

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>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.</p>	<p>Docket No. 08-2476-02</p> <p>PETITION TO RESOLVE DISPUTE OVER INTERCONNECTION OF ESSENTIAL FACILITIES</p> <p>AND</p> <p>PETITION FOR ARBITRATION</p>
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DIRECT TESTIMONY OF

ALEX J. HARRIS

On behalf of

Bresnan Communications, LLC

1 **Q. PLEASE STATE YOUR NAME AND CURRENT BUSINESS ADDRESS.**

2 A. My name is Alex J. Harris. My business address is One Manhattanville Road, Purchase,
3 New York, 10577-2596.

4

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am Vice President, Network Planning & Industry Affairs, for Bresnan Communications,
7 LLC.

8

9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
10 **EXPERIENCE.**

11 A. I graduated from the University of Illinois with Bachelors Degrees in Political Science
12 and Philosophy in 1984. In 1999, I received my Masters of Business Administration
13 degree from the New York University Stern School of Business. I was employed by the
14 Illinois Commerce Commission between 1984 and 1991, first as an intern, subsequently
15 as a telecom policy analyst, and finally as a commissioner's assistant. In 1991, I joined
16 Teleport Communications Group (TCG), a pioneer competitive access provider (CAP)
17 and competitive local exchange carrier (CLEC), as Manager of Regulatory Affairs,
18 handling regulatory matters at the federal level and in seven states, focused primarily on
19 early collocation and competitive entry efforts. In 1993, I joined MFS Communications
20 Company, another pioneering CAP/CLEC, and served initially as Assistant Vice
21 President-Regulatory Affairs, and subsequently as Vice President-Regulatory and
22 Industry Affairs, and focused on network cost management, pricing, business planning,
23 regulatory affairs, competitive entry, and especially CLEC interconnection negotiation

24 and implementation. After MFS was acquired in 1997, I worked as an independent
25 consultant providing business planning, public policy, interconnection, and product
26 development services to a variety of CLEC and other clients. In 2001, I joined
27 Commonwealth Telephone Company, a rural local exchange carrier (RLEC) operating in
28 northeastern Pennsylvania, serving as Vice President Marketing & Business
29 Development, and subsequently as Vice President Government & Industry Affairs. I
30 negotiated the first interconnection agreements between Commonwealth, which had its
31 own Section 251(f)(1) rural exemption, and a number of CLEC and wireless competitors.
32 In 2004, I joined Citizens Communications d/b/a Frontier Communications, a mid-size
33 telephone company with RLEC operations in 24 states, as Vice President Regulatory
34 Affairs, overseeing federal and state regulatory and public policy activities for the
35 company nationwide. In 2007, I joined BAXL Technologies, a broadband network
36 equipment maker, as Vice President Business Development. I joined Bresnan in my
37 present position in October 2008, where my responsibilities include network
38 cost/transport facility management, interconnection, intercarrier compensation, and
39 industry and regulatory affairs.

40

41 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY**
42 **COMMISSION?**

43 A. Yes. During the course of my career I have appeared as an expert witness before various
44 state regulatory commissions on a variety of issues. In the 1980s, I appeared as a staff
45 witness before the Illinois Commerce Commission in various cases pertaining to access
46 charges, information services and alternative regulation. During the 1990s, I appeared

47 before commissions in Maryland, Oregon, Connecticut and Georgia, in matters related to
48 competitive entry, local interconnection and reciprocal compensation. I have appeared
49 before legislative committees in various states and have participated in numerous
50 meetings, workshops, and presentations before regulators in several states and at the
51 FCC.

52

53 **Q. FOR WHOM ARE YOU APPEARING IN THIS PROCEEDING?**

54 A. I am appearing on behalf of Bresnan Broadband of Utah, LLC (“Bresnan”).

55

56 **Q. PLEASE DESCRIBE THE BUSINESS BRESNAN PERFORMS WITHIN THE**
57 **STATE OF UTAH.**

58 A. Bresnan is a cable multi-system operator (MSO) and competitive local exchange carrier
59 (CLEC) providing video, high speed-Internet and digital phone services in parts of
60 Colorado, Montana, Utah and Wyoming. Bresnan currently provides all of these services
61 in the Cedar City area. In the Vernal exchange area, Bresnan currently provides video
62 and high-speed-Internet services. Subject in part to the outcome of this proceeding,
63 Bresnan anticipates providing digital phone service in the Vernal area very soon.
64 Bresnan has received a Certificate of Public Convenience and Necessity (“CPCN”) from
65 the Utah Commission to operate as a CLEC in both the Cedar City and Vernal exchange
66 areas.

