless the Commission denies the proposed transaction or imposes a divestiture condition that would require CFC to divest either ICC's terrestrial pay-television operations or the Vitelco telephone operations, there will be no intermodal competition in the U.S. Virgin Islands because ICC's Innovative Cable business does not compete with Vitelco.²¹ It argues that the lack of a competitive

¹⁶ Joint Opposition at iii.

¹⁷ Public Interest Statement at 11-14. VIPN, a U.S. Virgin Islands limited liability company, is the assignee for IBS's domestic common carrier transmission lines. CFC Holdco is VIPN's sole member.

¹⁸ *Id.* at 15-19.

¹⁹ *Stanford Springel as Chapter 11 Bankruptcy Trustee for Innovative Communication Corporation, Transferor and Assignor, and National Rural Utilities Cooperative Finance Corporation and its Subsidiaries, Transferees and Assignees, Seek FCC Consent to Assign and Transfer Control of the Assets and Authorizations of Innovative Communication Corporation*, WC Docket No. 09-82, Public Notice, 24 FCC Rcd 7722 (2009).

²⁰ ATN Petition at 3.

²¹ *Id.* at 26-32. Jeffrey B.C. Moorhead filed a petition asserting that the Commission should deny the applications because the proposed transaction will adversely impact competition and disaster planning and recovery in the U.S. Virgin Islands. Petition to Deny of Jeffrey B.C. Moorhead, WC Docket No. 09-82 (filed July 7, 2009) (Moorhead Petition). See Letter from Jeffrey B.C. Moorhead to FCC, WC Docket No. 09-82 (filed July 6, 2009).

market will hinder broadband deployment on the islands.²² It further contends that, due to mismanagement and malfeasance of ICC's former owner and the lack of competition, the Vitelco network is in disrepair.²³ Finally, it argues that CFC failed to adequately supervise loans that it made to the former company and questions its qualifications to be a Commission licensee.²⁴

11. In response to these allegations, the Applicants assert that the proposed transaction will allow the ICC subsidiaries to finally emerge from a long-running bankruptcy as stable, solvent, and strengthened competitors.²⁵ They argue that CFC is qualified to be a Commission licensee,²⁶ that Vitelco and Innovative Cable have operated under common control since 1998, and that ATN's argument is a collateral attack on the bankruptcy process and is not specific to the proposed transaction.²⁷ They further contend that a divestiture condition would not result in viable bids for the ICC businesses in the unique U.S. Virgin Islands market, and that the costs of separating the operations are too high to support either company as a stand alone business at this point in time.²⁸

III. DISCUSSION

A. Public Interest Review

12. Pursuant to sections 214(a) and 310(d) of the Act, the Commission must determine before approving the transfer that the proposed transfer of control and assignment to CFC of licenses and authorizations held by ICC will serve the public interest, convenience, and necessity.²⁹ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits.³⁰ The Applicants bear the

²² Letter from Robert J. Aamoth and Joan M. Griffin, Counsel for ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82 at 9-10 (filed Aug. 28, 2009) (ATN August 28 *Ex Parte* Letter); Letter from Joan M. Griffin, Counsel for ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82, Att. at 1 (filed Sept. 9, 2009) (ATN September 9 *Ex Parte* Letter); Letter from Robert J. Aamoth, Counsel for ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82 at 1-4, 9 (filed Nov. 2, 2009) (ATN November 2 *Ex Parte* Letter).

²³ ATN Petition at 4-7, 14-19.

²⁴ *Id.* at 13, 16-19, 20.

²⁵ Springel Opposition at 13-16.

²⁶ Joint Opposition at 14-15; Springel Opposition at 15-16.

²⁷ Joint Opposition at 2; 5-12; Springel Opposition at 2-6.

²⁸ Joint Opposition at 2-3; Springel Opposition at 7-8.

²⁹ 47 U.S.C. §§ 214(a), 310(d); *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-32, paras. 8-10 (1998) (*WorldCom/MCI Order*).

