Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of National Rural Utilities Cooperative Finance Corporation, *Transferor*, and Atlantic Tele-Network, Inc., *Transferee*, Applications for Consent to the Transfer of Control of FCC Licenses and Authorizations	WC Docket No. 15-____

DESCRIPTION OF PROPOSED TRANSACTION,
PUBLIC INTEREST STATEMENT, AND RELATED REQUESTS AND SHOWINGS

EXECUTIVE SUMMARY

National Rural Utilities Cooperative Finance Corporation ("CFC") and Atlantic Tele-Network, Inc. ("ATN") request Commission consent to transfer control from CFC to ATN of the licenses and authorizations held by the following companies: DTR Holdings, LLC; Caribbean Communications Corporation d/b/a Innovative Cable TV St. Thomas-St. John; ICC TV, Inc. d/b/a CBS-TV2; Innovative Long Distance, Inc.; Virgin Islands Telephone Corporation d/b/a Innovative Telephone; and Vitelcom Cellular, Inc. d/b/a Innovative Wireless. These companies, along with St. Croix Cable TV, Inc. d/b/a/ Innovative Cable TV St. Croix and VI PowerNet, LLC, neither of which holds an FCC license, provide services in the U.S. Virgin Islands under the name Innovative (collectively, "Innovative Companies"). The Innovative Companies variously provide local exchange, exchange access, domestic intrastate and interstate interexchange, international telecommunications, commercial mobile radio, wireline broadband Internet access, and cable services in the U.S. Virgin Islands.

CFC acquired control of the Innovative Companies in 2010 as part of a credit bid to satisfy, in part, the debts of the Innovative Companies' bankrupt former parent companies and ultimate owner. Over the last five years, CFC has invested more than $125 million and significant expertise in improving the facilities and operations of the Innovative Companies. CFC stated at the time of acquisition, however, that it had no intention to own the Innovative Companies over the long term. CFC, ATN, and their affiliates have executed a purchase agreement pursuant to which ATN, through a straightforward stock purchase, will acquire indirect control of the Innovative Companies and their affiliated companies in the U.S. Virgin Islands, British Virgin Islands, and St. Maarten (the "Proposed Transaction"). As set forth

herein, the Proposed Transaction will serve the public interest and provide substantial benefits to consumers, visitors, and the local economy in the USVI.

ATN is an ideal and well-qualified buyer. It is an experienced and financially sound carrier that has a long and successful history of providing communications services to island-based, rural, tribal, and other underserved markets in the mainland United States, Bermuda, and the Caribbean region through a strategy that emphasizes local management and long-term investment. ATN has served the USVI market for the past 16 years through its affiliate Choice Communications, LLC, which provides mobile voice and data and fixed wireless broadband services. ATN also provides advanced wireless, wireline, broadband, and voice services to consumers and businesses in other markets on the U.S. mainland, Aruba, Bermuda, and Guyana. As a result, it is well aware of, and experienced with, the operational and other difficulties presented by serving communities like the U.S. Virgin Islands, which consist of several remote islands that are economically disadvantaged, have a small population and widely varying terrain, and are subject to severe weather.

Leveraging ATN's decades of experience and operational and technical expertise in serving rural and underserved markets (including its prior USVI experience), its superior access to capital, and recent network upgrades and operating improvements completed by CFC, ATN will reinvigorate the Innovative Companies. Specifically, the Proposed Transaction will benefit USVI consumers, businesses, and the economy by:

- Expanding the service portfolio of the combined companies and enhancing customer service;
- Enhancing the economic and social well-being of Virgin Islanders through improved access to and reliability of advanced communications services, which promote economic productivity and efficiency, employment, and access to education and healthcare;

- Providing a well-managed transition for customers, with no disruption to service, account, or billing arrangements; and
- Ensuring effective disaster recovery, minimizing outages resulting from hurricanes and tropical storms.

In addition, ATN projects that the post-consummation integration of the Innovative Companies with ATN's existing operations will generate significant operational cost savings through greater scale and, consequently, greater purchasing power with respect to equipment, software vendors, and video programming. These savings will help ensure that the Innovative Companies' services remain affordable. The transaction also will enhance competition in the mobile voice and data market by enabling ATN to create a more viable competitor against AT&T and Sprint, the substantially larger mobile market leaders in the USVI. Importantly, by combining Choice and VCI's operations and customers to achieve critical mass, ATN will be able to deploy a new 4G mobile network post-closing. ATN also is committed to improving broadband access in the U.S. Virgin Islands.

Moreover, the acquisition poses no threat to competition and raises no other public interest concerns. The transaction will have no competitive effect in the USVI local exchange, exchange access, intra-territorial or interstate interexchange, wireline broadband, or multichannel video programing distribution markets because ATN does not provide such services in the U.S. Virgin Islands. Although subsidiaries of both ATN and CFC provide mobile voice and data services in the USVI, any horizontal effects are negligible and the transaction does not trigger the Commission's spectrum screen. Rather, the combination of the companies' mobile businesses will enhance competition by creating a stronger local provider that will be able to better compete against the larger carriers in the market.

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DESCRIPTION OF PROPOSED TRANSACTION,
PUBLIC INTEREST STATEMENT, AND RELATED REQUESTS AND SHOWINGS

Pursuant to Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the "Act"),[1] and Sections 1.948, 63.04, 63.18, and 63.24 of the rules of the Federal Communications Commission ("Commission" or "FCC"),[2] National Rural Utilities Cooperative Finance Corporation ("CFC" or "Transferor") and Atlantic Tele-Network, Inc. ("ATN" or "Transferee") request Commission consent to transfer control from CFC to ATN of Commission licenses and authorizations held by the following companies: DTR Holdings, LLC ("DTR"); Caribbean Communications Corporation d/b/a Innovative Cable TV St. Thomas-St. John ("Innovative Cable STT-STJ"); ICC TV, Inc. d/b/a CBS-TV2 ("TV2"); Innovative Long

[1] 47 U.S.C. §§ 214, 310(d).

[2] 47 C.F.R. §§ 1.948, 63.04, 63.18, 63.24.

Distance, Inc. (“ILD”); Virgin Islands Telephone Corporation d/b/a Innovative Telephone (“Vitelco”); and Vitelcom Cellular, Inc. d/b/a Innovative Wireless (“VCI”). These companies, along with St. Croix Cable TV, Inc. d/b/a/ Innovative Cable TV St. Croix (“Innovative Cable STX”) and VI PowerNet LLC (“VI PowerNet”), neither of which holds an FCC license, provide services in the U.S. Virgin Islands under the name Innovative (collectively, “Innovative Companies,” together with CFC and ATN, “Applicants”). The Innovative Companies variously provide local exchange, exchange access, domestic intrastate and interstate interexchange, international telecommunications, commercial mobile radio, wireline broadband Internet access, dial-up Internet access and cable services in the U.S. Virgin Islands. CFC, ATN, and their affiliates have executed a purchase agreement pursuant to which ATN will acquire control of the Innovative Companies and their affiliated operating companies in the U.S. Virgin Islands, British Virgin Islands, and St. Maarten (the “Proposed Transaction”).

As further discussed below, the grant of Commission consent for consummation of the Proposed Transaction will serve the public interest and provide significant benefits to consumers, visitors, and the local economy in the U.S. Virgin Islands. Having significantly improved the Innovative Companies and their affiliates’ financial and operational status, CFC seeks to sell those businesses. ATN is an ideal buyer—an experienced and financially-sound carrier focused on serving island-based, rural, and underserved markets with local management and a strategy focused on long-term investment. The combined companies will offer a strong and comprehensive services portfolio and enhanced customer service, improved connectivity, enhanced economic and social well-being of USVI residents, effective disaster recovery, and a well-managed transition for customers. The combination of ATN and the Innovative Companies will not create any adverse horizontal effects or harm competition in any USVI product market.

Although the businesses of ATN and the Innovative Companies overlap in the mobile voice and data market, where each is a very small player, their combination will create a more effective competitor to the dominant USVI mobile providers, AT&T and Sprint.

The Applicants have filed four sets of electronic applications with the Commission seeking consent for the Proposed Transaction, as summarized in Table 1 below.

Table 1: Applications Filed

Description of Application	Licensees/ Authorization Holders
Transfer of control of international and domestic Section 214 authority	DTR and VCI (international); ILD, and Vitelco (domestic)
Form 603 transfer of control of wireless licenses (lead application in ULS) • Common-carrier fixed point-to-point microwave (CF) licenses • Industrial/business pool conventional (IG) license • Paging and radiotelephone (CD) license	Vitelco
Form 603 transfer of control of wireless licenses • Advanced wireless services (AW) license • Cellular (CL) licenses • Common-carrier fixed point-to-point microwave (CF) licenses • PCS broadband (CW) license	VCI
Form 327 transfer of cable television relay service licenses	Innovative Cable STT-STJ
Form 327 transfer of cable television relay service licenses	TV2

To assist the Commission in reviewing the Proposed Transaction, the Applicants have included the following attachments with the relevant applications:

- Attachment 1: this description of the Proposed Transaction, public interest statement, and related requests and showings;

- Attachment 2: list of subject Commission licenses and authorizations;

- Attachment 3: list of FCC registration numbers for the Applicants and parties to the Proposed Transaction;
- Attachment 4: diagram showing pre-consummation ownership of CFC and the Innovative Companies;
- Attachment 5: diagram showing proposed post-consummation ownership of the Applicants;
- Attachment 6: detailed spectrum aggregation analysis for mobile telephony/data markets; and
- Attachment 7: analysis of spectrum holdings of USVI mobile competitors.

I. DESCRIPTION OF THE PARTIES AND THE PROPOSED TRANSACTION

A. Transferor National Rural Utilities Cooperative Finance Corporation ("CFC")

CFC is the seller in the Proposed Transaction. CFC is a privately owned, tax-exempt, non-governmental cooperative financial institution that is owned by, and provides financing and credit support to, its members. It is the largest non-governmental lender to rural utility providers in the United States. CFC was incorporated under the District of Columbia Cooperative Association Act in April 1969 and is headquartered in Dulles, Virginia. CFC's members are not-for-profit, consumer-owned rural electric cooperatives (or their subsidiaries and affiliates) that supply electric power to approximately 42 million consumers of electricity across rural areas of the United States. As of August 31, 2015, CFC had more than $22 billion in loans outstanding, with borrowers in 47 states and the District of Columbia.

