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Association, Inc. and UBET Telecom, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF THE APPLICATION FOR INCREASE IN USE ELIGIBILITY FOR UINTAH BASIN  
TELECOMMUNICATIONS ASSOCIATION, INC.

DOCKET NO. 05-053-01

TESTIMONY OF BRUCE TODD

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PREPARED TESTIMONY OF  
BRUCE TODD

Q:PLEASE STATE YOUR NAME AND ADDRESS.

A: Bruce Todd and I live in Roosevelt, Utah.

Q:BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A:I am currently employed by Uintah Basin Telecommunications Association, Inc. ("UBTA") and UBET Telecom, Inc., a wholly-owned subsidiary of UBTA ("UBET Telecom")(collectively, "UBTA-UBET"), as General Manager/CEO of both companies. I am also the General Manager/CEO of Uintah Basin Electronic Telecommunications ("UBET") and Uintah Basin Long Distance, Inc. ("UBLD"), each a wholly-owned subsidiary of UBTA. UBET and UBLD own and operate the non-regulated business activities of the company.

Q:ARE YOU AUTHORIZED TO TESTIFY ON BEHALF OF UBTA-UBET IN THIS PROCEEDING?

A: Yes.

Q:PLEASE DESCRIBE YOUR EXPERIENCE IN THE TELEPHONE BUSINESS.

A:I have been in the telecommunications business for 19 years, with 9 years as General Manager/CEO of UBTA. I have also been the General Manager/CEO of UBET Telecom since its organization 5 years ago.

Q:PLEASE STATE THE NATURE OF YOUR TESTIMONY IN THIS PROCEEDING.

A:My testimony addresses UBTA-UBET's Application for Increase in USF Eligibility (the "Application"). My testimony covers the managerial and company policy consideration which I believe are important in connection with the Application.

Q: HAVE OTHERS BEEN AUTHORIZED TO TESTIFY ON BEHALF OF UBTA-UBET IN THIS PROCEEDING?

A: Yes. Ray Hendershot of GVNW Consulting, Inc., will file direct testimony on behalf of UBTA-UBET covering the cost studies and rationale supporting the proposed increase in USF eligibility. Karl Searle, the Chief Financial Officer, will also file direct testimony on behalf of UBTA-UBET. His testimony will deal with the changes in financial reporting requirements, namely, the implementation of FAS No. 142 related to the impairment of goodwill carried on the financial statements of the company.

Q:PLEASE DESCRIBE THE TWO COMPANIES.

A:UBTA-UBET are Utah corporations qualified to transact business and operate as a local exchange carriers providing telecommunications services within the State of Utah under authority issued by the Commission.

UBTA holds a Certificate of Convenience and Necessity from the Public Service Commission of Utah (the "Commission") to provide telephone services in the exchanges of Lapoint (247), Altamont (454), Fruitland (548), Flattop (646), Neola (353), Randlett (545), and Tabiona (848). The Lapoint exchange is located in Uintah County. The Altamont and Tabiona exchanges are located in Duchesne County. The Neola, Randlett and Flattop exchanges are located in both Duchesne and Uintah Counties and the Fruitland exchange is located in both

Duchesne and Wasatch Counties.

UBET Telecom holds a Certificate of Public Convenience and Necessity from the Commission to provide local calling area services in the exchanges of Duchesne (738), Roosevelt (722, 725) and Vernal (781, 789). Those exchanges were acquired by UBET Telecom from Qwest Communications on April 6, 2001. The Duchesne exchange is located in Duchesne County. The Roosevelt exchange is located in both Duchesne and Uintah Counties. The Vernal exchange is located in Uintah County.

Q: PLEASE DESCRIBE THE STATUS OF THE MERGER OF UBTA AND UBET TELECOM PREVIOUSLY APPROVED BY THE COMMISSION ON NOVEMBER 26, 2004, IN DOCKET NO. 04-053-03.

