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Attorneys for Bresnan Broadband of Utah, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITIONS OF
BRESNAN BROADBAND OF UTAH, LLC
TO RESOLVE DISPUTE OVER
INTERCONNECTION OF ESSENTIAL
FACILITIES AND FOR ARBITRATION
TO RESOLVE ISSUES RELATING TO AN
INTERCONNECTION AGREEMENT
WITH UBTA-UBET COMMUNICATIONS,
INC.

Docket No. _____

**PETITION TO RESOLVE DISPUTE
OVER INTERCONNECTION OF
ESSENTIAL FACILITIES**

AND

PETITION FOR ARBITRATION

**PETITION TO RESOLVE DISPUTE OVER INTERCONNECTION OF ESSENTIAL
FACILITIES AND PETITION FOR ARBITRATION**

Bresnan Broadband of Utah, LLC (“Bresnan”), through its undersigned counsel, petitions the Utah Public Service Commission (“Commission”) to (a) resolve a dispute over

interconnection of essential facilities on an expedited basis pursuant to Utah Code Ann. § 54-8b-2.2(1)(e) and (b) arbitrate, pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (“Telecommunications Act”), issues pertaining to a proposed Interconnection Agreement between Bresnan and UBTA-UBET Communications, Inc. (“UBTA-UBET”) (hereafter, Bresnan and UBTA-UBET are collectively referred to as the “Parties”).

In support of this Petition, and pursuant to Utah Code Ann. § 54-8b-2.2(1)(e) and 47 U.S.C. §252(b), Bresnan provides the following information.

A. IDENTIFICATION OF THE PARTIES AND THEIR COUNSEL

Bresnan is a limited liability company organized under the laws of the State of Utah and is certified to, among other things, provide public telecommunications services as that term is defined in Utah Code Ann. § 54-8b-2(16) within the Vernal exchange in and around Vernal, Utah pursuant to Commission Order issued November 16, 2007, in Docket No. 07-2476-01 (“CPCN Order”). Bresnan is a telecommunications corporation as that term is defined in Utah Code Ann. § 54-8b-2(18). A copy of the Commission’s Report and Order is attached hereto as Exhibit A. Bresnan is seeking interconnection with UBTA-UBET in order to provide the competitive local exchange services that the Commission authorized Bresnan to provide in its CPCN Order.

Bresnan’s business address is:

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1 Manhattanville Road
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Contacts related to this matter should be directed to:

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UBTA-UBET is a co-operative authorized to operate as a telecommunications corporation as that term is defined in Utah Code Ann. § 54-8b-2(18) providing local exchange and other services throughout the state of Utah. UBTA-UBET is an “incumbent local exchange carrier” in Utah as that term is defined in Sections 251(h) and 252 of the Telecommunications Act.

UBTA-UBET’s business address (Headquarters) is:

211 East 200 North
Roosevelt, UT 84066
(435) 622-5007

Upon information and belief, UBTA-UBET is represented in Utah by its counsel:

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B. JURISDICTION AND SUMMARY OF NEGOTIATION HISTORY

The Commission has jurisdiction over Bresnan's Petition pursuant to Utah Code § 54-8b-2.2(1)(e) and 47 U.S.C. § 252(b). In its CPCN Order, the Commission authorized Bresnan to provide public telecommunications services in the Vernal exchange currently served by UBTA-UBET. Pursuant to that authorization, Bresnan seeks to provide public telecommunications service as defined by Utah Code § 54-8b-2(16). As such, both Bresnan and UBTA-UBET are telecommunications corporations that provide or are seeking to provide public telecommunications services in the same service territory. Therefore, Bresnan has the right to request and the Commission has the authority to order UBTA-UBET to interconnect with Bresnan pursuant to Utah Code § 54-8b-2.2(1)(b). Further, because UBTA-UBET refuses to negotiate interconnection with Bresnan in accordance with Bresnan's right of interconnection, the Commission must resolve related disputes brought to it "on an expedited basis" pursuant to Utah Code § 54-8b-2.2(1)(e). It follows that the issues presented in this Petition are squarely within the Commission's jurisdiction and must be resolved by it expeditiously.

