

**Before the
Government of the Virgin Islands
of the United States
Public Services Commission**

In re:

Change of Control Proceedings for
Virgin Islands Telephone Corp. d/b/a
Innovative Telephone, Caribbean
Communications Corp. d/b/a Innovative
Cable TV St. Thomas-St. John, and
St. Croix Cable TV, Inc. d/b/a
Innovative Cable TV St. Croix

Docket 582

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PUBLIC SERVICES
COMMISSION
ST. THOMAS, VI

Closing Brief of Public Services Commission Staff

The Public Services Commission Staff (“Staff”) respectfully submits this Closing Brief. In this Brief, we intend to summarize the proceedings to date, to address the information presented in this proceeding on the Issues for Resolution set forth at the outset of this proceeding, discuss the efforts to negotiate a resolution of the outstanding issues, and finally present a staff recommendation. This Brief does not propose findings of fact. It is the position of the PSC Staff that the pre-filed testimony and evidence adduced at the hearings on each of the Virgin Islands simply does not support findings of fact that support a transfer of control. However, the draft Transfer of Control Agreement, discussed at much greater length below, if adopted, would permit the findings necessary for many but not all of these issues. However, a proposed agreement submitted for the first time at this stage of proceedings poses substantial procedural concerns as the basis for findings of fact. It is the functional equivalent of new and unsworn testimony.

I. Introduction.

First, as was made clear in a 1989 3rd Circuit Court Decision concerning the prior sale and financing of this very telephone company, this Commission has significant responsibilities to ensure that the regulated utilities provide adequate facilities and services, and do so at a reasonable cost. The Court said:

The PSC is charged with the responsibility of seeing that a utility meets its statutory obligation to provide adequate facilities and service at reasonable rates. In order to fulfill this responsibility, the PSC must have the authority to require a utility to maintain the kind of financial stability that will enable it to continue providing adequate facilities and service at reasonable rates in the future. In particular, if the sale of a utility's stock is proposed on terms that the PSC concludes will deprive the utility of such financial stability, it must be able to act effectively or its statutory mandate will go unfulfilled.

Atlantic Tele-Network, Co. v. Virgin Islands Public Services Commission, 841 F.2d 70, 73 (1989 3d Cir).

As a result of that decision, the Public Services Commission ("PSC" or "Commission") was able to obtain a Settlement Agreement with Atlantic Tele-Network ("ATN", now known as "New ICC") and the Rural Telephone Finance Cooperative ("RTFC") that provided for the necessary investment in facilities and services, and the establishment of satisfactory levels of equity as a condition to payment of dividends and fees. For more than a decade, that agreement was successfully implemented. Unfortunately, shown in this proceeding and in Docket 578 (the most recent rate investigation of VITELCO¹), VITELCO has been so depleted in the past several years that it effectively has a negative equity at the present time.

¹ Virgin Islands Telephone Corp. d/b/a Innovative Telephone, will be referred to as "VITELCO" throughout this brief. Caribbean Communications Corp. d/b/a Innovative Cable TV St. Thomas-St. John as "STT Cable" and St. Croix Cable TV, Inc. d/b/a Innovative Cable TV St. Croix as "STX Cable"; STT Cable and STX Cable will be jointly referred to as the "Cable Companies."

Before us in this docket is the proposed sale of VITELCO and the Cable Companies. That sale is taking place through the bankruptcy courts, where the parent entities of VITELCO and the Cable Companies are now being held in trusteeship. The Trustee proposes the sale of these companies, along with other assets of New ICC, to RTFC. RTFC is the single largest creditor of New ICC, and has submitted a credit bid and has assigned the rights to that bid to its affiliate, the National Rural Utilities Cooperative Finance Corporation (“CFC”). A credit bid is not a cash purchase, but is effectively a bid of the money already determined and adjudged to be owed to RTFC by New ICC. All of this is a normal part of the bankruptcy process. The unusual portion is that these assets are public utilities, and the sale of these assets is regulated by the Virgin Islands Public Services Commission.

In this proceeding, an Order Setting Issues for Resolution and Proceeding Schedule was issued by the Hearing Examiner on August 18, 2009. A two and a quarter page list of “Issues for Resolution” was presented. Due to the breadth of those issues, we will not try to address each of those issues, but rather will focus on those that remain the most troubling. Those issues include:

- d. Whether CFC has satisfied the Section 43(a) requirement that it provide the PSC with sufficient assurance that “obligations to employees [with respect to pension benefits previously enjoyed] will be satisfied as they become due.” 30 V.I.C. § 43a(c).
- f. Whether a reasonable allocation of the purchase price to each entity is made.
- g. Whether VITELCO’s balance sheet will be restructured in a form and content which meets reasonable, objective professional accounting standards and principles.
- h. Whether the applicant proposes capitalization plan that meets reasonable objective professional standards and principles.
- i. Whether VITELCO’s capital structure will be restructured to a reasonable approximation of rate base.
- j. Whether VITELCO will regain access to capital markets necessary for operations and reinvestment.
- l. Whether CFC has developed a reasonable capital expenditure program that addresses rate-base and depreciation matters, immediate service needs, and service

expansion and technology improvements, where warranted, subject to approval by the VIPSC