A: While ¶3 of the Application states that it is anticipated that the merger would be completed on or before July 1, 2005, it has yet to be completed. The delay in implementation is due to the following:

- (i) RUS and CoBank, as UBTA-UBET's primary lenders, have not given final consent to the proposed merger although, initially, both indicated that they would support, and approve, it. UBTA-UBET believe that final approval will be forthcoming and have received no feedback from either RUS or CoBank that would lead it to conclude otherwise. CoBank and UBTA-UBET have agreed to the forms of documentation required by CoBank with respect to the merger. CoBank has also indicated that it approves of the merger subject to final approval by RUS. UBTA-UBET have provided all data, information and documentation which has been requested by RUS.
- (ii) Moss-Adams, UBTA-UBET's tax consultants, advised the companies, prior to the filing of the application for approval of the merger of UBTA and UBET Telecom, that the merger should be completed prior to year end. Moss-Adams opined that closing the merger prior to year end would be in the companies' best interest for tax reasons. UBTA-UBET requested, and the Commission accommodated, an expedited approval procedure so that a year-end implementation of the merger could occur. Following approval by the Commission, however, an intervenor filed a Request for Reconsideration along with additional discovery requests and motions associated therewith. The

Commission issued its Order on Request for Reconsideration on January 12, 2005. UBTA-UBET, on advice of legal counsel, was not willing to implement the merger until such time as the Commission's Order was final and the 30-day statutory period for the intervenor filing a Petition for Review of the Commission's Order with the Utah Supreme Court had elapsed. As a result, the Commission's Order did not become final, and non-appealable, until February 11, 2005. Again, the companies' tax consultant advised that the merger be delayed until later in the year for tax reasons.

Q: UBTA-UBET REQUESTED, IN THE APPLICATION, THAT THE ELIGIBILITY FOR USF BE CONSIDERED ON A CONSOLIDATED BASIS. WHAT IS THE COMPANIES' REASONING FOR SUCH REQUEST?

A: As indicated above, it is anticipated that the merger of UBTA and UBET Telecom will be implemented during the last six months of this year. Therefore, given the anticipate schedule for this proceeding, the merger should occur prior to the Commission's determination as to the amount of USF to which the companies are entitled in this Docket.

Q: THE APPLICATION REQUESTS A PLANT ACQUISITION AND AMORTIZATION ADJUSTMENT RELATED TO THE PURCHASE OF THE VERNAL, DUCHESNE AND ROOSEVELT EXCHANGES FROM QWEST IN APRIL 2001. WHAT IS THE COMPANIES' RATIONALE FOR MAKING SUCH A REQUEST?

A: UBTA-UBET believe that the ratepayers in the Uintah Basin have substantially benefitted from the acquisition by UBET Telecom of the Vernal, Duchesne and Roosevelt exchanges. One of the principle reasons for the exchange sales by Qwest was that it (and its predecessor, US WEST) had not upgraded the facilities in those exchanges in years. Further, Qwest was unwilling to make any such upgrades but indicated that it would focus its resources in developing facilities in the metropolitan areas of Utah. As a result, there was no fiber, no broadband, or other enhanced technologies which the subscribers in those exchanges were demanding and to which they were entitled. This adversely impacted all subscribers in those exchanges and, particularly, those that

required broadband and enhanced technologies in their endeavors such as the Utah Education Network, USU Extension Services, etc. The Vernal, Duchesne and Roosevelt exchanges also suffered from blockages in services provided to the subscribers which were the result of inadequate and antiquated facilities. The blockages could not be remedied without the development and expansion of the telecommunications infrastructure which includes fiber. In the course of the public hearings in the Uintah Basin, which were attended by representatives from the Division of Public Utilities and the Committee of Consumer Services, UBET Telecom stated to subscribers in those exchanges that one of the primary benefits of the proposed exchange sales was that it would invest resources in bringing the enhanced technologies to the Uintah Basin. UBET Telecom found the Qwest facilities would not support those enhanced technologies and, as a result, both prior to, and following, the acquisition of the Vernal, Duchesne and Roosevelt exchanges, UBTA and UBET Telecom expended substantial resources to upgrade the quality of the facilities in those exchanges. Those expenditures have depleted the capital and operating reserves of the companies to the extent that neither has the financial ability to meet the requirements for new capital projects.