Additionally, pursuant to 47 U.S.C. § 252(b)(1), "During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." Consistent with Bresnan's authorization to provide public telecommunications services and right to interconnection, Bresnan sent a formal written request to UBTA-UBET, the incumbent local exchange carrier, on

February 14, 2008, to permit Bresnan to interconnect with UBTA-UBET for the purposes of exchanging traffic including 9-1-1 calls and facilitating local number portability. A copy of that letter and proposed Traffic Exchange Agreement is attached hereto as Exhibit B. The 135th day following February 14, 2008 was June 28, 2008 and the 160th day following February 14, 2008 will be July 23, 2008. Therefore, this petition for arbitration is timely.

Following the request for interconnection, contrary to the requirement of Rule R746-348-4(B) that receipt of a written request by another local exchange service provider for interconnection be acknowledged within five business days of receipt, UBTA-UBET did not acknowledge receipt of Bresnan's request for interconnection until March 12, 2008, or 19 days after receipt.

Although Rule R746-384-4(C) requires that incumbent local exchange carriers provide interconnection facilities and services within 60 days following receipt of a written request for interconnection, UBTA-UBET continues to refuse to negotiate the terms of a traffic exchange agreement with Bresnan, now three months past this deadline. Rather than complying with the Commission's rules in this regard, UBTA-UBET sent Bresnan a list of questions on April 11, 2008. Bresnan replied fully and in good faith to those questions by letter dated April 24, 2008.

However, UBTA-UBET sent a second and final letter to Bresnan on May 13, 2008, asserting that UBTA-UBET has no obligation to interconnect with Bresnan, thereby unequivocally indicating its intention to neither negotiate in good faith, nor enter into a traffic exchange agreement with Bresnan. A copy of that letter is attached hereto as Exhibit C.

Bresnan respectfully seeks Commission action resolving the continuing dispute between Bresnan and UBTA-UBET over Bresnan's right to interconnect, resolving the dispute between

Bresnan and UBTA-UBET regarding the appropriate terms of such interconnection, and arbitrating an appropriate traffic exchange agreement between Bresnan and UBTA-UBET pursuant to the Commission's authority under both Utah Code § 54-8b-2.2(1)(e) and Section 252(b) of the Telecommunications Act of 1996.

C. ISSUES SUBMITTED FOR ARBITRATION

Because UBTA-UBET refuses to negotiate in good faith and willingly enter into a traffic exchange agreement with Bresnan, the unresolved issues of: (1) UBTA-UBET's independent obligations under state and federal law to interconnect with Bresnan, and (2) all terms of Bresnan's proposed Traffic Exchange Agreement with UBTA-UBET are hereby submitted for dispute resolution on an expedited basis and arbitration by the Commission. However, the threshold issue of UBTA-UBET's obligation to interconnect with Bresnan is primarily in dispute at this time and must first be resolved by this Commission before specific terms of a resulting agreement may also be reached pursuant to this Petition. There are no additional issues that have been resolved by the Parties with respect to Bresnan's interconnection request that will not be subject to this Petition.

ISSUE 1: Does UBTA-UBET have interconnection obligations to Bresnan under Utah Code § 54-8b-2.2 and 47 U.S.C. §§ 251 and 252?

a. Positions of the Parties

The Parties disagree regarding UBTA-UBET's obligations under both state and federal law to interconnect with Bresnan. Bresnan submits that UBTA-UBET is subject to interconnection obligations to Bresnan under both Utah Code § 54-8b-2.2 and 47 U.S.C. §§ 251 and 252 pursuant to Bresnan's request for interconnection.

With respect to Utah state law, consistent with its CPCN granted by the Commission, Bresnan seeks to provide public telecommunications service as defined by Utah Code § 54-8b-2(16). Under state and federal law today, Bresnan has consistently acknowledged and acted on the belief that its proposed IP-Enabled Voice over Internet Protocol (“VoIP”) service is a public telecommunications service as defined by Utah law and fully subject to regulation by the Commission. As Bresnan stated in its CPCN application, it sought authorization to provide public telecommunications service “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 ¶ 4. Bresnan has and continues to maintain that it will offer its proposed VoIP service consistent with its regulatory obligations and statutory duties as a telecommunications corporation in Utah.

Therefore, Both Bresnan and UBTA-UBET are telecommunications corporations that provide or are seeking to provide public telecommunications services in the same service territory. As such, Bresnan has the right to request and the Commission has the authority to order UBTA-UBET to interconnect with Bresnan pursuant to Utah Code § 54-8b-2.2(1)(b). Bresnan requests that the Commission order UBTA-UBET to fulfill its interconnection obligations to Bresnan under Utah Code § 54-8b-2.2. Since UBTA-UBET has refused to permit interconnection or negotiate an interconnection agreement, Bresnan requests that the Commission resolve this dispute over the interconnection of essential facilities pursuant to Utah Code § 54-8b-2.2(1)(e).