³⁰ *See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T/BellSouth Order*); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14046, paras. 20, 22 (2002); *Applications of Ameritech Corp. and SBC Communications Inc.*, WC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14737-38, para. 48 (1999); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987, para. 2 (1997).

burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.³¹ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing.³²

13. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”³³ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest.³⁴ Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.³⁵ In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.³⁶

B. CFC’s Qualifications to Hold Licenses

14. As a threshold matter, we must determine whether the Applicants have the requisite qualifications to hold and assign and transfer licenses under section 310(d) of the Act and the Commission’s rules.³⁷ In general, when evaluating assignments under section 310(d), we do not re-

³¹ See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5672, para. 19; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21542, para. 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 485, para. 18 (2004); *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar/DirecTV Order*).

³² We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations. See *ITT World Commc’ns, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may do so, however, if we find that a hearing would be in the public interest. With respect to the applications to transfer licenses subject to Title III of the Act, however, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Communications Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); see also *EchoStar/DirecTV Order*, 17 FCC Rcd at 20574, para. 25; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21542-44, para 40.

³³ *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

³⁴ See 47 U.S.C. § 1302(b). Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, Title VII, Sec. 706, 110 Stat. 56, 153 (1996) (1996 Act), as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (BDIA), is now codified in Title 47, Chapter 12 of the United States Code. See 47 U.S.C. § 1301 *et. seq.* Prior to the BDIA, section 706 was reproduced in the notes to section 157 of the Act. 47 U.S.C. § 157 nt. (2008). See also 47 U.S.C. §§ 254, 332(c)(7); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18301, para. 17 (2005) (*SBC/AT&T Order*); *WorldCom/MCI Order*, 13 FCC Rcd at 18030-31, para. 9; *cf.* 47 U.S.C. §§ 301, 303, 309(j), 310(d), 521(4), 532(a).

³⁵ See *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

³⁶ See *id.*

³⁷ See *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order and Policy Statement, 102 F.C.C.2d 1179, 1210-11 paras. 60-61 (1986); Memorandum Opinion and Order, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and*

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evaluate the qualifications of the transferor.³⁸ There is an exception to this policy when issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.³⁹ That is not the case here, given that the proposed

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Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (*1990 Character Policy Statement*), Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. See, e.g., *1990 Character Policy Statement*, 5 FCC Rcd at 3253, para. 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services). In prior merger orders, the Commission has also used the Commission's character policy in the broadcast area as guidance in resolving similar questions in transfer of licenses proceedings. See, e.g., *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, 23 FCC Rcd 514, 524, para. 19 (2008); *AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *SBC/AT&T Order*, 20 FCC Rcd at 18739, para. 172; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, inc., Transferee*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21305, para. 26 (1998); *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20092-93, para. 236; *MCI Telecommunications Corp. Petition for Revocation of Operating Authority*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 512, para. 31 and n.14 (1988) (stating that character qualifications standards adopted in the broadcast context can provide guidance in the common carrier context).

³⁸ See *Applications of Sprint Nextel Corporation and Clearwire Corporation For Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582-83, para. 23 (2008) (*Sprint Nextel/Clearwire Order*); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, File Nos. 0003463892, et al., ITC-T/C-20080613-00270, et al., ISP-PDR-20080613-00012, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17464, para. 31 (2008) (*Verizon Wireless/Alltel Order*); *Applications of Guam Cellular and Paging, Inc., and DoCoMo Guam Holdings, Inc., for Consent to Transfer Control of Licenses and Authorizations; Applications of Guam Cellular and Paging, Inc., and Guam Wireless Telephone Company, LLC, for Consent to Assignment of Licenses and Authorizations; Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, File Nos. 0002556700, ITC-T/C-20060405-00234, 002553437, ITC-ASG-20060404-00181, ISP-PDR-20050404-00005, WT Docket No. 06-96, 21 FCC Rcd 13580, 13590, para. 14 (2006) (*DoCoMo/Guam Cellular Order*); *Applications of Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11536, para. 17 (2006) (*Alltel/Midwest Wireless Order*); *Applications of Nextel Partners, Inc., Transferor, and Nextel Wip Corp. and Sprint Nextel Corporation, Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7362, para. 10 (2006) (*Sprint Nextel/Nextel Partners Order*); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18526, para. 183 (2005) (*Verizon/MCI Order*); *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13979, para. 24 (2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13063-64, para. 18 (2005) (*Alltel/Western Wireless Order*); *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9790, para. 19 (2001) (*Deutsche Telekom/VoiceStream Order*).

