

**Prosser Letter 11-05-2009 to PSC re Change of Control**

**Exhibit D**

**Holt Letter to Galardi (Greenlight) February 27, 2006**

# JOEL H. HOLT, ESQ. P.C.

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2132 Company Street, Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

Tel. (340) 773-8709  
Fax (340) 773-8677  
E-mail: [holtvi@aol.com](mailto:holtvi@aol.com)

February 27, 2006

Gregg Galardi, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899-0636

Via email: [gglardi@skadden.com](mailto:gglardi@skadden.com)

**Re: *Greenlight v. Innovative Communication Corporation, LLC ("ICC-LLC") and  
Emerging Communication Corporation ("Emcom")***

Dear Gregg:

Lanny Davis said you made a comment about ICC's Amended Complaint, suggesting that "if we say it enough times, maybe we think that will make it true." As ICC wants to be clear as to why this litigation is meritorious, I have been requested to respond to that comment.

In its efforts to take control of ICC through litigation, the RTFC has engaged in conduct that ICC believes warrants the imposition of both compensatory and punitive damages. Rather than trying to argue this point with you, I have attached some of the evidence which supports this claim as follows:

**Exhibit A** - This is the cover letter sent to Jeff Prosser in Florida transmitting the 2001 Loan Agreement (which totaled approximately 400 pages), asking him to sign and return it. Jeff signed and returned both copies as he did not have the corporate seals needed to seal the agreement, which had been sent from the Virgin Islands directly to the RTFC's offices in Washington to expedite the closing. As you will note, a copy of the letter and attachments was also supposedly sent to Kevin Rames, ICC's counsel in the Virgin Islands.

**Exhibit B** - This is the agreement (without the voluminous attachments) that the RTFC is now asserting is the 2001 Loan Agreement between the parties. The page numbers are in my handwriting as the document had no page numbers. If you will review pages 7,11,14,15,17,20,21 and 22, you will see

that the three line footers end in a "4" while the other pages end in a "2" which suggests that different versions were inserted into the loan agreement. More importantly, the second to last page as well as the signature page (pages 25 and 26) both have the same "In witness whereof..." clause while the signature page only has a one line footer, unlike the three line footers on all of the other pages. These discrepancies demonstrate problems with the authenticity of the document that caused ICC's counsel to look into this issue further as noted by the next few exhibits.

**Exhibit C** - This is an internal RTFC email saying the copy to Kevin Rames in the Virgin Islands was returned to the RTFC came back, but was being resent. This exhibit also contains the discussion of the corporate seals being sent to the RTFC mentioned in Exhibit A above.

**Exhibit D** - This is the same cover letter to Prosser which Rames received (noted by the check next to his name on the "cc") which was date stamped by his office upon receipt at the top. Attached to the letter is the loan agreement he received, with my handwritten numbers added. You will note that all of the pages have a three line footer ending in "2" as none end in "4". Quite significantly, you will note that the signature page on page 26 (1) does not have a "In witness whereof ..." clause, (2) has a three line footer and (3) has a totally different alignment for the signature lines than the one Jeff signed. These three discrepancies confirm that the document signed by Jeff is different than what was supposedly an identical copy sent to Rames.

**Exhibit E** - These are (1) the deposition excerpts of the RTFC's in-house counsel where he admits that he changed the pages after Jeff signed and returned the agreement and (2) the deposition excerpts from the RTFC's 30(b)(6) designee regarding the retention of documents where he testified that the RTFC did not have the original or a copy of what Jeff actually signed.

**Exhibit F** - This is the Court's opinion denying the RTFC's summary judgment motion, noting in footnote 2 that the RTFC may be unable to establish even the terms of a loan agreement.

Thus, the allegations that the RTFC is now trying to foreclose on an admittedly altered document is well supported by the evidence in the record. ICC's evidence of the RTFC's misconduct does not end here as demonstrated by these additional exhibits:

**Exhibit G** - This is the initial RTFC foreclosure suit which alleges three defaults against ICC. All three alleged defaults involved Vitelco's issuance

of preferred stock. Interestingly, two of the three alleged defaults required 30 days written notice with a right to cure which was not given. Do the banking lawyers in your firm ignore such provisions before filing suit? Of course not.

**Exhibit H** - This is the except from the 1989 PSC Settlement Agreement that ICC gave to the RTFC after the initial complaint was filed, reminding the RTFC that the PSC Settlement Agreement, which the RTFC signed, prohibited the RTFC at page 16 from placing any restrictions on Vitelco's access to the financial markets in ICC's loan agreement, expressly stating that any such restriction is void. Thus, the RTFC knew almost immediately (if they did not know before) that the initial foreclosure complaint had no merit.

**Exhibit I** - This is the RTFC's Amended Complaint filed after ICC pointed out to the RTFC the problems in the foreclosure complaint based on Vitelco's preferred stock offering. The Amended Complaint now asserted 31 alleged defaults. Of course, if the RTFC had thought its initial complaint had merit, why amend it with multiple unrelated defaults? Moreover, as the RTFC admits in Count II, even if the loan agreement were valid, 20 of the alleged 31 defaults required 30 days notice with a right to cure, which the RTFC still did not give.

**Exhibit J** - This is the stipulation whereby the RTFC dismissed 16 alleged defaults after ICC moved for summary judgment, demonstrating that the majority of the 31 alleged defaults had no factual basis. It should be noted that the District Court subsequently dismissed several additional alleged defaults based on ICC's summary judgment motion.

Just so you understand how frivolous these defaults contained in the Amended Complaint really were, which constitutes some of the most damaging evidence in this case, the following exhibits regarding some of the dismissed defaults will help you understand this point:

**Exhibit K** - The RTFC alleged in several defaults that ICC supposedly failed to disclose the existence of a subsidiary, ESS, and refused to pledge its collateral as security for the RTFC's loan. This exhibit contains internal RTFC documents that includes the organizational chart dated August 10, 2001, submitted to the RTFC 3 weeks before the loan closing that lists ESS as a subsidiary. More importantly, this exhibit includes the internal email dated August 23, 2001 between the RTFC's in house counsel agreeing that the RTFC

did not want ESS's collateral as security for this loan, confirming these alleged defaults were totally without merit.

**Exhibit L** - The RTFC alleged in several defaults that ICC had failed to disclose a tax lien regarding Vitelco's FICA taxes. This exhibit contains internal RTFC documents which show that the RTFC was well aware of this lien several months before the loan closed and that in fact ICC disclosed this lien in its compliance report dated August 10, 2002, so that these alleged defaults were totally without merit.

**Exhibit M** - The RTFC alleged several defaults because ICC had allegedly failed to disclose the issuance of preferred stock in 1999 and had failed to pledge this preferred stock as collateral. This exhibit contains internal RTFC documents which show that the RTFC was fully aware of this issuance and considered but then decided not to take this stock as collateral.

**Exhibit N** - This exhibit contains part of the RTFC's computerized tracking system so it will know when its UCC filings expire, which showed that various ICC liens would expire on June 7, 2004. The RTFC waited for ICC's liens to expire. It then conducted a title search the very next morning to confirm no renewals had been filed and then promptly filed new liens before 9:00 a.m. that morning, an example of which is included in this exhibit. Notwithstanding these facts, the RTFC then alleged that ICC had breached the loan agreement by not renewing the liens before they expired. However, contrary to the RTFC's belief, the loan agreement did not require ICC to file the renewals for these liens. Moreover, just to be safe, ICC promptly recorded new renewal notices since the RTFC did not tell ICC it had already done so, resulting in duplicate filings. Of course, when these facts were uncovered and put into a summary judgment motion, the RTFC promptly dropped these alleged defaults with prejudice as well.

Indeed, while I could send you more exhibits showing why the other dismissed defaults were equally frivolous based on the RTFC's own records, I am sure you understand the point, although the others are also equally egregious.

Any reasonable banker reviewing this scenario would have to ask what is the motivation for such bizarre conduct. Indeed, all of these contrived defaults which had no factual basis are particularly disturbing since it is undisputed that the monthly loan payments were current when these allegations were filed, as the RTFC concedes. See **Exhibit O**. Several additional exhibits perhaps explain the RTFC's motivation for asserting so many frivolous defaults as follows:

**Exhibit P** - This exhibit contains excerpts from the various PSC meetings and media articles where the RTFC publicly touted these 31 defaults shortly after filing the Amended Complaint clearly using these alleged "31 defaults" as a smear campaign against ICC. Do your banking clients engage in such tactics?

**Exhibit Q** - As noted in Exhibit P, part of this smear campaign included presentations to the PSC. This exhibit is the TRO opinion that ICC and Vitelco had to obtain to keep the RTFC from using VITELCO's and ICC's former counsel in the prior RTFC loan transactions as the RTFC's counsel at these hearings.

**Exhibit R** - This is the internal RTFC memo dated the day before the Amended Complaint was filed where the RTFC admits that what it really wants to do is to replace management, not to accelerate the loan. Indeed, in this memo the RTFC admits that ICC can pay its debt service to the RTFC. Can there be any better evidence of an improper motive?

**Exhibit S** - Indeed, ICC believes the RTFC became upset when the RTFC lost its control over Vitelco and its secured position against Vitelco's collateral when the RUS loan was obtained. As you can see from the correspondence in this exhibit, the RTFC first took the position that it had to approve this loan based on the RTFC's loan agreement with ICC, which it finally agreed was wrong. Of course, as the exhibits indicate, the RTFC had placed great weight in the value of ICC's collateral in making the 2001 loan, which included Vitelco. Not only was the RTFC concerned about losing this collateral, it was even more concerned about losing control over Vitelco's ability to pay dividends to ICC. In fact, even after the RUS paid the RTFC, it took weeks to get a release from the RTFC, as the exhibits indicate.

In summary, as you can see, there is persuasive evidence to support ICC's assertions that the RTFC has acted in bad faith and that its conduct is generally culpable and not justifiable under the applicable standard in this jurisdiction as set forth in section 870 of the Restatement Second of Torts. Because the RTFC has only one actual employee (*see Exhibit T*) who has nothing to do with the ICC loan transaction, the CFC is equally liable for this conduct since every act theoretically done by the RTFC was in fact done by someone on the CFC's payroll.

While the defendants may disagree as to the interpretation to be given to this evidence, these issues will be resolved by Virgin Islands jury. I respectfully suggest that any reasonable trier of fact will use their common sense and conclude that the conduct in question is improper and warrants the imposition of liability, which I suggest any

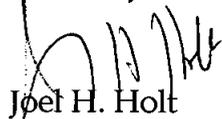
reasonable banker would agree with as well. Indeed, while my client's characterization of this conduct may seem hard to believe before reviewing the evidence, the evidence, which is rather amazing for a bank, is overwhelming.

As for Greenlight's exposure, I explained my client's theory in my letter to you dated February 16, 2006, so I will not repeat it again here. I will add, however, that by filing the involuntary bankruptcy proceedings, Greenlight is now tainted by the RTFC's conduct and thus has its own exposure under the theories alleged in the Amended Complaint, even though it does not have any indemnity agreement from the RTFC.

As for damages, you also commented on the evaluation in my letter dated February 16, 2006. That evaluation is an estimate of the damage calculation if the franchises of the various utilities (including Vitelco) are lost due to the bankruptcy filings. However, a very substantial damage calculation can and will be done even if these franchises are not lost based upon the damages ICC has suffered to date because of the conduct alleged in the Amended Complaint.

I trust the foregoing comments satisfy you that the allegations in the Amended Complaint are based on evidence and not some contrived set of beliefs that my client hopes it can make become true by just repeatedly asserting them. While a global settlement is preferable to continued litigation, this case does present credible exposure to your client, which only increases as the involuntary bankruptcy petitions are pursued in conjunction with the agreement with the RTFC to take control of ICC.

Cordially,

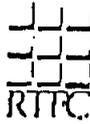


Joel H. Holt

JHH/jf

Enclosure

# EXHIBIT A



RURAL TELEPHONE FINANCE COOPERATIVE  
2201 Cooperative Way - Herndon, Virginia 20171-3025  
703-709-6700

**Via Federal Express**

August 23, 2001

Mr. Jeffrey J. Prosser  
Innovative Communication Corporation  
Phillips Point - East Tower  
777 S. Flagler Drive, 12<sup>th</sup> Floor  
West Palm Beach, FL 33401

Re: VI 802 - 9015

Dear Mr. Prosser:

The Rural Telephone Finance Cooperative (RTFC) loan documents are enclosed for the proposed loan to your organization in the amount of \$169,291,578.00.

Please understand that we have signed the enclosed documents as a matter of administrative convenience. However, we will not be able to advance funds to your organization until the documents are properly executed and returned to RTFC for review and acceptance. We will notify you of our acceptance or non-acceptance of the documents promptly upon their receipt.

Should you have any questions about these documents, please contact Frank E. Vaughan, Assistant General Counsel at 1-800-346-7095.

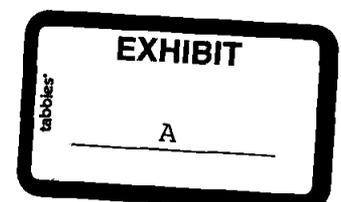
Sincerely,

Robin C. Reed  
Associate Vice President  
and Account Manager

RGR/rap

Enclosures

cc: Kevin A. Rames, Esq. (with enclosures & instructions)



# EXHIBIT B

## LOAN AGREEMENT

LOAN AGREEMENT ("Agreement") made as of August 22, 2001, by and between INNOVATIVE COMMUNICATION CORPORATION, a US Virgin Islands corporation ("Borrower"), and RURAL TELEPHONE FINANCE COOPERATIVE, a South Dakota cooperative association ("Lender").

### RECITALS

WHEREAS, Borrower has requested Lender to make the Loan of up to \$169,291,578.00, to Borrower on the terms and conditions set forth in this Agreement; and

WHEREAS, Lender is willing to make the Loan upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Borrower and Lender do hereby agree as follows:

### 1. CONSTRUCTION AND DEFINITION OF TERMS

All accounting terms not specifically defined herein shall have the meanings assigned to them as determined by generally accepted accounting principles. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

"Adjustment Date" shall mean a date or dates, determined by the Lender based on the term (or rate period) of the applicable Fixed Rate, after the date of the initial Advance to the Maturity Date.

"Advance" shall mean an advance of Loan proceeds made by Lender.

"Applicable Margin" shall be, with respect to the Loan, and as of the date hereof, for each Prior Loan, one and one-half percent (1½%) per annum for the period from the date of Closing through June 30, 2003, and thereafter, two and one-half percent (2½%) per annum until all amounts due and payable under the Loan and each Prior Loan are paid in full. Provided that, in the event of a default by Borrower in making required payments under the Loan and/or any Prior Loan, the Applicable Margin on the Loan and all Prior Loans shall be increased, as of the date of any such default and without notice to Borrower, to three and one-half percent (3½%) per annum for the period from the date of Closing through June 30, 2003, and thereafter, four and one-half percent (4½%) per annum, until all amounts due and payable under the Loan and each Prior Loan are paid in full.

"Business Day" shall mean any day that Lender is open for business.

"Call Provision" means Lender's right to demand full repayment of the Loans and Prior Loans on and after June 30, 2003.

"Capital Expenditures" means, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and its Subsidiaries that are (or would be) set forth in a consolidated statement of cash flows of the Borrower for

RTFC LOANAG  
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EXHIBIT

B

such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and its Subsidiaries during such period.

"Capital Lease Obligations" means the obligation of the Borrower and/or any of its Subsidiaries to pay rent or other amounts under any lease of (or arrangement conveying the right to use) real or personal property or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the obligor under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Margins" for any year shall mean net income plus depreciation, amortization and any other non-cash charges, less any non-cash credits and principal on long-term debt payable in such year, as calculated on a consolidated basis for Borrower and all its Subsidiaries.

"Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and correct and complete.

"Closing" or "Closing Date" shall mean the first date on which funds are advanced to Borrower hereunder.

"Collateral" shall mean all of the assets, real and personal, of Borrower, and each Guarantor listed on Schedule 2, attached hereto; including, but not limited to, (i) the property described in the Mortgage, each Guarantor's Mortgage, the Pledge and Security Agreements and any UCC-1 Financing Statement filed under this Agreement, and (ii) all proceeds, cash and non-cash, including condemnation and/or insurance proceeds, of the foregoing, whether in the possession of Borrower, a Subsidiary, Guarantor, Pledgor or any other person, and (iii) certain ownership or membership interests and related proceeds and dividends described in, and pledged to Lender pursuant to, Pledge and Security Agreements listed in Schedule 3 dated as of even date herewith and (iv) all after acquired real or personal property of Borrower, any Guarantor or any Subsidiary.

"Commitment" shall have the meaning set forth in Schedule 1 hereto.

"Current Ratio" for any year shall mean the ratio of total current assets to total current liabilities, as determined by dividing total current assets by total current liabilities under GAAP.

"Consolidated Net Earnings" for any period shall mean the gross revenues of the Borrower and its subsidiaries for such period less all expenses and other proper charges, determined on a consolidated basis in accordance with GAAP after eliminating earnings or losses attributable to outstanding minority interests, but excluding in any event: (a) any extraordinary gains or losses determined in accordance with GAAP and (b) net earnings of any business entity (other than a wholly-owned Subsidiary of the Borrower) in which the Borrower or any Subsidiary of the Borrower has an ownership interest unless such net earnings shall have actually have been received by the Borrower or a wholly-owned Subsidiary of the Borrower in the form of cash distributions.

"Consolidated Net Operating Cash Flow" means, for any period, the net cash flow from operations for Borrower and its subsidiaries on a consolidated basis for such period taken as a single accounting period, as set forth on the statement of cash flows of the Borrower and determined in accordance with GAAP.

"Debt Service Coverage Ratio" or "DSC Ratio" for any period shall mean Consolidated Net Earnings plus depreciation and amortization plus Interest Expense divided by Interest Expense and principal on long-term debt payable in such year.

"EBITDA" means, in respect of any period, the sum of Consolidated Net Earnings plus interest expenditures, taxes paid on or measured by income or excess profits, and depreciation and amortization. For purposes of measuring compliance with Financial Covenants, EBITDA will be calculated on a trailing four quarters basis and measured at the end of each quarter. EBITDA definition will include or exclude, as appropriate, acquisitions and divestitures as if such acquisition or divestiture occurred on the first day of such applicable period. EBITDA will also not include any extraordinary gains or losses.

"Equity" means consolidated Stockholders' Equity as defined by GAAP, including, without limitation, the sum of common stock, additional paid-in-capital and retained earnings.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person and any options warrants or other rights to acquire such Equity Interest but excluding any debt securities convertible into such Equity Interests.

"Excess Cash Flow" means for any fiscal year, (a) Consolidated Net Operating Cash Flow of the Borrower and its subsidiaries for such fiscal year (which shall give effect to any increases and decreases in working capital), minus (b) Capital Expenditures for such period except to the extent such Capital Expenditures are financed with the proceeds of asset dispositions less the amount of any permitted Capital Expenditures that may be carried forward to the next fiscal year, minus (c) the aggregate principal amount repaid or prepaid, excluding any SCC amortization or Patronage Capital retirements, during such period, with respect to Loan or Prior Loans.

"Event of Default" shall mean any of the events described in Section 8 hereof and any Event of Default under any Prior Loan Document.

"Financial Covenants" mean the ratios of TIER, Debt Service Coverage, Leverage Ratio, Fixed Charge Coverage and the Minimum EBITDA and Maximum Capital Expenditure set forth in Section 6.4 and Schedule 4, hereof.

"Fixed Charge Coverage Ratio", for any period, is defined as EBITDA divided by Fixed Charges.

"Fixed Charges" mean debt service, dividends, taxes, capital expenditures and other payments on Total Debt.

"Fixed Rate" shall mean the fixed base rate per annum established by the Lender from time to time for loans similarly classified pursuant to Lender's policies and procedures then in effect plus the Applicable Margin.

"GAAP" shall mean generally accepted accounting principals.

"Gross Plant, Property and Equipment" shall be calculated on a consolidated basis for the Borrower and all its Subsidiaries and shall mean the total of all assets included in property, plant and equipment pursuant to GAAP and shall exclude any goodwill or plant acquisition adjustments.

"Guarantor(s)" shall mean the entities set forth in Schedule 2, attached hereto.

"ICC Lines of Credit" shall mean Lender Loans designated V1802-9904, V1802-8906 and V1802-5105.

"~~Initial~~ Principal Payment Date" shall mean July 31, 2003.

"Interest Expense" means, for any period, total interest expense (including, without limitation, interest expense attributable to capital leases) determined on a consolidated basis, without duplication, for the Borrower and all of its Subsidiaries in accordance with GAAP.

"Leases" shall mean any lease of property by which Borrower shall be obligated for rental or other payments which in the aggregate are in excess of \$100,000 other than such equipment leases which are in form and substance substantially in conformity with lease agreements in general use in Borrower's industry by companies of size and character similar to Borrower.

"Leverage Ratio" for any period, means (a) Total Debt less SCC's divided by (b) EBITDA.

"Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set-off, claim, call, option, or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

"Loan" shall mean the loan or loans made by the Lender to Borrower pursuant to this Agreement and the Note, in an aggregate principal amount not to exceed the Commitment.

"Loan Documents" shall mean the Notes, Loan Agreements, Other Agreements, Mortgages, Guaranty Agreements, Pledge and Security Agreements, UCC filings and any other agreements, contracts or documents of any kind evidencing the Loan.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower, any Guarantor or Pledgor, and the Subsidiaries taken as a whole, and (b) the rights of or benefits available to the Lender under any Loan Document.

"Maturity Date" shall mean the maturity date defined in the Note.

"Mortgage" shall mean the Second Modification to Mortgage and Security Agreement executed by Borrower and delivered to Lender to secure Borrower's obligations under the Loan.

"Net Cash Proceeds" means, as applicable, (a) with respect to any sale or other disposition of assets, the gross cash proceeds received by the Borrower, or any of its Subsidiaries, from such sale less the sum of (i) all income and excess profit taxes assessed by a governmental authority as a result of such sale and any other reasonable fees and expenses actually incurred in connection therewith and (ii) the principal amount of, premium, if any, and interest on any debt secured by a lien on the asset (or a portion thereof) sold, which debt is required to be repaid in connection with such sale, (b) with respect to any offering of capital stock or issuance of debt, the gross cash proceeds received by the Borrower, or any of its Subsidiaries, therefrom less all reasonable legal, underwriting and other fees and expenses actually incurred in connection therewith, and (c) with respect to any payment under an insurance policy or in connection with a condemnation proceeding, the amount of cash proceeds received by the Borrower, or its Subsidiaries, from an insurance company or governmental authority, as applicable, net of all reasonable expenses of collection actually incurred.

"Net Worth" shall be calculated, according to GAAP, on a consolidated basis for the Borrower and all its Subsidiaries taken as a whole and arrived at by subtracting total liabilities from total assets.

"Note" shall mean the Note or Notes, of even date herewith, executed and delivered by Borrower at or prior to Closing and all renewals, replacements and extensions thereof.

"Obligations" shall include the full and punctual performance of all present and future duties, covenants and responsibilities due to the Lender by Borrower under this Agreement, the Note, the Other Agreements, the Prior Loan Documents and all present and future obligations of Borrower to the Lender for the payment of money under this Agreement, the Note, the Other Agreements and the Prior Loan Documents, extending to all principal amounts, interest, late charges and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Note, the Other Agreements, the Prior Loan Documents and any and all other present and future monetary liabilities of Borrower to the Lender, whether direct or indirect, contingent or noncontingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not of the same character or class as Borrower's obligations under this Agreement and the Note, whether or not secured under any other document, instrument or statutory or common law provision, as well as all renewals, refinancings, consolidations, recastings and extensions of any of the foregoing.

"Other Agreements" shall mean any and all promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, contracts, guaranties, instruments and documents now and hereafter existing between the Lender and Borrower, executed and/or delivered pursuant to this Agreement, or the Prior Loan Documents, or guaranteeing, securing or in any other manner relating to any of the Obligations, including, the Instruments and documents referred to in Subsection 5.2 hereof.

"Payment Date" shall mean the last day of each calendar month for the term of the Loan and each Prior Loan commencing on September 30, 2001.

"Payment Default" means the failure of Borrower to make any of the payment Obligations, including, without limitation, any sum due the Lender under the Loan Documents, or any Prior Loan Documents, when and as the same shall become due, whether at the due date thereof, by exercise of the Call Provision, by demand, by acceleration or otherwise.

"Payment Notice" shall mean the notice furnished to the Borrower at least monthly indicating the precise amount of principal and interest due on the next ensuing Payment Date, such notice to be sent to the Borrower at least ten (10) days before such Payment Date.

"Permitted Investment" means (i) the one-time acquisition of a franchise or franchises in France for the specific purpose of obtaining authorization to provide cable television services within the designated franchised area provided, however, that Borrower's, or any Subsidiary's aggregate total investment in said franchise and all associated expenses related to the acquisition of the franchise does not exceed \$1,000,000; (ii) bonds, notes, debentures, stock, or other securities or obligations issued by or guaranteed by the United States government or any agency or instrumentality thereof; (iii) bonds, notes, debentures, stock, commercial paper, subordinated capital certificates, or other security or obligation of institutions whose senior unsecured debt obligations are rated by at least two nationally recognized rating organizations in either of its two highest categories; (iv) investments incidental to loans made by Lender; (v) bonds, notes, debentures, commercial paper or any other security of the National Rural Utilities Cooperative Finance Corporation; and (vi) any deposit that is fully insured by the Federal Government.

"Person" or "person" means an individual, corporation, limited liability company, partnership, association, trust, business trust, joint venture, joint stock company, pool, syndicate, sole proprietorship, unincorporated organization, Governmental Authority or any other form of entity or group thereof.

"Pledge Agreement" shall mean the agreements executed by and between Lender and the Pledges as of even date herewith set forth in Schedule 3 attached hereto.

"Pledgor(s)" shall mean the entities set forth on Schedule 3 attached hereto.

"Principal Advance" shall mean an Advance credited to reduce principal under any Prior Loan.

"Prior Loan Documents" shall mean each of the Notes, Loan Agreements, Mortgages, Guaranty Agreements, Pledge and Security Agreements, UCC filings, Other Agreements and contracts or documents of any kind evidencing the Prior Loans as they may have been modified from time to time.

"Prior Loans" shall mean the loans listed in Schedule 5, attached hereto.

"Subordinated Capital Certificate" or "SCC" shall mean a subordinated certificate representing an investment in the Lender purchased by the Borrower in connection with the Loan.

"Subsidiary" or "Subsidiaries" means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity is at the time, directly or indirectly, owned by or the management is otherwise controlled by such Person (irrespective of whether, at the time, capital stock or other ownership interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified references to "Subsidiary" or "Subsidiaries" herein shall refer to those of the Borrower.

"TIER" or "Times Interest Earned Ratio" for any period shall mean net income plus Interest Expense plus income taxes payable divided by Interest Expense.

"Variable Rate" shall mean the Lender's base variable interest rate for long term loans with ten percent (10%) SCC's, as said base variable rate may change from time to time, according to Lender's policies and procedures then in effect plus the Applicable Margin.

2. LOAN TERMS. The Lender agrees to make the Loan to Borrower subject to all of the terms and conditions of this Agreement and the Other Agreements.

2.1. Advances. No Advance shall be made, at any time, for any reason, directly to Borrower. All Advances hereunder shall be made by internal transfer directly to Lender to credit to principal due and payable under the ICC Lines of Credit and/or the Prior Loans.

2.1.1. Initial Advance. At Closing, Lender shall make an Advance (i) to pay in full, all principal outstanding under the ICC Lines of Credit, after which no future borrowings under said Lines of Credit shall be permitted, and (ii) to purchase SCCs in the amount of \$12,561,301.00, which is the amount necessary to achieve, as of the Closing Date, a ratio of SCCs to principal amounts outstanding under the Loan and Prior Loans of ten percent (10%). On or before October 1, 2001, Borrower shall pay from its own funds, in full, all interest and any other amounts outstanding under the ICC Lines of Credit, at which time said loans shall be cancelled and retired.

2.1.2. Future Principal Advances. Lender shall make Principal Advances to be credited to monthly payments of principal due and payable under the Prior Loans, and to purchase SCCs with ten percent (10%) of each such Principal Advance, commencing on September 30, 2001, and continuing on each Payment Date until the earlier to occur of the date all principal, interest and any other amounts outstanding under the Prior Loans are paid in full, or June 30, 2003.

2.2. Payment, Amortization and Interest Rate.

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- 2.2.1. Principal Deferral. Provided that Borrower is not in default under the Loan or any Prior Loan, principal payments on the Loan shall be deferred until the Initial Principal Payment Date when Borrower shall commence principal payments from its own funds.
- 2.2.2. Principal Payments on the Loan. Commencing on the Initial Principal Payment Date, and continuing on each monthly Payment Date thereafter until the Maturity Date, Borrower shall make monthly payments of principal, interest and any other amounts due under the Loan as set forth in the Payment Notices. If not sooner paid, any outstanding balance of principal, interest and all other amounts due hereunder shall be due and payable on the Maturity Date. Principal on the Loan will be amortized in accordance with the method stated in Schedule 1 hereto.
- 2.2.3. Interest Payments. Interest payments on the Loan and each Prior Loan, in amounts determined by the Lender as shown in the Payment Notices, shall be made monthly by Borrower, from Borrower's own funds, on each Payment Date, commencing on the first Payment Date subsequent to the date of this Agreement, and continuing on each Payment Date thereafter until the Maturity Date when all amounts due and payable under the Loan, and the Prior Loans shall be due and payable.
- 2.2.4. Interest Rate for the Loan and Prior Variable Rate Loans. All funds Advanced and outstanding, at any time, under (i) Prior Loans that were accruing interest at a Variable Rate as of August 14, 2001, and (ii) the Loan, shall henceforth accrue interest at Lender's Variable Rate, plus the Applicable Margin, until the Loan and each Prior Loan is paid in full.
- 2.2.5. Applicable Margin Adjustments. With respect to all Prior Loans, accruing interest at a Variable Rate, and notwithstanding anything to the contrary in the Prior Loan Documents, the Variable Rate and Applicable Margin shall be applied and adjusted only as set forth herein. Any reference to any other adjustment options or possibilities set forth in the Prior Loan Documents, including, but not limited to performance based reductions in the Applicable Margin, are hereby deleted in full, null, void and of no force or effect.
- 2.2.6. Interest Rate for Prior Fixed Rate Loans. All funds Advanced and outstanding under each Prior Loan that was accruing interest at the Fixed Rate as of the Closing Date, shall henceforth accrue interest at the Fixed Rate that was in effect on that particular Prior Loan through the applicable Adjustment Date for the particular Prior Loan, plus the Applicable Margin.
- 2.2.7. Conversion to Different Interest Rate Program. Notwithstanding anything set forth in the Prior Loan Documents, Borrower may not, with respect to the Loan or any Prior Loan, convert a Fixed Rate loan to a Variable Rate loan or a Variable Rate loan to a Fixed Rate loan.
- 2.2.8. Application of Payments. At the Lender's option, all payments received by Lender shall be applied first to late payment charges due, as

hereinafter provided, then to interest accrued to the date of such payment, and then to the reduction of the principal balance outstanding.

2.2.9. Usury. No provision of this Agreement, the Note, or the Prior Loan Documents shall require the payment, or permit the collection, of interest in excess of the highest rate permitted by applicable law.

2.2.10. Interest Rate Computation. For the Loan and each Prior Loan accruing interest at the Variable Rate, interest shall be computed for the actual number of days elapsed on the basis of a year of 365 days. For Prior Loans accruing interest at a Fixed Rate, interest shall be computed based on a 30 day month and a year of 360 days.

2.3. Term. The Loan shall be for a term of 12 years, commencing on the Closing Date until August 27, 2013, when all amounts outstanding under the Loan shall be due and payable in full, provided that, notwithstanding anything to the contrary set forth in the Note or any Note evidencing any Prior Loan, Lender shall have the right, but not the obligation, to declare all amounts outstanding under the Loan and the Prior Loans due and payable at any time commencing on, and after, July 1, 2003 by giving Borrower written notice that Lender has exercised its right to call the Loans under this paragraph. At the expiration of 120 days after Borrower's receipt of such notice, all amounts due and payable under the Loan, the Prior Loans and any other loans or extensions of credit made by Lender to Borrower and/or any of its Subsidiaries shall be due and payable in full.

2.4. Prepayment. Borrower may make voluntary prepayments and must make mandatory prepayments according to the terms and conditions set forth herein.

2.4.1. Voluntary Prepayments. In the event Borrower voluntarily prepays all or part of the Loan or any Prior Loan, the Borrower shall pay any prepayment fees as the Lender may prescribe pursuant to the terms of this Section 2.4. All prepayments shall be accompanied by payment of accrued and unpaid interest on the amount prepaid to the date of the prepayment. All prepayments shall be applied first to fees, second to the payment of accrued and unpaid interest, and then to the unpaid balance of the principal amount of the loan to be prepaid. If the loan being prepaid bears interest at the Variable Rate the Borrower may prepay the loan or any portion thereof, as the case may be, at any time subject to the terms hereof and said prepayment fee shall be in an amount equal to fifty (50) basis points times the amount being prepaid. If the Loan to be prepaid bears interest at the Fixed Rate, the Borrower may prepay the particular loan without payment of a fee, only on an Adjustment Date, or if not paid on an Adjustment Date, any other date provided that the Borrower shall pay a prepayment fee in an amount equal to fifty (50) basis points times the amount being prepaid. Loans prepaid under this section shall not be reamortized.

2.4.2. Mandatory Prepayments.

2.4.2.1. In the event that, and on each occasion on which, any Net Cash Proceeds are received by or on behalf of the Borrower or any

Subsidiary, the Borrower shall, within three Business Days after such Net Cash Proceeds are received, prepay the Loans in an aggregate amount equal to such Net Cash Proceeds.

2.4.2.2. Following the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2004, the Borrower shall prepay the Loans in an aggregate amount equal to 50% of Excess Cash Flow for such fiscal year. Each prepayment pursuant to this paragraph shall be made within 180 days after the date on which financial statements are delivered pursuant to Section 6.5 with respect to the fiscal year for which Excess Cash Flow is being calculated.

2.4.2.3. Any Net Cash Proceeds shall be applied at Lender's discretion. Loans partially prepaid shall not be reamortized. Lender shall be reimbursed by payment of the breakage costs with respect to prepayment of Fixed Rate Loans.

2.5. Amendment of Prior Loan Documents. To the extent the terms and conditions hereof are contrary to, or in conflict with, the terms and conditions of any Prior Loans the provisions of this Agreement shall supersede the provisions set forth in any Prior Loan Document. For purposes of the foregoing, this Agreement shall be deemed to be an amendment to all Prior Loan Documents, and to all line of credit agreements, letter of credit reimbursement agreements, and other loan or credit agreements entered into between Lender and Borrower prior to the date hereof. Nothing in this paragraph, however, shall be deemed to change or otherwise to affect the Maturity Date as set forth in any of the Prior Loan Documents, or in any line of credit agreements, letter of credit reimbursement agreements, or other loan or credit agreements entered into between Lender and the Borrower prior to the date hereof.

2.6. 10% Subordinated Capital Certificates. With Loan proceeds from each Advance, Borrower shall purchase SCCs, which, in the aggregate, shall not exceed the amount specified in Schedule 1 hereto. The principal amounts purchased with each Advance shall be sufficient to maintain a ratio of SCCs to principal outstanding under the Loan and Prior Loans of ten percent (10%). The Lender agrees to deliver the SCCs on or about the date on which the SCCs have been paid for in full. The SCCs shall bear no interest and shall mature in accordance with the terms thereof. Amortization payments under the terms of the SCCs shall be funded directly to Lender and used to reduce outstanding principal on the Loans.

### 3. SECURITY

3.1. Borrower. As security for the payment and performance of all of the Obligations, Borrower has entered into the Mortgage granting Lender a prior and perfected continuing security interest in all of the Collateral that can be secured by the Mortgage. The Mortgage will be recorded in each jurisdiction necessary to give Lender a perfected prior lien on all of Borrower's real property. Borrower shall also pledge to Lender all of its ownership interests

In its direct Subsidiaries listed on Schedule 6 attached hereto. The mortgage shall also be a security agreement granting a lien on all of Borrower's personal property and UCC-1 Financing Statements shall be filed in each jurisdiction necessary to give Lender a perfected prior lien on all the property of Borrower subject to the Mortgage and the Uniform Commercial Code.

- 3.2. Guarantors. As security for the payment and performance of all of the Obligations, each Guarantor shall execute a secured Guaranty Agreement and Guarantor's Mortgage granting Lender a security interest in all of the property described in said Guarantor's Mortgage. Said mortgage will be recorded in each jurisdiction necessary to give Lender a perfected prior lien on all of Guarantor's real property. The mortgage shall also be a security agreement granting a lien on all of Guarantor's personal property and a UCC-1 Financing Statements shall be filed in each jurisdiction necessary to give Lender a perfected prior lien on all the property of Guarantor subject to the Uniform Commercial Code.
- 3.3. Additional Security. As security for the payment and performance of all of the Obligations, Innovative Communication Subsidiary Company, LLC ("ICSC") shall pledge to Lender all of its ownership interests in Emerging Communication, Inc. and cause to be filed UCC-1 Financing Statements, in each jurisdiction necessary to give Lender a perfected prior lien on all the ownership interest in ICSC. Borrower shall also file with the Federal Aviation Administration an Aircraft Security Agreement granting Lender a first and prior security interest in Boeing 727-30, Ser. No. 18365, N727EC (formerly N700TE) and engine No JT8D-9A with hush kits installed Nos. 655839, 653322 and 658161.
- 3.4. Further Assurances. If reasonably required by the Lender at any time, Borrower shall make notations, satisfactory to the Lender, on its books and records disclosing the existence of the Lender's security interest in the Collateral. Borrower agrees that, with respect to the Collateral which is subject to Article 9 of the Uniform Commercial Code, the Lender shall have, but not be limited to, all the rights and remedies of a secured party under the Uniform Commercial Code. The Lender shall have no liability or duty, either before or after the occurrence of an Event of Default hereunder, on account of loss of or damage to, or to collect or enforce any of its rights against, the Collateral, or to preserve any rights against account debtors or other parties with prior interests in the Collateral. Borrower agrees to give Lender any and all documentation Lender reasonably requests to further assure Lender of its perfected security interests under this Agreement and any mortgage, guaranty or pledge executed in connection herewith.
4. REPRESENTATIONS AND WARRANTIES. To induce the Lender to enter into this Agreement and make the Loans, Borrower represents and warrants to the Lender as of the date of this Agreement that the following representations are true and correct.
- 4.1. Good standing. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the U.S. Virgin Islands; has the power

to own its property and to carry on its business; is duly qualified to do business; and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary.

- 4.2. Authority. Borrower has full corporate power and authority to enter into this Agreement, the Note, the Mortgage, the Pledge Agreement and any Other Agreements; to make the borrowing hereunder; to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, in the Mortgage, in the Pledge Agreement and in the Note, all of which have been duly authorized by all necessary and proper corporate and other action; and no consent or approval of any person, including, without limitation, stockholders and members of Borrower and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.
- 4.3. Binding Agreement. This Agreement has been duly and properly executed by Borrower, constitutes the valid and legally binding obligation of Borrower and is fully enforceable against Borrower in accordance with its terms, subject only to laws affecting the rights of creditors generally, the exercise of judicial discretion in accordance with general principles of equity or because waivers of statutory or common law rights or remedies may be limited.
- 4.4. No Conflicting Agreements. The execution, delivery of and performance by Borrower of this Agreement, the Mortgage, the Pledge Agreement, the Note and the Other Agreements and the transactions contemplated hereby or thereby, will not: (a) violate any provision of law, any order, rule or regulation of any court or other agency of government, any award of any arbitrator, the charter or by-laws of Borrower, or any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which it or any of its property is bound; or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien (other than contemplated hereby) upon any of the property or assets of Borrower.
- 4.5. Litigation. Except as previously disclosed to Lender in writing, there are no judgments, claims, actions, suits or proceedings, including environmental matters, pending or, to the knowledge of Borrower, threatened against or affecting Borrower, any Subsidiary, or their properties, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, which may result in any Material Adverse Change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower or any Guarantor or Subsidiary, and Borrower, any Guarantor and any Subsidiary is not, to its knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would have a material adverse effect on Borrower or any Subsidiary.

- 4.6. Financial Condition. The financial statements of Borrower and its Subsidiaries as at the date set forth in Schedule 1 hereto, heretofore delivered to the Lender, are complete and correct, fairly present the financial condition of Borrower and its Subsidiaries and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis. There are no liabilities of Borrower or any Subsidiary, direct or indirect, fixed or contingent, as of the date of such statements which are not reflected therein. There has been no material adverse change in the financial condition or operations of the Borrower from that set forth in said financial statements except changes previously disclosed in writing to the Lender prior to the date hereof.
- 4.7. Taxes. Except as previously disclosed to Lender in writing Borrower and its Subsidiaries have paid or caused to be paid all federal, state and local taxes to the extent that such taxes have become due, unless the Borrower or a Subsidiary is contesting in good faith any such tax. Borrower or its Subsidiaries have filed or caused to be filed all federal, state and local tax returns which are required to be filed by Borrower and any Subsidiary.
- 4.8. Title to Properties. Borrower and each Subsidiary has good and marketable title to all of their real properties and owns all of their other properties and assets free and clear of any liens, except (i) the Lien of the Mortgage and taxes or assessments not yet due; (ii) deposits or pledges to secure payment of workmen's compensation, unemployment insurance, old age pensions or other social security; (iii) Liens granted to Lender under the Prior Loan Documents; and (iv) deposits or pledges to secure performance of bids, tenders, contracts (other than contracts for the payment of borrowed money), leases, public or statutory obligations, surety or appeal bonds, or other deposits or pledges for purposes of like general nature in the ordinary course of business.
- 4.9. Licenses and Permits. Borrower and its Subsidiaries have duly obtained and now holds all licenses, permits, certifications, approvals and the like necessary to own and operate its property and business that are required by federal, state and local laws of the jurisdictions in which Borrower or any Subsidiary conducts its business and each remains valid and in full force and effect.
- 4.10. Subsidiaries. Borrower has no Subsidiaries other than those Subsidiaries heretofore disclosed to the Lender and set forth in Schedule 6, or hereafter formed or acquired with the prior written consent of the Lender.
- 4.11. Certain Indebtedness. There is no indebtedness of Borrower or any Subsidiary owing to any employee, officer, stockholder or director of the board of Borrower or any Subsidiary other than accrued salaries, commissions and the like and any indebtedness subordinated to the Obligations pursuant hereto.
- 4.12. Borrower Information. The chief place of business of the Borrower and the office where its records concerning accounts and contract rights are kept is identified in Schedule 1 hereto. Borrower's organization number is

660445332. Borrower's true, complete and correct name and place of organization is as set forth on the introductory paragraph hereto.

