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January 15, 2010

**VIA ELECTRONIC COMMENT
FILING SYSTEM (ECFS)**

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: Ex Parte Communication, *In re National Broadband Plan for Our Future*, GN 09-51

Dear Ms. Dortch:

On December 29 and 30, 2009, Kyle Hollifield, Vice President of Marketing and Business Development for BVU-OptiNet and Mark Lane, Chief Technology Officer of BVU-OptiNet, participated in several *ex parte* telephone conversations with David S. Isenberg, Senior Advisor, to the Commission's Task Force that is developing a National Broadband Plan. In these calls, Messers. Hollifield and Lane responded to a number of Mr. Isenberg's questions and promised to furnish him certain additional information. The substance of these responses and the promised additional information are summarized in the attached document.

Pursuant to Commission's *ex parte* rules, please include a copy of this notice in the record of the proceeding noted above.

Sincerely,



James Baller

cc: David S. Isenberg

PUBLIC FIBER-TO-THE-HOME SYSTEM IN BRISTOL, VIRGINIA

The following is a snapshot of Bristol Virginia Utilities' municipal fiber-to-the-home (FTTH) initiative, called BVU-OptiNet. It is of special interest because it has contributed significantly to the revitalization of the economy of Southwest Virginia and because its take rate is well over 60%, even in the face of strong competition from large established communications service providers.

Bristol, Virginia, won widespread recognition when Intelligent Community Forum (ICF) designated it as one of the top seven Intelligent Communities in the world in 2008, due largely to the efforts of BVU-OptiNet. ICF's extensive profile of BVU-OptiNet is available online at <http://tinyurl.com/ppwqt3>. BVU-OptiNet has also won numerous other awards, including awards from the Fiber to the Home Council, the National League of Cities, and the National Association of Telecommunications Officers and Advisors.

BVU, the department that operates the City of Bristol's municipal utilities, including electricity, water, sewer, and now communications, has existed since 1945. Its first experience with fiber-optics occurred in the late 1990s, when it built a fiber system to monitor and manage its eight substations and water/sewer facilities. In 2000-01, BVU extended fiber-optic PBX and data services to schools and government offices. Soon afterward, BVU began to offer fiber-based PBX and data services to local businesses.

At the same time that BVU was gaining experience with its fiber optic system, the City was encountering severe economic problems, as the region's bedrock industries – agriculture, coal mining, textiles, and tobacco – were all in deep distress. It occurred to BVU's and the City's leaders that extending the fiber system to all homes and businesses in the community could spur economic development and revitalize the local and regional economy.

First, BVU had to overcome a Virginia law that prohibited municipalities from providing telecommunications services, infrastructure, or facilities to the public or to competitors of the incumbent telecommunications providers. BVU successfully challenged this law in the courts, and then the state legislature passed less restrictive legislation. Shortly afterward, the incumbent cable operator in Bristol sued the City to prevent BVU from providing cable services. Again, the state legislature enacted less restrictive legislation, this time effectively allowing BVU (but no other municipality) to provide cable service, but precluding Bristol from doing so outside its service area as it existed in January 2003. BVU-OptiNet then had to fight off various other challenges from incumbents. Finally, BVU-Net was able to begin full retail operations in 2003, becoming the first municipal provider of "triple play" services – voice, video, and broadband -- in the United States.

BVU's initial construction began in early 2000 and was financed from internal cash reserves and the issuance of a Series 2002 Utility System Revenue Bond. In 2003, the Series 2002 bond financing, along with all other BVU debt, was refinanced with a Series 2003 Utility System Revenue and Refunding Bond. This refinancing brought additional capital to BVU-OptiNet for the continued development of the fiber network. To date, BVU-OptiNet has invested \$72 million in plant infrastructure. This investment has been financed from multiple sources,

including subscriber revenues. Currently, BVU-OptiNet has an outstanding debt balance of \$27.586 million.

