

ATTACHMENT 1

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Bresnan)
Broadband, LLC, for a Certificate of Public)
Convenience and Necessity to Operate as a)
Competitive Local Exchange Carrier in Utah)
)

DOCKET NO. 07-2476-01

REPORT AND ORDER

ISSUED: November 16, 2007

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (the "Commission") grants the request of Bresnan Broadband of Utah, LLC ("Applicant") for a Certificate of Public Convenience and Necessity ("Certificate") authorizing Applicant to provide public telecommunications services within the Vernal exchange in and around Vernal, Utah. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

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By The Commission:

I. PROCEDURAL HISTORY

On February 5, 2007, 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 (“Applicant” or “Bresnan”) filed a Verified Application (“Application”) for a certificate of public convenience and necessity (“Certificate”) to operate as a Competitive Local Exchange Carrier (“CLEC”) and provide local exchange services in areas in and around Vernal, Utah served by UBTA-UBET Communications, Inc. (“UBTA-UBET”) as the Incumbent Local Exchange Carrier (“ILEC”), as well as in areas in and around Cedar City, Utah served by Qwest Communications as the ILEC. Bresnan also requested waiver of Commission Rule 746-349-3.A.2 requiring Bresnan to post a bond, seeking in lieu thereof to post a letter of credit. Finally, Bresnan requested waiver of Commission Rule 746-349-3.A.12 to permit the Application to rely on various financial statements in lieu of the required five-year projection of Bresnan’s *pro forma* income and cash flow. The Application was assigned to Docket No. 07-2476-01.

On February 20, 2007, UBTA-UBET filed a Petition to Intervene. On March 9, 2007, the Utah Rural Telecom Association (“URTA”) also filed a Petition to Intervene. On March 14, 2007, the Commission issued its Order Granting Invention to UBTA-UBET. By similar order issued April 12, 2007, the Commission granted URTA leave to intervene.

On April 17, 2007, Applicant filed a Motion to Bifurcate Docket No. 07-2476-01 (“Motion”) requesting the Commission separate the Application into two separate dockets for the convenience of all parties, and to expedite the proceedings. On May 18, 2007, the Division of

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Public Utilities ("Division") filed a memorandum recommending approval of the Motion and the splitting of the Application into two dockets. On June 14, 2007, following a duly-noticed Technical Conference held on June 1, 2007, as well as the establishment of a procedural schedule based on the agreement of parties present at the Technical Conference, the Commission issued an Order Granting Motion to Bifurcate and Opening Docket No. 07-2476-02. Pursuant to said Order, that portion of the Application relating to Applicant's request to operate as a CLEC in the Cedar City exchange in and around Cedar City, Utah was transferred to Docket No. 07-2476-02¹ while the portion of the Application relating to Applicant's request to serve the Vernal exchange in and around Vernal, Utah ("Application") remained in Docket No. 07-2476-01.

Hearing in Docket No. 07-2476-01 convened on September 4-5, 2007, before the Administrative Law Judge. Applicant was represented by Thorvald A. Nelson, of Holland & Hart, LLP. Katherine Kirchner, Bresnan Communications Vice President of Telephone Operations, testified on behalf of Applicant. UBTA-UBET was represented by Stanley K. Stoll and Kira M. Slawson of Blackburn & Stoll. Bruce H. Todd, General Manager and Chief Executive Officer of UBTA-UBET, and Raymond A. Hendershot of GVNW Consulting testified on behalf of UBTA-UBET. Steve Mecham of Callister, Nebeker & McCullough appeared on behalf of URTA. Douglas Meredith of John Staurulakis, Inc., testified for URTA. The Division was represented by Michael L. Ginsberg, Assistant Attorney General. Laura L. Scholl, Manager of the Division's Telecommunications Section, and Casey J. Coleman, Technical Consultant, testified on behalf of the Division. The Committee of Consumer Services ("Committee") was

¹On September 26, 2007, the Commission issued its Report and Order in Docket No. 07-2476-02 granting Bresnan the requested Certificate to serve the Cedar City exchange in and around Cedar City, Utah.

represented by Paul H. Proctor, Assistant Attorney General. Eric Orton testified on behalf of the Committee.²

At the conclusion of hearing, the Administrative Law Judge, at the request of the Division and with the concurrence of all parties, extended to September 26, 2007, the deadline for filing of post-hearing briefs. However, on September 21, 2007, in response to a request from counsel for Applicant, with the concurrence of the other parties, the Commission issued a Scheduling Order extending to October 10, 2007, the deadline for filing of briefs.

On October 10, 2007, Applicant, UBTA-UBET, URTA, and the Division filed post-hearing briefs.

II. BACKGROUND AND DISCUSSION

A. Bresnan and It's Application

Bresnan is a limited liability company organized under the laws of the State of Utah with its principal place of business in Cedar City, Utah. Bresnan is a wholly-owned subsidiary of Bresnan Communications, LLC, which, in conjunction with its subsidiaries, provides cable and telephony services to over 300,000 customers in Colorado, Wyoming, Montana, and Utah.

According to the Application, if granted a Certificate, Bresnan intends to provide business services over traditional circuit switched technology, and to provide residential services as part of its Internet Protocol-Enabled ("IP-Enabled") digital voice service called "Digital Phone." Bresnan believes its IP-Enabled service is not a public telecommunications service as

²Although parties pre-filed and offered into evidence testimony and exhibits marked as confidential, the evidentiary hearing remained open at all times. This Order discloses no confidential information; no confidential order has been prepared or issued in this docket.

defined by Utah Code Ann. § 54-8b-2(16), but acknowledges said belief remains a matter of dispute at the state and Federal level and so has filed its Application so that it can act in all respects as if its IP-Enabled services are a local exchange telecommunications service in Utah.

If granted a Certificate, Bresnan will offer residential service through cable telephony, whereby a call will originate via a telephone connected to a modem and routed over Bresnan's coaxial cable IP plant to a telephony switch and transported via the Public Switched Telephone Network for termination on traditional phone lines. Bresnan intends to offer business services using its own switch, as well as the facilities of the ILEC, UBTA-UBET, where necessary, and 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.

B. Granting a Certificate to a CLEC in a Rural ILEC's Territory

This docket presents the Commission with the first contested application for a Certificate to operate in a rural independent telephone exchange. UBTA-UBET and URTA therefore believe the Commission's decision in this case may well set precedent for subsequent CLEC applications to enter rural exchanges, and will establish precedent for exchanges with more than 5,000 access lines. However, we note that under current statutory authority a CLEC requesting to operate in the Vernal exchange is treated no differently than is a CLEC requesting authority to serve in Qwest territory. The only statutory differences apply to exchanges of less

than 5,000 access lines controlled by an incumbent with fewer than 30,000 access lines in the state.³ However, all parties agree the Vernal exchange contains more than 5,000 access lines.

Therefore, in deciding whether to grant the requested Certificate to Applicant, the Commission is guided by the same statutory provisions we have routinely applied in prior dockets when deciding whether to grant a Certificate to requesting CLECs. Specifically, the Legislature, at Utah Code Ann. § 54-8b-2.1(2), has established a two-part test for issuance of a Certificate:

The commission shall issue a certificate to the applying telecommunications corporation if the commission determines that: (a) the applicant has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for; and (b) the issuance of the certificate to the applicant is in the public interest.

All parties agree application of this two-part test is determinative of our decision in this matter.

In deciding what is in the public interest, the Commission's analysis is necessarily informed by the Legislature's policy declarations found in Utah Code Ann. §54-8b-1.1:

The Legislature declares it is the policy of the state to:

- (1) endeavor to achieve the universal service objectives of the state as set forth in Section 54-8b-11;0
- (2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;
- (3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state;

³Utah Code Ann. § 54-8b-2.1(4) requires the Commission to impose upon a CLEC approved to operate in such an exchange an obligation to provide public telecommunications services to any customer or class of customers who request service within said exchange. In conjunction with its Application, Bresnan has offered to assume this obligation even though not required by statute, an offer the Commission addresses later in this Order.

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- (4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops;
- (5) facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection;
- (6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis;
- (7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations;
- (8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry;
- (9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and
- (10) endeavor to protect customers who do not have competitive choice.

The Commission's only previous pronouncement relating to the "public interest" in a matter involving competing telecommunications operations in the territory of a rural ILEC occurred in Docket No. 98-2216-01, *In the Matter of the Petition of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications Carrier ("Western Wireless")*, in which the Commission determined the anticipated increased burden on the state Universal Public Telecommunications Service Support Fund ("USF") outweighed any unidentified and indeterminate public benefit that may have accrued from designating the petitioner wireless communications company an Eligible Telecommunications Carrier ("ETC") in accordance with 47 C.F.R. §§ 54.101 and 214(e) in rural areas where it was already providing service.

Mindful of these statutory requirements and the Commission's decision in *Western Wireless*, the Commission analyzes the present docket as follows:

1. Technical, Financial, and Managerial Resources and Abilities

In its Application, entered into evidence at hearing, Bresnan notes the extensive telecommunications and managerial experience of the key personnel who will be responsible for Bresnan's telecommunications operations in Utah. Bresnan also notes its parent, Bresnan Communications, has already deployed Digital Phone in thirty-three markets in Colorado, Montana, and Wyoming. Though Bresnan does not have and did not file a five-year *pro forma* income or cash flow projection and has requested waiver of this requirement, Bresnan did file various financial statements it believes indicate Bresnan Communications enjoys a positive net worth and sufficient cash flow to provide an adequate source of funding for Applicant. Furthermore, Bresnan testified that it has the technical ability to deliver high quality service to customers in the Vernal exchange and is currently providing similar service in numerous other markets.

The Division also concludes that Bresnan has shown sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for. Likewise, the Committee testified Bresnan satisfies the statutory requirements to be a CLEC.

UBTA-UBET and URTA, on the other hand, argue Bresnan has not adequately demonstrated that it possesses the required technical, financial, and managerial resources, and that the Division and Committee failed to undertake the appropriate inquiry regarding these issues, as required by statute. In their view, Bresnan's Application is incomplete because Bresnan provided financial information for its parent company rather than for itself, the financial information it finally provided in response to Division data requests was not relied upon by the

Division in making its recommendation, and said information is so limited that it is of virtually no use in determining or evaluating Bresnan's financial condition or resources. Additionally, UBTA-UBET notes Bresnan failed to provide the required five-year *pro forma* and has produced no evidence of its business plan by which the Commission could determine the feasibility of Bresnan's success in the Vernal exchange. URTA notes its own analysis of Bresnan's financial strength was hampered by the lack of a *pro forma* and argues the financial information admitted at hearing indicates Bresnan may not have the necessary financial resources to provide the public telecommunications services applied for. According to UBTA-UBET, the Division and the Committee failed to undertake the appropriate inquiry as required by statute by relying solely on information supplied by Bresnan to reach their conclusion regarding Bresnan's financial, technical, and managerial status.

While we agree with UBTA-UBET and URTA that Bresnan's failure to provide *pro forma* statements is a departure from normal procedure in requesting a Certificate, the Commission does not agree with these parties' conclusion that Bresnan has therefore failed to provide evidence sufficient to prevail on this point. Bresnan's parent and affiliates already operate the requested telecommunications service in numerous other jurisdictions so its technical and managerial qualifications cannot reasonably be questioned. Furthermore, its parent appears to possess sufficient financial resources to support Bresnan's Utah operations if authorized. Therefore, the Commission finds sufficient evidence to conclude Bresnan possesses the requisite technical, financial and managerial resources to support issuance of the requested Certificate.

2. The Public Interest

The primary issue in this docket is whether granting Bresnan the requested Certificate is in the public interest. Because this is an issue of first impression, the Commission has not previously enunciated a "public interest test" to be applied when evaluating a CLEC request for a Certificate to operate in the territory of a rural ILEC. However, in evaluating CLEC requests for certification in non-rural ILEC areas, the Commission has routinely looked to whether said certification would provide a "wider range of choices" and would "support the development of competition" in finding that granting the requested Certificates would be in the public interest. Furthermore, as noted above, in *Western Wireless* the Commission relied on the anticipated negative impact to the USF in the absence of any countervailing benefit to determine that granting ETC status would not be in the public interest. These factors therefore guide the analysis that follows.

a. Competitive Choice

Bresnan testified its entry into the Vernal exchange would: (a) allow customers a competitive option for local exchange telecommunications services that is affordable and high-quality; (b) encourage the development of competition in rural Utah; (c) allow for the possibility of flexible regulation for the incumbent; (d) encourage the deployment of advanced telecommunications networks; (e) encourage the development of new technologies; and (f) promote economic development in the Vernal exchange.

Bresnan also notes that even the modest market penetration rate estimated by the Division proves the point that Bresnan's presence in the market will be beneficial to customers since it stands to reason that only customers who perceive some benefit will choose to switch

their telephone service from UBTA-UBET to Bresnan. The Division concurs on this point while the Committee points out that if a higher customer switch rate occurs this too would be indicative of the positive benefits accruing to customers from the competition between Bresnan and UBTA-UBET.