- 4.13. Required Approvals. No license, consent, permit or approval of any governmental agency or authority is required to enable the Borrower to enter into this Agreement or to perform any of its obligations provided for herein except as disclosed on Schedule 1 hereto and except with respect to regulatory approvals which may be required in connection with the Lender's enforcement of certain remedies hereunder.
- 4.14. ERISA. Each pension plan of Borrower and its Subsidiaries providing benefits for employees of Borrower or such Subsidiary covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereto ("ERISA"), is in compliance with ERISA in all material respects, and no material liability to the Pension Benefit Guaranty Corporation ("PBGC") or to a multiemployer plan has been, or is expected by Borrower or its Subsidiaries to be, incurred by Borrower or such Subsidiaries.
- 4.15. Disclosure. The Borrower has disclosed to the Lender all agreements, instruments and corporate or other restrictions to which the Borrower or any of the Subsidiaries is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of Borrower or any Subsidiary in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such projections were prepared and delivered to the Lender.
- 4.16. Solvency. Immediately after the Closing and after giving effect to the application of the proceeds of the Initial Advance (a) the fair value of the assets of Borrower will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) Borrower will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (c) Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.
5. CONDITIONS OF LENDING. The Lender shall have no obligation to make any Advance to Borrower hereunder unless, as of the date of Closing, each of the following conditions precedent shall be satisfied as provided below:

5.1. Legal Matters. All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for the Lender and to such local counsel as counsel for the Lender may retain.

5.2. Documents. There shall have been delivered to the Lender, fully completed and duly executed and notarized (when applicable), the following, satisfactory to the Lender and its counsel:

5.2.1. The documents listed in Schedule 7 attached hereto, signed, dated and notarized, where applicable, and otherwise acceptable to Lender.

5.2.2. Borrower shall have delivered to Lender a true and correct copy of the fully executed listing agreement to list and sell the Boeing 727-30 referred to in Section 3.3.

5.3. Government Approvals. The Borrower shall have furnished to the Lender true and correct copies of all certificates, authorizations and consents, including without limitation the consents referred to in Section 4.14 hereof, if any, necessary for the execution, delivery or performance by the Borrower of this Agreement, the Note, the Pledge and the Mortgage.

5.4. Representations, Warranties and Material Change. At Closing and at the date of every subsequent Advance hereunder, all covenants, representations and warranties set forth in this Agreement shall be true and correct on and as of such time with the same effect as though such covenants, representations and warranties had been made on and as of such date; no Event of Default specified in Section 8 and no event which, with the lapse of time or the notice and lapse of time specified in Section 8 would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to the Advance on the books of the Borrower; there shall have occurred no Material Adverse Change in the business or condition, financial or otherwise, of the Borrower; and nothing shall have occurred which in the opinion of the Lender materially and adversely affects the Borrower's ability to meet its obligations hereunder.

5.5. Special Conditions. At Closing and at the time of every subsequent Advance hereunder, the Lender and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special conditions identified in Schedule 1 hereto.

5.6. Requisitions. The Borrower will request all Advances on the form attached hereto as Schedule 8.

## 6. AFFIRMATIVE COVENANTS

6.1. Prior Loan Documents. It is understood and agreed that with respect to the Prior Loan Documents, the Borrower shall be required, after the date hereof, to meet reporting and financial covenants as set forth in this Agreement rather than those set forth in the Prior Loan Documents. In the event of any conflict between any reporting and financial covenant set forth in a Prior Loan Document and any reporting and financial covenant in this Agreement, the

requirements as set forth in this Agreement shall apply. Nothing in this section shall, however, eliminate or modify any special condition, special affirmative covenant or special negative covenant, if any, unless specifically agreed to in writing by Lender. For purposes of the foregoing, this Agreement shall be deemed to be an amendment to all Prior Loan Documents and to all line of credit agreements, letter of credit reimbursement agreements, and other loan or credit agreements entered into between Lender and the Borrower prior to the date hereof.

- 6.2. Membership. Remain, or an affiliate thereof will remain, a member in good standing of the Lender.
- 6.3. Financial Statements and Other Information. Furnish to the Lender: (a) financial statements as required hereunder and by the Mortgage; (b) such other information, reports or statements concerning the operations, business affairs and/or financial condition of Borrower as the Lender may reasonably request from time to time; and (c) promptly upon their becoming available information, in form and substance satisfactory to Lender, evidence of any and all changes or modification of licenses, permits, certifications, approvals and the like necessary for Borrower to own or operate its business or a substantial part of its business.
- 6.4. Financial Covenants. Borrower shall meet, at the levels set forth in Schedule 4, attached hereto, the Financial Covenants for each of Borrower's fiscal quarters from the Closing date until December 1, 2001. Schedule 4 sets forth the (i) minimum TIER, Debt Service and Fixed Charge Coverage Ratios and, (ii) the maximum Leverage Ratio, and (iii) the minimum EBITDA and (iv) the maximum Capital Expenditure amounts. Lender shall have the right to adjust the Financial Covenants to take effect after December 1, 2001 subsequent to Lender's review of Borrower's consolidated and consolidating audited financial statements.
- 6.5. Annual Report. On or before October 1, 2001, and thereafter within 120 days after the end of each of its fiscal years Borrower shall provide to Lender, the Borrower's audited consolidated and consolidating balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of, and for, such year setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied. At the same time, Borrower shall submit to Lender its annual operating and capital expenditure budgets and an updated 5 year financial forecast.
- 6.6. Quarterly Reports. The Borrower shall provide to Lender, within 45 days after the end of each of its fiscal quarters, (i) the Borrower's consolidated and consolidating balance sheet, (ii) related statements of operations,

stockholders' equity and cash flows, (iii) statistical reports detailing population, homes passed, subscribers, penetration and churn for each Subsidiary and (iv) updated annual operating and capital expenditure budgets. Said reports shall be as of the end of, and for, such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year and previous fiscal quarter, all certified by its general manager of operations as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

- 6.7. Certificate of Compliance. Each time quarterly or annual financial statements are delivered to Lender under Sections 6.5 and 6.6 hereof, and at such other times as Lender shall reasonably request, the Borrower shall submit a Certificate of Compliance signed by the Chief Executive Officer or the Chief Financial Officer of Borrower in the form attached hereto as Schedule 7.
- 6.8. Miscellaneous Reports. In addition to the foregoing, Borrower shall submit to Lender other documents and reports Lender may reasonably request from time to time.
- 6.9. Use of Proceeds. Use all Advances made hereunder and under the Note only for the purpose identified in Schedule 1 hereto and for no other purpose whatsoever without the prior written consent of the Lender.
- 6.10. Special Affirmative Covenants. During the term hereof, Lender and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special affirmative covenants identified in Schedule 1 hereto.
- 6.11. After Acquired Real Property. Within ten (10) days of the Borrower or any Subsidiary acquiring any real property, the Borrower shall cause the Mortgage to be duly recorded as a first mortgage on all real property and the Mortgage or other appropriate documentation shall have been duly filed, recorded or indexed as a security interest in personal property wherever the Lender shall have reasonably requested, all in accordance with applicable law, and the Borrower shall have caused satisfactory evidence thereof to be furnished to the Lender.

## 7. NEGATIVE COVENANTS.

- 7.1. Notice. Borrower covenants and agrees with the Lender that Borrower will not, directly or indirectly, without giving written notice to the Lender thirty (30) days prior to the effective date of any change:
- 7.1.1. Change of Location of Place of Business or Chief Executive Office. Change the location of Borrower's place of business or, if more than one, its chief executive office.

- 7.1.2. Change of Name. Change the name of Borrower.
- 7.1.3. Change of Mailing Address. Change the mailing address of Borrower.
- 7.1.4. ~~Change~~ Change of Organizational Identification Number. Change its organizational identification number if it has one.
- 7.2. Consent. Borrower covenants and agrees with the Lender that Borrower, and its Subsidiaries, will not, directly or indirectly, without the prior written consent of the Lender do any of the following.
- 7.2.1. Alter or permit alteration of control of the Borrower or any Subsidiary (control shall be as defined by regulations for telephone companies issued by the Federal Communications Commission).
- 7.2.2. Form or acquire any Subsidiaries.
- 7.2.3. Borrow money on a secured basis from any other lender, or incur any additional secured indebtedness, or enter into any Leases.
- 7.2.4. Borrow money on an unsecured basis from any other lender, or incur any additional unsecured indebtedness, or to pay other current operating liabilities that arise in the ordinary course of business, provided that, so long as the aggregate total of such debt does not exceed two percent (2%) of Borrower's consolidated total assets, except for unsecured trade debt, no consent shall be required.
- 7.2.5. Declare or pay any dividends or make any other distribution to its members with respect to its ownership or membership interests; (ii) purchase or redeem or retire any of its ownership or membership interests; or (iii) pay any management fees or if already paying a management fee, pay an increase in management fees, provided that, any Subsidiary may pay a dividend or distribution to Borrower for the purpose of funding debt service payments to Lender.
- 7.2.6. Permit any Subsidiary to enter into any agreement that would impair said Subsidiary's ability to pay dividends or distributions to Borrower.
- 7.2.7. Permit, or permit any Subsidiary to allow any Lien on the Borrower's, or any Subsidiary's assets except the Liens created by the Loan Documents and Prior Loan Documents against the Collateral herein.
- 7.2.8. Alter in any material respect the character or conduct of the business conducted by the Borrower and its Subsidiaries as of the Closing Date.
- 7.3. Limitations on Sales of Assets. Without the prior written consent of Lender, Borrower shall not, and shall not permit any Subsidiary to sell, transfer, lease or otherwise dispose of any asset, whether now owned or hereafter acquired, including, but not limited to, owned Equity Interests, except (i) the sale of inventory in the ordinary course of business, (ii) the sale of obsolete assets no longer used or usable in the business of the Borrower or any of

its Subsidiaries, and (iii) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof, provided that, Lender's consent shall not be required for sales of assets listed above wherein, (a) the aggregate of all such asset sales of Borrower and its Subsidiaries shall have a cumulative fair market value of less than 2% of Gross Plant, Property and Equipment measured at the end of the prior fiscal year, and (b) if applicable, the Net Cash Proceeds thereof are applied to the Loans in accordance with Section 2.4.2 of this Agreement.

7.4. Special Negative Covenants. During the term hereof, Lender and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special negative covenants identified in Schedule 1 hereto.

7.5. Limitations on Loans, Investments and Other Obligations. Without the prior written consent of Lender, the Borrower shall not, and shall not permit its Subsidiaries, to, pursuant to a merger or otherwise, (i) purchase or make any commitment to purchase any Equity Interest, including but not limited to, any stock, bonds, options, warrants, notes, debentures or other securities or obligations of or beneficial interest in, (ii) make any other investment in, (iii) make, or permit to exist, any loan to, or (iv) guarantee, assume, or otherwise become liable for any obligation of, any corporation, association, partnership, joint venture, trust, government or any agency or department thereof, or any other entity, or person, of any kind except the Permitted Investments.

8. EVENT OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default."

8.1. Representations and Warranties. Any representation or warranty made herein, in any of the Loan Documents or Other Agreements or in any statement, report, certificate, opinion, financial statement or other document furnished or to be furnished in connection with this Agreement, the Loan Documents or the Other Agreements shall be false or misleading in any material respect.

8.2. Payment. Failure of Borrower to make any of the payment Obligations, including, without limitation, any sum due the Lender under this Agreement, the Note or any Note for any Prior Loan or any of the Other Agreements, when and as the same shall become due, whether at the due date thereof, by demand, by acceleration or otherwise.

8.3. Other Covenants. Failure of Borrower to observe or perform any warranty, covenant or condition to be observed or performed by Borrower under this Agreement or any of the Other Agreements.

8.4. Corporate Existence. The Borrower or any Subsidiary shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, consents or licenses required to carry on any material portion of its business.

- 8.5. Other Obligations. Default by the Borrower in the payment when due of any money owed by the Borrower, whether principal, interest, premium or otherwise, under any other agreement for borrowing money in an amount in excess of five percent (5%) of total assets, whether or not such borrowing is secured.
- 8.6. Bankruptcy. (i) A court shall enter a decree or order for relief with respect to the Borrower, any Subsidiary or any Pledgor or Guarantor hereunder in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days, or (ii) the Borrower any Subsidiary or any Pledgor or Guarantor hereunder shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking of possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors.
- 8.7. Dissolution or Liquidation. (i) Other than as provided in Section 8.6 above, the dissolution or liquidation of the Borrower any Subsidiary or any Pledgor or Guarantor hereunder, or (ii) failure by the Borrower any Subsidiary or any Pledgor or Guarantor hereunder promptly to forestall or remove any execution, garnishment or attachment of such consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within sixty (60) days.
- 8.8. Final Judgment. A final non-appealable judgment in excess of \$100,000 shall be entered against the Borrower and shall remain unsatisfied or without a stay for a period of sixty (60) days.

9. RIGHTS AND REMEDIES

- 9.1. Rights and Remedies of the Lender. Upon the occurrence of an Event of Default, the Lender may, subject to (i) thirty (30) days prior written notice to Borrower during which time Borrower shall have the opportunity to cure said Event of Default, except with respect to Events of Default pursuant to Sections 8.1, 8.2, 8.6(ii) and 8.7(i) above which shall require no notice or demand and shall have no period to cure; provided, however, that Borrower shall not be entitled to any separate notice and opportunity to cure any Event of Default which specifies its own cure period, as for example, the Event of Default specified in Section 8.8; and (ii) compliance, if required, with the rules and regulations of the FCC and any public service or utilities commission having jurisdiction;

- 9.1.1. Exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to all rights and remedies available to the Lender under applicable law, all such rights and remedies

being cumulative and enforceable alternatively, successively or concurrently;

- 9.1.2. Declare all unpaid principal, all accrued and unpaid interest thereon, and all other Obligations outstanding on the Note, and any Note under any Prior Loan, to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.
  - 9.1.3. Institute any proceeding or proceedings to enforce the Obligations owed to, or any Liens in favor of the Lender under the Loan or any Prior Loan.
  - 9.1.4. Pursue all rights and remedies available to the Lender that are contemplated by the Mortgage in the manner, upon the conditions, and with the effect provided in the Mortgage, including but not limited to a suit for specific performance, injunctive relief or damages.
  - 9.1.5. Pursue any other rights and remedies available to the Lender at law or in equity, including any remedies available to Lender directly against any Guarantor or Pledgor.
- 9.2. Cumulative Nature of Remedies. Nothing herein shall limit the right of the Lender, subject to notice and right to cure provisions contained herein, to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default subject to compliance, if required, with the rules and regulations of the FCC and any public service or utilities commission having jurisdiction. Each right, power and remedy of the Lender in this Agreement and/or the Other Agreements shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver or any other right, power or remedy.
- 9.3. Costs and Expenses. Borrower agrees to pay and to be liable for any and all reasonable expenses, including attorneys' fees and court costs, incurred by the Lender in exercising or enforcing any of its rights hereunder or under the Other Agreements, together with interest thereon at the rate and determined in the manner provided in the Mortgage. Subject to the Mortgage and applicable law, the Lender may apply all Collateral and proceeds of all Collateral to the Obligations in any manner which the Lender, in its sole discretion, deems appropriate, and Borrower will continue to be liable for any deficiency.
- 9.4. Late Payment Charges. If payment of any principal and/or interest due under the terms of the Note is not received at the office of the Lender in Herndon, Virginia, or as the Lender may otherwise designate to the Borrower, within such time period as the Lender may prescribe from time to time in its policies in connection with any late payment charges (such unpaid amount of principal and/or interest being herein called the "delinquent amount" and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Borrower will pay to the Lender, in addition to all other amounts due under the terms of the Note, the

Mortgage, the Pledge and this Agreement, any late-payment charge as may be fixed by the Lender from time to time, on the delinquent amount for the late-payment period.

- 9.5. Lender's Setoff. The Lender shall have the right, in addition to all other rights and remedies available to it, to setoff and to recover against any or all of the Obligations due to Lender, any monies now and hereafter owing to Borrower by the Lender. Borrower waives all rights of setoff, deduction, recoupment or counterclaim.

## 10. MISCELLANEOUS

- 10.1. Performance for Borrower. Borrower agrees and hereby authorizes that the Lender may, in its sole discretion, but the Lender shall not be obligated to, advance funds on behalf of Borrower without prior notice to Borrower, in order to insure Borrower's compliance with any material covenant, warranty, representation or agreement of Borrower made in or pursuant to this Agreement or any of the Other Agreements, to preserve or protect any right or interest of the Lender in the Collateral or under or pursuant to this Agreement or any of the Other Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Borrower; provided, however, that the making of any such advance by the Lender shall not constitute a waiver by the Lender of any Event of Default with respect to which such advance is made nor relieve Borrower of any such Event of Default. Borrower shall pay to the Lender upon demand all such advances made by the Lender with interest thereon at the rate and determined in the manner provided in the Note. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted the Lender hereunder to the extent permitted by law.
- 10.2. Expenses and Filing Fees. Whether or not any of the transactions contemplated hereby shall be consummated, Borrower agrees to pay to the Lender at Closing or within 10 days of receipt of notice from Lender, whichever is earlier, all expenses of the Lender in connection with the filing or recordation of all financing statements and instruments as may be required by the Lender at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify the Lender from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by the Lender in connection with this Agreement. The provisions of this Subsection 10.2 shall survive the execution and delivery of this Agreement and the payment of all other Obligations.
- 10.3. Waivers by Borrower. Borrower hereby waives, to the extent the same may be waived under applicable law: (a) in the event the Lender seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required; (b)

presentment, demand for payment, protest and notice of non-payment and all exemptions; and (c) substitution, impairment, exchange or release of any collateral security for any of the Obligations. Borrower agrees that the Lender may exercise any or all of its rights and/or remedies hereunder and under the Other Agreements without resorting to and without regard to security or sources of liability with respect to any of the Obligations.

- 10.4. Waivers by the Lender. Neither any failure nor any delay on the part of the Lender in exercising any right, power or remedy hereunder or under any of the Other Agreements shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 10.5. Lender's Records. Every statement of account or reconciliation rendered by the Lender to Borrower with respect to any of the Obligations shall be presumed conclusively to be correct and shall constitute an account stated between the Lender and Borrower unless, within ten (10) Business Days after such statement or reconciliation shall have been mailed, postage prepaid, to Borrower, the Lender shall receive written notice of specific objection thereto.
- 10.6. Modifications. No modification or waiver of any provision of this Agreement, the Note or any of the Other Agreements, and no consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.
- 10.7. Notices. All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a telecopied or mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

LENDER:  
Rural Telephone Finance Cooperative  
Woodland Park  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Attention: Chief Executive Officer  
Fax: 703-709-6780

BORROWER:  
The address set forth in Schedule 1 hereto

- 10.8. Governing Law, Submission to Jurisdiction; Waiver of Jury Trial. THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA. BORROWER HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA AND OF ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE BORROWER AND THE LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- 10.9. Holiday Payments. If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.
- 10.10. Consent to Patronage Capital Distributions. The Borrower hereby consents that the amount of any distributions with respect to Borrower's patronage which are made in written notices of allocation (as defined in Section 1388 of the Internal Revenue Code of 1986, as amended ("Code") including any other comparable successor provision) and which are received from Lender will be taken into account by Borrower at their stated dollar amounts in the manner provided in Section 1385(a) of the Code in the taxable year in which such written notices of allocation are received.
- 10.11. Right to Inspect. The Borrower shall permit representatives of the Lender at any time during normal business hours to inspect and make abstracts from the books and records pertaining to the Collateral, and permit representatives of the Lender to be present at Borrower's place of business to receive copies of all communications and remittances relating to the Collateral, all in such manner as the Lender may reasonably require.
- 10.12. Survival and Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the Other Agreements shall survive Closing and the execution and delivery to the Lender of the Note, and shall continue in full force and effect until all of the Obligations have been paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties by or on behalf of Borrower which are contained in this Agreement and the Other Agreements shall inure to the benefit of the successors and assigns of the Lender.

- 10.13. Assignment. The Lender may assign its rights and obligations under this Agreement and the Other Agreements without the consent of the Borrower; provided, however, that no such assignment shall result in terms or conditions less favorable to Borrower. The Borrower may not assign any of its rights or obligations under this Agreement or the Other Agreements without the prior written consent of the Lender.
- 10.14. Severability. If any term, provision or condition, or any part thereof, of this Agreement or any of the Other Agreements shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the Note, and the Other Agreements shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.
- 10.15. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.
- 10.16. Headings and Use of Terms. The headings and sub-headings contained in this Agreement are intended to be used for convenience only and do not constitute part of this Agreement. The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa.
- 10.17. Further Assurances. The Borrower will, upon demand of the Lender, make, execute, acknowledge and deliver all such further and supplemental indentures of mortgage, deeds of trust, mortgages, financing statements, continuation statements, security agreements and/or any other instruments and conveyances as may be reasonably requested by the Lender to effectuate the intention of this Agreement and to provide for the securing and payment of the principal of and interest on the Note according to the terms thereof.
- 10.18. Lender's Approval. Wherever prior written approval of Lender is required under the terms and conditions of this Agreement, Lender hereby agrees to not unreasonably withhold said approval.
- 10.19. Merger and Integration. This Agreement and the attached exhibits and matters incorporated by reference contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein, shall be valid or binding.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement under seal as of the date first above written.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement under seal as of the date first above written.

BORROWER:

INNOVATIVE COMMUNICATION CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

Secretary

LENDER:

RURAL TELEPHONE FINANCE COOPERATIVE

By: \_\_\_\_\_

Assistant Secretary-Treasurer

(SEAL)

Attest: \_\_\_\_\_

Assistant Secretary-Treasurer

# EXHIBIT C

Larry Zawalick  
08/24/01 02:07 PM

To: Robin Reed/CFC@CFC, Frank Vaughan/CFC@CFC, Robert  
Parrett/CFC@CFC, Tara Cromp/CFC@CFC  
cc:  
Subject: ICC

The package we sent to Kevin Rames was returned due to lack of a description of contents. It had to go through customs to get to St. Croix. I confirmed with Robin that the original docs were sent to Jeff Prosser in West Palm Beach.

To be sure things were going OK, I called Jeff and learned that he is in the process of signing the docs and will be ready to ship them out today. The problem that he has is the fact that the corporate seals are in St. Croix.

I checked with Robert and he had a good idea. Jeff will have the seals FedExed to us from St. Croix and he will FedEx the docs, all for Monday delivery. We will seal the executed docs and send the seals back to Jeff in West Palm Beach.

As soon as we can have the docs reviewed and the internal transfer made to bring the debt service current, please do so.

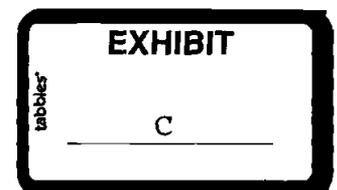
Then, immediately notify Bob Geier, and me.

I will be in a meeting with Fitch on Monday morning, so have a message sent to me immediately upon receipt of the docs.

The timing is now very critical.

Thanks.

Larry



RTFC 042752

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# EXHIBIT D



RURAL TELEPHONE FINANCE COOPERATIVE  
2201 Cooperative Way - Herndon, Virginia 20171-3025  
703-709-6700

received  
8/27/01

Via Federal Express

August 23, 2001

Mr. Jeffrey J. Prosser  
Innovative Communication Corporation  
Phillips Point - East Tower  
777 S. Flagler Drive, 12<sup>th</sup> Floor  
West Palm Beach, FL 33401

Re: VI 802 - 9015

Dear Mr. Prosser:

The Rural Telephone Finance Cooperative (RTFC) loan documents are enclosed for the proposed loan to your organization in the amount of \$169,291,578.00.

Please understand that we have signed the enclosed documents as a matter of administrative convenience. However, we will not be able to advance funds to your organization until the documents are properly executed and returned to RTFC for review and acceptance. We will notify you of our acceptance or non-acceptance of the documents promptly upon their receipt.

Should you have any questions about these documents, please contact Frank E. Vaughan, Assistant General Counsel at 1-800-346-7095.

Sincerely,

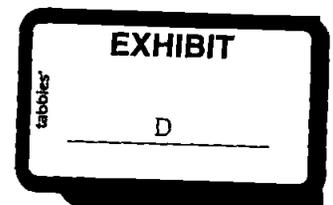
Robin C. Reed  
Associate Vice President  
and Account Manager

RCR/rap

Enclosures

cc: Kevin A. Rames, Esq. (with enclosures & instructions)

Def-ICC Dep Ex 0046/1



COPY

LOAN AGREEMENT

LOAN AGREEMENT ("Agreement") made as of August \_\_, 2001, by and between INNOVATIVE COMMUNICATION CORPORATION, a US Virgin Islands corporation ("Borrower"), and RURAL TELEPHONE FINANCE COOPERATIVE, a South Dakota cooperative association ("Lender").

RECITALS

WHEREAS, Borrower has requested Lender to make the Loan of up to \$169,291,578.00, to Borrower on the terms and conditions set forth in this Agreement; and

WHEREAS, Lender is willing to make the Loan upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Borrower and Lender do hereby agree as follows:

1. CONSTRUCTION AND DEFINITION OF TERMS

All accounting terms not specifically defined herein shall have the meanings assigned to them as determined by generally accepted accounting principles. In addition to the terms defined elsewhere in this Agreement, unless the context otherwise requires, when used herein, the following terms shall have the following meanings:

"Adjustment Date" shall mean a date or dates, determined by the Lender based on the term (or rate period) of the applicable Fixed Rate, after the date of the initial Advance to the Maturity Date.

"Advance" shall mean an advance of Loan proceeds made by Lender.

"Applicable Margin" shall be, with respect to the Loan, and as of the date hereof, for each Prior Loan, one and one-half percent (1½%) per annum for the period from the date of Closing through June 30, 2003, and thereafter, two and one-half percent (2½%) per annum until all amounts due and payable under the Loan and each Prior Loan are paid in full. Provided that, in the event of a default by Borrower in making required payments under the Loan and/or any Prior Loan, the Applicable Margin on the Loan and all Prior Loans shall be increased, as of the date of any such default and without notice to Borrower, to three and one-half percent (3½%) per annum for the period from the date of Closing through June 30, 2003, and thereafter, four and one-half percent (4½%) per annum, until all amounts due and payable under the Loan and each Prior Loan are paid in full.

"Business Day" shall mean any day that Lender is open for business.

"Call Provision" means Lender's right to demand full repayment of the Loans and Prior Loans on and after June 30, 2003.

"Capital Expenditures" means, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and its Subsidiaries that are (or would be) set forth in a consolidated statement of cash flows of the Borrower for

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such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and its Subsidiaries during such period.

"Capital Lease Obligations" means the obligation of the Borrower and/or any of its Subsidiaries to pay rent or other amounts under any lease of (or arrangement conveying the right to use) real or personal property or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the obligor under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Margins" for any year shall mean net income plus depreciation, amortization and any other non-cash charges, less any non-cash credits and principal on long-term debt payable in such year, as calculated on a consolidated basis for Borrower and all its Subsidiaries.

"Certified" shall mean that the information, statement, schedule, report or other document required to be "Certified" shall contain a representation of a duly authorized officer of Borrower that such information, statement, schedule, report or other document is true and correct and complete.

"Closing" or "Closing Date" shall mean the first date on which funds are advanced to Borrower hereunder.

"Collateral" shall mean all of the assets, real and personal, of Borrower, and each Guarantor listed on Schedule 2, attached hereto; including, but not limited to, (i) the property described in the Mortgage, each Guarantor's Mortgage, the Pledge and Security Agreements and any UCC-1 Financing Statement filed under this Agreement, and (ii) all proceeds, cash and non-cash, including condemnation and/or insurance proceeds, of the foregoing, whether in the possession of Borrower, a Subsidiary, Guarantor, Pledgor or any other person, and (iii) certain ownership or membership interests and related proceeds and dividends described in, and pledged to Lender pursuant to, Pledge and Security Agreements listed in Schedule 3 dated as of even date herewith and (iii) all after acquired real or personal property of Borrower, any Guarantor or any Subsidiary.

"Commitment" shall have the meaning set forth in Schedule 1 hereto.

"Current Ratio" for any year shall mean the ratio of total current assets to total current liabilities, as determined by dividing total current assets by total current liabilities under GAAP.

"Consolidated Net Earnings" for any period shall mean the gross revenues of the Borrower and its subsidiaries for such period less all expenses and other proper charges, determined on a consolidated basis in accordance with GAAP after eliminating earnings or losses attributable to outstanding minority interests, but excluding in any event: (a) any extraordinary gains or losses determined in accordance with GAAP and (b) net earnings of any business entity (other than a wholly-owned Subsidiary of the Borrower) in which the Borrower or any Subsidiary of the Borrower has an ownership interest unless such net earnings shall have actually have been received by the Borrower or a wholly-owned Subsidiary of the Borrower in the form of cash distributions.

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"Consolidated Net Operating Cash Flow" means, for any period, the net cash flow from operations for Borrower and its subsidiaries on a consolidated basis for such period taken as a single accounting period, as set forth on the statement of cash flows of the Borrower and determined in accordance with GAAP.

"Debt Service Coverage Ratio" or "DSC Ratio" for any period shall mean Consolidated Net Earnings plus depreciation and amortization plus Interest Expense divided by Interest Expense and principal on long-term debt payable in such year.

"EBITDA" means, in respect of any period, the sum of Consolidated Net Earnings plus interest expenditures, taxes paid on or measured by income or excess profits, and depreciation and amortization. For purposes of measuring compliance with Financial Covenants, EBITDA will be calculated on a trailing four quarters basis and measured at the end of each quarter. EBITDA definition will include or exclude, as appropriate, acquisitions and divestitures as if such acquisition or divestiture occurred on the first day of such applicable period. EBITDA will also not include any extraordinary gains or losses.

"Equity" means consolidated Stockholders' Equity as defined by GAAP, including, without limitation, the sum of common stock, additional paid-in-capital and retained earnings.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person and any options warrants or other rights to acquire such Equity Interest but excluding any debt securities convertible into such Equity Interests.

"Excess Cash Flow" means for any fiscal year, (a) Consolidated Net Operating Cash Flow of the Borrower and its subsidiaries for such fiscal year (which shall give effect to any increases and decreases in working capital), minus (b) Capital Expenditures for such period except to the extent such Capital Expenditures are financed with the proceeds of asset dispositions less the amount of any permitted Capital Expenditures that may be carried forward to the next fiscal year, minus (c) the aggregate principal amount repaid or prepaid, excluding any SCC amortization or Patronage Capital retirements, during such period, with respect to Loan or Prior Loans.

"Event of Default" shall mean any of the events described in Section 8 hereof and any Event of Default under any Prior Loan Document.

"Financial Covenants" mean the ratios of TIER, Debt Service Coverage, Leverage Ratio, Fixed Charge Coverage and the Minimum EBITDA and Maximum Capital Expenditure set forth in Section 6.4 and Schedule 4, hereof.

"Fixed Charge Coverage Ratio", for any period, is defined as EBITDA divided by Fixed Charges.

"Fixed Charges" mean debt service, dividends, taxes, capital expenditures and other payments on Total Debt.

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"Fixed Rate" shall mean the fixed base rate per annum established by the Lender from time to time for loans similarly classified pursuant to Lender's policies and procedures then in effect plus the Applicable Margin.

"GAAP" shall mean generally accepted accounting principals.

"Gross Plant, Property and Equipment" shall be calculated on a consolidated basis for the Borrower and all its Subsidiaries and shall mean the total of all assets included in property, plant and equipment pursuant to GAAP and shall exclude any goodwill or plant acquisition adjustments.

"Guarantor(s)" shall mean the entities set forth in Schedule 2, attached hereto.

"ICC Lines of Credit" shall mean Lender Loans designated V1802-9904, V1802-9906 and V1802-5105.

"Initial Principal Payment Date" shall mean July 31, 2003.

"Interest Expense" means, for any period, total interest expense (including, without limitation, interest expense attributable to capital leases) determined on a consolidated basis, without duplication, for the Borrower and all of its Subsidiaries in accordance with GAAP.

"Leases" shall mean any lease of property by which Borrower shall be obligated for rental or other payments which in the aggregate are in excess of \$100,000 other than such equipment leases which are in form and substance substantially in conformity with lease agreements in general use in Borrower's industry by companies of size and character similar to Borrower.

"Leverage Ratio" for any period, means (a) Total Debt less SCC's divided by (b) EBITDA.

"Lien" shall mean any statutory or common law consensual or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set-off, claim, call, option, or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the Uniform Commercial Code of any jurisdiction.

"Loan" shall mean the loan or loans made by the Lender to Borrower pursuant to this Agreement and the Note, in an aggregate principal amount not to exceed the Commitment.

"Loan Documents" shall mean the Notes, Loan Agreements, Other Agreements, Mortgages, Guaranty Agreements, Pledge and Security Agreements, UCC filings and any other agreements, contracts or documents of any kind evidencing the Loan.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower, any Guarantor or Pledgor, and the Subsidiaries taken as a whole, and (b) the rights of or benefits available to the Lender under any Loan Document.

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"Maturity Date" shall mean the maturity date defined in the Note.

"Mortgage" shall mean the Second Modification to Mortgage and Security Agreement executed by Borrower and delivered to Lender to secure Borrower's Obligations under the Loan.

"Net Cash Proceeds" means, as applicable, (a) with respect to any sale or other disposition of assets, the gross cash proceeds received by the Borrower, or any of its Subsidiaries, from such sale less the sum of (i) all income and excess profit taxes assessed by a governmental authority as a result of such sale and any other reasonable fees and expenses actually incurred in connection therewith and (ii) the principal amount of, premium, if any, and interest on any debt secured by a lien on the asset (or a portion thereof) sold, which debt is required to be repaid in connection with such sale, (b) with respect to any offering of capital stock or issuance of debt, the gross cash proceeds received by the Borrower, or any of its Subsidiaries, therefrom less all reasonable legal, underwriting and other fees and expenses actually incurred in connection therewith, and (c) with respect to any payment under an insurance policy or in connection with a condemnation proceeding, the amount of cash proceeds received by the Borrower, or its Subsidiaries, from an insurance company or governmental authority, as applicable, net of all reasonable expenses of collection actually incurred.

"Net Worth" shall be calculated, according to GAAP, on a consolidated basis for the Borrower and all its Subsidiaries taken as a whole and arrived at by subtracting total liabilities from total assets.

"Note" shall mean the Note or Notes, of even date herewith, executed and delivered by Borrower at or prior to Closing and all renewals, replacements and extensions thereof.

"Obligations" shall include the full and punctual performance of all present and future duties, covenants and responsibilities due to the Lender by Borrower under this Agreement, the Note, the Other Agreements, the Prior Loan Documents and all present and future obligations of Borrower to the Lender for the payment of money under this Agreement, the Note, the Other Agreements and the Prior Loan Documents, extending to all principal amounts, interest, late charges and all other charges and sums, as well as all costs and expenses payable by Borrower under this Agreement, the Note, the Other Agreements, the Prior Loan Documents and any and all other present and future monetary liabilities of Borrower to the Lender, whether direct or indirect, contingent or noncontingent, matured or unmatured, accrued or not accrued, related or unrelated to this Agreement, whether or not of the same character or class as Borrower's obligations under this Agreement and the Note, whether or not secured under any other document, instrument or statutory or common law provision, as well as all renewals, refinancings, consolidations, recastings and extensions of any of the foregoing.

"Other Agreements" shall mean any and all promissory notes, security agreements, assignments, subordination agreements, pledge or hypothecation agreements, mortgages, deeds of trust, leases, contracts, guaranties, instruments and documents now and hereafter existing between the Lender and Borrower, executed and/or delivered pursuant to this Agreement, or the Prior Loan Documents, or guaranteeing, securing or in any other manner relating to any of the Obligations, including, the instruments and documents referred to in Subsection 5.2 hereof.

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"Payment Date" shall mean the last day of each calendar month for the term of the Loan and each Prior Loan commencing on September 30, 2001.

"Payment Default" means the failure of Borrower to make any of the payment Obligations, including, without limitation, any sum due the Lender under the Loan Documents, or any Prior Loan Documents, when and as the same shall become due, whether at the due date thereof, by exercise of the Call Provision, by demand, by acceleration or otherwise.

"Payment Notice" shall mean the notice furnished to the Borrower at least monthly indicating the precise amount of principal and interest due on the next ensuing Payment Date, such notice to be sent to the Borrower at least ten (10) days before such Payment Date.

"Permitted Investment" means (i) the one-time acquisition of a franchise or franchises in France for the specific purpose of obtaining authorization to provide cable television services within the designated franchised area provided, however, that Borrower's, or any Subsidiary's aggregate total investment in said franchise and all associated expenses related to the acquisition of the franchise does not exceed \$1,000,000; (ii) bonds, notes, debentures, stock, or other securities or obligations issued by or guaranteed by the United States government or any agency or instrumentality thereof; (iii) bonds, notes, debentures, stock, commercial paper, subordinated capital certificates, or other security or obligation of institutions whose senior unsecured debt obligations are rated by at least two nationally recognized rating organizations in either of its two highest categories; (iv) investments incidental to loans made by Lender; (v) bonds, notes, debentures, commercial paper or any other security of the National Rural Utilities Cooperative Finance Corporation; and (vi) any deposit that is fully insured by the Federal Government.

"Person" or "person" means an individual, corporation, limited liability company, partnership, association, trust, business trust, joint venture, joint stock company, pool, syndicate, sole proprietorship, unincorporated organization, Governmental Authority or any other form of entity or group thereof.

"Pledge Agreement" shall mean the agreements executed by and between Lender and the Pledges as of even date herewith set forth in Schedule 3 attached hereto.

"Pledgor(s)" shall mean the entities set forth on Schedule 3 attached hereto.

"Principal Advance" shall mean an Advance credited to reduce principal under any Prior Loan.

"Prior Loan Documents" shall mean each of the Notes, Loan Agreements, Mortgages, Guaranty Agreements, Pledge and Security Agreements, UCC filings, Other Agreements and contracts or documents of any kind evidencing the Prior Loans as they may have been modified from time to time.

"Prior Loans" shall mean the loans listed in Schedule 5, attached hereto.

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"Subordinated Capital Certificate" or "SCC" shall mean a subordinated certificate representing an investment in the Lender purchased by the Borrower in connection with the Loan.

"Subsidiary" or "Subsidiaries" means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity is at the time, directly or indirectly, owned by or the management is otherwise controlled by such Person (irrespective of whether, at the time, capital stock or other ownership interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified references to "Subsidiary" or "Subsidiaries" herein shall refer to those of the Borrower.

"TIER" or "Times Interest Earned Ratio" for any period shall mean net income plus Interest Expense plus income taxes payable divided by Interest Expense.

"Variable Rate" shall mean the Lender's base variable interest rate for long term loans with ten percent (10%) SCC's, as said base variable rate may change from time to time, according to Lender's policies and procedures then in effect plus the Applicable Margin.

2. **LOAN TERMS.** The Lender agrees to make the Loan to Borrower subject to all of the terms and conditions of this Agreement and the Other Agreements.

2.1. Advances. No Advance shall be made, at any time, for any reason, directly to Borrower. All Advances hereunder shall be made by internal transfer directly to Lender to credit to principal due and payable under the ICC Lines of Credit and/or the a Prior Loans.

2.1.1. Initial Advance. At Closing, Lender shall make an Advance (i) to pay in full, all principal outstanding under the ICC Lines of Credit, after which no future borrowings under said Lines of Credit shall be permitted, and (ii) to purchase SCCs in the amount of \$12,561,301.00, which is the amount necessary to achieve, as of the Closing Date, a ratio of SCCs to principal amounts outstanding under the Loan and Prior Loans of ten percent (10%). On or before October 1, 2001, Borrower shall pay from its own funds, in full, all interest and any other amounts outstanding under the ICC Lines of Credit, at which time said loans shall be cancelled and retired.

2.1.2. Future Principal Advances. Lender shall make Principal Advances to be credited to monthly payments of principal due and payable under the Prior Loans, and to purchase SCCs with ten percent (10%) of each such Principal Advance, commencing on September 30, 2001, and continuing on each Payment Date until the earlier to occur of the date all principal, interest and any other amounts outstanding under the Prior Loans are paid in full, or June 30, 2003.

2.2. Payment, Amortization and Interest Rate.

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- 2.2.1. Principal Deferral. Provided that Borrower is not in default under the Loan or any Prior Loan, principal payments on the Loan shall be deferred until the Initial Principal Payment Date when Borrower shall commence principal payments from its own funds.
- 2.2.2. Principal Payments on the Loan. Commencing on the Initial Principal Payment Date, and continuing on each monthly Payment Date thereafter until the Maturity Date, Borrower shall make monthly payments of principal, interest and any other amounts due under the Loan as set forth in the Payment Notices. If not sooner paid, any outstanding balance of principal, interest and all other amounts due hereunder shall be due and payable on the Maturity Date. Principal on the Loan will be amortized in accordance with the method stated in Schedule 1 hereto.
- 2.2.3. Interest Payments. Interest payments on the Loan and each Prior Loan, in amounts determined by the Lender as shown in the Payment Notices, shall be made monthly by Borrower, from Borrower's own funds, on each Payment Date, commencing on the first Payment Date subsequent to the date of this Agreement, and continuing on each Payment Date thereafter until the Maturity Date when all amounts due and payable under the Loan, and the Prior Loans shall be due and payable.
- 2.2.4. Interest Rate for the Loan and Prior Variable Rate Loans. All funds Advanced and outstanding, at any time, under (i) Prior Loans that were accruing interest at a Variable Rate as of August 14, 2001, and (ii) the Loan, shall henceforth accrue interest at Lender's Variable Rate, plus the Applicable Margin, until the Loan and each Prior Loan is paid in full.
- 2.2.5. Applicable Margin Adjustments. With respect to all Prior Loans, accruing interest at a Variable Rate, and notwithstanding anything to the contrary in the Prior Loan Documents, the Variable Rate and Applicable Margin shall be applied and adjusted only as set forth herein. Any reference to any other adjustment options or possibilities set forth in the Prior Loan Documents, including, but not limited to performance based reductions in the Applicable Margin, are hereby deleted in full, null, void and of no force or effect.
- 2.2.6. Interest Rate for Prior Fixed Rate Loans. All funds Advanced and outstanding under each Prior Loan that was accruing interest at the Fixed Rate as of the Closing Date, shall henceforth accrue interest at the Fixed Rate that was in effect on that particular Prior Loan through the applicable Adjustment Date for the particular Prior Loan, plus the Applicable Margin.
- 2.2.7. Conversion to Different Interest Rate Program. Notwithstanding anything set forth in the Prior Loan Documents, Borrower may not, with respect to the Loan or any Prior Loan, convert a Fixed Rate loan to a Variable Rate loan or a Variable Rate loan to a Fixed Rate loan.
- 2.2.8. Application of Payments. At the Lender's option, all payments received by Lender shall be applied first to late payment charges due, as

hereinafter provided, then to interest accrued to the date of such payment, and then to the reduction of the principal balance outstanding.