³⁹ See *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17582-83, para. 23; *Verizon Wireless/Alltel Order*, 23 FCC Rcd at 17464, para. 31; *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Alltel/Midwest Wireless*

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transaction involves the transfer of control and assignment of authorizations and assets from the Trustee.

15. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.⁴⁰ Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite “citizenship, character, financial, technical, and other qualifications.”⁴¹ We disagree with ATN’s claim that CFC is not qualified to be a licensee. ATN asserts that CFC has no experience providing telecommunications services and that CFC failed to monitor ICC’s activities during the time that RTFC made loans to the company.⁴² While it may be true that CFC does not currently provide telecommunications services, it has previously taken possession and management control of another distressed telecommunications borrower; it has extensive experience with rural utilities as a financial institution for its members; and it has stated that it will work with existing ICC management.⁴³ Applicants further maintain that the ICC management has the expertise and experience necessary to maintain and improve the operating subsidiaries’ ability to serve the unique environment in the U.S. Virgin Islands, which is an area with limited resources, difficult terrain, and major storm risks.⁴⁴ In addition, they state that CFC intends to seek and retain additional senior management with substantial telecommunications experience.⁴⁵

16. We agree with Applicants that CFC’s financial resources should allow ICC to emerge from a complex bankruptcy that has been pending since 2007. This emergence from bankruptcy is critical to allowing Vitelco and the other ICC businesses both to continue and to improve their service offerings for consumers. As ATN recognizes, the Vitelco network infrastructure is in critical need of repair and modernization.⁴⁶ Applicants do not dispute this fact and have submitted evidence explaining

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Order, 21 FCC Rcd 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Sprint/Nextel Order*, 20 FCC Rcd at 13979, para. 24; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, para. 19.

⁴⁰ Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. *See* 47 U.S.C. § 308; *see also DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Alltel/Midwest Wireless Order*, 21 FCC Rcd at 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44.

⁴¹ 47 U.S.C. §§ 308, 310(d). *See also Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation to Transfer Control of Licenses and Authorizations*, WT Docket No. 07-208, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463,12477-78, para. 27 (2008); *Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations*, 22 FCC Rcd 20295, 20302, para. 11 (2007); *Alltel/Midwest Wireless Order*, 21 FCC Rcd at 11536, para. 17; *Sprint/Nextel Order*, 20 FCC Rcd at 13979, para. 24; *Alltel/Western Wireless Order*, 20 FCC Rcd at 13063, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44.

⁴² ATN Petition at 2, 13, 20.

⁴³ Letter from Kent D. Bressie, Counsel for CFC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82 at 3 (filed Aug. 14, 2009) (CFC August 14 *Ex Parte* Letter).

⁴⁴ *Id.* at 2.

⁴⁵ *Id.*

⁴⁶ ATN Petition at 15-19, Exhibit B (Finding of Facts, Investigation of Rates of Virgin Islands Telephone Company (d/b/a/ Innovative Communications), PSC Docket No. 578 at 44-45, 52 (V.I. Public Service Commission, Dec 1,

(continued....)

the steps CFC will take to address the amount of capital necessary to eliminate debts and claims against ICC and to fund capital expenditures that are necessary to rehabilitate the telecommunications and cable businesses.⁴⁷ The Trustee also states that, among other things, he has managed repairs of the telephone network since 2007, overseen digitalization of the cable network and the installation of switching and fiber capacity on the islands, funded ICC's employee pension plans, and commissioned a modernization design study of the telephone and cable infrastructure to improve the delivery and quality of services.⁴⁸ The record demonstrates that CFC is financially committed to stabilizing and rehabilitating the ICC networks, and the Applicants have stated that they will be guided by the design study as well as CFC's own determinations of what investments and operational changes will be necessary to improve the ICC businesses.⁴⁹