Further exacerbating the problem was the introduction of FAS 142 (which Mr. Searle discusses, at length, in his testimony). In summary, FAS 142 requires a “write down” of the impairment to goodwill which is reflected on the financial statements of the companies. As all parties were aware, the acquisition of exchanges sales included a substantial amount of goodwill or “blue sky.” The impairment of that goodwill, and resulting write down, has resulted in a negative equity position in the company. As such, UBTA-UBET no longer comply with their respective loan covenants with RUS and CoBank. As a result, the ability of UBTA-UBET to borrow funds to meet the capital project demands for service required by UBTA-UBET’s subscribers has been dramatically impacted.

**Q: HAS UBET TELECOM PREVIOUSLY AGREED THAT IT WOULD NOT INCLUDE THE “ACQUISITION ADJUSTMENT” IN ITS RATE BASE OR REVENUE REQUIREMENT?**

Yes. UBET Telecom entered into a Stipulation, dated April 6, 2000 (the “Stipulation”) in Docket No. 99-049-65,

in which UBET agreed that “[t]he premium paid to US West in excess of the net book value will not be included in the Buyer’s rate base or revenue requirement.” UBTA-UBET submit, however, that circumstances, which were unknown and unforeseeable at the time that UBET Telecom entered into the Stipulation, have changed and, thus, UBET Telecom should be granted the relief which it has requested.

Q: EXPLAIN WHAT HAS CHANGED THAT WAS NOT KNOWN OR FORSEEABLE AT THE TIME THAT UBET TELECOM ENTERED INTO THE STIPULATION IN DOCKET NO. 99-049-65.

A: The Commission’s approval of the acquisition by UBET Telecom of the Vernal, Duchesne and Roosevelt exchange was based, in part, on the Stipulation in Docket No. 99-049-65. It was anticipated, based on the then current financial accounting and reporting rules, that the difference between the purchase price and the net book value of the assets acquired would be reflected on the balance sheet of UBET Telecom, and amortized over the applicable period.

FAS Statement No. 142, *Goodwill and Other Intangible Assets*, mandates the write-down of goodwill. The adoption of FAS Statement No. 142, and the circumstances leading to its promulgation, i. e., the collapse of Enron, etc., were totally unforeseen, unexpected and unanticipated at the time the Stipulation was executed by the parties thereto and approved by the PSCU.

The write-down in goodwill has contributed to a negative equity position. If the relief requested by UBTA-UBET is not granted, it could result not only in the UBTA-UBET’s default of their loan covenants with their lenders but will also effectively bar their access to the capital markets for the funding necessary for plant development to meet the needs of UBTA-UBET’s subscribers.

Q: THE APPLICATION ALSO CONTAINS A REQUEST FOR RECOVERY OF EXPENSES INCURRED WITH RESPECT TO UBTA-UBET’S PROPOSED REDUNDANT ROUTE. PLEASE EXPLAIN WHY A REDUNDANT ROUTE IS REQUIRED.

A: Over the last two years the UBTA-UBET fiber route to Salt Lake City has been cut by contractors working outside of the UBTA-UBET service area leaving the entire UBTA-UBET service area without any reliable link

to communications outside of the Uintah Basin. Even 911 services have been effected. All customers have been adversely impacted by those outages. Particularly vocal, however, has been the business and educational community such as Zions' Bank, Utah State University Extension Campuses, Uintah Basin Area Technical College, the local newspapers and others in their demand for reliable, continuous services irrespective of outages and blockages. E911 and other public safety services have also been impacted by the lack of a redundant route. A viable, reliable redundant route is needed to insure that continuous, uninterrupted telecommunications services to and from the Uintah Basin are maintained.