Many of these issues were considered and identified as important in the recent rate case for VITELCO – Docket 578, conducted just one year ago. At that time, the position of the Trustee and VITELCO was that many of these issues – such as creating a new capital structure and restated balance sheet, determining costs of capital, etc., - would necessarily only be done when a new buyer came in for VITELCO, and consequently those items were set aside as issues that would need to be addressed when the transfer of control application was filed. This is that time.²

The PSC Staff is not satisfied that these issues have been appropriately resolved. The Staff is not satisfied that many of the issues identified for resolution in this proceeding were adequately addressed in the course of this proceeding, either in the pre-filed testimony or in the hearings held in November 2009.

Following the discovery, testimony and hearings, the parties made substantial and concerted efforts to address the issues identified and reach agreement on the resolution of those issues. On many of those issues, we were able to make very substantial and important progress. A copy of that draft Transfer of Control Agreement (“TOC Agreement”) is attached hereto as Exhibit A. While that effort reflects a number of compromises, on several major issues, the parties did not succeed in resolving all outstanding issues.

² Although CFC is not a cash purchaser, instead bidding a portion of its judgment against the bankrupt parent entities, no one should mistake that the acquisition of VITELCO and the Cable Companies will require CFC to expend very substantial and real dollars.

II. Proceedings Summary.

Following the initial schedule set forth by the Hearing Examiner on August 18, 2009, the process to date has been the following:

- The submission of an application for approval of the transfer by CFC;
- The issuance of information requests by the PSC Staff and responses by CFC, VITELCO and the Trustee;
- Submission of written testimony by CFC, VITELCO and the Trustee;
- Submission of written testimony by PSC Staff
- Hearings held on each of the three major islands, where live cross-examination of the witnesses took place.

Following the hearings, PSC Staff and CFC met to seek a negotiated resolution of the differences in positions revealed by the testimony and discovery. As shown by the several extensions of this proceeding, that effort continued for three months. Unfortunately, a fully satisfactory resolution has not been obtained. While the Commission staff believes that the draft TOC Agreement addresses many of the issues set for resolution in this proceeding, several are left unsatisfactorily addressed.

During the course of those negotiations, PSC Staff continued to investigate the financial status of VITELCO and the Cable Companies, and additional concerns have been brought to our attention. Many of the assumptions driving the financial analysis of VITELCO in particular concern its receivables from parent entities and affiliates and liabilities to those same corporations. As several of those entities remain in bankruptcy, there are questions as to when and in what amounts the bankruptcy court may permit offsets presently shown on VITELCO's books, what, if any, additional charges or liabilities may be imposed on VITELCO or the Cable Companies for the operations of the bankruptcy trustee, and the financial viability of VITELCO when it is actually transferred out of the bankrupt estate of ICC.

III. The Issues.

In the interest of brevity, we will not seek to address each of the Issues for Resolution identified in the Order Setting Issues for Resolution and Proceeding Schedule, dated August 18, 2009 (“Issues for Resolution”). Instead, we will try to focus this brief to address matters in (1) issues which staff identified as major shortcomings as presented in the testimony and hearings on several of the key items;³ (2) matters addressed in the draft TOC Agreement; and (3) matters remaining of significant concern to PSC Staff.

A. Issues Remaining Following Testimony and Hearings.

Those Issues for Resolution of concern included (but were not limited to):

1.d. Whether CFC has satisfied the Section 43(a) requirement that it provide the PSC with sufficient assurance that “obligations to employees [with respect to pension benefits previously enjoyed] will be satisfied as they become due.” 30 V.I.C. § 43a(c).

1.f. Whether a reasonable allocation of the purchase price to each entity is made.

1.g. Whether VITELCO’s balance sheet will be restructured in a form and content which meets reasonable, objective professional accounting standards and principles.

1.h. Whether the applicant proposes capitalization plan that meets reasonable objective professional standards and principles.

1.i. Whether VITELCO’s capital structure will be restructured to a reasonable approximation of rate base.

1.j. Whether VITELCO will regain access to capital markets necessary for operations and reinvestment.

1.l. Whether CFC has developed a reasonable capital expenditure program that addresses rate-base and depreciation matters, immediate service needs, and service expansion and technology improvements, where warranted, subject to approval by the VIPSC.

³ Pursuant to the direction of the hearing examiner, on November 10, 2009, PSC Staff delivered annotated copy of the Issues for Resolution linking each issue to the written direct testimony and discovery responses. We will not repeat that extensive exercise here, but rather resubmit the annotated issues for resolution as Exhibit B..

