

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

ACCEPTED/FILED

OCT 13 2017

In the Matter of
BVU Authority

Federal Communications Commission
Office of the Secretary

WC Docket No. 17-_____
File No. ITC-T/C-2017 _____

Application for Authorization Pursuant to
Section 214 of the Communications Act of 1934,
as Amended, for Assignment of Assets
and/or Transfer of Control

JOINT APPLICATION

BVU Authority ("BVU" or "Transferor") and Sunset Digital Communications, Inc. ("Sunset Digital" or "Transferee"), hereby jointly request approval from the Federal Communications Commission ("FCC" or "Commission") pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Sections 63.04 and 63.24 of the Commission's rules, 47 C.F.R. §§ 63.04 and 63.24, to transfer of control of BVU's telecommunications business assets, from BVU to Sunset Digital. BVU conducts its telecommunications business under the trade name, "OptiNet." Therefore, throughout this Application, the "telecommunications assets" of BVU will be referred to as "the OptiNet System." For the reasons stated herein, BVU and Sunset Digital (collectively "Applicants") respectfully submit that this Application is subject to the Commission's "streamlined" processing rules found in Section 63.03(b)(2) and thus prompt approval can be accomplished in a manner that raises no competitive concerns that could delay Commission approval of the transaction.

I. REQUEST FOR STREAMLINED TREATMENT OF APPLICATION

Under Section 63.04(b) of the Commission's rules, the Applicants are filing a combined domestic and international application, and the Applicants respectfully request streamlined treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's rules. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2) of the Commission's rules because: (1) the proposed transaction will result in Transferee having a market share in the interstate interexchange market of less than ten percent (10%); (2) Transferee will provide competitive telephone exchange services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither the Transferee nor any of its affiliates are regulated as dominant with respect to any service. This Application also qualifies for streamlined treatment under Section 63.12 of the Commission's rules because: (1) Applicants are not affiliated with a dominant foreign carrier; (2) as a result of the transaction, Transferee will not be affiliated with any foreign carrier as defined in the Commission's rules; and (3) none of the other scenarios outlined in Section 63.12(c) of the Commission's rules apply.

II. APPLICANTS

A. BVU Authority (FRN: 0006823991)

BVU is a political subdivision of the Commonwealth of Virginia that is authorized by the BVU Authority Act, Chapter 72, Title 15.2 of the Code of Virginia (Virginia Code §§ 15.2-7200 et seq.). BVU, through its OptiNet division, is a provider of data, Internet, broadband, voice communications and cable television services to residential and commercial customers over a facilities-based network in the following states: Virginia and Tennessee. OptiNet is currently a division of BVU, launched in 2001, that provides telecommunication services. OptiNet is known for its pioneering work in the area of municipal broadband throughout the area. BVU is the first

municipal utility in the United States to deploy an all-fiber network offering the triple play of video, voice and data services.¹

B. Sunset Digital Communications, Inc. (FRN 0010678001)

Transferee, Sunset Digital, is a next-generation fiber-optic company based in Duffield, Virginia providing broadband, private data, fiber-optic television and telephone services to residents, businesses, medical facilities, banks, and other Internet service providers.

The company has branch offices in Kingsport, Tennessee, and Tazewell, Tennessee, with an additional office planned for Danville, Virginia. Sunset Digital was founded in 2003, based on the insight that more modern, adaptable networking structures (similar to those used in IT networks for businesses) could be applied to telecommunications networks, resulting in significant advantages over older, legacy models. Instead of creating advanced data networks which could also carry legacy telephone and cable, most networks utilize existing telephone and cable networks with upgrades to enable them to carry data, which has significant limitations as compared to a network designed from the start to act as a data network. With a clean slate and no legacy networks to upgrade, Sunset Digital has a fresh take on a century-old way of doing business.

