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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION FOR INCREASE IN USE ELIGIBILITY FOR UINTAH BASIN
TELECOMMUNICATIONS ASSOCIATION, INC.

DOCKET NO. 05-053-01

SUR-REBUTTAL
TESTIMONY OF BRUCE TODD

PREPARED SUR-REBUTTAL TESTIMONY OF
BRUCE TODD

Q:DID YOU PREPARE, AND CAUSE TO BE FILED, DIRECT TESTIMONY IN THIS DOCKET?

A: Yes. I prepared, and caused to be filed Direct Testimony on behalf of Uintah Basin Telecommunications Association, Inc. (“UBTA”) and UBET Telecom, Inc. (“UBET Telecom”) (collectively, “UBTA-UBET”, “Applicants” or the “companies”) in this Docket.

Q:WHAT IS THE NATURE OF YOUR SUR-REBUTTAL TESTIMONY?

A. The purpose of my Sur-Rebuttal testimony is to respond to the Rebuttal Testimony filed by certain of the Division of Public Utilities’s witnesses; particularly, testimony regarding (1) a redundant route, (2) inter-

company transactions between UBTA-UBET and its non-regulated affiliates, (3) company management, (4) claims of cross-subsidization by the regulated company of the non-regulated companies, (5) travel costs and expenses, and (6) compliance with statutory requirements regarding unclaimed capital credits.

Q: SEVERAL OF THE DPU'S WITNESSES HAVE RAISED CONCERNS ABOUT THE MANAGEMENT OF UBTA-UBET. DO YOU AGREE WITH THEIR ASSESSMENTS.A: No. Throughout the Rebuttal

Testimonies filed by the DPU there appears to be a re-occurring theme in which the DPU questions the prudence of management of the Applicants. In some instances, DPU witnesses allude to certain decisions made, and courses-of action taken, by UBTA-UBET as possible indications of mismanagement on the part of the Applicants, their respective Boards and senior management. Unfortunately, the DPU's witnesses ignore the deliberative process by which decisions are made by the Applicants and seem to criticize decisions using the benefit of 20/20 hindsight. As such, the DPU's witnesses have unfairly branded such decisions as resulting from imprudence or mismanagement rather than viewing such decisions as a response to the demands of the Applicants' members and subscribers within the context of the times in which they were made.

For example, DPU witnesses are generally critical of what are characterized by Mr. Huntsman as "excursions" into non-regulated activities of Applicants' subsidiaries and affiliates. The primary targets of the DPU's attack appear to involve UBET Wireless and NC Telecom, although there are other unsubstantiated claims of imprudence or mismanagement dealing with company expenses, particularly, those involving travel, meetings and seminars, as well as the redundant route which UBTA-UBET proposed.

Q: PLEASE DESCRIBE THE HISTORY OF UBET WIRELESS AND NC TELECOM AND THE PROCESS BY WHICH THE COMPANIES BECAME INVOLVED WITH EACH.

A. UBET Wireless. UBET Wireless was first organized in the late 1980s in response to the demand in the Uintah Basin for cellular service. At that time, national cellular companies virtually ignored the development of rural markets. As a result, those in the Uintah Basin were being denied access to cellular services. The Board of Directors of UBTA and its senior management, in recognizing the needs of the communities within the Basin

for cellular service, thoroughly analyzed and assessed the financial risks of the cellular business and, based on the then existing cellular market conditions and those projected into the foreseeable future, determined that UBET Wireless was a prudent investment decision.

Throughout much of its operating history, UBET Wireless has enjoyed financial success which, in turn, has enabled UBET Wireless to contribute to the over-all financial strength of the Applicants. During recent years, however, with the increase in cellular competition and the restructuring of roaming charges, UBET Wireless has required financial support from UBTA-UBET. In response, UBET Wireless is currently restructuring its business plan to incorporate advantageous roaming rates with national cellular carriers and entering into strategic business alliances with other regional, rural cellular providers in order to enhance the profitability of its operations. UBET wireless has ordered, paid for and received services according to the company's tariffs.

NC Telecom In 1999 the Board of Directors contracted with MMS, Inc., to do a detailed study of the population/economic trends of the northwestern Colorado area in which the Board of Directors was considering developing enhanced technology services through a separate entity which eventually became NC Telecom. Given population projections and indications of upward trends and economic growth in the area which NC Telecom proposed to serve, the decision was made, along with White River Electric Association (WREA) of Meeker, Colorado, to organize NC Telecom with WREA and UBET each owning 50% of the stock. NC Telecom was organized with its own separate, distinct board of directors and management including General Manager, CFO and other support staff.