It is worth immediate attention that many of these unresolved issues concern the long term capital restructuring of VITELCO, ensuring that it is restored to financial viability and that it will be able to secure the necessary access to capital markets. CFC has made significant and long-term commitments to the funding of VITELCO's current obligations and providing funding that is necessary to address its immediate needs. However, it does not appear that VITELCO will have independent access to capital markets in the near term future, and the actual financial condition of VITELCO on its emergence from the Bankruptcy Court sale is uncertain, as is the future sale of VITELCO when CFC must resell the company.

Very briefly addressing each of these issues:

1.d. Although CFC has agreed to provide an \$8M loan to address previous underfunding of the Pensions, that is a loan for which VITELCO will be liable and only partially funds the pension. (Draft TOC Agreement at ¶2.) As second matter, the Pension Funds were previously handled at the ICC level; although the draft TOC Agreement now states that the pension funds will be handled at either the DTR (Virgin Islands holding company) or VITELCO levels, Staff is not satisfied that this assurance is by itself adequate. (Draft TOC Agreement at ¶9.b.) It would be a grave concern if the Bankruptcy Court did not transfer the pension funds for VITELCO and Cable employees, along with all assets, to the new entities.

1.f. No allocation of the purchase price to each entity is made. (Draft TOC Agreement at ¶3.b.) Instead, a "Fair Value Assessment" is planned for post-transfer of control. As is made clear from the language of the draft TOC Agreement, it is not clear what effect such a "Fair Value Assessment" would have on the regulatory process for rate setting, or how the proposed resolution of the Preferred Shareholder issue (Draft TOC Agreement at ¶3.a. and 5.a.) will impact either the Fair Value Assessment or future rate setting procedures.

1.g. Although CFC has represented that it will restructure the balance sheet of VITELCO (e.g., elimination of Preferred Shares, restructuring of debt, etc), we do not have proposed initial balance sheet, nor projections for next several years. Given the size of VITELCO, and the capital needs, both an immediate balance statement and several years of projections would appear to be necessary planning tools.

1.i. In the absence of a business plan, capital investment plan, and balance sheets (both current and projections), it is impossible to say when and if VITELCO's capital structure will be restructured to a reasonable approximation of rate base.

1.j. In the absence of business and capital investment plans, it is impossible to say with any certainty when and if VITELCO will regain independent access to capital markets necessary for operations and reinvestment. However, we must note that was a major issue in the negotiations for the longer term financing currently offered in the draft TOC Agreement.

1.l. CFC states that it has not developed, but will in the near future develop, a reasonable capital expenditure program that addresses rate-base and depreciation matters, immediate service needs, and service expansion and technology improvements. However, CFC has indicated that it does not intend to seek PSC approval of such plans at the present time.

B. Issues Addressed in the Draft TOC Agreement.

As noted above, CFC and Commission Staff met and negotiated an effort to resolve many of those issues. The draft TOC Agreement does address many of these items. In summary, the draft TOC Agreement provides the following:⁴

⁴ Parenthical references are to the paragraphs within Ex. A, the draft TOC Agreement.

1. Management plan, organizational charts and bios of the Management team will be delivered by CFC within five days of the Hearing Examiner's Report and before Commission approval. (§1.b.2.)
2. CFC will provide to PSC a business plan, including capital plan within four months of the Transfer of Control ("TOC"). (§2.a.)
3. CFC commits to investing a minimum average of \$15M per year for five years in VITELCO and Cable Companies for plant, property and equipment ("PP&E"); \$12M for VITELCO alone. (§2.b.)
4. The priority for funding the capital investments is from internal funding (current rates and revenues), with CFC making at least \$20M available if and as needed. (§2.c.)
5. No transfers of assets of VITELCO in excess of 5% of assets without PSC's prior consent. (§3.a.)
6. VITECLO may grant mortgages on its assets only on loans for VITELCO's benefit. No security will be granted on VITELCO or its assets or guarantees obtained from VITELCO for any loans not directly benefiting VITELCO. (§3.c.)
7. The proposed debt being financed by CFC (\$50M RUS replacement, \$30M Preferred Buyout, \$8M Pension, \$5M other debts, and up to \$20M for capital (see #4, above) will be financed at CFC's lowest rate:
 - a. Over 15 years;
 - b. 4 years interest only payments on \$38M (Preferred and Pension), which matches term of the proposed rate freeze. (§4.a and b.)
8. For the period of its ownership, CFC will provide a revolving credit line. (§4.c.)
9. RTFC expressly waives any claim to dividends from the Preferred Shares. (§4.d.)
 - a. Other \$55M in preferred shares being rolled in equity as common stock. (§5.a.1.)
 - b. However, the Fair Value Assessment which allocate estimated value of the companies post transfer for the purposes of CFC's books is not controlling on the PSC. (§3.b.)
10. No dividend payments for four years, which matches term of rate freeze. (§5.c.)
11. Quality of Service standards commitments made. (§7.a and b.)
12. VITELCO's revenue requirements to be determined on stand-alone basis, and actual taxes paid will be used (e.g., EDC benefits will be used for the benefit of ratepayers). (§7.c and d.)
13. A rate freeze will last four years – but only so long as CFC and VITELCO are in substantial compliance with the TOC Agreement. (§7.e.)
14. Future management fees will be justified on proper regulatory and accounting principles. No advisory fees. (§8.a.)
15. No significant changes in the number of employees at VITELCO or the Cable Companies for at least one year, but CFC reserves the right to offer an early retirement plan and to release an employee for cause. (§9.)
16. Specific financial and statistical reports required on an annual and quarterly basis. (§10.)
17. Applications for USF funds to be filed with the PSC no later than 60 days before required at the FCC. (§10.d.)
18. Procedure for claims of confidentiality specified, to make are future filings more transparent:

- a. For any claims of confidentiality, at the time of making such claim VITELCO must file a redacted copy of the document which will be publicly available immediately. (§10.e.)

As noted above, to arrive at this compromise, the Staff and CFC made concessions on a significant number of matters. The Staff had certainly entered into this proceeding with every expectation that a business and capital investment plan would be in place before a transfer of control would be approved; nevertheless, more than a year after the credit bid was announced, the firm position of CFC is that will not have such plans until after it is in actual possession and control of the Companies. That position is reflected in the draft document by the reference to delivery of such plans four months after CFC takes possession of the Companies. On the other hand, CFC has made significant concessions on the terms of its loans to VITELCO, extending the terms to fifteen years, forbearing principal payments on a portion of the debt in the first four years, and permitting the debts to be assumable, unlike the current RUS debt.

C. Issues That Remain Pending

As of this filing date, the remaining issues are focused on the following:

- (1) How and where will the Pension Funds be handled?
- (2) In what condition will VITELCO be transferred to CFC – in other words, what will its balance sheet look like when it is released from the bankruptcy court’s control?

i. Pension Funds.

In its discovery responses CFC proposed to loan funds to VITELCO to enable it “to make payments to the pension fund to bring it within the acceptable range of the funding requirement prescribed by the Pension Benefit Guaranty Corporation (“PBGC”).” The Commission’s witnesses testified that

We recommend that the CFC commitment to pay all pension amounts should be established concurrent with any TOC approval. Accordingly, the proposed loan transaction related to the pension should be brought to the PSC for review and approval. In the absence of such review and approval it should be assumed that there will be no rate impact of such a transaction and any repayment of the loan from cash flow will be subject to review and approval in the future. The current rates of VITELCO were set incorporating pension expense. Therefore, neither VITELCO's rates nor its financial condition should be adversely affected by the interest costs or repayments of this debt. In this regard, Attachment II Item 4 notes that the Hearing Examiner, in Docket No. 578, stated,

[T]he Hearing Examiner cautions that if the transfer of assets is not free and clear of claims of the preferred shareholders and the amounts owed to the debt holders including the PBGC, ratepayers should not be required to repay these amounts through future rates.

PSC Panel Testimony at P.30 L.20 - P.31 L.17.

The proposed financing of the \$8M for the pension funds will not be sufficient to make the pension funds whole, but is intended to simply bring the pension funds into compliance with minimum funding requirements. In addition, although CFC has recently added a proposed section on the relocation of the Pension Funds to DTR or VITELCO, that proposal is far from certain.

ii. Balance Sheets and Releases of Claims.

At the present time, there are substantial liabilities on the books of VITELCO running to the bankrupt parent entities, and substantial receivables due to VITELCO from the bankrupt entities, as well as other affiliates. Simply offsetting the payables against the receivables to obtain a net number is inappropriate in this circumstance, because the parent entities are in bankruptcy, but VITELCO is not. In addition, some of these liabilities and claims are pre-petition, and others are post-petition. These are not insignificant sums – the VITELCO payables exceed \$100M, the receivables exceed \$200M.

On February 4, 2010, Staff sent a detailed memorandum to VITELCO seeking more information concerning those accounts. Following that correspondence, in recent discussions, we have been assured that releases of claims between the Trustee on behalf of the bankrupt estate and VITELCO are contemplated in the bankruptcy court's approval process, and have in fact been provided in the related sales of the "Group 2" assets. However, at the present time we have no precise listing of which claims and what dollar amounts are being released, nor can the Trustee, VITELCO or CFC assure the Commission that such releases will be approved and for precisely which issues.