CFC acquired control of the Innovative Companies and their USVI operating affiliates in 2010—and of their British Virgin Islands and St. Maarten operating affiliates in 2011—as part of a credit bid in bankruptcy court to satisfy, in part, the debts of the Innovative Companies' bankrupt former parent companies and ultimate owner. CFC consummated its acquisition of the

Innovative Companies and their USVI affiliates following the grant of Commission consent[3] and approval of the bankruptcy court.[4] To own and operate the Innovative Companies and their operating affiliates, CFC created a holding company structure. CFC owns and controls Caribbean Asset Holdings, LLC ("CAH"), which owns and controls DTR, which in turn owns and controls each of the Innovative Companies and its USVI operating affiliates.[5] Attachment 4 illustrates the current ownership structure of the Innovative Companies and their affiliates.

Over the last five years, CFC has invested more than $125 million and significant expertise in improving the facilities and operations of the Innovative Companies and their operating affiliates. CFC is in the process of rebuilding the Innovative Companies' infrastructure (including by deploying a state-of-the-art hybrid fiber-coaxial network), introducing digital services that are new to the U.S. Virgin Islands, and working to improve customer service. CFC stated at the time of acquisition, however, that it had no intention to own the Innovative Companies over the long term.

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[3] *Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corp., Transferor and Assignor and National Rural Utilities Cooperative Finance Corp. and its Subsidiaries, Transferees and Assignees*, Order, 24 FCC Rcd 14360 (2009).

[4] *In Re Innovation Communication Corp.*, Final 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) Granted Related Relief, 434 B.R. 761 (Bankr. D.V.I. 2010).

[5] Research and Technology Park Protected Cell Corporation ("RTPark PCC") owns or holds the rights to 0.5 percent of the shares of certain of the Innovative Companies. RTPark PCC provides services and benefits to tenants of the University of the Virgin Islands Research and Technology Park, a research and technology park chartered by the USVI Government to promote economic development and technology industries in the U.S. Virgin Islands.

B. Innovative Companies and Affiliates

ATN will acquire indirect control of each of the following entities upon consummation of the Proposed Transaction.

1. Caribbean Asset Holdings, LLC ("CAH")

CAH is a holding company for CFC's telecommunications and cable television businesses in the U.S. Virgin Islands, the British Virgin Islands, and St. Maarten. CAH is a wholly-owned, direct subsidiary of CFC and is organized as a Delaware limited liability company headquartered in Dulles, Virginia. CFC is CAH's sole member.

2. DTR Holdings, LLC ("DTR")

DTR is a USVI limited liability company organized to hold CAH's interests in the U.S. Virgin Islands and is headquartered in Dulles, Virginia. CAH is DTR's sole member. DTR directly holds the stock of each Innovative Company (except for the 0.5-percent interest held by the RTPark PCC in certain Innovative Companies).

3. Virgin Islands Telephone Corporation d/b/a Innovative Telephone ("Vitelco")

Vitelco is the incumbent local exchange carrier in the U.S. Virgin Islands, operating pursuant to a franchise granted by the USVI Government in 1959.[6] It provides local, exchange access, and domestic intrastate and interstate interexchange services to consumers and enterprises in the U.S. Virgin Islands. It also provides Ethernet-based services (with speeds ranging from 10 Mbps to 1 Gbps) to enterprises. It holds a number of microwave, industrial/business pool, and paging and radiotelephone licenses from the Commission and relies

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[6] Franchise for the Virgin Islands Telephone Corp. (Oct. 31, 1959); Act No. 504 of the Third Legislature of the Virgin Islands, Authorizing the Sale of the Virgin Islands Telephone System, the Granting of a Franchise, and for Other Related Purposes (approved Oct. 9, 1959), 1959 V.I. Sess. Laws pp. 193-202 (approving sale of Vitelco to International Telephone and Telegraph Corporation).

on the blanket domestic Section 214 authorization set forth in 47 C.F.R. § 63.01. Vitelco is a USVI corporation headquartered on St. Thomas. DTR owns all of Vitelco's outstanding shares.

4. Caribbean Communications Corporation d/b/a Innovative Cable TV St. Thomas-St. John ("Innovative Cable STT-STJ")

Innovative Cable STT-STJ is the principal cable television operator on the islands of St. Thomas and St. John, and operates a cable system on each island pursuant to a franchise granted by the USVI franchising authority, the U.S. Virgin Islands Public Services Commission ("USVI PSC").[7] Innovative Cable STT-STJ offers basic and premium television programming, high-definition, and digital video recorder services. Innovative Cable STT-STJ holds cable television relay service ("CARS") licenses and an antenna structure registration issued by the Commission.

Innovative Cable STT-STJ is a USVI corporation headquartered on St. Thomas. DTR owns and holds the rights to 99.5 percent of Innovative Cable STT-STJ's shares, and RTPark PCC owns or holds the rights to 0.5 percent of Innovative Cable STT-STJ's shares.

5. St. Croix Cable TV, Inc. d/b/a Innovative Cable TV St. Croix ("Innovative Cable STX")

Innovative Cable STX is the principal cable television operator on the island of St. Croix, and operates a cable system on St. Croix pursuant to a franchise granted by the USVI PSC.[8]

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[7] *See* Cable Television Franchise Agreement between USVI PSC and Caribbean Communications (effective Oct. 20, 2000, executed Dec. 21, 2000); USVI PSC Order No. 23/1999, USVI PSC Docket No. 520 (Aug. 20, 1999) (consenting to renewal of original franchise); Cable Television Franchise (effective Oct. 21, 1985) (granting initial franchise). The USVI PSC renewed this franchise earlier in 2015 but has yet to finalize the text of the new franchise agreement. *Renewal of Franchise Agreements for St. Croix Cable TV d/b/a as Innovative Cable TV St. Croix and St. Thomas-St. John Cable TV d/b/a as Innovative Cable TV St. Thomas-St. John*, USVI PSC Order No. 54/2015, USVI PSC Docket Nos. 642 and 647 (July 15, 2015) ("PSC 2015 Cable Franchise Renewal Order").

[8] *See* Cable Television Franchise Agreement between USVI PSC and St. Croix Cable TV, Inc. (effective Nov. 14, 2000, executed Dec. 21, 2000); USVI PSC Order No. 25/1999, USVI PSC Docket No. 521 (Aug. 20, 1999) (consenting to renewal of original franchise); Cable Television Franchise (effective Nov. 15, 1985) (granting original franchise). The USVI PSC

Like its affiliate Innovative Cable STT-STJ, Innovative Cable STX offers basic and premium television programming, high-definition, and digital video recorder services. Innovative Cable STX does not currently hold any licenses or authorizations from the Commission, although it has in the past.

Innovative Cable STX is a USVI corporation headquartered on St. Croix. DTR owns and holds the rights to 99.5 percent of Innovative Cable STX's shares, with RTPark PCC owning or holding the rights to the remaining 0.5 percent of Innovative Cable STX's shares.

6. ICC TV, Inc. d/b/a CBS-TV2 ("TV2")

TV2 is a cable television network and the CBS network affiliate in the U.S. Virgin Islands. TV2 holds a CARS license issued by the Commission. TV2 is a USVI corporation headquartered on St. Thomas. DTR owns and holds the rights to 99.5 percent of TV2's shares, with RTPark PCC owning or holding the rights to the remaining 0.5 percent of TV2's shares.

7. Innovative Long Distance, Inc. ("ILD")

ILD provides interstate interexchange and international telecommunications services in the U.S. Virgin Islands. ILD is a USVI corporation headquartered on St. Thomas. ILD relies on the blanket domestic Section 214 authorization in 47 C.F.R. § 63.01 and on the international Section 214 authority of its direct parent company, DTR, pursuant to 47 C.F.R. § 63.21(h).

8. Vitelcom Cellular, Inc. d/b/a Innovative Wireless ("VCI")

VCI is a small CMRS carrier offering mobile voice and data services to approximately 4,500 customers in the U.S. Virgin Islands over its 2G/3G GSM network, which uses HSPA+ for

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renewed this franchise earlier in 2015 but has yet to finalize the text of the new franchise agreement. *See* PSC 2015 Cable Franchise Renewal Order.

data services. It holds a variety of radio communication licenses and international Section 214 authority from the Commission.

It is a USVI corporation headquartered on St. Thomas. DTR owns and holds the rights to 99.5 percent of VCI's shares, with RTPark PCC owning or holding the rights to the remaining 0.5 percent of VCI's shares.

9. VI PowerNet LLC ("VI PowerNet")

VI PowerNet is an Internet service provider and a provider of telephone equipment. It also provides broadband Internet access services via dedicated T1s and via hybrid fiber-coaxial and DSL networks (with speeds ranging from 512 Kbps to 25 Mbps), and dial-up Internet access to a very small number of customers.

It is a USVI limited liability company headquartered on St. Thomas. DTR owns and holds the rights to 99.5 percent of VI PowerNet's shares, with RTPark PCC owning or holding the rights to the remaining 0.5 percent of VI PowerNet's shares.

C. Transferee Parties to the Proposed Transaction

1. Atlantic Tele-Network, Inc. ("ATN")

ATN is the parent company of ATN VI Holdings, LLC, which is the buyer entity in the Proposed Transaction. Founded in 1987, ATN is organized under the laws of the state of Delaware and headquartered in Beverly, Massachusetts. ATN's shares trade publicly on NASDAQ and ATN has no controlling owner. ATN's fiscal year 2014 revenues totaled approximately $336 million.

ATN is an experienced and financially sound facilities-based carrier that has a long and successful history of providing communications service to island-based, rural, tribal, and other underserved markets in the mainland United States, Bermuda, and the Caribbean region through a strategy that emphasizes local management and long-term investment. Through its operating

subsidiaries, ATN provides both wireless and wireline voice and data services to retail residential and enterprise customers, including a range of mobile wireless solutions, local exchange services, and broadband Internet access services, as well as wholesale connectivity and related services to carrier customers. ATN also is the indirect owner and operator of terrestrial and submarine fiber optic transport systems domestically and internationally, including a fiber network serving the New York and New England region, a partial interest in the Americas II submarine cable connecting the U.S. mainland and the Caribbean region, and a submarine cable system linking Trinidad and Tobago, Suriname, and Guyana.