17. We agree with Applicants that there is no evidence that CFC should be disqualified as a purchaser on the basis that, as ATN alleges, CFC failed to monitor and detect mismanagement by the former owner after having loaned \$500 million to ICC.⁵⁰ While the Applicants have acknowledged the mismanagement and malfeasance of ICC's former owner,⁵¹ there is no evidence that any misconduct is attributable to CFC, or that it was negligent with respect to any oversight responsibilities it may have had as a creditor in these circumstances. Applicants state that neither RTFC nor CFC benefited from the actions by ICC's former owner and that RTFC worked with ICC for many years after problems emerged to reschedule its debt and arrange other relief, but that the company still defaulted on the loans in 2004.⁵² CFC then sought to protect its rights by litigating with ICC and eventually secured a judgment against the company for the full amount in 2006.⁵³ Applicants explain that, after ICC failed to repay the judgment and other debts, RTFC elected to bid for the ICC assets as a secured creditor, which is permitted under the bankruptcy code.⁵⁴ We agree with Applicants that RTFC and CFC have a significant incentive to make themselves whole by rehabilitating ICC's telecommunications and cable businesses.⁵⁵ In short, we are not persuaded that there are concerns about CFC's qualifications to hold Commission licenses.

(...continued from previous page)

2008) (finding that the Vitelco network is in disrepair, does not offer new products and services, and that a new owner must make the necessary investment to upgrade the network for consumers).

⁴⁷ Springel Opposition at 15-16; CFC August 14 *Ex Parte* Letter at 3; Letter from Kent Bressie, Counsel for CFC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82 at 2-4 (filed Sept. 15, 2009)

⁴⁸ Springel Opposition at 14-16; Joint Opposition at 14-15.

⁴⁹ CFC August 14 *Ex Parte* Letter at 3 ("CFC is closely monitoring the Chapter 11 Trustee's ongoing network engineering study. CFC expects that the study, which is nearing completion, will provide critical guidance and information about how best to rehabilitate and improve the Vitelco, Innovative Cable STT-STJ and Innovative Cable STX networks."); Letter from Kent D. Bressie, Counsel to CFC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82 at 2-4 (filed Sept. 9, 2009) (CFC September 9 *Ex Parte* Letter) (explaining certain capital requirements of ICC and describing steps CFC has taken to ensure financing of network upgrades and rehabilitation efforts post-closing).

⁵⁰ ATN Petition at 13, 16, 20.

⁵¹ *See supra* note 3.

⁵² Letter from Kent Bressie, Counsel for CFC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-82 at 2 (filed Oct. 8, 2009) (explaining CFC's actions to address long-running claims by ICC's former owner regarding the time period prior to ICC's bankruptcy).

⁵³ Joint Opposition at 14-15 (citing *RTFC v. ICC* and *RTFC v. Jeffrey Prosser*, Case Nos. 2004-CV-154 and 2004-CV-155, Final Judgment (D. V.I., June 9, 2006)).

⁵⁴ Public Interest Statement at ii-iii; 8-9 (citing 11 U.S.C. § 363(k)).

⁵⁵ Joint Opposition at 15.

C. Public Interest Analysis

18. We next consider the potential public interest harms arising from this proposed transaction and the potential benefits. ICC and CFC do not compete with each other for telecommunications customers because CFC is not currently a telecommunications service provider in the U.S. Virgin Islands, and thus, there is no reason to expect that the transaction will harm competition on that basis.⁵⁶ ATN argues, however, that the proposed transaction, as approved by the Bankruptcy Court, will perpetuate the pre-existing situation in which a single entity owns both Vitelco and Innovative Cable and that this will inhibit intermodal competition. It states that Vitelco is the incumbent LEC and that Innovative Cable has an estimated 90 percent share of the cable television market and that, in packaging the ICC assets for sale, the Trustee will preserve ICC's monopoly power.⁵⁷ ATN seeks to have us either deny the proposed transaction by requiring that the parties re-structure it to require separate purchasers for each business, or alternatively, grant the applications but require CFC to divest Vitelco or Innovative Cable as a condition of the approval.⁵⁸ For the reasons explained below, we deny ATN's petition.

19. First, facilitating the successful resolution of a bankruptcy proceeding is a factor in our public interest analysis.⁵⁹ It is the Commission's policy to support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act.⁶⁰ The Commission has stated that facilitating a telecommunications service provider's successful emergence from bankruptcy "advances the public interest by providing economic and social benefits, especially the compensation of innocent creditors."⁶¹ The Bankruptcy Court has granted interim approval of the ICC asset groupings, which includes assigning both the Vitelco and Innovative Cable assets in Group One for sale to CFC.⁶²

⁵⁶ Public Interest Statement at 19-20.

