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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Uintah Basin Telecommunications Association, Inc., and UBET Telecom, Inc., for an Order of the Commission Approving the Combination, Merger and Consolidation of UBET Telecom, Inc., and Uintah Basin Telecommunications Association, Inc.

RESPONSE TO REQUEST FOR RECONSIDERATION

Docket No.: 04-053-03

RESPONSE TO REQUEST FOR RECONSIDERATION

Pursuant to *Utah Code Ann.* §§ 63-46b-12 and 54-7-15 and R746-100-11 of the Public Service Commission Rules, Uintah Basin Telecommunications Association, Inc. (“UBTA”) and UBET Telecom, Inc. (“UBET”) (collectively, “UBTA-UBET”), by and through their attorneys of record, hereby submit the following Response to the Request for Reconsideration filed by Brent Hansen with the Commission on December 27, 2004. For the following reasons, UBTA-UBET oppose, and respectfully request that the Commission deny, Mr. Hansen’s Request for Reconsideration:

Background

Nature of Proceedings. UBTA, a cooperative, not-for-profit corporation, and its wholly-owned subsidiary, filed a Joint Application on July 26, 2004 (the “Joint Application”), seeking approval by the Commission of the consolidation, merger and combination of UBTA and UBET Telecom with UBTA to be the surviving entity operating as a cooperative under the name UBTA-UBET Communications, Inc.

With the proposed merger, the approximately 17,000 customers in the Vernal, Roosevelt and Duchesne exchanges will have the opportunity for membership in the UBTA-UBET Communications. With membership, the former UBET customers will have the opportunity to hold office as directors, vote as members in the cooperative and receive patronage. Currently, the residential and business subscribers in the Vernal, Roosevelt and Duchesne exchanges, as customers of an investor-owned utility, do not participate in such benefits.

The Plan of Merger was approved by the members of UBTA on April 29, 2004. The Plan of Merger details the applicable provisions with respect to those matters involving the internal governance of UBTA which are solely within the purview of its Board and membership. Those provisions concern the issues of representation on the board of directors, appointment of initial directors in the Vernal, Roosevelt and Duchesne exchanges and membership which have been raised by Mr. Hansen in his Request for Reconsideration.

History of Proceedings. On July 26, 2004, UBTA-UBET filed the Joint Application seeking Commission approval of the combination, merger and consolidation of UBET into UBTA pursuant to a Plan of Merger approved by the members of UBTA. On September 20, 2004, UBTA-UBET filed a Motion for Protective Order and the Commission issued a Protective Order on September 23, 2004. On October 5, 2004, the Commission issued its Scheduling Order. The Notice of Proceedings, in the form approved by the Commission, was published in the Uintah Basin Standard on October 5, 2004, and on October 12, 2004, and in The Vernal Express on October 6, 2004, and October 13, 2004. On November 3, 2004, Public Hearings on the proposed combination, merger and consolidation of UBET into UBTA were held in Vernal, Utah. Discovery was conducted by the Committee on Consumer Services (“CCS”), and the Division of Public Utilities (“DPU”), and Responses thereto were substantially submitted by UBTA-UBET, between September 28, 2004, and October 26, 2004. On November 15, 2004, UBTA-UBET, the CCS and the DPU entered into a Stipulation (“Stipulation”) in which the parties agreed that, subject to the terms of the Stipulation, the combination, merger and consolidation is in the public interest and that the Joint Application should be approved by the Commission. On November 22, 2004, hearings were held before the Honorable Steven F. Goodwill, Administrative Law Judge. On November 26, 2004, the Commission issued its Report and Order (the “Report and Order”) finding that the proposed

combination, merger and consolidation of UBET into UBTA to be in the public interest and approving the same.