ATN has served the USVI market for the past 16 years through its subsidiary, Choice Communications, LLC ("Choice"),[9] which currently provides mobile voice and data and fixed wireless broadband services in the U.S. Virgin Islands. ATN and its subsidiaries provide no other services in the USVI market.

ATN provides retail and wholesale wireless services in the mainland United States through NTUA Wireless, LLC ("NTUA Wireless"), Commnet Wireless, LLC ("Commnet"), and other affiliates. NTUA Wireless,[10] a joint venture with the government of the Navajo Nation, provides retail wireless voice and data services as well as fixed LTE under the "Choice" brand name to the Navajo people, many of whom live on historically unserved, remote tribal lands. In addition, through various subsidiaries operating under the trade name Commnet,[11] ATN provides carrier-grade wholesale wireless voice and data services and backhaul to leading wireless

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[9] *See* Choice Wireless, https://vi.choice-wireless.com/ (last visited Oct. 29, 2015).

[10] *See* Press Release, ATN, *Navajo Tribal Utility Authority and Atlantic Tele-Network Announce Partnership to Deliver Rural 4G Service* (Apr. 4, 2011), http://ir.atni.com/release-detail.cfm?releaseid=561723.

[11] *See* Choice Wireless, http://www.commnetwireless.com/overview.html (last visited Oct. 29, 2015).

companies in 14 states in the Midwestern and Southwestern United States, including in rural markets in Arizona, California, Colorado, Montana, Nebraska, Nevada, New Mexico, Texas, Utah, and Wyoming. Commnet predominantly focuses on serving communities of less than 2,500 people, state and national parks, seasonal areas such as ski resorts and lakes, and the roadways that connect these areas to more populated areas. ATN's Commnet operations also offer no-contract retail wireless and data services under the "Choice" brand name to customers in Arizona, Colorado, Nevada, New Mexico, and Utah.[12]

ATN's competitive local exchange carrier operating subsidiaries, including Sovernet, Inc.,[13] provide facilities-based integrated voice, broadband, and data services and wholesale transport services to enterprise and residential customers in New Hampshire, New York State, and Vermont. Its fiber network covers 4,500 route miles and spans cities and towns from Buffalo to Boston. In addition, ATN's subsidiary EssexTel, Inc. purchases wholesale voice termination services from U.S. carriers to resell to domestic and international carriers and purchases international termination from international carriers to resell to U.S. and other international carriers.

Further, ATN operates carriers outside the United States, in the Caribbean region, and Bermuda. ATN's subsidiary Guyana Telephone and Telegraph Company Limited ("GT&T"),[14] the largest telecommunications and technology company in Guyana, provides domestic mobile, broadband, wireline, enterprise, and wholesale services in Guyana, as well as international voice and data communications. In addition, ATN's subsidiary DTH Television &

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[12] *See* Choice Wireless, *supra* note 9.

[13] *See* Sovernet Communications, https://corp.sover.net/site/ (last visited Oct. 29, 2015).

[14] *See* Guyana Telephone and Telegraph Company Limited, http://gtt.co.gy/about-us.cshtml (last visited Oct. 29, 2015).

Telecommunication N.V. provides MiFi and wireless voice and data services in Aruba under the "MIO" brand name.[15] ATN also holds a minority controlling interest in Bermuda Digital Communications Ltd. ("BDC"), which provides both mobile wireless and fixed wireless voice and data services in Bermuda under the "CellOne" brand name.[16]

2. ATN VI Holdings, LLC ("ATN Holdings")

ATN Holdings is the buyer entity in the Proposed Transaction. ATN Holdings is a Delaware limited liability company created specifically to acquire CFC's interests in CAH. ATN owns all of ATN Holdings' member interests.

D. The Proposed Transaction

On September 30, 2015, CFC, CAH, ATN, and ATN Holdings executed a purchase agreement whereby ATN will acquire indirect control of the Innovative Companies and their USVI, BVI, and St. Maarten affiliates. The Proposed Transaction is equity-based, rather than an assignment of assets. ATN Holdings will acquire all of CFC's member interests in CAH. ATN will pay CFC approximately $145 million, subject to potential adjustments, with $85 million payable in cash and the option for ATN to finance up to $60 million of the purchase price with a loan from CFC's affiliate, Rural Telephone Finance Cooperative ("RTFC"). Consummation of the transaction is subject to regulatory approval by the Commission, the USVI PSC, and the Governments of the British Virgin Islands and St. Maarten, as well as U.S. antitrust clearance.

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[15] *See* MOI Wireless, http://www.mioaruba.com/ (last visited Oct. 29, 2015).

[16] ATN recently announced that it has agreed to acquire KeyTech Limited ("KeyTech"), a Bermuda company that provides voice, broadband, and cable television services under the Logic name in Bermuda and the Cayman Islands. As part of ATN's acquisition of KeyTech, ATN will contribute its cash and its interest in BDC to KeyTech in exchange for a 51-percent interest in the larger KeyTech organization. Following the consummation of the transaction, BDC will be wholly-owned by KeyTech, resulting in ATN holding an indirect 51-percent interest in BDC. *See* Press Release, ATN, *ATN to Acquire Controlling Interest in KeyTech Bermuda* (Oct. 6, 2015), http://ir.atni.com/releasedetail.cfm?ReleaseID=935284%20.

II. STANDARD OF REVIEW

Under 47 U.S.C. §§ 214(a) and 310(d), the Commission must determine whether a proposed transfer of control of Commission licenses and authorizations is consistent with the public interest, convenience, and necessity.[17] In making this determination, the Commission first assesses "whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules."[18] Second, if a proposed transaction would not violate the Act, any other applicable statue, or any of the Commission's rules, the Commission then considers whether a proposed transaction "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the

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[17] *See, e.g.*, *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 15-94, 30 FCC Rcd 9131, 9139 ¶ 18 (2015) ("*AT&T-DIRECTV Order*"); *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corp., and Clearwire Corp. For Consent to Transfer Control of Licenses and Authorizations; Petitions for Reconsideration of Applications of Clearwire Corp. for Pro Forma Transfer of Control*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9650 ¶ 23 (2013) ("*SoftBank-Sprint-Clearwire Order*"); *Applications of Comcast Corp., General Electric Company, and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4247 ¶ 22 (2011) ("*Comcast-NBCU Order*"); *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4198-99 ¶ 7 (2011) ("*Qwest-CenturyLink Order*"); *Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5976-77 ¶ 9 (2010) ("*Frontier-Verizon 2010 Order*").

[18] *See AT&T-DIRECTV Order*, 30 FCC Rcd at 9139-40 ¶ 18 (citations omitted); *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd at 9650 ¶ 23 (citations omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd at 4198-99 ¶ 7; *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672 ¶ 19 (2007) ("*AT&T-BellSouth Order*").

[Communications] Act or related statutes."[19] Third, the Commission employs a balancing test "weighing any potential public interest harms of the proposed transaction against any potential public interest benefits."[20] The applicants bear the burden of proving, by a preponderance of the evidence, that on balance a proposed transaction serves the public interest.[21] If the Commission is unable to find that a proposed transaction would serve the public interest or presents a substantial and material question of fact, it will designate the applications for hearing pursuant to 47 U.S.C. § 309(e).[22]

The Proposed Transaction would not violate any provision of the Act or any Commission rule, nor would it substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of the Act or other statutes. To the contrary, as detailed below, the Proposed Transaction will offer substantial public interest benefits without any material countervailing harms.

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[19] *See AT&T-DIRECTV Order*, 30 FCC Rcd at 9140 ¶ 18 (citation omitted); *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19.

[20] *See AT&T-DIRECTV Order*, 30 FCC Rcd at 9140 ¶ 18 (citation omitted); *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19 (citation omitted).

[21] *See AT&T-DIRECTV Order*, 30 FCC Rcd at 9140 ¶ 18;*General Motors Corp. and Hughes Electronics Corp., Transferors, And The News Corp. Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483 ¶ 15 (2004).

[22] *See AT&T-DIRECTV Order*, 30 FCC Rcd at 9140 ¶ 18; *Comcast-NBCU Order*, 26 FCC Rcd at 4248 ¶ 22; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

III. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

The Proposed Transaction offers significant public interest benefits without any countervailing public interest harms. The Commission should therefore expeditiously grant consent for the consummation of the Proposed Transaction.

In considering the public interest benefits of the Proposed Transaction, the Applicants ask that the Commission consider the unique aspects of offering services in the U.S. Virgin Islands:

- ***The U.S. Virgin Islands Are Small but Geographically Discontiguous***. The U.S. Virgin Islands have a total land area of less than 135 square miles (roughly twice the size of Washington, D.C.). Although the total land area is small, it is discontiguous. It consists of three small main islands—St. Thomas, St. Croix, and St. John—and other minor islands. While St. Thomas and St. John lie approximately two miles apart, separated by the narrow Pillsbury Sound but connected by regular ferry service, both St. Thomas and St. John are separated from St Croix by 44 miles (or 37 nautical miles) of the Caribbean Sea. There are presently no ferry connections to St. Croix from St. Thomas or St. John.
- ***The U.S. Virgin Islands Are Remote and Have Very Small Populations***. St. Thomas lies approximately 45 miles east of Puerto Rico and 1,100 miles southeast of Miami. The U.S. Virgin Islands have a total population of approximately 105,000. St. Thomas and St. Croix each have approximately 50,000 residents. St. John has fewer than 5,000 residents. Transport costs for any business enterprise remain high, and economies of scale within the U.S. Virgin Islands are therefore limited.
- ***The U.S. Virgin Islands Have Challenging and Varied Terrain and Severe Weather***. St. Thomas and St. John have mostly rocky and mountainous terrain with

heavily-indented coastlines, while St. Croix has more gently rolling hills. More than half of St. John is a national park. The U.S. Virgin Islands suffer from seasonal hurricanes and tropical storms. Although Hurricanes Hugo (1989) and Marilyn (1995) are most commonly recalled, storms of lesser intensity hit the U.S. Virgin Islands annually, damaging buildings and telecommunications and power networks. In addition, the islands' marine climate takes a significant toll on network equipment.

- ***The U.S. Virgin Islands Are Economically Disadvantaged***. Per-capita income in the U.S. Virgin Islands is significantly lower than on the U.S. mainland. The USVI economy depends heavily on tourism, all the more so after the closure of the Hovensa oil refinery on St. Croix in 2012, and a majority of residents hold tourism-related employment. The largest USVI employer is the USVI Government.

