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10 November 2009

**BY ELECTRONIC MAIL**

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*Re: Change of Control Proceeding for Virgin Islands Telephone Company d/b/a Innovative Telephone, Caribbean Communications Corp. d/b/a Innovative Cable TV St. Thomas-St. John, and St. Croix Cable TV, Inc., d/b/a Innovative Cable TV St. Croix, Docket 582*

Dear Attorney Belfon:

Through its counsel, National Rural Utilities Cooperative Finance Corporation (“CFC”), the transferee and purchaser in the above-captioned proceeding, asks the Public Services Commission (“PSC”) to strike from the record and disregard as irrelevant, untimely, and untrue the allegations made by Mr. Jeffrey Prosser, the former indirect owner of debtor Innovative Communication Corporation (“New ICC”).<sup>1</sup> In the alternative, CFC asks that the PSC accept for filing only those exhibits to Mr. Prosser’s filing that are already publicly available.

Throughout the bankruptcies of New ICC, its former parent companies, and Mr. Prosser himself, Mr. Prosser (directly and through third parties) has leveled allegations substantially the same as those contained in the Prosser Letter. These allegations, however, have been consistently and repeatedly rejected by the courts over the years. In fact, Mr. Prosser granted contractual releases of claims based on these allegations to New ICC’s creditors (principally CFC’s affiliate Rural Telephone Finance Cooperative (“RTFC”)), to the officers and directors of CFC and RTFC, and to Mr. Stan Springel as the Chapter 11 Trustee for the bankruptcy estates of New ICC and its former parent companies.

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<sup>1</sup> Letter from Jeffrey J. Prosser to Chairman Joseph Boschulte, Virgin Islands Public Services Commission (Nov. 5, 2009) (“Prosser Letter”).

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Mr. Prosser has not, however, previously appeared in *this* proceeding despite having had ample opportunity to do so. Instead, he waited for the conclusion of the public hearings you conducted, and more than two months after the public comment deadline you established, to pursue belatedly the same sort of action as he has attempted elsewhere. CFC urges you and the PSC to reject swiftly Mr. Prosser's belated effort to cause delay and sow confusion with recycled and untrue allegations. Any delay to deal with these procedurally infirm and untrue allegations will only work to the further detriment of Virgin Islanders.

This transaction review is not about Mr. Prosser, his tenure at New ICC, or his historical disputes with RTFC and CFC.<sup>2</sup> Rather, the scope of this proceeding has been carefully defined in the Scope and Scheduling Order.<sup>3</sup> Mr. Prosser, however, does not address the issues set forth in that order or in the underlying laws. Instead, his allegations pertain mostly to the period before New ICC's default on RTFC's loans in 2004—long before New ICC entered bankruptcy in September 2007 and long before Mr. Prosser lost his interests in New ICC and associated companies as a consequence of New ICC's loan defaults and the ensuing bankruptcies of New ICC, its parent companies, and Mr. Prosser himself. Moreover, Mr. Prosser's allegations have consistently been rejected by a variety of courts and other tribunals—and conclusively resolved through releases and non-disparagement agreements signed by Mr. Prosser himself and validated in various court opinions and proceedings. These allegations, in other words, are completely irrelevant to the transaction and constitute an abuse of the PSC's transaction review and hearing process and a waste of the PSC's resources.

As it has demonstrated throughout these proceedings, CFC seeks to rehabilitate Vitelco and the cable companies by enabling long-overdue investment necessary to improve services for Virgin Islanders. As New ICC's principal source of funding and secured creditor, RTFC had for years worked assiduously with New ICC to reschedule its debt and arrange other relief, but New ICC nevertheless defaulted on its loans in 2004. Following the default, RTFC sued, just as any creditor would have.<sup>4</sup> Mr. Prosser responded to RTFC's suit with lawsuits of his own in which

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<sup>2</sup> The underlying applications mention Mr. Prosser only in passing. *See Change of Control Proceeding for Virgin Islands Telephone Company d/b/a Innovative Telephone, Caribbean Communications Corp. d/b/a/ Innovative Cable TV St. Thomas-St. John, and St. Croix Cable TV, Inc., d/b/a Innovative Cable TV St. Croix*, Consolidated Application for Consent to Transfer Control of a Public Utility and Two Cable Television Franchise at 9 (filed May 19, 2009).

<sup>3</sup> *Change of Control Proceeding for Virgin Islands Telephone Company d/b/a Innovative Telephone, Caribbean Communications Corp. d/b/a/ Innovative Cable TV St. Thomas-St. John, and St. Croix Cable TV, Inc., d/b/a Innovative Cable TV St. Croix*, Order Setting Issues for Resolution and Proceeding Schedule, PSC Docket No. 582 (rel. Aug. 18, 2009).