67

68 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

69 A. My testimony will explain and support Bresnan's request that the Commission order
70 UBTA-UBET to enter into an interconnection agreement with Bresnan. In doing so I
71 will explain how UBTA-UBET's outright refusal to interconnect has: (i) made it
72 impossible for Bresnan to operate in Vernal as contemplated by the Commission in its
73 prior action granting Bresnan a specific CPCN covering the Vernal area; and (ii) directly
74 harmed the public interest by denying the residents and businesses of Vernal the benefits
75 of wire-line competition.

76

77 **Q. DOES UBTA-UBET HAVE AN OBLIGATION TO INTERCONNECTION WITH**
78 **BRESNAN?**

79 A. I believe so. While there may be several bases upon which to establish UBTA-UBET's
80 obligation in this regard, I believe four simple facts are sufficient to make the case: (1)
81 UT Administrative Code R746-348-3 A., states "Incumbent local exchange carriers shall
82 allow any other public telecommunication service provider to interconnect its network at
83 any technically feasible point, to provide transmission and routing of public
84 telecommunication services."; (2) UT Administrative Code R746-348-7 requires, among
85 other things, provision of "Local telephone number portability."; (3) UBTA-UBET is the
86 incumbent local exchange carrier in Vernal; and (4) as previously noted, the Commission
87 has awarded Bresnan a CPCN to operate as a CLEC in Vernal. To my layperson's eyes, I
88 see no way to square those four simple those simple facts without concluding that UBTA-
89 UBET is obligated to interconnect with Bresnan to provide local number portability.

90

91 **Q. HOW DOES BRESNAN PROPOSE TO INTERCONNECT WITH UBTA-UBET**
92 **TO ACCOMPLISH THE MUTUAL EXCHANGE OF TRAFFIC?**

93 A. Bresnan requests that the Commission order UBTA-UBET to enter into an
94 interconnection agreement with Bresnan in the form attached to my testimony as Exhibit
95 _____ (AJH-1). The attached exhibit is somewhat modified from the version of the
96 form of an agreement that was attached to Bresnan's application in this case. Bresnan
97 has modified the agreement to reflect the Commission's decision to proceed solely under
98 Utah state law rather than federal and state law. Additionally, the earlier version was
99 based on an agreement which Bresnan had accepted from another incumbent local
100 exchange carrier (ILEC) in another state, and included several provisions and options
101 which were not applicable to interconnection between Bresnan and UBTA-UBET. Such
102 extraneous provisions have been eliminated from the version I am sponsoring here. As a
103 result, the currently proposed agreement is more streamlined and straightforward.

104 As discussed in more detail below, Bresnan's proposed interconnection agreement
105 provides initially for indirect interconnection through Qwest. The agreement then calls
106 for a transition to direct interconnection once traffic volumes make direct interconnection
107 cost-effective. Finally, the agreement provides mechanisms to establish (a) a
108 compensation system for the transport and termination of traffic using bill-and-keep and
109 (b) number portability.

110
111 **Q. WILL THE INTERCONNECTION AGREEMENT PROPOSED BY BRESNAN**
112 **PROVIDE THE NECESSARY MEANS FOR BRESNAN TO COMPETE IN THE**
113 **VERNAL EXCHANGE?**

114 A. Yes. In order to compete for telephone subscribers in Vernal, Bresnan only needs a
115 mechanism to ensure that traffic is properly exchanged and that numbers are ported.
116 Once those mechanisms are established, Bresnan will be able to compete with UBTA-
117 UBET.

118

119 **Q. IS THE INTERCONNECTION AGREEMENT PROPOSED BY BRESNAN IN**
120 **THE PUBLIC INTEREST?**

121 A. Absolutely. Utah Code 54-8b-1.1 establishes that it is the policy of the state to “facilitate
122 access to high quality, affordable public telecommunications services to all residents and
123 businesses in the state” and “encourage the development of competition as a means of
124 providing wider customer choices for public telecommunications services throughout the
125 state.” So long as UBTA-UBET is allowed to refuse to interconnect and exchange traffic
126 with Bresnan, Bresnan will be unable to effectively offer competitive
127 telecommunications services to the residents and businesses in Vernal. Only after
128 UBTA-UBET is required to live up to its obligations under state law to interconnect and
129 exchange traffic with Bresnan will we be able to offer Vernal customers the competitive
130 choices the Commission envisioned when they approved Bresnan’s application for a
131 CPCN.

132

133 **Q. DOES BRESNAN’S PROPOSED INTERCONNECTION AGREEMENT CALL**
134 **FOR INTERCONNECTION THAT IS TECHNICALLY FEASIBLE?**

135 A. Yes. Commission Rule R746-348-3 provides that “incumbent local exchange carriers
136 shall allow any other public telecommunications service provider to interconnect its

137 network at any technically feasible point, to provide transmission and routing of public
138 telecommunications service.”

