

JEROLD C. LAMBERT
BRESNAN COMMUNICATIONS, LLC
1 Manhattanville Road
Purchase, NY 10577
Telephone: (914) 641-3338
Facsimile: (914) 641-3301
Email: jlambert@bresnan.com

THORVALD A. NELSON
HOLLAND & HART LLP
8390 East Crescent Pkwy, Suite 400
Greenwood Village, CO 80111
Telephone: (303) 290-1601
Facsimile: (303) 975-5290

JOEL D. WRIGHT (10477)
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111-1031
Telephone: (801) 799-5912
Facsimile: (801) 799-5700

Attorneys for Bresnan Broadband of Utah, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Application of

Bresnan Broadband of Utah, LLC

For a Certificate of Public Convenience and
Necessity to Operate as a Competitive Local
Exchange Carrier in Utah

VERIFIED APPLICATION

Docket No. 07-____-01

Pursuant to Utah Code Ann. § 54-8b-1 *et seq.*; Utah Admin. Code § 746-349-1 *et seq.*;
and the federal Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, Bresnan Broadband of
Utah, LLC a Utah limited liability company (the “Applicant”), hereby submits this application

(the “Application”) to the Utah Public Service Commission (the “Commission”) for a Certificate of Public Convenience and Necessity (CPCN) authorizing it to operate as a Competitive Local Exchange Carrier (CLEC), and provide local exchange services in two places: (1) within those portions of Utah that are served by Qwest as the Incumbent Local Exchange Carrier (ILEC), and (2) the local exchange area in Vernal, Utah. Applicant intends to provide business services over traditional circuit switched technology, and provide residential services as part of its IP-Enabled digital voice service that it calls “Digital Phone.”

Because certain financial information of Applicant and its parent companies is competitively and commercially sensitive, Applicant requests that such information be treated as confidential. Pursuant to standard Commission practice, the materials submitted with this Application for which Applicant seeks confidential treatment are printed on yellow paper and stamped “CONFIDENTIAL.”¹

I. BASIC CLEC APPLICATION INFORMATION

1. Applicant’s legal name and principal place of business are:

Bresnan Broadband of Utah, LLC
98 West Harding Ave.
Cedar City, UT 84720

2. Applicant is a limited liability company organized under the laws of the State of Utah.

A copy of Applicant’s Articles of Organization and Certificate of Existence are attached to this Application as Exhibit A.

¹Applicant understands that confidential treatment under this procedure limits the distribution of the designated materials to the Commission and its staff and to personnel of the Division of Public Utilities who are assigned to review the Application.

3. Applicant's registered agent in the State of Utah is:

CT CORPORATION SYSTEM
136 East South Temple, Suite 2100
Salt Lake City, UT 84111

4. Correspondence or communications pertaining to this Application should be directed to the three attorneys identified on the first page of this application.

5. Questions concerning the ongoing operations of Applicant following certification should be directed to Katherine Kirchner, General Manager of Telephone Operations, at the following address: Bresnan Communications, 1860 Monad Avenue, Billings, Montana 59102.

6. Applicant seeks authority to provide local exchange telecommunications services in Utah for both traditional circuit switched technology and Internet Protocol Enabled (IP-Enabled), despite its belief that it does not require such authority for the IP-Enabled services. Applicant believes the IP-Enabled service is not a public telecommunications service as defined by Utah Code Ann. § 54-8b-2(16). Applicant also believes the Federal Communications Commission has expressed a clear intention to preempt state regulation of IP-Enabled services. However, Applicant acknowledges these issues are under review in the FCC's IP-Enabled Notice of Proposed Rulemaking (NPRM) currently in progress. Thus, Applicant is filing this Application and, if granted, Applicant can act in all respects as if its IP-Enabled services are a local exchange telecommunications service in Utah while the FCC completes its IP-Enabled NPRM. Even though Applicant may act as if its IP-Enabled voice services are a regulated local exchange telecommunications service, Applicant is expressly not waiving or limiting its ability to argue in Utah or elsewhere that IP-Enabled services are not a regulated local exchange

telecommunications product. Additionally, once the FCC's NPRM is completed, Applicant may, as appropriate, seek to modify the certificate requested in this Application.