A. ATN Is an Ideal and Well-Qualified Buyer

1. Strong Technical Qualifications and Extensive Experience in Island-Based, Rural, and Underserved Markets

ATN is an experienced carrier with substantial expertise in operating facilities-based communications networks to provide wireline, wireless, subscription television, and Internet access services in the U.S. Virgin Islands, Aruba, Bermuda, and Guyana, as well as remote and underserved areas on the U.S. mainland. ATN is uniquely qualified to acquire the Innovative Companies based on its dedication to serving rural and underserved island-based markets and its proven track record of deploying new technologies in those markets. ATN is well aware of, and experienced with, the operational and other difficulties presented by serving such communities. The varied and challenging terrain, marine climate, and seasonal hurricanes and tropical storms make it expensive and difficult to design, build, and maintain outdoor facilities, and maintain consistent service quality across all geographic service areas in island markets. Moreover, there

are high costs and long lead times associated with transporting specialized equipment from the U.S. mainland when needed.

As noted in part I.C. above, ATN has operated under the Choice brand in the U.S. Virgin Islands for the past 16 years and therefore has substantial experience overcoming the challenges posed by the U.S. Virgin Islands. Choice currently provides mobile voice and 3G data services in the U.S. Virgin Islands to a relatively small number of customers using an EVDO and 1x CDMA network. Choice also provides fixed wireless Internet access services in the U.S. Virgin Islands (albeit to a rapidly decreasing customer base) using an LTE network deployed in April 2015 in St. Thomas and St. John to replace Choice's prior WiMax network serving these islands, and a legacy WiMax network in St. Croix.

ATN also has substantial experience in other markets in the Caribbean region, where ATN often was the first carrier to deploy new technologies. In Guyana, where it has operated for the past 25 years, ATN operates a wireless network and offers domestic wireline local and long-distance telephone services, international voice and data services, broadband Internet access, and wireless services. ATN was the first carrier to deploy a fiber-optic network in Guyana. It built the first submarine cable network in the region connecting Trinidad and Tobago, Suriname, and Guyana to substantially increase available bandwidth to Guyana and Suriname and offshore connectivity in each country. In addition, ATN was the first carrier to deploy 2G and 3G wireless technologies in Bermuda, where ATN has operated for 17 years, and ATN was the first carrier to launch MiFi services in Aruba, where ATN has operated for 5 years.

ATN also has extensive experience serving remote and underserved populations on the U.S. mainland. Through its affiliates, ATN provides facilities-based retail and wholesale wireline services in the Northeastern United States, where it has constructed an extensive fiber

wireline network to bring high-quality broadband and other data services to small towns, rural areas and community institutions that are often overlooked in the construction of advanced wireline networks. In addition, ATN has extensive experience in providing facilities-based advanced wireless services to rural and underserved populations in the Southwest and Midwest United States, including members of the Navajo Nation and multiple other tribes, and has most recently constructed an advanced wireless network covering approximately 2,130 unserved road miles in remote areas of Nevada and Colorado with support from the FCC's Mobility Fund Phase I.

2. Strong Financial Qualifications and a Long-Term Investment Outlook

Financially, ATN is well-qualified to own and operate the Innovative Companies. It has a strong balance sheet and limited leverage. As of the date of ATN's most recent public financial statements, ATN had approximately $391.8 million in cash and cash equivalents, and no borrowings under its existing $225 million credit facility.[23] Further, ATN's conservative approach to investment permits it to access the capital needed to invest in and grow its existing businesses. For example, ATN projects that it will spend in the range of $65 to $75 million in capital expenditures in 2015 to upgrade and enhance the services and networks of its existing telecommunications businesses, including its Choice and Commnet businesses in the United States.[24] As part of ATN's consolidated businesses, the Innovative Companies will benefit from improved cash flow and access to capital on favorable terms. ATN intends to continue investing

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[23] Atlantic Tele-Network, Inc., Quarterly Report (Form 10-Q), at 15 (Aug. 10, 2015).

[24] Press Release, ATN, *ATN Reports Second Quarter and Six Month 2015 Results*, Press Release (July 29, 2015), http://ir.atni.com/releasedetail.cfm?ReleaseID=924628 (stating that ATN "expects full year 2015 telecom capital expenditures in the range of $65.0 million to $75.0 million.").

in the Innovative Companies' network facilities and operations to enhance their coverage and quality, as well as the range of services offered.

Moreover, ATN takes a long-term ownership outlook regarding its businesses and believes that this involves building connections within the local community. Whenever feasible, ATN relies on local resources, including local management teams who have a successful track record or have extensive knowledge of the industry and the particular market. Indeed, a key component of ATN's long-term strategy is to develop strong local brand identities and a robust local presence. ATN believes that relying on qualified management who have expertise in the telecommunications industry, reside locally, are knowledgeable about issues of interest to the local population, and are active in their communities will allow the Innovative Companies to respond better to consumers' needs at the local level.

B. The Proposed Transaction Will Greatly Benefit Virgin Islanders

1. Service Portfolio and Enhanced Customer Service

Consummation of the Proposed Transaction will allow ATN to offer robust services and a variety of service bundles to USVI residents. The economies of scale and the combination of spectrum gained from the transaction will allow ATN to provide competitive mobile data speeds, improved quality of service to the U.S. mainland, an improved device portfolio, and a multiscreen content experience. In addition, ATN will be able to improve data coverage in the U.S. Virgin Islands by combining the high-speed broadband offered by Innovative's HFC network with the mobile LTE services that ATN will deploy post-closing. Deployment of a brand new LTE advanced mobile wireless network will provide consumers and businesses with mobile capacity and coverage that is equivalent to or better than that provided by the dominant market player, AT&T. The Proposed Transaction also will enable ATN to provide greater convenience to customers through bundling and integrated billing. For consumers, ATN can

provide access to leading educational, job skills, and entertainment content across any of their services and devices (*i.e.*, phones, computers, TV). For enterprise customers, ATN will provide an increasing level of information and communications technology functionality to help them run their businesses more effectively and more securely, which will be of particular value to small businesses. These additional "IT services" will be delivered either directly or via a network of trusted partners established by ATN.

Moreover, upon consummation of the Proposed Transaction and launch of mobile LTE services, ATN will have the resources and spectrum to focus on tailoring service offerings and bundles based on the market demand and reaction to the new mobile LTE offering.

ATN will also build upon CFC's efforts to enhance customer services for the Innovative Companies' residential and business customers.

- Choice's award-winning customer service utilizes a three-pronged approach to service, which it will bring to the customers of the Innovative Companies. Choice's in-store "CARE" policy requires Choice associates to Connect with the customer, Assess what their need is, and Recommend a solution while Energizing the person-to-person transaction. This approach has been well-received in the U.S. Virgin Islands. Indeed, a Choice staff member was the 2014 recipient of the Tommy Star Award for Best Sales and Customer Service. This was the only time since the award's inception that it was awarded outside of the hospitality industry. Choice is again in the finals for the 2015 award. The Proposed Transaction will also give customers improved channels and points of sale to purchase services and make payments, making it easier and more convenient for consumers to do business with the Innovative Companies.

- ATN has established a world-class customer care delivery process, hitting or beating telecom industry benchmarks for customer service performance. ATN call center representatives undergo extensive training on an ongoing basis so that they have up-to-date knowledge of available service plans and service-impacting issues, as well as a direct line to local personnel on-island to escalate issues if a customer care representative is unable to resolve an issue.

Throughout its businesses, ATN is committed to delivering exceptional customer care as a core business strategy of creating enterprise value by direct and positive customer interaction, and ATN intends to bring its dedication to customer care to the Innovative Companies.

2. Enhanced Economic Productivity and Efficiency and Access to Education and Healthcare

By investing in the Innovative Companies' networks and expanding access to and the reliability of advanced telecommunications in the U.S. Virgin Islands, ATN will contribute to the economic and social well-being of Virgin Islanders. Investment in and access to advanced communications services:

- improves productivity;
- encourages creation and relocation of enterprises based on the availability of high-quality networks and services;
- increases efficiency in the production of goods and services; and
- increases employment with new and relocated enterprises and through self-employment.[25]

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[25] *See* Federal Communications Commission, *Connecting America: The National Broadband Plan*, Chapter 13 – Economic Opportunity (2010) ("*National Broadband Plan*"); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry

Access to advanced communications services improves access to educational opportunities, particularly through online learning both in the classroom[26] and at home.[27] It also improves access to healthcare, enhancing the availability of health information to consumers and the sharing of data with healthcare providers.[28]

3. Well-Managed Transition for Customers

ATN's acquisition of the Innovative Companies will be seamless and transparent to customers. During the pendency of the Commission's review and immediately following the consummation of the Proposed Transaction, the Innovative Companies will continue to provide the same or better services to USVI consumers and businesses. Customers will not be forced to

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on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, 1377 ¶ 2 (2015) ("*2015 Broadband Progress Report*") ("Today, Americans turn to broadband Internet access service for every facet of daily life, from finding a job to finding a doctor, from connecting with family to making new friends, from becoming educated to being entertained. The availability of sufficient broadband capability can erase the distance to high-quality health care and education, bring the world into homes and schools, drive American economic growth, and improve the nation's global competitiveness. New technologies and services such as real-time distance learning, telemedicine, and higher quality video services are being offered in the market today and are pushing demand for higher broadband speeds.").

[26] *See National Broadband Plan*, Chapter 11 – Education; *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15539 ¶ 2 (2014) ("Today, high-speed broadband is transforming learning by providing teachers and students with a vast array of tools to improve educational outcomes, collaboration, and access to information.").

[27] *See Lifeline and Link Up Reform and Modernization*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7828-29 ¶ 18 (2015) (noting that with home access to the Internet, "students can be assigned additional and individualized problems and concepts to practice specific skills through interactive learning environments that provide students instant feedback. . . . [S]tudent access to the Internet has become a necessity, not a luxury." (citations omitted)).

[28] *See National Broadband Plan*, Chapter 10 – Health Care; *Rural Health Care Support Mechanism*, Report and Order, 27 FCC Rcd 16678, 16688-92 ¶¶ 21-27 (2012) (noting the many ways broadband can improve the delivery of health care, including by enabling remote access to far-away specialists, exchange of electronic health records, and remote training, and by reducing travel expenses).

change accounts or telephone numbers. Customers will continue to pay their bills in the same places and in the same manner as they currently do. The benefits of continuity of service are particularly critical here because customers rely on the Innovative Companies to provide residential voice communications and video entertainment services in the U.S. Virgin Islands. Customer upgrades for broadband services will result in better broadband experiences for customers and will be managed using the top-quality customer service model described above.