Mr. Hansen's Intervention. Mr. Hansen sent a letter, dated October 19, 2004, that was received by the Commission on October 22, 2004, the last day to file petitions to intervene pursuant to the Scheduling Order and the Notice of Proceedings. In his letter, Mr. Hansen indicated that he was not opposed to the merger, but objected to some of the terms thereof; namely, membership fees for current coop members, district representation on the board of directors and appointment of board members to serve initial terms. Mr. Hansen subsequently, on November 5, 2004, informed the Commission that it was his intent that his letter of October 19, 2004, be treated as a petition to intervene.

On November 12, 2004, the Commission issued an Order granting Mr. Hansen's intervention as "their [sic] interests may appear" (the "Intervention Order"). Mr. Hansen did not appear at the November 22, 2004 hearing. On December 13, 2004, Mr. Hansen served his Request of Discovery of All Records on UBTA-UBET. Following receipt, Mr. Clark Allred, counsel for UBTA-UBET, contacted Mr. Hansen to determine if there were any particular documents that he wanted (a copy of Mr. Allred's Affidavit detailing his involvement with Mr. Hansen is attached hereto as Exhibit "A"). The Request for Discovery did not specify which records Mr. Hansen was seeking to obtain. Mr. Hansen indicated that he only wanted copies of the articles and bylaws and the financial statements of UBTA and all related companies (Allred at ¶ 6). Mr. Allred scheduled Friday, December 17, 2004, with Mr. Hansen to provide the documents and discuss any concerns which Mr. Hansen might have (Allred at ¶ 6). Mr. Hansen then called and left a message with Mr. Allred indicating that because of his work he could not meet with Mr. Allred on December 17, 2004 (Allred at ¶ 7). Mr. Allred subsequently contacted Mr. Hansen and informed him that Mr. Allred would provide the documents at the time and place designated by Mr. Hansen (Allred at ¶ 9). Mr. Hansen stated that he would not have time to review those records until the week after Christmas but would not set a time (Allred at ¶ 10). Prior to January 7, 2005, Mr. Allred had no additional contact from Mr. Hansen until Mr. Allred received a copy of Mr. Hansen's Data Request (Allred at ¶ 11). On December 27, 2004, Mr. Hansen filed his Request for Reconsideration.

On January 2, 2005, Mr. Hansen submitted a Data Request to UBTA-UBET. Mr. Hansen's Data Request is premature at this time inasmuch as his Request for Reconsideration is pending. If Mr. Hansen's Request for

Reconsideration is denied by the Commission, then the Data Request becomes moot. If Mr. Hansen's Request for Reconsideration is granted by the Commission, then additional proceedings will be scheduled by the Commission at which time the issue of additional discovery, if any, would be permitted.

On January 9, 2005, Mr. Hansen submitted Motion for Order Compelling Discovery. As noted above, discovery at this time is premature. Accordingly, Mr. Hansen's Motion for Order Compelling Discovery is likewise not timely filed. In addition, pursuant to Rule 33 of the Utah Rules of Civil Procedure, a party upon whom interrogatories have been served have 30 days within which to file answers or objections. Mr. Hansen's Motion for Order Compelling Discovery was filed less than one week after having submitted his Data Request to UBTA-UBET.

Request for Reconsideration

Pursuant to *Utah Code Anno.* §§ 63-46-12, a request for review of an agency's order must state the grounds for review and the relief requested. Mr. Hansen has denominated certain "Reasons for Reconsideration" in his Request (Hansen Request, Lns. 7 - 32). We will treat those, for purposes of this Response, as Mr. Hansen's grounds for review.

With respect to his "Reasons for Reconsideration" it appears that Mr. Hansen's concerns fall within three general categories: (1) the public was not adequately informed of, or given the opportunity to be involved in, the approval process; (2) the Commission failed to fully inform and advise Mr. Hansen of his rights as an intervenor, and the procedures associated with the proceedings; and (3) the Commission, the DPU and the CCS failed to protect the public's interest in that the Commission, the DPU and the CCS failed to identify, and deal with, all issues associated with the proposed merger.

