

July 3, 2008

Thorvald A. Nelson
Holland & Hart
PO Box 8749
Denver, Colorado 80201-8749

Kira Slawson
Blackburn & Stoll
257 East 200 South, Suite 800
Salt Lake City, Utah 84111-2142

Re: Bresnan Broadband of Utah request for mediation pursuant to 47 USC 252(a)(2)

Dear Ms. Slawson and Mr. Nelson,

The Commissioners of the Utah Public Service Commission (Commission) have concluded they will not act on the request for mediation submitted by Bresnan Broadband of Utah (Bresnan) in its letter dated May 14, 2008.

Bresnan's February 14, 2008, request to UBTA-UBET references solely federal law provisions for the interconnection request; 47 USC 251(a) and (b). Bresnan's May 14, 2008, mediation request also references only federal law; 47 USC 252(a)(2). Review of Bresnan's responses to my May 28, 2008, email questions leads us to conclude that Bresnan continues in its position that the IP-Enabled service it plans to provide is not a public telecommunications service as defined by Utah Code 54-8b-2(16). Consistency in Bresnan's position that the service is not a public telecommunications service under Utah law would also lead one to conclude that the service is not within the Commission's state authority or jurisdiction, nor a public telecommunications service the provision of which is permitted through Bresnan's November 16, 2007, Certificate of Public Convenience and Necessity.

While the Commission has granted Bresnan a state certificate to provide public telecommunications services under state authority and definitions, it appears Bresnan does not acknowledge that the service it will provide, and for which it seeks an interconnection agreement, is provided pursuant to the state granted certificate and, as such, is subject to Commission authority and regulation. Bresnan misreads the Commission's November 16, 2007, Order, at page 4, where the Commission merely repeated Bresnan's position. Bresnan also errs in its characterization of Commission actions in Docket 08-049-02. In that docket, the Commission did not approve the interconnection agreement. As Bresnan herein, the Commission there was careful in identifying how the interconnection agreement would be treated under federal law, no reference to or act under state law was made.

As Bresnan seeks mediation and interconnection solely under federal law and avoids acknowledgment of and invocation of state law and authority, the Commission concludes that it must respond similarly. Absent application of Utah State law, Bresnan's request confines the Commission to proceed under federal law. The Commission concludes it would be a futile effort to attempt to act upon Bresnan's requests in light of the Federal Communications Commission (FCC) created conundrum relating to internet based services and federal law. As recognized by the parties, federal law is unsettled on the application of the provisions of 47 USC 251 and 252 which Breanan has invoked. Given that the FCC is proceeding in the Vermont Telephone Petition action to resolve what and how federal law may apply, the Commission will not effectively preempt or compete with the FCC to resolve these issues. Bresnan and UBTA-UBET may apply 47 USC 252(e)(5) to the Commission's declination to act on Bresnan's mediation request.

Sincerely,

/s/ Sandy Mooy
PSC Legal Counsel