139 Article IV, Section 5 of the interconnection agreement provides for indirect
140 interconnection, via already existing trunk groups between UBTA-UBET and the Qwest
141 tandem switch to which UBTA-UBET’s End Office switch currently subtends. Thus,
142 UBTA-UBET would have no incremental expenditures for switch capital or transmission
143 facilities.

144 Then, like almost all contemporary interconnection agreements, Article IV,
145 Section 4 of the agreement provides that when traffic volumes reach the equivalent of an
146 individual DS1 of capacity, the parties will implement direct interconnection by installing
147 a direct trunk group between the networks. The DS1 capacity level is used as the
148 threshold for direct interconnection because it generally ensures that both parties will be
149 able to add trunk groups in a reasonably optimal manner, and that direct trunk groups can
150 displace indirect trunk groups on a nearly 1 to 1 basis. Since telecommunications carriers
151 add and adjust trunk groups and trunk group capacities all the time, the requested
152 interconnection is obviously technically feasible.

153

154 **Q. IS BRESNAN’S PROPOSED INTERCONNECTION AGREEMENT**
155 **CONSISTENT WITH RULE R746-348-5?**

156 A. Yes. Article IV, Section 4 of the agreement provides that each carrier will be responsible
157 for constructing and maintaining facilities on its side of the point of interconnection
158 consistent with R746-348-5(A).

159

160 **Q. IS BRESNAN'S PROPOSED INTERCONNECTION AGREEMENT**
161 **CONSISTENT WITH RULE R746-348-6?**

162 A. Yes. Consistent with Rule R746-348-6(A)(1), Article IV, Section 6 of the agreement
163 calls for the use of appropriate signaling protocols to efficiently route traffic.

164 Consistent with Rule R746-348-6(A)(2), Article IV, Section 3 provides for the
165 exchange of information necessary for proper customer billing by both carriers and
166 Article III, Section 12 provides for the appropriate protection of customer proprietary
167 information.

168 Consistent with Rule R746-348(A)(4), Article IV, Sections 4 and 7 provides
169 adequate network management controls to ensure a high level of service quality with
170 respect to the interconnection arrangements.

171 Finally, consistent with Rule R746-348-6(B), Article IV, Section 4 provides for
172 the interconnection provisions necessary to ensure seamless routing of 9-1-1 calls.

173
174 **Q. DOES BRESNAN REQUIRE ACCESS TO ANY UBTA-UBET ESSENTIAL**
175 **FACILITIES?**

176 A. Yes, but only in a very limited way. Rule R746-348-7 provides Bresnan a right to access
177 14 different essential facilities. However, Bresnan only requests access to those
178 minimum facilities necessary for network interconnection and local telephone number
179 portability, which is discussed in Article IV, Section 8 of the agreement. Thus, the
180 agreement proposed by Bresnan has no provisions for access to items such as unbundled
181 loops, or loop sub-elements, collocation, etc.

182

183 **Q. HAS UBTA-UBET IMPLEMENTED LOCAL NUMBER PORTABILITY IN ITS**
184 **VERNAL RATE CENTER?**

185 A. UBTA-UBET's Vernal exchange codes (i.e., NXXs) are listed in the Local Exchange
186 Routing Guide (LERG – the authoritative telecommunications industry numbering and
187 routing guide published by Telcordia) as being portable, indicating that UBTA-UBET has
188 indeed implemented Local Number Portability in Vernal.

189

190 **Q. DOES UBTA-UBET'S END OFFICE SWITCH SERVING VERNAL SUBTEND**
191 **ANY THIRD-PARTY OPERATED TANDEM SWITCH?**

192 A. Yes, the LERG shows that UBTA-UBET's Vernal End Office switch subtends a Qwest
193 tandem switch.

194

195 **Q. GIVEN THAT UBTA-UBET HAS ALREADY IMPLEMENTED LNP AND**
196 **ALREADY SUBTENDS A QWEST TANDEM, COULDN'T BRESNAN HAVE**
197 **UNILATERALLY EFFECTED INDIRECT INTERCONNECTION AND BEGUN**
198 **OPERATIONS WITHOUT EXECUTING AN AGREEMENT WITH UBTA-**
199 **UBET?**

200 A. Theoretically, Bresnan could have attempted to unilaterally effect interconnection and
201 begun operations. But given UBTA-UBET's clear and unambiguous written statement
202 that it would not interconnect with Bresnan either directly or indirectly, it would not have
203 been responsible for Bresnan to attempt to unilaterally implement interconnection and
204 initiate operations with live customers. Bresnan takes the trust of its customers extremely
205 seriously, and has a strong sense of corporate responsibility to provide high quality and

206 reliable services. As such, Bresnan would never wish to use its customers as unwitting or
207 unwilling pawns in a cynical game of “regulatory gotcha.” Additionally, given this level
208 of uncertainty, it would have been financially burdensome for Bresnan to commit the
209 resources necessary to begin implementing operations with no assurance of being able to
210 generate revenues in a reasonable time period.