4. Effective Disaster Recovery

Given its geographic characteristics, the U.S. Virgin Islands are vulnerable to hurricanes, tropical storms, earthquakes, and other environmental challenges. Post-consummation, ATN will evaluate further operational steps to build upon the Innovative Companies' existing efforts to minimize service disruptions and ensure efficient restoration efforts after natural disasters and emergencies. Leveraging the expertise of its international network team, which has more than 15 years of disaster planning and recovery experience in the Caribbean and Bermuda, ATN focuses on a combination of network resiliency and advanced planning to reduce storm-related disruptions to the greatest extent feasible. Its team has successfully helped ATN's operations in Aruba, Bermuda, Guyana, and the U.S. Virgin Islands prepare for, and rapidly recover from, major storms by focusing on a storm-by-storm basis on forecasting, advanced preparation, and heightened internal communications. For example, unlike other carriers in the U.S. Virgin Islands, Choice has not suffered a major network disruption since Hurricane Earl in 2010, and Choice suffered no service disruptions during tropical storm Danny in 2015, Bertha in 2014, or Chantal in 2013. Choice was able to restore service in 30 to 60 minutes during tropical storm Erica in 2015.

C. Consummation of the Proposed Transaction Will Provide the Combined Company with Greater Purchasing Power and Economies of Scale

In addition to the compelling consumer benefits and access to capital outlined above, ATN expects that the combined companies will have greater scale and, consequently, greater purchasing power with equipment and software vendors. They will also be better positioned to negotiate attractive and affordable television programming for USVI consumers and businesses, as ATN's scale across the Caribbean and Bermuda markets is potentially more attractive to programmers.

D. The Proposed Transaction Will Enhance Competition in the USVI Mobile Voice and Data Market

The Proposed Transaction will enhance competition in the mobile voice and data market by enabling ATN to create a more viable mobile competitor in the U.S. Virgin Islands through the combination of Choice and VCI's operations and customers and the combined company's deployment of a new 4G network. As a result, unlike Choice and VCI separately, the combined company will be an effective competitor to the market leader, AT&T, as well as Sprint and the MVNOs that operate on Sprint's network.

AT&T is by far the largest mobile operator in the U.S. Virgin Islands, with the most substantial sub-1GHz spectrum holdings, even when compared with the combined ATN-Innovative Companies post-consummation. AT&T also is the sole carrier to have deployed LTE services covering the entire U.S. Virgin Islands.[29] The second largest mobile provider in the U.S. Virgin Islands is Sprint, which deployed LTE in 2014. The U.S. Virgin Islands are also served by a number of MVNOs providing service utilizing Sprint's network, including Boost

[29] *See* AT&T Maps, https://www.att.com/maps/wireless-coverage.html (last visited Oct. 29, 2015).

Mobile, Tracfone, and Virgin Mobile. AT&T and Sprint, combined with Sprint's MVNOs, are believed to control a mobile market share in the U.S. Virgin Islands of at least 85 percent. Further, T-Mobile USA, Claro Puerto Rico, and DISH each hold considerable spectrum in the U.S. Virgin Islands Cellular Market Areas ("CMAs") and have the resources to make a successful market entry. By contrast, Choice and VCI have fewer than 5,000 customers each and hold small market shares of approximately eight and seven percent, respectively, for a combined total market share of approximately 10-15 percent.

Currently, unlike AT&T and Sprint, neither Choice nor VCI offer 4G mobile data services,[30] and neither independently serves a sufficient number of mobile subscribers to warrant independently upgrading their networks to 4G speeds. As a result, both Choice and VCI are continuing to lose subscribers on month-to-month basis to the two much larger USVI carriers. Choice currently has less than 4,800 mobile subscribers on its 1x CDMA voice and 3G EVDO data networks, and VCI has less than 4,500 subscribers on its UMTS voice and 3G HSPA+ data networks—in each case, a small percentage of the number of subscribers served by the dominant mobile market provider, AT&T, and about half of the subscribers of Sprint (excluding its MVNO partners). In addition, Choice currently does not hold appropriate spectrum resources to cost

[30] Choice's mobile voice and data network utilizes 3G EVDO for data services and 1x CDMA for voice services. Although Choice deployed a fixed wireless broadband LTE network on St. Thomas and St. John and a WiMax network on St. Croix using 2.5 GHz Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") spectrum to compete with Vitelco's HFC network, Choice's LTE and WiMax networks only provide fixed wireless, not mobile, Internet access. Choice's LTE and WiMax networks have not been optimized for mobile services and have never been used for the provision of mobile service. These networks are "high-power, high-tower" networks structured for the provision of fixed Internet access services. In light of Choice's shrinking mobile customer base, Choice is unable to expend the resources necessary to deploy the many extra towers needed for a low-power, more highly cellularized mobile LTE network, and Choice has no plans to do so. In addition, until very recently, few handsets were available that were compatible both with Choice's existing mobile voice network and a 2.5 GHz data network.

effectively deploy 4G LTE mobile services in the sub-1 GHz bands that are most suitable for mobility services due to the superior in-building penetration and increased coverage enabled by below 1 GHz spectrum. Below-1 GHz band spectrum is especially crucial to serve St. Croix, which has topography that would benefit from low-band spectrum.

By combining the operations of Choice and VCI, however, ATN believes that it will be able to achieve the critical mass needed to successfully compete as a strong local company with AT&T and Sprint in the U.S. Virgin Islands mobile market. The combined company will be able to recognize local or in-market economies of scale that will enable more cost-effective operations. The combined company also will provide the customer base and spectrum resources needed to warrant ATN's deployment of a new 4G mobile network.[31] Indeed, ATN's current plan is for the combined company immediately to commence deployment of a new UMTS voice and 4G LTE mobile broadband data network following the consummation of the Proposed Transaction, and ATN expects the network to be completed within one year following the closing. Using a combination of VCI's below 1 GHz spectrum and Choice's above 1 GHz spectrum, the combined company will be able to offer enhanced low-band geographic coverage and improved in-building penetration with the high capacity and throughput speeds facilitated by

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[31] The Commission has long recognized that competition facilitates improved service, more choices, new products, and lower prices. *See, e.g.*, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc. to AOL Time Warner, Inc., Transferee*, Memorandum Opinion and Order, 18 FCC Rcd 16835, 16839-40 ¶ 12 (2003) (stating that "the Commission has continually recognized competition as an important policy objective for communications services, bringing consumer benefits of increased choice, lower prices, improved service, and new product offerings." (citation omitted)); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14783, 14792 ¶ 13 (2003) (enhanced competition benefits consumers by "increasing customer choice, offering innovative services, and introducing new technologies").

high-band spectrum resources. In light of Choice's ample 2.5 GHz spectrum resources, ATN believes that it will not need to reuse spectrum to the same degree as AT&T and Sprint, which will enable its new 4G network to experience reduced interference at cell borders and overlaps and therefore higher data throughputs in these zones relative to its competitors. Thus, the very modest combination of two of the smallest competitors in the USVI mobile market will result in a reinvigorated mobile voice and data provider capable of effectively competing with the dominant USVI mobile provider, AT&T. It also will enable the deployment of a new and potentially superior 4G data network to serve USVI consumers.

IV. THE PROPOSED TRANSACTION CREATES NO, OR MINIMAL, HORIZONTAL EFFECTS IN THE RELEVANT GEOGRAPHIC AND PRODUCT MARKETS AND RAISES NO OTHER COMPETITION OR PUBLIC INTEREST CONCERNS

As demonstrated below, the Proposed Transaction creates no, or at most minimal, horizontal effects in the relevant geographic and product markets , and it does not raise material competitive or other public interest concerns. The U.S. Virgin Islands consists of one wireline study area and two CMAs: CMA730 (St. John and St. Thomas) and CMA731 (St. Croix).

A. Local Exchange, Exchange Access, and Interexchange Markets

The Proposed Transaction will have no adverse effect in the USVI local exchange, exchange access, or intraterritorial or interstate interexchange markets because neither ATN nor any of its affiliates presently provides any such services in the U.S. Virgin Islands. ATN and the Innovative Companies therefore do not compete in these product markets. Moreover, ATN had no plans for entering the USVI wireline market independently of the Proposed Transaction.[32]

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[32] *See, e.g.*, *Applications Filed by Frontier Communications Corp. and AT&T Inc. for the Assignment or Transfer of Control of the Southern New England Telephone Company and SNET America, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9203, 9208 ¶ 14 (2014) (concluding that Frontier's acquisition of AT&T's ILEC business in Connecticut "is unlikely to have adverse effects on existing competition" because the companies "do not currently

B. Wireline Broadband Market and Fixed Wireless Broadband[33] Market

The Proposed Transaction will have no negative effect in the USVI wireline broadband market. Neither ATN nor any of its affiliates presently offers any wireline broadband services in the U.S. Virgin Islands, and none had any plans pre-dating the Proposed Transaction to offer such services. Nor will it have any effect in the fixed wireless broadband market. None of the Innovative Companies presently offers any fixed wireless broadband services, and none had any plans pre-dating the Proposed Transaction to offer such services.

The Commission should consider Vitelco's wireline broadband service and Choice's fixed wireless broadband service to be in separate product markets. Recently, the Commission has questioned whether fixed wireless broadband services provide a competitive alternative to wireline offerings, examining specific service characteristics more closely.[34] Unlike fixed

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compete against each other in the transaction market area [and] the transaction does not reduce the number of service providers").