BVU-OptiNet currently passes more than 99% of the homes in Bristol (pop. 17,367) and Abingdon (18 miles away, pop. 7780). Its system uses Passive Optical Network technology (originally BPON, with an almost-completed upgrade to GPON). Under current state law, BVU-OptiNet can offer the full triple play – including cable service -- only in Bristol and Abingdon, which were part of BVU-OptiNet's service area in January 2003. Elsewhere in BVU-OptiNet's four-county, 600+ mile network, BVU-OptiNet offers predominantly business services, with limited retail double-play FTTH services along main streets in some of the towns passed. [This remaining discussion in this report focuses on FTTH in Bristol and Abingdon.]

As of December 2009, BVU-OptiNet was passing approximately 8,000 homes in Bristol and 4,000 homes in Abingdon. It had a total of 7,781 data customers, resulting in a penetration rate of 64.8%. [In August 2008, the ICF reported the FTTH take rate at 62%.] These included 8,389 voice telephone customers, for a penetration rate of 69.9%, and 8,946 video customers, for a penetration rate of 74.5%. Net revenues for 2009 were about \$16 million, and BVU-OptiNet was self-sustaining.

BVU-OptiNet's current retail data offerings are still shaped by its initial BPON technology; offerings more consistent with GPON are under development. Today, BVU-OptiNet's offerings start at 64 kbps symmetrical for \$16.95 a month. It also offers 2, 4, 6, 10 and 16 Mbps at commensurately higher rates. Its 10 Mbps down/1 Mbps up offering is priced at \$49.95. More complete information is available at <http://tinyurl.com/yajqgggu>.

Competitors in town include telco incumbent CenturyLink (formerly Sprint/Embarq). Where CenturyLink's DSL is available, CenturyLink offerings range from 768 kbps downstream for \$29.95/month to 10 Mbps downstream for \$54.95 a month.

Cable companies Comcast and Charter provide service in separate, non-overlapping portions of the City of Bristol, and Comcast provides service throughout Abingdon. Comcast offers a triple play package for \$99 a month that includes 6 Mbps downstream and 768 kbps upstream. With a channel package comparable to BVU-OptiNet, Comcast's triple play price is about \$120/month. Charter's offerings in Bristol are in the same range. Comcast plans a DOCSIS 3 upgrade in 2010.

Other competitors in the region include two satellite broadcast TV providers and two small business-oriented CLECs now owned by Level3. The satellite broadcast TV offerings are popular, with take rates near 20%. The CLECs provide businesses data and PBX services.

There are no major differences in the services that Bristol and its competitors in Bristol and Abingdon provide, nor has there been much explicit price competition. BVU's actual speeds are closer to advertised speeds than those of its competitors, but this does not appear to have had a significant impact on the market.

A highly significant factor in BVU's success is its commitment to addressing local needs. BVU prides itself on locally-tailored service offerings (especially TV choices) and down-home responsive customer service. One display ad shows smiling agents and technicians and says, "Local Faces, Local Service, Big Savings." BVU-OptiNet offers many community outreach programs, such as computer training at the local library. In addition, field service technicians routinely spend extra time on customer issues that are not directly related to the initial truck roll, such as teaching the customer how to use a remote control. In addition, customers are encouraged to call the help desk anytime, for any reason.

As part of its concern for all the citizens in its service area, BVU-OptiNet also emphasizes that its presence in market helps keep its competitors' rates low through competitive pressure; its materials show that it has saved its competitors' customers millions in rate increases.

Also of critical importance is BVU-OptiNet's prominent role in fostering economic development in the community – for which it has become known throughout the world. BVU-OptiNet's fiber network has already attracted several businesses into the region, creating hundreds of new high-paying jobs, and its successes in helping to revitalize the region's economy will only multiply as time goes on. See, for example, the article available at <http://tinyurl.com/y8zcr3h> noting that BVU-OptiNet's has brought into the region two major businesses that will themselves create up to 1500 new jobs paying double the average wages in the area.

As ICF recognized, another important success factor for BVU-Net is that it carried out a well-executed initial marketing campaign to its existing utility customers. It successfully emphasized that, as the community's own provider, it was willing to do things for the community that its competitors, profit-seeking entities based in other states, were not willing to do.

In summary, despite significant competition from established incumbent communications providers, BVU-OptiNet has been highly successful and popular in its community. It has done so primarily by focusing on community needs and local solutions. Most important, it has playing a major role in bringing new economic vitality to the City and Southwest Virginia, giving them a bright future based on advanced communications and ultra-high speed connectivity.