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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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| <p><b>Bresnan Broadband of Utah, LLC, a Utah limited liability company,</b></p> <p><b>Petitioner,</b></p> <p><b>vs.</b></p> <p><b>UBTA-UBET Communications, Inc., a Utah corporation,</b></p> <p><b>Respondent.</b></p> | <p><b>UBTA-UBET COMMUNICATIONS, INC.'S PRE-HEARING REPLY BRIEF</b></p> <p><b>Docket No. 09-2476-01</b></p> <p><b>September 9, 2009</b></p> |
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UBTA-UBET Communications, Inc. ("UBET"), through its undersigned counsel, hereby submits its Pre-Hearing Reply Brief in the matter of Bresnan Broadband of Utah, LLC's ("Bresnan") Complaint for Injunctive and Other Relief Against UBET.

**HISTORY OF THESE PROCEEDINGS**

Bresnan seeks an Order from the Utah Public Service Commission (the "Commission") ordering UBET to sign the Essential Facilities Agreement (the "Agreement"), and ordering UBET to pay fines for its failure to sign the Essential Facilities Agreement. Within Bresnan's Prehearing Brief and the Affidavit of Alex Harris and throughout these proceedings Bresnan has stated that UBET has obstructed

competition within Vernal. This is an unwarranted characterization of these proceedings.

Bresnan initially filed its Application for Certificate of Public Convenience and Necessity (“CPCN”) seeking entry into UBET’s local service area. This was an issue of first impression with profound implications on a small rural market in Utah; the public interest; and the Utah Universal Service Fund. In fact, this was the first instance of a competitive local exchange carrier asking to compete in a rural ILEC market in Utah. As such, UBET and the URTA lawfully moved to intervene and were granted intervenor status to protect and litigate whether competition in a small rural market was, in fact, in the public interest. This proceeding was fully litigated, as provided by Utah Code and Commission Rules, and went to hearing in August of 2007. The Commission ultimately issued Bresnan a CPCN on November 16, 2007.

Thereafter, Bresnan initially sought interconnection under Federal law, and sought mediation under Federal law from the Commission. The Commission declined to mediate this matter indicating it did not have jurisdiction over the matter given Bresnan’s request for interconnection under federal law. Effectively the Commission indicated it would not preempt or compete with the FCC to resolve the issues regarding ILEC interconnection obligations with VoIP service providers citing the Vermont Telephone Petition pending before the FCC.

Bresnan, thereafter, sought arbitration of its request for interconnection under state law, also a matter of first impression in the State of Utah with profound impacts on the rural local exchange providers. This matter was fully litigated and went to hearing on January 27, 2009. The Commission issued its order on interconnection on May 21,

2009. UBET thereafter timely filed a Motion for Rehearing, Review and Reconsideration and a Motion for Stay of the Commission's Order pursuant to Utah Code and Commission Rules. The Motion for Stay was granted. Ultimately, the Commission issued its Order on Reconsideration on August 3, 2009. Immediately upon receiving the Commission's Order, UBET contacted Qwest to inquire about implementation of indirect interconnection.

UBET, at all times throughout this proceeding, has availed itself of its legal protections and has acted within the provisions of the law. UBET's exercise of its legal rights in this matter does not make it an obstructionist, and UBET takes exception to Bresnan's classification of UBET's efforts as obstructionist.

#### **REPLY TO BRESNAN'S PREHEARING BRIEF**

As previously indicated, upon receipt of Bresnan's letter dated August 4, 2009, in which Bresnan forwarded execution copies of the Agreement, and asked UBET to execute the Agreement, counsel for UBET sent a letter to Bresnan indicating that UBET was concerned that the Agreement did not address potential issues of significant costs to the parties to implement indirect interconnection through the Qwest Provo Tandem. Upon receipt of UBET's letter, Bresnan did not provide any assurances that UBET would not incur significant costs. In fact, until UBET received the Affidavit of Alex Harris and Bresnan's Prehearing Brief, UBET was not aware that Bresnan was going to bear the one-time costs which may be imposed by Qwest for the implementation of indirect interconnection through the Qwest tandem.

Despite Bresnan's recent clarification of the issue of one-time costs, there still remains the issue of whether Qwest will permit UBET to use the toll trunks to transit

local traffic. The Commission's Orders provide that UBET must permit "Bresnan to obtain indirect interconnection with UBTA-UBET's essential facilities at the Provo tandem".<sup>1</sup>

In the event that Qwest will not permit UBET to use the toll trunks to transit local traffic, UBET won't have essential facilities with which to interconnect. The Commission's Order on Reconsideration in ordering indirect interconnection, states that "it is more efficient to use existing trunks that carry traffic to a common tandem, so that no carrier bears the burden of constructing an entirely new facility."<sup>2</sup> Thus, neither the Commission's Orders, nor the Agreement, obligates UBET to obtain separate facilities for the purpose of transiting local traffic.

Bresnan indicates in its Brief that such issue is premature and is irrelevant to its Complaint. Bresnan indicates it has completed indirect interconnection through a Qwest tandem in other states and that "there is no need for UBET or Bresnan to engage Qwest in discussions about such transiting at this time."<sup>3</sup> UBET disagrees. This matter is central to the indirect interconnection issue and Qwest's position on this matter is crucial to determining whether UBET will be permitted to complete indirect interconnect by transiting local traffic on the toll trunks to the Provo Tandem. The toll trunk facilities belong to UBET from Vernal to the Whiskey Springs meet point with Qwest. From the meet point to the Provo Tandem the facilities belong to Qwest. Traffic on the toll trunks is handed off to Qwest at the meet point, UBET does not transport traffic over the Qwest portion, rather the traffic is handed off to Qwest as the facility owner. UBET is not at

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<sup>1</sup> Interconnection Order, May 21, 2009, p. 36

<sup>2</sup> *Id.* at p. 9

<sup>3</sup> Affidavit of Harris, p. 4.

liberty to utilize the trunks provided and maintained by Qwest, who is the owner of the facilities, for a purpose other than transporting toll traffic. There simply is no way of provisioning indirect interconnection over the toll trunk facilities from the meet point with Qwest at Whiskey Springs to the Provo Tandem without permission from Qwest. If the Commission declines to address these issues at this time, the parties will likely be back before the Commission after the parties have engaged in “meaningful discussions” with Qwest.

### **PENALTIES ARE NOT APPROPRIATE IN THIS CASE**

In addition to specific performance and injunctive relief requiring UBET to sign the Agreement, Bresnan seeks penalties pursuant to U.C.A. §54-7-25. As previously provided in UBET’s Initial Brief, the Commission’s Orders do not require signature of the Agreement, but rather order interconnection pursuant to the terms of the Agreement as modified by the Commission’s Orders. UBET has, since the Commission’s Order on Reconsideration, attempted to implement interconnection with Bresnan and has not violated any term of the Commission’s Orders. As a result, UBET should not be assessed any penalties in this matter.

### **CONCLUSION**

For the foregoing reasons, UBET requests that Bresnan’s Complaint be dismissed.

DATED this 9<sup>th</sup> day of September, 2009.

BLACKBURN & STOLL, LC

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Kira M. Slawson  
Attorney for UBTA-UBET Communications,  
Inc.

**CERTIFICATE OF MAILING**

I hereby certify that on this 9<sup>th</sup> day of September, 2009, I caused to be emailed a true and correct copy of the foregoing UBTA-UBET Communications, Inc.'s Prehearing Brief to the following:

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