211 While, theoretically, Bresnan could have attempted to unilaterally route local
212 traffic to UBTA-UBET via the Qwest tandem and employ industry standard procedures
213 to initiate number porting activities with UBTA-UBET, in light of UBTA-UBET’s clear
214 refusals Bresnan had no reasonable expectation that UBTA-UBET would: (i) complete
215 local calls in both directions; (ii) not take actions which would impair transmission
216 between the networks; (iii) allow end users to port their local telephone numbers to
217 Bresnan; (iv) provide dialing parity for local calling from UBTA-UBET customers to
218 Bresnan customers; or (v) not attempt to inappropriately impose Switched Access
219 charges on local calls from Bresnan customers to UBTA-UBET customers or then use
220 Bresnan’s non-payment of such charges as a pretext to block such calling.

221 For all these reasons, UBTA-UBET’s unequivocally-stated refusal to
222 interconnect, or even to discuss interconnection, with Bresnan, has directly and
223 concretely prevented Bresnan from initiating operations in fulfillment of its CPCN.
224 Again, this has in turn directly harmed the public interest by denying the households,
225 businesses and local institutions within Vernal the benefits of competitive land-line
226 telecommunications. These denied benefits are neither theoretical nor ephemeral. In
227 virtually every market in which facility-based competitors have entered, customers have
228 benefitted from lower prices, higher quality, expanded capabilities, wider choice, or some

229 combination thereof. Indeed, the Commission affirmed the reality of these benefits when
230 it granted Bresnan a CPCN to operate in Vernal.

231
232 **Q. WILL PROVIDING ACCESS TO NUMBER PORTABILITY BE DIFFICULT**
233 **FOR UBTA-UBET?**

234 A. No. As noted above, UBTA-UBET has already apparently implemented LNP in its
235 Vernal exchange. Presumably UBTA-UBET already ports numbers to wireless carriers.
236 Thus, engaging in LNP with Bresnan will involve no new capital expenditures.

237
238 **Q. DOES BRESNAN'S PROPOSED INTERCONNECTION AGREEMENT**
239 **PROVIDE FOR DIALING PARITY?**

240 A. Yes. Consistent with Utah Code Ann. § 54-8b-2.2(1)(a)(ii) which prohibits unreasonable
241 blocking or unreasonable restrictions on the flow of traffic, Article IV, Section 9 of the
242 agreement provides that each interconnection party shall implement local dialing parity.
243 As a result, neither carrier's customers would be required to dial additional numbers to
244 make local calls that terminate on the other carrier's network.

245
246 **Q. HOW DOES BRESNAN'S PROPOSED AGREEMENT HANDLE THE ISSUE OF**
247 **RECIPROCAL COMPENSATION?**

248 A. As discussed in Article IV, Section 2 of the agreement, Bresnan proposes to use a "bill &
249 keep" compensation arrangement unless traffic is significantly out of balance. Such
250 arrangements are increasingly common among CLECs, wireless carriers and ILECs, and
251 ensure that no party is faced with massive reciprocal compensation payments. Second,

252 Bresnan does NOT employ so-called “virtual” NXXs, does NOT target dial-up Internet
253 Service Providers (ISP) as dial-tone customers, does NOT engage in “traffic pumping”
254 schemes, and does NOT disguise or conceal the Automatic Number Identification (ANI)
255 or Calling Party Number (CPN) on any calls, so UBTA-UBET will face no risk of loss of
256 legitimate access charge revenues. The traffic which Bresnan intends to route through
257 the interconnection arrangements as “local” traffic, will be traffic which originated from
258 an end user customer located within the local calling area as defined in UBTA-UBET’s
259 own local tariffs.

260

261 **Q. IN CONCLUSION, WHAT DO YOU RECOMMEND THAT THE COMMISSION**
262 **DO IN THIS PROCEEDING?**

263 A. Bresnan wants very much to offer competitive telecommunications services in Vernal.
264 To that end, we request that the Commission approve under Utah state law our proposed
265 interconnection agreement with UBTA-UBET and order UBTA-UBET to sign that
266 agreement.

267

268 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

269 A. Yes.