In the most recent iteration of the draft TOC Agreement, a section has been added in which CFC has now asserted that VITELCO's claims against surviving affiliates (e.g., the Cable Companies, BVI Cable, the St. Maarten entities, etc.; see TOC Agreement at ¶8.b.) will not be released. Again, neither specific accounts and amounts, or even ranges of dollars, are not provided.

From the information available, only a ten percent difference in the numbers on the claims and liabilities could make the difference in a VITELCO with positive equity or negative equity. The PSC Staff, in the absence of a balance sheet from the Applicants (VITELCO/Trustee and CFC) have prepared a *proforma* balance sheet (attached hereto as Exhibit C) estimating the position of VITELCO at the time of a transfer of control; such an estimate is not the proper tool for approval of such a key item, and one clearly identified as key in the Issues for Resolution. In the absence of a clear statement as to what the beginning balance sheet of VITELCO will be, it is impossible for Staff to even provide an estimate as to when VITELCO will be independently financially viable, or have a capitalization structure that approximates its rate base.

IV. Conclusion and Recommendation.

As detailed in Exhibit B, the Annotated Issues for Resolution, and above, Staff does not believe that based on the record in this proceeding as of the close of the public hearings, CFC or the Trustee has proved a sufficient case for approval of the transfer of control. The record as of that time clearly does not support any conclusion that the Issues for Resolution had in fact been properly addressed.

There are substantial procedural issues with the adoption of a proposed, but incomplete agreement, as the basis for findings of fact. Notwithstanding that issue, if the remaining issues can be successfully addressed, the draft TOC Agreement does represent a good faith effort on the part of CFC and the PSC Staff to address the Issues for Resolution. Unfortunately, it is incomplete.

For the above reasons, Staff recommends that the Hearing Examiner retain this matter for additional proceedings to resolve the outstanding issues.

Dated this 19th of February, 2010.

Respectfully submitted,
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TRANSFER OF CONTROL AGREEMENT

This Transfer of Control Agreement (“Agreement”), dated as of _____ 2010, is by and among Caribbean Asset Holdings, LLC (“CAH”) (together with its successors and assigns, the “Parent Company”); DTR Holdings, LLC (“DTR”); Virgin Islands Telephone Corp., doing business as Innovative Telephone (“VITELCO”); Caribbean Communications Corp., doing business as Innovative Cable TV St. Thomas-St. John (“Innovative Cable STT-STJ”); and St. Croix Cable TV, Inc., doing business as Innovative Cable TV St. Croix (“Innovative Cable STX” and together with Innovative Cable STT-STJ, the “Cable Companies”) and the United States Virgin Islands Public Services Commission (the “PSC”). CAH is a wholly-owned subsidiary of National Rural Utilities Cooperative Finance Corporation (“CFC”). DTR is a wholly-owned subsidiary of CAH.

In connection with the PSC’s approval of the sale of the stock of VITELCO and the Cable Companies from Stanford Springel, as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation (“New ICC”), to the subsidiary of Parent Company as described in the Consolidated Application for Consent to Transfer Control of a Public Utility (the “TOC Application”) PSC Docket No. 582, the parties agree to the following terms and conditions in connection with the transfer of control (the “TOC”).

This Agreement shall become effective upon consummation of the TOC (the “Effective Date”). In the event that the TOC is not consummated, and CAH notifies the PSC that the TOC will not be consummated, then this Agreement shall become null and void and of no further effect (and any consent granted to the parties hereto pursuant to the TOC Application shall be deemed rescinded).

1. CFC’s Qualifications

- a. The PSC agrees CFC is financially able to own and operate VITELCO and the Cable Companies.
- b. The PSC agrees CFC is qualified to own and operate VITELCO and the Cable Companies (the “Operating Companies”) and is qualified to retain and supervise experienced and able management for CAH, DTR, and the Operating Companies, provided that CAH and DTR comply with the following conditions:
 1. CAH agrees it will not make material changes to Operating Company management (except termination for cause and except as provided in Section 9 below) for at least one year from the Effective Date of this Agreement.

2. CAH/DTR shall submit within five (5) business days of the issuance of the Hearing Examiner's report and recommendation its management plan, including organizational charts and professional biographies for the executive management team, and an employment plan for the Vitelco CEO. Executive management will have a minimum average of 10 years of experience managing telecommunications and/or cable companies or in their respective fields.
- c. CFC is committed to the provision of quality telecommunications and cable television services to USVI consumers.