<sup>4</sup> A federal district court awarded RTFC a \$524 million judgment against New ICC, with Mr. Prosser personally liable for up to \$100 million of that judgment. *RTFC v. ICC and RTFC v.*

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he made allegations substantially similar to those contained in his late-filed letter.<sup>5</sup> At Mr. Prosser's request, a federal district court dismissed these claims with prejudice,<sup>6</sup> and he executed a contract in which he agreed to release CFC, RTFC, and their officers and directors from claims related to those allegations.<sup>7</sup>

After signing those agreements, Messrs. Prosser and Raynor proceeded to re-raise their allegations in bankruptcy court,<sup>8</sup> a U.S. district court,<sup>9</sup> again in bankruptcy court,<sup>10</sup> yet again in

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*Jeffrey Prosser*, Case Nos. 2004-CV-154 and 2004-CV-155 (D.V.I., entered June 9, 2006) (entering judgment in favor of RTFC).

- <sup>5</sup> See, e.g., Counterclaim of J. Prosser, *Rural Telephone Finance Cooperative, et al. v. Jeffrey J. Prosser, John P. Raynor, et al.*, Case No. 2004-CV-132 (D. V.I., filed Feb. 3, 2005); Second Supplemental Counterclaim of New ICC, *Rural Telephone Finance Cooperative v. Innovative Communication Corp.*, Case No. 2004-CV-154 (D. V.I., filed Oct. 4, 2004); Amended Complaint, *Innovative Communication Corp. v. Rural Telephone Finance Cooperative*, Case No. 2005-CV-168 (D. V.I., filed Nov. 11, 2005); Amended Complaint, *Virgin Islands Telephone Corporation & Innovative Communication Corp. v. National Rural Utilities Cooperative Finance Corp. & Rural Telephone Finance Cooperative et al.*, Case No. 2006-CV-018 (D. V.I., filed Feb. 23, 2006).
- <sup>6</sup> Order of Dismissal, Case No. 2004-CV-132 (D. V.I., entered June 12, 2006); Order of Dismissal, Case No. 2004-CV-154 (D. V.I., entered June 8, 2006); Order of Dismissal, Case No. 2005-CV-168 (D. V.I., entered June 8, 2006); Order of Dismissal, Case No. 2006-CV-018 (D. V.I., entered June 9, 2006).
- <sup>7</sup> Release in Full, § 1.17 (executed in multiple parts May 2006) (listing litigation released among the parties).
- <sup>8</sup> See Order Granting RTFC's Motion for Protective Order, Case No. 06-30008 (JKF), at 19 (Bankr. V.I., entered Jan. 18, 2007) (forbidding Mr. Prosser from initiating further discovery with respect to these allegations).
- <sup>9</sup> Complaint, *Jeffrey J. Prosser & John P. Raynor v. National. Rural Utilities Cooperative. Finance Corp., Fed. Agricultural Mortgage Corp. & United States Dept. of Agriculture*, Civil Action No. 08-0687 (JR) (D. D.C., filed April 22, 2008); Order Granting CFC's Motion to Dismiss, Civil Action No. 08-0687 (JR) (D. D.C., entered May 30, 2008); Memorandum Opinion and Order Dismissing Civil Action, Civil Action No. 08-0687 (JR) (D. D.C., entered Jan. 14, 2009).
- <sup>10</sup> See Statements of Judge Judith K. Fitzgerald, Transcript of July 23, 2008 Hearing, Case No. 06-30008 (JKF) and Adv. Proc. No. 07-03010 (JKF), at 30:16-31:8, 31:13-31:20, 33:6-33:10, 34:2-34:11, 35:20-35:24, 37:25-38:6, 43:22-44:2 (Bankr. V.I., entered July 30, 2008); Order on Motion of Rural Telephone Finance Cooperative's Motion for Sanctions, Attorneys' Fees, and Other Appropriate [sic], Case No. 06-30009 (JKF) (Bankr. V.I., entered July 29, 2008).

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bankruptcy court,<sup>11</sup> once again in another district court,<sup>12</sup> and now here. Every tribunal that has considered these claims has rejected them.<sup>13</sup>

Having already dealt successfully and at length with the allegations of Mr. Prosser in each of these proceedings and venues, CFC does not believe it necessary to provide a lengthy rebuttal of them here. CFC would, of course, be pleased to provide you and the PSC with any of the materials cited herein (or any additional supporting documentation) that you or the PSC may require.

