

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Uintah)	
Basin Telecommunications Association,)	
Inc., and UBET Telecom, Inc., for an Order)	<u>DOCKET NO. 04-053-03</u>
of the Commission Approving the)	
Combination, Merger and Consolidation of)	<u>REPORT AND ORDER</u>
UBET Telecom, Inc. And Uintah Basin)	
Telecommunications Association, Inc.)	

ISSUED: November 26, 2004

SYNOPSIS

The Commission finds the proposed combination, merger, and consolidation of Uintah Basin Telecommunications Association, Inc. with its subsidiary, UBET Telecom, Inc., to be in the public interest and approves the same. The Commission also modifies the existing certificated service territory of UBET Telecom as requested by UBET Telecom and Qwest Corporation.

By The Commission:

PROCEDURAL HISTORY

On August 9, 2004, Uintah Basin Telecommunications, Inc. (UBTA) and UBET Telecom, Inc. (UBET) (jointly the "Applicants") filed their Joint Application seeking Commission approval of the combination, merger, and consolidation of UBTA and UBET into one company. On September 20, 2004, the Applicants filed a Motion for Protective Order and the Commission issued a Protective Order on September 23, 2004. The Applicants pre-filed testimony and exhibits in support of the Joint Application on September 28, 2004.

Pursuant to notice, the Commission held a public hearing on November 3, 2004, in Vernal, Utah, for the purpose of receiving public testimony. Seven public witnesses expressed their support, three opposed the Joint Application, and two others voiced concerns but did not state their position. One sworn affidavit of a member of the public not present at the hearing was entered into the record in opposition to the Joint Application. In addition, the Committee of Consumer Services (Committee) offered into evidence petitions signed by sixty-two area residents

opposing the proposal. The petitions, testimony, and writings received by the Commission in opposition to the Joint Application voice similar objections concerning the perceived lack of representation to be granted to residents of the current UBET service area and the amount of the membership fee to be assessed to new members.

On November 4, 2004, the Applicants and Qwest Corporation (Qwest) filed a request with the Commission seeking inclusion in the UBET certificated service area of two open exchange areas inadvertently left in the Qwest certificated service area when, as approved in Docket No. 99-049-65, Qwest sold the Duchesne, Roosevelt, and Vernal exchanges to UBET. In its filing, Qwest stated that since completion of the exchange sale in 2001 it has maintained no facilities in either of these open service areas and has no present intent to serve these areas. Qwest requests that the boundary maps concerning these two open areas be corrected to properly identify both open areas as being within the boundaries of the UBET service area. The Applicants likewise request that the Commission correct UBET's certificate by referencing the legal description intended by UBET at Qwest at the time of the exchange sale (a copy of which was provided by UBET and Qwest and is attached hereto as Appendix 1).

On November 15, 2004, the Applicants, Division of Public Utilities (Division), and the Committee (collectively referred to as the "Parties") submitted a signed Stipulation (attached hereto as Appendix 2) evidencing their agreement that the proposed combination, merger and consolidation (referred to by the Parties and hereinafter as the "Dissolution") is in the public interest and should be approved.

An evidentiary hearing was held on November 22, 2004, before the Commission's Administrative Law Judge. Stanley K. Stoll and the Applicants' General Counsel, Clark B. Allred, appeared on behalf of the Applicants. Mr. Bruce Todd, Applicants' General Manager and CEO, testified on behalf of Applicants, as did Mr. Raymond A. Hendershot, a consultant employed by Applicants. Mr. Michael Ginsberg appeared on behalf of the Division and Mr. Paul Proctor appeared on behalf of the Committee. Ms. Krystal Fishlock testified for the Division. Intervener Brent Hansen did not appear. The Administrative Law Judge questioned the parties and witnesses regarding various aspects of the Stipulation and the evidence presented.

DISCUSSION

UBTA, a not-for-profit cooperative, is a telephone corporation certificated to provide local calling area telecommunications services in the exchanges of Lapoint, Altamont, Fruitland, Flattop, Neola, Randlett, and Tabiona, Utah. UBET is a for-profit public utility certificated to provide local calling area telecommunications services in the exchanges of Duchesne, Roosevelt, and Vernal, Utah, and is a wholly-owned subsidiary of UBTA. UBET acquired its exchanges via sale from Qwest on April 6, 2001. In their Joint Application and its attached Revised Plan of Merger (Plan), the Applicants submit a plan by which UBET will be dissolved and UBTA, re-named UBTA-UBET Communications, Inc. (UBTA-UBET), will assume all of UBET's assets and liabilities and serve all exchanges currently served separately by UBTA and UBET.