2. Business Plan and Capital Expenditures

- a. CAH will provide the PSC with VITELCO's business plan (which shall include, at minimum, financial projections, network modernization plan, and planned capital expenditures) within four months of the Effective Date.
- b. The annual investment in plant, property and equipment ("PPE") for VITELCO and the Cable Companies will average \$15,000,000 for the five-year period commencing on the Effective Date. The average annual investment in VITELCO's PPE during that period will be \$12,000,000. The purpose of the capital expenditures shall be to implement the proposed network modernization plan in approximately four years and to rehabilitate and improve the VITELCO and Cable Company networks to provide improved telephone, telecommunications and cable television services.
- c. CAH, DTR, VITELCO and the Cable Companies may take any and all steps necessary or desirable to commence implementation of the business plan at any time following the date of consummation of the TOC and no later than the date of submission of the business plan to the PSC. VITELCO intends to fund capital expenditures using (i) internal cash flow to the greatest extent reasonably possible, and (ii) secured debt financing from CFC as detailed in Section 4 below, and will undertake to make capital improvements as quickly as reasonably possible after the Effective Date.
- d. VITELCO is not seeking PSC approval of its business plan or capital investment plan at the time of submission, and such submission does not bind the PSC in future rate proceedings as to the reasonableness, prudence or propriety of such plan. However, CFC acknowledges that the PSC will undertake its own review of the business plan and the capital investment plan.

3. Assets, Mortgages and Pledges of Stock

- a. **Assets.** VITELCO shall not transfer any property, plant or equipment to affiliates without due consideration and in no event shall any property in excess of five percent (5%) of Total Assets be transferred, conveyed or sold without the PSC's

prior consent. This provision does not require VITELCO to seek PSC approval to retire, replace or upgrade existing property, plant, inventory, or equipment. Total Assets shall mean, for any period, calculated for VITELCO in accordance with generally accepted accounting principles (GAAP), the sum of all assets on the balance sheet.

b. **Fair Value Assessment.** Prior to the Effective Date, CAH shall have completed an assessment of the fair value of VITELCO pursuant to SFAS 141. The Fair Value Assessment (“FVA”) shall have been prepared by an appraiser that is qualified to conduct such assessments. The balance sheet adjustments resulting from the FVA shall have been carried out by VITELCO and reviewed by an independent certified public accountant. A *pro forma* VITELCO balance sheet after adjusting for the FVA shall have been provided to the PSC (promptly upon completion of the FVA). CAH acknowledges that the PSC regulates rates based on the principle of “original cost”. The PSC may consider, but need not accept, the *pro forma* VITELCO balance sheet and FVA for the purpose of future ratemaking proceedings or local regulatory accounting purposes.

c. **Mortgages**

1. Notwithstanding Section 3(a) above, VITELCO may grant mortgages and UCC liens to creditors on its assets in connection with loans made directly to and for the benefit of VITELCO.
2. VITELCO and the Parent Company agree that any future financing (*i.e.*, any financing not now in place and disclosed to the PSC) undertaken by and for the benefit of the Parent Company or any subsidiary of the Parent Company (“Parent Subsidiary”) shall in no way require VITELCO to guarantee such financing or any part thereof, regardless of whether such guarantee would be secured by assets of VITELCO or unsecured.

4. **Debt**

- a. The parties acknowledge that at the time of the TOC, VITELCO will have secured term debt outstanding or available in the aggregate amount of \$113 million that will replace its existing debt obligations and fund capital expenditures as detailed below (amounts are approximate and may vary at the time of closing on the TOC):

Amount (estimated)	Purpose
\$50,000,000	Replace RUS, FFB debt outstanding
\$30,000,000	Replace a portion of the outstanding par value of

	the preferred stock obligation
\$20,000,000	External funding for a portion of future capital expenditures
\$8,000,000	Pension fund contribution payments
\$5,000,000	Replace other existing debt
\$113,000,000	Total Debt

- b. The above debt shall have an interest rate commensurate with the interest rate that CFC would offer to its members with no adder, except that CFC will offer interest only financing terms on the debt arising from the preferred stock and pension fund for a minimum of four years from the Effective Date. The term of the debt shall not be less than 15 (fifteen) years with a 15 (fifteen) year amortization period, except that the amortization period for the debt arising from the preferred stock and pension fund shall be 11 (eleven) years (commencing following the four (4) year interest only payments period). The above debt may remain in place so long as CFC has, through its subsidiaries, sole ownership of VITELCO. CFC and/or its affiliates and subsidiaries will make the debt described in this paragraph available for assumption by a third-party buyer of VITELCO, and at the third-party buyer's option. The PSC shall include the above debt in the calculation of the costs of capital in rate investigations until such debt is satisfied and so long as CFC, its affiliates and successors are in compliance with all terms of this Agreement. No increase in the debt above the levels prescribed above shall be permitted nor any extension of the term of such debt without prior approval of the PSC.
- c. The parties acknowledge that after the TOC, VITELCO, along with its affiliate companies, will have access to secured revolving credit facilities to fund capital expenditures or to provide working capital. The revolving credit facilities will be provided by CFC through its subsidiaries and will have terms commensurate with similar facilities that are provided by CFC. The duration of this facility shall be consistent with similar facilities to other CFC borrowers and the term shall not exceed 5 (five) years.
- d. There shall be no payment of dividends to Rural Telephone Finance Cooperative ("RTFC") on the preferred stock issued by VITELCO in 2004 and purchased by RTFC in May 2009 and accordingly, official notice of the waiver of any and all such dividend payments due to RTFC shall be provided to VITELCO on the date of closing on the TOC.