Mr. Prosser also uses his letter to raise matters currently pending in ongoing litigation, in which Mr. Prosser sued the PSC's former Hearing Examiner David M. Nissman and CFC.<sup>14</sup> Rather than squander its resources by addressing yet another round of misplaced allegations, the PSC should allow the relevant tribunals to address Mr. Prosser's claims.<sup>15</sup> As in prior proceedings, CFC is confident Mr. Prosser's allegations will again be rejected.

For all of these reasons, the PSC should disregard Mr. Prosser's filing and strike it from the record. If you or the PSC is concerned about ensuring a full record, administrative notice

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<sup>11</sup> See Order of Court Striking Response from Docket, Case No. 06-30009 (JKF) (Bankr. V.I., entered Sept. 8, 2008) (striking a motion filed by Mr. Raynor entitled "Resistance to Fulbright Jawaroski's [sic] Virulent Character Assassination in the Motion in Limine" as being "improvidently filed").

<sup>12</sup> See Amended Complaint, *Jeffrey J. Prosser & John Raynor, et al. v. National Rural Utilities Cooperative Finance Corp. & Rural Telephone Finance Cooperative, et al.*, Civil No. 2008-107 (D. V.I., filed Feb. 9, 2009).

<sup>13</sup> While the federal district court presiding over Messrs. Prosser and Raynor's latest attempt to raise these allegations has not yet issued its ruling on CFC and RTFC's motion to dismiss that case, on September 30, 2009, it dismissed two of the defendants and indicated that its ruling on CFC and RTFC's motion is forthcoming. See Memorandum Opinion and Order, Civil No. 2008-107 (D. V.I., entered Sept. 30, 2009).

<sup>14</sup> See Amended Complaint, *Jeffrey J. Prosser & John Raynor, et al. v. National Rural Utilities Cooperative Finance Corp. & Rural Telephone Finance Cooperative, et al.*, Civil No. 2008-107 (D. V.I., filed Feb. 9, 2009); Verified Complaint, *Jeffrey J. Prosser v. David Marshall Nissman*, Case No. SX-09 CV-509 (D. V.I., filed Oct. 29, 2009).

<sup>15</sup> CFC, RTFC and others burdened by Mr. Prosser's tactics have filed suit in the United States District Court for the District of Delaware to obtain relief from Mr. Prosser's vexatious and abusive litigation of claims that are released and otherwise barred. *National Rural Utilities Cooperative Finance Corporation & Rural Telephone Finance Cooperative et al. v. Jeffrey Prosser et al.*, Civil No. 09-111 (D. Del. filed Feb. 20, 2009).

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may of course be taken of any of the publicly-available materials appended to Mr. Prosser's filing.

CFC likewise urges the PSC to reject Mr. Prosser's belated call for further hearings. As this history demonstrates, Mr. Prosser's allegations could easily have been raised during the public comment period you established and public hearings you conducted.<sup>16</sup> Treating Mr. Prosser's filing as part of the record<sup>17</sup> and granting Mr. Prosser's procedurally infirm request for additional hearings would merely reward his tactical decision at the expense of the PSC's interest in the orderly conduct of its business.<sup>18</sup>

Should you have any questions or require further information, please contact Kent Bressie by telephone at +1 202 730 1337 or by e-mail at [kbressie@wiltshiregrannis.com](mailto:kbressie@wiltshiregrannis.com).

Respectfully submitted,



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cc: Tanisha Bailey-Roka, Esq.  
Boyd Sprehn, Esq.  
Bennett Ross, Esq.

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<sup>16</sup> Mr. Prosser undoubtedly had notice of these proceedings, having publicly discussed CFC request for approval in media appearances. *See, e.g.,* Interview by Anne Golden with Jeffrey Prosser, A.M. Saturday with Anne Golden (Oct. 18, 2009).

<sup>17</sup> CFC reserves its right to request an opportunity to examine Mr. Prosser if any of his late-filed non-public materials are included in the record of this proceeding.

<sup>18</sup> Notably, the bankruptcy court recently found "blatant dishonesty and bad faith" on Mr. Prosser's part and concluded that Mr. Prosser had engaged in "abuse of the bankruptcy process." Memorandum Opinion Regarding Exemptions Claimed by Debtor at 69, 72, Case No. 06-30009 (JKF) (Bankr. V.I., entered Oct. 9, 2009). Mr. Prosser's calculated decision to file only after the conclusion of the public hearings on this matter evinces a similar disregard for the PSC's process.