The Division also testified it expects to see better service quality, more rapid introduction of innovative services and reduced costs as a result of the introduction of more competition into the Vernal exchange. The Division notes that while one may not be able to place a dollar value on these benefits they are nonetheless benefits accruing from increased competitive choice.

UBTA-UBET and URTA, on the other hand, argue that approving the Application would provide little or no benefit to competition since the services Bresnan proposes to provide are already being offered by UBTA-UBET. According to UBTA-UBET, what little benefit Bresnan's certification might provide would be more than offset by its adverse impacts on the USF, the other exchanges in the Uintah Basin, and rural telephony in Utah as a whole. UBTA-UBET and URTA argue "consumer choice" was the only public interest benefit reviewed by the Division and point out that at least one Division witness testified consumer choice was the only factor relied upon in the Division's overt decision making. UBTA-UBET then argues that because Bresnan's Digital Voice product will only be available to those consumers whose homes are passed by Bresnan's facilities, the consumer choice so prized by the Division will not even extend to all customers in the Vernal exchange, let alone all customers in the Uintah Basin. URTA notes choices similar to that proposed by Bresnan are already available in Vernal since customers there can take service from several Voice Over Internet Protocol providers and

wireless carriers, thereby diminishing the customer choice value that Bresnan's Application might otherwise have had.

In response to the Division's testimony that Bresnan's entry into the Vernal exchange would reduce costs, increase service quality, and increase technological innovation, UBTA-UBET points out that there have been no complaints of poor service quality from UBTA-UBET and there is no evidence that Bresnan's product is of superior quality to that offered by UBTA-UBET. URTA argues the Division provided no concrete or measurable evidence in support of its conclusions.

URTA further argues Bresnan was unable to demonstrate that there would be any economic benefit accruing from granting the Certificate and Bresnan was unable to even identify whether it planned to build in brownfields, greenfields or both. According to URTA, Bresnan could not even show that all Vernal residents would benefit, let alone any other telecommunications customers in the state. As for customers outside the Vernal exchange, URTA believes Bresnan's service would provide no benefit since overall USF collections would not increase and Bresnan's service would not further progress toward any universal service goals.

Furthermore, according to UBTA-UBET and URTA, rather than fostering competition, approving Bresnan's Application would not be in the public interest because it would merely permit Bresnan to "cherry-pick" customers from the low cost Vernal exchange, reducing the revenue UBTA-UBET earns from this relatively high density, low cost area and thereby reducing the internal cross-subsidies UBTA-UBET uses to offset the cost of provisioning service in the outlying, high cost areas of the Uintah Basin. According to UBTA-UBET, if Bresnan is permitted to cherry pick the Vernal exchange, the costs of providing service to every

UBTA-UBET customer will increase, resulting either in a rate increase or increased reliance on draws from the USF. Within the Vernal exchange, these parties believe Bresnan will only serve those areas in which it currently has cable plant installed, or those areas into which it chooses to expand its cable plant; these areas represent only a fraction of the entire Vernal exchange.

In response, Bresnan points out that its cable facilities currently pass, and are therefore capable of serving, nearly 100% of the residential homes in the Vernal exchange, and that this number is very close to the number of households currently served by UBTA-UBET in the Vernal exchange. Bresnan also points out that Bresnan has accepted, should the Commission choose to impose it, the obligation to serve every customer in the Vernal exchange who requests service.

b. Effect on USF

Utah Code Ann. § 54-8b-15(5) requires operation of the USF to be “nondiscriminatory and competitively and technologically neutral . . . neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.”

The focus on USF impact in this docket stems both from the universal service policy declarations of Utah Code Ann. § 54-8b-1 and from the Commission’s decision in *Western Wireless* since a negative USF impact, standing in isolation as the only impact in evidence, was the deciding factor in that docket. However, the Division, while recognizing that USF impact is among the factors the Commission should consider in the instant matter, argues *Western Wireless* has no precedential value to this docket since *Western Wireless* was decided under a Federal ETC public interest test distinct from the Utah Code Ann. § 54-8b-2.1 factors

considered herein. Furthermore, *Western Wireless* concerned an application by a wireless carrier already serving the areas for which it sought ETC status so the Commission's decision in that docket had no impact, positive or negative, on the competitive landscape in the effected exchanges—the petitioning wireless company could continue to serve whether or not it was granted ETC status.

Likewise, Bresnan argues the fact that the Commission denied ETC status to the petitioner in *Western Wireless* does not mean the Commission must or even should deny Bresnan's Application herein. For instance, Bresnan notes, and URTA's own witness conceded at hearing, the impact on the USF is greater in cases where the applicant is requesting ETC status rather than merely CLEC status because, all other things being equal, in addition to the increased draw needed by the incumbent to make up for customers lost to the ETC, the ETC itself would seek its own disbursements from the USF. In the present docket, Bresnan is not seeking ETC status and would therefore not be eligible to draw from the USF.

In contrast, UBTA-UBET and URTA believe *Western Wireless* is directly applicable to analysis of the present Application, noting their view that the public interest test adopted in *Western Wireless* requires public benefits to offset a negative impact to the USF. According to UBTA-UBET, the Commission looked to the potential public benefits of lowering cost of service and offering service in areas not already served by the ILEC. Finding neither of these, the Commission concluded it would not be in the public interest to grant the requested ETC status. UBTA-UBET then argues that, whether or not Bresnan is seeking ETC status, the issues facing the Commission and the rural exchanges in this docket are the same as they were in *Western Wireless*: What impact will the granting of the Certificate have on the USF as end-user

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and access revenues are siphoned away from the ILEC, and what is the public interest test that should be applied in this docket and the dockets that will follow?

All parties concede that Bresnan's entry into the Vernal exchange would likely result in increased USF disbursements to UBTA-UBET due to customer migration from UBTA-UBET to Bresnan. The parties differ as to the amount of this increase, its effect on the USF, and the weight such an effect should be given in the Commission's public interest determination.

The Division calculates granting Bresnan the requested Certificate could result in an annual increase in USF disbursements to UBTA-UBET of approximately \$125,000 to \$275,000. To make up for an additional \$275,000 annual disbursement, the Division estimates the USF surcharge would have to increase by about one cent (\$0.012) per Utah customer per year. UBTA-UBET and URTA, on the other hand, calculate Bresnan's telecommunications operations in the Vernal exchange would result in an increased USF draw by UBTA-UBET of as much as \$550,000 per year. In addition, URTA suggests a more appropriate measure of negative impact to the USF would be a comparison of any negative impact with the amount actually distributed from the USF annually to support high cost areas. URTA estimates the impact resulting from granting the requested Certificate would exceed 8% of 2006 USF disbursements. However, notwithstanding these calculations, the Division testified that, given the current balance of the USF and expected disbursements in the future, the potential additional disbursements to UBTA-UBET anticipated by UBTA-UBET's own "worst case" scenario could actually be absorbed by the USF with no change to the present surcharge.

However, UBTA-UBET and URTA also argue the Commission should extrapolate this impact state-wide because other CLECs may seek certification in other rural

ILEC territory throughout the state, greatly increasing USF draws and potentially requiring large increases in the USF surcharge for all Utah customers. UBTA-UBET and URTA note the Division failed to analyze or consider these potential impacts and that, pending such analysis, the Commission should delay any decision on the Bresnan Application or deny the Application. In the absence of Utah-specific analysis, UBTA-UBET and URTA urge the Commission to consider a similar study from Texas indicating that competition in rural areas can have a negative impact. The Division disputes this argument, noting that there are only two other rural ILEC exchanges in the state with more than 5,000 access lines where CLECs might desire to operate. Furthermore, the Division believes it would simply be unreasonable to deny or delay a qualified company's application pending the speculative review of what might happen if other CLECs request certification in other areas of the state.

Finally, in continuing to argue the Commission should apply the public interest test adopted in *Western Wireless*, UBTA-UBET notes that Bresnan seeks a Certificate for only the Vernal exchange, an exchange already served by UBTA-UBET. Therefore, since Bresnan does not propose to extend telecommunications service to any unserved areas, the Application fails to provide the public benefit of extending universal service expounded by the Commission in *Western Wireless*.

C. Discussion Regarding Granting the Certificate

In arriving at its recommendation for approval, the Division considered the value of competitive choice and concluded that the benefits of Bresnan's Digital Voice service and the existence of customer choice serves the public interest. The Division balanced these benefits against the calculated impact to the USF and concluded that the benefits of reduced costs, better

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service quality, and increased choice outweigh the negative impact that could be felt by Utah telecommunications customers if the Commission were to increase the USF surcharge to account for Bresnan's presence in the Vernal marketplace. Furthermore, the Division concluded that even under worst-case USF impact scenario offered by UBTA-UBET and URTA the increased USF draws could be absorbed by the USF with no change to the current surcharge rate.⁴

The Committee also testified that granting Bresnan's Application promotes the competition favored by Utah statute and would have an acceptable impact on the USF. The Committee therefore argues there are no valid reasons, from the customer's point of view, why Bresnan's Application should be denied.

In deciding this matter, the Commission does not, as advocated by UBTA-UBET and URTA, look to *Western Wireless* as controlling precedent. Unlike the present docket wherein a CLEC will be denied the opportunity to compete and Utah consumers will be denied the benefits of competitive choice if the Commission denies the Application, *Western Wireless* merely involved an ETC request for a wireless provider otherwise free to operate in rural ILEC territory absent ETC status. As such, our determination in that docket was primarily guided by Federal public interest considerations focusing on the expansion of universal service balanced against the anticipated USF impact, rather than, as here, by Utah statutory authority regarding the benefits of competition and the public interest.

⁴The Division also recommends waiver, as requested by Applicant, of the Commission's Rule 746-349-3 requirement that Applicant file proof of \$100,000 bond and a five-year projection of expected operations. The Division notes Applicant proposes to file a \$100,000 letter of credit in lieu of the required bond.

Furthermore, as recognized by the Supreme Court in its review affirming the Commission's decision⁵, the Commission in *Western Wireless* did not say that because designating an additional ETC in a rural area may increase the burden on the USF it would never allow competition in rural areas. Instead, the Commission merely determined that "in the absence of corresponding public benefits, increasing the burden on the State Fund is not in the public interest."⁶ The Commission does not face a similar absence of evidence of public benefits in this docket. The record clearly demonstrates customers in the Vernal exchange would have available to them a telephone product and land line telephone service choice that they currently do not enjoy. They may also benefit from the lower prices, increased technological innovation, and improved customer service and service quality typically produced by the introduction of competition into the marketplace.

The Commission therefore concludes that in the present docket the public interest is served by the competitive choice Bresnan's presence in the Vernal Exchange will bring to the marketplace and to Utah consumers, that the projected impact on USF disbursements is acceptable and manageable given the current balance and anticipated revenues to the USF, and that, therefore, said competitive choice opportunities outweigh the concerns raised about the projected impact on disbursements from the USF.⁷

⁵ *WWC Holding Co. v. Pub. Serv. Comm'n*, 44 P.3d 714, 719 (Utah 2002).

⁶ *Id.* (emphasis in original).

⁷ In its post-hearing brief, URTA urges the Commission to establish a clear, predictable public interest standard for entry into rural exchanges with greater than 5,000 access lines, arguing that without such a standard future parties will have no guiding direction and the USF will sustain incremental erosion with each application approved. However, the Commission declines herein to decide under what future circumstance the negative impacts of granting a Certificate might outweigh the public benefits produced by competitive choice. The Commission must necessarily adjudicate each application for CLEC certification based on the facts presented therein. It is therefore appropriate that we employ the same test in this docket that we have routinely used in prior CLEC dockets, i.e., balancing the

D. Whether to Require Bresnan to Serve the Entire Exchange

When granting a CLEC a Certificate to serve a local exchange with less than 5,000 lines that is controlled by an ILEC with fewer than 30,000 access lines in the state, Utah Code Ann. § 54-8b-2.1(4) requires the Commission to impose upon said CLEC the obligation to provide service to any customer or class of customers who request service within the exchange. The Vernal exchange has more than 5,000 lines so this section is not directly applicable to Bresnan's Application. However, Bresnan, in part, it seems, to alleviate the parties' cherry picking concerns, has offered to provide service to any requesting customer within the Vernal exchange if the Commission imposes such an obligation in conjunction with approval of the Application.⁸ The Division recommends the Commission impose this obligation, but, when questioned at hearing, the Division indicated it would support approval of the Application absent imposition of this obligation and that it essentially recommended imposing the obligation only because Bresnan had made the offer.

