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-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

STATE OF UTAH

In the Matter of the Application of)	<u>DOCKET NO. 04-053-03</u>
Uintah Basin Telecommunications)	
Association, Inc., and UBET Telecom,)	<u>MOTION FOR ORDER</u>
Inc., for an Order of the Commission)	
Approving the Combination, Merger)	<u>COMPELLING ACCESS</u>
and Consolidation of UBET Telecom,)	
Inc., and Uintah Basin)	<u>TO ALL PROTECTED</u>
Telecommunications Association, Inc.)	<u>RECORDS</u>
)	
)	

Proceeding Time Period

Expiration Date:

February 11, 2005

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

42 This is a request for Public Service Commission action pursuant to
43 Paragraph 2 of the Protective Order issued by the Commission on September
44 23, 2004.

45 The Commission has not acted on the Motion for Order Compelling
46 Discovery dated the 10th day of January, 2005. If the Commission had acted
47 on that motion, this new motion would not have been required. The
48 information and arguments included in that motion along with the Exhibits are
49 relevant to this new motion and are to be included by this reference.

50 Time is of the essence. The Commission may want to act on the January
51 10th motion for quicker resolution of this problem.

52 ABBREVIATIONS USED:

53 Applicants: UBTA-UBET

54 Commission: Public Service Commission of Utah

55 Committee: Committee of Consumer Services of Utah

56 Division: Utah Division of Public Service

57 MHI: Reference to a section of Mr. Stanley K. Stoll's Response to Request for

58 Reconsideration (RRR) titled "Mr. Hansen's Intervention" on pages 3

59 and 4 of that response dated the 10th day of January, 2005.

60 Mr. Stanley K. Stoll: His name is defined to include applicants where

61 appropriate since he is acting in their capacity as their
62 attorney.

63 PSC: Public Service Commission of Utah

64 RRR: Mr. Stanley K. Stoll's Response to Request for Reconsideration dated
65 the 10th day of January, 2005.

66 UBET: UBET Telecom, Inc.

67 UBTA: Uintah Basin Telecommunications Association, Inc.

68 UBTA-UBET: Applicants

69 BACKGROUND:

70 Complaint:

71 Mr. Stanley K. Stoll, attorney for Uintah Basin Telecommunications
72 Association, Inc. and UBET Telecom, Inc has not provided any records that I
73 have requested in writing or verbally. And, he has told the Committee of
74 Consumer Services to not provide me with any protected records so that I have
75 not been able to see any of the critical records that I have been trying to gain
76 access to since the 3rd of November, 2004.

77 Appendix A to Protective Order:

78 I have been trying to gain access to the protected records for this Docket No.
79 since Mr. Paul H. Proctor, attorney for the Committee, told me on the 3rd of

80 November, 2004, that I had the right to have access to the type of records
81 I requested, that UBTA-UBET provide to the public in my sworn testimony at
82 the hearing in Vernal on that date.

83 According to Mr. Proctor, all I had to do was to get a confidentiality
84 agreement from the Public Service Commission, sign it, and mail it back to the
85 PSC. Once the signed statement was on file, UBTA-UBET would
86 automatically send me all of the records or contact me to find out what records
87 I wanted.

88 The employees of the PSC did not send me a copy of the Protective Order
89 until December 6, despite several requests from me starting on the 5th of
90 November by way of telephone calls, emails and a letter. I tried faxing a
91 request, but the number I had was always busy.

92 I submitted a signed Appendix A to Protective Order (in PDF format) with
93 the Commission on the 13th day of December, 2004. A duplicate submission
94 of Appendix A (in Word format) was submitted the 10th day of January, 2005,
95 to Mr. Stanley K. Stoll, the Division of Public Utilities, the Committee, and the
96 Commission.