Public Involvement. Mr. Hansen claims that the public was not adequately informed of, or given the opportunity to become involved in, the approval process are without merit. Prior to the filing of the Joint Application, UBTA-UBET held numerous public meetings at which the proposed merger was discussed and the public was given the opportunity to ask questions and receive information. In addition, as noted in the Joint Application, the proposed merger was the subject of numerous newspaper articles and radio broadcasts.

Following the filing of the Joint Application, the Notice of Proceedings was published twice in each of the

Uintah Basin Standard and The Vernal Express, two newspapers of general circulation in the Uintah Basin, well in advance of the October 22, 2004 date upon which intervention was required and the November 3, 2004 date of the public hearing held in Vernal, Utah. The public was well informed of the proposed merger and the Commission's proceedings associated with the approval process. At the November 3, 2004 hearing, numerous witnesses appeared before the Commission and voiced both support and opposition to the proposed merger. In addition, as Mr. Hansen notes, a petition opposing the merger with more than 60 signatures was presented to the CCS at the November 3, 2004 hearing. The concerns of those opposing the merger, including Mr. Hansen, were considered by UBTA-UBET, the DPU and the CCS in negotiating the Stipulation. Those concerns were further addressed in Judge Steve F. Goodwill's correspondence to UBTA-UBET, dated November 17, 2004, and UBTA-UBET's response of November 19, 2004, copies of which are attached as Exhibits "B" and "C". Finally, those concerns were addressed by the Commission in the Report and Order.

Mr. Hansen further claims that the public was not given access to critical information. The DPU is the state agency which is charged with the responsibility for investigating the Joint Application on behalf of the Commission. The CCS is the state agency that acts as the advocate for the residential and small commercial consumers of regulated utility services in the State of Utah. Through the course of discovery, UBTA-UBET provided such information as was requested by the DPU and the CCS.

Further, Mr. Hansen, as an intervenor, could have had access to the information provided by UBTA-UBET to the DPU and the CCS in the course of discovery upon execution by Mr. Hansen of Appendix A to the Protective Order prior to the November 22, 2004 hearing. Mr. Hansen acknowledges that, based on his conversation with Paul Proctor on November 3, 2004, that he knew then that he could have access to protected records if he signed the Commission's confidentiality agreement. (Exh. 1, Ln. 30-33). The fact that he did not do so until December 13, 2004 – three weeks after the hearing – is the result of Mr. Hansen's inaction, not the fault of UBTA-UBET, the Commission, the DPU or the CCS.

Mr. Hansen's Participation as an Intervenor. There seems to be a consistent theme throughout Mr. Hansen's

Request for Reconsideration. It is Mr. Hansen's mistaken belief that it is the responsibility of the Commission and the parties to a proceeding to educate him, as an intervenor, as to Utah law and the rules and regulations of the Commission.

Initially, he submitted his October 19, 2004 letter to the Commission which did not contain any language that could be reasonably construed as a petition to intervene nor does it satisfy the requirements of *Utah Code Anno.* §§ 63-46b-9 with respect to intervention. Mr. Hansen later informed the Commission, after the deadline for intervention had passed, that he intended the letter to be a petition to intervene. The other parties to the proceeding were unaware that he had filed a petition to intervene or that the commission was even considering intervention. Mr. Hansen did not provide copies of his October 19, 2004 letter, which he characterized as a petition to intervene, to UBTA-UBET as required under *Utah Code Anno.* §§ 63-46b-9.

Mr. Hansen complains that the petition to intervene was not timely acted upon by the Commission (Request, Lns. 63-64) even though the Commission issued its Intervention Order within a week of having been advised by Mr. Hansen that he intended his October 19, 2004 letter to be a petition to intervene. He further complains that he was never told by the Commission that some records would be posted on the Commission website (Request, Lns. 70-71); that he was unable to obtain the Appendix A to the Protective Order (Request, Lns. 73-76); that the Commission failed to respond to his email requests (Request, Lns. 77-78), and that the Commission never told Mr. Hansen about an inventory list and viewable records posted on the Commission's website (Request, Lns. 82-84). He also complained that no one recognized his rights as an intervenor until December 6, 2004 (Request, Lns. 65-66) even though he did not make any attempt to participate as an intervenor prior to that time.