NC Telecom offers services such as DSL, Point to Point Circuits, LAN's, WAN's, ISP, Wireless Internet and other data and transport services. As the prospects for potential customers increased, NC Telecom sought sources for funding and obtained a RUS broadband loan under a pilot program focused on development of enhanced technologies in rural areas. This loan allowed NC Telecom to further develop its business plan. The loan by RUS to NC Telecom was secured by its own assets and not guaranteed by UBTA-UBET or WREA.

The downturn and transition in technology and regulations within the telecommunications industry, particularly

that portion dealing with CLECs, had a detrimental impact on NC Telecom in sustaining its business plan. As a result, NC Telecom is currently evaluating to see how it can best meet its goals, obligations and objectives.

At all stages of the development of NC Telecom, the Board of Directors of UBTA-UBET and its senior management worked closely with consultants, advisors and others in structuring the ownership and operation of NC Telecom so that the financial resources of UBTA-UBET were not employed, and their assets not at risk. The Board of Directors of the Applicants and their senior management acted at all times with the requisite level of prudence and caution that would be expected of any other similarly situated company.

Q: SEVERAL OF THE DPU'S WITNESSES CLAIM THAT THE SUPPORT BY UBTA-UBET OF NON-REGULATED SUBSIDIARIES AND AFFILIATES CONSTITUTES CROSS-SUBSIDIZATION OF NON-REGULATED OPERATIONS. DO YOU AGREE?

A: No. Several of the DPU's witnesses point to loans made by the Applicants as constituting cross-subsidization. The use by the Applicants of "retained earnings" to support non-regulated subsidiaries does not constitute cross-subsidization of the UBET Wireless by UBTA-UBET. It is simply an investment by UBTA-UBET in a non-regulated entity which provides non-regulated telecommunications-related services to subscribers in the Uintah Basin. There is no evidence of cross-subsidization of the non-regulated entities by the regulated, or vice-versa, in terms of either the pricing of the services or the allocation of costs and expenses of the regulated and non-regulated operations.

In fact, following an exhaustive audit, the DPU identified only a few related-party transactions between the regulated and the non-regulated entities which it questioned. Given the scope of regulated and non-regulated activities of the Applicants, and the complexities of the allocation process, the fact that there were only a limited number of transactions which were even questioned, some of which the DPU later acknowledged were properly allocated, is compelling evidence that the UBTA-UBET have taken appropriate steps to insure proper allocation of regulated and non-regulated business activities.

Q: DPU WITNESS JOHN GOTHARD ASSERTS THAT THE RECLASSIFICATION OF A UBET WIRELESS'

DEBT TO UBTA TO EQUITY VIOLATED PROHIBITIONS ON CROSS-SUBSIDIZATION. DO YOU AGREE?

A: No. For the reasons stated above; namely, that the amounts advanced by UBTA to UBET Wireless were from retained earnings of UBTA and not a subsidy related to the operations of the regulated and non-regulated activities. I also disagree with John Gothard's testimony, at pages 2 - 5, in which he claims that the conversion from a "loan to equity" was a diversion of regulated assets which would be at the sole expense of the regulated company to the benefit of the non-regulated company. I disagree with Mr. Gothard's characterizations and somewhat accusatory comments for several reasons.

As a wholly-owned subsidiary of UBTA, the reclassification of the receivable from UBET Wireless to equity was not at the "sole expense" of UBTA. It merely converted a receivable on the balance sheet of UBTA into an investment on the same balance sheet. From a consolidated balance sheet standpoint, there was no impact; it was a neutral event. Furthermore, the reclassification of the receivable was recommended by Moss Adams, an independent auditor, and a highly reputable firm. This information was provided in a previous data request 3.1 A . Mr. Gothard's testimony failed to substantiate his claim that this reclassification was not in the best interest of the members of the Cooperative. In fact, the reclassification had no impact on the Company keeping its current loan covenants.

Q: MR. GOTHARD ALSO CLAIMS THAT UBTA HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF UTAH CODE ANNOTATED, § 54-3-26 RELATED TO UNCLAIMED CAPITAL CREDITS. WHAT IS YOUR RESPONSE?

