

June 5, 2008

VIA ELECTRONIC MAIL

Mr. Sandy Mooy
Public Service Commission of Utah
Heber M. Wells Building 300 South 160 East, 4th Floor
Salt Lake City, UT 84111

Re: Bresnan Broadband of Utah, LLC's Request For Mediation

Dear Mr. Mooy:

This letter responds to your May 28, 2008 email, in which you pose certain questions to Bresnan Broadband of Utah, LLC ("Bresnan") and to UBTA-UBET Communications, Inc. ("UBTA-UBET") relating to Bresnan's May 14, 2008 request, pursuant to 47 U.S.C. § 252(a)(2), that the Public Service Commission of Utah (a) participate in the negotiation of an interconnection agreement between Bresnan and UBTA-UBET; and (b) mediate any differences arising between the parties in the course of the negotiation. Notwithstanding UBTA-UBET's refusal to negotiate, Bresnan continues to believe that it would be helpful for the Commission to bring the parties together for a face-to-face mediation to determine whether there is any possible consensual resolution to be had.

1. **Question:** Does Bresnan seek mediation and interconnection between the two networks for the provision of services to Bresnan customers, which services Bresnan offers under authority of its Utah certificate and which services are subject to the jurisdiction and authority of the Utah Public Service Commission under various Chapters of Title 54 of the Utah Code?

Answer: Yes, Bresnan is seeking interconnection with UBTA-UBET to provide the competitive local exchange services that the Utah Commission authorized Bresnan to provide by order dated November 16, 2007. *In the Matter of the Application of Bresnan Broadband, LLC, for a Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Carrier in Utah*, Docket No. 07-2476-01, Report and Order issued November 16, 2007 (CPCN Order).

If Bresnan cannot interconnect with UBTA-UBET for purposes of originating and terminating calls, routing 9-1-1 calls, and permitting local number portability,

Bresnan will be unable to offer its telecommunications services authorized by the Commission.

2. **Question:** Does Bresnan seek mediation and interconnection between the two networks in order to provide services to Bresnan customers, which services Bresnan offers under authority of federal law or authority obtained from a federal agency and which are not subject to Utah Public Service Commission jurisdiction and authority under Utah law?

Answer: No. Bresnan applied for and was granted a CPCN by the Utah Commission “so that it can act in all respects as if its IP-Enabled services are a local exchange telecommunications service in Utah.” CPCN Order at p. 4.

For this reason, UBTA-UBET’s citation to *Vermont Telephone Petition*, DA 08-08-916 pending before the FCC as authority for its refusal to negotiate is wholly unpersuasive. The key issue on which Vermont Telephone seeks a declaratory ruling from the FCC is “(2) whether or not Voice over Internet Protocol (‘VoIP’) providers are entitled to interconnection pursuant to those sections of the Act [47 U.S.C. §§ 251, 252] when they assert they are not ‘telecommunications carriers’....” *Vermont Telephone Petition* at 8. But Bresnan does not assert that it is not a telecommunications carrier for purposes of Utah regulation. To the contrary, unless and until the FCC rules that IP-Enabled services are not local exchange telecommunications services, Bresnan has committed to act in Utah as if they are. So unlike the alleged situation in Vermont, Bresnan is not trying to “enjoy all the benefits from interconnection as a ‘telecommunications carrier,’ but at the same time dodge the regulatory obligations and statutory duties of a ‘telecommunications carrier’.” See *Vermont Telephone Petition*, at 6.

Moreover, UBTA-UBET has not committed to be bound by the FCC’s decision in *Vermont Telephone*. And prior to the FCC’s determination of the facts and conclusions of law in *Vermont Telephone* it is not even possible to predict what effect, if any, the FCC’s order would have on Bresnan’s Utah interconnection request. There is simply no public interest served for the Utah Commission to allow UBTA-UBET to delay interconnection while the FCC decides *Vermont Telephone*.

3. **Question:** Does Bresnan maintain that the interconnection it seeks between the two networks is for the provision of services to Vernal exchange residential and/or business customers of Bresnan and UBTA-UBET, which services are subject to the jurisdiction and authority of the Utah Public Service Commission under Utah law?

Answer: Yes, for the reasons set forth in answers 1, 2 and 4.

4. **Question:** Does Bresnan maintain that the jurisdiction and authority conferred by the various chapters of Title 54 of the Utah Code over Bresnan, the services Bresnan will provide to its Utah customers, or the interconnection it seeks with UBTA-UBET is conditioned or constrained by the 1996 Federal Telecommunications Act? If so, how?

Answer: Bresnan believes that UBTA-UBET, as an incumbent local exchange carrier, is required under both federal and state law to interconnect with Bresnan. *See* Utah Code Ann. §54-8b-2.2 and Utah Admin. Code R746-348. Indeed, the Commission has already recognized that cable telephony providers like Bresnan have the right to interconnect, as is evidenced by its recent approval of an interconnection agreement between Comcast and Qwest in Docket No. 08-049-02.

As the Commission recognizes, the FCC is considering the preemption of state regulation of IP-enhanced services in its rulemaking. That determination could someday effect the jurisdiction and authority conferred by the various chapters of Title 54 of the Utah Code over the services Bresnan will provide to its Utah customers. It is impossible, however, to predict what that effect might be. In the meantime, Bresnan applied for and was granted a CPCN by the Utah Commission “so that it can act in all respects as if its IP-Enabled services are a local exchange telecommunications service in Utah.” Unless and until the FCC rules that IP-Enabled services are not subject to state regulation, Bresnan has committed to act as if they are.

In summary, UBTA-UBET’s refusal to negotiate regarding interconnection undermines the Commission’s CPCN Order, which specifically concluded that the public interest is served by the competitive choice Bresnan’s presence in the Vernal Exchange will bring to the marketplace and Utah consumers. Given the fact that a traffic exchange agreement between Bresnan and UBTA-UBET is essential if that competitive choice is to be available, Bresnan respectfully requests that the Commission schedule a face-to-face mediation session as soon as possible. The Commission is well within its power to require the parties to attempt mediation as a first step under Utah Code Ann. §54-8b-2.2(1)(e), which provides “if there is a dispute over interconnection...one or both of the disputing parties may bring the dispute to the commission, and the commission, by order, shall resolve the dispute on an expedited basis.”

Mr. Sandy Mooy
June 5, 2008
Page 4

Respectfully,

A handwritten signature in black ink, appearing to read 'Thorvald A. Nelson', with a long horizontal stroke extending to the right.

Thorvald A. Nelson
for Holland & Hart LLP

cc: Jerry Lambert, Bresnan Communications
Kira Slawson, Blackburn and Stoll, Counsel for UBTA-UBET

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