**2.2.9. Usury.** No provision of this Agreement, the Note, or the Prior Loan Documents shall require the payment, or permit the collection, of interest in excess of the highest rate permitted by applicable law.

**2.2.10. Interest Rate Computation.** For the Loan and each Prior Loan accruing interest at the Variable Rate, interest shall be computed for the actual number of days elapsed on the basis of a year of 365 days. For Prior Loans accruing interest at a Fixed Rate, interest shall be computed based on a 30 day month and a year of 360 days.

**2.3. Term.** The Loan shall be for a term of 12 years, commencing on the Closing Date until August 27, 2013, when all amounts outstanding under the Loan shall be due and payable in full, provided that, notwithstanding anything to the contrary set forth in the Note or any Note evidencing any Prior Loan, Lender shall have the right, but not the obligation, to declare all amounts outstanding under the Loan and the Prior Loans due and payable at any time commencing on, and after, July 1, 2003 by giving Borrower written notice that Lender has exercised its right to call the Loans under this paragraph. At the expiration of 120 days after Borrower's receipt of such notice, all amounts due and payable under the Loan, the Prior Loans and any other loans or extensions of credit made by Lender to Borrower and/or any of its Subsidiaries shall be due and payable in full.

**2.4. Prepayment.** Borrower may make voluntary prepayments and must make mandatory prepayments according to the terms and conditions set forth herein.

**2.4.1. Voluntary Prepayments.** In the event Borrower voluntarily prepays all or part of the Loan or any Prior Loan, the Borrower shall pay any prepayment fees as the Lender may prescribe pursuant to the terms of this Section 2.4. All prepayments shall be accompanied by payment of accrued and unpaid interest on the amount prepaid to the date of the prepayment. All prepayments shall be applied first to fees, second to the payment of accrued and unpaid interest, and then to the unpaid balance of the principal amount of the loan to be prepaid. If the loan being prepaid bears interest at the Variable Rate the Borrower may prepay the loan or any portion thereof, as the case may be, at any time subject to the terms hereof and said prepayment fee shall be in an amount equal to fifty (50) basis points times the amount being prepaid. If the Loan to be prepaid bears interest at the Fixed Rate, the Borrower may prepay the particular loan without payment of a fee, only on an Adjustment Date, or if not paid on an Adjustment Date, any other date provided that the Borrower shall pay a prepayment fee in an amount equal to fifty (50) basis points times the amount being prepaid. Loans prepaid under this section shall not be reamortized.

**2.4.2. Mandatory Prepayments.**

**2.4.2.1.** In the event that, and on each occasion on which, any Net Cash Proceeds are received by or on behalf of the Borrower or any

Subsidiary, the Borrower shall, within three Business Days after such Net Cash Proceeds are received, prepay the Loans in an aggregate amount equal to such Net Cash Proceeds.

2.4.2.2. Following the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2004, the Borrower shall prepay the Loans in an aggregate amount equal to 50% of Excess Cash Flow for such fiscal year. Each prepayment pursuant to this paragraph shall be made within 180 days after the date on which financial statements are delivered pursuant to Section 6.5 with respect to the fiscal year for which Excess Cash Flow is being calculated.

2.4.2.3. Any Net Cash Proceeds shall be applied at Lender's discretion. Loans partially prepaid shall not be reamortized. Lender shall be reimbursed by payment of the breakage costs with respect to prepayment of Fixed Rate Loans.

2.5. Amendment of Prior Loan Documents. To the extent the terms and conditions hereof are contrary to, or in conflict with, the terms and conditions of any Prior Loans the provisions of this Agreement shall supersede the provisions set forth in any Prior Loan Document. For purposes of the foregoing, this Agreement shall be deemed to be an amendment to all Prior Loan Documents, and to all line of credit agreements, letter of credit reimbursement agreements, and other loan or credit agreements entered into between Lender and Borrower prior to the date hereof. Nothing in this paragraph, however, shall be deemed to change or otherwise to affect the Maturity Date as set forth in any of the Prior Loan Documents, or in any line of credit agreements, letter of credit reimbursement agreements, or other loan or credit agreements entered into between Lender and the Borrower prior to the date hereof.

2.6. 10% Subordinated Capital Certificates. With Loan proceeds from each Advance, Borrower shall purchase SCCs, which, in the aggregate, shall not exceed the amount specified in Schedule 1 hereto. The principal amounts purchased with each Advance shall be sufficient to maintain a ratio of SCCs to principal outstanding under the Loan and Prior Loans of ten percent (10%). The Lender agrees to deliver the SCCs on or about the date on which the SCCs have been paid for in full. The SCCs shall bear no interest and shall mature in accordance with the terms thereof. Amortization payments under the terms of the SCCs shall be funded directly to Lender and used to reduce outstanding principal on the Loans.

### 3. SECURITY

3.1. Borrower. As security for the payment and performance of all of the Obligations, Borrower has entered into the Mortgage granting Lender a prior and perfected continuing security interest in all of the Collateral that can be secured by the Mortgage. The Mortgage will be recorded in each jurisdiction necessary to give Lender a perfected prior lien on all of Borrower's real property. Borrower shall also pledge to Lender all of its ownership interests

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in its direct Subsidiaries listed on Schedule 6 attached hereto. The mortgage shall also be a security agreement granting a lien on all of Borrower's personal property and UCC-1 Financing Statements shall be filed in each jurisdiction necessary to give Lender a perfected prior lien on all the property of Borrower subject to the Mortgage and the Uniform Commercial Code.

- 3.2. Guarantors. As security for the payment and performance of all of the Obligations, each Guarantor shall execute a secured Guaranty Agreement and Guarantor's Mortgage granting Lender a security interest in all of the property described in said Guarantor's Mortgage. Said mortgage will be recorded in each jurisdiction necessary to give Lender a perfected prior lien on all of Guarantor's real property. The mortgage shall also be a security agreement granting a lien on all of Guarantor's personal property and a UCC-1 Financing Statements shall be filed in each jurisdiction necessary to give Lender a perfected prior lien on all the property of Guarantor subject to the Uniform Commercial Code.
- 3.3. Additional Security. As security for the payment and performance of all of the Obligations, Innovative Communication Subsidiary Company, LLC ("ICSC") shall pledge to Lender all of its ownership interests in Emerging Communication, Inc. and IC Air, Inc. and cause to be filed UCC-1 Financing Statements, in each jurisdiction necessary to give Lender a perfected prior lien on all the ownership interest in ICSC and IC Air. Borrower shall also file with the Federal Aviation Administration an Aircraft Security Agreement granting Lender a first and prior security interest in Boeing 727-30, Ser. No. 18365, N727EC (formerly N700TE) and engine No JT8D-9A with hush kits installed Nos. 655839, 653322 and 658161.
- 3.4. Further Assurances. If reasonably required by the Lender at any time, Borrower shall make notations, satisfactory to the Lender, on its books and records disclosing the existence of the Lender's security interest in the Collateral. Borrower agrees that, with respect to the Collateral which is subject to Article 9 of the Uniform Commercial Code, the Lender shall have, but not be limited to, all the rights and remedies of a secured party under the Uniform Commercial Code. The Lender shall have no liability or duty, either before or after the occurrence of an Event of Default hereunder, on account of loss of or damage to, or to collect or enforce any of its rights against, the Collateral, or to preserve any rights against account debtors or other parties with prior interests in the Collateral. Borrower agrees to give Lender any and all documentation Lender reasonably requests to further assure Lender of its perfected security interests under this Agreement and any mortgage, guaranty or pledge executed in connection herewith.
4. **REPRESENTATIONS AND WARRANTIES.** To induce the Lender to enter into this Agreement and make the Loans, Borrower represents and warrants to the Lender as of the date of this Agreement that the following representations are true and correct.
- 4.1. Good standing. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the U.S. Virgin Islands; has the power

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to own its property and to carry on its business; is duly qualified to do business; and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary.

- 4.2. Authority. Borrower has full corporate power and authority to enter into this Agreement, the Note, the Mortgage, the Pledge Agreement and any Other Agreements; to make the borrowing hereunder; to execute and deliver all documents and instruments required hereunder and to incur and perform the obligations provided for herein, in the Mortgage, in the Pledge Agreement and in the Note, all of which have been duly authorized by all necessary and proper corporate and other action; and no consent or approval of any person, including, without limitation, stockholders and members of Borrower and any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof or thereof.
- 4.3. Binding Agreement. This Agreement has been duly and properly executed by Borrower, constitutes the valid and legally binding obligation of Borrower and is fully enforceable against Borrower in accordance with its terms, subject only to laws affecting the rights of creditors generally, the exercise of judicial discretion in accordance with general principles of equity or because waivers of statutory or common law rights or remedies may be limited.
- 4.4. No Conflicting Agreements. The execution, delivery of and performance by Borrower of this Agreement, the Mortgage, the Pledge Agreement, the Note and the Other Agreements and the transactions contemplated hereby or thereby, will not: (a) violate any provision of law, any order, rule or regulation of any court or other agency of government, any award of any arbitrator, the charter or by-laws of Borrower, or any indenture, contract, agreement, mortgage, deed of trust or other instrument to which Borrower is a party or by which it or any of its property is bound; or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument, or result in the creation or imposition of any Lien (other than contemplated hereby) upon any of the property or assets of Borrower.
- 4.5. Litigation. Except as previously disclosed to Lender in writing, there are no judgments, claims, actions, suits or proceedings, including environmental matters, pending or, to the knowledge of Borrower, threatened against or affecting Borrower, any Subsidiary, or their properties, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, which may result in any Material Adverse Change in the business, operations, prospects, properties or assets or in the condition, financial or otherwise, of Borrower or any Guarantor or Subsidiary, and Borrower, any Guarantor and any Subsidiary is not, to its knowledge, in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would have a material adverse effect on Borrower or any Subsidiary.

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- 4.6. Financial Condition. The financial statements of Borrower and its Subsidiaries as at the date set forth in Schedule 1 hereto, heretofore delivered to the Lender, are complete and correct, fairly present the financial condition of Borrower and its Subsidiaries and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis. There are no liabilities of Borrower or any Subsidiary, direct or indirect, fixed or contingent, as of the date of such statements which are not reflected therein. There has been no material adverse change in the financial condition or operations of the Borrower from that set forth in said financial statements except changes previously disclosed in writing to the Lender prior to the date hereof.
- 4.7. Taxes. Except as previously disclosed to Lender in writing Borrower and its Subsidiaries have paid or caused to be paid all federal, state and local taxes to the extent that such taxes have become due, unless the Borrower or a Subsidiary is contesting in good faith any such tax. Borrower or its Subsidiaries have filed or caused to be filed all federal, state and local tax returns which are required to be filed by Borrower and any Subsidiary.
- 4.8. Title to Properties. Borrower and each Subsidiary has good and marketable title to all of their real properties and owns all of their other properties and assets free and clear of any liens, except (i) the Lien of the Mortgage and taxes or assessments not yet due; (ii) deposits or pledges to secure payment of workmen's compensation, unemployment insurance, old age pensions or other social security; (iii) Liens granted to Lender under the Prior Loan Documents; and (iv) deposits or pledges to secure performance of bids, tenders, contracts (other than contracts for the payment of borrowed money), leases, public or statutory obligations, surety or appeal bonds, or other deposits or pledges for purposes of like general nature in the ordinary course of business.
- 4.9. Licenses and Permits. Borrower and its Subsidiaries have duly obtained and now holds all licenses, permits, certifications, approvals and the like necessary to own and operate its property and business that are required by federal, state and local laws of the jurisdictions in which Borrower or any Subsidiary conducts its business and each remains valid and in full force and effect.
- 4.10. Subsidiaries. Borrower has no Subsidiaries other than those Subsidiaries heretofore disclosed to the Lender and set forth in Schedule 6, or hereafter formed or acquired with the prior written consent of the Lender.
- 4.11. Certain Indebtedness. There is no indebtedness of Borrower or any Subsidiary owing to any employee, officer, stockholder or director of the board of Borrower or any Subsidiary other than accrued salaries, commissions and the like and any indebtedness subordinated to the Obligations pursuant hereto.
- 4.12. Borrower Information. The chief place of business of the Borrower and the office where its records concerning accounts and contract rights are kept is identified in Schedule 1 hereto. Borrower's organization number is

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\_\_\_\_\_. Borrower's Federal Employer's Identification Number is \_\_\_\_\_.  
\_\_\_\_\_. Borrower's true, complete and correct name and place of organization is as set forth on the introductory paragraph hereto.

- 4.13. Required Approvals. No license, consent, permit or approval of any governmental agency or authority is required to enable the Borrower to enter into this Agreement or to perform any of its obligations provided for herein except as disclosed on Schedule 1 hereto and except with respect to regulatory approvals which may be required in connection with the Lender's enforcement of certain remedies hereunder.
- 4.14. ERISA. Each pension plan of Borrower and its Subsidiaries providing benefits for employees of Borrower or such Subsidiary covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereto ("ERISA"), is in compliance with ERISA in all material respects, and no material liability to the Pension Benefit Guaranty Corporation ("PBGC") or to a multiemployer plan has been, or is expected by Borrower or its Subsidiaries to be, incurred by Borrower or such Subsidiaries.
- 4.15. Disclosure. The Borrower has disclosed to the Lender all agreements, instruments and corporate or other restrictions to which the Borrower or any of the Subsidiaries is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of Borrower or any Subsidiary in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such projections were prepared and delivered to the Lender.
- 4.16. Solvency. Immediately after the Closing and after giving effect to the application of the proceeds of the initial Advance (a) the fair value of the assets of Borrower will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) Borrower will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (c) Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.
5. CONDITIONS OF LENDING. The Lender shall have no obligation to make any Advance to Borrower hereunder unless, as of the date of Closing, each of the following conditions precedent shall be satisfied as provided below:

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- 5.1. Legal Matters. All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for the Lender and to such local counsel as counsel for the Lender may retain.
- 5.2. Documents. There shall have been delivered to the Lender, fully completed and duly executed and notarized (when applicable), the following, satisfactory to the Lender and its counsel:
- 5.2.1. The documents listed in Schedules 7 attached hereto, signed, dated and notarized, where applicable, and otherwise acceptable to Lender.
- 5.2.2. Borrower shall have delivered to Lender a true and correct copy of the fully executed listing agreement to list and sell the Boeing 727-30 referred to in Section 3.3.
- 5.3. Government Approvals. The Borrower shall have furnished to the Lender true and correct copies of all certificates, authorizations and consents, including without limitation the consents referred to in Section 4.14 hereof, if any, necessary for the execution, delivery or performance by the Borrower of this Agreement, the Note, the Pledge and the Mortgage.
- 5.4. Representations, Warranties and Material Change. At Closing and at the date of every subsequent Advance hereunder, all covenants, representations and warranties set forth in this Agreement shall be true and correct on and as of such time with the same effect as though such covenants, representations and warranties had been made on and as of such date; no Event of Default specified in Section 8 and no event which, with the lapse of time or the notice and lapse of time specified in Section 8 would become such an Event of Default, shall have occurred and be continuing or will have occurred after giving effect to the Advance on the books of the Borrower; there shall have occurred no Material Adverse Change in the business or condition, financial or otherwise, of the Borrower; and nothing shall have occurred which in the opinion of the Lender materially and adversely affects the Borrower's ability to meet its obligations hereunder.
- 5.5. Special Conditions. At Closing and at the time of every subsequent Advance hereunder, the Lender and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special conditions identified in Schedule 1 hereto.
- 5.6. Requisitions. The Borrower will request all Advances on the form attached hereto as Schedule 8.

## 6. AFFIRMATIVE COVENANTS

- 6.1. Prior Loan Documents. It is understood and agreed that with respect to the Prior Loan Documents, the Borrower shall be required, after the date hereof, to meet reporting and financial covenants as set forth in this Agreement rather than those set forth in the Prior Loan Documents. In the event of any conflict between any reporting and financial covenant set forth in a Prior Loan Document and any reporting and financial covenant in this Agreement, the

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requirements as set forth in this Agreement shall apply. Nothing in this section shall, however, eliminate or modify any special condition, special affirmative covenant or special negative covenant, if any, unless specifically agreed to in writing by Lender. For purposes of the foregoing, this Agreement shall be deemed to be an amendment to all Prior Loan Documents and to all line of credit agreements, letter of credit reimbursement agreements, and other loan or credit agreements entered into between Lender and the Borrower prior to the date hereof.

- 6.2. Membership. Remain, or an affiliate thereof will remain, a member in good standing of the Lender.
- 6.3. Financial Statements and Other Information. Furnish to the Lender: (a) financial statements as required hereunder and by the Mortgage; (b) such other information, reports or statements concerning the operations, business affairs and/or financial condition of Borrower as the Lender may reasonably request from time to time; and (c) promptly upon their becoming available information, in form and substance satisfactory to Lender, evidence of any and all changes or modification of licenses, permits, certifications, approvals and the like necessary for Borrower to own or operate its business or a substantial part of its business.
- 6.4. Financial Covenants. Borrower shall meet, at the levels set forth in Schedule 4, attached hereto, the Financial Covenants for each of Borrower's fiscal quarters from the Closing date until December 1, 2001. Schedule 4 sets forth the (i) minimum TIER, Debt Service and Fixed Charge Coverage Ratios and, (ii) the maximum Leverage Ratio, and (iii) the minimum EBITDA and (iv) the maximum Capital Expenditure amounts. Lender shall have the right to adjust the Financial Covenants to take effect after December 1, 2001 subsequent to Lender's review of Borrower's consolidated and consolidating audited financial statements.
- 6.5. Annual Report. On or before October 1, 2001, and thereafter within 120 days after the end of each of its fiscal years Borrower shall provide to Lender, the Borrower's audited consolidated and consolidating balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of, and for, such year setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied. Additionally, with the annual. At the same time, Borrower shall submit to Lender its annual operating and capital expenditure budgets and an updated 5 year financial forecast.
- 6.6. Quarterly Reports. The Borrower shall provide to Lender, within 45 days after the end of each of its fiscal quarters, (i) the Borrower's consolidated and consolidating balance sheet, (ii) related statements of operations,

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stockholders' equity and cash flows, (iii) statistical reports detailing population, homes passed, subscribers, penetration and churn for each Subsidiary and (iv) updated annual operating and capital expenditure budgets. Said reports shall be as of the end of, and for, such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year and previous fiscal quarter, all certified by its general manager of operations as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

- 6.7. Certificate of Compliance. Each time quarterly or annual financial statements are delivered to Lender under Sections 6.5 and 6.6 hereof, and at such other times as Lender shall reasonably request, the Borrower shall submit a Certificate of Compliance signed by the Chief Executive Officer or the Chief Financial Officer of Borrower in the form attached hereto as Schedule 7.
- 6.8. Miscellaneous Reports. In addition to the foregoing, Borrower shall submit to Lender other documents and reports Lender may reasonably request from time to time.
- 6.9. Use of Proceeds. Use all Advances made hereunder and under the Note only for the purpose identified in Schedule 1 hereto and for no other purpose whatsoever without the prior written consent of the Lender.
- 6.10. Special Affirmative Covenants. During the term hereof, Lender and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special affirmative covenants identified in Schedule 1 hereto.
- 6.11. AFTER Acquired REAL Property. Within ten (10) days of the Borrower or any Subsidiary acquiring any real property, the Borrower shall cause the Mortgage to be duly recorded as a first mortgage on all real property and the Mortgage or other appropriate documentation shall have been duly filed, recorded or indexed as a security interest in personal property wherever the Lender shall have reasonably requested, all in accordance with applicable law, and the Borrower shall have caused satisfactory evidence thereof to be furnished to the Lender.

7. **NEGATIVE COVENANTS.**

- 7.1. Notice. Borrower covenants and agrees with the Lender that Borrower will not, directly or indirectly, without giving written notice to the Lender thirty (30) days prior to the effective date of any change:

- 7.1.1. Change of Location of Place of Business or Chief Executive Office. Change the location of Borrower's place of business or, if more than one, its chief executive office.

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- 7.1.2. Change of Name. Change the name of Borrower.
- 7.1.3. Change of Mailing Address. Change the mailing address of Borrower.
- 7.1.4. Change of Organizational Identification Number. Change its organizational identification number if it has one.
- 7.2. Consent. Borrower covenants and agrees with the Lender that Borrower, and its Subsidiaries, will not, directly or indirectly, without the prior written consent of the Lender do any of the following.
  - 7.2.1. Alter or permit alteration of control of the Borrower or any Subsidiary (control shall be as defined by regulations for telephone companies issued by the Federal Communications Commission).
  - 7.2.2. Form or acquire any Subsidiaries.
  - 7.2.3. Borrow money on a secured basis from any other lender, or incur any additional secured indebtedness, or enter into any Leases.
  - 7.2.4. Borrow money on an unsecured basis from any other lender, or incur any additional unsecured indebtedness, or to pay other current operating liabilities that arise in the ordinary course of business, provided that, so long as the aggregate total of such debt does not exceed two percent (2%) of Borrower's consolidated total assets, except for unsecured trade debt, no consent shall be required.
  - 7.2.5. Declare or pay any dividends or make any other distribution to its members with respect to its ownership or membership interests; (ii) purchase or redeem or retire any of its ownership or membership interests; or (iii) pay any management fees or if already paying a management fee, pay an increase in management fees, provided that, any Subsidiary may pay a dividend or distribution to Borrower for the purpose of funding debt service payments to Lender.
  - 7.2.6. Permit any Subsidiary to enter into any agreement that would impair said Subsidiary's ability to pay dividends or distributions to Borrower.
  - 7.2.7. Permit, or permit any Subsidiary to allow any Lien on the Borrower's, or any Subsidiary's assets except the Liens created by the Loan Documents and Prior Loan Documents against the Collateral herein.
  - 7.2.8. Alter in any material respect the character or conduct of the business conducted by the Borrower and its Subsidiaries as of the Closing Date.
- 7.3. Limitations on Sales of Assets. Without the prior written consent of Lender, Borrower shall not, and shall not permit any Subsidiary to sell, transfer, lease or otherwise dispose of any asset, whether now owned or hereafter acquired, including, but not limited to, owned Equity Interests, except (i) the sale of inventory in the ordinary course of business, (ii) the sale of obsolete assets no longer used or usable in the business of the Borrower or any of

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its Subsidiaries, and (iii) the sale or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof, provided that, Lender's consent shall not be required for sales of assets listed above wherein, (a) the aggregate of all such asset sales of Borrower and its Subsidiaries shall have a cumulative fair market value of less than 2% of Gross Plant, Property and Equipment measured at the end of the prior fiscal year, and (b) if applicable, the Net Cash Proceeds thereof are applied to the Loans in accordance with Section 2.4.2 of this Agreement.

- 7.4. Special Negative Covenants. During the term hereof, Lender and its counsel shall be fully satisfied that the Borrower has complied and will continue to comply with any special negative covenants identified in Schedule 1 hereto.
- 7.5. Limitations on Loans, Investments and Other Obligations. Without the prior written consent of Lender, the Borrower shall not, and shall not permit its Subsidiaries, to, pursuant to a merger or otherwise, (i) purchase or make any commitment to purchase any Equity Interest, including but not limited to, any stock, bonds, options, warrants, notes, debentures or other securities or obligations of or beneficial interest in, (ii) make any other investment in, (iii) make, or permit to exist, any loan to, or (iv) guarantee, assume, or otherwise become liable for any obligation of, any corporation, association, partnership, joint venture, trust, government or any agency or department thereof, or any other entity, or person, of any kind except the Permitted Investments.
8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default."
- 8.1. Representations and Warranties. Any representation or warranty made herein, in any of the Loan Documents or Other Agreements or in any statement, report, certificate, opinion, financial statement or other document furnished or to be furnished in connection with this Agreement, the Loan Documents or the Other Agreements shall be false or misleading in any material respect.
- 8.2. Payment. Failure of Borrower to make any of the payment Obligations, including, without limitation, any sum due the Lender under this Agreement, the Note or any Note for any Prior Loan or any of the Other Agreements, when and as the same shall become due, whether at the due date thereof, by demand, by acceleration or otherwise.
- 8.3. Other Covenants. Failure of Borrower to observe or perform any warranty, covenant or condition to be observed or performed by Borrower under this Agreement or any of the Other Agreements.
- 8.4. Corporate Existence. The Borrower or any Subsidiary shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, consents or licenses required to carry on any material portion of its business.

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- 8.5. Other Obligations. Default by the Borrower in the payment when due of any money owed by the Borrower, whether principal, interest, premium or otherwise, under any other agreement for borrowing money in an amount in excess of five percent (5%) of total assets, whether or not such borrowing is secured.
- 8.6. Bankruptcy. (i) A court shall enter a decree or order for relief with respect to the Borrower, any Subsidiary or any Pledgor or Guarantor hereunder in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days, or (ii) the Borrower any Subsidiary or any Pledgor or Guarantor hereunder shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking of possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors.
- 8.7. Dissolution or Liquidation. (i) Other than as provided in Section 8.6 above, the dissolution or liquidation of the Borrower any Subsidiary or any Pledgor or Guarantor hereunder, or (ii) failure by the Borrower any Subsidiary or any Pledgor or Guarantor hereunder promptly to forestall or remove any execution, garnishment or attachment of such consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within sixty (60) days.
- 8.8. Final Judgment. A final non-appealable judgment in excess of \$100,000 shall be entered against the Borrower and shall remain unsatisfied or without a stay for a period of sixty (60) days.

## 9. RIGHTS AND REMEDIES

- 9.1. Rights and Remedies of the Lender. Upon the occurrence of an Event of Default, the Lender may, subject to (i) thirty (30) days prior written notice to Borrower during which time Borrower shall have the opportunity to cure said Event of Default, except with respect to Events of Default pursuant to Sections 8.1, 8.2, 8.6(ii) and 8.7(i) above which shall require no notice or demand and shall have no period to cure; provided, however, that Borrower shall not be entitled to any separate notice and opportunity to cure any Event of Default which specifies its own cure period, as for example, the Event of Default specified in Section 8.8; and (ii) compliance, if required, with the rules and regulations of the FCC and any state public service or utilities commission having jurisdiction;
- 9.1.1. Exercise in any jurisdiction in which enforcement hereof is sought, the following rights and remedies, in addition to all rights and remedies available to the Lender under applicable law, all such rights and remedies

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being cumulative and enforceable alternatively, successively or concurrently;

- 9.1.2. Declare all unpaid principal, all accrued and unpaid interest thereon, and all other Obligations outstanding on the Note, and any Note under any Prior Loan, to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.
  - 9.1.3. Institute any proceeding or proceedings to enforce the Obligations owed to, or any Liens in favor of the Lender under the Loan or any Prior Loan.
  - 9.1.4. Pursue all rights and remedies available to the Lender that are contemplated by the Mortgage in the manner, upon the conditions, and with the effect provided in the Mortgage, including but not limited to a suit for specific performance, injunctive relief or damages.
  - 9.1.5. Pursue any other rights and remedies available to the Lender at law or in equity, including any remedies available to Lender directly against any Guarantor or Pledgor.
- 9.2. Cumulative Nature of Remedies. Nothing herein shall limit the right of the Lender, subject to notice and right to cure provisions contained herein, to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default subject to compliance, if required, with the rules and regulations of the FCC and any state public service or utilities commission having jurisdiction. Each right, power and remedy of the Lender in this Agreement and/or the Other Agreements shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver or any other right, power or remedy.
- 9.3. Costs and Expenses. Borrower agrees to pay and to be liable for any and all reasonable expenses, including attorneys' fees and court costs, incurred by the Lender in exercising or enforcing any of its rights hereunder or under the Other Agreements, together with interest thereon at the rate and determined in the manner provided in the Mortgage. Subject to the Mortgage and applicable law, the Lender may apply all Collateral and proceeds of all Collateral to the Obligations in any manner which the Lender, in its sole discretion, deems appropriate, and Borrower will continue to be liable for any deficiency.
- 9.4. Late Payment Charges. If payment of any principal and/or interest due under the terms of the Note is not received at the office of the Lender in Herndon, Virginia, or as the Lender may otherwise designate to the Borrower, within such time period as the Lender may prescribe from time to time in its policies in connection with any late payment charges (such unpaid amount of principal and/or interest being herein called the "delinquent amount" and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Borrower will pay to the Lender, in addition to all other amounts due under the terms of the Note, the

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Mortgage, the Pledge and this Agreement, any late-payment charge as may be fixed by the Lender from time to time, on the delinquent amount for the late-payment period.

- 9.5. **Lender's Setoff.** The Lender shall have the right, in addition to all other rights and remedies available to it, to setoff and to recover against any or all of the Obligations due to Lender, any monies now and hereafter owing to Borrower by the Lender. Borrower waives all rights of setoff, deduction, recoupment or counterclaim.

## 10. MISCELLANEOUS

- 10.1. **Performance for Borrower.** Borrower agrees and hereby authorizes that the Lender may, in its sole discretion, but the Lender shall not be obligated to, advance funds on behalf of Borrower without prior notice to Borrower, in order to insure Borrower's compliance with any material covenant, warranty, representation or agreement of Borrower made in or pursuant to this Agreement or any of the Other Agreements, to preserve or protect any right or interest of the Lender in the Collateral or under or pursuant to this Agreement or any of the Other Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Collateral or other property or assets of Borrower; provided, however, that the making of any such advance by the Lender shall not constitute a waiver by the Lender of any Event of Default with respect to which such advance is made nor relieve Borrower of any such Event or Default. Borrower shall pay to the Lender upon demand all such advances made by the Lender with interest thereon at the rate and determined in the manner provided in the Note. All such advances shall be deemed to be included in the Obligations and secured by the security interest granted the Lender hereunder to the extent permitted by law.
- 10.2. **Expenses and Filing Fees.** Whether or not any of the transactions contemplated hereby shall be consummated, Borrower agrees to pay to the Lender at Closing or within 10 days of receipt of notice from Lender, whichever is earlier, all expenses of the Lender in connection with the filing or recordation or filing of all financing statements and instruments as may be required by the Lender at the time of, or subsequent to, the execution of this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Borrower agrees to save harmless and indemnify the Lender from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by the Lender in connection with this Agreement. The provisions of this Subsection 10.02 shall survive the execution and delivery of this Agreement and the payment of all other Obligations.
- 10.3. **Waivers by Borrower.** Borrower hereby waives, to the extent the same may be waived under applicable law: (a) in the event the Lender seeks to repossess any or all of the Collateral by judicial proceedings, any bond(s) or demand(s) for possession which otherwise may be necessary or required; (b)

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presentment, demand for payment, protest and notice of non-payment and all exemptions; and (c) substitution, impairment, exchange or release of any collateral security for any of the Obligations. Borrower agrees that the Lender may exercise any or all of its rights and/or remedies hereunder and under the Other Agreements without resorting to and without regard to security or sources of liability with respect to any of the Obligations.

- 10.4. Waivers by the Lender. Neither any failure nor any delay on the part of the Lender in exercising any right, power or remedy hereunder or under any of the Other Agreements shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 10.5. Lender's Records. Every statement of account or reconciliation rendered by the Lender to Borrower with respect to any of the Obligations shall be presumed conclusively to be correct and shall constitute an account stated between the Lender and Borrower unless, within ten (10) Business Days after such statement or reconciliation shall have been mailed, postage prepaid, to Borrower, the Lender shall receive written notice of specific objection thereto.
- 10.6. Modifications. No modification or waiver of any provision of this Agreement, the Note or any of the Other Agreements, and no consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.
- 10.7. Notices. All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a telecopied or mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

**LENDER:**  
Rural Telephone Finance Cooperative  
Woodland Park  
2201 Cooperative Way  
Herndon, Virginia 20171-3025  
Attention: Chief Executive Officer  
Fax: 703-709-6780

**BORROWER:**  
The address set forth in Schedule 1 hereto

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- 10.8. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. THE PERFORMANCE AND CONSTRUCTION OF THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF VIRGINIA. BORROWER HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES COURTS LOCATED IN VIRGINIA AND OF ANY STATE COURT SO LOCATED FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE ESTABLISHING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE BORROWER AND THE LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- 10.9. Holiday Payments. If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.
- 10.10. Consent to Patronage Capital Distributions. The Borrower hereby consents that the amount of any distributions with respect to Borrower's patronage which are made in written notices of allocation (as defined in Section 1388 of the Internal Revenue Code of 1986, as amended ("Code") including any other comparable successor provision) and which are received from Lender will be taken into account by Borrower at their stated dollar amounts in the manner provided in Section 1385(a) of the Code in the taxable year in which such written notices of allocation are received.
- 10.11. Right to Inspect. The Borrower shall permit representatives of the Lender at any time during normal business hours to inspect and make abstracts from the books and records pertaining to the Collateral, and permit representatives of the Lender to be present at Borrower's place of business to receive copies of all communications and remittances relating to the Collateral, all in such manner as the Lender may reasonably require.
- 10.12. Survival and Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the Other Agreements shall survive Closing and the execution and delivery to the Lender of the Note, and shall continue in full force and effect until all of the Obligations have been paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, agreements, representations and warranties by or on behalf of Borrower which are contained in this Agreement and the Other Agreements shall inure to the benefit of the successors and assigns of the Lender.

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- 10.13. Assignment. The Lender may assign its rights and obligations under this Agreement and the Other Agreements without the consent of the Borrower; provided, however, that no such assignment shall result in terms or conditions less favorable to Borrower. The Borrower may not assign any of its rights of obligations under this Agreement or the Other Agreements without the prior written consent of the Lender.
- 10.14. Severability. If any term, provision or condition, or any part thereof, of this Agreement or any of the Other Agreements shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the Note, and the Other Agreements shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.
- 10.15. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counter-parts shall together constitute one and the same instrument.
- 10.16. Headings and Use of Terms. The headings and sub-headings contained in this Agreement are intended to be used for convenience only and do not constitute part of this Agreement. The use of any gender or the neuter herein shall also refer to the other gender or the neuter and the use of the plural shall also refer to the singular, and vice versa.
- 10.17. Further Assurances. The Borrower will, upon demand of the Lender, make, execute, acknowledge and deliver all such further and supplemental indentures of mortgage, deeds of trust, mortgages, financing statements, continuation statements, security agreements and/or any other instruments and conveyances as may be reasonably requested by the Lender to effectuate the intention of this Agreement and to provide for the securing and payment of the principal of and interest on the Note according to the terms thereof.
- 10.18. Lender's Approval. Wherever prior written approval of Lender is required under the terms and conditions of this Agreement, Lender hereby agrees to not unreasonably withhold said approval.
- 10.19. Merger and Integration. This Agreement and the attached exhibits and matters incorporated by reference contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby, and no other agreement, statement or promise made by any party hereto, or by any employee, officer, agent or attorney of any party hereto, which is not contained herein, shall be valid or binding.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement under seal as of the date first above written.

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BORROWER:

INNOVATIVE COMMUNICATION CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_  
Secretary

LENDER:

RURAL TELEPHONE FINANCE COOPERATIVE

By: \_\_\_\_\_  
Assistant Secretary-Treasurer

(SEAL)

Attest: \_\_\_\_\_  
Assistant Secretary-Treasurer

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# EXHIBIT E



1 Q. Well, look at the page immediately  
2 preceding the signature page. That's a three-line  
3 footer, right?

4 A. Yes.

5 Q. Can you explain to me -- well, scan  
6 through the entire document. Do you see any other  
7 pages other than the signature page that has one-line  
8 footers?

9 A. No.

10 Q. Can you explain to me why the signature  
11 page has a one-line footer and all the other pages  
12 have three-line footers?

13 A. It could have been prepared by somebody  
14 else. I don't know. There are nuances to iManage  
15 that I just -- I don't know and footers is one of  
16 them, so I don't know.

17 Q. Isn't it true, sir, that the set of --  
18 when the set of loan documents was sent to  
19 Mr. Prosser on August 23rd by Federal Express, that  
20 all of the pages of the loan agreement that were sent  
21 to him in that package had one-line footers?

22 A. I don't know.

23 Q. And isn't it true that when you received  
24 the documents back from Mr. Prosser on or before  
25 August 27th, all of the loan agreement pages that you

1 received back from Mr. Prosser had one-line footers,  
2 isn't that correct?

3 A. I don't know.

4 Q. Well, is it correct that at some point  
5 after you received the loan documents back from  
6 Mr. Prosser, you substituted the signature page that  
7 he had signed into an entirely different document?

8 A. No, I wouldn't have substituted it into a  
9 document that was different, no. You mean a document  
10 that he hadn't seen, that there were elements changed  
11 that I hadn't agreed with Rames, that kind of thing?  
12 No, absolutely not.

13 Q. The actual physical document, the actual  
14 physical paper that Mr. Prosser sent back to you, the  
15 signature page from it, from that loan agreement that  
16 he sent back to you, was taken off of the pages that  
17 he had signed, the document that he had signed, and  
18 attached to an entirely different set of pages called  
19 loan document?

20 MR. HIRSH: Objection.

21 THE WITNESS: I don't think so because  
22 this loan agreement, the fax marks are consistent  
23 across the top of the prior page and other fax marks.  
24 No, I just don't think that's true. I think that's  
25 wrong.

1 MR. HIRSH: He said he did it. I don't  
2 understand the question. It mischaracterizes his  
3 testimony for the last hour.

4 BY MR. RUSKIN:

5 Q. Is it your testimony that you personally  
6 swapped out pages of the loan agreement after  
7 Mr. Prosser signed it?

8 A. Yes, with his lawyer's consent.

9 Q. So in fact, those copies of the loan  
10 agreement that are attached to the complaint, the  
11 amended complaint and the motion for summary  
12 judgment, contain pages that were swapped out by you  
13 after Mr. Prosser signed it, isn't that right?

14 MR. HIRSH: He already said he would like  
15 to look at those exhibits.

16 THE WITNESS: I didn't verify --

17 MR. HIRSH: You're back to -- you're  
18 referring to documents attached to pleadings and  
19 motions that he already said he would have to look  
20 at.

21 BY MR. RUSKIN:

22 Q. Who provided copies of the loan agreement  
23 to the lawyer who drafted and filed the complaint?

24 A. I did.

25 Q. Where did you get those copies of the loan

1 that Mr. Prosser signed is identical to the words in  
2 the loan documents, the four versions of the loan  
3 documents that Mr. Siegfried asked you about?

4 A. We have talked all day long about this  
5 relationship between RTFC and Prosser and his  
6 companies, where we received things post-closing,  
7 they received things post-closing. I have told you  
8 that pages were swapped out. Pages were swapped out.

9 Q. So the answer would be yes or no, sir?  
10 I'll repeat the question if you would like to hear  
11 it.

12 A. Go ahead.

13 Q. Can you sit here today and tell me that  
14 each and every word on the physical loan document  
15 that Mr. Prosser signed is identical to the words in  
16 the loan documents, the four versions of the loan  
17 documents that Mr. Siegfried asked you about? That's  
18 a yes or no question, sir.

19 A. No.

20 Q. Your answer is no?

21 A. Yes.

22 Q. As you sit here today, can you absolutely  
23 swear that Mr. Prosser had in front of him, when he  
24 signed his version of the loan agreement, the version  
25 that was sent to him contained the schedule 6?

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IN THE UNITED STATES DISTRICT COURT  
OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

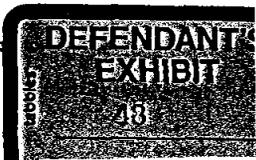
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RURAL TELEPHONE FINANCE COOPERATIVE, :  
Plaintiff, :  
v. : Civil Action  
INNOVATIVE COMMUNICATION CORPORATION, : 2004-cv-0154  
Defendant. :

----- X

Washington, D.C.  
Thursday, May 26, 2005

Deposition of ROBERT A. PARRETT, a  
30(b)(6) witness herein, called for examination by  
counsel for Defendant in the above-entitled matter,  
pursuant to notice, the witness being duly sworn by  
MARY GRACE CASTLEBERRY, a Notary Public in and for  
the District of Columbia, taken at the offices of  
Orrick, Herrington & Sutcliffe, 3050 K Street, N.W.,  
Washington, D.C., at 2:00 p.m., Thursday, May 26,  
2005, and the proceedings being taken down by  
Stenotype by MARY GRACE CASTLEBERRY, RPR, and  
transcribed under her direction.

CERTIFIED COPY



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Whereupon,

ROBERT A. PARRETT,

was called as a witness by counsel for Defendant, and having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANT

BY MR. HOLT:

Q. Can you state your name for the record, please?

A. Robert Anthony Parrett.

Q. Mr. Parrett, where do you reside?

A. In Arlington, Virginia.

Q. And where are you employed?

A. At the National Rural Utilities Cooperative Finance Corporation.

Q. Who actually pays you?

A. CFC, which is the acronym we use for that organization.

Q. When did you start working for them?

A. October of 1991.

Q. And when you came in October of 1991, what was your job?

A. I was a records administrator.

Q. And what does a records administrator do

1 at the CFC?

2 A. Assists with the implementation of the  
3 corporate records policies. That would be filing of  
4 documents, sending of documents off-site, assistance  
5 with the record retention process, which would be  
6 discarding outdated documents.

7 Q. And did there come a time that you were  
8 assigned primarily to the RTFC files?

9 A. Not as a records administrator.

10 Q. All right. Tell me, then, what did you do  
11 after you were the records administrator?

12 A. In March of 1996, I transferred to the  
13 legal department as a legal assistant.

14 Q. At that time, did you start then working  
15 directly with RTFC files?

16 A. Yes.

17 Q. And since March of 1996, have you worked  
18 with CFC files as well as RTFC files or just  
19 exclusively on RTFC?

20 A. Not exclusively. Primarily RTFC and, if I  
21 may clarify, as a records administrator, I was  
22 responsible for working with CFC and RTFC documents.  
23 By volume, most of those were CFC documents.

24 Q. All right. And when you started working  
25 as a legal assistant, did you have any involvement in

1 thickness of the package that she sent out on  
2 Thursday?

3 A. I don't recall the size of the package.  
4 The instruction sheet should give us a list of the  
5 contents and from there, we could identify which  
6 documents were sent out.

7 Q. The instruction sheet is what? This is  
8 the instruction sheet for the borrower?

9 A. Yes.

10 Q. Which you talked about earlier today?

11 A. That's correct.

12 Q. I take it you weren't at the board meeting  
13 on August 23rd when this loan was approved?

14 A. I don't recall if I attended that meeting.

15 Q. Do you recall having any involvement with  
16 the documents after that meeting took place as far as  
17 putting them together and sending them out?