Having considered this matter, the Commission finds little reason to impose such an obligation where, as here, doing so would provide no noticeable benefit to the local exchange in question. Granting Bresnan the requested Certificate will provide additional competitive choice opportunities to a great majority of the customers in the Vernal exchange. In contrast, requiring Bresnan to serve the entire exchange upon request would simply constitute a large step

identified positive and negative impacts of granting the requested Certificate in light of the statutory guidance provided by the Legislature to determine whether said grant would be in the public interest.

⁸Having made this offer, Bresnan urges the Commission not to impose upon it this obligation to serve, noting the tremendous amount of regulatory effort that imposing such an obligation would create, such as the need for Bresnan to negotiate an interconnection agreement with UBTA-UBET in order to serve those customers not passed by Bresnan facilities. Alternatively, Bresnan suggests the Commission could order Bresnan to serve any customer who requests service and who is passed by Bresnan facilities.

toward awarding Bresnan ETC status, thus potentially opening the USF to additional disbursements as noted above with no corresponding benefit.

III. FINDINGS AND CONCLUSIONS

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon:

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant has requested that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to provide public telecommunications services within the Vernal exchange in and around Vernal, Utah.
3. Applicant is proposing to provide public telecommunication services in the Vernal exchange in and around Vernal, Utah.
4. Applicant will utilize its managerial and technical expertise to support its Utah operations.
5. Applicant has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
6. Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
7. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.

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8. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
9. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.
10. Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
11. The issuance of a Certificate to Applicant to provide public telecommunications services is in the public interest.
12. The reporting requirements in Exhibit B attached hereto are in the public interest and are binding upon Applicant until modified by the Commission.
13. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
14. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest.
15. Applicant has requested waiver of the requirements of Commission Rule 746-349-3 requiring Applicant to file proof of bond in the amount of \$100,000 and a five-year projection of expected operations.
16. Applicant proposes to file a \$100,000 letter of credit in lieu of the required bond.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements §54-8b-2.1, *et. seq.* UCA 1953, as amended) for issuance of a Certificate as a telecommunications corporation.

2. Applicant meets each of the statutory requirements §54-8b-2.1, *et. seq.*, UCA 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.

3. The issuance of a Certificate to Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code §54-8b-1.1.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- The Commission hereby grants Applicant the Certificate attached hereto as Exhibit A and, by this reference, made a part of this Report and Order.
- Applicant shall provide reports to the Commission and to the Division of Public Utilities, Utah Department of Commerce, as set forth in Exhibit B and, by this reference, made part of this Report and Order.
- Applicant is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B.
- The provisions of Commission Rule 746-349-3.A.2 and -3.A.12 are waived. Applicant shall file a \$100,000 letter of credit in acceptable form in lieu of proof of bond.

Pursuant to Utah Code §§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 effective date of the order. Responses to a request for agency review or

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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 §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

Dated at Salt Lake City, Utah, this 16th day of November, 2007.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 16th day of November, 2007, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#55340

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EXHIBIT A

In the Matter of the Application of)
Bresnan Broadband, LLC, for a)
Certificate of Public Convenience and)
Necessity to Operate as a Competitive)
Local Exchange Carrier in Utah)

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CERTIFICATE

ISSUED: November 16, 2007

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing Bresnan Broadband of Utah, LLC ("Grantee") to provide public telecommunications services within the Vernal exchange in and around Vernal, Utah.

DATED at Salt Lake City, Utah, this 16th of November, 2007.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report

Grantee shall file an Annual Report, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. **Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. **Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

C. **Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation** for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.

G. **Number of Messages and Minutes of Services** for measured services billed to end users.

H. **List of Officers and Responsible Contact Personnel** updated annually.

I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. **Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.**

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Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	--	Prohibitions of discrimination
54-7-12	--	Rate increases or decreases
54-4-21	--	Establishment of property values
54-4-24	--	Depreciation rates
54-4-26	--	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	--	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	--	Tariff filings required
R746-340-2(E)(2)	--	Exchange Maps
R746-341	--	Lifeline ⁹
R746-344	--	Rate case filing requirements
R746-401	--	Reporting of construction, acquisition and disposition of assets
R746-405	--	Tariff formats
R746-600	--	Accounting for post-retirement benefits

⁹This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

III. Obligations with Respect to Provision of Services.

Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.

B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.

ATTACHMENT 2



February 14, 2008

VIA E-MAIL

Kira Slawson, Esq.
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111-2048
KiraM@blackburn-stoll.com

Re: Proposed Mutual Traffic Exchange Agreement

Dear Ms. Slawson:

Pursuant to 47 U.S.C. § 251(a) and (b), Bresnan Broadband of Utah hereby respectfully requests that UBTA-UBET Communications, Inc. enter into a mutual traffic exchange agreement with Bresnan. In particular, Bresnan requests that UBTA-UBET enter into an agreement in the form attached to this letter.

We further request UBTA-UBET's prompt attention to this request and specifically ask that UBTA-UBET respond to this request no later than February 28, 2008. To the extent your client would like a meeting to discuss these issues we would be happy to meet in Salt Lake City at your earliest convenience.

If you have any questions regarding this request, please feel free to contact me.

Respectfully,

Thorvald A. Nelson
for Holland & Hart LLP

cc: Jerry Lambert, Bresnan Broadband of Utah

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Holland & Hart LLP Attorneys at Law

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8390 E. Crescent Parkway Suite 400 Greenwood Village, Colorado 80111

Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Salt Lake City Santa Fe Washington, D.C.

**TRAFFIC EXCHANGE AGREEMENT
BETWEEN
BRESNAN BROADBAND OF UTAH, LLC
AND
UBTA-UBET**

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federal court review or other judicial action, and unless otherwise specified herein, the Parties shall cooperate with one another for the purpose of incorporating required modifications into this Agreement pursuant to Section 42 of this Article.

UBTA-UBET represents and warrants that it is a “rural telephone company” as that term is defined in the Act, 47 U.S.C. 153. Pursuant to Section 251 (f)(1) of the Act, UBTA-UBET is exempt from Section 251 (c) of the Act. Notwithstanding such exemption, UBTA-UBET has entered into and accepted this Agreement for purposes of exchanging local traffic, as defined in Article IV, Section 3 herein, with CLEC. UBTA-UBET’s execution of the Agreement does not in any way constitute a waiver or limitation of UBTA-UBET’s rights under Section 251 (f)(1) or 251 (f)(2) of the Act.

ARTICLE II DEFINITIONS

1. General Definitions.

Except as otherwise specified herein, in case of any interpretation question, the standard definitions in UBTA-UBET’s Section 251 Interconnection agreement template as set forth in Appendix C attached to this Agreement and made a part hereof shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in Appendix C and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.

ARTICLE III GENERAL PROVISIONS

1. Scope of General Provisions.

Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall control, these General Provisions apply to all Articles and Appendices of this Agreement.

2. Term and Termination.

2.1 Term.

Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be for a period of three (3) years from the Effective Date of this Agreement as defined in Section 36. This Agreement shall continue past the then-current term unless UBTA-UBET gives Bresnan written notice of termination 180 days in advance of the end of the then-current term (“Termination Date”). Bresnan must agree in writing to the notice of termination from UBTA-UBET. To ensure a continuing relationship, Bresnan shall request negotiation for a new agreement no later

than 150 days prior to the Termination Date. Bresnan may at any time request that UBTA-UBET extend this Agreement past the Termination Date for purposes of negotiation of a new agreement, if in the best interest of the customer base.

2.2 Post Termination Arrangements.

Except in the case of termination as a result of either Party's Default under Section 2.3 below, or a termination upon sale, pursuant to Section 2.5, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue:

- (a) As if under this Agreement, if either Party has requested negotiations for a new agreement, (i) until this Agreement has been replaced by a new agreement, or (ii) for up to one hundred eighty (180) calendar days following the Termination Date, whichever is earlier, unless otherwise agreed by the Parties.
- (b) If this Agreement is not continued pursuant to subsection (a) preceding under (i) a new agreement voluntarily executed by the Parties; (ii) standard terms and conditions approved and made generally effective by the Commission, if any; (iii) tariff terms and conditions made generally available to all Local Providers.

2.3 Termination Upon Default.

Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; *provided however*, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within twenty (20) Business Days of receipt of written notice thereof. Following the non-defaulting Party's notice to the defaulting Party of its Default, the non-defaulting Party shall not be required to process new service orders until the Default is timely cured. Default is defined to include:

- (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or
- (b) A Party's Certificate of Operating Authority has been revoked by the Commission, or
- (c) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.

2.4 Termination Upon Ordering and Implementation Inactivity.

Notwithstanding anything to the contrary contained herein, UBTA-UBET may terminate this Agreement in the event Bresnan has not (a) placed any initial orders for any of the services to be provided pursuant to this Agreement and (b) implemented any said services to Bresnan customers within one (1) year from the Effective Date of this Agreement.

2.5 Termination Upon Sale.

Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-affiliate. The selling or transferring Party shall provide the other Party with at least sixty (60) Business Days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.

2.6 Liability Upon Termination.

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

3. Amendments.

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

4. Assignment.

Except for an assignment pursuant to a sale of substantially all or part of the assets of an assigning entity, any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party, and the other Party being reasonably satisfied that the assignee is able to fulfill the assignor's obligations hereunder.

5. Authority.

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents he or she has had the opportunity to consult with legal counsel of his or her choosing.

6. Responsibility for Payment.

UBTA-UBET may charge Bresnan and Bresnan will pay UBTA-UBET a deposit before UBTA-UBET is required to provide services under this agreement, if UBTA-UBET so deems a deposit appropriate after examination of Bresnan's

payment and/or credit history. Such deposit will be calculated based on UBTA-UBET's estimated two-month charges to Bresnan. Deposits may be modified from time to time based on actual billing history and the credit rating of Bresnan. Notwithstanding the foregoing, if Bresnan establishes a consecutive twelve (12) month prompt payment history, or if this Agreement is terminated, the deposit, plus accrued interest to a cash deposit, if applicable, will be applied to Bresnan's account. Notwithstanding the foregoing, in the event that UBTA-UBET is holding a security deposit under this Agreement at the time the Parties enter into a subsequent agreement containing a provision for payment of deposits, UBTA-UBET may continue to hold the deposit in accordance with such terms in the subsequent agreement. Interest will be paid on returned cash deposits in accordance with state requirements for end user deposits.

7. CLEC Profile.

Before direct connection orders can be taken, the CLEC Profile in the form provided by UBTA-UBET must be completed by Bresnan and returned to UBTA-UBET; and, if required, by UBTA-UBET, an advanced deposit paid. Among other things Bresnan will provide UBTA-UBET with its Operating Company Number (OCN), Company Code (CC), and Customer Carrier Name Abbreviation (CCNA) as described in the UBTA-UBET Service Guide and as required for ordering services under this Agreement, Bresnan and UBTA-UBET agree that Bresnan is a certified provider of telecommunications service in the State. Bresnan will document its Certificate of Operating Authority on the CLEC Profile and agrees to promptly update this CLEC Profile as required to reflect its current certification.

8. Contact Exchange.

The Parties agree to exchange and to update contact and referral numbers for orders, inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the local, State and Federal governments.

9. Ordering and Electronic Interface.

Manual interface is currently being used for Bresnan to order services, and it includes facsimile orders and E-mail orders in accordance with the UBTA-UBET Service Guide. Conventional electronic ordering interface is not currently available. If UBTA-UBET later makes electronic interface ordering available to Bresnan, then the Parties agree that, to the extent practicable, electronic interface will be used by Bresnan for ordering services and manual interface will be discontinued.

10. Billing and Payment.

Except as provided elsewhere in this Agreement and where applicable, in conformance with Multiple Exchange Carrier Access Billing (MECAB) guidelines and Multiple Exchange Carriers Ordering and Design Guidelines for Access Services-Industry Support Interface (MECOD), Bresnan and UBTA-UBET agree to exchange all information to accurately, reliably, and properly order and bill for features, functions and services rendered under this Agreement.

10.1 Back Billing.

Neither Party will bill the other Party for previously unbilled charges for services that were provided longer ago than one (1) year.

10.2 Dispute.

If one Party disputes a billing statement issued by the other Party, the billed Party shall make reasonable efforts to notify Provider in writing regarding the nature and the basis of the dispute within ninety (90) calendar days of the bill date or the dispute shall be waived, subject to any State regulatory requirements. Notwithstanding the foregoing, the billed Party shall have one (1) year from the bill date to perform internal billing audits related to charges billed by the billing Party. Where the Parties mutually agree that an over-billing was made by the billing Party, the billing Party shall refund such over-billed amounts to the billed Party. Such refunds shall not be required for amounts that appeared on billing statements that were issued more than one (1) year prior. The Parties shall diligently work toward resolution of all billing issues. Notwithstanding the foregoing, if Provider notifies Party of the unpaid charges the dispute provisions thereof shall prevail.

10.3 Late Payment Charge.

If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider shall calculate and assess, and Customer agrees to pay, at Provider's option, a charge on the past due balance at an interest rate equal to the lower amount of 1½% charge per month, or the maximum nonusurious rate of interest permitted to be billed to end user customers under applicable law. Such late payment charges shall be included on the Provider's next statement.