97 **Data Requests:**

98 Data Requests to Public Service Commission:

99 The first verbal data request was at the public hearing held in Vernal, Utah
100 on the 3rd of November, 2004. I stated that the financial statements of UBTA
101 and the entities that it has ownership in need to be made available to the public.
102 I, also, requested that the patronage dividend history be disclosed to the public.
103 This may not qualify as a legal request, but all parties in this case were put on
104 notice of the type of records I wanted access to.

105 The first written data request was served on the PSC on the 5th day of
106 November, 2004. (Effective day was the 8th). The data request was included
107 in the email notification to the PSC that my letter dated October 19th was to be
108 treated as a Request for Intervention. In that email, I requested Appendix A of
109 the Protective Order and a list of items available (i.e. Records List). A copy of
110 that email is already on file. (See Exhibit 2 “re-labeled as Exhibit B by the
111 PSC” that was submitted with the Request for Reconsideration).

112 The second written data request served on the PSC was labeled “Request of
113 Discovery of All Records”. A paper copy and an electronic copy in PDF
114 format was sent on the 13th day of December, 2004.

115 Data Requests to Applicant:

116 The first written information request to UBTA was labeled “Request of
117 Discovery of All Records” (same request served on the PSC above) and was

118 served on the 13th of December, 2004. Mr. Stanley K. Stoll acknowledges the
119 receipt of that data request as well as the next two requests in (RRR. MHI,
120 pages 3 & 4, paragraphs 2 & 3).

121 The first verbal data request was to Mr. Clark B. Allred, counsel for UBTA
122 on the 14th (I was out of town on the 13th) of December, 2004. This request as
123 remembered by Mr. Clark was reduced to writing. See the Affidavit of Clark
124 B. Allred already on file as (Exhibit A of the RRR).

125 The second written request titled "DATA REQUEST" was served on Mr.
126 Stoll the 2nd day of January, 2005. A copy of this data request was filed with
127 the Commission as Exhibit B of my Motion for Order Compelling Discovery.
128 I served this data request a second time by email on the 1st day of February,
129 2005. A paper copy was mailed on the 3rd day of February.

130 The third written request titled "Third Data Request to Applicant" was
131 served by email on Mr. Stoll on the 1st day of February, 2005. A paper copy
132 was mailed on the 3rd of February. A copy is attached as Exhibit A.

133 Data Requests to Committee:

134 I have submitted data requests to the Committee of Consumer Services. The
135 Committee only sent me the non-protected records on my data requests. Mr.
136 Stoll told Mr. Paul H. Proctor (assumed), attorney for the Committee, not to

137 release any protected records when the Committee contacted him as required
138 under Paragraph 1(B) of the Protective Order. A copy of the Committee's
139 Response to Brent Hansen's Second Data Request is attached as Exhibit B
140 explaining the restriction imposed in complying with my request. (I do not
141 have an electronic version). This data request was the same as the second one
142 submitted to the applicant titled "DATA REQUEST".

143 ARGUMENT:

144 Summary:

145 Mr. Stanley K. Stoll's argument that I no longer have a need for access to
146 any records is completely without merit. (RRR, MHI, page 4 paragraph 3).
147 There is still time to file a Petition for Review with the Utah Supreme Court.
148 And, there is the possibility (however remote) that the Commission could be
149 persuaded to reverse or change its final order. (Utah Code Ann. ' 54-7-13) and
150 (Bowen Trucking, Inc. v. Public Serv. Comm'n, 559 P.2d 954 (Utah 1977)).

151 Mr. Stoll's argument that there is no longer a legal right for additional
152 discovery is, also, without merit. His argument dated February 4, 2005, is
153 attached as Exhibit C. (PDF is only electronic version I have). There can be
154 no justice if the opposing party is denied access to the evidence used in the
155 case he is involved with. Status as an intervener in this case gives me standing.

156 Rule 26 of the Utah Rules of Civil Procedure allows discovery to continue
157 unless there is a court order to deny it.

