

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.

STIPULATION

Docket No.: 04-053-03

STIPULATION

Uintah Basin Telephone Association, Inc. ("UBTA") and UBET Telecom, Inc. ("UBET Telecom") (collectively, the "Applicants"), the Division of Public Utilities ("Division") and the Committee of Consumer Services ("Committee"), (collectively, the "Parties"), stipulate and move the Public Service Commission of Utah ("Commission"), as follows:

1. The Parties request approval of the Applicants' Joint Application for Combination, Merger and Consolidation of UBTA and UBET into one company with the surviving company being UBTA-UBET Communications, Inc. ("UBTA-UBET"), organized as a nonprofit corporation pursuant to Section 16-6a-101, et. seq., Utah Code Annotated.
2. Applicants intend to dissolve UBTA's for profit subsidiary, UBET telecom, and UBTA will assume UBET Telecom's assets and liabilities. The "Combination, Merger and Consolidation of UBTA and UBET Telecom" will be referred to hereafter as the "Dissolution."
3. The Parties request approval of modifications to UBTA's Certificate of Public Convenience and Necessity, to be effective upon implementation of the Dissolution, to: (a) include the service territory of UBET Telecom, and (b) change the name to UBTA-UBET Communications, Inc.
4. The Parties request UBTA-UBET be designated as an ETC pursuant to 47 U.S.C. § 214 in each exchange assumed from UBET Telecom, to be effective upon implementation of the Dissolution.
5. The Parties request the cancellation of the separate Certificate of Convenience and Necessity of UBET Telecom, and that UBET Telecom be relieved of any obligation as an ETC in Utah, to be effective upon implementation of the Dissolution.
6. The Parties request approval of the transfer and assignment of all assets, operating authorities, licenses and contracts by UBET Telecom to UBTA-UBET and the assumption of all liabilities, obligations and claims of UBET Telecom by UBTA-UBET.
7. UBTA is a nonprofit cooperative corporation under Section 16-6a-101, et. seq., Utah Code Annotated. UBTA provides local exchange and other telecommunications services within the state of Utah, including the Lapoint, Altamont, Fruitland, Flattop, Neola, Randlett, and Tabiona exchanges, pursuant to a Certificate of Convenience and Necessity issued by the Commission.
8. UBET Telecom provides local exchange and other telecommunications services within the state of Utah, including the Duchesne, Roosevelt, and Vernal exchanges, pursuant to a Certificate of Convenience and Necessity issued by the Commission.

9. Applicants have the business, technical, managerial, and operating resources in place to effectively function as a combined/consolidated company. Applicants, since the acquisition of Qwest exchanges in 2001, have employed considerable effort and resources into preparation of the Dissolution; specifically, the combined company forces have focused efforts on infrastructure, advanced and enhanced services throughout the combined service territory of UBTA and UBET Telecom. The Dissolution will provide greater opportunity to improve the services offered and allow the company to take advantage of operating efficiencies including tax-exempt status as a nonprofit cooperative telecommunications corporation.

10. Following the Dissolution, UBTA-UBET will provide public telecommunications services and shall serve as the carrier of last resort in each of the exchanges formerly served by UBTA and UBET Telecom respectively.

11. Applicants shall provide the Commission, Division, and Committee, or their authorized agents, reasonable access to their books, records and their employees, officers and agents on matters relevant to and within the jurisdiction of the Commission in accordance with Section 54-7-7 and 54-7-8, Utah Code Annotated.

12. UBTA-UBET will acquire and assume and UBET Telecom will convey and assign all assets and liabilities including, without limitation:

- a. Telephone plant;
- b. Licenses and permits including Federal Communications Commission ("FCC") licenses and non-FCC authorizations;
- c. Debt service obligations;
- d. Books and records;
- e. Real property rights;
- f. Contracts including interconnection and toll carrier access contracts, equipment leases and agreements with suppliers, customers and subscribers;
- g. Customer contractual obligations, including the provision of 911 service;

13. Applicants agree that no customers will be worse off as a direct result of the Dissolution. This includes, without limitation, no negative impacts on any customer rates or charges, the State Universal Service Fund ("USF"), or the quality of service provided to the current customers of UBET Telecom or existing UBTA customers as a direct result of the Dissolution. If, on balance, customers are ultimately found by the Commission to be worse off, Applicants stipulate that an appropriate remedy may be implemented consistent with then existing law.

14. Until UBTA-UBET notifies the Commission in writing, that the percentage of UBET Telecom subscribers who are members of UBTA-UBET (Class A and Class B) that have voting privileges exceeds 60%, UBTA-UBET shall: (a) submit all rate, tariff and contract changes to the Division for review and consideration of USF impacts at least thirty days prior to the effective date of such change in a rate, charge or contract; (b) obtain Commission approval for any change to a rate, tariff or contract currently applicable to UBET Telecom and in effect at the time of Dissolution that results in more than a 5% increase in a rate, charge or contract; and, (c) obtain Commission approval for any change to existing extended area service rates or routes.