Currently, Sunset Digital owns, leases, operates and continuously improves one of the most agile and capable fiber-optic networks in the United States with more than 900 miles of fiber-optic cable, currently serving Southwest Virginia and Northeast Tennessee. Sunset Digital has over 2,250 active customers in the areas it serves and is growing at a pace of over 165 new connections per quarter. Sunset Digital is currently the oldest rural fiber-to-the-home ("FTTH") operator in the United States still in operation, and is the only private company actively connecting FTTH in

¹ In addition, BVU has received an International Section 214 Authorization to provide "Global or Limited Global Resale Authority" (ITC-214-20020404-00165) and an International Section 214 Authorization to provide "Individual Switched Resale Service" (ITC-214-20051026-00434).

rural America today. Currently, Sunset Digital resells Voice over Internet Protocol (“VoIP”) services, but with the transaction for which approval is requested in this Joint Petition, Sunset Digital plans to install its own switch interconnecting via traditional telecommunications technologies with local Incumbent Local Exchange Carriers to provide quality end-user phone services.

A significant part of Sunset Digital’s success is a result of its proprietary software platform, FiberTrac, which was developed by a sister company to manage the modern, agile fiber-optic network the company envisioned. The software platform keeps track of cables geographically, holds CAD drawings of major cable installations, runs a Customer Relationship Management system, tracks fiber assignment within cables, traces hardware locations and configurations, and maps visual data which has no physical form. FiberTrac is currently modeling over 2,000 feet of fiber cable with over 100,000 individual fiber segments; 3,000 network devices with almost 30,000 ports; over 5,000 active and prospective customers; over 7,000 access points; and over 29,000 pole attachments. It has been designed with scalability to grow with Sunset Digital’s expansion.

Because of Sunset Digital's innovative proprietary software, partnerships and business model, it has been successful in providing advanced data and communications connections to areas previously deemed too difficult to connect for the large carriers. Due to its people and its belief in customer service, it has continued to provide first rate service and has maintained high levels of customer satisfaction, often leading to new customers through word-of-mouth and reputation.

III. DESCRIPTION OF THE TRANSACTION

On February 5, 2016, Sunset Digital and BVU entered into an Asset Purchase Agreement (the “Agreement”) to allow Sunset Digital to acquire the OptiNet System as described more fully below. Sunset Digital and BVU entered into amendments to the Agreement on May 23, 2016,

July 19, 2016, August 19, 2016, and December 16, 2016 (collectively, the “Amendments”). As a result, all of the assets of a telephone company, the OptiNet System, will be acquired by Sunset Digital.

Under terms of the Agreement, Sunset Digital will pay total consideration of \$50 million for the OptiNet System assets. Sunset Digital is acquiring the OptiNet assets on a cash-free, debt-free basis. After the transaction, Sunset Digital will control the OptiNet assets, and, a separate Virginia entity, Sunset Fiber, LLC (“Sunset Fiber”), will operate the extensive network of facilities that provides broadband Internet, private data, fiber optic television and telephone services to residents, businesses, medical facilities, banks, and other Internet service providers in Virginia and Tennessee.

A third entity, Sunset Digital Holdings, Inc., will finance the transaction associated with the Asset Purchase Agreement and will become the parent company of Sunset Digital and the ultimate parent of Sunset Fiber. For the Commission’s convenience, pre- and post-transaction organizational charts are provided as Exhibit B. The transaction will result in the same management structure Sunset Fiber has today. Sunset Fiber’s officers and key personnel will remain the same as before the change in ownership structure. As a result, Sunset Digital Holdings, Inc. will be acquiring the same personnel who are currently providing telecommunications services to current customers and who will be providing telecommunications services to the newly acquired OptiNet customers.

IV. PUBLIC INTEREST STATEMENT

Applicants respectfully submit that the transaction and transfer of control described herein will serve the public interest. The proposed transaction will serve the public interest because the transfer of control to Sunset Digital will provide BVU’s OptiNet System with new sources of

investment that will allow the OptiNet System to continue its track record of rapid growth. Additional financing will provide opportunities for the OptiNet System to expand its current geographic coverage and the range of its current products. Sunset Digital and its affiliates will have the capability to provide additional resources to OptiNet which might not have been previously available, such as additional back office support, and support for long term business planning and growth. OptiNet currently offers competitive telecommunications service that offers competitive pricing, high quality services, and responsive customer service. The transaction will permit the OptiNet System to continue to offer these services to its existing consumers and will allow Sunset Digital to expand these same competitive services to more customers over the next decade.