A: UBTA-UBET received a letter from Julie Orchard, Commission Secretary, dated May 11,2004, acknowledging receipt of UBTA's guidelines and annual report of unclaimed patronage capital, dated February 26, 2004. Ms. Orchard's letter also receiving the response of the DPU on April 21, 2005, recommending that the Commission acknowledge the filing.

Q: CAN YOU EXPLAIN WHY UBTA-UBET HAVE DEVELOPED AND SUPPORTED NON-REGULATED OPERATIONS.

A: UBTA-UBET have historically entered into new telecommunications-related, non-regulated ventures such as wireless, internet, broadband and other such services because of member/customer demand. From the customer's perspective, it makes no difference whether a service is subject to regulation or not; the customer wants, and expects, the telephone company to provide such services. In addition, by investing in non-regulated services such as those described above, revenues which would migrate from UBTA-UBET to other service providers are retained by UBTA-UBET to the benefit of its members, customers, and the Uintah Basin economy.

A recent Survey conducted by the National Telecommunications Cooperative Association (NTCA) indicates that, due to increasing competition from internet, satellite, cable companies, rural telephone companies are continuing to deploy more broadband at greater speeds to support their customers demands. If rural telephone companies do not invest in non-regulated services, then they will see customers migrating from their services to those of competitors with a resulting loss in revenue to the rural carriers. Continued migration does threaten the rural telecommunications networks which provide the backbone for all of the cutting-edge and enhanced technologies which consumers now enjoy.

Q: DO YOU AGREE WITH WES HUNTSMAN THAT THE APPLICANTS FINANCIAL CONDITION IS DUE TO ITS "EXCURSIONS" INTO THE NON-REGULATED SERVICE ARENAS.

A: No. While the company may agree that investments in non-regulated operations have had an impact on the Applicants' financial situation, regulatory changes and/or inaction has contributed more over the past four years to that condition than those investments. For example, interconnection rates which were substituted for access charges for wireless/cellular carriers resulted in substantially lower revenues in the past four years. Also, "phantom traffic" which is transited by Qwest and others on common trunks for termination into the Applicants' service area without sufficient identification appended to the traffic to enable Applicants to bill the

appropriate cellular or interexchange carrier for such service has deprived Applicants of substantial revenues to which they were lawfully entitled. Regulator inaction to correct the phantom traffic issue has resulted in substantial lost revenue. Addressing this issue from a regulatory enforcement perspective is critical to the success of the industry. Bill Hegeman, CEO of the National Exchange Carriers Association, has stated that this is not a problem of the laws but a problem of the enforcement of the laws. Studies have shown from the National Exchange Carriers Association, that costs of phantom traffic are up to 20 percent to \$2,000,000,000.00 annually. The loss of such revenues has, from an historical perspective, adversely impacted the financial position of the Applicants. In addition, if received, the revenues from phantom traffic would go toward satisfying the future revenue requirements of Applicants thereby relieving the ratepayers and the State USF of a portion of the amount that they are otherwise required to cover.

Further, as noted in my Direct Testimony, substantial resources of both UBTA and UBET have been expended in upgrading and modernizing the facilities in the UBET Telecom service area which were inherited from Qwest in connection with the acquisition of the Vernal, Roosevelt and Duchesne exchanges. Had those facilities been maintained in a condition consistent with industry standards prior to the April 5, 2001 transfer of the exchanges to UBET, the resources expended by the Applicants on upgrading antiquated facilities could have been deployed for enhanced technologies or retained by the companies. While going from a 4,000 access line company to a 22,000 access line company has not been without difficulties, the Board, management and all company employees have worked extremely hard to make the transition as seamless as possible to the subscribers in the Uintah Basin. The Applicants have made substantial progress through the implementation of Basin-wide EAS and the upgrading of facilities in the Vernal, Roosevelt and Duchesne exchanges in bringing to all residences and businesses high quality, cutting-edge technology in order to satisfy the telecommunications needs of the Basin.

Q: DO YOU AGREE WITH PEGGY EGBERT'S ASSESSMENT THAT A REDUNDANT ROUTE IS AN "EXPENSIVE INSURANCE POLICY."