18 A. No, I don't recall.

19 Q. Do you know what was sent out to -- let me  
20 rephrase it. Do you have any personal knowledge as  
21 to exactly the contents of what was sent to  
22 Mr. Prosser on August 23rd after the board meeting?

23 A. I don't remember what was sent out.

24 Q. And the documents sent out, would they be  
25 in one binder or would they be sets of documents?

1 Q. When the documents went out to  
2 Mr. Prosser, there was supposed to be a full set of  
3 the complete loan package sent to Mr. Prosser, is  
4 that correct?

5 A. I should clarify that, since I mentioned I  
6 don't specifically recall whether or not I was the  
7 one who prepared them and sent them out, that it is  
8 our standard practice, unless we had agreed to send  
9 something at a later date. But I, again, don't have  
10 a specific recollection.

11 Q. You yourself don't have any specific  
12 recollection of exactly what was sent to Mr. Prosser  
13 after the August 23rd board meeting?

14 A. That's correct.

15 Q. Now, Ms. Reed was asked during her  
16 deposition, did you keep an exact photocopy of the  
17 loan agreement prior to sending it to Mr. Prosser,  
18 and she replied: "No, I didn't." Do you know if  
19 anyone kept an exact photocopy of the loan agreement  
20 sent to Mr. Prosser?

21 A. I don't recall.

22 (Exhibit No. 226 was  
23 marked for identification.)

24 BY MR. HOLT:

25 Q. Showing you Exhibit Number 226, this is an

1 out any new documents to Kevin Rames?

2 A. I don't remember if I was involved in that  
3 or not.

4 Q. Are you aware of the meeting that the  
5 sender of this, Larry Zawalik, was having on Monday  
6 with a gentleman named Fitch?

7 A. No, I don't remember being privy to that  
8 meeting.

9 Q. During this time period, were you aware of  
10 any time constraints regarding trying to get the  
11 package back from Mr. Prosser?

12 A. I don't recall that.

13 Q. Do you recall the package coming back from  
14 Mr. Prosser?

15 A. No, I don't specifically remember that.

16 Q. Do you recall whether or not you were the  
17 one who received the package back from Mr. Prosser?

18 A. No, I don't remember.

19 Q. And do you recall ever looking at the loan  
20 documents that Mr. Prosser returned?

21 A. Yes. But I don't recall the specific time  
22 frame when I reviewed those.

23 Q. Do you recall whether or not you would  
24 have reviewed them on August 27th, 28th, 29th?

25 A. I don't recall the time frame.

1 Q. Would it have been before or after the  
2 loan was funded?

3 A. I don't recall whether or not I saw them.  
4 I don't recall when I first saw them and I don't  
5 recall when the loan was funded.

6 Q. Looking at Exhibit 2005, can you tell me  
7 whether or not that was the actual loan agreement  
8 that Mr. Prosser signed and returned on August 27th,  
9 2001?

10 A. Mr. Prosser's signature appears to be on  
11 the signature page of the loan agreement dated August  
12 27, 2001.

13 Q. But having made that observation, can you  
14 tell me whether or not the document that's attached,  
15 that is marked as Exhibit 2005, whether or not that  
16 was the actual document sent -- let me rephrase that.  
17 Could you tell me whether or not Exhibit 2005 were  
18 the actual physical documents sent to Mr. Prosser and  
19 signed and returned by him?

20 A. This exhibit appears to be a photocopy.

21 Q. Let me rephrase it. Can you tell me  
22 whether or not Exhibit 2005 is a photocopy of the  
23 exact documents that were sent to Mr. Prosser in Palm  
24 Beach, if you know?

25 A. I'm sorry, I don't know. I don't actually

1 recall whether or not I was the one who assisted in  
2 the packaging of the documents and sending them out  
3 so I just don't remember whether or not I was the one  
4 who handled this at that time.

5 Q. Looking at the signature page with  
6 Mr. Prosser's signature on it, do you see the footer  
7 at the bottom, 19573-2?

8 A. Yes.

9 Q. What does that footer tell you?

10 A. That's the designation assigned by the  
11 document management system and the number 2 indicates  
12 this is a second version.

13 Q. And so if this is changed, there will be a  
14 3 or 4 or 5 after it instead of a 2?

15 A. Yes. I'm sorry, if a new version is  
16 saved.

17 Q. Okay. And looking at the preceding page,  
18 do you see that?

19 A. Yes.

20 Q. Do you see on here, RTFC LOANAG? Do you  
21 see that notation there?

22 A. In the footer, yes.

23 Q. Do you know what that means?

24 A. Yes. It refers to RTFC being the -- going  
25 to be doing the lending. LOANAG is an abbreviation

1           A.     I don't recall being notified of any  
2 corrections to the list.

3           MR. SIEGFRIED: Thank you. I have no  
4 further questions.

5           FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT

6           BY MR. HOLT:

7           Q.     Do you know if ICC ever received  
8 schedule 6 prior to Mr. Prosser signing it?

9           A.     I don't know.

10          Q.     Do you know if schedule 6 was actually in  
11 the package sent to Mr. Prosser?

12          A.     I don't know.

13          MR. HOLT: No other questions.

14          FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF

15          BY MR. SIEGFRIED:

16          Q.     You were not the person responsible for  
17 sending the documents to ICC, correct?

18          A.     I do not remember whether or not I did  
19 that. As I mentioned, we had a new legal assistant  
20 and I don't recall what the division of labor was so  
21 I do not recall specifically sending documents to  
22 Mr. Prosser.

23          MR. HOLT: No other questions.

24                 Just stay on the record because I know we  
25 don't have legal assistants. You had requested some

# EXHIBIT F

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

RURAL TELEPHONE FINANCE COOPERATIVE, )

Plaintiff, )

v. )

INNOVATIVE COMMUNICATION CORPORATION, )

Defendant. )

Civil No. 2004-154

CLERK OF THE  
DISTRICT COURT  
ST. THOMAS, VI

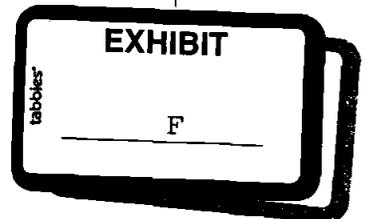
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ORDER

Before the Court is plaintiff Rural Telephone Finance Cooperative's ("RTFC") Motion for Partial Summary Judgment.

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also *Hersh v. Allen Products Co.*, 789 F.2d 230, 232 (3d Cir. 1986). "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).



RTFC v. ICC  
Civil No. 2004-154  
Order  
Page 2

The movant has the initial burden of showing there are no "genuine issues of material fact," but once this burden is met it shifts to the non-moving party to establish specific facts showing there is a genuine issue for trial. *Gans v. Mundy*, 762 F.2d 338, 342 (3rd Cir. 1985). "[T]here is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." *Anderson*, 477 U.S. at 249. In making this determination, this Court draws all reasonable inferences in favor of the non-moving party. See *Bd. of Educ. v. Earls*, 536 U.S. 822, 850 (2002).<sup>1</sup>

The Court finds that there are genuine issues of material facts in this matter and that RTFC has failed to meet its burden.<sup>2</sup> Accordingly, the premises considered, it is hereby

---

<sup>1</sup> In addition to the requirements set forth in Federal Rule of Civil Procedure 56 and the relevant case law, movants must also comply with Local Rule 56.1:

Each dispositive motion shall be accompanied by a notice of motion, brief, affidavits and/or other supporting documentation, including a statement of the material facts about which the movant contends there is no genuine issue, with specific references to parts of the record relied on to support the motion and each paragraph of the statement of material facts.

<sup>2</sup> For example, each of RTFC's claims is dependant on the existence of a specific loan document, which outlines the obligations of ICC as a borrower and what constitutes a default. While the loan transaction is not in dispute, the parties dispute the very document that RTFC claims reduced the loan transaction and ICC's obligation to a writing.

RTFC v. ICC  
Civil No. 2004-154  
Order  
Page 3

ORDERED that RTFC's motion for partial summary judgment is  
DENIED.

Dated: December 29, 2005



CURTIS V. GÓMEZ  
District Judge

ATTEST:

WILFREDO F. MORALES  
Clerk of the Court

By: Carol C. Jackson  
Chief Deputy Clerk

- Copy: ✓ Hon. Geoffrey W. Barnard
- ✓ Daryl Dodson, Esq. - Via Fax: 777-5498
- ✓ Joel Holt, Esq. , Via Fax: 773-8677
- ✓ Lydia Trotman
- ✓ Carol C. Jackson
- ✓ Olga Schneider
- ✓ Kendra Nielsam

12/29/2005  
cc Jackson

# EXHIBIT G

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

81

RURAL TELEPHONE FINANCE COOPERATIVE, )  
2201 Cooperative Way )  
Herndon, Virginia 20171-3025 )

Plaintiff, )

vs. )

INNOVATIVE COMMUNICATION )  
CORPORATION, )  
Bjerget House )  
55-58 Hill Street )  
St. Croix, U.S. Virgin Islands )

Defendant. )

Civ. Action No. 1:04CV633(CMH/BRP)

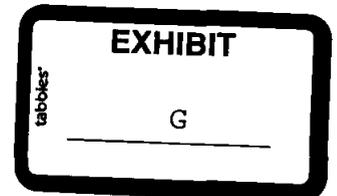
COMPLAINT

Plaintiff Rural Telephone Finance Cooperative (“RTFC” or “Lender”), by its counsel, hereby states its Complaint against defendant Innovative Communication Corporation (“ICC” or “Borrower”) to recover sums due and owing under loan agreements and related documents and for declaratory relief pursuant to 28 U.S.C. § 2201-02 as follows:

THE PARTIES

1. Plaintiff RTFC is a cooperative, nonprofit, membership corporation organized under the laws of the State of South Dakota with its principal place of business in Herndon, Virginia.

2. Defendant (“ICC”) is a corporation organized under the laws of the United States Virgin Islands with its principal place of business in Sunny Isle, St. Croix, United States Virgin Islands.



### **JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 as RTFC and ICC are of diverse citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and pursuant to 28 U.S.C. § 2201 as the relief sought is, in part, a declaratory judgment declaring the rights of the parties.

4. In the contract at issue here, ICC, as the Borrower, agreed as follows:

Borrower submits to the nonexclusive jurisdiction of the United States courts located in Virginia . . . for purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Borrower irrevocably waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the establishing of venue of any such proceeding brought in such a court and any claim that any such proceeding has been brought in an inconvenient forum.

5. Accordingly, this Court has personal jurisdiction over ICC because ICC contractually agreed to submit to jurisdiction in this judicial district. In addition, this Court has personal jurisdiction over ICC because the claims arise from ICC's transaction of business in this Commonwealth, Va. Code Ann. § 8.01-328.1 (A)(1); and the claims arise from ICC's contracting in this Commonwealth, Va. Code Ann. § 8.01-328.1 (A)(2).

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a)(2) and because the ICC has expressly agreed to venue in this Court. Venue is appropriate in this Division pursuant to Local Rule 3(c).

### **FACTUAL BACKGROUND**

7. RTFC was incorporated as a cooperative, nonprofit, membership corporation in 1987 and is in the business of providing, securing and arranging financing for its rural

telecommunications cooperative members and their affiliates. RTFC has over 500 rural telecommunications cooperative members.

8. ICC conducts business primarily to acquire, construct, erect, improve, maintain and operate the facilities for, and to engage in the business of furnishing telephone and other communication services and facilities in and around the Caribbean, including in the United States Virgin Islands.

9. ICC is the parent company of Virgin Islands Telephone Corporation (“Vitelco”), a corporation organized under the laws of the United States Virgin Islands with its principal place of business in Charlotte Amalie, St. Thomas, United States Virgin Islands.

10. Vitelco is the incumbent local exchange carrier in the United States Virgin Islands and provides local fixed wireline telephone services there. Under the 1996 Telecommunications Act, Vitelco qualifies as a rural telephone carrier.

11. Vitelco, as a member of the RTFC, and ICC, as Vitelco’s parent, are eligible to borrow money from RTFC and, since 1987, have borrowed money from RTFC.

12. Between 1987 and 2000, RTFC made 15 separate loans to ICC totaling in excess of \$500 million.

13. On August 27, 2001, RTFC and ICC signed a loan agreement (the “Loan Agreement”), a promissory note (the “Secured Promissory Note”) and other related documents to document a loan (the “Loan”) from RTFC to ICC in the amount of \$169,291,578. A copy of the Loan Agreement is attached hereto as Exhibit A. At the time the Loan was made, ICC had 15 prior, outstanding loans with RTFC in the amount of approximately \$507,417,573 (the “Prior Loans”). ICC’s outstanding indebtedness to RTFC exceeds \$550 million.

14. As security for the Prior Loans and as security under the Loan Agreement, RTFC required, among other things, that ICC pledge all of the common stock and preferred stock of ICC and its subsidiaries, including all of the common stock of Vitelco.

15. The Loan Agreement includes a number of agreements and covenants by ICC for the economic protection of RTFC and its secured interest in ICC's assets, including the Vitelco common stock. This action arises as a result of ICC's failure to make a mandatory prepayment pursuant to Section 2.4.2.1 of the Loan Agreement and as a result of a dispute between RTFC and ICC as to whether ICC has breached the negative covenants contained in Sections 7.2.5 and 7.2.6 of the Loan Agreement.

16. RTFC seeks in this action a judgment against ICC in the amount of the mandatory prepayment required by Section 2.4.2.1 in the amount of \$81,859,500, together with interest, costs and attorneys' fees. RTFC also seeks a declaration (a) that ICC has breached its contractual obligations pursuant to Sections 7.2.5, and/or 7.2.6; (b) that those provisions are valid and enforceable; (c) that those breaches are Events of Default under the Loan Agreement and (d) that RTFC, as a result of the Events of Default, is entitled to exercise its rights and remedies under the Loan Agreement and related documents, if the breaches are not cured by ICC within thirty days of notice of the Event of Default

### **CAUSES OF ACTION**

#### **Count 1 – RTFC's Claim for Payment Pursuant to Section 2.4.2.1 of the Loan Agreement**

17. Paragraphs 1 through 16 are incorporated herein by reference as if restated here in full.

18. Section 2.4.2 of the Loan Agreement requires ICC, as the Borrower, to make mandatory prepayments of the loan when ICC or its subsidiaries receives funds from certain financing activities, specifically:

2.4. Prepayment. Borrower may make voluntary prepayment and must make mandatory prepayments according to the terms and conditions set forth herein.

\* \* \*

2.4.2. Mandatory Prepayments.

2.4.2.1. In the event that, and on each occasion on which, any Net Cash Proceeds are received by or on behalf of the Borrower or any Subsidiary, the Borrower shall, within three Business Days after such Net Cash Proceeds are received, prepay the Loans in an aggregate amount equal to such Net Cash Proceeds.

19. Section 1 of the Loan Agreement, "Construction and Definitions of Terms," defines "Net Cash Proceeds" as follows:

"Net Cash Proceeds" means, as applicable... (b) with respect to any offering of capital stock or issuance of debt, the gross cash proceeds received by the Borrower, or any of its Subsidiaries, therefrom less all reasonable legal, underwriting and other fees and expenses actually incurred in connection therewith.

20. Vitelco is a "Subsidiary" of ICC under the construction and definitions of terms in the Loan Agreement.

21. During February 2004, Vitelco sold 85,000 shares of preferred stock (the "Preferred Stock"), with a par value of \$1,000, for net proceeds of \$81,859,500. The allegations contained in the Complaint concerning Vitelco's sale of Preferred Stock are pleaded upon information and belief based upon the disclosures in the audited Consolidated Financial Statements for the years ended December 31, 2003 and 2002 of Innovative Communication Corporation and Subsidiaries (the "ICC 2003 Financial Statements").

22. RTFC first learned of the Preferred Stock sale by Vitelco in late April 2004 when it received a copy of the ICC 2003 Financial Statements.

23. Pursuant to Section 1 of the Loan Agreement, the sum of \$81,859,500 constitutes "Net Cash Proceeds."

24. Pursuant to Section 2.4.2.1, ICC was obligated to make a mandatory prepayment to RTFC within three business days of the completion of the offering of Preferred Stock by Vitelco in an amount equal to the aggregate amount of the Net Proceeds received by Vitelco, namely, \$81,859,500. The offering was completed more than three months ago, but ICC, despite demand, has not made the mandatory prepayment required by Section 2.4.2.1 of the Loan Agreement.

25. Section 9.3 of the Loan Agreement provides as follows:

9.3 Costs and Expenses. Borrower agrees to pay and to be liable for any and all reasonable expenses, including attorneys' fees and court costs, incurred by the Lender in exercising or enforcing any of its rights hereunder or under the Other Agreements, together with interest thereon at the rate and determined in the manner provided in the Mortgage. . . .

26. Accordingly, RTFC seeks a judgment against ICC for \$81,859,500, plus interest thereon and RTFC's attorneys' fees, costs and expenses pursuant to Section 9.3 of the Loan Agreement.

**Count 2 – RTFC's Claim for a Declaratory Judgment  
Concerning Sections 7.2.5 and 7.2.6 of the Loan Agreement**

27. Paragraphs 1 through 26 are incorporated herein by reference as if restated here in full.

28. Section 7.2 of the Loan Agreement contains certain negative covenants imposed upon ICC, specifically:

7. **NEGATIVE COVENANTS**

\* \* \*

7.2. Consent. Borrower covenants and agrees with the Lender that Borrower, and its Subsidiaries, will not, directly or indirectly, without the prior written consent of the Lender do any of the following. . . .

\* \* \*

7.2.5. Declare or pay any dividends or make any other distribution to its members with respect to its ownership or membership interests; (ii) purchase or redeem or retire any of its ownership or membership interests. . . .

7.2.6. Permit any Subsidiary to enter into any agreement that would impair said Subsidiary's ability to pay dividends or distributions to Borrower.

29. The Loan Agreement defines certain events as "Event[s] of Default." Section 8.3 of the Loan Agreement provides that a breach by ICC of any of its covenants in the Loan Agreement is an Event of Default, specifically:

8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default".

\* \* \*

8.3. Other Covenants. Failure of Borrower to observe or perform any warranty, covenant or condition to be observed or performed by Borrower under this Agreement or any of the Other Agreements. . . .

30. Upon the occurrence of an Event of Default, the Loan Agreement and the related documents, including but not limited to Section 9 of the Loan Agreement, provide RTFC certain rights and remedies. Those rights and remedies include, but are not limited to, declaring that all unpaid principal, all accrued and unpaid interest thereon and any other obligations under the

Loan and the Prior Loans are immediately due and payable, refusing to advance further funds to ICC and exercising its rights and remedies with respect to the collateral.

31. With respect to Events of Default under Section 8.3, RTFC's exercise of its rights and remedies is subject to "thirty (30) days prior written notice to the Borrower during which time the Borrower shall have the opportunity to cure said Event of Default. . . ."

32. Upon information and belief based on the ICC 2003 Financial Statements, Vitelco's Preferred Stock receive an annual dividend (cumulative) of 10 percent computed based upon the par value (which is \$1,000 per share), payable quarterly in arrears.

33. To the extent that ICC, without RTFC's consent, permits its Subsidiary, Vitelco, to declare or pay any dividends with respect to the Preferred Stock, ICC has breached the negative covenant contained in Section 7.2.5. If not cured within thirty days of notice of the breach, that breach will be an Event of Default under Section 8.3.

34. Even if Vitelco does not declare or pay dividends with respect to the Preferred Stock, the issuance of the Preferred Stock still violates Section 7.2.6 of the Loan Agreement.

35. Upon information and belief based upon the ICC 2003 Financial Statements, Vitelco may not pay dividends on its common shares (which are pledged as collateral by ICC to RTFC) if the dividends to the Preferred Stock are in arrears (not declared and paid quarterly) unless holders of more than two-thirds of the Preferred Stock approve such payments with respect to the common stock. Thus, the holders of Vitelco's Preferred Stock have the right to prevent the payment of dividends to ICC on Vitelco's common stock (if dividends on the Preferred Stock have not been paid). Those common stock dividends are in turn an important source of funds for ICC's payments of its obligations to RTFC.

36. RTFC did not consent to ICC or its subsidiaries incurring dividend obligations to other parties, did not consent to ICC or its subsidiaries impairing Vitelco's ability to pay dividends to ICC with respect to the pledged common stock, and did not consent to ICC's breach of the negative covenants contained in Sections 7.2.5 and 7.2.6.

37. An actual controversy exists between RTFC and ICC relating to ICC's obligations under Sections 7.2.5 and 7.2.6. RTFC contends that Sections 7.2.5 and 7.2.6 are valid and enforceable, that ICC has breached its obligations under one or both of those sections; that ICC's breach of the negative covenants in Section 7.2 is an Event of Default under Section 8.3; and that RTFC is therefore entitled to exercise its rights and remedies under the Loan Agreement and related documents, including, but not limited to, that RTFC may declare all unpaid principal, all accrued and unpaid interest thereon and any other obligations under the Loan and the Prior Loans to be immediately due and payable, may refuse to advance further funds to ICC and may exercise its rights and remedies with respect to the collateral, if the breaches are not cured by ICC within thirty days of notice of the Event of Default. Counsel for ICC has informed counsel for RTFC that it contends that there has been no Event of Default.

38. Accordingly, RTFC seeks judgment declaring (a) that Sections 7.2.5 and 7.2.6 are valid and enforceable; (b) that ICC has breached its negative covenants under either or both of Sections 7.2.5 and 7.2.6; (c) that ICC's breach of one or both of these sections is an Event of Default under Section 8.3; and (d) that RTFC is entitled to exercise its rights and remedies under the Loan Agreement and related documents, including, but not limited to, that RTFC may declare all unpaid principal, all accrued and unpaid interest thereon and any other obligations under the Loan and the Prior Loans to be immediately due and payable, may refuse to advance

further funds to ICC and may exercise its rights and remedies with respect to the collateral, if the breaches are not cured by ICC within thirty days of notice of the Event of Default.

39. RTFC further seeks judgment against ICC for its attorneys' fees, costs and expenses pursuant to Section 9.3 of the Loan Agreement.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment as follows:

- (1) **On the First Count of this Complaint**, for judgment against ICC for \$81,859,500, plus interest thereon pursuant to Section 9.3 of the Loan Agreement;
- (2) **On the Second Count of this Complaint**, for judgment declaring (a) that Sections 7.2.5 and 7.2.6 are valid and enforceable; (b) that ICC has breached its negative covenants under either or both of Sections 7.2.5 and 7.2.6; (c) that ICC's breach of one or both of these sections is an Event of Default under Section 8.3; and (d) that RTFC is entitled to exercise its rights and remedies under the Loan Agreement and related documents, including, but not limited to, that RTFC may declare all unpaid principal, all accrued and unpaid interest thereon and any other obligations under the Loan and the Prior Loans to be immediately due and payable, may refuse to advance further funds to ICC and may exercise its rights and remedies with respect to the collateral, if the breaches are not cured by ICC within thirty days of notice of the Event of Default.

- (3) For judgment against ICC for reasonable costs, expenses and attorney's fees pursuant to Section 9.3 of the Loan Agreement in an amount to be determined at trial.

Respectfully submitted,

**Rural Telephone Finance Cooperative**

By Counsel

  
\_\_\_\_\_  
Gerald Zingone (VSB #396604)  
Thelen Reid & Priest LLP  
701 Pennsylvania Avenue, N.W.  
8<sup>th</sup> Floor  
Washington, D.C. 20004-2608  
(202) 508-4332

Of Counsel:

Michael Evan Jaffe  
Thelen Reid & Priest LLP  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 508-4215

and

Jonathan D. Siegfried  
Jonathan E. Polonsky  
Noel Garcia  
Thelen Reid & Priest LLP  
875 Third Avenue  
New York, NY 10022  
(212) 603-2000

# EXHIBIT H

SETTLEMENT AGREEMENT

The undersigned parties, VITELCO, ATN, RTFC, VITELCOM and the Virgin Islands Public Services Commission, desiring to resolve and settle various pending civil actions, administrative proceedings and appeals, stipulate and agree as follows:

1. RATES

a. VITELCO agrees to reduce rates for regulated local service, retroactive to January 1, 1988, and consequently to return to ratepayers as prescribed below, \$800,000.00 associated with the calendar year 1988. This \$800,000.00 will be booked by VITELCO in 1988 into the appropriate liability account and will be amortized to income over a three year period. A negative surcharge associated with the three year amortization of \$800,000.00 will be implemented as of January 1, 1989. This negative surcharge will have an annual value of \$267,000.00 and will be priced out based upon average 1988 access lines, but a one time credit will be given for the period of January 1, 1989, to the date rates are implemented through this agreement.

b. VITELCO will implement a permanent base rate reduction of \$1.1 million dollars effective January 1, 1989. A one time credit will be given for

EXHIBIT

H

RTFC 109281



**AMERICAN MEDIATION INSTITUTE**

SPECIALISTS IN DISPUTE RESOLUTION

P.O. BOX 6832

ST. THOMAS, U.S. VIRGIN ISLANDS 00804

PHONE: (340) 777-9500

FAX: (340) 774-6543

VIA FACSIMILE ONLY

February 27, 2006

TO: Gregory H. Hodges, Esq.  
Joel H. Holt, Esq.  
Denise Francois, Esq.  
Andrew L. Capdeville, Esq.

FM: Nancy Clark

RE: Anton Felton and June Felton v. Scott W. Elkins and Tammy Ton Elkins  
Scott W. Elkins v. Marty Beechler, Islandia Real Estate, Inc.  
Civil No. 2003/68

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This will confirm that the mediation of the above matter on Tuesday, February 28, 2006 at 11:00 A.M. with Andrew L. Capdeville, Esq. as the Mediator is **CANCELLED**.

We will contact counsel re alternate availability during the week of March 20, 2006.

VITELCO's convenience, to begin discussions relating to the appropriate unbundling of the inside wire tariff.

7. ITEMS RELATED TO DOCKET 301

- a. The Commission agrees to approve the sale of VITELCO stock from ITT to ATN upon appropriate satisfaction of the following conditions which the parties agree to undertake as part of this agreement within thirty (30) days:
1. VITELCO's guarantee of \$44.4 million of debt from RTFC by ATN shall be removed.
  2. The mortgages and UCC liens on VITELCO's property shall be used as collateral only for VITELCO's direct debt and shall not guarantee \$44.4 million of debt taken on by ATN. The underlying documents shall be amended accordingly. It is agreed that nothing contained herein shall preclude ATN, VITELCOM, or any other ATN subsidiaries or affiliates other than VITELCO, from granting mortgages or UCC liens to RTFC to further secure the ATN loan so long as the assets to be mortgaged are the bona fide separate property of ATN, VITELCOM, or such other ATN subsidiaries or affiliates, and do not represent assets of VITELCO transferred to VITELCOM, ATN or such

other ATN subsidiaries or affiliates, without the Commission's specific approval.

3. The loan agreements and financing documents between RTFC, VITELCO and ATN shall be amended to reflect that earnings and performance tests such as the Times Interest Earned Ratio (TIER) and Debt Service Coverage Test (DSC) with regard to loans made to VITELCO will be based upon VITELCO's earnings and VITELCO's debt alone and will not incorporate the debt service related to the \$44.4 million borrowed by ATN. The Commission recognizes VITELCO's RTFC debt and related mortgage and loan agreement obligations as valid and binding obligations of VITELCO and will recognize the debt in future rate making proceedings as a valid element of capital.
4. ATN, VITELCO and RTFC represent that presently all VITELCO's issued and outstanding stock is pledged to RTFC as collateral for ATN's loan. RTFC agrees that should default in that loan occur resulting in seizure of or foreclosure upon that VITELCO stock, any proposed sale of such stock shall first be submitted to the Commission for approval before consummation which approval shall not be unreasonably

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withheld if the proposed sale will not adversely affect VITELCO's operations or rates. Provided this condition is met, it is understood and agreed that in the event of an ATN loan default RTFC may foreclose its lien or pledge upon VITELCO stock. ATN and VITELCO agree that if in the future any VITELCO stock is to be used as collateral or security for any debt or obligation, the same undertaking hereinabove given by RTFC will be required from the prospective creditor prior to creating or imposing any lien or pledge of VITELCO stock.

5. VITELCO's investment in the Subordinated Capital Certificates (SCC) shall be reduced from \$10.4 million to \$6.0 million.
6. VITELCO must demonstrate to the satisfaction of the Commission that it has attained an equity ratio of fifteen percent (15%) by December 31, 1988 and twenty five (25%) by December 31, 1989. The measurement of the equity ratio will be determined by the proportion of equity in VITELCO's capital structure after reflecting the appropriate dividends payment, if any, for VITELCO's operations for the year 1988 and 1989. In

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addition, VITELCO's books must reflect the appropriate treatment for such items as the "regulatory asset" as agreed to in this stipulation as well as the reduction in the SCC.

7. VITELCO and ATN agree that transfer of ownership of a cumulative 51% or greater share of ATN stock from the current owners will not take place without the Commission's prior approval. For purposes of this paragraph, a series of transfers of shares to the same or directly affiliated persons or entities shall be considered on a cumulative basis, and if the total interest so transferred equals or exceeds 51%, Commission approval shall be required.
8. VITELCO and ATN agree that any additional financing (i.e., any financing not now in place and disclosed to the Commission) undertaken by ATN shall in no way require VITELCO to guarantee or collateralize such financing or any part thereof, and shall in no way impact on VITELCO's access to financial markets, without the Commission's prior approval. Any such purported guarantee or collateralization shall be void.

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9. VITELCO and ATN agree that VITELCO shall employ for at least two (2) years, as Executive Vice President for Regulatory Affairs, an individual with at least five (5) years experience as vice president, president or chief executive of a regulated telephone utility not smaller than VITELCO. Such individual should be provided the normal latitude of an officer responsible for the day to day affairs of managing the telephone utility's regulatory rights and responsibilities.

b. Providing that VITELCO, ATN, RTFC and VITELCOM are in compliance with the terms of this stipulation, the Commission agrees that dividends from VITELCO to ATN will be permitted in amounts required to satisfy ATN's debt service requirement to RTFC. This is not a guarantee that rates will be fixed to assure coverage; only that such payments can be made if funds are available after satisfaction of VITELCO's responsibilities as a public utility, and as prescribed herein.

8. SETTLEMENT OF OUTSTANDING PROCEEDINGS

This settlement supercedes and would dispose of Dockets 301, 314, and 316, and all related civil actions, including all outstanding orders related to those

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shall be returned to ATN and shall not become a part of the public record. If the matters do affect VITELCO they shall be referred to the Commission.

4. A copy of VITELCO's annual audit report, no less than promptly after it is formally received by VITELCO's management.
5. A copy of VITELCO annual report information presented to the extent available in the format that was previously compiled for the company's form M. This information should be provided together with the company's annual audit report.
6. A monthly summary of all payments made by VITELCO to any affiliated company, individual or interest. In addition, all income and receipts from affiliated interests should be listed.

Virgin Islands Telephone Corporation  
"VITELCO"

DATED: 4/19, 1989

By: [Signature]

Atlantic Tels Network, Inc.  
"ATN"

DATED: 4/19, 1989

By: [Signature]

Rural Telephone Finance Cooperative  
"RTFC"

DATED: April 19, 1989

By: [Signature]

RTFC 109299

DATED: 4/19, 1989

"VITELCOM"

By: [Signature]

Public Services Commission  
"Commission"

DATED: 4/19, 1989

By: [Signature]

RTFC 109300

# EXHIBIT I



2. Defendant ICC is a corporation organized under the laws of the United States Virgin Islands with its principal place of business in Sunny Isle, St. Croix, United States Virgin Islands.

**JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 as RTFC and ICC are of diverse citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and pursuant to 28 U.S.C. § 2201 as the relief sought is, in part, a declaratory judgment declaring the rights of the parties.

4. In the contract at issue here, ICC, as Borrower, agreed as follows:

[ICC] hereby submits to the nonexclusive jurisdiction of the United States courts located in Virginia . . . for purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. [ICC] irrevocably waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the establishing of venue of any such proceeding brought in such a court and any claim that any such proceeding has been brought in an inconvenient forum.

5. Accordingly, this Court has personal jurisdiction over ICC because ICC contractually agreed to submit to jurisdiction in this judicial district. In addition, this Court has personal jurisdiction over ICC because the claims arise from ICC's transaction of business in this Commonwealth, Va. Code Ann. § 8.01-328.1 (A)(1), and the claims arise from ICC's contracting in this Commonwealth, Va. Code Ann. § 8.01-328.1 (A)(2).

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(a)(2) and because ICC has expressly agreed to venue in this Court. Venue is appropriate in this Division pursuant to Local Rule 3(c).

## THE LOAN DOCUMENTS

7. RTFC was incorporated as a cooperative, nonprofit, membership corporation in 1987 and is in the business of providing, securing and arranging financing for its rural telecommunications members and their affiliates. RTFC has over 500 rural telecommunications members.

8. ICC conducts business primarily to acquire, construct, erect, improve, maintain and operate the facilities for, and to engage in the business of furnishing telephone and other communication services and facilities in and around the Caribbean, including the United States Virgin Islands.

9. ICC is the parent company of Virgin Islands Telephone Corporation ("Vitelco"), a corporation organized under the laws of the United States Virgin Islands with its principal place of business in Charlotte Amalie, St. Thomas, United States Virgin Islands.

10. Vitelco is the incumbent local exchange carrier in the United States Virgin Islands and provides local fixed wireline telephone services there. Under the 1996 Telecommunications Act, Vitelco qualifies as a rural telephone carrier.

11. Vitelco, as a member of RTFC, and ICC, as Vitelco's parent, are eligible to borrow money from RTFC and, since 1987, have borrowed money from RTFC.

12. Between 1987 and 2000, RTFC made 15 separate loans to ICC totaling in excess of \$500 million.

13. On August 27, 2001, RTFC and ICC signed a loan agreement, as amended by that certain First Amendment to Loan Agreement dated April 4, 2003 (the "Loan Agreement"), a promissory note (the "Secured Promissory Note") and other related documents to document a loan (the "Loan") from RTFC to ICC in the amount of \$169,291,578. A copy of the Loan

Agreement is attached hereto as Exhibit A. At the time the Loan was made, ICC had 15 prior, outstanding loans with RTFC in the amount of approximately \$507,417,573 (the "Prior Loans"). Pursuant to the terms and conditions of Section 9.1 of the Loan Agreement, RTFC may, upon the occurrence of an Event of Default under the Loan Agreement, declare all unpaid principal, all accrued and unpaid interest, and all other obligations outstanding on the Loan and Prior Loans due and payable. ICC's outstanding principal indebtedness to RTFC under the Loan and Prior Loans presently exceeds \$550 million.

### **THE DEFAULTS**

**A. ICC Is In Default Of Its Obligation To Make A Mandatory Prepayment To RTFC**

14. Section 2.4.2 of the Loan Agreement requires ICC, as Borrower, to make Mandatory Prepayments, as defined in the Loan Agreement, when ICC or its subsidiaries receives funds from certain financing activities. Specifically, Section 2.4.2 of the Loan Agreement provides, in relevant part:

2.4. Prepayment. [ICC] may make voluntary prepayments and must make mandatory prepayments according to the terms and conditions set forth herein.

\* \* \*

2.4.2. Mandatory Prepayments.

2.4.2.1. In the event that, and on each occasion on which, any Net Cash Proceeds are received by or on behalf of [ICC] or any Subsidiary, [ICC] shall, within three Business Days after such Net Cash Proceeds are received, prepay the Loans in an aggregate amount equal to such Net Cash Proceeds.

15. Section 1 of the Loan Agreement, "Construction and Definition of Terms," defines "Net Cash Proceeds" as follows:

"Net Cash Proceeds" means, as applicable... (b) with respect to any offering of capital stock or issuance of debt, the gross cash proceeds received by [ICC], or any of its Subsidiaries, therefrom less all reasonable legal, underwriting and other fees and expenses actually incurred in connection therewith.

16. Vitelco is a "Subsidiary" of ICC under the construction and definition of terms contained in Section 1 of the Loan Agreement.

17. During February 2004, Vitelco issued and sold 85,000 shares of preferred stock (the "Vitelco Preferred Stock"), with a par value of \$1,000, for net proceeds of \$81,859,500. The allegations contained herein concerning Vitelco's sale of Vitelco Preferred Stock are pleaded upon information and belief based upon the disclosures in the audited Consolidated Financial Statements for the years ended December 31, 2003 and 2002 of Innovative Communication Corporation and Subsidiaries (the "ICC 2003 Financial Statements").

18. RTFC first learned of the Vitelco Preferred Stock sale in late April 2004, when it received a copy of the ICC 2003 Financial Statements.

19. Pursuant to Section 2.4.2.1 of the Loan Agreement, ICC was obligated to make a Mandatory Prepayment to RTFC within three business days of the completion of the offering of the Vitelco Preferred Stock in an aggregate amount equal to the Net Cash Proceeds received by Vitelco, namely, \$81,859,500. ICC failed to make such Mandatory Prepayment.

20. Section 8.2 of the Loan Agreement provides in relevant part:

8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default."

\* \* \*

8.2. Payment. Failure of [ICC] to make any of the payment Obligations, including, without limitation, any sum due [RTFC] under this Agreement, the Note or any Note for any Prior Loan or any of the Other Agreements,

when and as the same shall become due, whether at the due date thereof, by demand, by acceleration or otherwise.

21. Accordingly, ICC's breach of Section 2.4.2.1 of the Loan Agreement by failing to make the Mandatory Prepayment constitutes an Event of Default under Section 8.2 of the Loan Agreement.

**B. ICC Is In Default Of Its Obligation Not To Issue Or Sell Preferred Stock Without The Prior Written Consent Of RTFC**

22. Section 2 of the Second Amended and Restated Master "A" Pledge and Security Agreement dated August 27, 2001 between ICC and RTFC (the "Master A Pledge") prohibits ICC from, directly or indirectly, issuing any stock of any of its direct or indirect Subsidiaries, without RTFC's prior written consent. A copy of the Master A Pledge is attached hereto as Exhibit B.

23. Section 2 of the Master A Pledge states specifically, in relevant part:

**SECTION 2. The Pledge and Security Interest.** . . . [ICC] covenants and agrees with [RTFC] that [ICC] will not, directly or indirectly, without prior written consent of [RTFC], transfer, issue or sell any of the Collateral or stock of [ICC], or any direct or indirect subsidiary, or enter into any agreement which may result in the transfer, issuance or sale of any of the Collateral or stock of [ICC], or of its direct or indirect subsidiaries, whether common or preferred, including but not limited to those partnership and equity interests of identified in Schedule A and Schedule B attached hereto.

24. Vitelco is one of the entities listed on Schedule A to the Master A Pledge.

25. Vitelco's issuance of the Vitelco Preferred Stock, as set forth in Paragraph 17 *supra*, without the prior written consent of RTFC, constitutes a breach of Section 2 of the Master A Pledge.

26. Section 8.3 of the Loan Agreement provides, in relevant part:

8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default."

\* \* \*

8.3. **Other Covenants.** Failure of [ICC] to observe or perform any warranty, covenant or condition to be observed or performed by [ICC] under this Agreement or any of the Other Agreements.

27. The Master A Pledge is included in the definition of "Other Agreements" under the construction and definition of terms contained in Section 1 of the Loan Agreement.

28. By letter dated July 19, 2004, RTFC provided written notice to ICC that the issuance of Vitelco Preferred Stock without the prior written consent of RTFC, and the resulting breach of Section 2 of the Master A Pledge, constitutes an Event of Default under Section 8.3 of the Loan Agreement. A copy of the July 19, 2004 letter is attached hereto as Exhibit C.

**C. ICC Is In Default Of Its Obligation Not To Borrow Money On An Unsecured Basis Without The Prior Written Consent Of RTFC**

29. Section 7.2 of the Loan Agreement contains the following negative covenants:

7. **NEGATIVE COVENANTS.**

\* \* \*

7.2. **Consent.** [ICC] covenants and agrees with [RTFC] that [ICC], and its Subsidiaries, will not, directly or indirectly, without the prior written consent of [RTFC] do any of the following.

\* \* \*

7.2.4. Borrow money on an unsecured basis from any other lender, or incur any additional unsecured indebtedness, or to pay other current operating liabilities that arise in the ordinary course of business, provided that, so long as the aggregate total of such debt does not exceed two percent (2%) of [ICC's] consolidated total assets, except for unsecured trade debt, no consent shall be required.

30. The terms of the Vitelco Preferred Stock entitle the holders to receive an annual cumulative dividend of ten percent (10%) computed based upon the par value of the Preferred Stock. The Vitelco Preferred Stock is also redeemable at Vitelco's option beginning in 2006. Due to these factors, the Vitelco Preferred Stock is a debt instrument. As such, it represents indebtedness in excess of two percent (2%) of ICC's consolidated assets, based on the ICC 2003 Financial Statements.

31. Accordingly, the issuance of the Vitelco Preferred Stock on these terms, without the prior written consent of RTFC, constitutes a breach of ICC's covenant in Section 7.2.4 of the Loan Agreement.

32. By letter dated July 19, 2004, RTFC provided written notice to ICC that the issuance of Vitelco Preferred Stock and the resulting breach of Section 7.2.4 of the Loan Agreement constitutes an Event of Default under Section 8.3 of the Loan Agreement.

**D. ICC Is In Default Of Its Obligation Under Section 7.2.6 Of The Loan Agreement**

33. Section 7.2 of the Loan Agreement contains the following negative covenants:

7. NEGATIVE COVENANTS.

\* \* \*

7.2. Consent. [ICC] covenants and agrees with [RTFC] that [ICC], and its Subsidiaries, will not, directly or indirectly, without the prior written consent of [RTFC] do any of the following. . . .

\* \* \*

7.2.6. Permit any Subsidiary to enter into any agreement that would impair said Subsidiary's ability to pay dividends or distributions to [ICC].

34. The Vitelco Preferred Stock, by its terms, affords its holders a preference in the payment of dividends over holders of Vitelco's common stock and gives the holders of the Preferred Stock the right to block the payment of dividends to the holders of Vitelco's common

stock. Accordingly, the issuance of the Vitelco Preferred Stock on these terms, without the prior written consent of RTFC, impairs Vitelco's ability to pay dividends or make distributions to ICC and constitutes a breach of ICC's covenant in Section 7.2.6 of the Loan Agreement.

35. By letter dated July 19, 2004, RTFC provided written notice to ICC that Vitelco's issuance of Vitelco Preferred Stock on terms that impairs Vitelco's ability to pay dividends or make distributions to ICC, and the resulting breach of Section 7.2.6 under the Loan Agreement, constitutes an Event of Default under Section 8.3 of the Loan Agreement.