10.4 Due Date.

Payment is due thirty (30) calendar days from the bill date.

10.5 Audits.

10.5.1 In General.

Either Party may conduct an audit of the other Party's books and records pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) Business Days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

10.5.2 Traffic Audits.

On thirty (30) Business Days written notice, each Party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. UBTA-UBET and Bresnan shall retain records of call detail for a minimum of nine (9) months from which a PLU and/or PIU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the Party being audited. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent audatory paid for by the Party requesting the audit. The PLU and/or PIU shall be adjusted based upon the audit results and shall apply to the usage for the quarter for which the audit was completed, the usage for the quarter prior to the completion of the audit, and the usage for the two quarters following the completion of the audit. If, as a result of an audit either Party is found to have overstated the PLU and/or PIU by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

11. Binding Effect.

This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

12. Capacity Planning and Forecasting.

Within twenty (20) Business Days from the effective date of this Agreement, or as soon after the effective date as practicable, the Parties agree to meet and develop joint planning and forecasting responsibilities which are applicable to, number portability and interconnection services. UBTA-UBET may delay processing Bresnan service orders should the Parties not perform obligations as specified in this Section 12, except that UBTA-UBET shall not delay such order processing if UBTA-UBET fails to timely meet its obligations in this Section 12. Such responsibilities shall include but are not limited to the following:

- 12.1 The Parties will establish periodic reviews of network and technology plans and will notify one another no later than six (6) months in advance of changes that would impact either Party's provision of services.
- 12.2 Bresnan will furnish to UBTA-UBET information that provides for statewide annual forecasts of order activity, in-service quantity forecasts, and facility/demand forecasts.
- 12.3 The Parties will develop joint forecasting responsibilities for traffic utilization over trunk groups and yearly forecasted trunk quantities as set forth in Article IV.
- 12.4 Bresnan shall notify UBTA-UBET promptly of changes greater than ten percent (10%) to current forecasts (increase or decrease) that generate a shift in the demand curve for the following forecasting period. Bresnan orders

that exceed the capacity of the Bresnan's forecast shall only be filled in the standard intervals by UBTA-UBET to the extent the requested capacity is Currently Available. Notwithstanding the foregoing, orders for increased capacity that UBTA-UBET has the capability to provide shall be filled by UBTA-UBET in the interval that it would provide such capacity to itself or to its own end users.

- 12.5 UBTA-UBET reserves the right to condition the fulfillment of additional service orders on satisfactory Bresnan fill rates in previously ordered capacity, or on Bresnan payment for all of the additional capacity absent satisfactory fill rates.
- 12.6 UBTA-UBET reserves the right to assess Bresnan a stranded plant or discontinued service order charge for capacity forecast by Bresnan but not used by Bresnan, only to the extent that UBTA-UBET built the plant based solely on Bresnan's order.
- 12.7 Where the Parties are unable to reach mutual agreement on satisfactory capacity plans and forecasts, including but not limited to appropriate fill rates, the Parties shall follow the dispute resolution process set forth in the Agreement.

13. Compliance with Laws and Regulations.

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

14. Confidential Information.

14.1 Identification.

Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such.

Notwithstanding the foregoing, preorders and all orders for services placed by Bresnan pursuant to this Agreement, and information that would constitute customer proprietary network information of Bresnan end user customers pursuant to the Act and the rules and regulations of the FCC, as well as recorded usage information with respect to Bresnan end users, whether disclosed by Bresnan to UBTA-UBET or otherwise acquired by UBTA-UBET in the course of its performance under this Agreement shall be considered Confidential Information.

14.2 Handling.

In order to protect such Confidential Information from improper disclosure, each Party agrees:

- (a) That all Confidential Information shall be and shall remain the exclusive property of the source;
- (b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance under this Agreement;
- (c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
- (d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source;
- (e) To return promptly any copies of such Confidential Information to the source at its request; and
- (f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

14.3 Exceptions.

These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.

14.4 Survival.

The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

15. Consent.

Where consent notice, approval, mutual agreement, or similar action is permitted or required of a Party by any provision of this Agreement, it shall not be conditional, unreasonably withheld, or delayed.

16. Fraud.

Bresnan assumes responsibility for all fraud associated with its end-user customers and accounts. UBTA-UBET shall bear no responsibility for, nor is it required to investigate or make adjustments to Bresnan's account in cases of fraud.

17. Reimbursement of Expenses.

If requested by Bresnan and with prior approval, UBTA-UBET may be required to make expenditures or incur costs that are not otherwise reimbursed under this Agreement. In such event UBTA-UBET is entitled to reimbursement from Bresnan for all such reasonable and approved costs and expenses. For all such costs and expenses UBTA-UBET shall receive through non-recurring charges ("NRCs") the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to UBTA-UBET's common costs.

18. Dispute Resolution.

18.1 Alternative to Litigation.

Except for the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

18.2 Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

18.3 Arbitration.

If the negotiations do not resolve the dispute within sixty (60) Business Days of the initial written request, the dispute shall be submitted to binding arbitration. At the election of either Party, arbitration shall be before the Commission. Otherwise, arbitration shall be by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. If the State Commission is selected as the arbitrator, its arbitration rules shall apply. Otherwise the rules described in part (a) below shall be applicable.

- (a) A Party may demand such arbitration in accordance with the procedures set out in AAA rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) Business Days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) Business Days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause.
- (b) Judgment upon the award rendered by the arbitrator, whether it be the Commission or an AAA or other arbitrator, may be entered in any court having jurisdiction.

18.4 Expedited Arbitration Procedures.

If the issue to be resolved through the negotiations referenced in Section 18.2 directly and materially affects service to either Party’s end-user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, and if arbitration with the Commission is not selected, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (*i.e.*, rules 53 through 57).

18.5 Costs.

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the reasonable costs of production of documents (including search time and reproduction costs).

18.6 Continuous Service.

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations in accordance with this Agreement. However, during the pendency of any dispute resolution procedures UBTA-UBET agrees to continue to accept new Bresnan service orders only if Bresnan is current on all undisputed charges.

19. Entire Agreement.

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

20. Expenses.

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

21. Force Majeure.

In the event performance of this Agreement, or any obligation hereunder, is restricted, or interfered with by reason of fire, flood, earthquake or likes acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other material change of circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); *provided however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease. It is expressly agreed that financial difficulties of a Party are not subject to this Section. In the event the Force Majeure event is not resolved within sixty days, the Party whose performance was not affected by the Force Majeure event, may terminate this Agreement without penalty or further responsibility.

22. Good Faith Performance.

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld or delayed.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with applicable federal and (to the extent not inconsistent therewith) domestic laws of the state where the services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.

24. Standard Practices.

The Parties acknowledge that UBTA-UBET shall be adopting selected industry standard practices and/or establishing its own standard practices to meet various requirements hereunder applicable to the CLEC industry which may be added in the UBTA-UBET Service Guide. Bresnan agrees that UBTA-UBET may implement such practices to satisfy any UBTA-UBET obligations under this Agreement to the extent such practices are not in conflict with terms of this Agreement, and are, at a minimum, equal to such standard practices.

25. Headings.

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

26. Independent Contractor Relationship.

The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding.

27. Law Enforcement Interface.

27.1 UBTA-UBET shall provide seven day a week/twenty-four hour a day assistance to law enforcement persons for emergency traps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services.

27.2 UBTA-UBET agrees to work jointly with Bresnan in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for Bresnan customers will be

billed to Bresnan at the rates no higher than those which recover the costs incurred by UBTA-UBET.

- 27.3 UBTA-UBET will, in non-emergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc. is a Bresnan Customer and shall refer them to Bresnan.

28. Liability and Indemnity.

28.1 Indemnification.

Subject to the limitations set forth in Section 28.4 of this Article III, each Party agrees to release, indemnify, defend, and hold harmless the other Party from all direct losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for personal injury to or death of any person or persons, caused by the indemnifying Party's gross negligence or willful misconduct. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.

28.2 End-User and Content-Related Claims.

The Indemnifying Party agrees to release, indemnify, defend, and hold harmless the other Party, its affiliates, and any third-party provider or operator of facilities involved in the provision of services or Facilities under this Agreement (collectively, the "Indemnified Party") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by the Indemnifying Party's end-users against an Indemnified Party arising from Services or Facilities. The Indemnifying Party further agrees to release, indemnify, defend, and hold harmless the Indemnified Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any

person or property arising out of content transmitted by the Indemnifying Party and the Indemnified Party or such Party's end-users, or any other act or omission of the Indemnified Party or such Party's end-users.

28.3 DISCLAIMER.

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

28.4 Limitation of Liability.

Each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the monthly charges, plus any related costs/expenses either Party may recover, including those under Section 15 above, and plus any costs/expenses for which the Parties specify reimbursement in this Agreement for the services or facilities for the month during which the claim of liability arose. Under no circumstance shall either Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or any accessories attached thereto, delay, error, or loss of data. Should either Party provide advice, make recommendations, or supply other analysis related to the services or facilities described in this Agreement, this limitation of liability shall apply to provision of such advice, recommendations, and analysis.

29. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

30. No Third Party Beneficiaries.

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

31. Notices.

Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Any

cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").

32.2 Resolution.

If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be imposed by the Impaired Party. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of or disconnect the affected circuit, facility or equipment with notice to the Impairing Party, without further liability or costs.

33. Publicity.

Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of Services or Facilities pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both UBTA-UBET and Bresnan.

34. Regulatory Agency Control.

This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications Commission and/or the applicable State Commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency.

35. Changes in Legal Requirements.

UBTA-UBET and Bresnan further agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time the Agreement became effective. Upon written notice by either Party, the Parties agree to negotiate in good faith an amendment to this Agreement to bring it into compliance with modifications to those requirements pursuant to Section 42 of this Article.

36. Effective Date.

This Agreement will be effective only upon execution by both Parties unless prior Commission approval is required, in which case this Agreement shall be effective upon Commission approval. The "effective date" of this Agreement for all purposes will be the latest date reflected by the signing parties. The Parties agree that orders for services will not be submitted or accepted until the latter of (a) the submission

of the CLEC Profile required by Section 7; or (b) the expiration of the first ten (10) Business Days after the Agreement is effective.

37. Regulatory Matters.

Each Party shall be responsible for obtaining and keeping in effect all FCC, Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement.

38. Rule of Construction.

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

39. Section References.

Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.

40. Severability.

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may invoke the provisions for dispute resolution set forth in Article III, Section 18 of this Agreement.

41. Subcontractors.

Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement, provided that a Provider remains liable for the performance of its duties and obligations hereunder.

42. Subsequent Law.

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, or regulation. Further, to the extent such law, rule, or regulation allows one or both Parties the choice to operate, voluntarily, in a manner contrary to the current term(s) and condition(s) of this Agreement, the Parties agree to modify, in writing, the affected term(s) and condition(s), should one or both Parties choose to avail themselves of such law, rule, or regulation. The Dispute Resolution provisions of Article III, Section 18 shall also govern any disputes arising out of or relating to such modifications. To the extent that

subsequent applicable laws, rules or regulations of Federal, State or local governmental authority require modification or negotiation of one or more terms of this Agreement, the Parties agree to begin negotiating such terms within thirty (30) Business Days after such subsequent change. If negotiations fail within sixty (60) Business Days thereafter, this matter shall proceed to the Dispute Resolution procedures of Article III, Section 18, with the consequent changes in this Agreement to be retroactive to the extent required by the subsequent applicable laws, rules or regulations.

Notwithstanding the foregoing, should the FCC establish a mechanism for intercarrier compensation for Internet protocol voice traffic in its IP-Enabled Services docket or its Intercarrier Compensation docket, the Parties will incorporate such mechanisms into this Agreement pursuant to the change of law provisions in the Agreement.

43. Taxes.

Any state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes, except to the extent that the obligated Party provides to the collecting Party appropriate documentation as UBTA-UBET requires that qualifies the obligated Party for a full or partial exemption. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the other Party. The other Party will indemnify the collecting Party from any sales or use taxes that may be subsequently levied on payments by the other Party to the collecting Party.

Notwithstanding anything to the contrary contained herein, Bresnan is responsible for furnishing tax exempt status information to UBTA-UBET at the time of the execution of the Agreement. Bresnan is also responsible for furnishing any updates or changes in its tax exempt status to UBTA-UBET during the Term of the Agreement and extensions thereof. In addition, Bresnan is responsible for submitting and/or filing tax exempt status information to the appropriate regulatory, municipality, local governing, and/or legislative body to the extent that such information is required to be filed. It is expressly understood and agreed that the Bresnan's representations to UBTA-UBET concerning the status of Bresnan's claimed tax exempt status, if any, and its impact on this Section 42 are subject to the indemnification provisions of Section 28.1, which for purposes of this Section, are to be enjoyed by UBTA-UBET. Notwithstanding the foregoing, to the extent that UBTA-UBET fails to timely bill Bresnan for applicable taxes for which Bresnan has not provided proof of exemption, UBTA-UBET shall be responsible for any penalties or interest levied by taxing authorities for late payments.