II. SUPPORTING INFORMATION UNDER UTAH ADMIN. CODE § R746-349-3

In support of its Application, Applicant provides the following information pursuant to Utah Admin. Code § R746-349-3:²

1. *Testimony and Exhibits.* Previous CPCN applications indicate the Commission no longer requires the submission of prepared, written testimony in connection with a CLEC application. Exhibits in support of the Application are set forth and explained in the following sections.

2. *Proof of Bond.* Pursuant to § R746-349-3.A.2, Applicant respectfully requests the Commission permit a letter of credit for \$100,000, in substantially the form found in Exhibit B, in lieu of a \$100,000 bond. Applicant believes a letter of credit for \$100,000 protects customer deposits or other customer liabilities as well as a \$100,000 bond.

3. *Facilities, Resale of ILEC Services.* In the Cedar City area, Applicant will provide residential services in conjunction with its partner Net2Phone. Net2Phone's affiliated CLEC in Utah (IDT America, Corp.) already has existing interconnection arrangements with Qwest. Applicant will provide business services in the Cedar City area using the facilities of the ILEC as necessary. In the Vernal area, Applicant will provide residential services using its own facilities, and provide business services using the facilities of the ILEC as necessary.

²The paragraphs in this section are numbered to match the subsection designations of § R746-349-3.

4. *Services to be Offered.*

a. *Classes of Customers.* Applicant's initial marketing efforts will be to provide voice service to both business and residential customers.

b. *Location of Service.* Applicant will initially provide service in areas in and around Cedar City, Utah served by Qwest as the ILEC, as well as areas in and around Vernal, Utah served by UBTA-UBET Communications as the ILEC.

c. *Types of Services to be Offered.* Applicant will offer residential service through cable telephony, whereby a call will originate via a telephone connected to a modem. Such calls will be routed over Applicant's coaxial cable (internet protocol) to a telephony switch and transported via the Public Switched Telephone Network (PSTN), and then terminated on traditional phone lines. This process does not utilize the public Internet for transport, thus typically supporting a higher quality of service and prioritization of voice traffic. Applicant will offer business services using its own switch, and the facilities of the ILEC where necessary.

5. *Access to Standard Services.* Applicant will provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 either through its own operations or by purchasing those services from third parties.

6. *Implementation Schedule Pursuant to 47 U.S.C. § 252(c)(3).* Applicant intends to begin marketing its CLEC services to business and residential customers as soon as the Commission issues a CPCN and Applicant signs any necessary interconnection agreements.

7. *Professional Experience and Education of Managerial Personnel.* Applicant's operations will be conducted by personnel from affiliates of Applicant, described in ¶ II.8 below.

Attached to this Application as Exhibit C are the extensive telecommunications and managerial experience of the key personnel who will be responsible for Applicant's operations. Bresnan Communications, LLC has already deployed Digital Phone in 33 markets in Colorado, Montana and Wyoming.

8. *Organizational Chart.* Applicant is a Limited Liability Company whose sole member is Bresnan Digital Services, LLC. Both entities are wholly-owned subsidiaries of Bresnan Communications, LLC. The original Bresnan corporate entity, Bresnan Communications, Inc. was founded in 1984 to provide cable television services. Bresnan Communications, LLC and its subsidiaries currently provide cable and/or telephony services to over 300,000 customers in Colorado, Wyoming, Montana, and Utah. Attached as Exhibit D are organizational charts of Applicant's employees currently working or that plan to be working for Applicant's operations with their job titles.

9. *Chart of Accounts.* A chart of accounts for Bresnan Communications, LLC, including account numbers and brief descriptions, is attached to this Application as confidential Exhibit E. Applicant does not have any accounts at this point.

10. *Financial Statements.*

a. Attached as confidential Exhibit F are the most recent balance sheet, income statement and cash-flow statement for Bresnan Communications, LLC and its subsidiaries, all prepared in accordance with generally accepted accounting principles (GAAP).

b. Attached as Exhibit G is a letter from Andrew C. Kober, Senior Vice President and Controller for Bresnan Communications, Inc., the manager of Bresnan Communications, LLC,

attesting to the accuracy, integrity and objectivity of the statements in Exhibit F, and that they were prepared in accordance with GAAP.

c. A balance sheet of Applicant is not included because Applicant will not have any material assets until this Application is approved.

d. Bresnan Digital Services, LLC is the sole member of Applicant, and both are subsidiaries of Bresnan Communications, LLC. Therefore, the financial statements of Bresnan Communications, LLC and its subsidiaries are included in this Application as Exhibit F.