158 I do not understand how Mr. Stoll can believe that his obstruction of justice
159 is benefiting the UBTA members. His actions when considered with other
160 information imply that there is something for me to find that clearly shows that
161 the merger is not in the public's interest. How can Mr. Stoll justify the cost
162 benefit of his actions when he claims that they do not have a problem with
163 letting me see the protected records?

164 Review of the Record:

165 Mr. Stanley K. Stoll submitted Exhibit A (an Affidavit of Clark B. Allred,
166 counsel for UBTA) with his Response to Request for Reconsideration. Mr.
167 Allred stated in paragraph 8 that I could examine whatever records I wanted
168 that had been filed with the Commission. If Mr. Stoll had a valid sensitivity
169 and confidentiality reason to deny me access to the protected records, then why
170 did he submit that affidavit?

171 The Commission has been misled about the proposed meeting I was going
172 to have with UBTA-UBET on the 17th day of December, 2004. The real
173 purpose of that meeting was to give the applicant the opportunity to talk me
174 out of filing my Request for Reconsideration. I do not believe that the

175 presentation would have had any confidential information beyond what UBTA
176 is willing to provide it members at its annual meetings. Further explanation is
177 provided in Exhibit E attached.

178 Mr. Stoll stated that he is entitled to sit on my data requests for thirty full
179 days before he has to respond to them. (RRR, MHI, page 4 paragraph 4). All
180 of the written and verbal data requests (except the third one) that have been
181 served or conveyed on Mr. Stoll are all older than thirty days and are past due
182 for a response.

183 The only objections to providing the protected and the non-protected
184 records that Mr. Stoll has presented to the Commission was that my request
185 was premature and access to the records is moot since the Commission denied
186 the Request for Reconsideration. (RRR, MHI, page 4 paragraphs 3 & 4).

187 Mr. Stoll told the Committee (I assume Mr. Paul H. Proctor) something to
188 keep the Committee from responding to my data requests. The details of that
189 communication were never submitted to the Commission (as far as I know) or
190 to me.

191 Analysis:

192 If the records show that the Commission made the correct decision to
193 approve the merger, then why is so much time and energy being wasted in

194 denying my access to those records? I could have looked at all of the records
195 on file in half of the time I have spent trying to protect my rights in this matter.
196 And, I am sure that the Commission, Committee, and Division have other
197 matters they could have spent their time on.

198 It would have been much more cost effective if Mr. Stoll would have just
199 allowed me access to the records back in October 2004. At that time, I just
200 wanted to determine how badly the merger was going to affect the public and
201 try to mitigate the problems. As this case matures, proof of claims requires a
202 higher standard. That is why my additional data requests have been made and
203 could continue.

204 Part of the problem has to do with the Public Service Commission's office
205 in handling my email notification to treat my letter as a Request for
206 Intervention. (See Data Requests to Public Service Commission, paragraph 2).
207 The Commission should have seen that email along with the letter requesting
208 intervention to approve my status as intervener on the 12th day of November,
209 2004. (I assume that Julie Orchard, Commission Secretary, needed written
210 proof of my request in order to have the Commission act on that request). The
211 Commission should have queried its staff on whether the data request was
212 complied with.

213 Mr. Stoll's claim that he has thirty days to respond to a Data Request shows
214 how easy it would be to deny informed public participation in this Docket.
215 The last day to file a Petition to intervene was the 22nd of October, 2004. The
216 final hearing was on the 22nd of November. It would have been impossible for
217 me to obtain any records from the Applicant before the final hearing if the full
218 reply time was used.

219 The first public notice in the newspaper was on the 6th of October. That
220 gives the intervener a maximum of seventeen days to send his Petition to
221 Intervene, get and file Appendix A, prepare and submit a Data Request,
222 examine the records, and prepare for discussion at the final hearing. The
223 likelihood of someone actually doing this is remote. And, a single challenge
224 by the Applicant at the end of the thirty day period would prevent the
225 intervener from receiving any records before the hearing. This example
226 supports reason 6 in my Request for Reconsideration claiming that the merger
227 application was on the fast track for approval.