5. Equity, Capital Stock and Dividends

a. Capital Stock

1. At the time of the TOC, \$55,000,000 of the \$85,000,000 par value of the preferred stock issued by VITELCO in 2004 plus all unpaid cumulative dividends shall have been converted to common equity capital. The PSC shall determine in future rate proceedings whether the equity set forth above shall be considered a valid element of capital.
2. Notwithstanding Section 5(a)(1) above, the issuance of any further VITELCO stock shall be subject to prior approval by the PSC.
3. The Parent Company and any subsidiary of the Parent Company may pledge any of the issued and outstanding stock of VITELCO to a lender as collateral for a loan. Should a default in such a loan occur resulting in seizure of or foreclosure upon that stock, any proposed sale of such stock shall first be submitted to the PSC for approval before consummation which approval shall not be unreasonably withheld, conditioned, or delayed if the proposed sale will not adversely affect VITELCO's operations or rates, or unduly restrict VITELCO's access to the capital markets. Provided this condition is met, it is understood and agreed that in the event of a loan default, a secured lender may foreclose its lien or pledge upon the VITELCO stock.

b. **Equity.** VITELCO shall manage its business to achieve positive earnings and a positive equity position. The parties recognize that as of the time of the TOC, the transactions detailed in Sections 3(b) and 5(a)(1) above may not result in a positive equity position for VITELCO. The parties recognize that the PSC may in the future review and evaluate the actions required to ensure that VITELCO is restored to financial viability, consistent with the provision of safe and adequate services at reasonable costs.

c. **Dividends.** VITELCO shall not make cash dividend payments any earlier than four years after the Effective Date of this Agreement.

6. Transfers of Control

- a. The sale, transfer, or conveyance of 51 percent (51%) or more of the stock of VITELCO or either of the Cable Companies to a non-affiliated person shall be subject to prior approval by the PSC. Affiliated person shall be defined as CFC, CAH, DTR, the Operating Companies or any wholly-owned subsidiary of CFC, CAH, DTR or the Operating Companies.
- b. The sale, transfer, or conveyance of a controlling interest in CAH or DTR, to a non-affiliated person shall be subject to prior approval by the PSC.

7. Quality of Service, Rates and Income Tax Expense

- a. VITELCO agrees to strive to meet existing quality of service standards subject to the limitations of the current network and current systems. As recommended in PSC Docket 578, VITELCO agrees to work with the PSC to establish revised quality of service standards and to meet said standards. If within a year of establishment any of the standards remain unmet, Vitelco shall provide a plan to achieve compliance for those unmet standards within 30 days.
- b. VITELCO does not anticipate any customer disruption as a result of the TOC. In unlikely event of customer disruption, VITELCO will address that disruption as quickly as possible.
- c. VITELCO's revenue requirement shall be determined based on the stand-alone operations of VITELCO and shall *not* include (i) tax expenses that are based on a consolidated tax return of the Parent Company or other affiliates and are in excess of VITELCO's stand alone tax liabilities, (ii) tax expenses that are technically offset by the abatement of taxes through an Economic Development PSC ("EDC") certificate or any other tax abatement or relief program that may be extended, continued or granted to VITELCO.
- d. CFC agrees that any tax savings which may result from the write-off of major VITELCO assets related to the current bankruptcy proceedings shall be reserved and treated in a manner to be determined and prescribed by the PSC.
- e. Provided all parties hereto are in substantial compliance with the terms of this Agreement, no party may request or initiate a rate investigation any earlier January 2014.
 1. The parties hereto acknowledge that the PSC has the authority to address VITELCO's rates, rate base, and related matters in future rate proceedings and that VITELCO is free to request adjustments in rate base, changes to rates, and similar or related actions in future rate proceedings.

8. Management Fees and Intercompany Payables and Receivables

- a. VITELCO shall be permitted to pay a management fee to Parent Company or Parent Subsidiary in an amount that is identifiable and attributable to the cost of managing VITELCO based on market values or cost, whichever is lower, using the direct allocation method pursuant to FCC Parts 32 and 64 and, to the extent it is not inconsistent with or contrary to FCC Parts 32 and 64, GAAP.
- b. Amounts payable from VITELCO to the Cable Companies, Innovative Long Distance, Inc., Vitelcom Cellular, Inc., ICC TV, Inc., and VI PowerNet, LLC and amounts receivable by VITELCO from the Cable Companies, Innovative Long

Distance, Inc., Vitelcom Cellular, Inc., ICC TV, Inc., and VI PowerNet, LLC shall be reconciled, but not released, on the Effective Date, except to the extent such amounts did not originate from the verifiable trade of goods and/or services.