⁵⁷ ATN Petition at ii, 10-14.

⁵⁸ *Id.* at 10-13, 26-31. Applicants state that Vitelco's affiliate, ICC, bought Innovative Cable in 1998. Joint Opposition at iv.

⁵⁹ *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelpia Communications Corporation, Assignors, to Time Warner Cable, Inc Assignees; Adelpia Communications Corporation, Assignors and Transferors, to Comcast Corporation, Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner, Inc., Transferee; Time Warner, Inc., Transferor, to Comcast Corporation, Transferee*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8323, para. 282 (2006) (*Adelpia Order*) (citing *WorldCom, Inc. and its Subsidiaries (debtor-in possession), Transferor, and MCI, Inc., Transferee, Applications to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses*, WC Docket No. 02-215, Memorandum Opinion and Order, 18 FCC Rcd 26484, 26503, para. 29 (2003) (*WorldCom Order*)).

⁶⁰ *WorldCom Order*, 18 FCC Rcd at 26503, para. 29 (citing *Mobilemedia Corporation, et al., Applicant for Authorizations and Licenses of Certain Stations in Various Services*, WT Docket No. 97-115, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8018, para. 4 (1999); *Applications of Space Station System Licensee, Inc., Motorola Satellite Communications, Inc. and Wireless SP, Inc., Assignors, and Iridium Constellation LLC, Iridium Carrier Services, LLC and Iridium Satellite LLC, Assignees, for Consent to Assignment of License Pursuant to Sections 214 and 310(d) of the Communications Act*, Memorandum Opinion and Order, 17 FCC Rcd 2271, 2286-87, para. 34 (Int'l Bur. 2002) ("Because this transaction permits the Iridium system to emerge from bankruptcy and continue operations, the competitive impact is likely to be beneficial."); *Application of Orbital Communications Corporation and ORBCOMM Global, L.P., Assignors, and ORBCOMM License Corp. and ORBCOMM LLC, Assignees, for Consent to Assign Non-Common Carrier Earth and Space Station Authorizations, Experimental Licenses, and VSAT Network*, Order and Authorization, 17 FCC Rcd 4496, 4504, para. 15 (Int'l Bur. 2002) ("Because this transaction permits the [licensee] to emerge from bankruptcy and continue operations, the competitive impact will be beneficial Successful emergence from bankruptcy is critical to the continued operation and expansion of the ORBCOMM system.").

⁶¹ *WorldCom Order*, 18 FCC Rcd at 26503, para. 29.

⁶² *Interim Sale Order* at 3.

The Court stated that the sale of the assets to CFC is “in the best interests of the Debtor’s estate and its creditors” and found that the Trustee marketed the Group One assets through a “fair, full and complete marketing process.”⁶³ While this is an interim approval, pending regulatory approval of the transaction, it represents the Bankruptcy Court’s judgment that the Trustee “has demonstrated both (i) good, sufficient, and sound business purpose and justification for the sale of the Assets; and (ii) compelling circumstances for interim approval of the sale transaction contemplated in the [Sale] Agreement pursuant to Bankruptcy Code §§ 363(b) and (f).”⁶⁴ We recognize the Court’s jurisdiction to find that the sale of the assets in a combined grouping is in the best interests of the creditors, and we do not question that finding here.

20. We find the Applicants’ argument that the proposed transaction would serve the public interest, convenience, and necessity to be persuasive. ICC’s customers have been subject to the uncertainties associated with the bankruptcy for over two years,⁶⁵ and the Trustee emphasizes that ICC’s successful emergence from bankruptcy hinges on the sale of the existing asset groupings. In particular, he asserts that the cost of separating the integrated operations of Vitelco and Innovative Cable would dramatically alter the cost structure of the two companies and significantly increase their cost of service.⁶⁶ He provides a long list of integrated operations that would have to be duplicated, including technical and maintenance crews, operations support systems, office facilities, billing systems, and fleet vehicles; and he argues that, even if another buyer were to absorb these costs, consumers would be subject to rate increases.⁶⁷ We believe that ATN’s argument that we must order Innovative Cable or Vitelco to be independently owned does not accord sufficient weight to the increased costs and delay that would attend unwinding the findings of the Bankruptcy Court and requiring a new sale of the cable or telephone assets to an undetermined third party.

