

CITY OF BRISTOL, VIRGINIA
BRISTOL VIRGINIA UTILITIES
15022 LEE HIGHWAY
BRISTOL, VIRGINIA 24202

October 1, 2007

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Bristol Virginia Utilities testimony
October 2, 2007
Written Statement – Rule 4(b)(1)

Dear Chairman Markey:

In 1999, The City of Bristol, Virginia d/b/a Bristol Virginia Utilities (BVU) began planning a fiber-optic system that would eventually become known by its branding name, BVU OptiNet, the City Utilities' telecommunication and information services operation. After a storm-related full system shutdown, BVU developed its fiber-optic infrastructure to provide telemetry for BVU's electric substations, designed to prevent such a shutdown in the future. After the foundational infrastructure was in place, BVU actively investigated additional ways to utilize the fiber-optic network for the benefit of the City and BVU's electric service area.

In early 2001, broadband and PCX telephone services were provided to local schools and government offices. As local businesses learned of BVU's broadband capabilities, their interest rapidly grew. The economic development opportunities available to BVU (expanded electric customer base), the City of Bristol, Virginia, and Washington County,

Virginia became immediately apparent. However, before the decision to move forward with a city-wide deployment of telecom and information services was made, BVU conducted two surveys to verify consumer interest levels. Both surveys confirmed that there was significant local consumer interest in BVU providing competitive telecom and information services. Having verified consumer interest, BVU commissioned the development of two business plans. Both plans showed success by achieving a 30 – 35% market penetration. Armed with this data, BVU quickly resolved to move forward.

BVU's telecommunication and information system (hereinafter "OptiNet") was charged with a dual mission: 1) to enhance economic development opportunities in Bristol, Virginia and surrounding areas by providing access to cutting-edge services and future-proof technology, and 2) to improve the quality of life for local citizens and small businesses by offering broadband access at affordable and stable prices.

Community interest had been quantified, the mission had been identified and a management team was in place. Work began immediately on expanding the state-of-the-art fiber-optic network and preparing it for business and residential access. OptiNet's network architects chose to deploy a passive optical network (PON). A PON contains no active elements in the signals' path between the central office optical line terminal (OLT) and the customer's optical network terminal (ONT). The only components used in such networks are optical combiners, couplers and splitters. The main application of a PON is in the local access network; or 'last mile', before reaching the customer. This specification is an approved ITU (International Telecommunications Union) standard,

published for any telecom vendor to use in developing products. This allows multiple vendors to develop and sell products that are operationally compatible with each other, thereby driving competition in pricing, service, and features. Proprietary designs, on the other hand, lock a network operator into a particular vendor's idea of features and service, not to mention removing the major factor in price competition - the threat of buying it from someone else for less. This translates to better service at lower cost for OptiNet customers.

As OptiNet's engineers progressed through the technical aspects of preparing the network, BVU's legal counsel and management team were working on a completely different aspect of the business. Before BVU could offer telecommunication and information services, it had to work for two years to change Virginia law and to complete necessary regulatory compliance to obtain state approvals.

In early 2001, BVU filed a complaint asking the federal court to declare invalid the Virginia statute that expressly prohibited a municipal entity from offering the proposed telecom services. On May 16, 2001, the court declared the statute superseded by federal law and therefore unenforceable. During the 2001 legislative session, the Virginia General Assembly passed SB245 authorizing localities to provide telecom services. In addition to legislative challenges, just weeks before BVU OptiNet's scheduled service launch, the incumbent CATV provider, Charter Communications, obtained a permanent injunction that enjoined BVU from offering CATV services because that was beyond the

City's express powers. However, during the 2003 legislative session, the Virginia General Assembly passed SB875 authorizing BVU to offer CATV services.