228 The Commission gave some direction to the Applicant in regard to
229 responding to my data requests in the last paragraph of its Order on Request
230 for Reconsideration dated the 12th of January, 2005.

231 “We note Applicants’ willingness to provide information to Mr. Hansen
232 following issuance of our Order and expect such willingness to continue.”
233 As I have repeatedly mentioned in several motions and Exhibits, the Applicant
234 has not been willing (since December) to provide any records and has asked
235 the Committee, in particular, not to provide any protected records.

236 Mr. Stoll has demonstrated that he will not provide the records requested in
237 my data requests without an absolute order from the Commission (if even
238 then). He may not respond without an order from the Utah Supreme Court.
239 The Committee will not respond without a specific order from the Commission
240 as required under paragraph 2 of the Protective Order. Therefore, Commission
241 action on this motion is required if I am to have access to the records I need.

242 Response to letter from Stanley K. Stoll (Exhibit C):

243 Paragraph 1:

244 Utah Code Ann. ’63-46b-14(2) requires all administrative remedies be
245 exhausted before seeking judicial review. Even though the Commission’s
246 Order is final, its decision is still subject to review under Utah Code
247 Ann. ’63-46b-14 and 63-46b-16.

248 Rule 26(d) of the Utah Rules of Civil Procedure (URCP) permits fact
249 discovery to continue up to 240 days after the first answer is filed. The joint

250 application was filed in August 2004, which still leaves two more months for
251 fact discovery. Some of the Division's Data Requests require the Applicant to
252 continue providing certain information until the Division told the Applicant the
253 information was no longer required. If UBTA-UBET is still required to
254 furnish certain information, then discovery is still on going.

255 Rule 26(3) of URCP allows discovery for trial preparation. Despite all of
256 my efforts over the past three months, I still have not received the crucial
257 records that I need to present my case! Some of the records I have requested
258 are not even available to the UBTA members. Therefore, there is no other
259 source for me to obtain the records.

260 It does not matter that UBTA-UBET does not think that the information I
261 seek is relevant. Rule 26(b)(1) of URCP states that "It is not ground for
262 objection that the information sought will be inadmissible at the trial if the
263 information sought appears reasonably calculated to lead to discovery of
264 admissible evidence." The Third Data Request to Applicant was mostly for
265 actual records requested by the Division. If the Division thought that they
266 were applicable, then why would they not be applicable to me?

267 Paragraph 2:

268 Mr. Stoll acknowledged that my initial data request to Mr. Allred

269 “. . . represented but a small portion of the information provided by
270 UBTA-UBET to the DPU and the CCS. Had he requested that information
271 prior to the hearing held on November 22, 2004, it could have easily been
272 provided to him.” (RRR, Mr. Hansen’s Participation as an Intervenor, page7,
273 last paragraph #7)

274 If Mr. Stoll really wanted to save the applicant time and money, and allow
275 the merger to proceed as quickly as possible, then why is he resorting to delay
276 tactics that generate fee income to his legal firm?

277 Paragraphs 3 & 4:

278 These are not relevant to the motion at hand, but I have chosen to provide a
279 response. (See Exhibit F attached).

280 Assurances:

281 As a Certified Public Accountant, I deal with confidentially issues every
282 day. And, with over twenty-six years of work experience in Public Accounting
283 I am fully qualified to evaluate a financial statement and income tax return. I
284 am not a common lay person requesting information that I do not have the
285 skills to evaluate. Telecommunications and Coop accounting have specialized
286 rules, but the ability to evaluate the information is different than the skill
287 needed to prepare the document.

288 CONCLUSION:

289 There is absolutely no reason why I should be denied access to any records
290 that I want to examine. It is absurd for the Applicant and the Commission to
291 require me to make a blind decision on whether to take this case to the Utah
292 Supreme Court. I find it disheartening that Mr. Stoll wants this merger case to
293 end up in the venue of the Utah Supreme Court.