43.1 Tax.

A charge which is statutorily imposed by the state or local jurisdiction and is either (a) imposed on the seller with the seller having the right or responsibility to pass the charge(s) on to the purchaser and the seller is responsible for remitting the charge(s) to the state or local jurisdiction or (b) imposed on the purchaser with the seller having an obligation to collect the charge(s) from the purchaser and remit the charge(s) to the state or local jurisdiction.

Taxes shall include but not be limited to: federal excise tax, state/local sales and use tax, state/local utility user tax, state/local telecommunication excise tax, state/local gross receipts tax, and local school taxes. Taxes shall not include income, income-like, gross receipts on the revenue of a Provider, or property taxes. Taxes shall not include payroll withholding taxes unless specifically required by statute or ordinance.

43.2 Fees/Regulatory Surcharges.

A charge imposed by a regulatory authority, other agency, or resulting from a contractual obligation, in which the seller is responsible or required to collect the fee/surcharge from the purchaser and the seller is responsible for remitting the charge to the regulatory authority, other agency, or contracting party.

Fees/Regulatory Surcharges shall include but not be limited to E-911/911, other N11, franchise fees, and Commission surcharges.

44. Trademarks and Trade Names.

Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever.

45. Waiver.

The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

46. Environmental Responsibility.

The Parties agree that prior to such time as either Party may place its equipment in the other Party's premises pursuant to a collocation or some other arrangement, the Parties will negotiate appropriate terms with respect to responsibility for environmental matters.

47. TBD Prices.

If a provision references prices in an Attachment and there are no corresponding prices in such Attachment, such price shall be considered "To Be Determined" (TBD). With respect to all TBD prices, prior to either Party ordering any such TBD item, the Parties shall meet and confer to establish a price. If the Parties are unable

to reach agreement on a price for such item, an interim price shall be set for such item that is equal to the price for the nearest analogous item for which a price has been established. Any interim prices so set shall be subject to modification by any subsequent decision of the Commission. If an interim price is different from the rate subsequently established by the Commission, any underpayment shall be paid by the billed Party to the billing Party, and any overpayment shall be refunded by the billing Party to the billed Party, within 45 Business Days after the establishment of the price by the Commission.

ARTICLE IV

CONNECTION AND TRANSPORT AND TERMINATION OF TRAFFIC

1. Services Covered by This Article.

1.1 Types of Services.

This Article governs the provision of Internetwork Facilities (*i.e.*, physical connection services and facilities), by UBTA-UBET to Bresnan or by Bresnan to UBTA-UBET and the transport and termination and billing of Local Traffic between UBTA-UBET and Bresnan. For purposes of this Agreement, Local Traffic shall be defined per Appendix C, Section 1.61. Traffic not meeting the definition of Local Traffic is not subject to this Agreement. The Parties reserve the right to seek compensation for such non-Local Traffic including the imposition of access charges, pursuant to each Party's effective tariffs, where appropriate.

1.1.1 Bresnan will initiate orders for trunk-side Local Traffic connection services by sending an ASR to UBTA-UBET. The ordering process is described in the UBTA-UBET Service Guide. The ASR will be reviewed by UBTA-UBET for validation and correction of errors. Errors will be referred back to Bresnan. Bresnan then will correct any errors that UBTA-UBET has identified and resubmit the request to UBTA-UBET through a supplemental ASR.

1.1.2 Bresnan must comply with the Capacity Planning and Forecasting provisions of Section 12, Article III and Section 4 of this Article IV before UBTA-UBET will process the Bresnan's ASR for interconnection services.

2. Billing and Rates.

2.1 Service Ordering, Service Provisioning, and Billing.

The following describes generally the processes UBTA-UBET will use for ordering, provisioning and billing for connection facilities and services. Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance shall be governed by the UBTA-UBET Service Guide.

2.2 Rates and Charges.

Each Party, where applicable, agrees to pay the other Party the rates and charges for the Services set forth in the applicable appendices to this Agreement. Rates and charges are set forth in Appendix A attached to this Agreement and made a part hereof.

2.3 Billing.

UBTA-UBET shall render to Bresnan a bill for direct connection services on a monthly basis. Charges for physical facilities and other non-usage sensitive charges shall be billed in advance, except for charges and credits associated with the initial or final bills. Usage sensitive charges, such as charges for termination of Local Traffic, shall be billed by each Party to the other Party in arrears. Bresnan is required to order trunks pursuant to Section 4.4 of this Article.

2.4 Billing Specifications.

The Parties agree that billing requirements and outputs will be consistent with the Ordering & Billing Form (OBF) and also with Telcordia Technologies Billing Output Specifications (BOS).

2.4.1 Usage Measurement: Usage measurement for calls shall begin when Answer Supervision or the equivalent Signaling System 7 (SS7) message is received from the terminating office and shall end at the time of call disconnect by the calling or called subscriber, whichever occurs first.

2.4.2 Minutes of use (MOU), or fractions thereof, shall not be rounded upward on a per-call basis, but will be accumulated over the billing period. At the end of the billing period, any remaining fraction shall be rounded up to the nearest whole minute to arrive at total billable minutes. MOU shall be collected and measured in minutes, seconds, and tenths of seconds.

3. Transport and Termination of Local Traffic.

3.1 Traffic to be Exchanged.

The Parties shall reciprocally terminate Local Traffic originating on each other's networks utilizing either Direct or Indirect Network Connections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).

3.2 Compensation for Exchange of Local Traffic.

3.2.1 Mutual Compensation. The Parties shall compensate each other for the exchange of Local Traffic originated by or terminating to the Parties' end-user customers in accordance with Section 3.2.2 of this Article, subject to any applicable regulatory conditions. Charges for

the transport and termination of optional EAS, intraLATA toll and interexchange traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate.

- 3.2.2 Bill-and-Keep. The Parties shall assume that Local Traffic originated by or terminating to the Parties' end-user customers is roughly balanced between the parties unless traffic studies indicate otherwise. Accordingly, the Parties agree to use a Bill-and-Keep Arrangement with respect to termination of Local Traffic only. Either Party may initiate a traffic study no more frequently than once a quarter. Such traffic study shall examine all Local Traffic excluding Local Traffic that is also Information Access Traffic. Should such traffic study indicate, in the aggregate, that either Party is terminating more than 60 percent of the Parties' total terminated minutes for Local Traffic excluding Local Traffic that is also Information Access Traffic, either Party may notify the other in writing that mutual compensation will commence for such Local Traffic, excluding Local Traffic that is also Information Access Traffic, pursuant to the rates set forth in Appendix A of this Agreement and following such notice it shall begin and continue for the duration of the Term of this Agreement unless otherwise agreed.
- 3.2.3 Percent Local Use. Upon request of either Party, each Party will report to the other an accurate Percentage Local Usage ("PLU"). The application of the PLU will determine the amount of Local Traffic minutes to be billed to the other Party. For purposes of developing the PLU, each Party shall consider every Local Traffic call and every non-Local Traffic call, excluding intermediary traffic. PLU requests shall be made no more frequently than every twelve (12) months. Requirements associated with PLU calculation and reporting shall be as set forth in UBTA-UBET's current PLU policy, as it is amended from time to time. Notwithstanding the foregoing, where the terminating Party has message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PLU factor, shall, at the terminating Party's option, be utilized to determine the appropriate Local Traffic usage compensation to be paid.
- 3.2.4 Percentage Interstate Usage. In the case where Bresnan desires to terminate its Local Traffic over or co-mingled on its switched access Feature Group D trunks, Bresnan will be required to provide a projected Percentage Interstate Usage ("PIU") to UBTA-UBET. All jurisdictional report requirements, rules and regulations for Interexchange Carriers and as required by applicable law will apply to the Parties. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU factor will be used for application and billing of local interconnection. Notwithstanding the foregoing, where the terminating Party has

industry-accepted message recording technology that identifies the jurisdiction of traffic terminated as defined in this Agreement, such information, in lieu of the PIU and PLU factor, shall, at the terminating Party's option, be utilized to determine the appropriate local usage compensation to be paid.

3.3 Tandem Switching Local Traffic.

The Parties will provide tandem switching for Local Traffic between the Parties' end offices subtending each other's access tandem.

The Parties agree to enter into their own traffic exchange arrangements with third-party providers either by contract or a presumed bill and keep relationship in the absence of a contractual arrangement. In the event that either Party originates traffic that transits the other Party's network and terminates to a third-party provider with whom the originating Party does not have a traffic exchange agreement, then the originating Party agrees to indemnify the transiting Party for any termination charges rendered by a third-party provider for such traffic. Notwithstanding the foregoing, neither Party shall enter into an agreement with such third-party to act as an agent to collect termination charges on behalf of the third-party where no contractual traffic exchange arrangement exists between the Originating party and third-party provider.

4. Network Connection.

4.1 Network Connection Architecture.

Bresnan may connect with UBTA-UBET on its network at any of the minimum Currently Available points required by the FCC. Connection at additional points will be reviewed on an individual case basis. Where the Parties mutually agree to directly connect their respective networks, connection will be as specified in the following subsections. Based on the configuration, the installation time line may vary, however, UBTA-UBET will work with Bresnan in all circumstances to install Interconnection Points (IP) within one hundred twenty (120) calendar days of a Bresnan order. Internetwork connection and protocol must be based on industry standards developed consistent with Section 256 of the Act.

4.1.1 Subject to mutual agreement, the Parties may use the following types of network facility connection, using such interface media as are (i) appropriate to support the type of connection requested and (ii) available at the facility at which connection is requested.

- a. A Mid-Span Fiber Meet within an existing UBTA-UBET exchange area whereby the Parties mutually agree to jointly plan and engineer their facility IP at a designated manhole or junction location with each Party being individually responsible for its incurred costs in establishing this arrangement. The IP is the demarcation between ownership of the fiber transmission facility.

- b. A special access and/or CLEC Dedicated Transport arrangement terminating at a UBTA-UBET Wire Center subject to the rates, terms, and conditions contained in UBTA-UBET's applicable tariffs. These facilities will meet the standards set forth in such tariffs.
- c. If permitted by the provider, Bresnan may exchange traffic via indirect connections by transiting a third-party provider's interconnection with UBTA-UBET. In the event that Bresnan sends traffic through a third-party provider, then Bresnan agrees to indemnify UBTA-UBET for any termination, transiting or tandem charges rendered by a third-party provider for such traffic.

4.1.2 Where direct connection is utilized under options (a) or (b) above, the Parties will mutually designate at least one IP on UBTA-UBET's network within each UBTA-UBET local calling area or such other location as mutually agreed upon by the Parties.

4.2 Compensation.

The Parties agree to the following compensation for inter-network facilities, depending on facility type. Only Local Traffic will be used for calculation of this compensation.

- 4.2.1 Mid-Span Fiber Meet: Each Party shall pay for the interconnection facilities on their side of the IP. The IP will be at a technically feasible point within UBTA-UBET's exchange boundary.
- 4.2.2 Special Access: Each Party shall pay for the interconnection facilities on their side of the IP. The IP will be at a technically feasible point within UBTA-UBET's exchange boundary.

4.3 Trunking Requirements.

Where the Parties directly interconnect their networks, the Parties shall meet and agree on trunking availability and requirements in order for the Parties to begin exchange of traffic.

- 4.3.1 The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, and 911 routing switches. The Parties will mutually agree where one-way or two-way trunking will be available. Agreement to use two-way trunks for delivery of Local Traffic shall not be unreasonably withheld where two-way trunking is technically feasible and the Party's are capable of rendering accurate bills for charges associated with two-way trunking. The Parties may use two-way trunks for delivery of Local Traffic or either Party may elect to provision its own one-way trunks for delivery of Local Traffic to the other Party. If a Party elects to provision its own one-way trunks for

Local Traffic, that Party will be responsible for its own expenses associated with the trunks.

