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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter 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. 08-2476-02 Reply of the Utah Rural Telecom Association and Association Members to Bresnan Broadband of Utah LLC's Opposition to Intervention
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On November 4, 2008, the Utah Rural Telecom Association (“URTA”) petitioned the Public Service Commission (“Commission”) for intervention in the above-entitled matter pursuant to Utah Code Ann. § 63G-04-207 and Utah Admin. Code R746-100-7. On November 10, 2008, Bresnan Broadband of Utah, LLC (“Bresnan”) filed a response to URTA’s petition opposing intervention on grounds that no URTA member apart from UBTA-UBET Communications Inc. has a legal interest in this matter, URTA’s interests are already represented, and URTA’s intervention will impair the orderly and prompt resolution of this case.

Bresnan’s position is wrong and asks the Commission to depart from its longtime practice on intervention. Bresnan’s Petition for Interconnection presents issues of first impression for the Commission. For example, based on recent filings by both UBTA-UBET and Bresnan, the Commission will address the exemption from interconnection for rural companies under 47 U.S.C. § 251(f)(1)(A). Depending on how the Commission decides the exemption

issue, it may also address the treatment of VoIP services for the purpose of interconnection as well as interconnection requirements generally for rural telecommunications service providers. URTA clearly has legal interests at stake in this docket that may be substantially affected as required by Utah Code Ann. § 63G-04-207. In this way this docket is no different than Docket No. 07-2476-01, Bresnan's petition for a certificate of public convenience and necessity in UBTA-UBET's territory in which the Commission permitted URTA to intervene. The questions answered in this docket will most certainly affect all subsequent dockets addressing the same issues. There is no reason for the Commission to change course now.

In its response opposing URTA's petition to intervene, Bresnan cites *Questar Gas Company v. Public Service Commission*, 175 P.3d 545, 551 (Utah 2007) for the proposition that the Commission can deny the petition if URTA's interests are already represented in the proceeding. That is not accurate. In *Questar*, the Supreme Court determined that the petitioners would be substantially affected by the outcome of that case so the only question the Court had to answer is whether or not intervention would materially impair the prompt and orderly resolution of the case. *Id.* at 553. Determining material impairment is the second part of the test for intervention and the only contingency for intervention when the petitioner's legal interests will be substantially affected. The Court simply used the fact that other parties who participated in the case had similar interests to petitioners' to rationalize its decision; it was by no means a deciding factor. The real driver for the Court's decision in *Questar* is that the petitioners sought to intervene more than a year after the case had begun even though they had notice and were well aware that the case was underway. In addition, the existing parties had expended considerable resources in reaching a stipulation that the petitioners wanted to challenge. Under these circumstances, the Court determined that intervention would materially impair the orderly and

prompt disposition of the case.

The facts in this proceeding are entirely different from those in *Questar*. URTA timely filed its petition. URTA participated in the pre-hearing scheduling conference on October 27, 2008 and agreed to meet the schedule established there. Additionally, the parties in this proceeding have expended no resources in settling this matter. Bresnan's concerns of having another voice at the table or having to read an additional brief are not reasons to deny URTA's Petition to Intervene.¹

NOW THEREFORE, URTA respectfully requests that the Commission disregard Bresnan's Opposition and enter an Order granting URTA's petition to intervene in this docket allowing URTA and URTA members to participate to the fullest extent allowed by law.

Dated this 13th day of November, 2008.

Callister Nebeker & McCullough

Stephen F. Mecham

¹ In *Millard County v. State Tax Commission*, 823 P.2d 459 (Utah 1991), the Utah Supreme Court reversed the Tax Commission for refusing to grant intervention. The Court recognized that intervention may complicate proceedings, but that does not justify denying intervention. *Id.* at 463.

Certificate of Service

I hereby certify that on November 13, 2008, I caused a true and correct copy of the foregoing Reply of the Utah Rural Telecom Association and Association Members to Bresnan Broadband of Utah LLC's Opposition to Intervention to be emailed to the following:

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