11. *Financial Ability.* Applicant has the financial backing and wherewithal to provide the telecommunications services outlined in this Application. Specifically, Bresnan Communications, LLC will supply Applicant with the financing and capital necessary to conduct its telecommunications operations as specified in this application. In particular, (a) Bresnan Communications, LLC has a positive net worth, as indicated in Exhibit F, and (b) there is sufficient cash flow from Bresnan Communications, LLC's operations to provide the necessary cash flow for Applicant (see Exhibit F), and (c) Applicant will provide a letter of credit for \$100,000 to protect customers as set forth in ¶ II.2 above.

12. *Expected Operations.*

a. *Proforma Projection.* Applicant respectfully requests that this requirement be waived because it does not have a projection of its proforma income or cash flow statement for the next five years. In addition, Applicant believes the financial statements provided in Exhibit F demonstrate that Applicant has the resources to provide the services identified in this Application, and the form of letter of credit provided in Exhibit B demonstrates that future customers will be protected.

b. Technical Description of Technology. After obtaining CLEC certification, Applicant intends to upgrade its system to enable it to provide Digital Phone and/or CLEC services to its customers, as set forth in ¶ II.4 above.

c. Proposed Facility Locations. Applicant will initially provide service in areas in and around Cedar City, Utah served by Qwest as the ILEC, and in areas in and around Vernal, Utah served by UBTA-UBET Communications as the ILEC.

13. *Implementation Schedule Pursuant to 47 U.S.C. § 252(c)(3).* Applicant intends to begin marketing its cable telephony to residential and business customers as soon as the Commission issues a CPCN and Applicant signs any necessary interconnection agreements with incumbent carriers.

14. *Technical and Managerial Abilities.* Due to their extensive previous experience with Bresnan Digital Services, LLC, Applicant's officers and managers have the necessary managerial and technical abilities to provide the proposed services and to operate and maintain Applicant's facilities over which such services will be provided. Biographies of the key personnel who will be responsible for Applicant's operations in Utah are attached to this Application as Exhibit C.

Other Jurisdictions. Affiliates of Applicant, who are all wholly-owned subsidiaries of Bresnan Digital Services, LLC, are certified as CLEC's in the following three states and providing voice services therein:

Bresnan Broadband of Colorado, LLC in Colorado

Bresnan Broadband of Montana, LLC in Montana

Bresnan Broadband of Wyoming, LLC in Wyoming

Attached as Exhibits H, I and J is proof of CLEC certification in these three states.

15. *Public Interest.* Some of the reasons why the public interest is served by issuing a CPCN to Applicant include:

a. Choice. Applicant will provide customers with a high quality and affordable choice for land line voice service. For example, when combined with other Bresnan products, Digital Phone is currently available throughout Bresnan's service territory for \$39.99 a month, and a second line can be added for \$14.99 a month. This monthly price includes unlimited calling within the United States and Canada, with features like voice mail, call waiting, caller identification and call forwarding at no additional cost. Digital Phone is professionally installed, and allows customers to use their existing phone.³

b. CPCN Lowers Cost of Providing Service. A CPCN will: (i) facilitate signing an interconnect agreement with the ILEC, (ii) make number portability easier and more reliable, (iii) remove a degree of future regulatory risk and (iv) prevent unnecessary duplication of facilities by allowing Applicant to use the ILEC's facilities and reimburse the ILEC for such use.

c. Economic Development. Because Cedar City and Vernal are located in relatively rural areas, the cost of communication is critical to their economic development. Economic activity that could move to either location may locate elsewhere if the cost of communicating is higher in Cedar City or Vernal. Both Cedar City and Vernal are already at a disadvantage because Comcast has deployed their product comparable to Digital Phone along the Wasatch Front. In

³Terms and pricing of monthly service, along with more information on Digital Phone, can be found on Bresnan's web site at: <http://www.bresnan.com/unst/products/phone/>

addition, the Vernal area is still served by a single landline phone company, while customers in Qwest's Utah territory have enjoyed the benefits of choice and competition for over a decade.

d. Competitive Entry Under Utah Law. Utah law allows the Commission to grant Applicant the requested CPCN. There are no applicable restrictions because Cedar City is in Qwest territory, and the restrictions applicable to the local exchange area in Vernal expired on December 31, 1997.⁴

16. *Authority to Do Business in Utah.* Enclosed as Exhibit A are (a) the Articles of Organization of Applicant, filed with the Division of Corporations and Commercial Code, Utah Department of Commerce, on November 28, 2006, and (b) a Certificate of Existence, which establishes Applicant's authority to conduct business in Utah.