- 4.3.2 Bresnan shall make available to UBTA-UBET trunks over which UBTA-UBET shall terminate to end-users of Bresnan-provided Exchange Services and Local Traffic originated from end-users of UBTA-UBET-provided Exchange Service. Compensation for UBTA-UBET's use of such trunks shall be pursuant to Section 4.2 of Article IV.
- 4.3.3 Bresnan and UBTA-UBET shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Bresnan and UBTA-UBET will support the provisioning of trunk groups that carry combined or separate Local Traffic. UBTA-UBET requires separate trunk groups from Bresnan to originate and terminate Non-Local Traffic calls and to provide Switched Access Service to IXCs. To the extent Bresnan desires to have any IXCs originate or terminate switched access traffic to or from Bresnan, using jointly provided switched access facilities routed through a UBTA-UBET access tandem, it is the responsibility of Bresnan to arrange for such IXC to issue an ASR to UBTA-UBET to direct UBTA-UBET to route the traffic. If UBTA-UBET does not receive an ASR from the IXC, UBTA-UBET will initially route the switched access traffic between the IXC and Bresnan. If the IXC subsequently indicates that it does not want the traffic routed to or from Bresnan, UBTA-UBET will not route the traffic.
 - 4.3.3.1 Each Party agrees to route traffic only over the proper jurisdictional trunk group.
 - 4.3.3.2 Each Party shall only deliver traffic over the local connection trunk groups to the other Party's access tandem for those publicly-dialable NXX Codes served by end offices that directly subtend the access tandem or to those wireless service providers that directly subtend the access tandem.
 - 4.3.3.3 Neither party shall route Switched Access Service traffic over local connection trunks, or Local Traffic over Switched Access Service trunks.
- 4.3.4 End-Office Trunking. The Parties will work together to establish high usage end-office trunk groups sufficient to handle the greater of the actual or reasonably forecasted traffic volumes between a Bresnan end office and a UBTA-UBET end office.
- 4.3.5 Bresnan and UBTA-UBET will reciprocally provide Percent Local Usage (PLU) factors to each other on or before January 15 and July 15 of each year to identify the proper percent of Local Traffic

carried on local connection trunks. If either Party does not provide to the other Party an updated PLU, the previous PLU will be utilized. The parties agree to the initial PLU factor as set forth in Appendix A. Notwithstanding the above, either party may use actual call detail to bill instead of using provided PLUs provided that the party has the technical means to identify and jurisdictionalize call detail. In such a case, written notice will be provided to the other party that such a capability exists and will be used.

- 4.3.6 Reciprocal traffic exchange arrangement trunk connections shall be made at a DS-1 or multiple DS-1 level, DS-3, (Synchronous Optical Network (SONET)) where technically available) and shall be jointly engineered to the appropriate State grade of service standard.
- 4.3.7 Bresnan and UBTA-UBET agree to use diligent efforts to develop and agree on a Joint Connection Plan prescribing standards to ensure that the reciprocal traffic exchange arrangement trunk groups are maintained at the appropriate State grade of service standard. Such plan shall also include mutually-agreed upon default standards for the configuration of all segregated trunk groups.
- 4.3.8 SS7 Common Channel Signaling will be used to the extent that such technology is available. If SS7 is not available, Multi-Frequency Signaling (MF) will be used as specified.
- 4.3.9 The Parties agree to offer and provide to each other B8ZS Extended Superframe Format (ESF) facilities, where available, capable of voice and data traffic transmission.
- 4.3.10 The Parties will support intercompany 64kbps clear channel where available.
- 4.3.11 Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an Access Service Request (ASR), or another industry standard eventually adopted to replace the ASR for local service ordering.

4.4 Trunk Forecasting.

- 4.4.1 The Parties will develop joint forecasting of trunk groups in accordance with Article III, Section 12, and as a condition to UBTA-UBET's processing of Bresnan interconnection services ASRs under Section 1.1. Intercompany forecast information must be provided by the Parties to each other once a year. The annual forecasts will include:
 - 4.4.1.1 Yearly forecasted trunk quantities for no less than a two-year period (current year, plus one year); and the use of (i) CLCI-MSG codes, which are described in Telcordia Technologies document BR 795-100-100; (ii) circuit identifier codes as described in BR 795-400-100; and (iii) Trunk Group Serial Number (TGSN) as described in BR 751-100-195.

4.4.2 Description of major network projects that affect the other Party will be provided with the semi-annual forecasts provided pursuant to Section 4.4.1.1. Major network projects include but are not limited to trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities by either Party that are reflected by a significant increase or decrease in trunking demand for the following forecasting period.

4.4.3 Parties will meet to review and reconcile their forecasts if their respective forecasts differ significantly from one another.

4.5 Trunk Facility Under Utilization.

At least once a year the Parties shall exchange trunk group measurement reports for trunk groups terminating to the other Party's network. In addition and from time to time, each Party will determine the required trunks for each of the other Party's trunk groups from the previous 12 months servicing data. Required trunks will be based on the State grade of service standard or the Joint Connection Plan referenced in Section 4.3.7. When a condition of excess capacity is identified, UBTA-UBET will facilitate a review of the trunk group existing and near term (3 to 6 months) traffic requirements with the customer for possible network efficiency adjustment.

4.6 Joint Trunk Planning Criteria.

In order to facilitate sound and economical network planning and provisioning, UBTA-UBET deployment of trunks for Bresnan use may be conditioned on (i) fill factors for trunks previously deployed for the Bresnan; (ii) a stranded plant or special construction termination charge to Bresnan for not utilizing the ordered trunking for the forecasted duration; and (iv) whether the Bresnan ordered trunking is Currently Available. Notwithstanding the foregoing, trunk orders that UBTA-UBET has the capability to provide shall be filled by UBTA-UBET in the interval that it would provide such facilities to itself or to its own end users.

4.7 Network Redesigns Initiated by UBTA-UBET.

UBTA-UBET will not charge Bresnan when UBTA-UBET initiates its own network redesigns/reconfigurations.

5. Indirect Network Connection.

5.1 Indirect Network Connection is intended to handle de minimis mutual traffic exchange until Local Traffic volumes grow to a point where it is economically advantageous to provide a direct connection as provided in Section 5.4 of this Article.

5.2 Bresnan is required to establish a direct connection in each instance where Bresnan has established telephone numbers that are rated to a UBTA-UBET rate center.

- 5.3 Consistent with Section 8, Article IV, Bresnan is required to establish a direct connection in each instance where Bresnan ports a number that is rated to a UBTA-UBET rate center.
- 5.4 In instances where Bresnan has not established telephone numbers that are rated to a UBTA-UBET rate center, but has established telephone numbers that are rated to a rate center that is within the mandatory local calling area of UBTA-UBET end user customers, the Parties agree to establish a direct connection when any one of the following conditions is met for a consecutive three-month period:
- a. Combined traffic between two single switches of each Party reaches a DS-1 equivalent (200,000 combined minutes of use (“MOU”));
 - b. Traffic originating from a single UBTA-UBET switch to a single Bresnan switch reaches 100,000 MOUs; or
 - c. When either Party is assessed transiting costs by a third party and such charges associated with a single traffic exchange route exceed \$300.00 per month.
- 5.5 Neither Party shall deliver traffic destined to terminate at the other Party’s end office via another LEC’s end office except as provided for in Section 4.1.1 (c).

6. Common Channel Signaling.

6.1 Service Description.

The Parties will provide Common Channel Signaling (CCS) via a Signaling System 7 (SS7) network connection, where and as available, in the manner specified in FCC Order 95-187, in conjunction with all traffic exchange trunk groups. The Parties will cooperate on the exchange of all appropriate SS7 messages for local and intraLATA call set-up signaling, including ISDN User Part (ISUP) and Transaction Capabilities Application Part (TCAP) messages to facilitate full interoperability of all CLASS Features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon.

6.2 Signaling Parameters.

All SS7 signaling parameters will be provided in conjunction with traffic exchange trunk groups, where and as available. These parameters include Automatic Number Identification (ANI), Calling Party Number (CPN), Privacy Indicator, calling party category information, originating line information, charge number, etc. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter (CIP), wherever such information is needed for call routing or billing.

6.3 Privacy Indicators.

Each Party will honor all privacy indicators as required under applicable law.

6.4 Connection Through Signal Transfer Point (STP).

Bresnan must interconnect with the UBTA-UBET STP(s) serving the LATA in which the traffic exchange trunk groups are interconnected. Such connection shall be negotiated and contracted with the appropriate UBTA-UBET affiliate.

6.5 Third Party Signaling Providers.

Bresnan may choose a third-party SS7 signaling provider.

6.6 Multi-Frequency Signaling.

In the case where CCS is not available, in band Multi-Frequency (MF), wink start, E & M channel associated signaling with ANI will be provided by the Parties. Network signaling information, such as CIC/OZZ, will be provided wherever such information is needed for call routing or billing.

7. Network Management Controls.

Each Party shall provide a 24-hour contact number for Network Traffic Management issues to the other's network surveillance management center. A fax number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they shall work cooperatively that all such events shall attempt to be conducted in such a manner as to avoid degradation or loss of service to other end-users. Each Party shall maintain the capability of respectively implementing standard protective controls.

8. Number Portability (NP).

8.1 Local Number Portability (LNP).

8.1.1 LNP shall be provided in response to a porting request from either Party, consistent with applicable time periods and procedures established by the Act and applicable FCC regulations. The Parties agree that they shall develop and deploy LNP in accordance with the Act, such binding FCC and State mandates, and industry standards, as may be applicable.

8.1.2 The rate that the Parties will charge each other for service ordering change charges are tariffed rates and included in Exhibit B.

ARTICLE V
SIGNATURE PAGE

IN WITNESS WHEREOF, each Party has executed this Agreement. The Effective Date of this Agreement for such purposes will be established by the date of the final signature on this agreement subject to confirmation by Commission approval order.

UBTA-UBET:
By:
Name:
Title:
Date:

Bresnan
By:
Name:
Title:
Date:

**APPENDIX A
RATES AND CHARGES FOR TRANSPORT AND TERMINATION OF
TRAFFIC**

General. The rates contained in this Appendix A are the rates as defined in Article IV and are subject to change resulting from future commission or other proceedings, or any appeal or other litigation.

Each Party will bill the other Party as appropriate:

A. Reciprocal Compensation

Local Traffic, excluding Local Traffic that is also Information Access Traffic (if invoked pursuant to Article IV Section 3.2.2)	TBD
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Local Traffic that is also Information Access Traffic	\$0.00
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B. Tandem Switching and Transiting Not Applicable

Tandem Switching:	Switched Access Tariff Rate
Tandem Transport	Switched Access Tariff Rate
Transport Termination	Switched Access Tariff Rate

<u>Transiting Charge:</u>	
Tandem Switching:	Switched Access Tariff Rate
Tandem Transport	Switched Access Tariff Rate
Transport Termination	Switched Access Tariff Rate

C. Initial Factors

1. UBTA Originated Local Traffic Factor	50%
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**APPENDIX B
OTHER RATES AND CHARGES**

Non-Recurring Charges (NRCs)

Service Order Change Charge – per Local Service Request (LSR)

APPENDIX C DEFINITIONS

1. General Definitions.

Except as otherwise specified herein, the following definitions shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in this Appendix C and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.

1.1 Access Service Request (ASR)

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of Interconnection.

1.2 Act

The Telecommunications Act of 1996, Public Law 104-104 of the 104th Bresnan States Congress effective February 8, 1996.

1.3 Affiliate

A person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party.

1.4 Answer Supervision

An off-hook supervisory signal.

1.5 Applicable Law

All laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, and approvals of any Governmental Authority, which apply or relate to the subject matter of this Agreement.

1.6 Automatic Location Identification/Data Management System (ALI/DMS)

The emergency services (E-911/911) database containing customer location information (including name, address, telephone number, and sometimes special information from the local service provider) used to

process subscriber access records into Automatic Location Identification (ALI) records.

1.7 Automated Message Accounting (AMA)

The structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Telcordia Technologies as GR-1100-CORE, which defines the industry standard for message recording.

1.8 Automatic Number Identification (ANI)

The number transmitted through the network identifying the calling party.

1.9 Basic Local Exchange Service

Voice grade access to the network that provides the ability to place and receive calls; touch-tone service, access to operator services; access to directory

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Assistance; access to emergency services (E911); access to telephone relay service (TRS); access to interexchange carriers of the customer's choice; standard white pages directory listing; and toll blocking for low-income consumers participating in Lifeline (subject to technical feasibility).

1.10 Bill-and-Keep Arrangement

A compensation arrangement whereby the Parties do not render bills to each other for the termination of Local Traffic specified in this Agreement and whereby the Parties terminate local exchange traffic originating from end-users served by the networks of the other Party without explicit charging among or between said carriers for such traffic exchange.

1.11 Bona Fide Request (BFR)

Process intended to be used when requesting customized service orders for certain services, features, capabilities or functionality defined and agreed upon by the Parties as services to be ordered as BFRs.

1.12 Business Day

Monday through Friday, except for holidays on which the non-priority U.S. mail is not delivered.

1.13 Centralized Message Distribution System (CMDS)

The billing record and clearing house transport system that the Regional Bell Operating Companies (RBOCs) and other incumbent LECs use to efficiently exchange out collectibles and in collectibles as well as Carrier Access Billing System (CABS) records.

1.14 Central Office (CO)

A telephone company building where customer lines are joined to a switch or switches for connecting customers to each other, for Local and non-Local Traffic.