In addition to these legal challenges, BVU OptiNet also faced opposition from the incumbent telephone provider. On December 12, 2002, United Telephone-Southeast, Inc. ("Sprint"), filed a petition with the Virginia State Corporation Commission (Commission) for Declaratory Judgment Interpreting Various Sections of the Code of Virginia, for Injunction Prohibiting the City of Bristol from Providing Telecommunications Services and for Other Relief. Specifically, Sprint requested that: (1) its complaint against the City of Bristol d/b/a/ Bristol Virginia Utilities be upheld; (2) the Commission determine that Bristol had failed to comply with Virginia Law and find Bristol in violation of 15.2-2160 A and D, 56-241.1, and 56-265.4:4 of the Code of Virginia; (3) the Commission issue an injunction against Bristol prohibiting it from providing telecommunications services to the public until it had complied with the conditions set forth in Virginia law regarding the offering of telecommunications services by municipal electric systems; (5) Bristol's proposed tariff be rejected, or in the alternative, suspended by the Commission until the tariff is compliant; and (6) the Commission grant such other relief as is just and proper.

On December 10, 2002 the Commission issued an order, in which it: (1) denied Sprint's request for injunctive relief; (2) rejected Bristol tariff submitted on November 27, 2002; (3) ordered Bristol to file a revised tariff on or before December 26, 2002; (4) assigned the matter to a hearing examiner; (5) directed the VSCC Staff to participate in the case;

and (6) ordered Bristol to file cost studies to support the prices for its basic local exchange service on or before January 31, 2003.

On August 15, 2003, Bristol filed its cost studies with the Commission. A hearing on the matter was held on April 14 and April 15, 2004. The hearing examiner's report was filed on November 30, 2004 whereby it was found that:

- (1) The cost studies filed by Bristol in the case, provided the information required to determine that Bristol's local telephone service, in the aggregate, meets the requirements of 15.2-2160 A and D, 56-241.1, and 56-265.4:4 of the Virginia Code: and
- (2) Bristol's cost studies demonstrate that in the aggregate it does not subsidize local telephone services provided via its OptiNet System.

In the end, BVU won in all its legal and regulatory cases. However, it should be noted that the legal battles fought to defend BVU's position against the incumbent operators cost approximately \$2.5 million. This money could have been used for additional "last mile" service to benefit customers.

In January 2003, BVU electric customers throughout the City of Bristol, Virginia and in a small area in Washington County, Virginia were officially notified that they could sign up for telephone, long distance and data services provided by BVU OptiNet. Because of the statutory revisions necessitated by the incumbent CATV provider's injunction, BVU

did not begin making cable television services available until July 1, 2003, the effective date of the legislative changes. Within the first year of offering service, BVU OptiNet secured over 30% of the available market (i.e. homes and businesses passed by fiber-optic backbone infrastructure).

Today, after just four years, BVU OptiNet has attained high market penetration rates and is forming partnerships which have allowed for expansion of fiber-optic backbone throughout Southwest Virginia. BVU OptiNet has approximately 65% residential market penetration in the primary service area (city limits of Bristol, Virginia). It is also notable that BVU OptiNet provides service to over half of all local businesses which are serviceable.

As previously stated, one of BVU's primary goals was to increase economic development opportunities in Bristol, Virginia and throughout Southwest Virginia. The Coalfield Coalition, a non-profit organization comprised of the LENOWISCO and Cumberland Plateau Planning District (CPPD) Commissions have begun a multi-million dollar project to expand high-capacity fiber-optic cable along a 155 mile route in Buchanan, Dickenson, Lee, Russell, Tazewell and Wise Counties. BVU was chosen to manage this project. Cumberland Plateau Company (CPC) also selected BVU to provide telecommunications services within its planning district. With a connection to this essential infrastructure, businesses will have access to broadband data services, which are currently unavailable in many areas of Southwest Virginia. Telephone services will also be available to these customers. This vital infrastructure work was possible due to federal funding secured by

Congressman Rick Boucher with the cooperation of State Senator William Wampler and other elected officials throughout the region.