UBTA-UBET have explored several possibilities for the redundant route. Each, have proven to be substantially more costly than that which UBTA-UBET now propose. For example, UBTA-UBET looked at a redundant route which would go through Wyoming using 360 Communications' facilities back into Salt Lake City, but it was determined that the Wyoming route was cost prohibitive. UBTA-UBET also have a four (4) DS-3 microwave radio that can be used to haul some traffic from the UBTA-UBET service area. It is, however, an old, obsolete radio that doesn't have the capacity to handle UBET-UBET's traffic requirements. Even if it could be upgraded to handle the traffic, it would be cost prohibitive and would not adequately address the redundancy requirement for the companies. The radio became manufacturer non-repairable in 1998. There are no assurances that the microwave facilities and be maintained and for how long. In addition, certain subscribers such as Uintah River Technologies have federal contracts requiring that they utilize fiber facilities only in performing their obligations; they cannot use microwave facilities. Weather impacts the reliability and functionality of the microwave transmission. UBTA-UBET have been able to keep the radio marginally operational only by searching the used parts market and secondary support providers since that time. The microwave path is from South Myton to Vernal, Roosevelt, Duchesne and Flattop. The traffic is handed off to Carbon/Emery Telcom at the South Myton -- Bruin Peak midpoint. An upgraded microwave system would not support the OC48 ring technology which is necessary to provide enhanced technologies which UBTA-UBET is committed to provide to its subscribers and are required by UEN and Uintah River Technologies.

Q: WOULD YOU PLEASE EXPLAIN WHAT PROPOSED REDUNDANT ROUTE ENTAILS, AND WHY THE EXPENSES ASSOCIATED WITH IT SHOULD BE INCLUDED WITHIN THE COMPANIES' REVENUE REQUIREMENT.

The proposed redundant route through Colorado would carry UBTA-UBET traffic on the UBTA-UBET fiber network from Vernal to the Utah-Colorado state line. It would then meet NC Telecom mid-span at the state line and would then run on NC Telecom fiber from the state line to Rifle, CO. NC Telecom would then meet Qwest Classic. UBTA-UBET would lease dark fiber from Qwest Classic from Rifle to Salt Lake City, Utah to UBTA-UBET's current location at the Kearns Building. This configuration would give UBTA-UBET a sonnet ring configuration for all of UBTA-UBET's traffic. UBTA-UBET will lease the dark fiber from NC Telecom and Qwest Classic with long term lease agreements. UBTA-UBET requires a redundant route that is geographically distinct from its existing route. A side-by-side route with its existing Salt Lake City route will not work. Natural disasters such as landslides, floods, etc., could disrupt telecommunications services for days, weeks and even months. The Thistle landslide in 1983 is a good example of what could happen.

Q: PLEASE EXPLAIN HOW THE REDUNDANT ROUTE WILL BENEFIT UBTA-UBET'S SUBSCRIBERS.

A: The first benefit to the subscribers is the provision of a reliable communications route at the least cost. The proposed redundant route is the least cost route. The redundant route benefits subscribers by eliminating isolation. Isolation due to cut facilities has been an increasing problem for the subscribers in the Uintah Basin. Experience in rural areas indicates that an important factor in deciding whether to locate a business is the availability of reliable telecommunications facilities. Subscribers benefit when businesses decide to take advantage of the many pro-business factors in a community including state-of-the-art telecommunications facilities. Subscribers also benefit by being able to conduct business in a timely manner, without concern as to service interruptions resulting from downed or cut telecommunications facilities. The current oil boom has placed high performance demands on the telecommunications facilities in the Uintah Basin. A redundant route is necessary to meet the performance demands.



Q: THE APPLICATION SEEKS CERTAIN KNOWN AND MEASURABLE CAPITAL PROJECTS. PLEASE EXPLAIN THE NATURE OF THOSE PROJECTS.

A: One of the largest, if not the largest, industries in the Uintah Basin is the exploration, development and production of crude oil and natural gas. Due to the unprecedented increases in crude oil and natural gas prices during the past year, the Uintah Basin has seen a substantial increase in both population and economic development in the area. There has been a substantial increase in the demand for housing as a result of the expansion of the local economy as well as additional demand for goods and services related to the exploration, development and production of petroleum products in the fields located in Uintah and Duchesne Counties. As a result of the economic boom in the Uintah Basin, UBTA-UBET will need to develop additional telecommunications infrastructure to serve not only the additional population coming into the Basin but also the increased economic activity associated with the local economic boom. The number of projects have increased since the Application in this Docket was filed. UBTA-UBET may need to supplement its Request for USF Eligibility for the additional construction projects that are being developed to meet the needs of the Basin.