1.15 Central Office Switch

A switch used to provide telecommunications services including (1) End Office Switches which are Class 5 switches from which end-user Exchange Services are directly connected and offered, and (2) Tandem Office Switches which are Class 4 switches used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

1.16 UBTA-UBET Service Guide

The UBTA-UBET Service Guide, which contains UBTA-UBET's operating procedures for ordering, provisioning, trouble reporting and repair for resold services. Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance shall be governed by the UBTA-UBET Service Guide, which may be amended from time to time by UBTA-UBET as needed.

1.17 Certificate of Operating Authority

Bresnan must represent and warrant to UBTA-UBET that it is a certified provider of local exchange service in the State and authorized within the UBTA-UBET local service area. Bresnan will provide a copy of its Certificate of Operating Authority or other evidence of its status to UBTA-UBET upon request. Bresnan will notify UBTA-UBET if its certificate has been revoked.

1.18 CLASS

CLASS is an acronym for Custom Local Area Signaling Services. It is based on the availability of common channel signaling. CLASS consists of number-translation services such as call-forwarding and caller identification, available within a local exchange. CLASS is a service mark of Bellcore, now Telcordia.

1.19 CLLI Codes

Common Language Location Identifier Codes.

1.20 Commission

The State Public Service or Public Utilities Commission, as applicable.

1.21 Common Channel Signaling (CCS)

A high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries addressed signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.

1.22 Competitive Local Exchange Carrier (CLEC)

Any company or person authorized to provide local exchange services in competition with an ILEC.

1.23 Compliance

Environmental and safety laws and regulations based upon a Federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety compliance program may include review of applicable laws/regulations, development of written procedures, training of employees and auditing.

1.24 Conversation Time

The time that both Parties' equipment is used for a completed call, measured from the receipt of Answer Supervision to the receipt of Disconnect Supervision.

1.25 CTOC or UBTA-UBET

The UBTA-UBET Operating Company in the State that is a Party to this Agreement.

1.26 Currently Available

Existing as part of UBTA-UBET's network at the time of the requested order or service and does not include any service, feature, function or capability that UBTA-UBET either does not provide to itself or to its own end users, or does not have the capability to provide.

1.27 Customer

The Party receiving service from the other. UBTA-UBET or Bresnan, depending on the context and which Party is receiving the service from the other Party.

1.28 Customer Service Record Search

Applied to LSR when CLEC requests a customer service record search prior to account conversion from UBTA-UBET or from another CLEC. Search typically is for basic account information, listing/directory information, service and equipment listing, and billing information. Applied on a per requested loop basis.

1.29 Dedicated Transport

An Unbundled Network Element that is purchased for the purpose of transporting Telecommunications Services between designated Central Offices. Dedicated Transport may only extend between two Central Offices.

1.30 Disconnect Supervision

An on-hook supervisory signal end at the completion of a call.

1.31 DS-1

A service carried at digital signal rate of 1.544 Mbps.

1.32 DS-3

A service carried at digital signal rate of 44.736 Mbps.

1.33 Electronic File Transfer

A system or process that utilizes an electronic format and protocol to send/receive data files.

1.34 E-911 Service

A method of routing 911 calls to a PSAP that uses a customer location database to determine the location to which a call should be routed. E911 service includes the forwarding of the caller's Automatic Number Identification (ANI) to the PSAP where the ANI is used to retrieve and display the Automatic Location Identification (ALI) on a terminal screen at the answering attendant's position. It usually includes selective routing.

1.35 Exchange Message Record (EMR)

An industry standard record used to exchange telecommunications message information among CLECs for billable, non-billable, sample, settlement and study data. EMR format is defined in BR-010-200-010 CRIS Exchange Message Record, published by Telcordia Technologies.

1.36 Exchange Service

All basic access line services or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the Public Switched Telecommunications Network (PSTN), and which enable such end users to place or receive calls to all other stations on the PSTN.

1.37 Facility

All buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same persons or person as used in Article III, Section 46.

1.38 FCC

The Federal Communications Commission.

1.39 Generator

Under the Resource Conservation Recovery Act (RCRA), the person whose act produces a hazardous waste (40 CFR 261) or whose act first causes a hazardous waste to become subject to regulation. The generator is legally responsible for the proper management and disposal of hazardous wastes in accordance with regulations (see reference in Article III, Section 46).

1.40 Hazardous Chemical

As defined in the U.S. Occupational Safety and Health Act (OSHA) hazard contamination standard (29 CFR 1910.1200), any chemical which is a health hazard or physical hazard.

1.41 Hazardous Waste

As described in the Resource Conservation Recovery Act (RCRA), a solid waste(s), which may cause, or significantly contribute to an increase in mortality or illness or pose a substantial hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed because of its quantity, concentration or physical or chemical characteristics.

1.42 Imminent Danger

As described in the Occupational Safety and Health Act and expanded for environmental matters, any conditions or practices at a facility which are such that a danger exists which could reasonably be expected to cause death or serious harm or significant damage to the environment or natural resources.

1.43 Incumbent Local Exchange Carrier (ILEC)

Any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. §69.601(b) of the FCC's regulations.

1.44 Indirect Network Connection

The Interconnection of the Parties' networks for exchange of Local Traffic..

1.45 Information Access Traffic

Information Access Traffic, for the purpose of this Agreement, is traffic (excluding CMRS traffic) that is transmitted to or returned from the Internet at any point during the duration of the transmission between the Parties. Information Access Traffic is not Local Traffic unless the traffic is between an end-user and an ISP physically located in the same UBTA-UBET Local Calling Area. The term Information Access Traffic does not include transmission of voice telecommunications traffic regardless of whether it is delivered to an ISP and regardless of whether it is carried at any point on facilities via Internet protocol.

1.46 Information Service Provider or "ISP"

A provider of Information Service, as defined in 47 U.S.C. 153(20). Information Service Provider includes, but is not limited to, Internet Service Providers.

1.47 Initial Service Order

A charge applied to each LSR of Unbundled Loops with the exception of Subsequent Service Order changes to existing CLEC accounts.

1.48 Interconnection Facility

See "Internetwork Facilities".

1.49 Interconnection Point (IP)

The physical point on the network where the two parties interconnect. The IP is the demarcation point between ownership of the transmission facility.

1.50 Interexchange Carrier (IXC)

A telecommunications service provider authorized by the FCC to provide interstate long distance communications services between LATAs and is authorized by the State to provide inter- and/or intraLATA long distance communications services within the State.

1.51 Internetwork Facilities

The physical connection of separate pieces of equipment, transmission facilities, etc., within, between and among networks, for the transmission and routing of exchange service and exchange access.

1.52 ISDN User Part (ISUP)

A part of the SS7 protocol that defines call setup messages and call takedown messages.

1.53 Line Side

Refers to an end office switch connection that has been programmed to treat the circuit as a local line connected to an ordinary telephone station set. Line side connections offer only those transmission and signaling features appropriate for a connection between an end office and an ordinary telephone set.

1.54 Local Access and Transport Area (LATA)

A geographic area for the provision and administration of communications service; *i.e.*, intraLATA or interLATA.

1.55 Local Calling Area

1.56 Local Exchange Carrier (LEC)

Any company certified by the Commission to provide local exchange telecommunications service. This includes the Parties to this Agreement.

1.57 Local Exchange Routing Guide (LERG)

The Telcordia Technologies reference customarily used to identify NPA-NXX routing and homing information, as well as network element and equipment designation.

1.58 Local Number Portability (LNP)

The ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

1.59 Local Provider

A carrier authorized to provide local telecommunications service in the State.

1.60 Local Service Request (LSR)

The industry standard form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold services and unbundled elements for the purposes of competitive local services.

1.61 Local Traffic

Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated within the UBTA-UBET Local Calling Area, or mandatory Extended Area Service (EAS) area, as defined in UBTA-UBET's local exchange tariffs. Local Traffic does not include optional local calling (*i.e.*, optional rate packages that permit the end-user to choose a Local Calling Area beyond the basic exchange serving area for an additional fee), referred to hereafter as "optional EAS". Local Traffic includes Information Access Traffic to the extent that the end user and the ISP are physically located in the same UBTA-UBET Local Calling Area.

1.62 Main Distribution Frame (MDF)

The distribution frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.

1.63 Meet Point Billing (MPB)

Refers to an arrangement whereby two LECs jointly provide the transport element of a switched access service to one of the LEC's end office switches, with each LEC receiving an appropriate share of the transport element revenues as defined by the effective access tariffs.

1.64 Mid Span Fiber Meet

An Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed upon IP.

1.65 Multiple Exchange Carrier Access Billing (MECAB)

Refers to the document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs, or by one LEC in two or more states within a single LATA.

1.66 Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface (MECOD)

A document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR-STS-002643, establishes methods for processing orders for access service that is to be provided by two or more LECs.

1.67 911 Service

A Bresnan telephone number that gives the public direct access to the PSAP. Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

1.68 North American Numbering Plan (NANP)

The system of telephone numbering employed in the Bresnan States, Canada, and Caribbean countries that employ NPA 809.

1.69 Numbering Plan Area (NPA)

Also sometimes referred to as an area code, is the three-digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service that may be provided across multiple geographic NPA areas. 800, 900, 700, and 888 are examples of Non-Geographic NPAs.

1.70 NXX, NXX Code, Central Office Code or CO Code

The three-digit switch entity indicator that is defined by the “D”, “E”, and “F” digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.

1.71 Owner or Operator

As used in OSHA regulations, owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building or facility. As used in the Resource Conservation and Recovery Act (RCRA), Operator means the person responsible for the overall (or part of the) operations of a facility.

1.72 Party/Parties

UBTA-UBET and/or Bresnan.

1.73 Pole Attachment

A Party’s use of space on telephone poles belonging to the other Party for attachment of cables and related materials to provide services in accordance with the terms and conditions of this Agreement.

1.74 Provider

The Party providing service to the other. UBTA-UBET or Bresnan depending on the context and which Party is providing the service to the other Party.

1.75 Public Safety Answering Point (PSAP)

An answering location for 911 calls originating in a given area. A PSAP may be designated as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAPs are staffed by employees of Emergency Response Agencies (ERAs) such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.

1.76 Qualifying Service

A Qualifying Service is a telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or primary domain of incumbent local exchange carriers, including, but not limited to, local exchange service (such as “Plain Old Telephone

Service”), and access service (such as DSL services and high-capacity circuits).

1.77 Rate Center

The specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX Codes that have been assigned to a LEC for its provision of Exchange Services. The geographic point is identified by a specific Vertical and Horizontal (V&H) coordinate that is used to calculate distance-sensitive end user traffic to/from the particular NPA-NXXs associated with the specific Rate Center.

1.78 Right-of-Way (ROW)

The right to use the land or other property of another Party to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.

1.79 Routing Point

Denotes a location that a LEC has designated on its network as the homing (routing) point for traffic that terminates to Exchange Services provided by the LEC that bear a certain NPA-NXX designation. The Routing Point is used to calculate airline mileage for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Telcordia Technologies Practice BR795-100-100, the Routing Point may be an end office location, or a “LEC Consortium Point of Interconnection.” The Routing Point must be in the same LATA as the associated NPA-NXX.

1.80 Service Switching Point or Signal Switching Point (SSP)

A Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific customer services.

1.81 Signaling Point (SP)

A node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.

1.82 Signaling System 7 (SS7)

The signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute (ANSI) standards.

1.83 State

The State in which Services are to be provided under the Agreement.

1.84 Subsidiary

A corporation or other legal entity that is majority owned by a Party.

1.85 Subsequent Service Order

Applied to LSRs requesting a service change to an existing unbundled account (no CLEC transfer). For disconnect-only LSRs, no NRC will be applied.

1.86 Synchronous Optical Network (SONET)

Synchronous electrical (STS) or optical channel (OC) connections between LECs.

1.87 Switched Access Service

The offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service customers in a given area pursuant to a switched access tariff. Switched Access Services include: Feature Group A,

Feature Group B, Feature Group C, Feature Group D, 800 access and 900 access services.

1.88 Tandem or Tandem Switch

Tandem means to connect in series. A Tandem or Tandem Switch connects one trunk to another. It is an intermediate (Class 4) switch between an originating telephone call and the final destination of the call.

1.89 TDM Technology

Time Division Multiplexing. A method of multiplexing in which a common transmission path is shared by a number of channels on a cyclical basis by enabling each channel to use the path exclusively for a short time slot. This technology is used to provision traditional narrowband services (*e.g.*, voice, fax, dial-up Internet access) and high-capacity services like DS1 and DS3 circuits.

1.90 Telcordia Technologies

A wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new telecommunications

services. Telcordia Technologies also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.

1.91 Telecommunications Services

The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.92 Third Party Contamination

Environmental pollution that is not generated by the LEC or Bresnan but results from off-site activities impacting a facility.

1.93 Transit Traffic

Transit Traffic is traffic originating on Bresnan's network that is switched and/or transported by UBTA-UBET and delivered to a third party's network.

1.94 Trunk Side

Refers to a central office switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to another central office switch. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone sets.

