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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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BRESNAN BROADBAND OF UTAH, LLC,  
a Utah limited liability company,

Petitioner,

vs.

UBTA-UBET COMMUNICATIONS, INC.,  
a Utah corporation,

Respondent.

**Docket No. 09-2476-01**

**AFFIDAVIT OF ALEX J. HARRIS TO  
BRESNAN BROADBAND OF UTAH,  
LLC'S INITIAL BRIEF**

I, Alex J. Harris, being first duly sworn on oath, state as follows:

1. My name is Alex J. Harris. My business address is One Manhattanville Road, Purchase, New York, 10577-2596. I am Vice President, Network Planning & Industry Affairs, for Bresnan Communications, LLC.

2. In the above-referenced enforcement action, UBTA-UBET Communications, Inc. (“UBET”) refuses to execute and implement an Essential Facilities Agreement with Bresnan Broadband of Utah, LLC (“Bresnan”), despite the orders approving and mandating the terms of that agreement by the Utah Public Service Commission (“Commission”) in Docket No. 08-2476-02.

3. The execution and implementation of the approved Essential Facilities Agreement (also known as an Interconnection Agreement) is critical to Bresnan’s ability to, among other things, request a telephone number block (*i.e.*, an NPA-NXX), effectuate interconnections between its network and those of other entities, seamlessly transfer customers from UBET to Bresnan, and importantly, to cement the governing terms of interconnection between Bresnan and UBET.

4. Upon execution of an interconnection agreement, the CLEC will typically request a telephone number block (*i.e.*, an NPA-NXX) from the North American Numbering Plan Administrator (“NANPA”) and cause such number block to be listed in the Local Exchange Routing Guide (“LERG”). The LERG is the industry publication governing the routing of traffic between and among service providers. The standard interval for an NPA-NXX assignment and activation in the LERG is 66 days. In order to request a code, the CLEC must certify, and provide evidence in support of such certification, that its network will be ready to begin offering services using that number block within 60 days of code activation. The usual form of evidence submitted by CLECs in support of such certification is an executed interconnection agreement with the competing ILEC.

5. During the interim between code request and code activation, the CLEC will typically undertake actions necessary to effectuate interconnections between its network and those of other entities. The entities with which the CLEC would commence interconnectivity actions in the Rate Center(s) in which the CLEC intends to operate include, but are not limited to:

a. The ILEC(s) Operating in the Rate Center(s): Where the CLEC and ILEC implement direct interconnection, the two companies will establish one or more new direct trunk groups between their networks, as well as programming their respective switches to route traffic between their networks over the new trunk group(s). Where the CLEC and ILEC implement indirect interconnection via a 3rd party tandem switch (to which both the CLEC and ILEC must be connected for other purposes), no new trunk groups are established. Rather the CLEC and ILEC merely program their respective switches to route the traffic between their networks over the trunk groups each party maintains between its network and the 3rd party tandem switch.

b. The 9-1-1 System(s) Serving the Rate Center(s): The CLEC must establish connectivity to the 9-1-1 system(s) serving the Rate Center(s) in which the CLEC intends to operate.

c. The Tandem Switch Serving the Rate Center(s): To the extent the ILEC serving the Rate Center(s) in which the CLEC intends to operate does not operate a tandem switch for purposes of providing Switched Access services and indirect

interconnection to other ILECs, CLECs or wireless carriers for the exchange of Local, EAS or intraLATA (non-IXC) traffic, the CLEC will need to establish one or more trunk groups between its network and the 3rd party-operated tandem switch which does provide such functions for each Rate Center in which the CLEC intends to operate. Such tandem trunk groups must be established in order for the CLEC to receive traffic from all other service providers operating within the public switched telecommunications network (PSTN).

6. In addition, during the period between code request and code activation, the CLEC will begin coordinating with the ILEC with regard to processes and procedures for customer transfers, including Customer Service Record (CSR) requests, Local Number Portability (LNP) requests, and related activities.

7. Although an executed interconnection agreement (*i.e.*, Essential Facilities Agreement) is not the only form of evidence which can be submitted in support of a CLEC's certification that its network will be ready to begin providing service within 60 days of NPA-NXX code activation, the CLEC must operate with a reasonable belief that its certification of network readiness is justified. In the instances where a CLEC is operating in Rate Centers in which the ILEC has routinely interconnected with CLECs and that prior course of dealing provides the necessary indications that the ILEC will timely execute and implement an interconnection agreement with the CLEC without delay or objection, a CLEC can reasonably request a code by self-certifying it will be ready. However, in an instance where a CLEC is the first entrant into an area in which the ILEC has never previously interconnected with a CLEC, and in which the ILEC has continually made clear over a two-year time period its intent to oppose and obstruct the CLEC's entry to the exchange and has willfully refused to execute an interconnection agreement despite Commission orders that it do so, a CLEC cannot reasonably certify it will be ready to operate within 60 days of code activation.

8. Indeed, if Bresnan had requested an NPA-NXX code upon receipt of its CPCN from the Commission on November 16, 2007, on the reasonable expectation that UBET would agree to timely interconnection with Bresnan on standard terms, and assuming a standard 66-day activation interval and subsequent 60-day use interval, Bresnan would have missed its self-certified network readiness date on March 21, 2008, because UBET refused to even negotiate with Bresnan until well after Bresnan filed its arbitration case.