9. Employees

- a. CAH, DTR, and the Operating Companies agree that they shall not cause any significant changes in the total number of employees of VITELCO or the Cable Companies prior to the one (1) year anniversary date of the Effective Date. This provision shall not prohibit VITELCO or either of the Cable Companies from instituting a voluntary early retirement program for existing employees, including Operating Company management.
- b. DTR or VITELCO will continue the Virgin Island Telephone Corporation Pension Plan for Hourly Employees and the ICC Consolidated Pension Plan.

10. Reporting Requirements

- a. The PSC accepts and agrees to the modification of VITELCO's fiscal year end from December 31 to May 31 to become effective immediately upon closing on the TOC. This modification shall not impact VITELCO's rates.
- b. VITELCO shall provide in a form satisfactory to the PSC within 60 days of the close of each fiscal quarter, except at fiscal year end which shall be submitted within 120 days of the close of the fiscal year, the following:
 1. Unaudited balance sheet and income statement prepared by management;
 2. Reports on the company's revenue requirements and rate base;
 3. A statistical report that includes information for the quarter on access lines, employee headcount, plant additions and plant retirements; and
 4. A summary of payments, income, and receipts from or made to any affiliated company, parent company, operating divisions thereof, or affiliated individual. This report shall not include payments, income and receipts from or made to any employee in the normal course of his or her employment.
- c. VITELCO shall provide the following, at a minimum, in a form acceptable to the PSC, on an annual basis:
 1. VITELCO's audited financial statements within 15 days of receipt of said audit report together with the auditor's opinion and management letters, provided such letters are accorded confidential treatment,

2. An annual statistical report that includes information for the year on access lines, employee headcount, plant additions and plant retirements.
- d. VITELCO shall provide the PSC with applications for certification of eligibility to receive federal Universal Service Fund distributions in form and substance acceptable to the PSC no later than 60 days in advance of required PSC action.
- e. For all required reports, if VITELCO wishes to assert any claim of confidentiality of some portion of the information submitted, VITELCO shall file no later than the due date:
 1. A complete copy of the required information, marked as subject to a claim of confidentiality;
 2. A redacted copy of the required information, showing where information has been withheld. Such redacted copy shall be immediately available to the public; and
 3. A motion specifically identifying the information claimed to be confidential and the basis of each claim.

11. Access to Information

- a. The Operating Companies will provide the PSC with access to information related to the regulated activities of VITELCO and the Cable Companies upon PSC request. Such access shall include access to the Operating Companies' (1) financial books and records (2) tax returns and (3) employment contracts.
- b. CAH and DTR agree to provide the PSC with all information that is reasonably related to the regulated activities of the Operating Companies.
- c. CAH, DTR, and/or the Operating Companies may request confidential treatment of information provided to the PSC. CAH, DTR, and/or the Operating Companies will provide information to the PSC under an appropriate protective order pending resolution of such requests.

12. PSC Authority

- a. Except insofar as their activities, personnel or assets involve or affect the Operating Companies, are otherwise expressly addressed in this Agreement, or involve activities and/or assets which the PSC has the discretion to take into account to determine local revenue requirements as permitted by law, the PSC expressly recognizes that CFC, CAH, and DTR are not subject to PSC jurisdiction.

13. Assessments

- a. VITELCO will pay all future assessments within 30 days of receipt of an order from the PSC imposing an assessment, even if VITELCO expects or intends to appeal such assessment. Concurrently with the imposition of future assessments, the PSC will notify VITELCO of the docket or dockets to which such assessment(s) will be allocated and will provide VITELCO on request with copies of any and all bills and invoices received by the PSC in any existing docket..

14. Prior Agreement and Governing Law

- a. The Settlement Agreement and all amendments thereto between VITELCO, Atlantic Tele-Network Co. ("ATN"), RTFC and the PSC dated April 19, 1989 is terminated as of the Effective Date and shall on the Effective Date be of no further force or effect and all provisions thereunder shall on the Effective Date be released.
- b. This Agreement shall be governed by and construed in accordance with the laws of the U.S. Virgin Islands without regard to U.S. Virgin Islands conflict-of-law provisions.

Caribbean Asset Holdings, LLC

Dated: _____

By: _____

DTR Holdings, LLC

Dated: _____

By: _____

Virgin Islands Telephone Corporation

Dated: _____

By: _____

Caribbean Communications Corp.

Dated: _____

By: _____

St. Croix Cable TV, Inc.

Dated: _____

By: _____

TRANSFER OF CONTROL AGREEMENT
Ref: PSC Docket No. 582

*Exhibit A to PSC Closing Brief
CFC Draft Dated February 19, 2010;*

United States Virgin Islands
Public Services Commission

Dated: _____

By: _____