21. ATN recognizes that critical repairs and rehabilitation of the Vitelco network are necessary to serve customers, who have endured the instability associated with the mismanagement and resulting bankruptcy of ICC.⁶⁸ Not only is there a need finally to resolve the bankruptcy process, to stabilize the ICC businesses, and to allow a purchaser to move forward with much needed investments, but the Applicants have also asserted that CFC, as the common purchaser, will facilitate improved disaster planning and recovery programs for both the Vitelco and Innovative Cable networks, which are vulnerable to hurricanes and tropical storms, some of which have inflicted devastating damage in recent years.⁶⁹ Because Applicants state that ICC does not currently have access to the capital it needs to rehabilitate the networks,⁷⁰ we are particularly concerned about the impact of any delay and are mindful of the fact that it took a full year between the time that the Trustee began to market the ICC assets and the Bankruptcy Court’s interim approval of the proposed transaction.⁷¹

⁶³ *Id.* at 4.

⁶⁴ *Id.*

⁶⁵ Public Interest Statement at 8-10.

⁶⁶ Springel Opposition at 11-12.

⁶⁷ *Id.* at 12.

⁶⁸ ATN Petition at 14-19.

⁶⁹ Public Interest Statement at 17-19. CFC September 9 *Ex Parte* Letter at 2-4.

⁷⁰ Joint Opposition at v.

⁷¹ Public Interest Statement at 11 (the Trustee began marketing the assets in April 2008, received the purchase offer from RTFC in January 2009, and the Bankruptcy Court issued its *Interim Sale Order* in April 2009); Joint Opposition at ii, v (stating that, besides CFC, no other sufficient bids emerged from the bankruptcy process; describing the difficulties associated with recommencing marketing and sales efforts to find a new bidder; and stating that a divestiture condition would make it impossible to exit the bankruptcy process quickly). ATN

(continued....)

22. Second, while ATN is correct that the Commission's public interest inquiry under the Act is paramount regardless of a bankruptcy court proceeding,⁷² we have not been persuaded by ATN that approval of the applications will result in transaction-specific harms. ATN argues that common ownership of Vitelco and Innovative Cable has historically impeded intermodal competition in the U.S. Virgin Islands because the companies have not competed against each other. However, this common control has existed since 1998 and does not arise as a result of the proposed transaction.⁷³ Consistent with Commission precedent, we decline to address claims that are not specific to the transaction.⁷⁴ Moreover, we recognize the record evidence regarding the unique challenges in the U.S. Virgin Islands that are both a reason for the current integration and an impediment to finding alternative purchasers. Applicants state that the islands have a very small population spread across three separate islands and a low per capita income, rocky and mountainous terrain that make it expensive and difficult to build and maintain outdoor facilities, and high costs associated with transporting equipment and skilled technicians from the U.S. mainland. They assert that the corrosive impact of the tropical climate and risk of hurricanes require providers to store and maintain large amounts of spare and emergency equipment.⁷⁵

23. In addition to the geography and demographics in the U.S. Virgin Islands, ATN argues that there are other barriers to entry that should persuade the Commission to impose a divestiture condition on the proposed transaction.⁷⁶ It states that Vitelco has a dominant share of the local wireline market and enjoys economies of scope and scale that other competitors do not. It argues that Vitelco

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speculates that CFC will not be a long term owner of the ICC assets and will not focus on rebuilding the network infrastructure, including for wireline services, but will instead sell the company at a future date. ATN September 9 *Ex Parte* Letter at 2; ATN November 2 *Ex Parte* Letter at 5, 8-9. There is no evidence in the record contradicting Applicants' assertion that they intend to develop ICC's businesses and will take steps to recapitalize Vitelco and its affiliates and fund the rehabilitation of the telecommunications and cable businesses. See CFC September 15 *Ex Parte* Letter at 2-4. These necessary steps are in the public interest.

⁷² ATN Petition at 7-10; ATN August 28 *Ex Parte* Letter at 5-9. See Joint Opposition at 11 (citing *Adelphia Order*, 21 FCC Rcd at 8323, para. 283) ("The Commission has a mandate to evaluate whether these transactions promote the aims of the Communications Act, including preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, and managing spectrum in the public interest. The principal duty of the proponents of Adelphia's plan to emerge from bankruptcy is to maximize creditor recovery. These aims are not congruent, although they are not necessarily in opposition.").