OptiNet customers will not see any change to their services as a result of this change of control. Customers will receive the same reliable, low-cost service after the transaction closes. Nonetheless, OptiNet is providing notice to its customers consistent with the Commission's Rules and applicable state laws. OptiNet customers will have advance notice of the transaction and will continue to receive the same high quality, low-cost services once the transaction closes. Because the transaction will expand competition and benefit consumers, Applicants submit that the transaction is in the public interest.

V. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE COMMISSION'S RULES

In support of this Application, the Applicants submit the following information pursuant to Section 63.24(e) of the Commission's rules, which is the information requested in paragraphs (a)-(d) and (o)-(p) of Section 63.18 for both the Transferor and Transferee and the information requested in paragraphs (h)-(n) of Section 63.18 for the Applicants.

(a) Name, Address and Telephone Number

i. Transferors

BVU Authority
15022 Lee Highway
Bristol, VA 24202
Phone: (276) 669-4112
Fax: (276) 821-6240

ii. Transferee

Sunset Digital Communications, Inc.
333 Fraley Avenue
Duffield, Virginia 24244
Phone: (276) 431-7200
Fax: (276) 431-7202

(b) State of Organization

BVU is a political subdivision of the Commonwealth of Virginia that is authorized by the BVU Authority Act, Chapter 72, Title 15.2 of the Code of Virginia (Virginia Code §§ 15.2-7200 et seq.). Sunset Digital is a corporation organized under the laws of the Commonwealth of Virginia with its headquarters in Duffield, Virginia.

(c) Contact Information

All correspondence, notices and inquiries regarding this Application should be addressed to:

i. Transferors

Cameron Bell
Seth M. Land
PennStuart
208 E. Main Street
Abingdon, Virginia 24210
Tel: (276) 623-4421
Fax: (276) 628-4918
Email: cbell@pennstuart.com
Email: sland@pennstuart.com

ii. Transferee

Robert J. Gastner, Esq.
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
1717 Pennsylvania Avenue, NW
12th Floor
Washington, D.C. 20006
Tel: 202.659.6600
Fax: 202.659.6699
Email: rgastner@eckertseamans.com

and

Jeffery Mitchell
The Mitchell Law Firm, a Professional Corporation
1700 Kraft Drive, Suite 2000
Blacksburg, Virginia 24060
Tel: (540) 443-9272
Fax: (540) 301-1666
Email: Jeff@Mitchell-Firm.com

(d) International Section 214 Authorizations (Answer to IBFS Main Form Question 10)

Transferor, BVU, provides domestic telecommunications services pursuant to the blanket Section 214 authority granted in Section 63.01 of the Commission's Rules. In addition, BVU has International Section 214 authority to provide "Global or Limited Global Resale Authority" (ITC-214-20020404-00165) and an International Section 214 Authorization to provide "Individual Switched Resale Service" (ITC-214-20051026-00434).

Transferee, Sunset Digital, also has authority from the FCC under Section 214 of the Act to provide domestic telecommunications service pursuant to the blanket Section 214 authority granted in Section 63.01 of the Commission's Rules. Sunset Digital does not hold any international Section 214 authorizations.

(h) Ten Percent Greater Interest Holders/Interlocking Directorates (Answer to IBFS Main Form Question 11 and 12).

i. Transferor

As noted above, BVU is a political subdivision of the Commonwealth of Virginia that is authorized by the BVU Authority Act, Chapter 72, Title 15.2 of the Code of Virginia (Virginia Code §§ 15.2-7200 et seq.). The BVU Authority's business address is 15022 Lee Highway Bristol, VA 24202. Transferor does not have any interlocking directorates with a foreign carrier,² nor will it have any such directorates or managers after consummation of this transaction.

ii. Transferee

As noted above, Sunset Fiber is an operating company organized under the laws of the Commonwealth of Virginia. It is a whole-owned subsidiary of Sunset Digital, which in turn is wholly owned by Sunset Digital Holdings, Inc. Sunset Digital Holdings, Inc. and Sunset Digital are both also organized under the laws of the Commonwealth of Virginia. The shareholders that own ten percent (10%) or more of the issued and outstanding stock of Sunset Digital Holdings, Inc. are provided below:

Name	Occupation	Citizenship	Ownership Percent³
Paul Elswick	Telecommunications	USA	15%
Ryan Elswick	Telecommunications	USA	15%
H.I.G. Capital Partners V, L.P. ⁴	Finance	USA	70%

² As defined by 47 C.F.R. § 63.09(d).

