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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<i>In the Matter of the Application of Uintah Basin Telecommunications Association, Inc., and UBET Telecom, Inc., for an Order of the Commission Approving the Combination, Merger and Consolidation of UBET Telecom, Inc., and Uintah Basin Telecommunications Association, Inc.</i>	<i>RESPONSE TO MOTION FOR ORDER COMPELLING ACCESS TO ALL PROTECTED RECORDS Docket No.: 04-053-03</i>
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**RESPONSE TO MOTION FOR ORDER COMPELLING ACCESS
TO ALL PROTECTED RECORDS**

Uintah Basin Telecommunications Association, Inc. (“UBTA”) and UBET Telecom, Inc. (“UBET”) (collectively, “UBTA-UBET”), by and through their attorneys of record, hereby submit the following Response to Motion for Order Compelling Access to All Protected Records filed by Brent Hansen with the Commission on February 7, 2005. For the following reasons, UBTA-UBET oppose, and respectfully request that the Commission deny, Mr. Hansen’s Request for Motion for Order Compelling Access to All Protected Records:

Introduction

Mr. Hansen seeks an order from the Commission compelling UBTA-UBET to respond to certain requests for records which he alleges that he has requested in writing or verbally. What Mr. Hansen fails to recognize, however, is that there is no provision under either the Commission’s Rules or the Utah Rules of Civil Procedure for post-hearing (trial) discovery. The fact is that Mr. Hansen, having been granted

intervention by the Commission, had his opportunity to fully participate as a party to the proceeding. That he failed to timely do so, is Mr. Hansen's fault, not that of the Commission, UBTA-UBET or any other party to the proceeding. The Commission, having issued its Order approving the proposed merger of UBTA and UBET (the "Merger Order"), and having denied Mr. Hansen's Request for Reconsideration of that Order (the "Reconsideration Order"), should now conclude these proceedings so that the UBTA-UBET can implement the proposed merger without any further unwarranted and unnecessary expense in responding to Mr. Hansen's efforts to resurrect his arguments which have been previously rejected by the Commission.

Discussion

As noted by the Commission in its Reconsideration Order, "Mr. Hansen did not submit his Request for Discovery until December 13, 2004, more than two weeks after the Commission issued its Order." Yet, Mr.

Hansen acknowledges that he knew as early as November 3, 2004, well in advance of the November 22, 2004 hearings, that he would be entitled to access to what he describes as “protected records” if he signed a confidentiality agreement. Upon being granted intervention on November 12, 2004, it was incumbent on Mr. Hansen to take an active role in the proceedings if it was his intent to participate as a party. The Commission correctly observes in its Reconsideration Order that Mr. Hansen had ten days following the granting of his intervention in which to prepare for, and participate in, the hearings but the record indicates that he took no action as an intervener during this period. Contrary to Mr. Hansen’s contention, it was not the responsibility of the other parties to ascertain what Mr. Hansen’s interests were or to determine to what extent Mr. Hansen would participate. The fact is that Mr. Hansen never contacted UBTA-UBET about any of the records to which he now asserts that he is entitled until December 13, 2004.

As Mr. Hansen acknowledges, the Utah Rules of Civil Procedure allow discovery for the purpose of trial preparation (Motion, ln. 255). The trial in this matter was held on November 22, 2004. There was no discovery cutoff prior to the hearing. Discovery could have been conducted up to the time of hearing, but Mr. Hansen claims that it would have been impossible for him to obtain any records from UBTA-UBET before the final hearing. Nevertheless, the record is clear that Mr. Hansen did not even attempt to obtain any of the records that he claims are necessary to “present his case” prior to the hearing. (Motion, lns. 256 to 257). Moreover, Mr. Hansen failed to attend the hearing. Mr. Hansen totally failed to protect his interests in this matter, whatever those interests may be, by failing to participate in the discovery and hearing process.

Mr. Hansen claims that despite “all of his efforts over the past three months,” he still has not received the crucial records that he claims he needs to present his case. However, as indicated in its Response to Request

for Reconsideration, dated January 10, 2005, in an effort to accommodate Mr. Hansen, and without any legal obligations to do so, UBTA-UBET scheduled a meeting with Mr. Hansen on December 17, 2004, in order to provide Mr. Hansen with the opportunity to inspect certain financial and organizational documents which Mr. Hansen had indicated that he wanted to review. Mr. Hansen canceled the meeting with UBTA-UBET. Mr. Hansen has responded that he canceled the meeting because he concluded that the "real" purpose of the meeting was to give UBTA-UBET the opportunity to talk him out of filing his Request for Reconsideration.

UBTA-UBET has confirmed with the Utah Supreme Court that Mr. Hansen did not file a Petition for Review or otherwise appeal the Commission's Order in this Docket within the period of time required by Utah law. Given the fact that Mr. Hansen did not timely appeal the Commission's approval of the Merger, and the Commission's Order is now final, there is no legitimate purpose to be served in connection with Docket

No. 04-053-03 in providing Mr. Hansen with any documentation which he has requested. Should Mr. Hansen have an interest in becoming a member of UBTA-UBET upon implementation of the merger, however, the same information as is made available to other members of UBTA-UBET will be provided to Mr. Hansen.

Mr. Hansen did not participate in discovery prior to the hearing; Mr. Hansen did not attend the hearing; and Mr. Hansen failed to meet with UBTA-UBET when it agreed to meet with him and permit him to inspect financial and organizational documents. Now, dissatisfied with the result of the hearing that Mr. Hansen chose not to participate in, and after having his Request for Reconsideration rejected by the Commission, Mr. Hansen seeks to compel discovery in an obvious effort to reopen, and have the Commission reconsider, what is now a final order. Mr. Hansen essentially wants the Commission to reopen the proceedings, including discovery, so

that he can have what he did not take advantage of in the first place, his day in court.

Conclusion

To grant Mr. Hansen's Motion at this time would result in an unwarranted and unnecessary expenditure of time and resources by UBTA-UBET and its members. For the reason cited above, UBTA and UBET request that the Commission deny the Mr. Hansen's Motion for Order Compelling Access to All Protected Records.

DATED this 16th day of February, 2005.

BLACKBURN & STOLL, L.C.

Stanley K. Stoll
Attorneys for UBTA and UBET

CERTIFICATE OF DELIVERY

*I hereby certify that on this 16th day of February, 2005, I caused to be hand-delivered, and provided by electronic means, a true and correct copy of the foregoing **RESPONSE TO MOTION FOR ORDER COMPELLING ACCESS TO ALL PROTECTED RECORDS**, to:*

Michael Ginsberg
Assistant Attorney General
Division of Public Utilities

Paul Proctor
Assistant Attorney General
Committee of Consumer Services

*I hereby certify that on this 16th day of February, 2005, I caused to be mailed by first-class United States mail, and provided by electronic means, a true and correct copy of the foregoing **RESPONSE TO MOTION FOR ORDER COMPELLING ACCESS TO ALL PROTECTED RECORDS**, to:*

Brent Hansen
254 North 100 East
P.O. Box 263
Vernal, Utah 84078

Stanley K. Stoll