⁷³ ATN asserts that section 652 of the Act, 47 U.S.C. § 572, which prohibits a LEC from purchasing a cable system in its operating territory or a cable company from purchasing a LEC in its operating territory, supports its argument that common ownership of Vitelco and Innovative Cable is not in the public interest. ATN Petition at 9-10; ATN August 28 *Ex Parte* Letter at 10. The Applicants reply that CFC is neither a LEC nor a cable operator, and that section 652 is inapplicable to the proposed transaction because the transaction would not create the combination about which ATN is complaining. Joint Opposition at 9. The Applicants further argue that, even if section 652 did apply, section 652(d)(5) expressly permits LECs, like Vitelco, that have less than \$100,000,000 in annual operating revenue to purchase "small cable systems in nonurban areas." The Applicants argue that this exception thus reflects Congress's judgment that affiliations between LECs and small nonurban cable systems are not likely to harm competition and should be allowed. Joint Opposition at 9 (citing 47 U.S.C. § 572(d)(5)); CFC September 9 *Ex Parte* Letter at 2. We agree with the Applicants that the underlying policy of section 652 does not support, and, indeed, rebuts, ATN's argument that allowing the continuation of common ownership here is not in the public interest.

⁷⁴ *Verizon Communications, Inc., Transferor, and America Movil, S.A., DE C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, WT Docket No. 06-113, 22 FCC Rcd 6196, 6206, para. 25 (2006) (*America Movil/Verizon Order*); *Verizon/MCI Order*, 20 FCC Rcd at 18529, para. 191. We also reject similar claims by Jeffrey B.C. Moorhead that the proposed transaction will hinder competition in the U.S. Virgin Islands. See Moorhead Petition at 1.

⁷⁵ Springel Opposition at 7-9.

⁷⁶ ATN Petition at 19-20, 23-25.

receives federal universal service support that its former owners did not use in an appropriate manner, and that Commission policies limit the ability of new entrants to receive support in the future. It states that Vitelco mishandled local tax credits under its former ownership, and that this benefit disadvantages competitors. It maintains that Vitelco is exempt from incumbent LEC obligations because it qualifies as a rural telephone company under section 251(f) of the Act, while other competitors are not, and claims that the state public service commission is underfunded and will not take action on its own to promote competition.⁷⁷ It is not clear how a divestiture condition would address any of these overly broad claims, and we reject any argument by ATN that we should use this transaction to correct pre-existing market conditions. The proposed transaction results in no increase in concentration in the wireline market because CFC is not a telecommunications carrier in the U.S. Virgin Islands, and ATN's argument about Vitelco's existing economies of scale and market share is not a valid basis to deny or condition it.⁷⁸ Universal service support and existing rural incumbent LEC obligations are addressed in the Act,⁷⁹ and the Applicants and all carriers remain subject to existing legal requirements.⁸⁰ Any argument that ATN has regarding industry-wide implementation of universal service support is not appropriate in a proceeding addressing a specific transaction. Finally, alleged issues associated with local tax credits or state public service commission funding are not relevant to the proposed transaction.⁸¹

24. Third, maintaining and, in this case, restoring, a viable telecommunications provider that can invest and innovate benefits the public interest and serves the competitive goals of the Act. Applicants state that, under the Trustee's oversight, ICC has begun deploying additional fiber capacity across the islands and completed a significant deployment of large bandwidth fiber capacity between central offices to support higher speed broadband services, and that approval of the proposed transaction will allow CFC to continue these improvements.⁸² They also assert that transfer of ICC to CFC will facilitate investment in Innovative Wireless's network, which Applicants describe as "antiquated," and enhance its ability to compete for this business.⁸³ Granting these applications will give consumers the opportunity to have access to a stabilized provider for local, long distance, wireless, and cable TV services. This is a transaction bringing ICC out of bankruptcy, and, as we have found in similar circumstances, ensuring that customers will continue to receive quality service without disruption and with necessary improvements is in the public interest.⁸⁴

25. For these reasons, we conclude that it would not serve the public interest to interject a structural separation requirement at the tail end of this lengthy bankruptcy process. Instead, we find that granting the applications will serve the public interest by avoiding service disruptions and permitting CFC to continue the Trustee's rehabilitation efforts after a difficult period for telecommunications consumers in the U.S. Virgin Islands.