**E. ICC Is In Default Of Its Obligations Under Section 3.04 Of The Master A Pledge Agreement**

36. As set forth *supra* at ¶¶ 22-27, a breach of the Master A Pledge constitutes an Event of Default under Section 8.3 of the Loan Agreement.

37. Section 3.04 of the Master A Pledge prohibits ICC from voting any shares of Vitelco common stock which it has pledged to RTFC in any manner that is inconsistent with the terms of the Master A Pledge or other related agreements. Specifically it provides, in relevant part:

**3.04 Rights Regarding Collateral.** . . . [ICC] agrees that it will not vote the Collateral in any manner that is inconsistent with the terms of [the Master A Pledge] or any of the Basic Documents.

38. Section 222 of the Virgin Islands General Corporation Law requires the holders of Vitelco's common stock to vote on a proposal to amend and restate Vitelco's Articles of Incorporation which was necessary to create and designate the terms of the Vitelco Preferred Stock.

39. Upon information and belief, to validly effect the issuance of the Vitelco Preferred Stock, ICC, as the sole holder of Vitelco's common stock, voted its shares of common

stock in favor of amending and restating Vitelco's Articles of Incorporation to establish the Vitelco Preferred Stock in contravention of ICC's obligations under the Loan Agreement as set forth in Paragraphs 22-35 *supra*.

40. Any such vote constitutes a breach of Section 3.04 of the Master A Pledge and an Event of Default under Section 8.3 of the Loan Agreement.

41. By letter dated July 19, 2004, RTFC provided written notice to ICC that Vitelco's vote of its shares of common stock in favor of amending and restating Vitelco's Articles of Incorporation to create and designate the terms of the Vitelco Preferred Stock, and the resulting breach of Section 3.04 of the Master A Pledge, constitutes an Event of Default under Section 8.3 of the Loan Agreement.

**F. According To ICC, It Is In Default Of Section 4 Of The Loan Agreement**

42. ICC has alleged in its Answer and Counterclaim in this action that, in effect, a Settlement Agreement, dated October 3, 1989, among Vitelco, ATN (ICC's predecessor), RTFC, Vitelcom and the Virgin Islands Public Services Commission ("VIPSC") (the "1989 Agreement"), renders or may render certain provisions of the Loan Agreement unenforceable absent the consent of the VIPSC to the enforcement of such provisions by RTFC, and constitutes a defense to some or all of the foregoing Events of Default.

43. RTFC contends that the 1989 Agreement does not or should not render any provision of the Loan Agreement void and unenforceable and does not constitute a defense to any of the foregoing Events of Default.

44. To the extent that ICC maintains that the 1989 Settlement Agreement renders certain provisions of the Loan Agreement unenforceable and/or constitutes a defense to any of

the Events of Default set forth above, then ICC, by its own admission, is in breach of various of its representations and warranties to RTFC contained in Section 4 of the Loan Agreement.

45. Specifically, Section 4 of the Loan Agreement provides, in relevant part:

4. REPRESENTATIONS AND WARRANTIES. To induce [RTFC] to enter into this Agreement and make Loans, [ICC] represents and warrants to [RTFC] as of the date of this Agreement that the following representations are true and correct.

\* \* \*

4.2. Authority. . . . [N]o consent or approval of any person, including, without limitation . . . any public authority or regulatory body, which has not been obtained is required as a condition to the validity or enforceability hereof . . . .

4.3. Binding Agreement. This Agreement has been duly and properly executed by [ICC], constitutes the valid and legally binding obligation of [ICC] and is fully enforceable against [ICC] in accordance with its terms, subject only to the laws affecting the rights of creditors generally, the exercise of judicial discretion in accordance with general principles of equity or because waivers of statutory or common law rights or remedies may be limited.

4.4. No Conflicting Agreements. The execution, delivery of and performance by [ICC] of this Agreement, the Mortgage, the Pledge Agreement, the Note and the Other Agreements and the transactions contemplated hereby or thereby, will not: (a) violate any provision of law, any order, rule or regulation of any court or other agency of government, any award of any arbitrator, the charter or by-laws of [ICC], or any indenture, contract, agreement, mortgage, deed of trust or other instrument to which [ICC] is a party or by which it or any of its property is bound; or (b) be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under, any such award, indenture, contract, agreement, mortgage, deed of trust or other instrument . . . .

\* \* \*

4.13. Required Approvals. No license, consent, permit or approval of any governmental agency or authority is required to enable [ICC] to enter into this Agreement or to perform any of its obligations provided for herein except as

disclosed on Schedule 1 hereto and except with respect to regulatory approvals which may be required in connection with [RTFC's] enforcement of certain remedies hereunder.

46. Section 8 to Schedule 1 of the Loan Agreement provides as follows: "The government authorities referred to in Section 4.13 are: NONE."

47. A breach of any of the foregoing representations and warranties constitutes an Event of Default under Section 8.1 of the Loan Agreement which provides, in relevant part:

8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default."

8.1. . **Representations and Warranties.** Any representation or warranty made herein, in any of the Loan Documents or Other Agreements . . . shall be false or misleading in any material respect.

48. Accordingly, to the extent that ICC alleges that VIPSC consent was required for ICC's execution, delivery and performance of the Loan Agreement, ICC's representations and warranties in Section 4.2 of the Loan Agreement are false and constitute an Event of Default under Section 8.1 of the Loan Agreement.

49. To the extent that ICC alleges that certain provisions of the Loan Agreement are unenforceable, then ICC's representations and warranties contained in Section 4.3 of the Loan Agreement are false and constitute an Event of Default under Section 8.1 of the Loan Agreement.

50. To the extent that ICC alleges that provisions of the Loan Agreement are unenforceable without the VIPSC's consent to a waiver of provisions of the 1989 Settlement Agreement, ICC's representations and warranties contained in Section 4.4 of the Loan Agreement are false and constitute an Event of Default under Section 8.1 of the Loan Agreement.

51. Finally, to the extent that ICC alleges that the VIPSC consent was required in respect of the Loan Agreement, ICC's representations and warranties in Section 4.13 and Section 8 to Schedule 1 of the Loan Agreement are false and constitute an Event of Default under Section 8.1 of the Loan Agreement.

**G. ICC Is In Default Of Its Obligations Under Section 7.2.2 And 7.5 Of The Loan Agreement, As Well As Sections 1.01 And 3.02 Of The ICC Mortgage, As A Result Of Its Acquisition Of Shares Of Belize Telecommunications Limited**

52. Upon information and belief, in March 2004, without RTFC's consent, ICC entered into a Master Agreement with the Government of Belize pursuant to which ICC was to acquire shares of Belize Telecommunications Limited, through a newly-formed subsidiary (the "Belize Transaction").

53. Upon information and belief, in connection with the Belize Transaction, Vitelco made a loan to Belize Telecommunications Limited, as evidenced by a \$28,500,000 Promissory Note payable to Vitelco.

54. Neither the shares of the newly-formed subsidiary nor the shares of Belize Telecommunications Limited have been delivered to RTFC. Instead, upon information and belief, they have been pledged to the Government of Belize.

55. Section 7 of the Loan Agreement provides, in relevant part:

7. **NEGATIVE COVENANTS.**

\* \* \*

7.2. Consent. [ICC] covenants and agrees with [RTFC] that [ICC], and its Subsidiaries, will not, directly or indirectly, without the prior written consent of [RTFC] do any of the following. . . .

\* \* \*

7.2.2. Form or acquire any Subsidiaries.

\* \* \*

7.5. Limitations on Loans, Investments and Other Obligations. Without the prior written consent of [RTFC], [ICC] shall not, and

shall not permit its Subsidiaries, to, pursuant to a merger or otherwise, (i) purchase or make any commitment to purchase any Equity Interest, including but not limited to, any stock, bonds, options, warrants, notes, debentures or other securities or obligations of or beneficial interest in, (ii) make any other investment in, (iii) make, or permit to exist, any loan to, or (iv) guarantee, assume, or otherwise become liable for any obligation of, any corporation, association, partnership, joint venture, trust, government or any agency or department thereof, or any other entity, or person, of any kind . . . .

56. Upon information and belief, ICC formed a new subsidiary for the purpose of acquiring the shares of Belize Telecommunications Limited without the prior written consent of RTFC. The formation of such a new subsidiary without the prior written consent of RTFC constitutes a breach by ICC of Section 7.2.2 of the Loan Agreement.

57. ICC also breached Section 7.5 of the Loan Agreement by (a) purchasing an equity interest in Belize Telecommunications Limited without the prior written consent of RTFC, and (b) permitting its subsidiary, Vitelco, to make a \$28,500,000 loan to Belize Telecommunications Limited, without the prior written consent of RTFC.

58. In addition, ICC is in breach of Sections 1.01 and 3.02 of the Consolidated Mortgage and Security Agreement between ICC and RTFC dated June 4, 1999, as amended (the "ICC Mortgage"), which obligate ICC, *inter alia*, to (a) maintain and preserve RTFC's lien on pledged collateral superior to all other liens, (b) deliver to RTFC all stock powers and related certificates representing RTFC's collateral, and (c) take all actions necessary to allow RTFC's security interest to attach and become perfected. A copy of the ICC Mortgage is attached hereto as Exhibit D.

59. Section 1.01 of the ICC Mortgage provides, in relevant part:

In order to secure the payment of the principal of and interest on the Notes, according to their tenor and effect, and to further secure the due performance of the covenants, agreements and provisions

contained in this Mortgage and the Loan Agreement and to declare the terms and conditions upon which the Notes are to be secured, [ICC] in consideration of the premises, has executed and delivered this Mortgage, and has granted bargained, sold, conveyed, warranted, assigned, transferred, mortgaged, pledged and set over, and by these presents does hereby grant bargain, sell, convey, warrant, assign, transfer, mortgage, pledge and set over, unto [RTFC] and assigns, all and singular the following-described property whether now owned or hereafter acquired by [ICC], wherever located, and grants a security interest therein for the purposes herein expressed (hereinafter sometimes called the "Mortgaged Property"): ... [a]ll right, title and interest of [ICC] in and to all other property, real or personal, tangible or intangible, of every kind, nature and description and wheresoever situated, now owned or hereafter acquired by [ICC], it being the intention hereof that all such property ... acquired or held by [ICC] after the date hereof shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by [ICC] and were specifically described herein to the extent only, however, that the subject of such property to the lien hereof shall not be contrary to law.

60. Section 3.02 of the ICC Mortgage provides, in relevant part:

[ICC] will, so long as any of the Notes shall be outstanding, maintain and preserve the lien of this Mortgage superior to all other liens affecting the Mortgaged Property and, will forever warrant and defend the title to the property described as being mortgaged hereby to [RTFC] against any and all claims whatsoever.

61. Because the equity interests of Belize Telecommunications Limited and the newly-formed subsidiary have not been delivered to RTFC but instead, upon information and belief, have been pledged to the Belize Government, ICC has breached Sections 1.01 and 3.02 of the ICC Mortgage.

62. As set forth *supra*, the failure of ICC "to observe or perform any warranty, covenant or condition to be observed or performed by [ICC] under [the Loan Agreement] or any of the Other Agreement" constitutes an Event of Default under Section 8.3 of the Loan Agreement.

63. The ICC Mortgage is included in the definition of "Other Agreements" under the construction and definition of terms contained in Section 1 of the Loan Agreement.

64. By letter dated July 19, 2004, RTFC provided written notice to ICC that its breaches of Sections 7.2.2 and 7.5 of the Loan Agreement and Sections 1.01 and 3.02 of the ICC Mortgage constitute Events of Default under Section 8.3 of the Loan Agreement.

**H. ICC Is In Default of Its Obligations Under Sections 7.2.3 And 7.2.7 Of The Loan Agreement As A Result Of The Vitelco And SMB Boatphone Holdings, Limited Secured Loan Transaction**

65. Upon information and belief, in July 2002, without RTFC's prior written consent, Vitelco and another ICC subsidiary, SMB Boatphone Holdings, Limited, consummated a loan transaction with Global Bank of Commerce Limited (the "Secured Loan Transaction"). The Debenture dated July 8, 2002 between Vitelco, SMB Boatphone Holdings, Limited, and Global Bank of Commerce Limited states that a loan in the amount of \$3 million was made by Global Bank of Commerce Limited to Vitelco and that the assets of SMB Boatphone Holdings, Limited were pledged as security for the loan.

66. As a result of the Secured Loan Transaction, ICC has breached Sections 7.2.3 and 7.2.7 of the Loan Agreement.

67. Section 7.2 of the Loan Agreement provides, in relevant part:

7.2. Consent. [ICC] covenants and agrees with [RTFC] that [ICC], and its Subsidiaries, will not, directly or indirectly, without the prior written consent of [RTFC] do any of the following.

\* \* \*

7.2.3. Borrow money on a secured basis from any other lender, or incur any additional indebtedness, or enter into any Leases.

\* \* \*

7.2.7. Permit, or permit any Subsidiary to allow any Lien on [ICC's], or any Subsidiary's assets except the Liens

created by the Loan Documents and Prior Loan Documents against the Collateral herein.

68. Both Vitelco and SMB Boatphone Holdings, Limited are subsidiaries of ICC.

69. The Secured Loan Transaction, which caused ICC's subsidiaries to incur additional secured debt, constitutes a breach by ICC of Section 7.2.3 of the Loan Agreement.

70. The pledge of the assets of SMB Boatphone Holdings, Limited as security for the Secured Loan Transaction constitutes a breach by ICC of Section 7.2.7 of the Loan Agreement.

71. By letter dated July 19, 2004, RTFC gave notice to ICC that its breaches of Sections 7.2.3 and 7.2.7 of the Loan Agreement constitute Events of Default under Section 8.3 of the Loan Agreement.

**I. ICC Is In Default Of Section 8.1 Of The Loan Agreement As A Result Of The Failure To Disclose To RTFC The Existence And Issuance Of ICC Preferred Stock**

72. Section 8.1 of the Loan Agreement provides, in relevant part:

8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default."

8.1. **Representations and Warranties.** Any representation or warranty made herein, in any of the Loan Documents or Other Agreements or in any statement, report, certificate, opinion, financial statement or other document furnished or to be furnished in connection with this Agreement, the Loan Documents or the Other Agreements shall be false or misleading in any material respect.

73. The Amended and Restated Pledge and Security Agreement dated August 27, 2001 (the "Emerging Pledge Agreement") between Emerging Communications, Inc. ("Emerging") and RTFC is included in the definition of "Other Agreements" in Section 1 of the Loan Agreement.

74. Section 1(a) to Schedule A to the Emerging Pledge Agreement states that there are no issued and outstanding shares of ICC Preferred Stock. It specifically provides:

As of the date hereof, [ICC] has issued and outstanding 2,000 shares of Common Stock and 0 shares of Preferred Stock.

A copy of the Emerging Pledge Agreement is attached hereto as Exhibit E.

75. Notwithstanding the foregoing, the ICC 2003 Financial Statements state that ICC issued shares of Preferred Stock (the "ICC Preferred Stock") on December 23, 1998. To date, no certificates representing the shares of the ICC Preferred Stock have been delivered to RTFC.

76. To the extent that the ICC Preferred Stock was issued and outstanding on August 27, 2001, Emerging breached its representations and warranties in Section 1(a) to Schedule A to the Emerging Pledge Agreement, which, in turn, constitutes an Event of Default by ICC under Section 8.1 of the Loan Agreement.

77. Furthermore, Section 2 of the Master A Pledge (which amends and restates the obligations of ICC arising under that certain Pledge and Security Agreement, dated as of December 30, 1997, between ICC and RTFC) provides, in relevant part:

[ICC] covenants and agrees that [RTFC] and [ICC] will not, directly or indirectly, without prior written consent of [ICC] transfer, issue or sell any of the Collateral or stock of [ICC], or any direct or indirect subsidiary, or enter into any agreement which may result in the transfer, issuance or sale of any of the Collateral or stock of [ICC], or of its direct or indirect subsidiaries, whether common or preferred, including but not limited to those partnership and equity interests of [entities] identified on Schedule A and Schedule B attached hereto.

78. Accordingly, ICC's issuance of the ICC Preferred Stock on December 23, 1998 is a breach of its covenant in Section 2 of the Master A Pledge and constitutes an Event of Default under Section 8.3 of the Loan Agreement.

**J. ICC Is In Default Of Sections 7.2.7 And 4.7 Of The Loan Agreement As A Result Of The Existence Of Certain Liens**

79. Section 7.2.7 of the Loan Agreement provides, in relevant part, that ICC will not, without the prior written consent of RTFC:

Permit, or permit any subsidiary to allow any lien on [ICC's], or any Subsidiary's assets. . . .

80. Notwithstanding the foregoing, liens have been placed on the assets of ICC and its subsidiaries Caribbean Communications Corporation d/b/a Innovative Cable TV – St. Thomas-St. John, The Daily News Publishing Co., Inc. d/b/a Virgin Island Daily News and iCC TV, Inc.

81. In addition, Federal tax liens were filed against Vitelco in 2001, and Virgin Islands tax liens have been placed on Vitelco dated April 4, 1992, June 17, 1992 and July 29, 1992.

82. Upon information and belief, Vitelco's non-payment of taxes has resulted in these liens.

83. By letter dated July 19, 2004, RTFC gave notice to ICC that the existence of the above-referenced liens resulted in a breach of Section 7.2.7 of the Loan Agreement and constitutes an Event of Default under Section 8.3 of the Loan Agreement.

84. In addition to the foregoing, Section 4.7 of the Loan Agreement sets forth certain representations and warranties, specifically:

4.7. Taxes. Except as previously disclosed to [RTFC] in writing [ICC] and its Subsidiaries have paid or caused to be paid all federal, state and local taxes to the extent that such taxes have become due, unless [ICC] or a Subsidiary is contesting in good faith any such tax. [ICC] or its Subsidiaries have filed or caused to be filed all federal, state and local tax returns which are required to be filed by [ICC] and any Subsidiary.

85. ICC's failure to disclose the existence of such tax liens to RTFC is a breach of Section 4.7 of the Loan Agreement and constitutes an Event of Default under Section 8.1 of the Loan Agreement.

86. Finally, Section 4.8 of the Loan Agreement provides, in relevant part:

4.8. Title to Properties. [ICC] and each Subsidiary has good and marketable title to all of their real properties and owns all of their other properties and assets free and clear of any liens, except (i) the Lien of the Mortgage and taxes or assessments not yet due; (ii) deposits or pledges to secure payment of workmen's compensation, unemployment insurance, old age pensions or other social security; (iii) Liens granted to [RTFC] under the Prior Loan Documents; and (iv) deposits or pledges to secure performance of bids, tenders, contracts (other than contracts for the payment of borrowed money), leases, public or statutory obligations, surety or appeal bonds, or other deposits or pledges for purposes of like general nature in the ordinary course of business.

87. By reason of the liens referred to *supra*, ICC is in breach of Section 4.8 of the Loan Agreement, which constitutes an Event of Default under Section 8.1 of the Loan Agreement.

**K. ICC Is In Default Of Its Obligations Under Sections 4.10 And 7.2.2 Of The Loan Agreement, As Well As Sections 1.01 And 3.02 Of The ICC Mortgage, As A Result Of Its Failure To Disclose The Existence Of Certain Subsidiaries**

88. Two subsidiaries of ICC, Communications Systems & Services, Inc. and Executive Security Services, Inc., appeared on the most recent ICC organizational chart made available to RTFC.

89. Section 4.10 of the Loan Agreement provides, in relevant part:

4.10. Subsidiaries. [ICC] has no Subsidiaries other than those Subsidiaries heretofore disclosed to [RTFC] and set forth in Schedule 6, or hereafter formed or acquired with the prior written consent of [RTFC].

90. Communications Systems & Services, Inc. and Executive Security Services, Inc. are "Subsidiaries" of ICC under the construction and definition of terms in the Loan Agreement.

91. To the extent these subsidiaries were in existence at the time of the execution of the Loan Agreement, they were not disclosed on Schedule 6 of the Loan Agreement.

92. Upon information and belief, ICC's failure to disclose the existence of these subsidiaries at the time of the execution of the Loan Agreement or obtain RTFC's consent to form these subsidiaries constitutes a breach of Section 4.10 of the Loan Agreement and an Event of Default under Section 8.1 of the Loan Agreement.

93. Section 7.2.2 of the Loan Agreement also prohibits ICC from forming or acquiring any subsidiaries without the prior written consent of RTFC.

94. To the extent these subsidiaries were formed after the execution of the Loan Agreement, ICC did not seek RTFC's prior written consent, nor did RTFC provide its prior written consent, for their formation.

95. Upon information and belief, ICC's formation of these subsidiaries without the prior written consent of RTFC constitutes a breach of Section 7.2.2 of the Loan Agreement and an Event of Default under Section 8.3 of the Loan Agreement.

96. In addition, Sections 1.01 and 3.02 of the ICC Mortgage obligate ICC to maintain and preserve RTFC's lien on pledged collateral superior to all other liens, to deliver to RTFC all stock powers and related certificates representing RTFC's collateral and to take all actions necessary to allow RTFC's security interest to attach and become perfected.

97. Because ICC has not delivered stock certificates representing the equity interests of Communications Systems & Services, Inc. and Executive Security Services, Inc. to RTFC,

ICC has breached its covenants in Sections 1.01 and 3.02 of the ICC Mortgage, resulting in an Event of Default under Section 8.3 of the Loan Agreement.

98. By letter dated July 19, 2004, RTFC gave notice to ICC that its breaches of 7.2.2 of the Loan Agreement and Sections 1.01 and 3.01 of the ICC Mortgage constitute Events of Default under Section 8.3 of the Loan Agreement.

**L. ICC Is In Default Of Its Obligations Under The Master A Pledge As A Result Of Its Failure To Maintain First Priority Perfected Liens On Certain Collateral Pledged To RTFC**

99. ICC and certain of its subsidiaries have failed to give, execute, file and/or record financing statements, continuation statements and other documents required to maintain first priority perfected liens for the benefit of RTFC on equity interests and other collateral of the following companies: (a) Caribbean Communications Corporation d/b/a Innovative Cable TV – St. Thomas-St. John; (b) Atlantic Aircraft, Inc.; (c) IC Air, Inc.; (d) Vitelcom Cellular, Inc.; (e) Eastern Caribbean Cellular, N.V.; (f) St. Croix Cable T.V., Inc.; (g) Daily News Publishing Company, Inc. d/b/a Virgin Island Daily News and iCC TV, Inc.; (h) Communications Systems & Services, Inc.; and (i) Executive Security Services, Inc.

100. Section 3.01 of the Master A Pledge provides, in relevant part:

[ICC] shall give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other papers that may be necessary or desirable (in the judgment of [RTFC]) to create, preserve, perfect or validate the security interest granted pursuant hereto or to enable [RTFC] to exercise and enforce its rights hereunder with respect to such pledge and security interest.

101. In addition, Section 3.02 of the ICC Mortgage provides, in relevant part:

[ICC] will, so long as any of the Notes shall be outstanding, maintain and preserve the lien of this Mortgage superior to all other liens affecting the Mortgaged Property and, and will forever warrant and defend the title to the property described as being

mortgaged hereby to [RTFC] against any and all claims whatsoever.

102. Other mortgages, security agreements and pledge agreements between RTFC and ICC's subsidiaries and affiliates contain virtually identical provisions.

103. The failure of ICC and its subsidiaries and affiliates to take all required actions to create, preserve, perfect and validate ICC security interests in the aforementioned companies is a breach of Section 3.01 of the Master A Pledge, Section 3.02 of the ICC Mortgage and the other mortgages, security agreements and pledge agreements. As noted *supra*, a breach of the Master A Pledge constitutes an Event of Default under Section 8.3 of the Loan Agreement.

104. By letter dated July 19, 2004, RTFC gave notice to ICC that the failure of ICC and its subsidiaries and affiliates to take all required actions to create, preserve, perfect and validate ICC security interests in the aforementioned companies, and the resulting breach of Section 3.01 of the Master A Pledge, Section 3.02 of the ICC Mortgage and the other mortgages, security agreements and pledge agreements constitute Events of Default under Section 8.3 of the Loan Agreement.

**M. ICC Is In Default of Its Obligations Under Section 2 Of The Master A Pledge Agreement As A Result Of The Dissolution Of ICC Subsidiary Pinnacle Ltd.**

105. Pursuant to Section 2 of the Master A Pledge Agreement and Schedule A thereto, ICC pledged all outstanding shares of the Common Stock of its subsidiary, Pinnacle Ltd., as collateral security for all obligations of ICC to RTFC under the Loan Agreement.

106. Pinnacle Ltd. has been dissolved and is no longer in existence.

107. Section 8 of the Loan Agreement provides, in relevant part:

8. **EVENT OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an "Event of Default."

\* \* \*

8.4 Corporate Existence. [ICC] or any Subsidiary shall forfeit or otherwise be deprived of its corporate charter, franchises, permits, easements, consents or licenses required to carry on any material portion of its business.

\* \* \*

8.7 Dissolution or Liquidation. (i) Other than as provided in Section 8.6 above, the dissolution or liquidation of [ICC] any Subsidiary or any Pledgor or Guarantor hereunder, or (ii) failure by [ICC] any Subsidiary or any Pledgor or Guarantor hereunder promptly to forestall or remove any execution, garnishment or attachment of such consequence as will impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within sixty (60) days.

108. By letter dated July 19, 2004, RTFC gave notice to ICC that ICC's dissolution of Pinnacle Ltd. constitutes an Event of Default under Section 8.4 and 8.7(i) of the Loan Agreement.

**N. ICC Is In Default Of Section 8.6 Of The Loan Agreement  
As A Result of Certain Bankruptcy Proceedings**

109. Upon information and belief, in November 2002, Martinique TV Cable S.A. became a debtor in a judicial liquidation proceeding in Martinique, and, in June 2003, Martinique Cable Multimedia, SARL became a debtor in a judicial reorganization proceeding in Martinique.

110. Section 8.6 of the Loan Agreement provides, in relevant part:

The occurrence of any one or more of the following events shall constitute an "Event of Default" . . . (i) a court shall enter a decree or order for relief with respect to [ICC], any Subsidiary or any Pledgor or Guarantor hereunder in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days,

or (ii) [ICC], any Subsidiary or any Pledgor or Guarantor hereunder shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking of possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make a general assignment for the benefit of creditors.

111. Upon information and belief, the bankruptcy cases of Martinique TV Cable S.A. and Martinique Cable Multimedia, SARL constitute Events of Default under Section 8.6 of the Loan Agreement.

### **CAUSES OF ACTION**

#### **Count 1 – RTFC’s Claim For Breach Of Contract Based Upon Events Of Default Under The Loan Agreement For Which There Is No Cure Period**

112. Paragraphs 1 through 111 are incorporated herein by reference as if restated here in full.

113. RTFC and ICC, its subsidiaries and/or affiliates entered into valid and enforceable agreements, including, *inter alia*, the Loan Agreement, the Master A Pledge, the ICC Mortgage, and the Emerging Pledge Agreement.

114. RTFC has duly performed all of the conditions and obligations of the Loan Agreement, the Master A Pledge, the ICC Mortgage, and the Emerging Pledge Agreement.

115. As set forth *supra*, ICC, its subsidiaries and/or affiliates have breached various provisions of the Loan Agreement, the Master A Pledge, the ICC Mortgage, and the Emerging Pledge Agreement. The following breaches constitute Events of Default by ICC under the Loan Agreement for which no notice or cure period is required:

- (a) ICC’s breach of Section 2.4.2 of the Loan Agreement resulting from its failure to make a Mandatory Prepayment to RTFC in the amount of \$81, 859, 500, resulting in an Event of Default under Section 8.2 of the Loan Agreement;

- (b) ICC's breach of Section 4.2 of the Loan Agreement resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (c) ICC's breach of Section 4.3 of the Loan Agreement resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (d) ICC's breach of Section 4.4 of the Loan Agreement resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (e) ICC's breach of Section 4.13 of the Loan Agreement resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (f) Emerging's breach of Section 1(a) to Schedule A to the Emerging Pledge Agreement resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (g) ICC's breach of Section 4.7 of the Loan Agreement resulting from ICC's failure to disclose the existence of certain tax liens resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (h) ICC's breach of Section 4.8 of the Loan Agreement due to the existence of liens resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (i) ICC's breach of Section 4.10 of the Loan Agreement resulting from ICC's failure to disclose the existence of subsidiaries, Communications Systems & Services, Inc. and Executive Security Services, Inc. resulting in an Event of Default under Section 8.1 of the Loan Agreement;
- (j) ICC's breach of Section 8.7(i) resulting from ICC's dissolution of subsidiary Pinnacle Ltd.; and
- (k) ICC's breach of Section 8.6(ii) of the Loan Agreement resulting from the filing, if any, of a voluntary case under applicable bankruptcy, insolvency or similar law in Martinique.

116. Section 9.1 of the Loan Agreement provides, in relevant part:

9.1. Rights and Remedies of the Lender. Upon the occurrence of an Event of Default, [RTFC] may, subject to (i) thirty (30) days prior written notice to [ICC] during which time [ICC] shall have the opportunity to cure said Event of Default, except with respect to Events of Default pursuant to Sections 8.1, 8.2, 8.6(ii) and 8.7(i) above which shall require no notice or demand and shall have no period to cure . . . .

9.1.2. Declare all unpaid principal, all accrued and unpaid interest thereon, and all other Obligations outstanding on the Note, and any Note under any Prior Loan, to be immediately due and payable and the same shall thereupon become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.

117. By reason of each such occurrence of an Event of Default, RTFC declares that all unpaid principal, all accrued and unpaid interest thereon and any other obligation under the Loan and Prior Loans are immediately due and payable.

118. Section 9.3 of the Loan Agreement provides, in relevant part:

9.3 Costs and Expenses. [ICC] agrees to pay and to be liable for any and all reasonable expenses, including attorneys' fees and court costs, incurred by [RTFC] in exercising or enforcing any of its rights hereunder or under the Other Agreements, together with interest thereon at the rate and determined in the manner provided in the Mortgage. . . .

119. Accordingly, pursuant to the terms and conditions of the Loan Agreement, RTFC seeks a judgment against ICC for an amount to be determined at trial but not less than \$550 million in principal together with interest at the default rate of interest set forth in the Loan Agreement, late payment charges, RTFC's attorneys' fees, costs and expenses, and any and all other monies advanced and paid by RTFC as provided for and pursuant to the terms and conditions of the Loan Agreement.

**Count 2 – RTFC's Claim For Breach Of Contract Based Upon Events Of Default Under The Loan Agreement For Which Notice Of Default And Opportunity To Cure Has Been Given**

120. Paragraphs 1 through 119 are incorporated herein by reference as if restated here in full.

121. As set forth *supra*, ICC, its subsidiaries and/or affiliates have breached various provisions of the Loan Agreement, the Master A Pledge, the ICC Mortgage, and the Emerging Pledge Agreement which constitute Events of Default under the Loan Agreement, subject to thirty (30) days prior written notice to cure.

122. Each of the following breaches constitutes an Event of Default under the Loan Agreement for which notice of default and opportunity to cure was given by letter dated July 19, 2004:

- (a) ICC's breach of Section 2 of the Master A Pledge resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (b) ICC's breach of Section 7.2.6 of the Loan Agreement resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (c) ICC's breach of Section 7.2.4 of the Loan Agreement resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (d) ICC's breach of Section 3.04 of the Master A Pledge resulting from the issuance and sale of the Vitelco Preferred Stock resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (e) ICC's breach of Section 7.2.2 of the Loan Agreement resulting from the Belize Transaction resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (f) ICC's breach of Section 7.5 of the Loan Agreement resulting from the Belize Transaction resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (g) ICC's breach of Section 1.01 of the ICC Mortgage resulting from the Belize Transaction resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (h) ICC's breach of Section 3.02 of the ICC Mortgage resulting from the Belize Transaction resulting in an Event of Default under Section 8.3 of the Loan Agreement;

- (i) ICC's breach of Section 7.2.3 of the Loan Agreement resulting from the Secured Loan Transaction resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (j) ICC's breach of Section 7.2.7 of the Loan Agreement resulting from the Secured Loan Transaction resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (k) ICC's breach of Section 7.2.7 of the Loan Agreement resulting from the existence of certain liens on ICC's or its subsidiaries' assets resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (l) ICC's breach of Section 7.2.2 of the Loan Agreement resulting from ICC's failure to disclose the existence of certain subsidiaries resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (m) ICC's breach of Section 1.01 of the ICC Mortgage resulting from ICC's failure to disclose the existence of certain subsidiaries resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (n) ICC's breach of Section 3.02 of the ICC Mortgage resulting from ICC's failure to disclose the existence of certain subsidiaries resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (o) ICC's breach of Section 7.2.2 of the Loan Agreement resulting from ICC's forming or acquiring certain subsidiaries without obtaining prior written consent of RTFC resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (p) ICC's breach of Section 1.01 of the ICC Mortgage resulting from ICC's failure to maintain and preserve RTFC's first priority perfected liens on certain pledged collateral resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (q) ICC's breach of Section 3.02 of the ICC Mortgage resulting from ICC's failure to maintain and preserve RTFC's first priority perfected liens on certain pledged collateral resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (r) ICC's breach of Section 3.01 of the Master A Pledge resulting from ICC's failure to maintain and preserve RTFC's first priority perfected liens on certain pledged collateral resulting in an Event of Default under Section 8.3 of the Loan Agreement;
- (s) ICC's breach of Section 8.4 of the Loan Agreement resulting from ICC's dissolution of Pinnacle Ltd.; and

- (t) ICC's breach of Section 8.6(i) of the Loan Agreement resulting from the filing, if any, of an involuntary case under applicable bankruptcy, insolvency or similar law in Martinique.

123. Accordingly if all of the foregoing Events of Default are not cured within thirty (30) days of notice thereof, RTFC may properly declare that all unpaid principal, all accrued and unpaid interest thereon and any other obligation under the Loan and Prior Loans are immediately due and payable pursuant to such Events of Default.

124. Furthermore, if all of the Events of Default are not cured within thirty (30) days of the notice of the breaches, pursuant to the terms and conditions of the Loan Agreement, RTFC is entitled to a judgment against ICC for an amount to be determined at trial but not less than \$550 million in principal together with interest at the default rate set forth in the Loan Agreement, late payment charges, RTFC's attorneys' fees, costs and expenses, and any and all other monies advanced and paid by RTFC as provided for and pursuant to the terms and conditions of the Loan Agreement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- (1) **On the First Count of this Amended Complaint**, for judgment against ICC in an amount to be determined at trial but not less than \$550 million in principal together with interest at the default rate set forth in the Loan Agreement.
- (2) **On the Second Count of this Amended Complaint**, for judgment against ICC in an amount to be determined at trial but not less than \$550 million in principal together with interest at the default rate set forth in the Loan Agreement in the event that the Events of Default specified therein are not cured within thirty (30) days of the notice thereof.
- (3) **On all Counts of this Amended Complaint**, for judgment against ICC for reasonable costs, expenses, RTFC's attorneys' fees, late payment charges, and all monies advanced and paid by RTFC as provided for and pursuant to the terms and conditions of the Loan

Agreement in an amount to be determined at trial, together with such other and further relief as the Court may deem just and proper.

Respectfully submitted,

**Rural Telephone Finance Cooperative**

By Counsel

---

Mark F. Evens (VSB #15069)  
Gerald Zingone (VSB #396604)  
Thelen Reid & Priest LLP  
701 Pennsylvania Avenue, N.W.  
8th Floor  
Washington, D.C. 20004-2608  
(202) 508-4332

Of Counsel:

Michael Evan Jaffe  
Thelen Reid & Priest LLP  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 508-4215

and

Jonathan D. Siegfried  
Alyson L. Redman  
Thelen Reid & Priest LLP  
875 Third Avenue  
New York, N.Y. 10022  
(212) 603-2000

---

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Amended Complaint was served by facsimile and mail this 20th day of July, 2004 on the following counsel for defendant Innovative Communication Corporation:

George F. West, Jr.  
Craig C. Reilly  
Richards McGettigan Reilly & West, P.C.  
1725 Duke Street, Suite 6000  
Alexandria, Virginia 22314

---

Mark F. Evens

# EXHIBIT J

3

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

RURAL TELEPHONE FINANCE  
COOPERATIVE,

Plaintiff,

-against-

INNOVATIVE COMMUNICATION  
CORPORATION,

Defendant.

Civ. Action No.: 2004-154

LOAN DEFAULT ACTION

STIPULATION

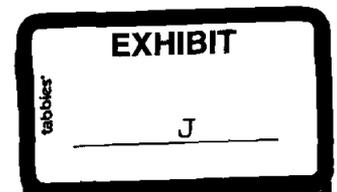
This Stipulation is entered into this 9th day of September, 2005 by and between Rural Telephone Finance Cooperative ("RTFC") and Innovative Communications Corp. ("ICC").

WHEREAS, RTFC filed a Complaint dated June 1, 2004, and an Amended Complaint dated July 20, 2004 against ICC in the United States District Court for the Eastern District of Virginia, in which RTFC alleged various events of default under the loan agreement between the parties; and

WHEREAS, ICC filed its Answer to Amended Complaint; Amended Counterclaim on August 3, 2004, and subsequently ICC filed its Amended Answer to Amended Complaint; Amended Counterclaim on August 23, 2004 in which it denied that it is in default of the loan agreement and raised various defenses to RTFC's claims; and

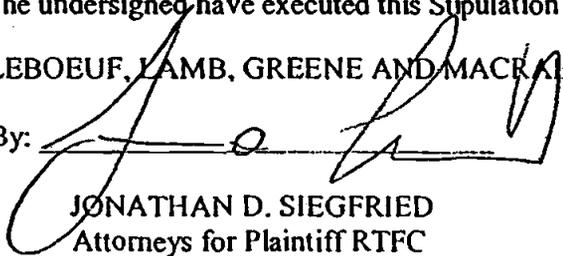
NOW, THEREFORE, the parties stipulate as follows:

1. RTFC hereby agrees to voluntarily dismiss the following alleged defaults with prejudice:



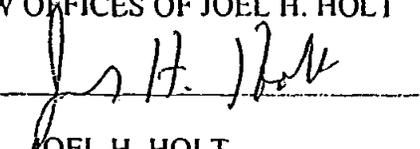
- relating to SMB Boatphone Holdings, Ltd. (Amended Complaint, ¶¶ 65 - 71, 122(i) & (h));
  - relating to ICC's 1998 Preferred Stock Issuance, (Amended Complaint, ¶¶ 72 - 78, 115(f));
  - relating to certain Virgin Islands tax liens filed against Vitelco on April 4, 1992, June 17, 1992 and July 29, 1992, (Amended Complaint, ¶¶ 79 - 87, 115 (g) & (h), 122 (k), but not those claims relating to certain Federal tax liens filed against Vitelco in 2001);
  - relating to Communications Systems and Services Inc. and Executive Security Services Inc., (Amended Complaint, ¶¶ 88 - 98, 115(i), 122 (m) - (p));
  - relating to the dissolution of Pinnacle Limited, (Amended Complaint, ¶¶ 105 - 108, 115 (j), 122(s));
  - relating to the alleged failure to maintain certain liens on pledged collateral, (Amended Complaint, ¶¶ 99 - 104, 122(q), and (r));
  - relating to the liquidation of Martinique Cable Multimedia SARL ("MCM"), (Amended Complaint, ¶¶ 109 - 111, 115 (k), 122 (t)), but not those claims relating to Martinique TV Cable S.A. ("MTVC").
2. RTFC's voluntary dismissal of the defaults listed in paragraph 1 herein with prejudice shall not constitute an admission that it was not entitled to assert said defaults in the Amended Complaint.
  3. By executing this Stipulation, ICC does not waive any arguments, defenses or claims that it has alleged, or may claim to have.
  4. The undersigned have executed this Stipulation as of the date first stated above.

LEBOEUF, LAMB, GREENE AND MACRAE LLP

By: 

JONATHAN D. SIEGFRIED  
Attorneys for Plaintiff RTFC

LAW OFFICES OF JOEL H. HOLT

By: 

JOEL H. HOLT  
Attorneys for Defendant ICC

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

RURAL TELEPHONE FINANCE  
COOPERATIVE,

Plaintiff,

vs.

INNOVATIVE COMMUNICATION  
CORPORATION,

Defendant.

Civ. Action No. 2004-cv-0154

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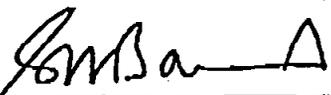
ORDER

This matter is before the Court on the parties' stipulation entered into on September 9, 2005 dismissing certain claims asserted in the Amended Complaint. Upon consideration of the matters before the Court and being otherwise advised of the premises, it is hereby

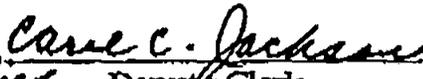
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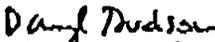
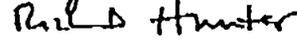
THAT the specific counts in the Amended Complaint referenced in the stipulation are hereby dismissed with prejudice.

Dated: October 21, 2005

  
Magistrate Judge Barnard

ATTEST: WILFREDO MORALES  
Clerk of Court

BY:   
Deputy Clerk

Dist: Joel H. Holt  
Jonathan D. Siegfried  
  
  


# EXHIBIT K



Robert Parrett  
08/23/01 11:52 AM

To: Frank Vaughan/CFC@CFC  
cc:  
Subject: ICC subs

Frank,

Executive Security Services, Inc. is a direct subsidiary of ICC. I left them off of the list because they are not pledged to RTFC.



- imandoc1\_19697\_1.NRL



RTFC 042754

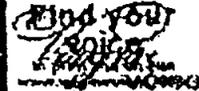
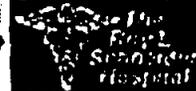
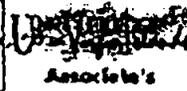
E-2



# EXHIBIT L

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Friday, Jun. 15, 2001

St. Thomas, US Virgin Islands

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- Directories...
- Fun Stuff...

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  - Local Sports
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  - Advertisers
  - Links
- Community
  - People
  - Calendar
  - Organizations
  - Schools
  - Services
  - Data
  - Other stuff
- Commentary
  - Editorial
  - Op-ed
  - Open Forum
- Arts/Entertainment
  - Things to Do
  - Movies
  - Music
  - Showcase
- Lifestyles
  - Advice
  - Health/Fitness
  - Home/Garden
  - Food
  - Religion
  - Other stuff
- Visitor's Center
  - Accommodations
  - Transportation
  - Attractions
  - Dining Out
  - Marine Scene



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## IRS FILES \$1.5 MILLION TAX LIEN AGAINST VITELCO

by Don Krummel

June 14, 2001 - The Internal Revenue Service has filed a tax lien against V.I. Telephone Corp., now Innovative Telephone, seeking \$1,587,930.57 in past-due employee Social Security taxes.