15. Costs incurred directly as a result of the Dissolution will neither be recovered from the USF

nor in intrastate rates of UBTA-UBET.

16. Any income tax liability due directly to either (a) a determination of the Dissolution as a taxable event, or (b) the recapture of deferred taxes shall not be recovered from the USF nor in intrastate rates of UBTA-UBET.

17. All new customers including current UBET Telecom customers may either elect to remain a non-member subscriber or elect to pay membership fees, either in lump sum or on an installment basis, and become a Class A voting member. Any customer that does not affirmatively elect to remain a non-member subscriber or to pay membership fees shall not be charged membership fees and shall remain a Class B non-voting members until such time as (a) the customer either makes such an election, or (b) the amount of the customer's patronage that has been retired and credited to the customer's membership fees in lieu of payment entitles the customer to Class A membership. Transitioning Class B customers of UBET Telecom shall receive voting privileges at such time as \$50.00 of the customer's patronage account has been retired and credited to the customer's membership fees in lieu of payment. The portion of any customer's patronage account that has been retired shall be credited to that customer's membership fee until such membership fee is fully paid prior to any distribution of that customer's patronage account.

18. The bylaws of UBTA-UBET will include a provision under the termination clause Article 1.7 that states as follows:

If a person whose membership has terminated wants to reapply for membership and meets the qualifications for membership set forth in these bylaws and that person has previously paid the membership fee then no additional membership fee will be required of that person to again become a member. If that person has not paid the full membership fee when the membership terminated then the amount of the membership fee will be the amount at the time the membership was terminated and the amount that has been previously paid will be credited against that membership fee when the person becomes a member again.

19. Applicants agree and commit to make investments based upon and consistent with the service needs of the subscribers and sound business practices

20. UBTA-UBET shall continue to equitably deploy advances and enhanced service throughout all exchanges, taking into consideration economic and other considerations, attempting to balance deployment among the basic-rural and outlying-rural areas consistent with its obligations as a "public utility" under Utah law.

21. Applicants agree and commit that the cost of capital as reflected in the rates UBTA and UBET Telecom shall not be adversely affected by the Dissolution. The Parties to the Stipulation agree that the determination of the cost of capital shall be based on the risk attendant to the regulated operations of UBTA-UBET. Any declines in the credit rating of UBTA-UBET caused by the Dissolution shall be quantified by UBTA-UBET in any future earnings analysis, or rate base/rate of return case and adjusted as if such declines did not occur. In the event of an increase in the cost of capital directly relating to the Dissolution, the Parties agree and commit to the use of any imputed or hypothetical capital structure in any future earnings analysis, or rate base/rate of return case, if necessary, to reflect the cost of capital of UBTA-UBET, as the case may be, without the effects of the Dissolution.

22. Applicants shall provide, prior to implementation of the Dissolution, an additional notification of the final approved membership provisions of the Dissolution (Merger Plan of the Applicants) to all customers affected by the Dissolution. Such notification shall include: (a) a clear description of the Class A, Class B, and non-member subscriber; (b) obligations and procedures for membership application; (c) distinction between, and timelines of, purchasing or

accruing patronage to become a voting member for each membership classification. This notification will be submitted to the Committee and Division for review and approval prior to distribution to customers.

23. Based on the foregoing, the Parties assert that the Dissolution is in the public interest and should be approved by the Commission.

24. The Parties agree that this Stipulation represents a resolution among them of the matters in this proceeding included within this Stipulation. As such, all discussions, evidence or conduct relating to this Stipulation are privileged and confidential.

25. This Stipulation shall not become effective unless and until (1) the Commission enters a final order approving this Stipulation which is not subject to any further judicial review, and (2) the Dissolution has been fully implemented. In the event the Commission or a court rejects all or any portion of this Stipulation as resolving the issues included within this Stipulation, or imposes additional conditions with respect to such issues, each Party reserves the right to withdraw from this Stipulation. In such case, no Party to this Stipulation shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission order, to file any testimony it chooses, to cross-examine witnesses, and in general to put on such case as it deems appropriate. If this Stipulation does not become effective according to its terms, it shall be null and void unless otherwise agreed to by the Parties.

26. Except to the extent expressly stated in this Stipulation, nothing in this Stipulation shall be (1) cited or construed as precedent or as indicative of the Parties' positions on a resolved issue, or (2) asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions in this or any other proceeding, including those before the Commission, the state courts of Utah or of any other state, the federal courts of the United States of America, or the Federal Communications Commission. The limitation in this paragraph shall not apply to any proceeding to enforce the terms of this Stipulation or any Commission order adopting this Stipulation.

27. The Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties. By entering into the Stipulation, the Parties intend that the Commission exercise only that authority contained in applicable laws.

28. Each Party shall take all actions necessary and appropriate to enable it to carry out this Stipulation, including, providing witnesses and argument in support of the approval by the Commission of the Stipulation.

DATED this 15th day of November, 2004.

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