[33] Although the Applicants refer herein to the high-speed wireline Internet access offered by Vitelco over its HFC network and the fixed wireless Internet access service offered by Choice over its WiMax and LTE networks as "broadband," the Commission recently held that consumers require a minimum download speed of 25 Mbps and a minimum upload speed of 3 Mbps to "'enable[] users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.'" *See 2015 Broadband Progress Report*, 30 FCC Rcd at 1393-1408 ¶¶ 26-55 (citing 47 U.S.C. § 1302(d)(1)). Unlike Vitelco, Choice does not offer any Internet access services that achieve these data speeds. The very highest residential download speed offered by Choice over its fixed wireless network is 15 Mbps with 3 Mbps uploads ($80 per month), and this service is throttled to 2G speeds after 75 GB of data usage. Less than 10 percent of Choice's fixed wireless Internet access service customers purchase this speed, and Choice's networks would not be capable from a capacity perspective of supporting a large number of customers at this service level in any single geographic vicinity. Most of Choice's customers purchase fixed wireless Internet access service at download speeds of 5 Mbps (with 3 Mbps uploads) or lower. Further, Choice's 15 Mbps download/3 Mbps upload service only is offered on St. John and St. Thomas. The highest data speed Choice offers on St. Croix is 5 Mbps download and upload ($80 per month). *See* Choice Wireless Internet Plans, https://vi.choice-wireless.com/internet-plans.html (last visited Oct. 29, 2015).

[34] *See AT&T-DIRECTV Order*, 30 FCC Rcd. at 9265-9306 ¶¶ 347-76, Appx. D (concluding that the applicants had not demonstrated that the speeds, service quality, and price of the

wireline broadband, fixed wireless broadband faces significant capacity constraints (especially in areas with any significant population density), which generally require providers to throttle service beyond specified data caps, as well as propagation challenges caused by weather, topography, the distance of a subscriber from the nearest antenna, and in-building penetration issues.[35] Consequently, the Commission should treat Vitelco's HFC-based broadband services as a separate and distinct market from Choice's fixed wireless service.

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proposed fixed wireless offering would make it a meaningful competitor to cable broadband); *cf. Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1467 ¶ 95 (2014) (inviting experiments to analyze, among other questions, the characteristics of fixed wireless that residential customers would find to be an acceptable substitute for fiber-based broadband). Previously, the Commission had grouped all fixed broadband services in the same product market. *See, e.g.*, *Applications of Nextel Commc'ns, Inc. & Sprint Corp.*, Memorandum Opinion & Order, 20 FCC Rcd 13,967, 14,029 ¶ 167 (2005) ("*Nextel-Sprint Order*") (including fixed broadband services provided over any technology in the same market, but expressing uncertainty over the exact nature of the fixed wireless services proposed to be developed). As mentioned, the Commission has since altered its interpretation of the statutory term "advanced telecommunications capability," which is the term by which the Commission had defined the market for fixed broadband services. *2015 Broadband Progress Report*, 30 FCC Rcd at 1393, ¶ 26.

[35] *See* Vantage Point, *Wireless Broadband is Not a Viable Substitute for Wireline Broadband*, at 1, 9, 11-16 (Mar. 2015), https://www.ntca.org/images/stories/Documents/fixed-wirelesswhitepaper.pdf (citing spectrum constraints, distance from antenna, and weather and geography among reasons that wireless networks have limited broadband capabilities as compared to wireline networks); CTC Technology & Energy, *The State of Art and Evolution of Cable Television and Broadband Technology*, at 18 (prepared for Public Knowledge (Nov. 2014), https://www.publicknowledge.org/assets/uploads/blog/State_of_the_Art-_and_Evolution_of_Cable_Television_and_Broadband_Technology.pdf ("The various fixed wireless service offerings are not cost-effective compared to cable or fiber-based services that do not assign … low data limits."); Tom Wheeler, Chairman, FCC, Prepared Remarks: "The Facts and Future of Broadband Competition," at 1776 Headquarters, Washington, D.C. (Sept. 4, 2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.pdf (asserting that "only fiber gives the cable company a competitive run for its money" and "[w]hile LTE and LTE-A offer new potential, consumers have yet to see how these technologies will be used to offer fixed wireless service").

Even if the Commission were to treat Vitelco's HFC broadband and Choice's fixed wireless broadband services as fully substitutable and thus part of the same product market, the competitive effects would be minimal. Using 2.5 GHz BRS and EBS spectrum that is licensed to or leased by Choice or is used by Choice pursuant to Special Temporary Authority ("STA"), Choice deployed WiMax networks on St. Thomas, St. John, and St. Croix in August 2010.[36] Choice deployed these networks in an effort to compete in the WISP market for data subscribers. Choice's network deployment was intended to address a gap in Vitelco's wireline broadband coverage that, at the time, was limited to relatively poor performing ADSL services, as well as to address the long waiting period for ordering new services from Vitelco. At the time, Vitelco was providing wireline DSL service over the copper plant that it then operated. However, as a result of Vitelco's recent deployment of its HFC wireline network and its ongoing migration of its prior DSL customers to the much higher-speed Internet access services enabled by its HFC network, ATN no longer believes that there is sufficient market demand for its fixed wireless product or that it will be able to successfully compete with Vitelco.

Indeed, Choice did not gain customers as a result of its April 2015 fixed wireless LTE deployment in St. Thomas and St. John even though the LTE deployment offered higher speeds than the WiMax network initially deployed by Choice on these islands and mitigated certain capacity and other technology difficulties Choice encountered with its prior WiMax network. Instead, Choice has lost nearly 15 percent of its fixed wireless Internet access customers since March 2015. In addition, Choice is operating at a significant loss while serving its remaining

[36] In April 2015, Choice replaced its WiMax network in St. John and St. Thomas with an LTE network because Choice's WiMax infrastructure is no longer supported by its manufacturer. Choice initially had planned to do the same in St. Croix, but has put this plan on hold indefinitely due to its failure to gain market share in St. Thomas and St. John despite deploying LTE.

fixed wireless customers.[37] Further, Choice expects this trend of customer and operating losses to continue as Vitelco completes the migration of its prior DSL customers to its new HFC network and increases its efforts to gain new subscribers. Consequently, Choice has put any further anticipated upgrades of its fixed wireless networks on hold indefinitely while it reevaluates its future business plans with respect to fixed wireless Internet access. Thus, although Choice currently offers fixed wireless services in the U.S. Virgin Islands, it does so at an operating loss to a shrinking customer base, and it has no current plans to make additional fixed wireless capital investments.

Moreover, ATN is committed to improving broadband access in the U.S. Virgin Islands following the consummation of the Proposed Transaction. The broadband deployment rate in the U.S. Virgin Islands is the lowest among all of the U.S. jurisdictions and is roughly half the rural deployment rate on the U.S. mainland.[38] (Approximately half of Virgin Islanders are considered to be rural residents). ATN believes that the HFC network being deployed by Vitelco is the best and most cost-effective means of closing this broadband deployment gap due to the higher data rates and lower operating costs of an HFC network. Therefore, to the extent not completed

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[37] Choice's experience is consistent with the Commission's observation in the *AT&T-DIRECTV Order* that, for consumers with no other terrestrial broadband option or only DSL, there might be some benefit in having a fixed wireless broadband option, but finding that the Applicants had not shown that fixed wireless broadband could compete with cable broadband. *AT&T-DIRECTV Order*, 30 FCC Rcd at 9273 ¶ 376.

[38] According to the FCC's 2015 Broadband Progress Report, as of December 31, 2013, 45 percent of Virgin Islanders overall and 72 percent of rural Virgin Islanders did not have access to fixed 25 Mbps/3 Mbps service; 44 percent did not have access to 10 Mbps/768 kbps service; and 43 percent did not have access to fixed 3 Mbps/768 Kbps service. *See Inquiry 2015 Broadband Progress Report*, 30 FCC Rcd at 1471-72, 1475-76 (Appendices D, G); *see also* NTIA, National Broadband Map, *Broadband Statistics Report: Broadband Availability in Urban vs. Rural Areas*, at 8, http://www.broadbandmap.gov/download/Broadband-%20Availability%20in%20Rural%20vs%20Urban%20Areas.pdf (last visited Oct. 29, 2015) (finding that 40% of rural Virgin Islanders did not have access to 3 Mbps/768 Kbps as of June 2014).

before the consummation of the Proposed Transaction, ATN will complete the deployment of the network, continue the migration of Vitelco's customers to the HFC network, and initiate a migration of Choice customers to the HFC network. However, to ensure that Virgin Islanders maintain access to Internet services, ATN will continue to operate Choice's fixed wireless service for such period of time post-closing as is needed for ATN to deploy mobile LTE service.

Indeed, the Proposed Transaction will enable ATN to provide this important new broadband option to Virgin Islanders. By combining Choice and VCI's customers and spectrum holdings, ATN will be able to deploy a new 4G LTE *mobile* data network that offers the same or better coverage and data rates as Choice's existing fixed wireless service but with the added benefit of full mobility. Thus, the Proposed Transaction will not cause any reduction in the broadband options available to Virgin Islanders, but instead will enable ATN to provide a new and better broadband option—a 4G LTE mobile network that can effectively compete with AT&T's mobile offerings.

C. Multichannel Video Programming Distribution ("MVPD") Market

The Proposed Transaction will have no effect in the USVI MVPD market because ATN does not provide MVPD services in the U.S. Virgin Islands. ATN and the Innovative Companies therefore do not compete in this product market. Choice previously offered wireless, multichannel digital video service (*i.e.*, wireless cable TV) to subscribers in the U.S. Virgin Islands. However, it exited that market in 2009 due to a lack of the scale required to bear the immense programming and transmission costs, which were substantially greater than those of other video services in the market, as well as the inefficient use of spectrum associated with the wireless delivery of video programming and a shift of the business to focus on using the available spectrum to provide high-speed Internet access. ATN has no plans to reenter the MVPD market in the U.S. Virgin Islands independently of the Proposed Transaction.

D. Mobile Voice and Data Market

As noted in part III.D above, the Proposed Transaction will create minimal horizontal effects in the USVI mobile voice and data market and no public interest concerns. The Proposed Transaction will in fact enhance competition by creating a stronger mobile competitor in the U.S. Virgin Islands that is better positioned to compete with the U.S. mainland-based market leader, AT&T, and with the strong number two provider, Sprint. It will also result in the rapid deployment of a new and potentially superior 4G data network to serve Virgin Islanders.

To determine the competitive impact of a proposed acquisition of wireless licenses, the Commission first reviews, on a market-by-market basis, the total amount of spectrum that will be held by the applicant post-closing.[39] For purposes of this spectrum aggregation analysis, the Commission uses local geographic markets while analyzing potential national effects as appropriate.[40] The Commission found that

> most consumers use their mobile telephony/broadband services at or close to where they live, work, and shop, in support of our decision that local markets are the relevant geographic markets in which to analyze the potential for competitive harms as a result of certain wireless transactions.[41]

Markets in which the applicant's aggregated spectrum holdings will exceed the Commission's spectrum screen in any component county are subject to case-by-case review.[42] Markets in

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[39] *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6230 ¶ 256, 6237 ¶ 279 (2014) ("*Mobile Spectrum Holdings Order*").