³ Paul Elswick's address is 342 Elswick Drive, Jonesville, Virginia 24263. Ryan Elswick's address is 2120 St. Erics Court, Kingsport, Tennessee 37660. H.I.G. Capital Partners V, L.P.'s address is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

⁴ H.I.G. Capital Partners V, L.P. ("H.I.G.") is a limited partnership organized under the laws of the state of Delaware with its headquarters in Miami, Florida. H.I.G. is an affiliate of H.I.G. Capital, L.L.C. ("H.I.G. Parent"). At this time, neither H.I.G. nor H.I.G. Parent provide telecommunications services or hold any telecommunications licenses in its own right. H.I.G. Parent is a global private equity and alternative assets investment firm. H.I.G. Parent operates a family of private equity, growth equity, credit/special situation, primary lending, syndicated credit, and real estate

Transferee does not have any interlocking directorates with a foreign carrier,⁵ nor will it have any such directorates or managers after consummation of this transaction.

(i) Foreign Carrier Affiliation Certification (Answer to IBFS Main Form Questions 14-17)

Applicants certify that they are not foreign carriers, that they are not affiliated with a foreign carrier as defined under the Commission's rules and that neither will become affiliated with a foreign carrier as a result of this transaction.

(j) Foreign Carrier and Destination Countries (Answer to IBFS Main Form Questions 14-17).

As evidenced by the signatures to this Application, Applicants certify that upon consummation of the transaction they will not provide international telecommunications services to any country in which: (1) they are a foreign carrier in the destination market; (2) they control a foreign carrier in the destination market; (3) any entity that owns more than twenty-five percent (25%) of Applicant, or that controls Applicant, controls a foreign carrier in the destination market; and (4) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than twenty-five percent (25%) of Applicant and are parties to, or the beneficiaries of, a contractual relationship affecting the provision or marketing of international basic telecommunications services in the United States.

(k) WTO Membership of Destination Countries (Answer to IBFS Main Form Questions 14-17).

Not applicable.

funds, and it specializes in providing both debt and equity capital to small and mid-sized companies. No person has Ten Percent (10%) or greater direct or indirect interest in H.I.G. Parent.

⁵ As defined by 47 C.F.R. § 63.09(d).

(l) International Telecommunications Services (Answer to IBFS Main Form Questions 14-17).

Applicants will not resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to a country where either is a foreign carrier or is affiliated with a foreign carrier.

(m) Non-dominant Regulatory Classification (Answer to IBFS Main Form Questions 14-17).

Not applicable.

(n) Special Concessions Certification (Answer to IBFS Main Form Question 21).

As evidenced by the signatures to this Application, Applicants have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to adversely affect competition in the U.S. market, and will not enter into such agreements in the future.

(o) Federal Benefits/Anti-Drug Act of 1988 Certification (Answer to IBFS Main Form Question 25).

As evidenced by the signatures to this Application, Applicants certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that they are not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. § 862.

(p) Eligibility for Streamlined Processing (Answer to IBFS Main Form Question 20).

Applicants request streamlined processing of this Application pursuant to Section 63.12 of the Commission's rules, 47 C.F.R. § 63.12, for the reasons set forth above.

VI. INFORMATION REQUIRED BY SECTION 63.04(b) OF THE COMMISSION'S RULES

In accordance with the requirements of Section 63.04(b) of the Commission's rules, the additional information required by Section 63.04(b) of the Commission's rules for transfer of control of assets is provided in Exhibit C.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission promptly grant this Application.