In substance, Mr. Hansen made no effort to participate as an intervenor until after the hearing. Having been granted intervenor status, it was incumbent on Mr. Hansen to participate in the proceedings to the extent to which he had an interest. It was not the obligation of the Commission, UBTA-UBET, the DPU or the CCS to ascertain the extent to which Mr. Hansen wanted to participate in the proceedings.

By the time that Mr. Hansen was granted status as an intervenor, discovery had been completed. If he wanted the information, then it was incumbent upon him to request the information. As indicated above, the information that he

actually wanted as he indicated in his conversations with Mr. Allred, i. e., the financial statements and articles and bylaws, represented but a small portion of the information provided by UBTA-UBET to the DPU and the CCS. Had he requested that information prior to the hearing held on November 22, 2004, it could have easily been provided to him.

The Commission, the DPU and the CCS Failed to Protect the Public's Interest. Mr. Hansen states that the Commission, the DPU and the CCS failed to protect the public's interest in the merger proceeding (Request, Lns. 20-21). He claims that the DPU and the CCS agreed to provisions in the Stipulation even though they had serious concerns with it (Request, Lns. 89-90). He also claims that the DPU and CCS did not respond to the November 19, 2004, Response from Stanley K. Stoll to Judge Goodwill on issues not covered by the Stipulation (Request, Lns. 91-92). Mr. Hansen's claims are without merit.

Utah Code Anno. §§ 54-7-1 encourages informal resolution of matters before the Commission as a means minimizing time and expense and enhancing administrative and regulatory efficiency. Contrary to Mr. Hansen's assertions, the issues of board representation, appointment of initial directors, information to be provided to UBET subscribers, patronage, etc., were all thoroughly discussed by UBTA-UBET, the DPU and the CCS in the course of negotiating the Stipulation. As with any settlement process, each of the parties made compromises and concessions. The fact remains, however, that both the DPU and CCS, in the discharge of their respective statutory duties, determined that the Joint Application, subject to the terms of the Stipulation, was in the public interest.

The three issues upon which Mr. Hansen focuses most of his attention in his Request for Reconsideration, i. e., representation on the board of directors, appointment of initial directors for the Vernal, Roosevelt and Duchesne districts, and the membership fee were not only considered in the course of the negotiations of the Stipulation but also were the subject of extensive discussions between Judge Goodwill, UBTA-UBET, the DPU and the CCS during the November 22, 2004 hearing. Mr. Hansen's objections to the proposed merger, and the objections of others opposing the merger, were thoroughly considered by UBTA-UBET, the DPU and the CCS in the Stipulation and by the Commission in its Order. The fact that the Commission did not adopt the recommendations made by Mr. Hansen and others, or deny the Joint Application, does not mean that their concerns were not fully considered.

The Report and Order, at page 4-5, contains an extensive discussion of the issues of representation, election and membership fee on which members of the public who oppose the proposed merger generally base their objections. The Report and Order also notes the provisions of the Stipulation that protect the representational and financial interest of current UBET customers.

As previously noted, the issue of representation on the board of directors and the appointment of initial directors is a matter of the internal governance of UBTA solely within the purview of UBTA's members. The Plan of Merger approved by the members of UBTA specifies the manner of board representation and the appointment of initial directors. The suggestions made by Mr. Hansen with respect to those matters are simply not options that are before the Commission. The Commission's role in this proceeding is defined by *Utah Code Anno.* §§ 54-4-28, which provides that approval shall be granted "only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest." (Id.) The terms and conditions of the proposed merger are those which are reflected in the Joint Application. UBTA and UBET have not presented to the Commission terms and conditions other than those in the Joint Application. The Commission properly concluded that, based on all of the attendant circumstances including those conditions contained in the Stipulation, that the proposed merger is in the public interest.