[40] *Id.* at 6226 ¶ 241.

[41] *Id.*

[42] *Id.* at 6226 ¶ 241, 6228 ¶ 250.

which the applicant will hold one-third or more of the mobile broadband spectrum below 1 GHz are subject to enhanced scrutiny.[43]

1. The Commission Should Adopt a Local Geographic Market Definition

The Commission generally defines the local geographic market in terms of CMAs, and it should do so here.[44] The *Mobile Spectrum Holdings Order* makes no mention of regional geographic markets or a special approach for the U.S. Virgin Islands. Instead, it states that the Commission should adopt a local geographic market, with consideration of potential national effects.[45]

The Applicants are aware, however, that the Commission has previously stated that it will use a territory-wide geographic market for the U.S. Virgin Islands.[46] In doing so, the Commission appears to have focused mostly on Puerto Rico and consequently made summary conclusions applicable to both Puerto Rico and the U.S. Virgin Islands without considering the particular geography of[47] and consumer purchasing opportunities in[48] the U.S. Virgin Islands.

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[43] *Id.* at 6240 ¶¶ 286, 288.

[44] *Id.* at 6222 ¶ 227.

[45] *Id.* at 6226 ¶ 241.

[46] *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13934 ¶ 42 (2009) (holding that "for Puerto Rico and the U.S. Virgin Islands, we find that the relevant geographic markets are not CMAs or CEAs. Instead, we find that Puerto Rico and the U.S. Virgin Islands are each a separate relevant geographic market." (citation omitted)).

[47] *See id.* (finding that "the relevant geographic market is larger than a CMA or CEA because of the unique characteristics of Puerto Rico and the U.S. Virgin Islands. Both of these markets are limited in their geographic scope. Puerto Rico is about 3,471 square miles, and the U.S. Virgin Islands is approximately 133 square miles." (citation omitted)).

[48] *See id.* at 13934-35 ¶ 42 (finding that "the six competing mobile telephony/broadband service providers have sufficient area and population coverage throughout the territory of Puerto Rico. . . . [I]t is likely that consumers in Puerto Rico have access to the same or very similar

As noted in part III above, the U.S. Virgin Islands are not geographically contiguous. The bulk of the population is split between islands that lie 43 miles apart. St. Croix and Puerto Rico are both equidistant from St. Thomas. It is therefore unsurprising that the U.S .Virgin Islands are divided into two CMAs: CMA 730 (St. Thomas and St. John) and CMA 731 (St. Croix). This reflects the fact a USVI consumer is likely to shop for mobile service locally on St. Thomas/St. John or on St. Croix, rather than at the territorial level, which would require an airline flight. Like nationwide CMRS carriers offering nationwide plans on the U.S. mainland, USVI CMRS carriers offer territory-wide plans. The practices of nationwide carriers on the U.S. mainland have not dissuaded the Commission from adopting a local geographic-market approach there[49] or in other remote territories. In the case of Guam and the Northern Mariana Islands, which include geographically discontiguous CMAs served by the same mobile operators, locations remote from the U.S. mainland, and small populations, the Commission found that the geographic market was local.[50] Consistent with these insights, the Commission should adopt a local geographic market for purposes of analyzing the Proposed Transaction.

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mobile telephony/broadband services, and that they have the ability and incentive to purchase service throughout the entire territory if different prices or plans are offered at different locations." (citations omitted)) The order makes no mention of USVI provider coverage or USVI consumers' ability to purchase territory-wide rather than locally.

[49] *See id.* 13934 ¶ 41 (concluding that "with respect to the continental United States, the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. Further, the Applicants' argument that prices are set on a national level, and that consumers shop for national plans and national rates, does not undercut the finding of a local geographic market. We conclude that their assertions regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market." (citations omitted)).

[50] *See Application of TeleGuam Holdings, LLC and Club 42 CM Limited Partnership For Consent To Assign Licenses*, Memorandum Opinion and Order, DA 15-1076, ¶ 12 (WTB rel. Sept. 25, 2015) (finding that the geographic market is local and noting that the transaction involved "spectrum that covers Guam and the Northern Mariana Islands, two local non-contiguous CMAs that account for well under one percent of the population of the United States and its territories." (citation omitted)).

Moreover, it is the Commission's standard practice to tabulate spectrum holdings on a county-by-county basis in each market that it considers. In other words, regardless of whether the Commission decides to treat the U.S. Virgin Islands as one market or as two CMAs, the threshold question remains whether the combined attributable spectrum holdings of the Applicants exceed the spectrum screen in any of the three counties that comprise the U.S. Virgin Island. Even in those instances in which the Commission has treated Puerto Rico or the U.S. Virgin Island as one market, it nevertheless appears to have tabulated the applicant's spectrum holdings on a county-by-county basis for purposes of applying the spectrum screen, and there is no reason why it should not do so here.[51]

2. The Proposed Transaction Does Not Trigger Spectrum Screens Requiring Further Competitive Analysis

Considered on a county-by-county basis, the spectrum aggregation contemplated in the Proposed Transaction would not trigger either a case-by-case review of the overall spectrum holdings of ATN post-closing or enhanced scrutiny of below-1 GHz aggregation. Specifically, as shown in Table 2 below, consummation of the Proposed Transaction will result in ATN holding 189.1 MHz of attributable spectrum in the St. Thomas CMA and 170.3 MHz of attributable spectrum in the St. Croix CMA—with each result falling short of the Commission's current 194 MHz spectrum screen.[52]

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[51] *See e.g.*, *Application of AT&T Mobility Puerto Rico Inc. and Worldcall Inc. For Consent To Assign Licenses*, Memorandum Opinion and Order, DA 15-971, n.51 (WTB Aug. 31, 2015), *citing Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership For Consent To Assign Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5121 ¶ 31, 5123 ¶ 35 (2015) (stating that "[a]s with our application of the initial total spectrum screen, we evaluate increases in below 1-GHz spectrum concentration *on a county-by-county basis*.") (emphasis added).

[52] While not necessary for purposes of analyzing the Proposed Transaction, the Commission's spectrum screen should be reset to 199 MHz to acknowledge the availability of AWS-3

Table 2: Post-Closing Spectrum Aggregation

		ATN				Innovative			
Market#	County	BRS	PCS	EBS (leased)	EBS (licensed)	AWS	Cellular	PCS	Total
CMA730	St. John	67.5	30	17.8	18.8	20	25	10	189.1
CMA730	St. Thomas	67.5	30	17.8	18.8	20	25	10	189.1
CMA731	St. Croix	67.5	30	17.8	0	20	25	10	170.3

Moreover, the Proposed Transaction will result in ATN holding approximately 18.6 percent of the 134 MHz of spectrum below 1 GHz, which is well below the Commission's 33-percent threshold for enhanced scrutiny.[53] Consequently, the Proposed Transaction does not trigger the Commission's spectrum aggregation threshold and therefore further competitive analysis is not warranted.

The Applicants calculated the totals in Table 2 in the following manner. ATN is currently attributed with 67.5 MHz of BRS and 30 MHz of broadband PCS spectrum in both CMAs.[54] ATN also uses 22.5 MHz of leased EBS spectrum in both markets (attributed at 17.8

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spectrum in the 1695-1705 MHz band. When the Commission set the current screen at 194 MHz (representing approximately one-third of all spectrum available and suitable for mobile broadband/telephony), it said that it would add AWS-3 spectrum to the screen "in a particular market once all relocating Federal incumbent[s] . . . are within three years of completing relocation according to the [federal incumbents'] Transition Plans." *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6178-79 ¶ 102, 6229 ¶ 251. The current Transition Plans on file with the National Telecommunications & Information Administration ("NTIA") indicate that all federal incumbents in the 1695-1710 MHz portion of the AWS-3 band will be transitioned less than three years from now. NTIA, *Initial Estimated Costs and Timelines for the 1695-1710 MHz Band* (May 12, 2014), http://www.ntia.doc.gov/files/ntia/publications-/initial_estimated_costs_and_timelines_1695-1710_mhz_band_05-12-2014.pdf. Accordingly, the spectrum screen should be raised 5 MHz, from 194 to 199 MHz, to account for one-third of the 15 MHz of AWS-3 spectrum that is within three years of being transitioned. This will provide a greater margin between the spectrum attributable to ATN post-closing and the threshold warranting closer scrutiny by the Commission.

[53] ATN holds three site-based 800 MHz Specialized Mobile Radio Service licenses, consisting of individual 25 kHz channels (less than 1 MHz total) at various sites in both markets. This spectrum is no longer licensed for commercial, cellularized operations, and is thus excluded from the screen. *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6190 ¶ 134.

[54] BRS-1 (2496-2502 MHz) is not included in the screen. *Id.* at 6185 ¶ 121.

MHz)[55] plus 22.5 MHz of licensed EBS spectrum in the St. Thomas CMA (attributed at 18.8 MHz).[56] ATN proposes to acquire VCI's Advanced Wireless Service ("AWS"), Cellular Radiotelephone and broadband PCS licenses (55 MHz total) covering both CMA markets. The Applicants provide a detailed aggregation analysis in Attachment 6.

Although ATN also holds STA to use EBS spectrum in the U.S. Virgin Islands for its fixed wireless broadband operations, this spectrum is not attributable under the Commission's spectrum screen. The Commission does not consider the use of spectrum pursuant to an STA for aggregation analysis purposes. In particular, Section 20.22 of the Commission's rules, which establishes in detail which interests in licensed or leased spectrum are subject to the screen, makes no mention of STAs.[57] This is appropriate because STAs do not convey regular operating authority, but instead are issued for discrete purposes. In addition, STAs are issued for six-month periods (subject to renewal) and may be revoked by the Commission at any time without the need for a notice or hearing, including once the Commission adopts a new EBS licensing mechanism and assigns the EBS spectrum that Choice currently uses pursuant to an STA. Moreover, STAs do not belong in the Commission's competitive analysis for the same reason that short-term *de facto* transfer leases are excluded. Specifically, the Commission decided to exclude short-term *de facto* transfer leases from competitive analysis since they "do not raise

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[55] The Commission excludes 5 percent of EBS spectrum from the screen to account for spectrum reserved for educational uses. *Id.* at 6186 ¶ 123. The Commission also excludes from the screen 16.5 percent of EBS spectrum to account for EBS white spaces. *Id.* at 6187 ¶ 125. As a result, ATN has an attributable interest in 79.3 percent (.95 * (1-.165) = 79.325%) of its 22.5 MHz of leased EBS spectrum (*i.e.*, 17.8 MHz).