With respect to federal law, Bresnan has received a certificate from the Utah Commission to act as a local exchange carrier. Therefore, Bresnan has a right to interconnect with the incumbent local exchange carrier pursuant to 47 U.S.C. § 251(a). Additionally, as a local exchange carrier, UBTA-UBET has the obligation to provide, among other things, number

portability and reciprocal compensation for the termination of traffic under 47 U.S.C. § 251(b). Therefore, Bresnan has lawfully requested interconnection and, to date, UBTA-UBET has unlawfully refused to negotiate an interconnection agreement with Bresnan. Therefore, pursuant to 47 U.S.C. § 252(b) Bresnan has the right to request that the Utah Commission arbitrate the interconnection disputes between the parties.

UBTA-UBET maintains that it has no interconnection obligations to Bresnan under federal law. However, UBTA-UBET's reliance on current consideration by the Federal Communication Commission ("FCC") of a petition to determine the interconnection rights of VoIP providers ("*Vermont Telephone*") as UBTA-UBET's sole means to avoid interconnection with Bresnan is misplaced and should be rejected. See *Vermont Telephone Petition*, DA 08-08-916.

First, future determinations by the FCC do not affect the Commission's jurisdiction and lawful obligations as they currently exist to resolve Bresnan's sought interconnection with UBTA-UBET. Regardless of the future outcome of *Vermont Telephone*, current federal law authorizes state regulatory commissions to determine telecommunications carrier status pursuant to Sections 251 and 252 of the Telecommunications Act. Thus, although Vermont Telephone may have presented a challenge to the authority of state regulatory commissions in this regard, the Commission currently enjoys this authority, nonetheless. Further, because Bresnan is authorized under its CPCN to provide public telecommunications services in Utah and it maintains its intention to provide such services in accordance with Utah State law, the Commission is currently required under both Utah State law and federal law to enforce UBTA-UBET's interconnection obligations to Bresnan.

Next, the precise issue and factual circumstances underlying Vermont Telephone's petition for a declaratory ruling are distinguishable from those involved in this instance before the Commission. 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. However, Bresnan does not claim that it is not a telecommunications carrier for purposes of Utah regulation. To the contrary, as stated again above, Bresnan acknowledges that under Utah state and federal law today, Bresnan's proposed telephone service to customers in the Vernal exchange is a public telecommunications service and Bresnan is a telecommunications carrier. So, unlike the alleged situation in *Vermont Telephone*, 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. Therefore, UBTA-UBET incorrectly asserts that issues relating to Bresnan's right of interconnection are squarely before the FCC at present. To the contrary, UBTA-UBET's interconnection obligations to Bresnan are properly within the jurisdiction of the Commission.

Lastly, given that the issue presented for a declaratory ruling before the FCC in *Vermont Telephone* is not applicable to the situation involving Bresnan's requested interconnection with UBTA-UBET, it is not possible to predict what effect, if any, the FCC's order in that proceeding would have on UBTA-UBET's interconnection obligations to Bresnan. Therefore, the public interest would not be served if the Commission chose to heed UBTA-UBET's position and delay interconnection while the FCC decides *Vermont Telephone*. Rather, UBTA-UBET's refusal to

fulfill its interconnection obligations with Bresnan should be rejected by the Commission as a groundless attempt to thwart competition.

With respect to the widely-accepted right of VoIP providers to interconnection, it is important to observe that over the last several years, the FCC has extended several service obligations to interconnected VoIP providers. In its *VoIP 911 Order*, the FCC adopted a rule defining “interconnected VoIP service” as a service that, like Bresnan’s anticipated service in Vernal:

(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. *Id.* at 10291, Appendix B, § 9.3 Definitions.

For example, most recently, the FCC extended local number portability (“LNP”) obligations to interconnected VoIP providers in an Order dated November 8, 2007. *LNP Order*, WC Docket Nos. 07-243, 07-244, 04-36, and CC Docket Nos. 95-116 and 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 20 FCC Rcd 19531, 19540, ¶ 16 (2007). In its Order, the FCC stated:

Allowing customers [of interconnected VoIP providers] to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act, while helping to fulfill the Act’s goal of facilitating “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.” *Id.*, ¶ 17 (citing 47 U.S.C. § 151).