17. *Complaint of Unauthorized Switching.* No complaints have been made nor has any investigation been undertaken against Applicant or any other affiliate for unauthorized switching ("slamming") or any other illegal activities.

18. *Unauthorized Switching; Solicitation of New Customers.* Applicant will employ traditional marketing and sales practices in soliciting customers for its new services. These include such advertising as sponsorships, television and/or radio spots, print advertising and advertising on internet sites.

⁴ See Utah Code Ann. § 54-8b-2.1(1) (2006). In addition, it is unclear if the ILEC in Vernal would still qualify for these expired restrictions. Data from the North American Numbering Plan Administration indicates the ILEC in Vernal uses 6,346 numbers in the Vernal local exchange area, and 35,047 numbers in Utah. The complete list of "utilized codes" for the 435 area code is available here: http://www.nanpa.com/nas/public/assigned_code_query_step1.do?method=resetCodeQueryModel. In addition, the ILEC in Vernal claims it "...has evolved into a company of over 30,000 customers." See: http://www.ubta-ubet.com/index.php?option=com_content&task=view&id=15&Itemid=35

When Applicant offers voice services, it will prevent unauthorized switching of customers by requiring all new customers to sign a letter of authorization. A sample of the letter of authorization is set forth in Exhibit K.

Applicant will comply with Utah law and regulations of the Federal Communications Commission (FCC) regarding how interexchange carriers may change a consumer's Primary Interchange Carrier. Applicant will also comply with the FCC's regulations regarding how carriers may change a consumer's primary local exchange provider.

III. REQUEST FOR CERTIFICATE

WHEREFORE, Applicant respectfully requests that the Utah Public Service Commission issue a CPCN authorizing Applicant to provide services in the State of Utah, as set forth in detail in the body of this Application.

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DATED this 5th day of February, 2007.

/s/ Joel D. Wright

JOEL D. WRIGHT (10477)
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111-1031
Telephone: (801) 799-5912
Facsimile: (801) 799-5700

Thorvald A. Nelson
HOLLAND & HART LLP
8390 East Crescent Parkway
Suite 400
Greenwood Village, CO 80111
Telephone: (303) 290-1601
Facsimile: (303) 290-1606

Jerold C. Lambert
BRESNAN COMMUNICATIONS, LLC
Associate General Counsel
One Manhattanville Road
Third Floor
Purchase, NY 10577
(914) 641-3338

ATTORNEYS FOR BRESNAN BROADBAND
OF UTAH, LLC

LIST OF EXHIBITS

EXHIBIT A	Articles of Organization and Certificate of Existence of Applicant
EXHIBIT B	Form of \$100,000 Letter of Credit in Lieu of Bond
EXHIBIT C	Managerial and Technical Qualifications of Personnel for Utah Operations
EXHIBIT D	Organizational Charts of Applicant's Operations
EXHIBIT E	Applicant Chart of Accounts [CONFIDENTIAL]
EXHIBIT F	Financial Statements of Bresnan Communications, LLC and its Subsidiaries [CONFIDENTIAL]
EXHIBIT G	Letter of Bresnan Communications, LLC's Controller in Support of Financial Statements
EXHIBIT H	Proof of CLEC Certification in Colorado
EXHIBIT I	Proof of CLEC Certification in Montana
EXHIBIT J	Proof of CLEC Certification in Wyoming
EXHIBIT K	Form Authorization Letter to Prevent Unauthorized Switching
EXHIBIT L	VERIFICATION

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of February, 2007, an original, five (5) true and correct copies, and an electronic copy of the foregoing **VERIFIED APPLICATION** were hand-delivered to:

Ms. Julie Orchard
Commission Secretary
Public Service Commission of Utah
Heber M. Wells Building, Fourth Floor
160 East 300 South
Salt Lake City, Utah 84114
mlivingston@utah.gov

Sincerely,

Signature: /s/ Joel D. Wright

JOEL D. WRIGHT (10477)
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111-1031
Telephone: (801) 799-5912
Facsimile: (801) 799-5700