Officials of Innovative Communication Corp., parent company of the former Vitelco, contest the claim. They are steeing with IRS officials over a "fundamental disagreement" as to the amount owed, Innovative spokesman Holland Redfield told the Source on Thursday.

The lien was filed June 7 at the V.I. Recorder of Deeds office. It states that Vitelco owes Social Security taxes in the amount of \$1,526,537.70 from three separate tax periods totaling nine months in 2000, as well as \$1,392.87 in federal unemployment taxes from the tax period ending Dec. 31, 1998.

The figures cited in the lien include penalties and interest on the actual payroll taxes owed.

"We are giving a notice that taxes (including interest and penalties) have been assessed" against Vitelco, the lien states. "We have made a demand for payment of this liability, but it remains unpaid."

According to the lien, if the taxes aren't paid, the IRS could seize property belonging to Vitelco in compensation for the full amount of taxes owed.

"There is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest and costs that may accrue," the lien states.

Redfield said Innovative and the former Vitelco are aware of the lien "at a high management level." He said private taxpayers and businesses often have disagreements with the IRS over the amount of taxes owed.

"Tax liens like this are not uncommon," Redfield said. "The company is sitting down with the IRS and working this issue out."

Although the telephone company is contesting the amount owed in both Social Security and federal unemployment taxes, Redfield would not elaborate on what specifically is in dispute.

"All I know is that there is obviously a fundamental disagreement on what is owed, and there has to be a meeting," he said. "There has to be a process that takes place" to address the discrepancy, "and I don't think it's appropriate for me to discuss

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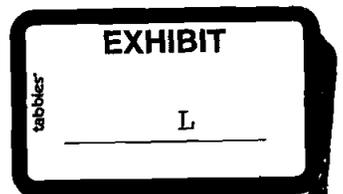
No I'm sorry, sharing my life and is appropriate. No I'm not concerned, responsibility and discipline. No I'm not controlling. No I'm responsible for my bank a very close to. No I'm not much and the much involved a. No I'm mainly for the. I don't know.

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*Actual amount \$1.3mm  
paid to BBK  
up front  
Remainder \$870,000  
will be paid in monthly installments (thru 6/03)  
Will have amount of Redfield's address or phone in instant messages or penalties*

*Want to determine if any been filed, they have filed what it be taken at the LFC, lies any lien filed by the IRS would be subordinate to RTFC's lien.*

RTFC 019818



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that.

The pboard company's non-payment of the taxes has nothing to do with recent layoffs at Innovative St. Thomas-St. John Cable TV's Channel Two and rumors of financial difficulties among other Innovative holdings, Rodfield said.

The non-payment "doesn't reflect the company's ability to pay these taxes; it reflects a fundamental disagreement on them," he said. "It should in no way be interpreted that the company does not have the money to pay the taxes."

Johnay Perez, an IRS revenue officer in San Juan, filed the lien, but he said he could not disclose any information about it. He referred all questions to a "disclosure officer" for the IRS in Washington, D.C.

A list of questions was faxed by the Source to Michelle Lamishaw, a media liaison at IRS headquarters in Washington, D.C. She had not responded as of Thursday evening.

Social Security taxes are broken down into FICA and Medicare payments. Both employers and employees are required to contribute to these taxes, which for the 2000 tax year amounted to 15.3 percent of wages.

Half is paid by the employee and half by the employer, who is responsible for transmitting both halves to the IRS. Social Security taxes are taken out of an employee's check every pay period.

According to a local financial expert, the taxes and penalties the IRS is seeking to collect from the former Video represent roughly \$9.8 million in taxable wages paid to phone company employees during the nine months in 2000.

Innovative Communication Corp. is owned by Jeffrey Prosser. Its holdings include the V.I. Daily News, Innovative St. Thomas-St. John Cable and St. Croix Cable, and Innovative Telephone. Separate from Innovative, Prosser also owns the Virgin Islands Community Bank.

#### IRS FILES \$1.5 MILLION TAX LIEN AGAINST VIELCO

Officials of parent company Innovative Communication Corp., owned by Jeffrey Prosser, dispute the claim, saying there is a "fundamental disagreement" as to whether the telephone company owes that amount in overdue federal Social Security taxes.

Click here for more... 2001-08-13 07:34:40

#### FEDERAL FUNDS MAKE SUMMER SCHOOL A GO

With the end of the school year at hand, the Education Department announced Thursday that there will be summer school to make up instruction lost during the three-week teachers' strike last fall.

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#### ST. CROIX CHAMBER TO PURSUE SENATE LAWSUIT

Despite calls for it to drop its lawsuit against the Legislature, the St. Croix Chamber of Commerce board of directors voted Thursday to press on with its effort to sue the chamber of senators' reelection.

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#### BILL TO GIVE HOSPITALS MORE SAY CLEARS PANEL

A bill approved by the Senate Health and Hospitals Committee would give the territory's hospitals more say in hiring practices and would let them acquire new equipment without having to go through a lengthy bidding process.

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#### FAST FERRY BREAK ON PORT HEAD TAX APPROVED

The V.I. Port Authority board voted to give Boston Harbor Cruisers — and any and all other interisland fast-ferry services — a break on port fees. Another company, Crocker Express, announced plans to begin operations in the fall.

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RTFC 019819

K-2

## INTERNAL MEMORANDUM

TO: Sheldon C. Petersen, CEO

COPIES TO: Executive Team, McDaniel

FROM: Lawrence Zawalick, Administrative Coordinator

SUBJECT: High Risk Borrowers Update

DATE: July 12, 2001

American Digital Switching ("ADS")

ADS shutdown its operations on April 16, 2001 with an outstanding principal balance on its secured RTFC line of credit of \$1,550,000. RTFC's exposure net of patronage capital certificates and the 2001 cash refund is \$1,498,811. The entire amount of the loan was written off as a bad debt in the fiscal year ended May 31, 2001. We are now attempting to recover through a liquidation action.

However, the landlord for ADS' leased office and warehouse space has primed RTFC's lien in accordance with Florida law. RTFC's options are to (a) pay the landlord for back rent (approximately \$9,000 per month since April) plus legal costs and fees, and auction the assets ourselves and receive 100% of the proceeds, or (b) permit the landlord to auction the assets; RTFC will be entitled to any monies the landlord receives in excess of his costs. Discussions with liquidators and telecom asset recovery specialists have solicited no interest in the assets of ADS. The majority of the inventory is raw materials including parts, frames and electronics for Vidar and Centura switches. The book value of the inventory as of April 19, 2001 was \$1,468,782. We have resumed discussions with ADS' customers that have formed a consortium known as the ADS Users Group. The Users Group has agreed to pay the landlord exactly what he is owed in exchange for the entire inventory. RTFC has asked the Users Group to make RTFC an offer for the inventory because we plan to pay the landlord.

Innovative Communications Corporation ("ICC")/Virgin Islands Telephone Corporation ("Vitelco")

On July 2, 2001, RTFC received a letter from ICC requesting a deferral of its principal payments for a 24-month period beginning June 30, 2001 until June 30, 2003.

✓ ICC and its operating LLC subsidiary, Vitelco, have had difficulty making their last two debt service payments (March 31 and June 30). Both companies fully paid the March payment in part by funding an \$8.7 million RTFC-mandated escrow account. The June payment consisted of interest only followed by the above-described request for a deferral of the principal due.

The company has produced audited financial statements for Vitelco, but we have yet to receive audited financial statements for ICC for the second consecutive year. Delays in the audited financial statements are a result of the change in the audit firm, and a relatively late engagement date of the new firm. Grant Thornton was hired to replace Deloitte Touche in November 2000 to prepare an audit report for 1999 and 2000 of an organization with more than 25 subsidiaries, both foreign and domestic.

✓ A study of internally prepared financial statements indicates that the cash flow problems have been spurred by significant capital spending during 2000. While RTFC staff estimates non-acquisition capital spending for the year to have been \$72 million, ICC states the amount was \$53 million (see Attachment 1). Included in the itemization of the company's capital expenditures for 2000 is \$4.5 million in costs relating to plant reconstruction from hurricane damage. Management at the company informed us that it had received over \$12 million in insurance proceeds over the past 12 months yet did not use the funds to repay the \$30 million principal balance of its RTFC storm damage line of credit as required under its loan documents. There is approximately \$18 million in unfunded insurance claims remaining.

ICC and all of its operating subsidiaries carry extensive storm damage insurance and maintenance of storm insurance coverage is a requirement of its RTFC loan documents. In its July 2, 2001 letter, ICC has requested that RTFC allow the coverage on its

PROPRIETARY and CONFIDENTIAL

RTFC 019644

Def-ICC Dep Ex 0149/1

lx-3

Memo To: Sheldon C. Petersen, CEO  
Re: High Risk Borrowers Update  
Page 2

~~Guadeloupe and Martinique CATV properties to be dropped because these locations are below the "hurricane belt". ICC believes that by removing these two islands, it will save \$1.2 million on annual insurance premiums.~~

✓ RTFC has learned that the company is delinquent on its Social Security taxes by \$1.6 million, which represents 3 quarterly payments missed during 2000. (Whether all 2001 IRS payments are current or not is now being investigated by RTFC staff.) We have initiated a search to determine if the IRS has filed a lien against the company and for how much.

✓ ~~The company claims to be realizing significant success from its cost cutting program that was implemented in April of this year which includes an indefinite moratorium on capital expenditures. However, ICC has failed to provide weekly cash flow projections, has reorganized the management of the company again and continues to miss promised delivery dates of the audited financial statements and other items.~~

✓ Unfortunately, ICC seems to be taking an adversarial approach to remedying the differences of opinion that exist between the company and RTFC. This is evident in ICC's request for RTFC Bylaws and listing of current Board of Directors and membership claiming that they plan to solicit the membership for a special meeting. RTFC's response has been to provide the first two items but instead of providing a membership listing, we agreed to distribute to the membership on ICC's behalf whatever materials the company wishes to put before the RTFC membership. The company's current posture appears to be fueled by two misconceptions on the part of ICC: (1) ICC's belief that RTFC has disclosed confidential information regarding the financial position of its organization, and (2) based on ICC's analysis of Madison River Capital LLC's public documents, it has concluded that the Madison River companies enjoy a more favorable relationship with RTFC when making a comparison of the business activities, cash flow, level of debt, and interest rate adders. However, an accurate comparison cannot be made using the information contained in the public filings because the role that RTFC financing has at the Madison River enterprise is not described in detail.

ICC's July 2, 2001 letter contains a lengthy turnaround strategy. ICC's turnaround plan includes applying cash to repay principal during the moratorium period that may be received from (a) the sale of its 727 airplane, (b) unpaid insurance claims, and (c) any equity or debt offerings by its foreign subsidiaries. Additionally, ICC has \$65 million outstanding on two RTFC lines of credit with interest rate adders of 250 basis points that are scheduled to mature on October 31, 2001.

#### Wireless North, LLC ("WN")

In mid-May 2001, following the receipt of a formal default letter, PCS borrower WN made its past due April 30 interest payment to RTFC. Soon thereafter, we agreed to enter into a dialogue with WN, its parent Minnesota PCS ("MN PCS"), and co-secured lender (and part owner) Touch America ("TA") regarding the terms under which RTFC would consent to the sale of WN and MN PCS' licenses and other assets in multiple sale transactions, since no single bidder was interested in the company's entire PCS business. Major issues currently being discussed center around the timing of the multiple sale transactions, whether buyers have been identified for all of the properties, how much of the sale proceeds should be applied to our \$28 million loan (as compared to the \$20 million of TA loans), and whether/how the guarantees supporting 86.3% of our loan need to be amended to further protect our risk/recovery position while the company's assets are sold.

MN PCS currently owns C and F block license spectrum for 13 markets primarily in Minnesota and parts of North Dakota, South Dakota and Wisconsin representing a total potential population (or POPs) of 2.6 million. MN PCS' licenses average 13.5 MHz and 32 POPs per square mile. WN's existing CDMA based PCS network covers 4 of the 13 markets representing 0.4 million POPs and serves 3,500 customers.

The RTFC loan (\$28 million) and TA loans (\$20 million) are secured on a 50-50% basis by all the assets of MN PCS and WN, with the exception of the company's C and F block PCS licenses that are pledged under the FCC loans (\$6.5 million). The RTFC loan is also secured by pledges of 100% of the equity of MN PCS and WN and is further supported by first loss owner guaranties and a second loss, periodic payment vendor guaranty covering \$24.2 million or 86.3% of RTFC's gross loan exposure. These guaranties break down as follows - \$7.4 million from the original telco investors (primarily unsecured), \$9.3 million from Motorola (unsecured), and \$7.4 million from TA (secured by cash collateral). Most of the guaranties are structured such that they cover a percentage of the total outstanding RTFC indebtedness and ratchet down as principal payments are made or assets are voluntarily sold with sales proceeds used to pay down outstanding RTFC debt. Unfortunately, without changes to the affected guaranties, this structure will result in our unguaranteed exposure not reducing while the most saleable collateral is being sold. This could lead to RTFC suffering a loss if the remaining collateral is not of sufficient value to cover the unguaranteed portion of the loan. RTFC's gross

RTFC 019645

Borrower Name: VITELCO  
Borrower ID#: VI501



Officer's Certificate of Compliance Worksheet  
RTFC Long-term Borrower

Unless otherwise specified, all requested information relates to the 12 month period from 1/1/00 to 12/31/00. Please use additional sheets if necessary.

Organization and Operations

- 1. What was your annual TIER? 3.6814  
(Calculated as defined in Loan Agreement - Construction and Definition of Terms)
- 2. What was your annual DSC? 2.9665  
(Calculated as defined in Loan Agreement - Construction and Definition of Terms)
- 3. What is your Net Worth (as a % of total assets)? 32.99%  
(Calculated as defined in Loan Agreement - Construction and Definition of Terms)
- 4. Total long term debt service payments made by the Company for calendar years 1999 and 2000 are as follows:

	1999	2000
Total Principal: (RTFC/RE/RTB and Other)	<u>4,185,426</u>	<u>4,257,632</u>
Total Interest:	<u>6,225,000</u>	<u>4,956,000</u>
Grand Total:	<u>10,410,426</u>	<u>9,213,632</u>

- 5. Income taxes paid for calendar year 2000 totaled 0
- 6. Services (as applicable) have been provided by the Company for calendar years 1999 and 2000 as follows:

	1999	Penetration%	2000	Penetration%
Access Lines:	<u>66,438</u>	<u>n/a</u>	<u>70,062</u>	<u>n/a</u>
Cellular Subscribers:	<u>n/a</u>	<u>%</u>	<u>n/a</u>	<u>%</u>
Basic CATV Subscribers:	<u>n/a</u>	<u>%</u>	<u>n/a</u>	<u>%</u>
Premium CATV Subs:	<u>n/a</u>	<u>%</u>	<u>n/a</u>	<u>%</u>
PCS Subscribers:	<u>n/a</u>	<u>%</u>	<u>n/a</u>	<u>%</u>
Internet Subscribers:	<u>n/a</u>	<u>%</u>	<u>n/a</u>	<u>%</u>

RTFC 025827



K-5

Borrower Name: VITELCO  
Borrower ID#: V1501

7. Have you changed your company name or address?  
 Yes  No If yes, please provide the new name and/or address.

Trade name changed to Vitelco D.B.A.  
Innovative Telephone

8. Have you maintained property and casualty insurance (including fidelity bonds), naming RTFC as co-insured or loss payee?  
 Yes  No If no, please have RTFC named on all such policies as required by your mortgage, and attach proof hereto.

9. Please provide the state in which the Company was organized or incorporated (please note that the state of organization and the state of the principal place of business may not be the same):

Territory of U.S. Virgin Islands

10. Please provide the organizational identification number of the Company, if any (this number is assigned by the state and should appear on the filed copy of your articles of incorporation, articles of organization or certificate of limited partnership):

N/A

11. Have you changed your ownership structure in any manner?  
 Yes  No If yes, please explain.

12. Taxes:

a. Have you paid all federal, state and local taxes, to the extent due?  
 Yes  No If no, please explain.

Vitelco is not current on FICA Taxes

b. Are you currently contesting in good faith any such tax?  
 Yes  No If yes, please explain.

There is a dispute on Amount on FICA Taxes which is on-going

13. Have you acquired or forfeited any franchises, licenses or permits?  
 Yes  No If yes, please explain.



RTFC 025828

Ac-6

# EXHIBIT M

\_\_\_\_\_  
 Matt Springer  
 \_\_\_\_\_

12/23/98 06:32:29 PM  
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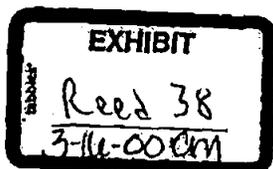
To: Robin Reed/CFC@CFC, Larry Zawalick/CFC@CFC  
 cc:  
 Subject: ICC/ATN Co. Merger

We have reached agreement on all issues related to the ICC/ATN Co. Merger and it should become effective as of today. In a nutshell, ATN Co. will be the surviving entity and ICC will soon be liquidated. All of the EmCom stock will be pledged to us. ATN Co. will be holding a 20 year, \$53.7 million note (6.5% interest rate) from ICC Subsidiary LLC guaranteed by Prosser and a \$20 million note from Prosser. ATN Co. will issue \$53.7 million in preferred stock with an 8.5% dividend (hence, Prosser will get a 2% or \$1 million positive arbitrage).

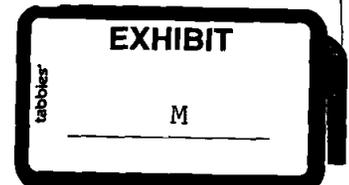
Here's a summary of what we negotiated in:

- 1) The \$73.7 million in notes will be pledged to RTFC (to be papered post-closing).
- 2) Prosser will pledge the preferred stock to RTFC (to be papered post-closing).
- 3) Prosser's personal guaranty will remain in place despite our earlier agreement to release it post-merger. I have agreed in principle with Carl Hartmann to carve out certain personal assets (i.e. home, cars, Virgin Island Bank stock) after we re-paper all of this around March.
- 4) All ATN Co interest rate adders should now be at 150 basis points until the Leverage Ratio < 5.0 and Equity > 20% of total assets (whereupon interest rate adder drops to 100 basis points).
- 5) We have received a new Cahill, Gordon tax opinion that this reorganization/merger doesn't impact their October 1997 tax free spin-off ruling and that all such activity will not result in any taxable gains at any of our borrowing or guaranteeing entities.
- 6) EmCom will provide us with a secured guaranty (to be papered post-closing).
- 7) No changes to the material terms of the preferred stock (i.e. interest rate, redemption rights, voting rights, etc.) may be effectuated without our consent. Additionally, Jeff's personal guaranty to ATN Co. on the ICC Subsidiary LLC note can't be released without our consent (unless the note is paid off).
- 8) No current preferred stock dividends will be paid if not permitted by ATN Co. loan documents (standard dividend test -- 40% Min Net Worth or 25% of Cash Margins if 25% net worth).
- 9) RTFC shall retain 2 seats on ATN Co. & Vitelco Boards.

Tx,  
 Matt



CONFIDENTIAL  
 RTFC5157







RURAL TELEPHONE FINANCE COOPERATIVE  
2201 Cooperative Way - Herndon, Virginia 20171-3025  
703-709-6700

To: Robin Reed, Legal Documents File (VI 801-A-05) ✓  
From: Matt Springer  
Copies: Lawrence Zawalick, Robert Parrett (w/o attachments)  
Re: Documents Related to the Reorganization of ATN Co. and ICC  
Date: January 20, 1999

Attached hereto are certain documents related to Atlantic Tele-Network Co. and Innovative Communication Corporation's recent merger/reorganization which became effective December 23, 1998.

- 1) Side letter agreement executed by Jeffrey J. Prosser whereby: (a) he agrees to pledge his \$20 million personal note and Innovative Communication Subsidiary Company LLC's \$53.7 million note to RTFC as collateral for ATN Co.'s indebtedness to RTFC; (b) his personal guarantee to RTFC will remain in effect; and © EmCom agrees to issue a secured guarantee to RTFC for ATN Co's indebtedness.
- 2) Stock Purchase and Sale Agreement between ICC and IC Subsidiary Company LLC.
- 3) Jeffrey J. Prosser's guarantee to holder of IC Subsidiary Company LLC's \$53.7 million note.
- 4) Reorganization Agreement between ICC and ATN Co.
- 5) Certificate of Designation of Preferences and Rights of Senior Preferred Stock, Series A.
- 6) Certain Consents to Assignment, Cross Receipts, Assumptions, Resolutions, Consents to Dissolution
- 7) ATN Co. Preferred Stock certificate issued to ICC.
- 8) Articles of Organization of IC Subsidiary Company LLC
- 9) Assignment of Right of use of trade name between ICC and IC Subsidiary Company LLC.

RTFC 002456

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- 10) Tax-free reorganization opinion of counsel from Cahill, Gordon dated December 23, 1998.
- 11) Matt Springer's 12/23/98 reorganization memo to Robin Reed and Lawrence Zawalick.
- 12) Pre- and post-merger organization charts.

RTFC 002457

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RURAL TELEPHONE FINANCE COOPERATIVE  
2201 Cooperative Way · Herndon, Virginia 20171-3025  
703-709-6700

March 16, 1999

Carl J. Hartmann, Esq.  
126 Sussex Street  
Jersey City, New Jersey 07302

Kevin A. Rames, Esq.  
Apothecary Hall  
2111 Company Street, Suite 3  
Christiansted, St. Croix  
US Virgin Islands 00820

Dear Carl and Kevin:

Pursuant to our conversations, enclosed please find substantially completed draft documents related to the merger of Atlantic Tele-Network Co. and Innovative Communication Corporation. More specifically, please find the following documents:

- 1) Master Guaranty Agreement;
- 2) Master Modification to Guarantors' Mortgage and Security Agreements;
- 3) Master Assignment of Promissory Notes;
- 4) Master "A" Pledge and Security Agreement (covering ICC's pledge);
- 5) Master "B" Pledge and Security Agreement (covering ICSubsidiary Company's pledge and anticipatory pledge);
- 6) Sample Substitute Promissory Note;
- 7) Sample Secured Guaranty for I-Comm Holdings, Inc. (similar one will be utilized for all new Guarantors);
- 8) Sample Guarantor's Mortgage and Security Agreement for I-Comm Holdings, Inc. (similar one will be utilized for all new Guarantors); and
- 9) A memorandum from Robert Parrett discussing certain post-closing stock pledge clean up issues.

In addition to the above, next week we will send to you draft opinions of counsel, resolutions, certificates of incumbency, stock powers and UCC-1s and UCC-3s as deemed appropriate by RTFC. Further, in the near future, we will prepare an Amended Loan Agreement and a Consolidated Mortgage with New ICC which should be the last step necessary to roll up all of the loan and security documents into New ICC.

Please provide me with your comments as soon as possible, so that we may send out executable documents for filing purposes by the end of next week. I can be reached at (703) 709-6746.

Sincerely,



Matt L. Springer  
Assistant General Counsel

cc: Thomas R. Minnich (w/o enclosures)

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RURAL TELEPHONE FINANCE COOPERATIVE  
2201 Cooperative Way - Herndon, Virginia 20171-3025  
703-709-6700

**MEMORANDUM**

**TO:** Matt L. Springer  
Assistant General Counsel

**FROM:** Robert A. Parrett   
Legal Assistant

**COPIES:** Carl J. Hartmann, Esq.  
Kevin A. Rames, Esq.

**DATE:** March 16, 1999

**RE:** Post-closing actions required to correct or complete the documentation for stock pledged as collateral by ICC and ATN Co.

This memorandum outlines the actions required to complete the documentation of certain stock pledges provided to RTFC as collateral for loans to Innovative Communication Corporation and Atlantic Tele-Network Co.

After Mr. Hartmann and Mr. Rames have reviewed and commented on the draft Master A and Master B Pledge and Security Agreements, RTFC will prepare the final revised pledge documents and/or UCC-1 & UCC-3 forms referred to below for each pledgor. These documents will be sent to Mr. Rames to supervise the execution, filing and return to RTFC.

RTFC will return the original stock certificates to Mr. Rames upon receipt of the replacement certificates identified below.

1. **Innovative Communication Corporation (IC Corporation)**  
VI 801 A-05

IC Corporation executed and delivered an Amended Pledge and Security Agreement, dated September 16, 1998. The pledged collateral includes 5,200 shares of The Daily News Publishing Company, Inc.

RTFC has possession of certificate number 3 of The Daily News Publishing Company, Inc. showing Gannett Co. as the owner of the stock.

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**Action required** - a new certificate needs to be issued showing IC Corporation as the owner of the Daily News Publishing Company, Inc. Certificate number 4 is listed on the stock power that was submitted with the September 16, 1998 pledge agreement.

**2. Innovative Communication Company (IC Company)**

IC Company executed and delivered an Amended Pledge and Security Agreement, dated September 16, 1998. The pledged collateral includes an unspecified number of shares of Emerging Communications, Inc.

Two stock certificates totaling 4,490,926 shares of Emerging Communications, Inc. (Emerging) were delivered to RTFC in conjunction with the A-05 loan. RTFC already held 5,704,231 shares pledged as collateral for the A-01 through A-04 loans. It is unclear whether the approximately 763,977 additional outstanding shares will be pledged or retired.

IC Company has subsequently merged into Innovative Communication Subsidiary Company, L.L.C. (ICSC).

**Action required** - RTFC will prepare a Pledge and Security Agreement, Stock Power and UCC-1 Financing Statements by which ICSC will pledge a total of 10,195,157 shares of Emerging to RTFC. The pledge will reflect the anticipated merger of Emerging into the new Innovative Communication Corporation, which will be a wholly-owned subsidiary of ICSC.

**3. Atlantic Tele-Network Co. (ATN)**  
VI 502 A-05 & A-06

ATN executed and delivered a Second Amended Pledge and Security Agreement, dated September 9, 1998. The pledged collateral includes: (a) 250,000 shares of the Virgin Islands Telephone Corporation; (b) 1,000 shares of Vitelcom Cellular, Inc. d/b/a Vitel Cellular (Vitel Cellular); and (c) 60,000 shares of SMB Holdings, Ltd.

A. RTFC has possession of certificate number 10 of the Virgin Islands Telephone Corporation, showing American Cable & Radio Corporation as the owner of the stock.

**Action required** - a new certificate needs to be issued and a new stock power executed naming IC Corporation as the owner of the Virgin Islands Telephone Corporation. The certificate number that appears on the stock power executed in conjunction with the September 9, 1998 Second Amended Pledge and Security Agreement is # 10.

B. RTFC also has possession of two certificates totaling 1,000 shares of Vitel Cellular. Certificate number 2 lists ATN as the owner of 900 shares of Vitel Cellular. Certificate number 3 shows Comsat Mobile Investments, Inc. as the owner of 100 shares of Vitel Cellular.

**Action required** - a new certificate needs to be issued and a new stock power executed naming IC Corporation as the owner of 1000 shares of Vitel Cellular.

C. ATN pledged 40,000 shares of common stock and 20,000 shares of preferred stock in SMB Holdings, Ltd. RTFC has possession of a replacement certificate that names Boatphone-FCR, Ltd. as the owner of those shares.

**Action required** - a new stock power will need to be executed naming IC Corporation as the owner of SMB Holdings, Ltd. and a UCC-1 Financing Statement will need to be filed to reflect the correct ownership of SMB Holdings, Ltd. A new certificate naming IC Corporation as the owner of the SMB Holdings, Ltd. shares will need to be issued and delivered to RTFC with the new stock power.

Draft

## MASTER GUARANTY AGREEMENT

This Master Guaranty Agreement ("Master Guaranty") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, by: (I) INNOVATIVE COMMUNICATION SUBSIDIARY COMPANY, L.L.C. (successor in interest to, and formerly known as, INNOVATIVE COMMUNICATION COMPANY, L.L.C.), THE DAILY NEWS PUBLISHING COMPANY, INC., CARIBBEAN COMMUNICATIONS CORPORATION (d/b/a St. Thomas-St. John Cable TV), BVI CABLE TV, LTD., ST. MAARTEN CABLE T.V., LTD. (a/k/a Caribbean Televue Services N.V.), and VIRGIN ISLANDS CABLE TV, a limited partnership (d/b/a St. Croix Cable TV) (collectively, hereinafter referred to as the "Existing Guarantors"); (II) JEFFREY J. PROSSER, in his individual capacity (hereinafter referred to as the "Personal Guarantor"); and (III) ATLANTIC AIRCRAFT, INC., I-COM HOLDINGS, INC., ICREAL, INC., VITELCOM CELLULAR, INC., EAST CARIBBEAN CELLULAR, N.V., ST. MARTIN MOBILES, S.A. (collectively, hereinafter referred to as the "New Guarantors") (the Existing Guarantor, Personal Guarantor and New Guarantors collectively hereinafter referred to as the "Guarantors") in favor of RURAL TELEPHONE FINANCE COOPERATIVE, a South Dakota cooperative association ("Lender").

WHEREAS, Lender extended credit to ATLANTIC TELE-NETWORK CO. ("ATN Co.") in the following amounts and pursuant to the following terms (hereinafter, the "ATN Co. Notes"), all of which are subject to the Second Restated Mortgage and Security Agreement dated as of September 9, 1998, as it may have been or may be amended from time to time (hereinafter, the "ATN Co. Mortgage"):

<u>New Loan</u> <u>Designation</u>	<u>Prior Loan</u> <u>Designation</u>	<u>Original Loan</u> <u>Amount</u>	<u>Maturity</u> <u>Date</u>
VI 802-A-01	VI 502-A-01	\$44,444,000	June 30, 2007*
VI 802-A-02	VI 502-A-02	\$18,315,789	December 30, 2012
VI 802-A-06	VI 502-A-03	\$21,052,632	April 15, 2013
VI 802-A-10	VI 502-A-04	\$6,842,105	April 15, 2018
VI 802-A-08	VI 502-A-05	\$32,315,790	September 9, 2013
VI 802-A-11	VI 502-A-06	\$13,684,211	September 9, 2018
VI 802-S-03	VI 502-S-03	\$15,000,000	April 28, 1999

\*Original Maturity Date for VI 802-A-01 (f/k/a VI 502-A-01) was changed by consent of all parties from December 30, 2002 to June 30, 2007.

WHEREAS, Lender extended credit to INNOVATIVE COMMUNICATION CORPORATION ("ICC") in the following amounts and pursuant to the following terms (hereinafter, the "ICC Notes"), all of which are subject to the Restated Mortgage and Security Agreement dated as of September 16, 1998, as it may have been or may be amended from time to time (hereinafter, the "ICC Mortgage"):

<u>New Loan</u> <u>Designation</u>	<u>Prior Loan</u> <u>Designation</u>	<u>Original Loan</u> <u>Amount</u>	<u>Maturity</u> <u>Date</u>
VI 802-A-03	VI 801-A-01	\$18,947,368	December 30, 2012
VI 802-A-04	VI 801-A-02	\$40,000,000	December 30, 2012
VI 802-A-07	VI 801-A-03	\$18,421,053	April 3, 2013

*Draft*

VI 802-A-05	VI 801-A-04	\$21,052,632	December 30, 2012
VI 802-A-09	VI 801-A-05	\$63,157,895	September 16, 2013

**WHEREAS**, ATN Co. acquired all of the assets and assumed all of the liabilities of ICC pursuant to a Reorganization Agreement dated December 23, 1998;

**WHEREAS**, ICC lawfully dissolved as a corporate entity pursuant to a resolution of the sole stockholder thereof made as of December 23, 1998 and submitted to the Office of the Lieutenant Governor of the Virgin Islands on December 30, 1998;

**WHEREAS**, ATN Co. lawfully changed its name to INNOVATIVE COMMUNICATION CORPORATION (hereinafter, "NEW ICC"), pursuant to an amendment to Articles of Incorporation filed with the Office of the Lieutenant Governor of the Virgin Islands on January 29, 1999 and approved by that office by Certificate of Amendment to Articles of Incorporation dated February 9, 1999;

**WHEREAS**, as of March 15, 1999, the aggregate amount of principal outstanding under the ATN Co. Notes and the ICC Notes was \$274,863,657.71 (hereinafter referred to as the "New ICC Existing Indebtedness");

**WHEREAS**, the Existing Guarantors are either direct or indirect owners or subsidiaries of New ICC, have previously guaranteed indebtedness of ATN Co. and/or ICC from Lender (as is evidenced by a Modification to Secured Guarantees dated as of September 16, 1998), and have agreed to guaranty the New ICC Existing Indebtedness and all future indebtedness to New ICC from Lender (hereinafter referred to as the "New ICC Future Indebtedness"), pursuant to the terms and conditions hereunder;

**WHEREAS**, each Existing Guarantor is party to a Secured Guaranty and a Guarantor's Mortgage and Security Agreement and/or a UCC-1 Financing Statement (collectively, hereinafter referred to as a "Guarantor's Mortgage") dated as of December 30, 1997, and a Modification to Secured Guarantees dated as of September 16, 1998, in favor of Lender;

**WHEREAS**, the Personal Guarantor is the indirect owner of all of the outstanding stock of New ICC, has previously guaranteed indebtedness of ICC from Lender (as is evidenced by an Amended Guaranty dated as of September 16, 1998), and has agreed to guaranty the New ICC Existing Indebtedness and New ICC Future Indebtedness, pursuant to the terms and conditions hereunder;

**WHEREAS**, the New Guarantors are either direct or indirect subsidiaries of New ICC, and each has agreed to guaranty the New ICC Existing Indebtedness and the New ICC Future Indebtedness, pursuant to the terms and conditions hereunder; and

**WHEREAS**, to induce Lender: (i) to consent to the Reorganization Agreement, the dissolution of ICC and certain related transactions thereto; (ii) to extend the New ICC Existing Indebtedness and consider certain future indebtedness to New ICC; and (iii) for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged or reaffirmed; each Guarantor hereby unconditionally guarantees, jointly

*Draft*

and severally, the due, timely and full payment by New ICC of all New ICC Existing Indebtedness and New ICC Future Indebtedness.

**NOW THEREFORE**, in consideration of the foregoing, the parties hereby agree as follows:

**Section 1. Reaffirmation of Existing Guarantees.** Except as expressly modified herein, each Existing Guarantor acknowledges that: (i) it shall be jointly and severally liable for the New ICC Existing Indebtedness and the New ICC Future Indebtedness; (ii) the terms and conditions of the Secured Guaranty, Modification to Secured Guarantees, and the Guarantor's Mortgage shall remain in full force and effect; (iii) the Guarantor's Mortgage shall continue to encumber the Mortgaged Property (as that term is defined in the Guarantor's Mortgage); and (iv) from time-to-time, it shall take such further actions, and execute and file such other instruments, deemed reasonably necessary by Lender to reaffirm its obligations hereunder and secure the New ICC Existing Indebtedness and New ICC Future Indebtedness as an Additional Note (as such term is defined under the Guarantor's Mortgage) under the Guarantor's Mortgage.

**Section 2. Reaffirmation of Personal Guaranty.** Except as expressly modified herein, the Personal Guarantor acknowledges that: (i) he shall be jointly and severally liable for the New ICC Existing Indebtedness and the New ICC Future Indebtedness; (ii) the terms and conditions of the Amended Guaranty shall remain in full force and effect; and (iii) from time-to-time, he shall take such further actions, and execute and file such other instruments, deemed reasonably necessary by Lender to reaffirm his obligations hereunder.

**Section 3. Affirmation of New Guarantees.** Each New Guarantor acknowledges that: (i) it shall be jointly and severally liable for the New ICC Existing Indebtedness and the New ICC Future Indebtedness; (ii) it shall enter into a secured guaranty and guarantor's mortgage and security agreement as of even date hereof, in form and content satisfactory to Lender, providing Lender with a first priority lien on substantially all of its assets, revenue and property; and (iii) from time-to-time, it shall take such further actions, and execute and file such other instruments, deemed reasonably necessary by Lender to reaffirm its obligations hereunder.

**Section 4. Cancellation of Future Obligations.** Each of the Guarantors may cancel any and all future liabilities to guarantee the New ICC Future Indebtedness provided that it submits a written request to Lender at least sixty (60) days prior to New ICC incurring any New ICC Future Indebtedness, and such request is accepted by Lender within thirty (30) days of receipt, such acceptance not to be unreasonably withheld by Lender; ~~provided, however,~~ that notwithstanding anything to the contrary, such Guarantor shall continue to be obligated for all of the New ICC Existing Indebtedness and all of the New ICC Future Indebtedness incurred until such time as Lender shall agree to accept Guarantor's cancellation request.

**Section 5. Acceptance by Lender.** By its execution of this Master Guaranty, Lender accepts and approves the reaffirmations and affirmations made by the Guarantors hereunder.

M-12

Draft

**Section 6. Counterparts.** This Master Guaranty may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**Section 7. Successors and Assigns.** This Master Guaranty shall be binding upon and inure to the benefit of the respective successors and assigns of each of the Guarantors and the Lender, provided, however, that no Guarantor shall assign or transfer his or its rights hereunder without the prior written consent of the Lender.

**IN WITNESS WHEREOF,** each Guarantor and Lender have executed this Master Guaranty as of the \_\_\_\_\_, day of \_\_\_\_\_, 199\_\_.

INNOVATIVE COMMUNICATION  
SUBSIDIARY COMPANY, L.L.C.  
(f/k/a INNOVATIVE COMMUNICATION  
COMPANY, L.L.C.)

(SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

THE DAILY NEWS PUBLISHING  
COMPANY, INC.

(SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

CARIBBEAN COMMUNICATIONS  
CORPORATION (d/b/a ST. THOMAS-ST.  
JOHN CABLE TV)

(SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

BVI CABLE TV, LTD.

(SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Draft

(SEAL)

Attest: \_\_\_\_\_

(SEAL)

ST. MAARTEN CABLE T.V., LTD. (a/k/a  
CARIBBEAN TELEVIEW SERVICES N.V.)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

VIRGIN ISLANDS CABLE TV, a limited  
partnership (d/b/a ST. CROIX CABLE TV)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATLANTIC AIRCRAFT, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

I-COM HOLDINGS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ICREAL, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

VITELCOM CELLULAR, INC.

By: \_\_\_\_\_

*Draft*

Attest: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

EAST CARIBBEAN CELLULAR, N.V.

By: \_\_\_\_\_

Title: \_\_\_\_\_

ST. MARTIN MOBILES, S.A.

By: \_\_\_\_\_

Title: \_\_\_\_\_

JEFFREY J. PROSSER

By: \_\_\_\_\_

Title: \_\_\_\_\_

RURAL TELEPHONE FINANCE  
COOPERATIVE

By: \_\_\_\_\_

Title: \_\_\_\_\_

M-15

# EXHIBIT N

## UCC-1 Original Financing Statement

### Borrower Information - DEBTOR

---

Org. is a Co-op?:  Yes  No  
Co-op ID: VI802  
Org. Name: Innovative Communication Corp. f/k/a ATNCO  
Mailing Address: Bjerget House  
PO Box 1730  
Christiansted, St. Croix, VI 00821-1730  
Secured Party: DC700/RTFC  
Debtor Party: VI802  
State of Organization (Debtor):  
Organizational ID #:  
Type of Entity:  
Tax ID #:  
Loan Facility Number: A-12  
Loan Amount: \$51,000,000  
Loan Type: Secured Promissory Note  
Loan Maturity Date: 06/04/2014  
Transmitting Utility:  Yes  No  
Comments:

### Guarantor Information - DEBTOR

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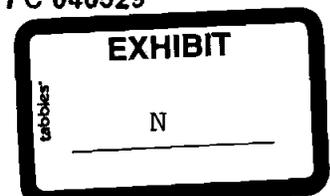
Guaranty?  Yes  No  
Guarantor Co-op ID:  
Guarantor Name:  
Guarantor Address:  
State of Organization:  
Organizational ID #:  
Type of Entity:  
Tax ID #:  
Transmitting Utility?  Yes  No  
Comments:

### Pledgor Information - DEBTOR

---

Pledge?  Yes  No

RTFC 046529



6/29/04)		Administration Records		Publishing Company, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	
14 1746/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records		Caribbean Communications Corporation	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
15 1744/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records		St. Croix Cable TV, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
16 1743/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records		IC Real, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
17 1745/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records		BVI Cable TV, Ltd	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
18 1742/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records		Vitelcom Cellular, N.V.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
19 1741/1999 (Entered 6/29/04)	06/08/2004	Office of Lt. Governor, USVI Administration Records		IC Air, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
20					<input type="radio"/> B <input type="radio"/> G <input type="radio"/> P	

\*Debtor Type: B=Borrower : G=Guarantor : P=Pledgor

Continuation Needed?:  Yes  No

Comments:

RTFC 046531

6/29/04)		Administration Records		Publishing Company, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	
14	1746/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records	Caribbean Communications Corporation	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
15	1744/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records	St. Croix Cable TV, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
16	1743/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records	IC Real, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
17	1743/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records	BVI Cable TV, Ltd	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
18	1742/1999 (Entered 6/29/04)	06/08/1999	Office of Lt. Governor, USVI Administration Records	Vitelcom Cellular, N.Y.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
19	1741/1999 (Entered 6/29/04)	06/08/2004	Office of Lt. Governor, USVI Administration Records	IC Air, Inc.	<input type="radio"/> B <input checked="" type="radio"/> G <input type="radio"/> P	06/08/2004
20					<input type="radio"/> B <input type="radio"/> G <input type="radio"/> P	

\*Debtor Type: B=Borrower : G=Guarantor : P=Pledgor

Continuation Needed?:  Yes  No

Comments:

OFFICE OF THE GOVERNOR  
DIVISION OF  
CORPORATIONS & TRADEMARKS  
ST. CECIL, VI 00823

2004 JUN -8 AM 8:57

**INFORMATION REQUEST**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**A. NAME & PHONE OF CONTACT AT REQUESTOR**

CHRISTINE PAULY, 773-0570

**B. RETURN TO: (Name and Address)**

Virgin Islands Title & Trust Co.  
1138 King Street  
Suite 209  
Christiansted, VI 00820

*Kathleen M. Heney  
Rec'd*

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one Debtor name (1a or 1b)**

**1a. ORGANIZATION'S NAME**

VITELCOMM CELLULAR, INC.

OR

**1b. INDIVIDUAL'S LAST NAME**

**FIRST NAME**

**MIDDLE NAME**

**SUFFIX**

**2. INFORMATION OPTIONS RELATING TO UCC FILINGS AND OTHER NOTICES FILED IN YOUR OFFICE THAT INCLUDE AS A DEBTOR THE DEBTOR NAME INDICATED IN ITEM 1:**

**SEARCH CERTIFICATE** — Please furnish a certificate/report listing ALL (regardless of Debtor's address and Social Security or Tax ID #) presently effective financing statements, related subsequent filings including statements of assignment, and other notices, showing the date and time of filing and the name and address of each Secured Party named therein.