Respectfully Submitted,

SUNSET FIBER, LLC

By:


Counsel

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BVU AUTHORITY

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Counsel

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Email: cbell@pennstuart.com
Email: sland@pennstuart.com

Attorneys for BVU Authority

Dated: August 29, 2017

EXHIBIT A

CERTIFICATION

I, Ryan Elswick, Secretary of Sunset Digital Communications, Inc., being first duly sworn, hereby certify under penalty of perjury that I am authorized to make this certification on behalf of the Transferees in the foregoing application. I further certify that the information in the foregoing application as it pertains to the Transferees is true and accurate to the best of my knowledge, and that the Transferees are not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 883(a), as amended.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed this day of August, 2017.



Ryan Elswick
Secretary
Sunset Digital Communications, Inc.

STATE OF Virginia)

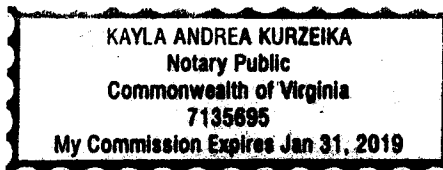
ss:

CITY/COUNTY OF Scott)

Subscribed and sworn before me this 9th day of August, 2017. In testimony whereof, I have hereunto set my hand and official seal on the day, month, and year aforesaid.


Notary Public

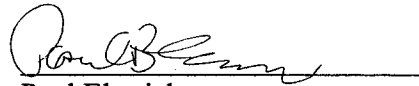
My commission expires: Jan 31, 2019



CERTIFICATION

I, Paul Elswick, President of Sunset Digital Communications, Inc., being first duly sworn, hereby certify under penalty of perjury that I am authorized to make this certification on behalf of the Transferees in the foregoing application. I further certify that the information in the foregoing application as it pertains to the Transferees is true and accurate to the best of my knowledge, and that the Transferees are not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 883(a), as amended.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed this day of August, 2017.



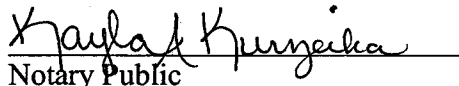
Paul Elswick
President
Sunset Digital Communications, Inc.

STATE OF Virginia)

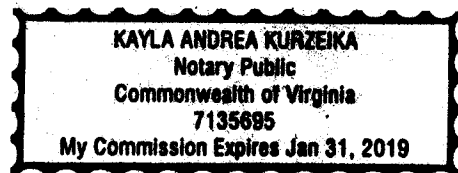
ss:

CITY/COUNTY OF Scott)

Subscribed and sworn before me this 9th day of August, 2017. In testimony whereof, I have hereunto set my hand and official seal on the day, month, and year aforesaid.


Notary Public

My commission expires: Jan 31, 2019



CERTIFICATION

I, Donald L Bowman, President and Chief Executive Officer of BVU Authority, being first duly sworn, hereby certify under penalty of perjury that I am authorized to make this certification on behalf of the Transferor in the foregoing application. I further certify that the information in the foregoing application as it pertains to the Transferor is true and accurate to the best of my knowledge, and that no party is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 883(a), as amended.

28 I declare under penalty of perjury that the foregoing is true and correct. Executed this day of August, 2017.

Donald L Bowman

Donald L Bowman
President and Chief
Executive Officer
BVU Authority

STATE OF Virginia)

ss:

CITY/COUNTY OF Bristol)

Subscribed and sworn before me this 28th day of August, 2017. In testimony whereof, I have hereunto set my hand and official seal on the day, month, and year aforesaid.

Shiranda Gail Mast
Notary Public

My commission expires: 12/31/2019

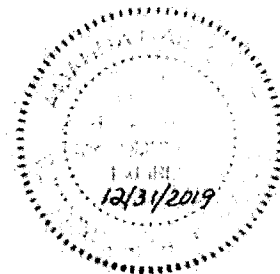
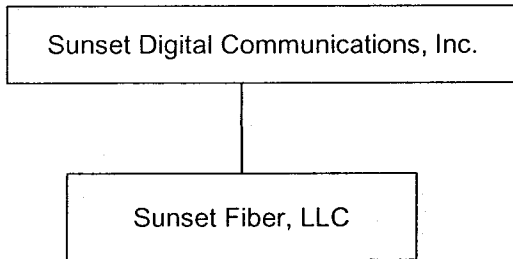