[56] The 5-percent educational reserve discount does not apply to ATN's commercial EBS license. Hence, ATN is attributed with 83.5 percent (100 – 16.5 = 83.5%) of its 22.5 MHz of licensed EBS spectrum (*i.e.*, 18.8 MHz).

[57] 47 C.F.R. § 20.22.

concerns about the consolidation of control over spectrum that could have the type of unacceptable anticompetitive effects that are contrary to the public interest."[58] This same reasoning applies to STAs.

3. Competitor and Market-Share Analyses Demonstrate that the Spectrum Aggregation Analysis Does Not Accurately Reflect the Negligible Competitive Impact of the Proposed Transaction

The positions of Choice and VCI's competitors in the USVI mobile market—both in terms of spectrum holdings and subscribers—show that the aggregation analysis noted in Table 2 above and Attachment 6 do not accurately reflect the negligible potential competitive effects of the Proposed Transaction. Serving more than half of all mobile subscribers in the U.S. Virgin Islands, AT&T holds a dominant market position. As noted in part III.D above and in Attachment 7, the Applicants conservatively estimate that AT&T controls over half of the USVI mobile market by subscribers and 37.5 MHz (*i.e.*, 27.6 percent) of sub-1 GHz spectrum in the U.S Virgin Islands. AT&T will continue to control the most substantial below-1 GHz spectrum holdings, even following the combination of ATN and the Innovative Companies. Further, AT&T is the only carrier that has deployed an LTE network across the entire U.S. Virgin Islands.

Choice, by contrast, does not hold any sub-1 GHz spectrum in the U.S. Virgin Islands suitable for the provision of mobile voice and data services. Instead, ATN's USVI spectrum holdings are either in the 1.8 GHz broadband PCS or 2.5 GHz BRS/EBS bands. The Proposed Transaction, which includes VCI's 25 MHz of cellular spectrum, will enable ATN to compete in

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[58] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20676-77 ¶ 178 (2003) (citation omitted).

the U.S. Virgin Islands with sub-1 GHz spectrum for the first time. As the Commission has recognized, the superior propagation characteristics of sub-1 GHz spectrum provides licensees with a competitive advantage over carriers operating in higher spectrum bands.[59] The Commission found that the "obvious and unavoidable" differences between spectrum above and below 1 GHz are "relevant to our mobile spectrum holdings policies," and would be a "key factor in our case-by-case analysis" of spectrum transactions.[60] In sum, although the Proposed Transaction will result in spectrum aggregation totals approaching (but not exceeding) the Commission's screen, the spectrum involved is primarily located in the 2.5 GHz band, and it is more difficult and expensive to compete using this spectrum, especially in an area as rural as the U.S. Virgin Islands where the vast majority of the population lives in concrete structures.

The Proposed Transaction also will not foreclose new market entrants. T-Mobile and DISH currently hold 57.5 MHz and 71 MHz[61] of CMRS spectrum, respectively, that each could use to enter the market as facilities-based carriers at any time. Further, in the recently concluded AWS-3 auction, Claro Puerto Rico acquired an additional 20 MHz of CMRS spectrum in the U.S. Virgin Islands, bringing its market total to 52 MHz. Moreover, the Commission recently adopted rules for the Broadcast Television Incentive Auction, which will repurpose as much as 70 MHz of 600 MHz band spectrum for mobile broadband in the near future.[62] The Proposed

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[59] *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6166 ¶ 63, 6236 ¶ 274.

[60] *Id.*

[61] This 71 MHz figure includes 15 MHz of AWS-3 spectrum in the U.S. Virgin Islands licensed to Northstar Wireless, LLC, a designated entity in which DISH holds a majority equity interest.

[62] *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014); *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016 Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, FCC 15-78, 30 FCC Rcd 8975 (2015).

Transaction will not diminish the ability of competitors to enter the market for want of spectrum, and the spectrum that these future competitors control does not present the same technical challenges as the 2.5 GHz band in which the bulk of Choice's spectrum holdings are located.[63]

V. ADMINISTRATIVE MATTERS

A. Related Governmental Filings

In connection with this transaction, the Applicants will file a pre-merger notification with the U.S. Department of Justice and the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and associated regulations.[64] The Applicants will also file applications seeking the respective consents of the USVI PSC and the governments of the British Virgin Islands and St. Maarten with respect to regulated businesses in those jurisdictions.

B. Request for Approval of Additional Authorizations

The Applicants intend the lists of licenses and authorizations referenced in Attachment 3 and in related applications to be complete and to include all of the licenses and authorizations held by the respective licensees that are subject to this transaction. Nevertheless, the Innovative Companies may now have on file, and may hereafter file, additional requests for authorizations for new or modified facilities related to the assets to be transferred to ATN, which may be granted before the Commission takes action on these applications. Accordingly, the Applicants

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[63] *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd at 9665-66 ¶¶ 58-59 (finding that Sprint's acquisition of significant EBS spectrum did not raise substantial competitive concern giving the availability of similar spectrum without the challenges of operating in the 2.5 GHz bands, such as "co-existing with high power adjacent video operations in the middle band segment, and aggregating spectrum by leasing excess capacity from site-based EBS licensees that have a separate educational mission." (citation omitted)).

[64] 15 U.S.C. § 18a; 16 C.F.R. Subchapter H.

request that any Commission consent for the Proposed Transaction authorize ATN to acquire control of the following:

- Any license or authorization issued to the Innovative Companies during the Commission's consideration of the applications and the period required for consummation of the Proposed Transaction thereafter;
- Any construction permits held by the Innovative Companies that mature into licenses after closing; and
- Applications that are filed after the date of these applications and that are pending at the time of consummation of the Proposed Transaction.

Such authorization would be consistent with Commission precedent.[65] Moreover, the Applicants request that the Commission's approval of the applications include any facilities or authorizations that may have been inadvertently omitted.

C. Unconstructed Facilities and Trafficking

To the extent authorizations for unconstructed systems are covered by this transaction, these authorizations are merely incidental, with no separate payment being made for any

[65] *See, e.g.*, *Qwest-CenturyLink Order*, 26 FCC Rcd at 4214-15 ¶ 46; *Frontier-Verizon 2010 Order*, 25 FCC Rcd at 5996 ¶ 64; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21626 ¶ 275 (2004) ("*AT&T-Cingular Order*"); *Application of WorldCom, Inc., and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18153 ¶ 226 (1998); *NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 20097 ¶ 247 (1997); *Craig O. McCaw and American Telephone and Telegraph Company For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 ¶ 137 n.300 (1994) ("*McCaw-AT&T Order*").

individual authorization or facility. Accordingly, the Proposed Transaction raises no trafficking issues.[66]

D. Unjust Enrichment

None of the licenses or authorizations held by the Innovative Companies were obtained pursuant to set-asides or bidding credits for designated entities. Consequently, the unjust enrichment provisions of the Commission's auction rules do not apply.[67]

E. Environmental Impact

Pursuant to 47 C.F.R. § 1.923(e), the Applicants state that the transfer of control of wireless licenses involved in this transaction will not have a significant environmental effect, as defined by 47 C.F.R. § 1.1307.

F. No Foreign Ownership Issues Under Section 310(b)

The Proposed Transaction is permissible under Section 310 of the Act because ATN and ATN Holdings are not (1) aliens or representatives of any alien; (2) corporations organized under the laws of any foreign government; (3) corporations of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or (4) corporations directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country.[68] To the contrary, ATN and ATH Holdings are almost entirely U.S.-owned

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[66] *See* 47 C.F.R. § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the "principal purpose of speculation").

[67] *See* 47 C.F.R. § 1.2111(b)-(d).

[68] *See* 47 U.S.C. § 310.

and –controlled. No foreign person or entity owns an interest in ATN greater than five percent, and ATN is not aware of any other material shareholdings of ATN stock.

G. Exemption from Cut-Off Rules

Pursuant to 47 C.F.R. §§ 1.927(h), 1.929(a)(2), and 1.933(b), to the extent necessary,[69] the Applicants request a blanket exemption from any applicable cut-off rules in cases where ATN files amendments to pending applications to reflect consummation of the proposed transfer of control. The Applicants request this exemption so that any amendments to pending applications to report the change in ultimate ownership of these licenses would not be treated as major amendments. The Proposed Transaction's scope demonstrates that the ownership change would not be made for purposes of acquiring any particular pending application, but instead comprises part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of this blanket exemption request would be consistent with previous Commission decisions routinely granting a blanket exemption in cases involving similar transactions.[70]

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[69] *See Sprint Nextel Corp. and Clearwire Corp. Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17611 ¶ 105 (2008) ("*Sprint-Clearwire Order*"). With respect to cut-off rules under 47 C.F.R. §§ 1.927(h) and 1.929(a)(2), the Commission has previously found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. *See Ameritech Corp., Transferor, and GTE Consumer Services Inc., Transferee, For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 6667, 6668 ¶ 2 n.6 (WTB 1999); *Comcast Cellular Holdings, Company, Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 10604, 10605 ¶ 2 n.3 (WTB 1999).

[70] *See, e.g.*, *Sprint-Clearwire Order*, 23 FCC Rcd at 17611 ¶ 105; *AT&T-Cingular Order*, 19 FCC Rcd at 21626 ¶ 275; *PacifiCorp Holdings, Inc., Transferor, and Century Telephone Enterprises, Inc., Transferee, For Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16 ¶ 47 (WTB 1997); *McCaw-AT&T Order*, 9 FCC Rcd 5909 ¶ 137 n.300.

H. *Ex Parte* Status

The Applicants request that the Commission treat this proceeding as "permit-but-disclose" pursuant to 47 C.F.R. § 1.1206. "Permit-but-disclose" status would serve the public interest by facilitating the development of a complete record upon which a well-reasoned decision can be made.[71]

[71] 47 C.F.R. § 1.1200(a) (providing that the Commission may adopt modified *ex parte* procedures in particular proceedings if the public interest so requires).