⁷⁷ ATN Petition at 19-20, 23-25.

⁷⁸ *America Movil/Verizon Order*, 22 FCC Rcd at 6206, para. 24.

⁷⁹ 47 U.S.C. §§ 251, 254.

⁸⁰ *See America Movil/Verizon Order*, 22 FCC Rcd at 6208, para. 29 (stating that the transferee remains subject to all generally applicable legal obligations under the Act).

⁸¹ We also deny assertions that ICC's past behavior with regard to subsidies or tax credits is evidence of CFC's future actions. *See America Movil/Verizon Order*, 22 FCC Rcd at 6206, para. 25.

⁸² Public Interest Statement at 14-15.

⁸³ *Id.* at 19-20; Springel Opposition at 9; CFC August 14 *Ex Parte* Letter at 3.

⁸⁴ *See WorldCom Order*, 18 FCC Rcd at 26503-04, paras. 30-31.

IV. ORDERING CLAUSES

26. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 214, 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214, 303(r), 309, 310(d), that this *Order* IS ADOPTED, and that the Applications for Authority to Transfer Control and/or Assignment of various Commission licenses and authorizations filed by Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, Innovative Communication Corporation, acting by and through its Chapter 11 Trustee, National Rural Utilities Cooperative Finance Corporation, DTR Holdings, LLC, and VI PowerNet, LLC as discussed herein and set forth in Appendix A ARE GRANTED.

27. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(d), that the Petition of Atlantic Tele-Network, Inc. to Deny or, Alternatively, to Grant with Conditions, and the Petition to Deny of Jeffrey B.C. Moorhead ARE DENIED.

28. This action is taken pursuant to delegated authority under Sections 0.51, 0.61, 0.91, 0.131, 0.204, 0.261, 0.283, 0.291, and 0.331, of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.61, 0.91, 0.131, 204, 0.261, 0.283, 0.291, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Sharon Gillett
Chief
Wireline Competition Bureau

William T. Lake
Chief
Media Bureau

Ruth Milkman
Chief
Wireless Telecommunications Bureau

Mindel De La Torre
Chief
International Bureau

APPENDIX A

Applications Granted

SECTION 310(d) APPLICATIONS

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0003824713	Vitelcom Cellular, Inc.	KNKN845
0003825339	Atlantic Aircraft, Inc.	WMU3
0003824877	St. Croix Cable TV, Inc.	WPAP546
0003824912	Virgin Islands Telephone Corporation	KNKI943
0003825113	Innovative Communication Corporation, Stanford Springel, Chapter 11 Trustee	KNLG242

CABLE TELEVISION RELAY SERVICE AUTHORIZATIONS

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
CAR-20090526AA-09	Caribbean Communications Corporation	WHZ-442
CAR-20090526AB-09	Caribbean Communications Corporation	WLY-863
CAR-20090526AC-09	Caribbean Communications Corporation	WLY-864
CAR-20090526AD-09	Caribbean Communications Corporation	WLY-865
CAR-20090526AE-09	Caribbean Communications Corporation	WLY-866
CAR-20090526AF-09	ICC TV, Inc.	WLY-875
CAR-20090526AG-09	ICC TV, Inc.	WLY-876

SECTION 214 AUTHORIZATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20090519-00229	Vitelcom Cellular, Inc.	C2141999033000207
ITC-T/C-20090519-00230	Vitelcom Cellular, Inc.	C2141993031200048
ITC-ASG-20090519-00231	Innovative Communication Corporation	C2141999033000206

The Applicants also filed an application under section 214 of the Act for consent to assign the domestic common carrier transmission lines of ICC's Innovative Business Systems Division to VI PowerNet, LLC, to transfer control of Innovative Long Distance, Inc's domestic common carrier transmission lines from Stanford Springel, Chapter 11 Trustee, to National Rural Utilities Cooperative Finance Corporation, and to transfer control of the Virgin Islands Telephone Corporation's domestic common carrier transmission lines from Stanford Springel, Chapter 11 Trustee, to National Rural Utilities Cooperative Finance Corporation in connection with the transaction described in the Order.