A: No. In this day and age, a redundant route, given the demands of educational, public safety, business and residential users in the communities which the Applicants serve, is not an insurance policy but a prudent investment in maintaining reliable, viable telecommunications services including E911 services to the customers. Contrary to Ms. Egbert's assertion, there is no reliable redundant route currently existing from the Basin to the outside world. The radio to which Ms. Egbert refers could go down at any time. It cannot be fixed. Ms. Egbert's suggestion that there haven't been the requisite number of customer complaints to justify a redundant route is, in essence, advocating that the company wait until a major break has occurred. This would threaten public safety and commerce, thereby constituting a major disruption in the lives of the Basin residents. I believe that a "wait until the levee breaks" approach is unwise and imprudent.

As I stated in my Direct Testimony, there have been, over the last two years, several cuts in the UBTA-UBET fiber route to Salt Lake City. These cuts have been by contractors working outside of the UBTA-UBET service area, leaving the entire UBTA-UBET service area without any reliable link to communications outside of the Uintah Basin. Those were man-made disruptions. As we have seen in recent events in New Orleans and surrounding areas, telecommunications plays a vital role in maintaining the health and safety of the residents of an area impacted by natural disasters. While a hurricane is not likely to happen in Utah, an earthquake of significant proportions is. A diverse, redundant route is the best assurance that continuous, uninterrupted telecommunications services will remain available from the Basin to the outside world in the event of a natural catastrophe. That is one of the reasons that UBTA-UBET proposed the redundant route through Colorado.

In addition, as I stated in my Direct Testimony, UBTA-UBET have explored several possibilities for the redundant route. UBTA-UBET believe that the route that it proposes is the most cost-effective. I disagree with Ms. Egbert's assertion that there are unknown costs that may drive up the price of the proposed redundant route. UBTA-UBET, in working with the companies' engineers and outside consultants, feel that they have sufficient information available to them in order to reasonably estimate the costs of the project. Clearly, the Applicants do not have signed contracts, leases, etc., as Ms. Egbert points. To have entered into such agreements, and made

such commitments, without securing the funding to complete the proposed redundant route would have been imprudent.

Q: MARY CLEVELAND TAKES ISSUE WITH THE COMPANIES' POLICIES AS TO TRAVEL COSTS AND EXPENSES AS WELL AS THE MEASURES TAKEN TO ASSURE THAT THE COMPANIES AVOID ANY MISUSE OR ABUSE. HOW DO YOU RESPOND.

A: The travel policies and procedures, and the costs and expenses associated therewith, are determined by the Board of Directors. The Board has long advocated the education of its directors and management through attendance at vendors presentations, seminars and industry meetings as a means of enhancing Applicants abilities to serve their customers. Given the time from work and family which Board members and senior managers spend while in attendance at such functions, the Board has determined that it is in the best interests of the companies and their subscribers to pay for spouse travel costs and expenses at selected and approved events. Not only does it enhance the possibility that Board members and managers will attend those meetings, it also provides the spouse with an understanding of the nature of the business of the Applicants. The Board of Directors firmly believe that spouse involvement in such activities ultimately inures to the benefit of the members and subscribers of UBTA-UBET.

I would also like to address Ms. Cleveland's assertion that there are no controls in place as to my travel costs and expenses. First, I, along with all other employees, must comply with Board requirements as to those expenses that are covered by the Applicants' travel cost and expense policy; second, my travel costs and expenses are subject to review and approval by the accounting department just as with any other employee; and, finally, all travel costs and expenses are reviewed by the companies' auditors to insure compliance with company policy as well as federal and state tax law and regulations. The travel costs and expenses are ordinary and necessary expenses of regulated business such as that of the Applicants and, as such, should be recoverable as a regulated expense of the companies.

The Board of Directors believes that it is vital to the well-being of the Applicants that its Board members,

management and employees fully participate in the organizations and associations, both regional and national, whose interests are primarily directed towards rural telephony. Further, their alliances with such organizations and associations enable the Applicants to maintain a strong, visible presence in the legislative and regulatory arenas. All of the rural, independent telephone companies of which I am aware, both in Utah and nationally, maintain memberships in those various organizations and associations in which Applicants are members. Such affiliations provide a forum which enables the rural telephone companies to share ideas, information and developments in rural telecommunications. Such associations have been encourage by regulators on federal and state levels as a means of assuring that the rural telephone companies are well-informed on the latest developments in telecommunications.

Q:DOES THAT CONCLUDE YOUR TESTIMONY?

A: Yes.