294 RELIEF SOUGHT:

295 Despite the fact that the Commission has issued final orders on this merger
296 request, the Commission retains the legal right to change those orders or take
297 actions to expedite the implementation of those orders. It is in everyone's best
298 interest if the Commission will approve as much of this motion that it agrees
299 with as quickly as it can. This should be done even if this case goes to the
300 Utah Supreme Court before the Commission's order can become legal.

301 1. That all records that have or will be submitted to the Utah Public Service
302 Commission, the Committee of Consumer Services, and the Division of Public
303 Utilities by or at the direction of UBTA and UBET, the applicants will be
304 made available to me, the intervener, regardless of their sensitive and
305 confidential nature. [This is not a request for all of these records. It is a

306 request that they will be provided if a data request is made without having to
307 get another court order.]

308 2. That all records that have been requested from the Applicants in the second
309 written "Data Request" dated the 2nd of January, 2005, and "Third Data
310 Request to Applicant" dated the 1st of February, 2005, are to be delivered to
311 me, the intervener, immediately regardless of their sensitive and confidential
312 nature.

313 3. That the Committee is directed to respond as soon as possible to the data
314 requests I previously served on it. Without the restrictions that Mr. Stanley K.
315 Stoll or the Applicant had imposed on the Committee's initial response.

316 4. That the Commission should rule that UBTA's and UBET's response time
317 started with my earlier Motion for Order Compelling Discovery dated the 10th
318 of January, 2005. That the Commission accepts Mr. Stoll's response to my
319 data requests #2 and #3 (Exhibit C) as his final response to this Motion for
320 Order Compelling Access to all Protected Records. This would allow the
321 Commission to act immediately on this Motion for Order Compelling Access
322 to All Protected Records without further delay.

323 5. That the Commission should make its order effective the day it is issued
324 since I am not requesting that any of the protected records become “public”
325 records.

326 6. That the response time to comply with any new data requests be specified
327 and shorten from the perceived thirty days as expressed by Mr. Stanley K.
328 Stoll. I would like five business days unless it is an unusual data request.

329 PRECATORY:

330 I stated that the Commission could rescind its Order dated the 26th of
331 November, 2004, and maybe change its Order on Request for Reconsideration.
332 The Commission has a lot more flexibility in changing the terms of the
333 currently approved merger. The Utah Supreme Court would be very limited in
334 what it can order. If I have been able to convince you that it is in everyone’s
335 best interest for you to take another look at the merger in order for justice to
336 prevail, then it is my hope that you would take that initiative as soon as
337 possible.

338 LIST OF EXHIBITS ATTACHED:

339 Exhibit A: Third Data Request to Applicant

340 Exhibit B: Committee of Consumer Service’s Response to Brent Hansen’s

341 Second Data Request (no electronic copy)

342 Exhibit C: Letter from Blackburn & Stoll, LC dated February 4, 2005

343 Exhibit D: Explanation for canceled meeting

344 Exhibit E: Response to letter from Stanley K. Stoll

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351 Dated this 7th day of February, 2005

352

353 By_____

354 /s/ Brent Hansen

355 Intervener (representing self)

356 254 North 100 East (physical)

357 P O Box 263 (mail)

358 Vernal, Utah 84078

359

360

361 CERTIFICATE OF SERVICE

362 I hereby certify that a true and correct copy of the foregoing Motion For Order
363 Compelling Access to All Protected Records and Exhibits A, B, C, D & E
364 were served by email by me this 7th day of February, 2005 to:

365
366 Stanley K. Stoll
367 Blackburn & Stoll, LC
368 257 East 200 South, Suite 800
369 Salt Lake City, Utah 84111
370 sstoll@blackburn-stoll.com

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372 Michael Ginsberg
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379 pschmid@utah.gov

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382 Oliwia Smith
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391 _____
392
393 /s/ Brent Hansen
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