The FCC also determined that interconnected VoIP providers are subject to the Communications Assistance for Law Enforcement Act (“CALEA”). *CALEA First Report and Order*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of

Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, ¶ 8 (2005).¹ In concluding that CALEA applies to facilities-based broadband Internet access providers and interconnected VoIP providers, the FCC stated, “[t]his Order is the first critical step to apply CALEA obligations to new technologies and services that are increasingly relied upon by the American public to meet their communications needs.” *Id.* at 14989, ¶ 1.

Additionally, the FCC required interconnected VoIP providers to provide emergency 911 calling capabilities to their customers in 2005. *VoIP 911 Order*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10246, ¶ 1 (2005). The FCC detailed the rationale behind its Order as follows:

Our decisions in this Order simply extend our longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans. We believe that it is critically important to impose E911 obligations on interconnected VoIP providers and to set firm but realistic target deadlines for implementation of those requirements. ...In this Order, we take the necessary steps to promote cooperative efforts by state and local government, public safety answering point (PSAP) administrators, 911 systems service providers, and interconnected VoIP providers that will lead to improved emergency services. Accordingly, today we adopt a balanced approach that takes into consideration the expectations of consumers, the need to strengthen Americans’ ability to access public safety in times of crisis, and the needs of entities offering these innovative services. *Id.* at 10248, ¶ 5.

Such examples of the FCC’s repeated decision to extend service obligations to interconnected VoIP providers strongly suggest that the FCC has long accepted that VoIP providers are permitted to interconnect in their capacity as telecommunications carriers. The FCC’s specific and conspicuous reference to the public switched telephone network (“PSTN”) in

¹ *Aff’d, Am. Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

its adopted rule further suggests that the FCC clearly understands that interconnection by a VoIP provider will be a certainty.

Accordingly, federal treatment of interconnected VoIP providers to date undermines UBTA-UBET's position that it has no interconnection obligations to Bresnan under federal law. Rather, FCC acknowledgement of the critical role that interconnected VoIP providers have in increasingly providing telecommunications services and the associated necessity of extending service obligations to such providers supports Bresnan's requested interconnection with UBTA-UBET. Significantly, Bresnan requires interconnection with UBTA-UBET for purposes of originating and terminating calls, and providing some of the very service obligations that the FCC extended to interconnected VoIP providers discussed above, namely routing 9-1-1 calls and permitting local number portability. FCC treatment of interconnected VoIP providers regarding the provision of such services validates action by this Commission to proceed under its authority to arbitrate the issues presented in this Petition.

ISSUE 2: All terms of Bresnan's Proposed Traffic Exchange Agreement between Bresnan and UBTA-UBET are submitted for arbitration pursuant to this Petition.

Due to UBTA-UBET's refusal to both acknowledge its interconnection obligations to Bresnan and negotiate the terms of an agreement in good faith, discussion between the Parties regarding particular terms of Bresnan's proposed Traffic Exchange Agreement has not occurred. Therefore, Bresnan respectfully submits all terms of its proposed Traffic Exchange Agreement for arbitration by the Commission pursuant to this Petition. Bresnan has attached its proposed Traffic Exchange Agreement hereto as Exhibit B.

REQUEST FOR RELIEF

Bresnan respectfully requests that the Commission:

1. Resolve the dispute over whether Bresnan has a right to interconnection of essential facilities under state law and the dispute over the terms of an agreement for the interconnection of essential facilities between Bresnan and UBTA-UBET;
2. Arbitrate the issue of Bresnan's right to interconnection and the terms of a reasonable interconnection agreement between Bresnan and UBTA-UBET;
3. Retain jurisdiction of these petitions and the Parties hereto until UBTA-UBET has complied with all implementation time frames specified in the resolved/arbitrated an interconnection agreement and has fully implemented such agreement;
4. Take such other and further actions as it deems necessary and appropriate.

Respectfully submitted this 17th day of July, 2008.

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CERTIFICATE OF MAILING

I hereby certify that on this 17th day of July, 2008, I caused to be emailed a true and correct copy of the foregoing Petition to Resolve Dispute Over Interconnection of Essential Facilities and Petition for Arbitration to the following:

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