1.95 Undefined Terms

Undefined terms may appear in this Agreement. Parties acknowledge and agree that any such terms shall be construed in accordance with UBTA-UBET's tariffs, or, if not defined therein, under customary usage in the telecommunications industry as of the effective date of this Agreement.

1.96 Wire Center

A building or space within a building that serves as an aggregation point on a LEC's network, where transmission facilities and circuits are connected or switched.

ATTACHMENT 3

Thor Nelson

From: Kira Slawson [KiraM@blackburn-stoll.com]
Sent: Wednesday, March 12, 2008 9:00 AM
To: Thor Nelson
Cc: Lambert, Jerry; Stan Stoll
Subject: RE: Bresnan Letter

Thor,

We did receive your letter and request, and are in the process of reviewing it with our client and our consultants. We will get back to you once we have completed this review.

Thanks,

Kira M. Slawson
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111-2048
Phone: (801) 521-7900
Fax: (801) 578-3579

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From: Thor Nelson [mailto:TNelson@hollandhart.com]
Sent: Tuesday, March 11, 2008 2:12 PM
To: Kira Slawson
Cc: Lambert, Jerry
Subject: Bresnan Letter

Kira,

On Feb. 14, I sent you an e-mail with an attached letter and proposed Traffic Exchange Agreement from Bresnan to your client UBTA-UBET. We have still not heard anything back from you or your client regarding this letter and proposed agreement. Would you please (a) confirm that you received this information and (b) let me know as soon as possible when we might expect a response from your client.

Thank you.

Thorvald Nelson
Holland & Hart LLP
8390 E. Crescent Pkwy, Suite 400
Greenwood Village, CO 80111
Phone (303) 290-1601
Fax (303) 975-5290
E-mail: tnelson@hollandhart.com

5/14/2008



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ATTACHMENT 4

Brett N. Anderson
Charles M. Bennett
Kristy L. Bertelsen
Michael D. Blackburn
David J. Castleton
Thomas Christensen, Jr.
Jane A. Clark
Mark D. Dean
Michael E. Dyer
Sharon J. Eblen
Bret A. Gardner
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April 11, 2008

VIA EMAIL
tnelson@hollandhart.com

Thorvald A. Nelson
Holland & Hart, LLP
8390 E. Crescent Parkway, Suite 400
Greenwood Village, CO 80111

Re: **Bresnan Broadband of Utah's Request for Interconnection with UBTA-UBET Communications, Inc.**

Dear Mr. Nelson:

This letter is in response to the February 14, 2008 letter from Bresnan Broadband of Utah ("Bresnan") to UBTA-UBET Communications, Inc. ("UBTA-UBET") requesting the negotiation of an interconnection agreement under Section 251(a) and (b) of the Communications Act of 1934, as amended (the "Act"). UBTA-UBET has engaged a consultant, John Staurulakis, Inc. ("JSI") to assist in these negotiations. At this time, however, I will be your point of contact for the negotiations.

In order to initiate the discussions between UBTA-UBET and Bresnan, will you please provide responses to the following questions? These questions are intended to provide UBTA-UBET a more clear understanding of the purpose and aim of Bresnan in these negotiations.

1. In Bresnan's Application for Certificate of Public Necessity and Convenience, Bresnan stated that it did not believe its IP-Enabled voice services are a regulated local exchange telecommunications service. Please explain how Bresnan qualifies as a telecommunications carrier under federal law, in light of its above stated position.

2. Please identify the specific areas within Bresnan's certificated service areas where the telecommunications services requested under this agreement will be provided by Bresnan.

3. Please indicate if Bresnan is seeking to negotiate with UBTA-UBET on behalf of a third party telecommunications carrier or third party VoIP provider.

4. Please specifically describe the telecommunications services, as defined by federal law, that Bresnan intends to provide.

5. Please specifically describe the services Bresnan would like UBTA-UBET to provide, such as physical trunks, local number portability, etc.

Once we receive the information requested above and better understand Bresnan's request, we will be able to evaluate your request and provide a response.

Sincerely,

Blackburn & Stoll, LC



Kira M. Slawson

cc: UBTA-UBET
JSI

ATTACHMENT 5



April 24, 2008

Kira M. Slawson
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111

Re: Bresnan Broadband of Utah's Request for Interconnection with UBTA-UBET Communications, Inc.

Dear Ms. Slawson:

This letter is in response to your letter of April 11, 2008 wherein you request Bresnan's response to five questions about the purpose and aim of its long standing interconnection request. In an effort to move these negotiations along, which have been hindered by your client's lack of responsiveness for too long, we provide the following information in furtherance of Bresnan's request for interconnection. In addition, however, we remind you that UBTA-UBET has a specific duty under FCC Rules, specifically Rule 51.301, to negotiate with Bresnan in good faith

- 1. In Bresnan's Application for a Certificate of Public Necessity and Convenience, Bresnan stated that it did not believe its IP-Enabled voice services are a regulated local exchange telecommunications service. Please explain how Bresnan qualifies at[sic] a telecommunications carrier under federal law, in light of its above stated position.**

A. The Utah Public Service Commission's decision to grant Bresnan a CPCN to provide public telecommunications services is presumptive proof that it has the right to interconnect under both state and federal law. Utah Code § 54-8b-2.2.(1)(b)(i) states:

Whenever the commission grants a certificate to one or more telecommunications corporations to provide public telecommunications services in the same or overlapping service territories, all telecommunications corporations providing public telecommunications services in the affected area shall have the right to interconnect with the essential facilities and to purchase the essential services of all other certificate holders operating in the same area on a nondiscriminatory and reasonably unbundled basis.



Utah Code further states:

Each telecommunications corporation shall permit access to and interconnection with its essential facilities and the purchase of its essential services on terms and conditions, including price, no less favorable than those the telecommunications corporation provides to itself and its affiliates.

Id. at § 54-8b-2.2.(1)(b)(ii).

Significantly, the Utah Public Service Commission agrees that cable telephony providers like Bresnan have the right to interconnect as is evidenced by its recent approval of an interconnection agreement between Comcast and Qwest in Docket No. 08-049-02.

Additionally, the FCC's March 2007 Time Warner Ruling confirmed that: (1) telecommunications carriers have the right to interconnect and exchange traffic under 47 U.S.C. §§ 251(a) and (b) regardless of whether the carrier provides retail or wholesale services, and (2) regardless of the classification of the service provided to the ultimate end user (i.e., information service or telecommunications service). This ruling reinforces Bresnan's right to interconnect in this instance because the Utah Public Service Commission has already concluded that Bresnan is a telecommunications carrier for purposes of approving Bresnan's CPCN.

Further, a number of federal courts and state commissions have recently affirmed the right of the telecommunications carrier, Sprint, to interconnect for the purposes of exchanging traffic that either originates or terminates on a cable telephony provider's network. In fact, earlier this month the federal district court of the Southern District of Iowa ruled that Sprint is entitled to interconnect with rural LECs in Iowa. See *Iowa Telecom Services v. Iowa Util. Bd.*, Case No. 4:06cv0291 JAJ, Order (S.D. Iowa Apr.15, 2008).

It is clear that Bresnan has the right under both state and federal law to interconnect as a result of being granted a certificate authorizing it to provide public telecommunications services.

2. Please identify the specific areas within Bresnan's certificated service areas where the telecommunications services requested under this agreement will be provided by Bresnan.

A. The details of Bresnan's service area will be defined as it works through its traffic exchange agreement. However, Bresnan intends to serve the entire Vernal

exchange where it has plant located. It was previously established in testimony that Bresnan's service area covers at least that of UBTA-UBET.

3. Please indicate if Bresnan is seeking to negotiate with UBTA-UBET on behalf of a third party telecommunications carrier or third party VoIP provider.

A. Bresnan does not at this time intend to provide service to a third party. In the event that Bresnan seeks to negotiate on behalf of another party, UBTA-UBET will be informed of such decision.

4. Please specifically describe the telecommunications services, as defined by federal law, that Bresnan intends to provide.

A. Bresnan intends to provide telecommunications services authorized under its CPCN to operate as a Competitive Local Exchange Carrier and as authorized by both state and federal law.

5. Please specifically describe the services Bresnan would like UBTA-UBET to provide, such as physical trunks, local number portability, etc.

A. Bresnan requests local number portability services and physical trunking for the exchange of calls between our companies. This will necessarily include trunking and associated SS7 connectivity to support local traffic exchange and tandem trunking for termination of non-local traffic to our customers. Bresnan does not anticipate the need for unbundled loops at this time. Additionally, Bresnan will require reciprocal compensation for the exchange of traffic, access to 911 databases and facilities, and the ability to submit directory listings to the area telephone directory and to directory assistance. If UBTA-UBET does not publish its own directory, but rather uses DEX, Bresnan can support direct updates to DEX.

Again, a final, but significant consideration that Bresnan wishes to emphasize is that UBTA-UBET has a duty under federal law to negotiate the terms of Bresnan's requested agreement in good faith. Specifically, 47 C.F.R. 51.301(a) requires UBTA-UBET to negotiate the terms of agreements to fulfill its duties under 47 U.S.C. §§ 251 (b) and (c). Furthermore, 47 C.F.R. 51.301(c)(6) provides that "intentionally obstructing or delaying negotiations" is a per se violation of the duty to negotiate in good faith. The Utah Public Service Commission similarly requires that interconnection "be fully reciprocal, shall not be unreasonably delayed or withheld" and shall fully comply with state and federal law. See Utah Admin. Code § R746-348-4(A). Given that Bresnan initially requested interconnection with UBTA-UBET more than two months ago and has yet to receive a formal response, Bresnan expects that UBTA-

UBET will commence negotiations with it promptly in order to avert such violations of federal and state law.

Please contact me if you have further questions regarding Bresnan's response to UBTA-UBET's questions contained herein.

Best regards,



Thorvald A. Nelson
of Holland & Hart LLP *By Robyn A. Kastner*

TAN

ATTACHMENT 6

Brett N. Anderson
Charles M. Bennett
Kristy L. Bertelsen
Michael D. Blackburn
David J. Castleton
Thomas Christensen, Jr.
Jane A. Clark
Mark D. Dean
Michael E. Dyer
Sharon J. Eblen
Bret A. Gardner
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May 13, 2008

VIA EMAIL

tnelson@hollandhart.com

Thorvald A. Nelson
Holland & Hart, LLP
8390 E. Crescent Parkway, Suite 400
Greenwood Village, CO 80111

Re: Bresnan Broadband of Utah's Request for Interconnection with UBTA-UBET
Communications, Inc.

Dear Mr. Nelson:

I am in receipt of your letter dated April 24, 2008. Thank you for responding to several of our questions. In reviewing your responses, however, UBTA-UBET respectfully disagrees with your analysis of Bresnan's request.

While we can assure you that UBTA-UBET will meet the requirements of all *applicable* federal rules, UBET-UBET is not convinced, based on Bresnan's response to our requests, that UBTA-UBET has an obligation to interconnect with Bresnan. Based on your response to our first question, we are not convinced that Bresnan qualifies for an interconnection arrangement under applicable federal law because Bresnan is not intending to use the interconnection arrangement for telecommunications services. Instead, it is quite clear that your client is seeking to deploy a VoIP service. As you are likely aware, the FCC has not yet made the determination that VoIP Service is a telecommunications service. Your reference to the FCC's *Time Warner* decision is unavailing. While you seem to be arguing that Bresnan qualifies for interconnection as a telecommunications carrier providing qualifying services, we respectfully disagree. *Time Warner* does not give your client the ability to request services when it provides the end-user VoIP service. In fact the FCC in the *Time Warner* makes it clear that its decision does not extend to VoIP providers directly, specifically, the *Time Warner* order does not give VoIP providers their own interconnection rights. In fact, we believe that the question of VoIP providers' interconnection rights is unclear under federal law.

This understanding is confirmed by the FCC's recent acceptance of a petition by Vermont Telephone seeking a declaratory ruling addressing the same matter presented before us by Bresnan.¹ Specifically, Vermont Telephone is specifically asking the FCC to clarify whether VoIP providers are entitled to the interconnection rights of telecommunications carriers. The fact that the FCC is currently seeking comment on a matter closely related to Bresnan's request for interconnection persuades us that ILEC's interconnection obligations with VoIP providers is unsettled, and prudence dictates UBTA-UBET postpone discussion of interconnection with Bresnan until the FCC makes a determination on the requirement of rural ILECs to interconnect with cable companies that provide VoIP service.

Your references in the April 24, 2008 letter to Utah law are unavailing. Federal law and federal regulations govern the duties found in Section 251 of the Act. Additionally, your reference to 47 CFR § 51.301 is not applicable to UBTA-UBET at present.

Sincerely,

BLACKBURN & STOLL, LC

Kira M. Slawson

Kira M. Slawson

¹ See Vermont Telephone Petition, DA 08-08-916. And See FCC acceptance of this Petition in Public Notice.