9. Even if Bresnan had requested an NPA-NXX upon release of the Commission's Order in Docket No. 08-2476-02 on May 21, 2009, on the reasonable expectation that UBET would execute the interconnection agreement specified by the Commission in that Order, Bresnan would be at risk of missing its self-certified network readiness date on September 24, 2009, since the Commission may not have even issued an order in this complaint case by that date.

10. Thus, absent an executed Essential Facilities Agreement that actually and specifically governs the terms of interconnection between Bresnan and UBET, Bresnan is reluctant to certify network readiness date in support of an NPA-NXX code request. In the absence of an executed interconnection agreement, Bresnan is likewise reluctant to incur various expenses for basic business prerequisites to actually launch service, given the uncertainty as to whether UBET will effectively interconnect with Bresnan and to allow Bresnan to operate.

11. UBET has made various allegations about Bresnan's lack of communication and interaction with Qwest and about Qwest's role in the matter of transiting via the Provo tandem. Contrary to UBET's allegations, Bresnan has initiated interconnection discussions with Qwest and is reviewing a draft interconnection agreement for execution. While Bresnan has not yet completed its review of the document, based on its review of effective interconnection

agreements into which Qwest has entered with other CLECs in Utah, Bresnan believes that the transiting necessary to enable indirect interconnection between Bresnan and UBET is fully provided for within Qwest's basic interconnection terms and that no specific negotiations or preparations in that regard are necessary. Once Bresnan establishes trunk groups to the Provo tandem for purposes of receiving Switched Access traffic from IXCs and transited intraLATA toll (non-IXC) traffic from other ILECs, CLECs and wireless carriers operating in Utah, those trunk groups should be fully capable of transiting Local/EAS traffic between Bresnan and UBET. Indeed, in other states where Bresnan has exclusively employed indirect interconnection between its network and an independent ILEC via a Qwest tandem, there were no discussions or negotiations between the independent ILEC and Qwest, or between Bresnan and Qwest related to such indirect interconnection. Rather, Bresnan and the independent ILEC merely programmed their switches to route traffic to each other over the trunk groups each already had in place to the same Qwest tandem. There is no reason that same procedure should not apply with UBET and there is no need for UBET or Bresnan to engage Qwest in discussions about such transiting at this time.

12. In the event that Qwest should subsequently advise Bresnan that such transiting capability is not enabled in the Provo tandem, the Qwest interconnection agreement into which Bresnan intends to enter provides a bona fide request process whereby Bresnan may request such functionality, with terms governing how any special one-time costs for making such functionality available shall be charged to the requesting party. Should Bresnan disagree with Qwest as to whether such transiting functionality is currently enabled (and we firmly believe it is), or disagree with Qwest as to the special one-time costs for making such functionality available, Bresnan will have the option to seek arbitration with Qwest before the Commission. Not only is it wholly premature and unnecessary for Bresnan to undertake such activities now, in light of UBET's long track record of obstruction, it would be absolutely foolish for Bresnan to do so at the time. The overwhelming prerequisite for Bresnan's CLEC operation in Vernal is UBET's execution of the Commission-Ordered Essential Facilities Agreement as a minimum assurance that UBET will, in fact, interconnect on any terms whatsoever. In unique and extreme contrast to its experiences in securing and implementing interconnection with other ILECs in other states, Bresnan has spent nearly two (2) years and tens of thousands of dollars attempting to secure interconnection with UBET in Vernal, a single, very small market. As a rational business proposition, Bresnan must limit its expenditures on secondary Vernal-related telephone launch activities (including hypothetical issues with Qwest) until it can be reasonably assured of UBET's execution of and compliance with the Commission-Ordered Essential Facilities Agreement.

13. In any event, under these circumstances UBET will bear no exposure, liability or obligation with respect to special on-time costs. Indeed, if the necessary transiting functionality is enabled, there will be no special one-time costs. If it is not enabled and Bresnan does not make a bona fide request to Qwest to enable it, the Essential Facilities Agreement between Bresnan and UBET will default to Direct Interconnection pursuant to Section 3.1.1 of the Interconnection Attachment. If it is not enabled and Bresnan makes a bona fide request to Qwest to enable it, Bresnan will be liable for any special one-time costs pursuant to its role as the originator of the Bona Fide Request. If the necessary transiting functionality is a subject of dispute between Bresnan and Qwest, and Bresnan seeks arbitration with Qwest before the Commission, Bresnan will bear all the expenses of the affirmative case in the arbitration. Alternatively, if it is a subject of dispute between Bresnan and Qwest, and Bresnan does not seek arbitration with Qwest before the Commission, the Essential Facilities Agreement between Bresnan and UBET will default to Direct Interconnection pursuant to Section 3.1.1 of the Interconnection Attachment. UBET is held harmless under each of these possible scenarios, and its insistence that it cannot execute and implement the Essential Facilities Agreement with Bresnan by virtue of Qwest's involvement therefore is completely unfounded.