In his Request for Reconsideration Mr. Hansen raises a number of other concerns regarding the proposed merger. Those generally involve the information which Mr. Hansen believes UBET customers should have prior to deciding whether to become members and the methods by which patronage is calculated and paid. As noted in the Report and Order, membership is not compulsory. In fact, all new customers including current UBET customers may either elect to remain a non-member customer (just as they currently are) or elect to pay the cash portion of membership fee, either in lump sum or on an installment basis, and become a Class A member. A customer who does not want to become a member of the cooperative can opt-out of membership. Otherwise, a UBET customer who does not take any action with regards to membership participation becomes a Class B member upon the effective date of the merger and remains in that status until a) he or she chooses to opt-out of the membership completely or b) the amount in the customer's patronage account that has been retired and credited to the membership fee, in lieu of payment, entitles the

customer to upgrade from Class B to Class A membership. Pursuant to ¶22 of the Stipulation, UBTA-UBET provided to all UBET customers a notification of the final approved membership provisions for the proposed merger in early December 2004 (a copy of which is attached as Exhibit “D”).

Mr. Hansen also raised numerous concerns as to the manner in which meetings are held, voting occurs and other issues involving the internal governance of UBTA. Such matters are within the purview of the Board of Directors and members of UBTA and are not properly before the Commission in the context of this proceeding. As noted above, the sole issue before the Commission, is whether the merger, as proposed by UBTA and UBET, is in the public interest.

Mr. Hansen has alleged that the approval process was hastily done in an effort to meet UBTA-UBET’s desire to complete the merger by year-end. There is no truth to his allegation. The DPU and the CCS engaged in extensive discovery to which UBTA-UBET fully responded. If there was additional discovery which either the DPU or the CCS wanted to conduct, there was ample opportunity. Public notice was timely provided and public hearings were held, both before and after the Joint Application was filed. To the extent that Mr. Hansen did not participate, either through his own inaction or by virtue of his admitted lack of understanding of the proceedings, Mr. Hansen has only himself to blame.

Conclusion

There are approximately 17,000 UBET customers. Of that amount, only 60 signed a petition opposing the proposed merger, and only 1 has sought reconsideration of the Commission’s Report and Order. There has been no groundswell of opposition in the Uintah Basin to the proposed merger; only a groundswell of support from both UBET customers as well as UBTA members. The Reasons for Reconsideration which Mr. Hansen has cited are without merit and do not constitute sufficient grounds for a grant of review or rehearing, particularly, in light of the provisions of the Stipulation safeguarding the financial and representational interests of the current UBET customers. There is simply no reasonable basis upon which the Commission should modify its determination that the proposed merger is in the public interest.

For the reasons cited above, UBTA and UBET request that the Commission deny the Request for Reconsideration.

DATED this 10th day of January, 2005.

BLACKBURN & STOLL, L.C.

Stanley K. Stoll
Attorneys for UBTA and UBET

CERTIFICATE OF DELIVERY

I hereby certify that on this 10th day of January, 2005, I caused to be hand-delivered, and provided by electronic means, a true and correct copy of the foregoing **RESPONSE TO REQUEST FOR RECONSIDERATION** to:

Michael Ginsberg
Assistant Attorney General
Division of Public Utilities

Paul Proctor
Assistant Attorney General
Committee of Consumer Services

I hereby certify that on this 10th day of January, 2005, I caused to be mailed by first-class United States mail, and provided by electronic means, a true and correct copy of the foregoing **RESPONSE TO REQUEST FOR RECONSIDERATION** to:

Brent Hansen
254 North 100 East
P.O. Box 263
Vernal, Utah 84078

Stanley K. Stoll

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "C"

EXHIBIT "D"