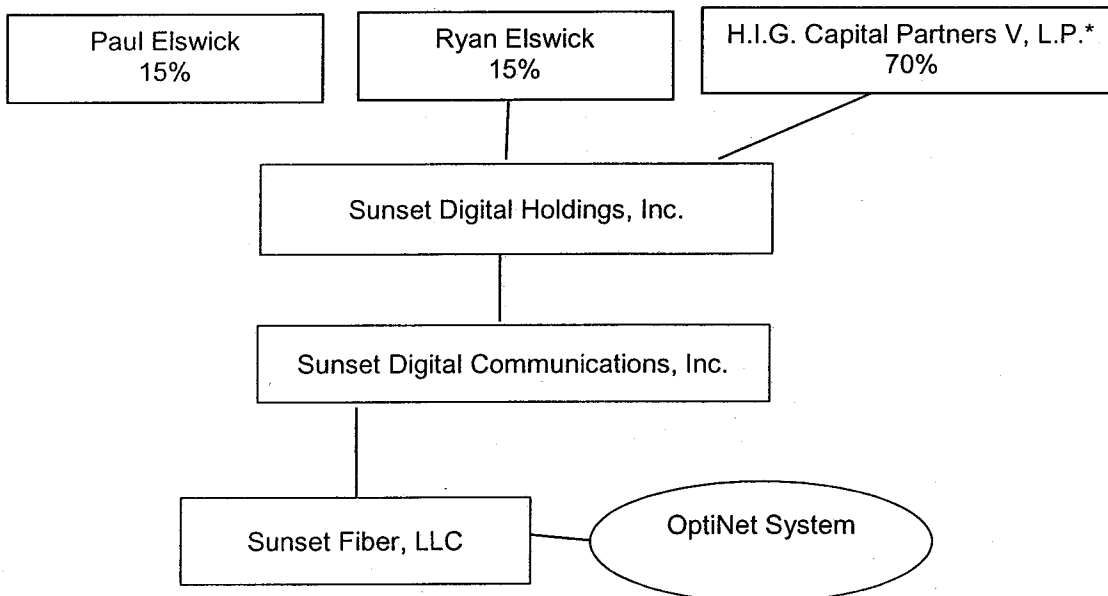
EXHIBIT B

Illustrative Transaction Charts

Pre-Closing Chart:



Post-Closing Chart:



* Ownership may be held indirectly

EXHIBIT C

DOMESTIC SECTION 214 TRANSFER OF CONTROL INFORMATION

Pursuant to Section 63.04 of the Commission's Rules, 47 C.F.R. § 63.04, Applicants request authority to transfer control of BVU Authority's ("BVU"), a holder of domestic Section 214 authority, OptiNet System. Applicants are filing a combined Application for this transfer of control pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b). Applicants provide the following information in support of their request.

63.04(b)(6): Description of the Transaction

Section III of the Application contains a full description of the proposed transaction.

63.04(b)(7): Description of Geographic Service Area and Services in Each Area

BVU, through its OptiNet division, is a provider of data, Internet, broadband, voice communications and cable television services to residential and commercial customers over a facilities-based network in the following states: Virginia and Tennessee.

63.04(b)(8): Presumption of Non-Dominance and Qualification for Streamlining

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i), because as a result of the proposed Transaction, Applicant will have market share in the interstate, interexchange market of substantially less than 10 percent and will provide competitive telephone exchange services exclusively in geographic areas serviced by a dominant local exchange carrier that is not a party to the proposed transaction, and the Applicants will not be dominant with respect to any domestic service.

63.04(b)(9): Other Pending Commission Applications Concerning the Proposed Transaction

Sunset Digital will file a separate application seeking approval of the transfer of control of its telecommunications assets to H.I.G. Capital Partners V, L.P.

63.04(b)(10): Special Consideration

None.

63.04(b)(11): Waiver Requests (If Any)

None.

63.04(b)(12): Public Interest Statement

Section IV of the Application contains the required public interest statement.