**SEARCH CERTIFICATE and ALL COPIES** — Please furnish search certificate/report (as described in 2a above) and exact copies of each page of ALL financing statements, related subsequent filings including statements of assignment, and other notices, including ALL attachment pages.

**SPECIFIED COPIES ONLY** — Please furnish exact copies of each page of the financing statements, related subsequent filings including statements of assignment, or other notices (including all attachments) that are identified below by document locator number. Certain filing offices require additional identifying information — please complete if required.

Document Locator#	Date Document Filed	Additional Identifying Information (if required)
1742/1999	June 8, 1999 2:40pm	Rural Telephone Finance Cooperative 2301 Cooperative Way, Herndon VA 20171

**SEARCH CERTIFICATE and PARTIAL COPIES (ALL FILINGS—FIRST PAGES ONLY)** — Please furnish search certificate/report (as described in 2a above) and exact copies of the FIRST PAGE ONLY of ALL financing statements, related subsequent filings including statements of assignment, and other notices.

**3. DELIVERY INSTRUCTIONS (request will be filed by mail to address shown in item B unless otherwise instructed here):**

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Specify other desired method here — verify that desired method is available in this state — and include other pertinent delivery information (e.g., courier name, addressee's account number with courier, addressee's telephone number, etc.)

[This area of national form reserved for options available in particular state.]

# EXHIBIT O

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT of 1934

For the fiscal year ended May 31, 2004

or

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT of 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 1-7102

NATIONAL RURAL UTILITIES COOPERATIVE  
FINANCE CORPORATION

(Exact name of registrant as specified in its charter)

DISTRICT OF COLUMBIA

(State or other jurisdiction of incorporation or organization)

52-0891669

(I.R.S. Employer Identification Number)

2201 COOPERATIVE WAY, HERNDON, VA 20171

(Address of principal executive offices)

(Registrant's telecommunications number, including area code, is 703-709-6700)

Securities registered pursuant to Section 12(b) of the Act:

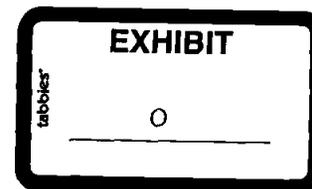
Title of each class	Name of each exchange on which listed	Title of each class	Name of each exchange on which listed
6.375% Collateral Trust Bonds, due 2004	NYSE	6.55% Collateral Trust Bonds, due 2018	NYSE
5.50% Collateral Trust Bonds, due 2005	NYSE	7.35% Collateral Trust Bonds, due 2026	NYSE
6.125% Collateral Trust Bonds, due 2005	NYSE	6.75% Subordinated Notes, due 2043	NYSE
6.65% Collateral Trust Bonds, due 2005	NYSE	6.10% Subordinated Notes, due 2044	NYSE
7.30% Collateral Trust Bonds, due 2006	NYSE	7.625% Quarterly Income Capital Securities, due 2050	NYSE
6.20% Collateral Trust Bonds, due 2008	NYSE	7.40% Quarterly Income Capital Securities, due 2050	NYSE
5.75% Collateral Trust Bonds, due 2008	NYSE		
5.70% Collateral Trust Bonds, due 2010	NYSE		
7.20% Collateral Trust Bonds, due 2015	NYSE		

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained to the best of the registrant's knowledge in definitive proxy or information statements incorporated by reference in Part IV of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes  No .

The Registrant has no stock.



CC 039438

**NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION**  
**NOTES TO CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS — (Continued)**

Based on its analysis, CFC believes that it is adequately reserved for the estimated probable loss on its loan to CoScrv at May 31, 2004.

(d) VarTec Telecom, Inc. ("VarTec") is a telecommunications borrower of CFC located in TX. VarTec provides discount long-distance service throughout the U.S. using a platform commonly known as dial-around service and also offers competitive local exchange carrier ("CLEC") services and other telecommunications products through direct marketing and multilevel marketing. VarTec does not own network assets for the provision of local services, but rather leases network facilities from incumbent, facilities-based, local exchange carriers ("LECs") at wholesale rates. In addition, VarTec also offers other resale services to a lesser degree including wireless, digital subscriber lines ("DSL"), paging and satellite radio.

Currently, there is significant competition in both of VarTec's primary businesses, dial-around long-distance service and as a CLEC. This competition has resulted in a significant reduction to the cashflow generated by VarTec. In addition, on a prospective basis, recent court rulings have given the incumbent LEC network owners more control of the prices they can charge to companies leasing elements of the network, which will most likely result in an increase to the cost of operating as a CLEC that leases network capacity.

VarTec is engaged in binding arbitration with Teleglobe, Inc. ("Teleglobe"), in connection with VarTec's acquisition of Teleglobe subsidiaries. The subsidiary acquisition was financed with approximately \$227 million of unsecured notes issued by VarTec to Teleglobe. Teleglobe contends that VarTec is in payment default with regard to the notes, while VarTec contends that Teleglobe breached its agreement with VarTec and that VarTec has significant offset and recoupment rights relative to the breach. The arbitration is expected to be completed no sooner than late August 2004. The outcome of the arbitration is unknown.

At May 31, 2004, CFC had a total of \$340 million of loans outstanding to VarTec. On May 31, 2004, CFC classified all loans to VarTec as non-performing. CFC's exposure to VarTec is secured under a mortgage on substantially all of its assets. VarTec was current with respect to debt service payments to CFC at May 31, 2004. However, VarTec has informed CFC that it will not be able to meet the principal portion of the debt service payments due on August 31, 2004 and November 30, 2004. Failure to make such payments constitutes an event of default under the credit agreement. CFC believes it is doubtful that VarTec can continue to make regularly scheduled payments of principal as and when due under the existing credit agreement. As of June 1, 2004, CFC has placed the loans to VarTec on non-accrual status with respect to the recognition of interest income. CFC is currently in negotiations with VarTec regarding future payments on the outstanding debt, as well as other terms and conditions of the lending relationship.

At May 31, 2004, CFC believes that it is adequately reserved against its exposure to VarTec.

(e) Innovative Communication Corporation ("ICC") is a diversified telecommunications company headquartered in St. Croix, United States Virgin Islands ("USVI"). In the USVI, through its subsidiaries, ICC provides wire line local and long-distance telephone services. Cable television service is provided to subscribers in the USVI and a number of other islands located in the eastern and southern Caribbean and mainland France. ICC also owns the local newspaper based in St. Thomas, USVI and operates a public access television station that serves the USVI.

As of May 31, 2004, CFC, through RTFC, had \$552.7 million in loans outstanding to ICC. RTFC's collateral for the loans includes (i) a series of mortgages, security agreements, financing statements, pledges and guaranties creating liens in favor of RTFC on substantially all of the assets and voting stock of

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION

NOTES TO CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS — (Continued)

ICC, (ii) a direct pledge of 100% of the voting stock of ICC's USVI local exchange carrier subsidiary, (iii) secured guaranties, mortgages and direct and indirect stock pledges encumbering the assets and ownership interests in substantially all of ICC's other operating subsidiaries, and (iv) a personal guaranty of the loans from ICC's indirect majority shareholder and chairman.

On June 1, 2004, RTFC filed a lawsuit in the Eastern District Court of Virginia against ICC for failure to comply with the terms of the loan agreement. The complaint was amended by RTFC on July 20, 2004 to allege additional loan agreement defaults by ICC and to demand immediate full repayment of ICC's total outstanding debt including all principal, interest and fees. On August 3, 2004, ICC filed its amended answer and counterclaims, in which it denies that it is in default of the loan agreement, and asserts a counterclaim seeking the reformation of the loan agreement to conform to a 1989 settlement agreement among the Virgin Islands Public Services Commission, ICC's predecessor, and RTFC, in a manner that ICC contends would relieve it of some of the defaults alleged in the amended complaint.

 As of May 31, 2004, ICC was current on all its scheduled monthly payments to CFC and all loans are currently on accrual status with respect to the recognition of interest income. RTFC and ICC have agreed that, during the pendency of the litigation, (i) RTFC will bill ICC for regularly scheduled loan payments, calculated at pre-default levels of principal and interest, (ii) ICC may make such payments to RTFC, and (iii) RTFC may accept and apply such payments to the loans, without prejudice to either party's rights, defenses or claims in the pending litigation, under the loan documents or otherwise.

At May 31, 2004, CFC believes that it is adequately reserved for its exposure to ICC.

**(15) Segment Information**

Prior to June 1, 2003, CFC combined operations with RTFC and operated in two business segments — rural electric lending and rural telecommunications lending. Upon adoption of FIN 46(R), as of June 1, 2003, CFC now consolidates NCSC and RTFC and operates in three business segments — rural electric lending, rural telecommunications lending and other lending. The financial information for these segments provides a breakout of the consolidated and combined statements of operations that reflects the full gross margin earned on each segment's loan portfolio and a breakout of the consolidated and combined balance sheets that reflects the total assets in each segment. The electric segment is comprised of loans to electric members and foreclosed assets which were received as a result of the settlement of electric loans. The telecommunications segment is comprised of loans to telecommunications members. The other segment is comprised of the loans to electric consumers, loans to the for-profit subsidiaries of members and other items not included in the electric or telecommunications segments. The cost of funding, derivative cash settlements, derivative forward value and foreign currency adjustments are allocated to each segment based on CFC's current matched funding and risk management practices. Operating expenses are allocated based on the cost reported for each segment. The breakout of loans outstanding represents actual loans outstanding for each segment. The loan loss provision and ending loan loss allowance balance are allocated to each segment based on CFC's loan loss methodology. All other assets except for foreclosed assets are allocated based on total average loan volume. Using the methodology described above, financial information reported for net margin, total assets and loans outstanding for the telecommunications and other segment will not agree with the net margin, total assets and loans outstanding reported for RTFC and NCSC as stand-alone entities. Prior period amounts have not been restated to include the other lending segment.

# EXHIBIT P

GOVERNMENT OF THE VIRGIN ISLANDS  
OF THE  
UNITED STATES

REGULAR BOARD MEETING  
OF THE  
VIRGIN ISLANDS PUBLIC SERVICES COMMISSION

Friday, September 10, 2004  
10:00 a.m. to 1:37 p.m.  
Public Services Commission Conference Room  
Barbel Plaza  
St. Thomas, U.S. Virgin Islands

BOARD MEMBERS PRESENT

VALENCIO JACKSON, CHAIRMAN  
YVETTE CANEGATA-JONES, Member  
VERNE C. DAVID, Member  
DESMOND MAYNARD, ESQ., Member  
SENATOR LUTHER RENEE, Member Ex-Officio  
ALRIC SIMMONDS, Member  
ALECIA M. WELLS, Member

STAFF PRESENT

KEITHLEY R. JOSEPH, Executive Director  
CLAUDIUS MOORE, CFO  
SANDRA SETORIE, Assistant Executive Director  
BOYD SPREHN, ESQ., Board Counsel  
FREDERICK WATTS, ESQ., Board Counsel

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EXHIBIT

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OTHERS PRESENT

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RALPH ALLEN, Steelworkers Union  
 ALBERT BRYAN, Innovative  
 BEVERLY CHONGASING, V.P. Human Resources,  
 Innovative  
 ERIC COWAN, ESQ., Thelen, Reid & Priest, RTFC  
 LANNY DAVIS, ESQ., Borg, Harrington & Sutcliffe,  
 Innovative  
 MICHELLE DOMINIQUE, St. Croix Avis  
 SAM EBBESEN, Senior Vice President, ICC  
 TIM FIELDS, Daily News  
 JADA FINCH-SHEEN, ESQ., Innovative  
 MARIA HODGE, ESQ., Hodge & Francois, Representing  
 Senior Citizen Subscriber  
 FREDERICK JOSEPH, Steelworkers Union  
 SIMONE FRANCIS, ESQ., Ogletree, Deakins & Nash  
 DURILEY HARRIS, Innovative, St. Croix  
 SENATOR LOUIS HILL  
 STEVEN LILLY, Senior Vice President, RTFC  
 JOHN LIST, ESQ., General Counsel, RTFC  
 JENNIFER MATARANGAS-KING, Innovative Telephone  
 DOUG MINSTIER, ESQ., General Counsel, Atlantic  
 Telenetwork  
 SAMUEL OTTLEY, ESQ., for Samuel Ottley, Sr.  
 MEGAN POINSKI, Daily News  
 HENVILLE POLE, Innovative, St. Croix  
 KEVIN RAMES, ESQ., Innovative Telephone  
 HOLLAND REDFIELD, V.P. Corporate Affairs,  
 Innovative  
 CAROL RICH, ESQ., Campbell, Arellano & Rich  
 RICHARD RUBIN, ESQ., Thelen, Reid & Priest, RTFC  
 DAVID SHARP, CEO, Innovative Telephone  
 JONATHAN SIEGFRIED, ESQ., Thelen, Reid & Priest,  
 RTFC  
 SHARON SMALLS, VP Human Resources, Innovative  
 Telephone  
 JOSEPH TIANO, ESQ., Thelen, Reid & Priest, RTFC  
 GREG VOGT, ESQ., Innovative Telephone

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1 Don't let us find out about it after the fact.

2 So, on the face of these defaults, and  
3 given the fact that RTFC no longer had faith in Prosser  
4 or ICC and its credibility, ICC delivered default  
5 notices -- I'm sorry, RTFC delivered default notices to  
6 ICC, accelerated the full amount of their loan, \$600  
7 million, and brought suit in the Eastern District of  
8 Virginia in the rocket docket in order to collect its  
9 \$600 million.

10 Now, it certainly isn't my intention, and  
11 no matter what my abilities, it is well beyond my  
12 abilities in any reasonable amount of time to take you  
13 through each and every default that's alleged in this  
14 complaint. There are, in fact, when you have an  
15 opportunity to review the complaint, I think when I

16 last counted, about 31 separate violations of the loan  
17 agreements.

18 And as my colleague Eric said to you,  
19 there is nothing really for you to do today about that.  
20 We're not asking you to decide the complaint. That's  
21 up for a judge in Virginia. But we thought that the  
22 Commission might be interested in a few examples of the  
23 kinds of defaults that potentially are relevant here.

24 So let me start with one which involves  
25 VITELCO and Belize. We allege in our complaint that

1 from the lender, and as I understand their position  
2 before this Commission, also without any approval or  
3 oversight from you. That they didn't have to come here  
4 and tell you.

5 Now, you'll decide, however, whether they  
6 are right, that you don't have any oversight but they  
7 are free to issue the stock and loan it off-island as  
8 they see fit. But we believe that they are dead wrong  
9 about their rights as to the lender.

10 I could tell you in the 600-million-dollar  
11 loan, one of the fundamental safeguards that a lender  
12 is going to insist upon is that there be checks and  
13 balances, so that the borrower cannot take assets and  
14 do things that impair its collateral. That's just  
15 fundamental.

16 Now, as I said, there are other defaults,  
17 31 more -- or 30 in all. They really all follow a  
18 similar suit -- a similar pattern, and I'm not going to  
19 take you through one by one but they kind of fall into  
20 categories. Same kinds of issues.

21 Assets of one ICC entity are pledged to  
22 third parties to secure loans to other Prosser entities  
23 without our knowledge or consent. So, again, an asset  
24 that we think we have under our loan agreement, they  
25 take. They say, we will pledge it away over here,

1 security interest lapses, there is always the danger  
2 that somebody can intervene, put a security interest in  
3 between yours and when it is renewed, so loan  
4 ~~agreements many times are written quite strictly and~~

5 say we are not going to let you cure that default. And  
6 more importantly, everyone, if they are cured -- and  
7 when I say there are 31 defaults, what I'm saying to  
8 you is this treatment of a loan, this failure to make  
9 sure they are in good shape, that they are preserved,  
10 reflects for us a cavalier disregard of its loan  
11 obligations.

12 So the bottom line here is, instead of a  
13 borrower that scrupulously tries to live up to its loan  
14 obligations and its representations, RFTC has concluded  
15 that ICC is engaged constantly in hiding the ball, of  
16 avoiding its loan obligations, and simply lacks candor,  
17 truthfulness and transparency. And when you have a  
18 600-million-dollar loan, is it too much to ask for  
19 candor, truthfulness, and transparency?

20 Eric mentioned to you on settlement. We  
21 in the rocket docket, December, January, that's it.  
22 The Magistrate Judge in the Eastern District of  
23 Virginia made that fundamentally clear. He said don't  
24 anybody even think of coming back here to ask for an  
25 adjournment, and the only reason I can't tell you

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  - Other stuff



Let's Achieve **EXCELLENCE** Together.

## Phone Company Could Have New Owner in January

by Michelle Dominique and Shaun A. Pennington

Sept. 10, 2004 – The local telephone company could have new owners as early as January if Rural Telephone Financial Cooperative prevails in its suit against Innovative Telephone's parent company Innovative Communication Corp.

"We believe we will be back in January in our new role as the owners of the telephone company," Eric Cowan, RTFC legal counsel, said Friday.

In a hearing before the Public Services Commission Cowan said RTFC was "tired" of ICC's "half-truths" and "after-the-fact" notices of actions ICC had taken and so it had filed suit against the phone company in June.

Specifically at issue was an \$85 million preferred stock issuance that RTFC says violated loan agreements between RTFC and Innovative Communications Corp.

"We are tired of finding out that ICC was taking monies that had been pledged as collateral in violation of the loan agreement," Jonathan Siegfried, another attorney representing RTFC, told PSC members.

Siegfried said ICC had committed 31 violations against its loan agreement with RTFC, a not-for-profit lending institution that provides rural telephone companies with low-interest loans.

"Due to the fact that RTFC has no more faith in Jeff Prosser and ICC," Siegfried said, the institution had no choice but to file the suit.

"We believe that we will prevail in this litigation and become owners of the company," Cowan, said, adding, "We are ready to work with the commission if the courts rule in our favor."

Cowan said if that happened, RTFC would hire utility specialists to

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run the company while it sought a suitable buyer.

Cowan promised the decision wouldn't be long in coming because the suit was filed in a federal District Court in Virginia that is dubbed the "rocket docket," because of the speed at which the court hears and decides cases.

But it wouldn't take a court ruling for RTFC to vote in a new board of directors and take over the company.

Lanny Davis, ICC's attorney, said, "There is a threat of RTFC taking over the company before we have our day in court." Because, as part of the loan agreement RTFC holds 100 percent of the common voting stock of Innovative Telephone, Davis said, "They can do this tomorrow morning."

None of the RTFC representatives disagreed with Davis's statement, nor would they agree not to do it, despite Davis' repeated requests that RTFC commit to not taking over before "we get our day in court."

The hearing, postponed two weeks earlier, was called to address the financial viability of the phone company and to discuss the pending RTFC litigation.

In opening the hearing Frederick Watts, PSC's attorney, said three critical issues could impact the commission's relationship with Innovative Telephone, which it regulates: the RTFC litigation, Innovative's issuance of preferred stock and use of the money derived from the issuance, and the so called "Greenlight" litigation.

### **Issuance of \$85 million in preferred stock brings litigation**

In the RTFC lawsuit filed against Innovative June 1, Rural Telephone said ICC owes it \$600 million. Siegfried said 31 breaches of the loan agreement were RTFC's reason for calling in the entire loan. The breach that appears to have brought on the action, however, was the telephone company's \$85 million preferred stock issuance. To add to RTFC's annoyance Siegfried said \$30 million of the proceeds were loaned by the phone company to another ICC entity that RTFC didn't know about, to purchase a telephone company in Belize.

"This one transaction alone violated a host of ICC's loan agreements," Siegfried said, adding that ICC had a pattern of taking the assets of "one ICC entity, pledged to third parties, to secure loans to other Prosser entities."

ICC was required to notify the RTFC in advance about the sale of stock as part of its loan agreement, Siegfried told the commission. However, it did not do so.

RTFC found out about the preferred stock issuance on May 1 in the "footnote" of ICC's end of year financial statement, and he said, "it was up to us to figure out what it was."

"Without the consent of RTFC or the PSC, they saddled the company with \$85 million stock obligations and transferred \$30 million out of the Virgin Islands, to the government of Belize," Siegfried said.

Cowan said, "there's no guarantee" that the money would come back to the territory either, because it was an unsecured loan.

At issue specifically for the PSC is what the V.I. Code says relative



to the commission's role: "No person or corporation, whether or not organized under the laws of the territory, shall sell, acquire or transfer control, either directly or indirectly, of any public utility organized and doing business in this territory, without first securing authorization from the commission."

But ICC attorney Kevin Rames told the PSC that in his opinion the code did not apply to this situation because Innovative was excused from its obligations under a 1989 agreement signed by Vitelco, RTFC and the PSC.

Rames, who rattled off the legalese of the 1989 agreement, said according to his interpretation the 1989 agreement supercedes the law and therefore the issuing of preferred stock does not require PSC approval.

"The law was not intended for the PSC to intervene every time Innovative transferred one share of stock," Rames said. "That would impede on Innovative's ability to raise capital."

Rames said the issuance of the \$85 million in stock did not initiate a "change of control"; therefore ICC did not believe it was violating the PSC order.

Watts did not agree with Rames' legal interpretation of the 1989 agreement. "No matter what the PSC agreements have said, they can't trump the law of the land," Watts said.

Siegfried said the Belize loan "reflects for us the cavalier disregard for its loan agreement. When you have a \$600 million loan, is it too much to ask for candor, openness and honesty?"

But Davis said ICC did not owe RTFC that much money. "The \$81 million is the real subject of this lawsuit," Davis said, adding that RTFC had seized \$61.6 million in patronage certificates from ICC last week and used it to pay down on the ICC debt, "as is their right," Davis said.

According to Davis, the loan to ICC for its operation in Belize was a short-term loan at 12 percent interest, which comes due at the end of November.

"Not only will that loan be repaid, but it will be repaid early," Davis said.

Davis added that ICC now has permanent financing in place for the Belize telephone company it purchased, so no more of Innovative Telephone's money will be used to fund the Belize purchase.

Davis also said Innovative is "current" on its loan payments to RTFC and that ICC owes it only \$500 million.

Cowan, however, estimates that ICC's overall debt has reached nearly \$1 billion. "That's billion with a 'B,'" Cowan said. "That's a lot of money."

"We have questions about how that can be sustained; that's what we are here to talk about," he said.

Cowan said ICC's debt is:

- \$600 million to RTFC.
- \$200 million to Greenlight.
- \$85 million to preferred stock holders.
- \$65 million to the Department of Agriculture's Rural Utilities Service.

(See: "Suit Seeks More from ICC; Loan Details Made Known".)

Sharp said the stock issuance "has not had any impact on the ratepayers."

Sen. Luther Renee, nonvoting member of the PSC, said it did have an impact on the territory: "You used capital monies that could have been used in the territory for Belize, instead of using it for capital projects" in the Virgin Islands.

Watts reminded Sharp he had told the PSC in the last hearing that Innovative had to seek EDC benefits to be able to accomplish capital improvements.

"Why were you loaning money out to other entities when your company is in need of capital projects?" Watts asked.

Sharp said it was a sound business decision to loan the money, which was borrowed at 10 percent interest, to another ICC company at 12 percent interest. He said it was better than putting it into a bank where it would only earn 1 or 2 percent interest.

### **Greenlight litigation not settled yet**

In May a judgment was rendered in a suit filed against ICC by Greenlight Securities, minority stockholders in ICC's predecessor firm Emerging Communications. In that case in Delaware state court, the judge's decision, which has not yet been converted to a monetary judgment, was that ICC had understated the value of the stock owned by the minority (Greenlight) by tens of millions of dollars. (See: "Prosser Ordered to Pay Millions to Ex-shareholders".)

The estimates of the judgment were between \$100-200 million.

Davis said that ICC and all Greenlight stockholders had signed off on a memorandum of understanding Thursday night. He did not say what the monetary terms of the memorandum were.

Siegfried said the RTFC believes its loan should be paid in full before money was issued to address the Greenlight situation.

"It is our decision to end the relationship we've had with ICC," Siegfried said. "In this case, defaults do matter; the truth does matter. If the RTFC prevails, there will be a new successor to Innovative."

Frederick Joseph, sub-director of the United Steelworkers of America, in attendance at the hearing said, "I want them (RTFC) to take over tomorrow." Joseph's union represents Vitelco employees.

Sen. Louis Hill, who attended the meeting, issued a release Friday afternoon, saying he was "gravely concerned" at the issues raised at the hearing. Hill requested that the PSC "immediately" file an action in court against Innovative Telephone for violating the V.I. Code.

"Additionally, I would like the PSC to conduct an investigation to determine Innovative Telephone's ability to pay \$30 million in dividends to Innovative Communication Corp. in light of the fact that Innovative Telephone is currently requesting EDC benefits to improve their communication's infrastructure," Hill wrote.

### **USF Certification**

The PSC also voted 4-2 Friday to accept the recommendations of its consultant Gregory Mann and approve Innovative Telephone's Universal Services Fund certification plus send a letter to the Federal Communications Commission notifying it of the certification. Innovative receives substantial subsidies from the fund. This is the first time the commission, which is required to sign off on the application, has done anything more than rubberstamp the application, Valencio Jackson, PSC chairman, said at a meeting in August.

PSC Chairman Valencio Jackson, along with Alric Simmonds, Alecia Wells and Yvette Canegata-Jones voted in favor of the motion. Verne David and Desmond Maynard abstained. Jerris Browne was absent.

Attending the hearing Friday were Jackson, Canegata-Jones, David, Maynard, Simmonds, Wells and Renee. Browne and nonvoting member Sen. Shawn-Michael Malone were absent.

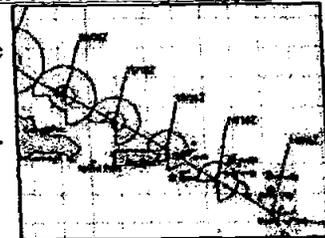
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### **TD 11 Expected to Pass Over V.I. Late Tuesday Night**

Virgin Islands residents should look for showers Tuesday morning, with conditions deteriorating in the afternoon as what is now Tropical Depression 11 moves through the area. Forecasters think it may be Tropical Storm Jeanne by the time it reaches the area.



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### **Scaled Down Primary Cuts Costs in Half**

If your candidate did not win in the primary, look on the bright side, it did not cost that much to elect his opponent.

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### **Halfpenny Bay Not Safe for Recreation Use**

Halfpenny Bay is not safe for swimming or other recreational uses right now. The bay has been placed on the list of recreational beaches that do not meet V.I. beach water-quality standards.

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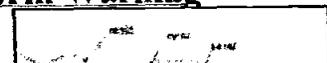
### **High School Students to Mentor Elementary Students**

The U.S Attorney's office will soon resume its Peer Helpers Mentoring and Tutoring Program. The program was initiated to counter violence among youth.

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### **The Virgin Islands Now Under a Storm Warning**

The U.S. Virgin Islands went on a tropical storm warning and the British Virgin Islands on a tropical



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COMMUNICATION TECHNOLOGIES, INC.

## ICC Offer to Settle Refused by Telephone Cooperative

by Molly Morris

Sept. 21, 2004 – The Rural Telephone Finance Cooperative firmly rejected an offer from Innovative Telephone Co. attorneys Tuesday to reach a settlement for millions of dollars for which RTFC says Innovative is in default.

Speaking from his New York office Wednesday, RTFC attorney Jonathan Siegfried said, "A proposal was made by Innovative Telephone that was rejected by RTFC. There are no further negotiations scheduled."

Talks between the attorneys for both companies were held Tuesday in Washington, D.C. Siegfried further said RTFC plans to continue with its current lawsuit against Innovative Telephone's parent company, Innovative Communication Corp.

"We are proceeding full speed ahead with the litigation in the District of Virginia, and we expect to prevail in trial in December or January," he said Wednesday.

The negotiations stem from a lawsuit RTFC filed in federal District Court in Virginia on June 1 claiming that ICC and its subsidiaries had violated a 2001 agreement for a loan of \$163.9 million from the cooperative to ICC, that ICC was therefore in default of the loan and that RTFC was therefore entitled to call in the loan and prior loans. (See "Cooperative Sues ICC and Says It Owes \$530 Million").

The RTFC is a member-owned, not-for-profit, lending cooperative created in 1987 to serve the financial needs of the rural telecommunications industry.

Attorneys for the two entities clashed in a Sept. 10 meeting before the Public Services Commission. As part of its loan agreement, RTFC holds 100 percent of the common voting stock of Innovative Telephone.

Eric Cowan, RTFC legal counsel, told the commission, "We believe we will be back in January in our new role as the owners of the telephone company."

Siegfried said at that meeting, RTFC was "tired" of ICC's "half-truths" and "after-the-fact" notices of actions ICC had taken and so it had filed suit against the phone company in June.

Specifically at issue was an \$85 million preferred stock issuance that RTFC says violated loan agreements between RTFC and Innovative Communications

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Corp. Siegfried said at the meeting that 31 breaches of the loan agreement were RTFC's reason for calling in the entire loan. The breach that appears to have brought on the action, however, was the telephone company's stock issuance. To add to RTFC's annoyance, Siegfried said, \$30 million of the proceeds were loaned by the phone company to another ICC entity that RTFC didn't know about, to purchase a telephone company in Belize.

Lanny Davis, ICC's attorney, said, "There is a threat of RTFC taking over the company before we have our day in court." Davis said, "They can do this tomorrow morning."

The PSC is scheduled to hear further from Innovative and the RTFC in a Sept. 30 meeting in Frederiksted.

**Back Talk**

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*Publisher's note* : Like the St. Croix Source now? Find out how you can love us twice as much -- and show your support for the islands' *free and independent* news voice... [click here](#).

**Castle Burke Woman Missing Since Monday**

Police are looking for a 21-year-old woman who has been missing since Monday. Herminio Velazquez, deputy police chief for St. Croix, said Lorraine Bryan, an Estate Castle Burke resident, was last seen early Monday afternoon in the Sunny Isles Shopping Center and also at a bank near the Seventh Day Adventist Church in Castle Coakley.

Lorraine Bryan.

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**DPNR Says St. Croix Beaches Safe for Swimming**

In the immediate aftermath of Tropical Storm Jeanne most St. Croix beaches tested for water quality were found unsuitable for swimming. A new update by the Department of Planning and Natural Resources Division of Environmental Protection shows all tested beaches are now safe. Four beaches in the St. Thomas-St. John district are still a problem.

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**Senate Committee Axes Taxes, Funds Union Workers**

With fiscal year 2005 drawing near, the Senate Finance Committee in a hearing Wednesday tabled three of Gov. Charles Turnbull's tax proposals in the 2005 budget, reduced several appropriations to fund the \$9 million in pay raises for union workers and effectively disbanded the present Carnival Committee.

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# TELEPHONY ONLINE

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## RTFC IN BATTLE OVER CONTROL OF U.S. VIRGIN ISLANDS TELCO

By Vince Vittore

Telephony, Oct 4, 2004

The Rural Telephony Finance Cooperative, the non-profit lender that specializes in financing for rural telcos, is attempting to take control of one of its customers, according to a lawsuit filed in U.S. district court.

The suit against Innovative Communications Corp. — parent company of Innovative Telephone, the incumbent telco in the U.S. Virgin Islands — alleges that ICC has broken a total of 31 covenants on its loan agreements with RTFC, including failure to pre-pay certain loans. Most egregious is the contention that an ICC affiliate controlled, by ICC CEO Jeff Prosser, issued \$85 million in preferred stock and used \$30 million of the proceeds to purchase a telco in Belize — all without informing RTFC as required by previous loan agreements.

“You can weigh some of the defaults and say some would be more important than others,” said Jonathan Siegfried, a partner with Thelen, Reid & Priest, which is representing RTFC in the case. “When RTFC found out by reading a footnote of an ICC year-end financial that one of [ICC’s] subsidiaries issued preferred stock and doesn’t account for the proceeds — and seems to have used some of the proceeds by lending them to Jeff so he could buy a toy in Belize, we’ve now moved into an unacceptable area.”

RTFC also claims that the company was required to receive permission from the public services commission of the U.S. Virgin Islands before it could acquire the Belize property. As a remedy, RTFC is seeking control of the telco as well as the wireless and cable operations that are under the same corporate umbrella. To do that, though, the company could be forced into bankruptcy.

“The intent is to operate until such time that we can make an appropriate sale to an appropriate buyer,” said Eric Cowan, also a partner at Thelen, Reid & Priest.

ICC officials wouldn’t comment on the lawsuit, citing company policy. However, the company filed a counterclaim last month in the Eastern District Court of Virginia, claiming that it wasn’t required to seek permission from either RTFC or the PSC before making the deal in Belize.

In the case of the PSC, the company believes it was exempt from such regulations because of a 1989 agreement signed by ICC’s predecessor, Virgin Islands Telephone Corp., with the PSC. Additionally, the company states that even if it did violate the terms of its RTFC loans, it has already paid off those obligations as of last January by refinancing its debt with another lender. Furthermore, ICC claims that RTFC has impeded its access to financial markets because of the liens the lender placed against its assets.

However, RTFC believes the matter is more than just about money and goes to the heart of the

relationship between the two companies.

“The crux of it for RTFC is that they see someone who has borrowed \$600 million, who has a series of other obligations out there and they say ‘we don't trust this guy any more,’” Siegfried said. “What [ICC] is really saying is ‘you know we agree that under the loan agreement we screwed up, so please rewrite the contract.’”

Though rare, incumbent carriers have filed for bankruptcy. NTELOS, an ILEC that serves parts of Kentucky, North Carolina, Tennessee, Virginia and West Virginia, filed for Chapter 11 protection last year and emerged six months later. And RTFC is no stranger itself to troubled borrowers.

Last year, National Rural Utilities Cooperative Finance Corp. (CFC), which funds RTFC, forced CoServ, a rural electrical and telecom cooperative, into bankruptcy and took over part of that company's assets. CFC eventually sold off those assets.

RTFC's lawsuit against ICC is expected to be heard in December.

### **RTFC ALLEGATION**

RTFC loans ICC \$169,291,578 in August 2001. ICC has almost \$600 million in debt to RTFC by 2004.

**In February 2004** ICC subsidiary Vitelco issues and sells 85,000 shares of preferred stock for net proceeds of \$81,859,500, violating terms of the loan agreement and regulations of the U.S. Virgin Islands' PUC.

Vitelco, which is controlled by the same management as ICC, then takes some of those proceeds to fund a previously announced acquisition of Belize Telecommunications, the national carrier of Belize.

Source: RTFC filing

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## Caribbean Splash

Matthew Swibel, 11.01.04

### How a Nebraska boy built an island empire with other people's money.

Jeffrey Prosser, owner and head of Innovative Communication, spent his 48th birthday this September in Washington, D.C., working with \$500-an-hour lawyers to stave off a pack of creditors and regulators who are ready to have him tarred and feathered. "Yuck," he says, with an exaggerated shudder. He would have been happier in the U.S. Virgin Islands. That's the base from which he has built a constellation of telephone, newspaper, banking, cellular phone and cable TV assets with cunning, moxie and other people's money. Or in Palm Beach, Fla., where he and second wife, Dawn, regulars on the charity circuit, reside with one of his four children while their \$14 million St. Croix beachfront mansion gets a makeover.

**By the Numbers**

- \$500-an-hour lawyers
- \$14 million St. Croix beachfront mansion
- \$220 million in damages
- \$550 million it lent Innovative
- \$28.5 million loan to Belize Telecommunications
- \$105 million in stock in M...
- \$360 million
- 11.5% return on investment
- 30% of Vitelco's equity

Among Prosser's adversaries are the former minority shareholders of the firm Prosser merged into Innovative. In May a Delaware chancery judge found Prosser personally, and his corporation, liable to them for \$220 million in damages.

A month later the not-for-profit Rural Telecommunications Finance Cooperative of Herndon, Va. accused Innovative of 31 breaches of its lending agreement and filed suit to get the \$550 million it lent Innovative the most it has ever lent one company--repaid at once. In August Virgin Islands regulators questioned whether Innovative's phone company had made an improper \$28.5 million loan to Belize Telecommunications which an affiliate of Innovative acquired for \$105 million in stock in M...

When pressed, Prosser admits he has thought "for more than a moment about losing it all." At a sale of physical assets, say, at bankruptcy, its assets would likely go for an estimated \$360 million. But as of now Prosser is keeping current on all his loan payments and so may be able to hang on to his steeply leveraged empire. "I am waiting to see if any of my four children are interested in coming in the company," he says.

The ruddy-faced 6-foot-3 Prosser grew up in Falls City, Nebr. (pop. 5,000). As a teenager he drove a bulldozer and sold cable for the telephone company where his father worked. In Lincoln he got an accounting degree at the University of Nebraska. He was off to the Caribbean at age 25 on behalf of some Nebraska investors interested in buying an aluminum plant in St. Thomas. The purchase collapsed, but he kept angling for deals there. When he learned ITT was selling its Virgin Islands telephone business, Vitelco, he made an unsolicited \$87 million bid. The telecom giant gave the then 29-year-old the cold shoulder. But six months later, in June 1986, it finally gave in to his persistence. Prosser lined up 105% debt financing from E.F. Hutton & Co. with help from Neil Prior, a telecom banker at now-defunct Kidder, Peabody & Co. F left Kidder and took 30% of Vitelco's equity for himself.

Prior knew a good deal when he saw one. Vitelco faced no competition and was guaranteed an 11.5% return on investment by the Virgin Islands Public Service Commission. Sweetening the deal, the USVI Industrial Development Commission

granted the company an abatement of 90% of income taxes and 100% of gross receipts, property and excise taxes. The new owners refinanced in just one year, replacing the Wall Street loan with a \$104 million loan at a below-market rate from the Rural Telecommunications Finance Cooperative.

In 1991 Prosser and his partners bought 80% of Guyana Telephone & Telegraph for \$25 million. Eleven months later they took Vitelco's holding company public with an offering of 4.4 million shares, 40% of the total, at \$19 per share. That made the then 35-year-old Prosser's stake worth \$63 million. He divorced, remarried and bought a Rolls-Royce.

Prosser's acquisitions and spending style led to a falling-out with the older Prior. They sued each other in 1995. Prosser was facing protests over his use of private jets as well as a shareholder plan to oust him. The putsch failed, but Prosser and Prior agreed in 1996 to split the company in half. Prosser ended up owning 52% of the publicly traded Virgin Islands business, now called Emerging Communications. Prior took the Guyana telecom.

Prosser kept buying. He used a newly formed company named Innovative to acquire four Caribbean cable-TV companies and Gannett's *Virgin Islands Daily News*. Then he moved to consolidate his budding empire, eventually settling on a plan to have Innovative buy out Emerging Communications, ridding himself in the process of minority shareholders.

Innovative paid \$10 a share for Emerging Communications, the telecom finance co-op that Prosser arranged to finance the buyout, determined the shares were worth \$28 each. Nevertheless, Prosser's hand-picked board at Emerging approved the \$10 price. In addition to holding Prosser and Innovative liable for \$220 million, the judge in Delaware held two Emerging board members liable for part of that; one was Prosser's personal attorney from Omaha, who also served as general counsel of Emerging. Prosser considered an appeal but now looks likely to settle for \$100 million. He appears to be chastened by the decision. "The Delaware case made me open my eyes," he says.

Some federal agencies, however, still seem to have their eyes shut. Despite the litigation, last December the U.S. Department of Agriculture's Rural Utilities Service guaranteed a \$64.7 million loan to Innovative from the Treasury's Federal Financing Bank at an annual interest rate of only 1%. (Very few of FFB's 183 other borrowers have gotten more than \$1 million.) The RUS lent another \$1.6 million directly to Innovative at 4.3%. In addition to the subsidized loans, Prosser collects \$1.2 million a month from the Federal Communications-administered Universal Service Fund. This is a subsidy slush fund paid for by a federal phone tax.

With the financing still flowing, Prosser kept on buying. In April the government of Belize gave Innovative permission to buy all the stock of Belize Telecommunications Ltd. from Lord Michael Ashcroft and Carlisle Holdings for \$105 million. "If someone wanted to break free from regulators and creditors, this is a place to consider opening shop," snipes Eric Covatta, outside counsel for the RTFC.

For that deal to go through, Prosser needed cash to pay down Belize Telecommunications' debts to the Belize government. In February Vitelco sold 85,000 shares of preferred stock to unidentified investors for \$82 million. Both the rural telecom cooperative and Virgin Islands regulators allege that Vitelco wrongfully took \$28.5 million of its proceeds and lent it to Belize Telecommunications in March.

Oops. The co-op's loan agreement requires Innovative and its subsidiaries to use any funds from financing activities to pay down the loan from the co-op, at any rate. So says the co-op, at any rate. Prosser argues otherwise. The dispute is tangled up in arcane arguments about subsidiaries and technical defaults. Prosser also says that the Belize transaction is irrelevant because Virgin Islands-based Innovative, which borrowed the RTFC money, didn't acquire it. That was done by a different special-purpose Delaware corporation, also named Innovative.

In an effort to settle, Innovative has twice offered to restructure loan payments. But the co-op is in no mood to cut deals.

Prosser; it wants him removed and wouldn't mind seeing Innovative forced into bankruptcy.

Meanwhile, the Virgin Islands Public Service Commission's rules prohibit Innovative or Vitelco from making any loans to foreign businesses, such as Belize Telecommunications. And the commission's staff is raising a stink about how Innova could claim, in its recent request for an extension of tax breaks, to need more money for capital projects while at the same time shipping \$28 million off to Belize.

"We are looking into whether or not the loan was or wasn't technically in violation of a PSC order from years ago," says Lanny Davis, a Washington, D.C. lawyer speaking for Prosser. (The smooth-talking Davis is best known as spinmeister former President Clinton during the Monica Lewinsky days.)

Meantime, competition from wireless and an upstart Virgin Islands broadband service launched in November could erode Vitelco's customer base and its \$53 million a year in revenue. As a going concern, Innovative's assets might be worth \$1 billion, says Prosser. But in a sale like bankruptcy, physical assets would go for maybe \$360 million. That's only 65% of debt to the rural co-op.

Is Innovative insolvent? "It depends on what your definition of insolvency is," says Davis. Clinton couldn't have said it b

# EXHIBIT Q

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

INNOVATIVE COMMUNICATION )  
CORPORATION and the VIRGIN ISLANDS )  
TELEPHONE COMPANY, )  
) **Plaintiffs,** )  
) vs. )  
) DUDLEY, TOPPER AND FEUERZEIG, LLP, )  
) **Defendant.** )

CIVIL NO. 447/2004

**ACTION FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

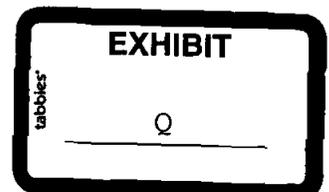
MEMORANDUM

**THIS MATTER** is before the Court on Plaintiffs' Motion for a Temporary Restraining Order seeking to enjoin Defendant, Dudley, Topper and Feuerzeig, LLP ("DTFLLP"), from any further representation of the Rural Telephone Finance Cooperative ("RTFC") involving any matters related to the Virgin Islands Telephone Company ("VITELCO") and Innovative Communication Corporation ("ICC") f/k/a Atlantic Tele-Network Co. ("ATN") and Defendant's Opposition thereto.