The Applicants' Plan envisions a representation arrangement whereby the current UBTA board of directors would be expanded from seven to ten members, with one new board member representing each of the municipalities—Duchesne, Roosevelt, and Vernal—added to the cooperative's service territory. These directors would initially be appointed by the current UBTA board and would first be subject to election at the UBTA-UBET annual meetings to be held in 2005, 2006, and 2007, respectively.

The Plan also states that all present members of UBTA would become Class A members of the new UBTA-UBET. Current UBET customers would become Class B members of UBTA-UBET until they qualify for Class A membership. There would be no fee for Class B membership, but Class B members would not enjoy voting rights, nor would they be eligible to become a director. However, they would accrue patronage payments which could be applied toward the \$200.00 Class A membership fee. Payment of \$50.00 toward the \$200.00 membership fee would convert a Class B membership into a Class A membership with full voting rights. Upon Dissolution, current UBET customers would be deemed to have elected to convert their Class B membership to Class A status using this installment payment procedure, unless they provide UBTA-UBET specific written notice to the contrary.

It is these issues of representation, election, and membership fee on which members of the public who

oppose Dissolution generally base their objections. In response, the Applicants note that, while the board of directors will be comprised of one member from each of the municipalities served by the cooperative, all directors will be elected by all voting members of the cooperative. For example, a voting member residing in Vernal will vote not only for the board member who will represent Vernal but also for the board members who will represent Roosevelt, Duchesne, and all other municipalities in the cooperative service area. The Division and the Committee note that such community representation within cooperatives is a standard method of governance for Utah cooperatives. They also point out that representation and the proposed membership fee were the subject of extensive discussion and negotiation leading to the Parties' Stipulation and that they are satisfied that the requirements of the Stipulation ensure that the Dissolution is in the public interest.

Specifically, they note that paragraph 14 of the Stipulation requires that UBTA-UBET submit for Commission approval all material changes to tariffs, rates, contracts, and extended service area rates and routes currently applicable to UBET until such time as sixty percent of current UBET customers who become UBTA-UBET members have obtained voting privileges and UBTA-UBET notifies the Commission that the sixty percent threshold has been reached. Paragraph 17 of the Stipulation modifies the Applicants' Plan so that current UBET customers may elect to remain non-member UBTA-UBET subscribers or to pay the membership fee and become Class A members. Contrary to the Applicant's original membership plan, upon Dissolution, current UBET customers will be deemed to be Class B non-voting members and shall not be charged any membership fees until they affirmatively elect to become Class A members or until they have accrued sufficient patronage to pay the membership fee. The Division and the Committee view the changes embodied in the Stipulation as adequately protecting the representational and financial interests of current UBET customers and therefore urge Commission approval of the Joint Application.

Based upon the Joint Application, testimony, and Stipulation of the Parties, and in full consideration of the evidence and comments provided by concerned members of the public, the Administrative Law Judge enters the following proposed:

FINDINGS AND CONCLUSIONS

1. Pursuant to *Utah Code Ann.* § 54-4-28, the Commission finds and concludes that the proposed Dissolution of UBET into the newly named UBTA-UBET is in the public interest.

2. The Commission finds and concludes that UBTA-UBET qualifies for designation as an Eligible Telecommunications Carrier (ETC) pursuant to 47 U.S.C. § 214 and shall, upon Dissolution, assume within its service area all ETC obligations currently held separately by UBTA and UBET.

3. The Commission finds and concludes that the correct legal description of the service area transferred to UBET by sale from Qwest and approved by the Commission in Docket No. 99-049-65 is that legal description jointly provided by UBET and Qwest in their filings of November 22, 2004, and attached hereto as Appendix 1.

Based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. UBET's Certificate of Public Convenience and Necessity is hereby modified to contain the legal description of certificated service area as provided in Appendix 1 attached hereto. To the extent necessary, Qwest's Certificate of Public Convenience and Necessity and all relevant service area boundary maps are also modified to remove this territory from Qwest's certificated service area.

2. The Stipulation of the parties in this Docket is hereby adopted and incorporated herein by reference.

3. Effective upon Dissolution, UBTA's Certificate of Public Convenience and Necessity is modified to include the service territory of UBET Telecom and to change the name to UBTA-UBET Communications, Inc.

4. Effective upon Dissolution, UBTA-UBET is designated as an ETC pursuant to 47 U.S.C. § 214 in each exchange assumed from UBET.

5. Effective upon Dissolution, UBET's Certificate of Public Convenience and Necessity is cancelled and UBET is relieved of any obligation as a designated ETC in the State of Utah.

6. The transfer and assignment of all assets, operating authorities, licenses and contracts from UBET to UBTA-UBET, and the assumption of all liabilities, obligations and claims by UBTA-UBET from UBET is hereby approved.

7. Pursuant to *Utah Code Ann.* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Ann.* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 26th day of November, 2004.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 26th day of November, 2004, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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