In Bristol, Virginia, a new marketing effort was recently implemented. "Access Bristol" utilizes the availability of a fiber-optic infrastructure as one of the primary attractions for new industry. In nearby Russell County, where BVU has collaborated with the Cumberland Plateau Planning District, two new major employers have broken ground. High-speed data-reliant employers Northrop Grumman and CGI will hire more than 700 workers. The average salary for positions within these companies will be \$50,000. These salaries are significantly higher than the region's average. Both companies attributed their decision to locate in Southwest Virginia to the availability of data products delivered via a fiber-optic infrastructure.

Has this investment in infrastructure accomplished BVU's initial goals? These goals have been met and exceeded. Local residents and businesses not only pay less for their standard priced services, but they also enjoy world-class customer service. This was quantified recently as BVU was named the winner of the prestigious 2007 Cornerstone Award in the category of outstanding customer service, an award bestowed annually by *Broadband Properties Magazine*.

BVU was the only United States utility to receive one of six Cornerstone awards this year. The Cornerstone Award recognizes companies and agencies that have achieved notable deployments of fiber-optic networks reaching directly to the home. *Broadband*

Properties Magazine recognized BVU in the customer service category because of its continuous efforts to upgrade services, manage and address the needs of more than 50,000 customer accounts, and provide a growing diversity of products.

Several factors have led to the success enjoyed by BVU OptiNet. First, BVU has provided excellent service to their community as the traditional utility service provider for over 60 years. This solid foundation was necessary to compete in this new industry. Second, customers appreciate friendly, locally provided customer service and technical support. Many, if not most, regional and national telecommunication operators do not provide local customer service. Finally, BVU offers quality products and services at affordable and stable prices over a state-of-the-art fiber-optic network.

BVU was the *first* municipality in the United States to offer the triple-play of services (telephone, cable and Internet) over a fiber-to-the-user network. Many entities, both public and private, from the U.S. and abroad, have sought knowledge and direction from the seasoned professionals at BVU. This ongoing interest in BVU's extensive knowledge base led to the April, 2007 formation of a new branding name BVU FOCUS. Under the name, BVU FOCUS, BVU provides innovative consulting, operations and management services. BVU's goal is to assist other municipal entities across the United States to find comprehensive solutions to deploy telecommunications and information services to benefit their own communities.

BVU believes that its investment in infrastructure, particularly fiber-optic infrastructure, will lead to profound long-term benefits for the City and BVU's other customers. Helping other municipal entities allows BVU to play a role in achieving a much bigger objective for our country. As the United States continues to lag behind in broadband deployment, our citizens, and businesses suffer a competitive disadvantage. In a global economy, the U.S. needs to support those who have an interest and ability to lay the solid foundation for the most important infrastructure roll out in our country's history. The lack of uniformly available high-speed broadband access in today's society is comparable to the lack of electricity, and high-speed, high-traffic highways in the past, deficiencies that were met by both private and public efforts.

The Internet is a global connection to which everyone deserves access. That means it must be affordable and available to all. Competition in the marketplace is essential for this to happen.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wes Rosenbalm". The signature is fluid and cursive, with a large initial "W" and "R".

Wes Rosenbalm, President

Bristol Virginia Utilities

EXHIBIT A

- Government Enterprise fund of the City of Bristol, VA
- Managed by President/CEO and Board of Directors
- Integral part of the City of Bristol, Virginia
- Offering electric service since 1945
- Bristol Virginia Utilities (BVU) currently provides the following services:
 - Electric to 16,141 customers
 - Water to 7,991 customers
 - Wastewater to 7,740 customers
 - Telecommunications and information services
- BVU, through its branding name, BVU OptiNet, currently provides fiber-to-the-premise (FTTP) triple-play services.
 - 7986 FTTH customers
 - 5865 Telephone customers
 - 6751 CATV customers
 - 6154 Data customers
- Manage over 50,600 accounts

102 employees