A hearing was held on August 23, 2004 on the Motion for Temporary Restraining Order and/or Preliminary Injunction. At said hearing, both Plaintiff and Defendant agreed to consolidate a trial on the merits for both a preliminary injunction and a permanent injunction, to be held on Friday, September 10, 2004. For the following reasons this Court will grant Plaintiff's Motion for Temporary Restraining Order.

**I. STATEMENT OF FACTS**

Dudley, Topper and Feuerzeig ("DTF"), a Virgin Islands general partnership, served as local counsel for VITELCO and ATN with respect to two financings in which the firm



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provided opinion letters to the lenders. The first loan took place in 1987 ("1987 loan") and was from RTFC to both ATN and VITELCO. The second loan took place in 1990 ("1990 loan") and was from Rural Electric Administration ("REA") to VITELCO only.

On December 30, 1987, DTF drafted an opinion letter ("1987 letter") on behalf of VITELCO and ATN. This letter was provided to RTFC, the lender. George Dudley signed the 1987 letter. On January 28, 1988, a second opinion letter was written on behalf of the debtors and sent to RTFC. This letter referenced the 1987 loan and amended the mortgage and security agreement of the 1987 loan to indicate the actual value of the real property securing the debt. Mark Topper signed this second opinion letter. In reference to this second opinion letter, Mark Topper also signed a letter that was sent to Lieutenant Governor Hodge, advising him of the amended valuation of the real property securing the 1987 loan and sending him the resulting difference in recording fees.

In respect to the 1990 loan, Mark Topper signed an opinion letter, dated June 19, 1990, that was drafted on behalf of VITELCO and provided to REA. In addition, on June 20, 1990, Mark Topper signed and sent a letter to Lewis A. Stern, Esq. of Fried, Frank, Harris, Shriver and Jacobson enclosing 39 documents related to the REA loan for the recipient's 'closing binder'. Mark Topper subsequently left DTF in late 1990.

During the period of DTF's representation of VITELCO and ATN, the companies were engaged in litigation with the Virgin Islands Public Services Commission ("PSC"). This matter was eventually resolved and a settlement agreement was reached among VITELCO, ATN, RTFC and PSC in 1989 ("1989 Settlement Agreement"), which resulted in an amendment to the 1987 loan.

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In 2004, RTFC commenced a lawsuit against ICC in the state of Virginia ("Virginia Litigation") arising from an alleged default under a loan agreement dated August 27, 2001, amended by a First Amendment to Loan Agreement dated April 4, 2003 ("2001 loan agreement"). According to the Complaint filed in the Virginia Litigation, the alleged default of the 2001 loan agreement makes due and payable all unpaid principal, all accrued and unpaid interest and all other obligations outstanding on the 2001 loan and 'prior loans' between RTFC and ICC. DTFLLP was retained by RTFC in June 2004 to provide legal services in the Virgin Islands with respect to local Virgin Islands matters arising in connection with ICC's alleged default under the 2001 loan agreement that prompted the Virginia Litigation. On July 28, 2004, George Dudley, of DTFLLP, arranged a meeting between the representatives of RTFC and PSC at the offices of the PSC's attorneys' Watts, Benham & Sprehn, P.C. In attendance were PSC's Chairman (via telephone), the Vice-Chairman and Attorney Boyd Sprehn for the PSC. Representing the RTFC were its Chief Financial Officer, RTFC's in-house general counsel, members of the law firm Thelen Reid & Priest LLP, attorneys of record representing RTFC in the Virginia Litigation, and attorneys for DTFLLP, including George Dudley. The purpose of the meeting was for RTFC to brief PSC on RTFC's commencement of the Virginia Litigation, seeking to collect on debts owed by ICC and its subsidiaries and affiliates in excess of \$550 million and how that litigation might affect VITELCO and the PSC's regulatory authority over VITELCO.

On August 19, 2004, after learning that RTFC had retained DTFLLP to meet with PSC pertaining to the RTFC loans to ICC and VITELCO, Plaintiffs filed the current Motion for Temporary Restraining Order with the Court. Plaintiffs assert that Defendant law firm cannot

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continue to represent RTFC regarding matters in which the defendant previously represented VITELCO and ICC f/k/a ATN. Plaintiffs argue that Defendant's current representation of RTFC is a violation of the applicable ethical standard.

## II. LEGAL STANDARD

FED. R. CIV P. 65(b) provides in pertinent part:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

In order to prevail in an action for injunction, Plaintiffs must demonstrate that: (1) they are likely to succeed on the merits; (2) if relief is not granted, they will experience irreparable harm; (3) granting relief will not cause greater harm to the defendants, DTF; and (4) it is in the public interest to grant injunctive relief. *Everett v. Schneider*, 989 F.Supp. 720, 724 (D.V.I. 1997). See also 11A Wright, Miller and Kane, Federal Practice and Procedure § 2948; *Swartzwelder v. McNeilly*, 297 F.3d 228, 234 (3d Cir. 2002); *AT&T v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426-27; *Gladfelter v. Fairleigh Dickinson Univ.*, 25 V.I. 91, 96 (Terr. Ct. 1990). Such a remedy should only be granted where a movant, by a clear showing, carries the burden of persuasion. *Gladfelter*, 25 V.I. at 95 (citing 11C. Wright & A. Miller, Federal Practice and Procedure § 2948 (1973)). See also *Enterprise Int'l, Inc. v. Corporacion Estatal Perollera Ecuatoriana*, 762 F.2d 464, 472 (5<sup>th</sup> Cir. 1985); *Polaroid Corp. v. Disney*, 862 F.2d 987, 991 (3d Cir. 1988); *ECRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987).

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### III. DISCUSSION

#### A. The Likelihood of Success on the Merits

Plaintiffs have adequately demonstrated that they will likely prevail on the merits. Plaintiffs contend, pursuant to applicable ethical standards, that DTFLLP should be disqualified from representing RTFC involving any matters in which Defendant previously represented VITELCO and ICC.

In this jurisdiction, "disqualification is never automatic". *Brice v. Hess Oil Virgin Islands Corp.*, 769 F. Supp. 193, 195 (D. V.I. 1990) (quoting *U.S. v. Miller*, 624 F.2d 1198, 1201 (3d Cir. 1980)); *VECC, Inc. v. Bank of Nova Scotia*, 222 F. Supp. 2d 717, 720 (D.V.I. 2002); *Gordon v. Bechtel Intl.*, 2001 WL 1727251, \*4 (D.V.I. Dec. 28, 2001). The Court has a certain amount of discretion in regards to disqualification and "...should disqualify an attorney only when it determines, on the facts of the particular case, that disqualification is an appropriate means of enforcing the applicable disciplinary rule". *Brice*, 769 F. Supp. at 195 (quoting *Miller*, 624 F. 2d at 1201); *VECC, Inc.*, 222 F. Supp. 2d at 722.

The applicable ethical standard governing disqualification in this matter lies in the ABA's Model Rules of Professional Conduct ("Model Rules"). In this jurisdiction, the Model Rules have been adopted pursuant to Terr. Ct. R. 303(a) and govern the professional responsibilities of attorneys. See LRCi 83.2(a); see also *Brice*, 769 F. Supp. at 194; *VECC, Inc.*, 222 F. Supp. 2d at 719. Within the Model Rules the Plaintiff's contend that Rule 1.9(a) or 1.10, disqualifies DTFLPP from representing RTFC. The Defendant maintains that the relevant standard is Rule 1.10(b) and under an application of such rule they should not be disqualified. It is not clear from the evidence presented whether the applicable ethical standard is Rule 1.9(a) governing the

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disqualification of an attorney who has himself represented an adverse party, imputed to the attorney's current firm under Rule 1.10(a), or Rule 1.10(b) governing the ability of an attorney's former firm to represent an adverse party.

The District Court of this jurisdiction addresses such a lack of clarity and states "any doubts that the Court may have about the appropriateness of disqualification should be resolved in favor of the movant in order to preserve the confidences of the former client." *Bluebeard's*, 886 F. Supp. at 1210 (citing *INA Underwriters Ins. v. Nalibotsky*, 594 F. Supp. 1199, 1207 (E.D. Pa. 1984)). The Court grounds this statement in its reflection of the prophylactic purposes, which it says "...dispels any inconsistency which may appear in the Court's disqualification of plaintiff's counsel where actual prejudice to defendant's interests may not be readily apparent..." *Id.*

Defendant states that Mark Topper, a former attorney with DTF, was the partner primarily responsible for the legal work performed as local counsel to VITELCO and ATN regarding both the 1987 and 1990 loans. Def. Exhibit 1 ¶ 2, Exhibit 3 ¶ 2 and 3. Plaintiff's Exhibit A presents five documents signed by an attorney at DTF on behalf of VITELCO and ATN. Mark Topper signed four of those five documents. George Dudley signed the other document, the 1987 letter related to the 1987 loan, the only financing involving RTFC with which DTFLLP says the general partnership was involved. Mark Topper states that he was responsible for the preparation of the 1987 letter and George Dudley only signed said letter because of Topper's unavailability. Def. Exhibit 1 ¶ 3. However, George Dudley does not attest to this fact. Def. Exhibit 3. In addition, the three opinion letters signed by an attorney at DTF and sent to lenders on behalf of ATN and VITELCO refer to 'we', presumably the entire firm of

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DTF, as being counsel or special counsel to ATN and VITELCO. Therefore, the Court finds that as the 1987 loan was the only financing involving RTFC, as George Dudley signed the opinion letter, and as it is not clear whether Mark Topper was the primary attorney on the 1987 loan, rule 1.9(a) and 1.10(a) will be the applicable ethical standards under which the Court will examine the merits of this case.

Rule 1.9(a) states specifically:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

The leading case in this jurisdiction interpreting this rule is *Bluebeard's Castle Inc. v. Delmar Marketing, Inc.*, 32 V.I. 205, 886 F. Supp. 1204 (D.V.I. 1995). *Bluebeard's* sets out a two part examination when applying 1.9(a): (1) whether an attorney-client relationship existed between an attorney in DTF and ATN or VITELCO; and (2) whether a substantial relationship exists between that prior representation and DTFLLP's current representation of RTFC. *Id.* at 1207. Within the second part of the examination, the Court in *Bluebeard's* delineates a three prong test to determine the existence of a substantial relationship: (1) the nature and scope of the earlier representation; (2) the nature of the present lawsuit; and (3) the possibility that the client might have disclosed confidences during the earlier representation which could be detrimental and relevant to the present action. The inquiry does not end there as in cases where 'relevant countervailing considerations exist' the Court in *Bluebeard's* employs an additional step in the form of a balancing test to determine the appropriateness of disqualifying an attorney. *Id.* at 1211 (citing *Brice* 769 F. Supp. at 195).

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It is uncontroverted that between 1987 and 1990, an attorney-client relationship existed between DTF and VITELCO and ATN. However, the Defendants deny a substantial relationship between DTF's prior representation of Plaintiffs and DTFLLP's current representation of RTFC.

As described earlier, the scope of DTF's prior representation was to act as local counsel for VITELCO and ATN in connection with loans they obtained from RTFC in 1987 and REA in 1990. In the present lawsuit, based upon the Defendant's own Exhibits, DTFLLP is acting as local counsel to RTFC and providing advice as to Virgin Islands matters arising in connection with ICC's alleged default under the 2001 loan agreement that prompted the Virginia Litigation. The Virginia Litigation Complaint alleges that the ICC is in default of the 2001 loan agreement with RTFC and this triggers default of all other outstanding obligations including 'Prior loans'. Def. Exhibit 2(A) ¶ 13. DTFLLP argues that the 1987 loan may have matured in 2002, or been extended, refinanced or supplanted by other loans between ICC, VITELCO and RTFC in which DTFLLP played no role. However, the Virginia Litigation Complaint alleges that from 1987 up until the 2001 loan agreement, RTFC made 15 separate loans to ICC, of which all 15 are outstanding. *Id.* at ¶ 12, 13. Therefore it is reasonable to conclude that the original 1987 loan, in which DTF assisted VITELCO and ATN, is one of the 15 loans extended by RTFC to the Plaintiffs, is still outstanding and is part of the "Prior Loans" whose default may be triggered as part of the Virginia Litigation.

Defendant also argues, that similar to the Court's findings in the *Brice* case, no substantial relationship exists. This present case is distinguishable from *Brice*. In *Brice*, attorney Rohn, whose disqualification was sought, had previously defended HOVIC, the movant,

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against personal injury cases. *Brice*, 769 F. Supp. at 193. Rohn was now representing the Plaintiff, Brice, in a personal injury case against HOVIC. *Id.* The relationship between the prior and current representation in *Brice* was different from the case at hand as attorney Rohn, in representing Brice, was raising the *same type* of grievance she had defended against; however, she had never actually defended HOVIC against Brice and thus had no prior confidences or secrets of HOVIC related to Brice's action. *Id.* at 196 In this case, George Dudley was not only involved with the 1987 loan and signed the 1987 letter sent to RTFC on behalf of VITELCO and ATN, he is also currently involved in representing RTFC in a matter that may trigger the default of that *same* 1987 loan. Therefore, as the 1987 loan is at issue in DTFLLP's prior and current representations, a substantial relationship exists between these matters.

Upon a finding of a substantial relationship, there is a presumption that the client possibly disclosed confidences during the earlier action, which could be detrimental and relevant to the present action. *Beard's*, 886 F. Supp. at 1207. Such a presumption does not require the movant to show that confidences were actually passed. *Id.* Defendant denies having any confidential information regarding either the 1987 or 1990 loans. They state that they had no 'substantive' communications with anyone in VITELCO or ATN, nor did they negotiate the terms of the loans or prepare the corresponding loan documents. Def. Exhibit 1 ¶ 4. During oral hearings Defendant argued that any information they had regarding the loans was not confidential, but rather a document made available to the public or RTFC. However, the 1987 letter states that DTF 'conferred with officers and agents of ATN and VITELCO'. Pl. Exhibit A. DTF also acted as counsel to Plaintiffs advising them regarding local matters pertaining to loans for three years from 1987 through 1990. Therefore, it is reasonably possible that ATN and VITELCO may have

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revealed detrimental and relevant information to the Defendant and such information might place Plaintiffs at a disadvantage in the Virginia Litigation.

The last part of a Rule 1.9(a) disqualification analysis requires the Court to conduct a balancing test. *Brice* 769 F. Supp. at 195 (citing *In re Corn Derivatives Antitrust Litigation*, 748 F.2d 157 (3d Cir. 1984)). One party's request for disqualification based on its interest in the continued loyalty of its attorney is balanced against the opposing party's interest in retaining its chosen counsel who has familiarity with the factual and legal issues involved, avoiding the time and expense required to familiarize a new attorney with the matter and the policy that attorneys should be free to practice without excessive restrictions. *Id.* While DTFLLP may specialize in local issues pertaining to utilities and financing, they are not the only attorneys in the Virgin Islands who maintain such an expertise. In addition, Defendant, by its own admission, was retained as local counsel by RTFC in June, 2004. Def. Exhibit 3 ¶ 9. As DTFLLP has only represented RTFC for approximately two months, it will not be too expensive or time consuming for a new attorney to familiarize herself with RTFC's legal needs. Lastly, Defendant's worry that by enjoining them from representing RTFC, they will not be able to practice freely as RTFC is the main local financier of utilities. However, RTFC is not Defendant's sole client and DTFLLP is only being enjoined to the extent of representing RTFC regarding matters in which they previously represented VITELCO or ATN. Thus, the Court finds these three factors insufficient to outweigh Plaintiffs' interest in the continued loyalty of DTFLLP and other prophylactic justifications for enforcing the applicable ethical standard.

Rule 1.9(a) governs the disqualification of a single attorney. Such disqualification can only be imputed to the entire firm of DTF if the requirements of Rule 1.10(a) are met. Rule

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1.10(a) states in material part, “[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9...” Comment 2 to the rule explains that the rule is based on the premise that a firm of currently associated lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client. However such a premise doesn’t hold for disqualifications under Rule 1.9(b) and 1.10(b), when attorneys move from one firm to another. George Dudley will likely be disqualified under Rule 1.9(a); therefore, Rule 1.10(a) applies and it is likely that Plaintiffs will be successful on disqualifying the whole firm.

**B. Irreparable Harm**

“Injunction is appropriate only where there exists a threat of irreparable harm such that legal remedies are rendered inadequate.” *Anderson v. Davila*, 37 V.I. 496, 125 F.3d 148 (3d Cir. 1997). Plaintiffs have articulated the irreparable harm they will experience if Defendants are not enjoined from representing RTFC until September 10, 2004, when a consolidated trial is held on the preliminary and permanent injunctions. Plaintiffs argue that an injunction is the only effective method of protecting and preserving whatever remains of the confidential relationship between DTF and the Plaintiffs regarding the 1987 loan transaction and PSC Settlement Agreement. Defendant states that Plaintiffs cannot establish irreparable harm as they have not identified any potentially confidential information possessed by current members of DTFLLP that is material to Defendant’s representation of RTFC. As described earlier in the ‘substantial relationship’ analysis, this Court finds that there is a possibility that ATN and VITELCO might have disclosed confidences during DTF’s representation of the companies, which could be detrimental and relevant to the Virginia Litigation. Therefore, it is clear that the Plaintiffs will

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suffer irreparable harm if DTFLLP continues to give advice to RTFC regarding matters in which DTF previously represented the Plaintiffs.

**C. Greater Harm to Defendant, and Public Interest**

Plaintiffs have shown that an injunction would not cause greater harm to the defendant and that it is in the public interest to grant injunctive relief. As discussed above, the RTFC can find other competent local counsel to represent its interest and such an injunction will not impact RTFC greatly as they only recently retained DTFLLP as their local counsel. DTFLLP also has other clients and their practice is not solely based on their current representation of RTFC. In addition, the public factor weighs in favor of issuing a TRO as the Third Circuit Court of Appeals identifies one of the important prophylactic purposes behind Model Rule 1.9 to be the maintenance of the public confidence in the integrity of the bar. *In re Corn Derivatives Antitrust Litigation*, 748 F.2d at 161.

Having reviewed the record, the parties' submissions and the nature of Plaintiff's claim, it is hereby

**ORDERED** that Plaintiff's Motion for a Temporary Restraining Order is **GRANTED**; and further,

**ORDERED** that Plaintiff's post a security bond, pursuant to Fed. R. Civ. P. 65(c), in the amount of \$50,000

**ORDERED** that upon the consent of the parties, a consolidated trial for a Preliminary and Permanent Injunction is to be held at 10:00 a.m. on Friday, September 10, 2004 in Courtroom No. 203.

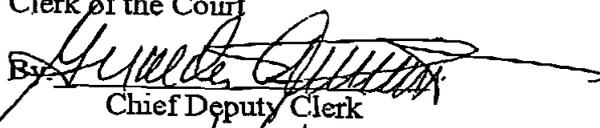
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DONE AND SO ORDERED this 27<sup>th</sup> day of August, 2004.



**DARRYL DEAN DONOHUE**  
**Judge**

**ATTEST:**  
**DENISE D. ABRAMSEN**  
Clerk of the Court

By:   
Chief Deputy Clerk

Dated: 8/27/04

# EXHIBIT R



Bob Geier  
08/18/2004 11:31 AM

To: Steve Slepian/CFC@CFC, Steven Lilly/CFC@CFC  
cc:  
Subject: Timing for 10K filing

EY is pushing for us to file on Friday. If we go past Friday, we will need new rep letters and they will need to update procedures through the new data. Think that we run into issues with staff not being at the office as we move into next week due to vacations that were put off until after our planned 10K filing.

They informed me that the staff will have been through the MDA by end of day on Thursday, but all items will not have been reviewed by manager or partner yet. They have also asked us to provide them with an edgar version of the report on Thursday morning, so that they can perform their final review. Don said this review will take at least a day - based on past performance, probably a little longer, but hopefully two days will be enough.

We can provide them with the edgar version. We are just working on formatting at this point and will send all changes in later tonight.

My only concern is that we would like to have the MDA tie out completed for a couple of reasons, (1) to have double check on our work, (2) any changes found after we file the 10K will have to be discussed and explained in the comfort letter and (3) to get full value for the amount we are paying for the work.

So far they have only found one minor change, but I do not know how much of the MDA has been reviewed. In one of the charts we have a reference related to LT Debt and included the full amount of the foreign currency valuation account. It should only include a portion of the valuation, as some of the valuation is related to MTNs maturing within one year and reclassified to short-term debt. In all other places where we have the total for MTNs outstanding, the footnote is correct with the total foreign currency valuation account.

Don also mentioned that it is very common in their comfort work to have minor changes referenced and that it is not that big a deal (My guess is that is because they can't get their act together at other clients either in order to get all the work done on time). In the past this was never an issue for us because AA was always completed with the 10K tie down before we filed and in the past two years, there has not been anything that they found when they did the tie down and circle up work as part of prep for a comfort letter.

At this point, I would be happy to get it filed and get them out of the building. As we have seen in the past, they will not accept the signature of an employee who has been designated as acting CEO, CFO or controller. So we will run into issue trying to provide them a new rep letter on Monday or Tuesday.

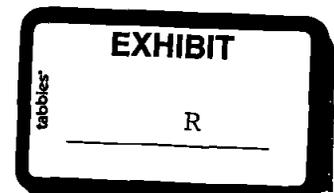
Please let me know if you are in agreement that it is best to get the document filed on Friday regardless of whether they have completed the full tie down.

Today they are doing some more work on ICC. I sat down with Don and Katie and explained why we felt that the two credits were different and to support ICC as high risk and VarTec as impaired. And that the analysis performed on ICC, while similar to the valuation we did for VarTec, was done as additional support for the level of the reserve. We do expect ICC to continue to pay us during the litigation. I think that I satisfied them with the following:

- ICC is a viable business that can be operated in a manner to pay the debt service
- existing management continually is pushing the edge and we have finally decided we have had enough and want to replace management
- while we believe that the company has the ability to pay debt service, the green light litigation and the company's issuance of preferred stock - one of issues in our litigation - has increased the uncertainty related to the credit.
- that while we initially moved the reserve up to \$99 million, we subsequently reduced it to \$92 million based on the analysis and adding the pat cap to that analysis as an offset.



RTFC 106598



Cian has asked us to provide him with what ICC would have been at the minimum- we gave them the calculation - \$87 million.  
So I think that they should be ok with the slight increase due to the increase in uncertainty related to green light and RTFC litigation.

Bob Gaier  
NRUCFC  
Assistant Controller  
Phone: 703-709-6716  
Fax: 703-707-6026 or 703-709-6779  
email: bob.gaier@nrucfc.coop

# EXHIBIT S

NO. 519 F. 15/16  
Robin Chaeck  
# 44



RURAL TELEPHONE FINANCE COOPERATIVE  
2221 Cooperative Way - Henric, Virginia 23171-3025  
783-789-2700

2004-D

August 8, 2003

Joe C. Minor, CFO  
Innovative Communication Corp.  
Phillips Point - East Tower  
777 Flagler Dr., 12<sup>th</sup> Floor  
West Palm Beach, FL 33401  
FAX No. 561-514-0603

Re: Rural Telephone Finance Cooperative ("RTFC") loans to Innovative Communication Corp. ("ICC") under Loan Agreement dated August 27, 2001 as amended ("RTFC Loan Agreement"); Loan No. V802-0015.

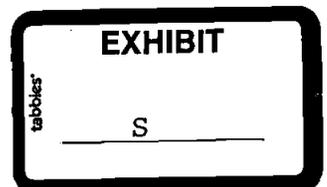
Dear Mr. Minor

We understand that Virgin Islands Telephone Corporation ("VITELCO"), a wholly owned subsidiary of ICC, has applied for secured loans and loan guarantees from the Rural Utilities Service, Rural Telephone Bank and Federal Financing Bank totaling \$161,639,250.00 (collectively "RUS Loans"). Under Section 7.2, Subsections 7.2.3, 7.2.6 and 7.2.7 of the RTFC Loan Agreement, ICC is obligated to obtain the prior written consent of RTFC for any such financing.

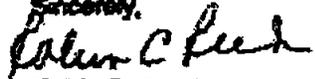
While we reserve our right to analyze the entire transaction, one issue is that RUS loan documents typically restrict dividends paid by RUS borrowers. We are concerned that the flow of dividends from VITELCO to ICC could be restricted to an extent that would impair ICC's ability to make loan payments to RTFC.

So that we may give you our full cooperation in this matter, please forward to me, as soon as possible, a copy of the RUS loan commitment and drafts of any notes, mortgages, loan agreements, guarantees, side letters, appraisals, studies and other documents, agreements, contracts, reports and forms that will evidence and support the RUS Loans. We will also need updated financial statements and projections showing the effects of the RUS Loans.

We understand that the RUS Loans could fund as early as the end of this month. Analyzing and reaching agreement on complex matters such as this can easily take several weeks to complete and we cannot begin our evaluation until we receive the requested materials.



If you have questions please feel free to call me at 703 700-0792.

Sincerely,  
  
Robin C. Reed  
Director, Portfolio Management

cc: Alan D. Superman, Esq.



RURAL TELEPHONE FINANCE COOPERATIVE

## INTERNAL MEMORANDUM

DATE: August 22, 2001

TO: Randy Johnston, Arthur Andersen

COPIES TO: Lilly, Geier, Slepian

FROM: Robin C. Reed, Associate Vice President and Account Manager *rcr*

SUBJECT: Innovative Communication Corporation  
New Facility

- Innovative Communication Corporation's ("ICC") and Virgin Islands Telephone Corporation's ("Vitelco") June 2001 payment consisted of interest only; the \$6.2 million of principal due under ICC's and Vitelco's loans had not been paid as of the date of this memorandum.
- RTFC is proposing to provide financing to ICC to (i) refinance balances outstanding under RTFC revolving lines of credit to ICC, and (ii) fund operations including capital expenditures.
- As consideration for the new loan, RTFC will receive additional collateral consisting of:
  - The stock and assets of ValVision, S.A., a cable television provider with 14,000 subscribers that is valued between \$17 million and \$20 million;
  - The stock and assets of Innovative Long Distance, Inc., an operating long-distance telephone service provider in the early stage of operations;
  - Three new subsidiaries that have been formed to provide long distance services in the future but are not currently operating: East Caribbean Communications (Curacao) N.V., East Caribbean Communications (Bonaire) N.V., and East Caribbean Communications (St. Maarten) N.V.; and
  - The stock of ICC.
- The overall valuation of the collateral pledged in support of the RTFC loans to ICC is estimated to be \$722 million. The company's projected consolidated peak debt balance as a percentage of the value is 79.3%.
- Draws under the loan will be limited to the amount of principal that is due under ICC's and Vitelco's RTFC loans so that RTFC does not experience an increase in its net exposure to the companies.
- RTFC intends to use internal transfers that will be requisitioned and authorized by ICC to pay principal due under the loans instead of wiring funds directly to the organization. This approach has been agreed to by ICC and RTFC to limit capital expenditures and to ensure that RTFC's net exposure to ICC does not exceed the current level.

OWNER FOCUS · EVERYONE'S CONTRIBUTION IS VITAL · INTEGRITY  
RESPECT · TEAMWORK · INNOVATION · QUALITY OF LIFE · PROFESSIONALISM

RTFC 020022

EXHIBIT

tabbles

B

**2004-E**

August 20, 2003

Ms. Robin C. Reed  
Director, Portfolio Management  
Rural Telephone Finance  
Cooperative  
2201 Cooperative Way  
Herndon, Virginia 20171

RE: Virgin Islands Telephone Corporation ("Vitelco")

Dear Robin:

I am in receipt of your letter dated August 8, 2003, concerning Vitelco's pending financing with the Rural Utilities Service, Rural Telephone Bank and the Federal Financing Bank (collectively the "RUS") in an amount slightly exceeding \$161 million (the "Loan"). As you are aware, I am relatively new to Innovative Communication Corporation ("ICC") and have to rely upon others to provide the history of the relationship. As you will recognize as you read this letter, knowledge of the history is imperative.

In your letter you raise several sections of the August 27, 2001 refinancing (subsections of 7.2 thereof) as requiring the Rural Telephone Finance Cooperative ("RTFC") approval of any refinancing by Vitelco. This letter will set forth our position with respect to any RTFC approval; however, first, I would like to review a few facts.

Vitelco is definitely the flagship property of ICC. In that regard, Vitelco:

- Has been handicapped over the last few years because of the inability to invest at levels necessary to provide the level of service that Vitelco's customers are accustomed to and also, to maintain Vitelco's rate base which establishes Vitelco's revenue requirement;
- RTFC has been unwilling to provide any additional funding even if loans for specific purposes were prudent to protect the value of Vitelco;

Ms. Robin C. Reed  
Director, Portfolio Management  
Rural Telephone Finance  
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- RTFC encouraged Vitelco to seek RUS funding;
- The Loan will reduce RTFC's exposure to ICC by an amount exceeding \$70 million;
- The Loan will increase Vitelco's rate base, provide better quality of service to Vitelco's customers, and decrease Vitelco's operating expenses effectively enhancing the value of Vitelco; and
- Additionally, the Loan, viewed over a reasonable period of time, will increase Vitelco's earnings as well as Vitelco's dividend capacity.

All in all, the Loan is the most positive development for Vitelco, Vitelco's customers and for RTFC with respect to its ICC loans that has occurred in a long time. Considering the above, I have been dismayed by RTFC's reaction to the news of the RUS loan approval.

I have been advised by counsel, that RTFC need not approve the Loan to Vitelco if Vitelco completely pays off Vitelco's loans to RTFC. The provisions of the August 27, 2001 refinancing (subsections of 7.2 thereof) requiring the Rural Telephone Finance Cooperative ("RTFC") approval of any refinancing does not explicitly mention Vitelco but instead refers to the term "Subsidiaries". Vitelco is not included within the term Subsidiaries since:

- i. RTFC, Vitelco, Atlantic Tele-Network, Inc. ("ATN"), ICC's predecessor, and the Virgin Islands Public Services Commission (the "PSC") agreed in a document entitled "Settlement Agreement" on October 3, 1989 in paragraph 7, paragraph a, subparagraph 8 (on page 16 of the Settlement Agreement), that ICC would not enter into any loan that would place any restrictions on Vitelco's access to financial markets;
- ii. The foregoing is supported by fact that Vitelco loans were always subject to separate loan agreements and documentation (the only ICC affiliate that was so treated); and
- iii. RTFC's approval was in fact obtained as part of the April 2003 revisions to Vitelco's and ICC's loan agreements.

With respect to point (i) above, any changes to the prospective provisions of Settlement Agreement requires the approval of the PSC. Since no such approval was even sought it is clear that neither party believed that Vitelco was included within the term Subsidiary as defined by the documents reflecting the August 27, 2001 refinancing. With respect to point (iii) above, RTFC was notified of the RUS approval and RTFC is not in a position

Ms. Robin C. Reed  
Director, Portfolio Management  
Rural Telephone Finance  
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to argue that RTFC does not understand the import of the agreement when RUS loans are subject to standard terms and conditions which are well known to RTFC.

Please rests assure, that regardless of Vitelco's legal rights, ICC would not enter into any agreement that would restrict ICC's ability to meet its debt service obligations to RTFC. In fact, the October 3, 1989 Settlement Agreement was entered into by RTFC because it explicitly protected, and continues to protect, Vitelco's dividend paying capacity to RTFC. Not only is there sufficient dividend capacity under the RUS arrangement but the Loan will strengthen Vitelco's cash flow, earnings, and dividend capacity in the near future and clearly enhance Vitelco's cash flow, earnings, and dividend capacity over the term of ICC's loans from RTFC. Without the Loan, Vitelco's cash flow, earnings, and dividend capacity would decrease over the term of the RTFC's loans.

Please do not hesitate to contact me if you have any further concerns at your earliest convenience.

Sincerely yours,

Joe C. Minor

2004-K

Carl Hartmann

---

From: Carl Hartmann [hartmann@carroll.com]  
Sent: Wednesday, December 24, 2003 9:58 AM  
To: Joe Minor; John Raynor; Eling S Joseph (for Jeffrey Prosser)  
Cc: Alan D Sugarman  
Subject: Eric's email

Bottom Line...they give in on the major points, but are being pissy about accepting it.

What they are saying about the releases is that they will deliver them when the SCC's are applied against the Make-Whole -- which will happen on the 31st.

Carl

-----Original Message-----

From: Cowan, Eric [mailto:ecowan@thelenreid.com]  
Sent: Tuesday, December 23, 2003 4:39 PM  
To: hartmann@carroll.com  
Subject: FW:

Carl:

As you know from our call, I read your letter to Robin dated yesterday and was somewhat confused as to what Vitelco is seeking to accomplish. During that call you clarified Vitelco's desires for me and I thought it would be helpful for both of us if I memorialize my understandings.

1. The Secured Loan. Vitelco desires to pay the secured loan in full. Toward that end Vitelco has wired money to RTFC in an amount Vitelco believes is equal to the outstanding principal obligation and sent by FedEx a check in an amount Vitelco believes is in excess of the outstanding interest obligation.

2. The Unsecured Loan. Vitelco desires to pay the unsecured loan in full. Vitelco desires to do so by using SCC amounts it believes due it. To the extent the SCC amount is not sufficient Vitelco desires to use Vitelco's unretired RTFC patronage capital ("Vitelco's Patronage") to make up any shortfall.

3. Vitelco's Patronage. Vitelco seeks the return of all of Vitelco's Patronage remaining after any patronage is used to make up any shortfall as set out in number 2 above.

4. Releases. Vitelco seeks that the releases drafted by you be executed as soon as possible.

I will take each item in turn.

1. The Secured Loan. RTFC will apply the wire against the outstanding principal obligation and the check against the outstanding interest obligation. However, as I told you, Vitelco must satisfy Vitelco's "make whole obligation" before the loan will be paid in full. You then told me that if, after review, you agreed that Vitelco must satisfy this obligation, that Vitelco would request that any available SCC funds be used to do so. I was at that time unable to tell you if RTFC is willing to apply the SCC funds in this manner. I can now confirm that if Vitelco makes a written request to RTFC that

RTFC apply the SCC funds in this manner that RTFC will honor that request.

2. The Unsecured Loan. RTFC will apply those Vitelco SCC funds available to the unsecured loan balance. The amount of the funds available will not be known until the amount of any Vitelco SCC funds applied to the secured loan is determined. To the extent that there is a shortfall RTFC will not apply Vitelco's Patronage to the shortfall.

3. Vitelco's Patronage. Vitelco's Patronage will be treated as all other patronage is treated. RTFC does not return patronage accounts on an accelerated basis at the time a lending relationship no longer exists.

4. Releases. RTFC is reviewing the releases you provided for accuracy and effect. To the extent that there are any issues in the releases we will contact you to resolve them. In any event, the releases as agreed between us will be returned to you in normal course following the full payment by Vitelco of all of Vitelco's obligations in connection with the secured loan.

As we also discussed, I have asked RTFC to calculate all of the balances you requested and to forward them to me to be forwarded to you.

In addition to the issues set out above, your letter contained a number of characterizations and references that I found confusing. If these were substantive in nature and raised issues other than those set out above I would appreciate your sending me a follow up letter setting them out more clearly so that I can understand and react to them.

Finally, the sole purpose of this email is to address those issues set out in it. It does not in any manner or for any purpose constitute a waiver by RTFC of any right, remedy, covenant, term, condition, or other interest of any kind or nature nor is it an acknowledgement or agreement to any other course of conduct by Vitelco or any other party including any agreement between Vitelco and the RUS.

I look forward to hearing from you.

Eric

2004-5

**CARL J. HARTMANN III**  
ATTORNEY-AT-LAW  
126 SUSSEX STREET  
JERSEY CITY, NJ 07302

**CARL J. HARTMANN III**  
ADMITTED: NM AND USVI

EMAIL: HARTMANN@CARROLL.COM  
TELEPHONE: (201) 434-1738  
FAX: (201) 434-3616

11 January, 2004

RTFC  
Attn: Robin Reed  
2201 Cooperative Way  
Herndon, VA 20171

RE: Payoff

Robin:

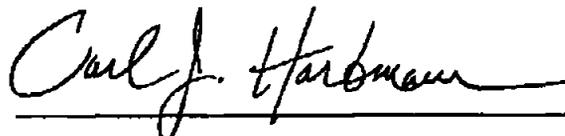
Please find a copy of the verification of the amounts for the payoff as originally executed by Jeff. This replaces the version executed by me when I was unable to reach Jeff to get a copy of the copy he had executed. I apologize, I had understood a document signed by the general counsel would be sufficient as it has been at all times in the past. Again, an original will follow.

I hop that the executed releases will be sent out by Fedex to Kevin as it was agreed would be done last week.

If your legal department has any other issues that I do not know about that will further delay this process, again, please let me know immediately.

Thank you for your attention and assistance.

Sincerely,



Carl J. Hartmann

# EXHIBIT T

1 IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

2 DIVISION OF ST. THOMAS AND ST. JOHN

3

4 \_\_\_\_\_  
RURAL TELEPHONE FINANCE )

5 COOPERATIVE, )

6 Plaintiff, )

7 v. ) Civil Action No.

8 INNOVATIVE COMMUNICATION ) 2004-cv-0154

9 CORPORATION, )

10 Defendant. )

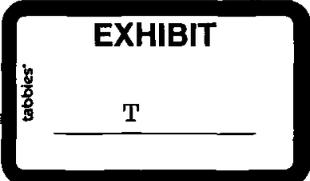
11

12

13 Washington, D.C.

14 Friday, January 13, 2006

15 30(b)(6) deposition of STEVEN LILLY, a  
16 witness herein, called for examination by counsel  
17 for Defendant in the above-entitled matter, pursuant  
18 to notice, the witness being duly sworn by CYNTHIA  
19 R. SIMMONS OTT, a Notary Public in and for the  
20 District of Columbia, taken at the offices of  
21 Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue,  
22 Northwest, Washington, D.C., at 9:24 a.m., Friday,  
23 January 13, 2006, and the proceedings being taken down  
24 by Stenotype by CYNTHIA R. SIMMONS OTT, RMR, CRR, and  
25 transcribed under her direction.



1 National Rural Utilities Corporate Finance  
 2 Corporation.  
 3 Q. So does RTFC have any of its own  
 4 employees?  
 5 A. Yes.  
 6 Q. Distinct from CFC employees?  
 7 A. Yes.  
 8 Q. How many?  
 9 A. One.  
 10 Q. And who's that?  
 11 A. Brad Captan.  
 12 Q. Okay. So all the rest of the RTFC  
 13 employees are also CFC employees?  
 14 A. RTFC does not have any employees.  
 15 Q. So all of the remaining people that do  
 16 work for RTFC are CFC employees?  
 17 MR. KRUSE: Look, Paul, I've got to  
 18 object to this whole line of questioning. It's  
 19 not on the topics designated under the notice,  
 20 nor discussed even with the magistrate judge on  
 21 this.  
 22 MR. RUSKIN: Look --  
 23 MR. KRUSE: I've got to instruct him  
 24 not to answer any more on this line of  
 25 questioning. Let's move on. We'll be here all

1 MR. KRUSE: Well, Paul, let me frame  
 2 the objection. If the witness uses that term  
 3 in his normal course to mean all those entities  
 4 or if he distinguishes among those entities, it  
 5 may be easier for him to understand what you're  
 6 talking about if you specify the entity.  
 7 MR. RUSKIN: Well, look, I'm simply  
 8 asking if we can agree that if I use the phrase  
 9 "ICC entities," he'll understand it to mean the  
 10 definition that's in this notice.  
 11 MR. KRUSE: Paul, let me further  
 12 object that the Defendant in this case does not  
 13 include all those entities, and we've always  
 14 used ICC to mean the Defendant in this case, so  
 15 I don't want there to be a misunderstanding  
 16 because the Defendant is ICC, right?  
 17 MR. HOLT: Layne, in the 30(b)(6) that  
 18 you guys sent, you defined the ICC entities  
 19 identical to how we defined them in this one,  
 20 and the reason why we do that is so when we ask  
 21 Mr. Lilly a question, does the RTFC have any  
 22 agreement with Greenlight involving the ICC  
 23 entities, we don't have to ask that question as  
 24 to ATN Co., as to old ICC.  
 25 We don't have to ask the same question

1 day.  
 2 MR. RUSKIN: Okay. We'll ask each  
 3 question three or four times if it requires  
 4 that.  
 5 BY MR. RUSKIN:  
 6 Q. All right. In the second definition,  
 7 B, do you understand that the definition of ICC  
 8 entities refers collectively and individually  
 9 to Atlantic Telenetwork Company; Emerging  
 10 Communications; Innovative Communication  
 11 Corporation, LLC; Innovative Communication  
 12 Corporation, old ICC, now dissolved; Innovative  
 13 Communication Corporation, formerly known as  
 14 ATN Co., and Vitelco, as well as their  
 15 officers, shareholders, and directors,  
 16 including Jeffrey Prosser, do you understand  
 17 that?  
 18 MR. KRUSE: Paul, are you asking him,  
 19 if you use the term "ICC," you want him to  
 20 understand that it's every one of these  
 21 entities?  
 22 BY MR. RUSKIN:  
 23 Q. If I ask a question about the ICC  
 24 entities, will you understand, and do we agree  
 25 that I'm referring to all of those entities?

1 10 different times. We're just trying to get a  
 2 definition thing down so it moves faster,  
 3 instead of repeating the question 25 times.  
 4 It's the same definition that you used. It's  
 5 not trying to trick Mr. Lilly. It's not trying  
 6 to do anything other than move the deposition  
 7 along.  
 8 MR. KRUSE: Well, if Mr. Lilly  
 9 understands these entities here, and I think  
 10 maybe it may depend on the type of question  
 11 that you're asking, then Mr. Lilly can  
 12 certainly, if he understands it, he can answer  
 13 the question accordingly.  
 14 BY MR. RUSKIN:  
 15 Q. Mr. Lilly, do you understand these  
 16 definitions?  
 17 A. I understand these definitions.  
 18 Q. And with regard to the definition  
 19 section C, do you understand if I make a  
 20 reference to Greenlight, I'm referring to  
 21 Greenlight Capital LP, Greenlight Capital  
 22 Qualified LP, Greenlight Offshore LTD,  
 23 individually and collectively, do you  
 24 understand that?  
 25 MR. KRUSE: Well, let me object here.