Q: PLEASE DETAIL THOSE PROJECTS WHICH ARE KNOWN AND MEASURABLE AT THIS TIME.

A: Halliburton is constructing a housing project in the Uintah Basin that will have 100 total units in the first phase. In addition, at the time the Application was filed in Docket No. 05-053-01, UBTA-UBET had been made aware of 25 new subdivisions slated for development in 2005. These subdivisions will add approximately 600 lots in this year's phases and will expand to 700 to 800 lots over the next few years. At an approximate cost of \$400.00 per lot to provide telecommunications services, the new subdivisions were estimated to cost UBTA-UBET \$240,000.00 for this year's phases alone. Since filing its Application, UBTA-UBET have learned that the total number of subdivisions slated for 2005 has increased to over 50. UBTA-UBET is now anticipating over 1000 new lots in 2005 at an approximate cost of \$400,000 to provide telecommunications infrastructure.

The Uintah Basin is also experiencing high growth in the Bonanza Area (Southeast of Vernal) which currently has very limited facilities (I have attached, as Exhibit 1, an Article which appeared in the Deseret News, Sunday,

July 10, 2005, detailing the boom in the Bonanza Area). In order to provide services to this area, UBTA-UBET will be required to place new facilities from either Jensen or Naples to the Bonanza Area, a distance of approximately 29 miles. At approximately \$4.00 per foot for construction and materials, it is estimated that the extended infrastructure for the project will cost in excess of \$615,000.00. There will also need to be a BLC/DLC placed in order to provide services to customers in that area. The estimated cost for the DLC is \$80,000.00. Along with these costs, there will be the added expense of getting these facilities into the customer locations. This will add approximately 5 miles of additional construction and materials at an estimated cost of \$100,000.00. This puts the total estimate for the Bonanza Area project at around \$800,000.00. UBTA-UBET requires the additional revenues which it is seeking in this Docket in order to meet the demands of the known and measureable growth in the Uintah Basin at this time. As a result of the oil boom which the Basin is experiencing, further development of housing and commercial enterprises is to be expected. The relief which UBTA-UBET is seeking will also assist it in meeting the demands on the tele-communications infrastructure which will occur as a result of the economic expansion of the Basin that, while not undergoing development and construction at this time, will undoubtedly occur.

The level of economic development in the companies' service areas puts tremendous demands on all public services in the Uintah Basin whether telecommunications, electrical, roads, public safety, etc. It is essential that UBTA-UBET have the financial resources available to them to respond to those demands.

**Q: HAVE THE PUBLIC SERVICE PROVIDERS IN THE UINTAH BASIN RECEIVED SUPPORT FROM THE GOVERNOR'S OFFICE AND THE LEGISLATIVE LEADERSHIP IN THE STATE OF UTAH?**

**A:** Yes, on July 8, 2005, the Governor, Lt. Governor, members of the Governor's staff as well as the legislative leadership, including Senator Bev Evans from the Uintah Basin, met with community and business leaders in the Uintah Basin. The Governor's Rural Affairs Coordinator was also in attendance.

The Governor declared that he and his office were "here to help you out and listen to your concerns." I, as a representative of UBTA-UBET, was invited by the Governor to make a presentation as to the challenges faced

by UBTA-UBET in providing the necessary telecommunications infrastructure to support and enhance the economic growth and development in the Basin. During my presentation, I focused my remarks on the support from governmental agencies such as the Commission which UBTA-UBET will need in order to have the financial resources available to them to meet the increased demand of a booming economy. My impression was that from those in the governmental sector, including the Governor and his staff, understood the necessary role of those agencies such as the Commission in providing the resource base required to enable public utilities such as UBTA-UBET in meeting the demands of a growing economy.

Q:DOES THAT CONCLUDE YOUR TESTIMONY?

A: Yes.