

BEFORE 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>
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**DIRECT TESTIMONY OF**

**VALERIE WIMER**

**ON BEHALF OF**

**UBTA-UBET COMMUNICATIONS, INC.**

**December 17, 2008**

1 **I. Introduction**

2 **Q. Please state your name, occupation, and place of business.**

3 A. My name is Valerie Wimer. I have been employed by John Staurulakis, Inc. (JSI)  
4 since 1997. JSI is a telecommunications consulting firm headquartered in  
5 Seabrook, Maryland. At JSI, I am the Director of New Business Development. I  
6 am responsible for helping rural companies offer new products, prepare for  
7 competition and implement new technologies. In this position, I have been  
8 involved in many interconnection agreements between CLECs and ILECs, helped  
9 clients implement DSL, video, and other new services, helped clients with pricing  
10 and worked with clients upgrading their networks with new switches and loop  
11 technologies. In addition, I act as a resource for the technical nature of cost study  
12 development.

13 Prior to my employment at JSI, I worked for Southern New England  
14 Telephone (SNET) for eighteen years. I held several manager and directory level  
15 positions in switching operations, procurement, network planning and marketing.  
16 In these various positions, some of the major projects I was responsible for was  
17 implementing SS7 signaling network, ISDN, vendor selection and implementation  
18 of the first digital switches in Connecticut, migration host remote switching  
19 architecture and coordination of SNET's delivery of voice, data, and video over a  
20 coax plant. In the marketing area, I was responsible for implementing small

21 business centrex, ISDN services, and advanced intelligent network services. I  
22 was responsible for the development and implementation of SNET's corporate  
23 policies governing local competition in Connecticut. I supervised the marketing,  
24 pricing and technical development of interconnection agreements, resale service,  
25 and unbundled elements. I was the SNET technical and marketing witness for  
26 several dockets relating to the development of competition in Connecticut.  
27 Lastly, I managed a CLEC users group for SNET, which educated CLECs on the  
28 requirements of local service and solicited input from the CLEC industry  
29 regarding operational requirements.

30  
31 I graduated with honors from Cornell University with a BS in engineering. I  
32 completed Executive Engineering Education at Stanford University, Continuing  
33 Engineering Courses at George Washington University, and SNET's Advanced  
34 Management Development Program.

35 **Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED**  
36 **DIRECT TESTIMONY?**

37 A: I am testifying on behalf of UBTA-UBET ("UBET") in this dispute resolution  
38 proceeding with Bresnan ("Bresnan").

39 **Q: PLEASE DESCRIBE THE APPROXIMATE SIZE OF UBET.**

40 A: UBTA-UBET is a rural incumbent local exchange carrier (“ILEC”) operating in  
41 ten Utah exchanges and serves approximately 19,600 access lines

42 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

43 A: My purpose is to explain why, in my professional opinion; the Utah Public  
44 Service Commission (“Commission”) should adopt language proposed by UBET  
45 in the agreement between UBET and Bresnan for the exchange of traffic, and  
46 number portability. UBET has proposed an agreement that is consistent with the  
47 State rules for an Essential Facilities agreement. It provides services required by  
48 Bresnan at just and reasonable rates. Because this Agreement sets the standard  
49 for nondiscriminatory terms for other carriers that may want to compete with  
50 UBET, the UBET terms and wording should prevail over the Bresnan proposed  
51 terms. In addition, the UBET terms are consistent with the UBET network and  
52 operations.

53 **Q: ARE YOU FAMILIAR WITH THE PROCEDURAL HISTORY BETWEEN**  
54 **BRESNAN AND UB ET IN THIS MATTER.**

55  
56 A: Yes, I have reviewed the materials provided in both this docket and in Docket No.  
57 07-2496-1. I have reviewed the pleadings, testimony, data requests, and the  
58 correspondence between the parties.

59

60 **Q: WHAT IS YOUR UNDERSTANDING OF THE PARTIES' POSITIONS IN**  
61 **THIS MATTER?**

62 A: It is my understanding that Bresnan applied for a certificate of public convenience  
63 and necessity in the Vernal exchange. UBET intervened in that matter claiming  
64 that a CPCN was not in the public interest in Vernal. UBET presented significant  
65 evidence that Bresnan's presence in the Vernal exchange would detrimentally  
66 affect other telephone consumers in the Uintah Basin and rural telephony  
67 generally. Additionally, there was testimony from Mr. Meredith indicating that  
68 rural carriers do not have a federal obligation to interconnect for purposes of  
69 exchanging digital telephony and cable telephony. Mr. Meredith, Mr.  
70 Hendershot, and Mr. Todd all seemed to recognize the issues relating to the  
71 negotiation of an interconnection agreement between UBET and Bresnan.  
72 Nevertheless, the Commission issued Bresnan a CPCN for the Vernal Exchange.  
73 It is my understanding that in February of 2008 Bresnan sent UBET a letter  
74 requesting that UBET enter into a Mutual Traffic Exchange Agreement pursuant  
75 to 47 USC §251. In response, UBET asked Bresnan to clarify some issues with  
76 regard to the service they were proposing to offer. After obtaining a response  
77 from Bresnan that made it abundantly clear that Bresnan was seeking  
78 interconnection under federal law, and that the services they were proposing to  
79 offer were not, in fact, telecommunications services under federal law, UBET  
80 informed Bresnan that it was under no obligation to interconnect with Bresnan  
81 under Federal law.

82 **Q: DO YOU KNOW WHAT BRESNAN'S RESPONSE TO UBET WAS?**

83

84 A: Bresnan petitioned the Utah Public Service Commission for mediation regarding  
85 an interconnection agreement with UBET. The Utah Public Service Commission  
86 transferred the matter to its Counsel, Sandy Mooy. After a series of data requests  
87 and responses, the Utah Public Service Commission, through Sandy Mooy,  
88 indicated that Bresnan's request for interconnection with UBET was made solely  
89 pursuant to Federal Law. The PSC determined it would not act on Bresnan's  
90 request for mediation under federal law. The PSC pointed out to Bresnan that  
91 since it had not requested interconnection with UBET under state law, the PSC  
92 would not entertain mediation of the request. It is my understanding that Bresnan,  
93 thereafter, Petitioned the PSC to Arbitrate the terms of an interconnection  
94 agreement between Bresnan and UBET pursuant to State and Federal law. UBET  
95 moved to intervene and dismiss Bresnan's Petition on the grounds that under  
96 Federal Law UBET does not have an interconnection obligation to connect with  
97 Bresnan for the purpose of providing information services. Additionally, UBET  
98 argued that State law is preempted by federal law in this matter.

99

100 **Q: DO YOU KNOW WHAT THE COMMISSION DECIDED?**

101 A: The Utah Public Service Commission ultimately ruled that while UBET may be  
102 correct that it has no obligation to interconnect under federal law, the PSC refused  
103 to consider the application of federal law in this matter, and rather, proceeded

104 solely under state law. The PSC determined that under state law, UBET has an  
105 obligation to interconnect with Bresnan until such time as the Commission or the  
106 parties later find that state law has no application, and determine that the  
107 Commission does lack authority over the services involved or authority to  
108 grant/enforce the relief given. At that time, the Commission indicated that the  
109 relief ultimately provided, in the form of an Essential Facilities Agreement, will  
110 have no further application. (Commission Order, p.9). Absent such a  
111 determination, the PSC found that Utah law requires Utah certificated  
112 telecommunications corporations to allow interconnection of Essential Facilities  
113 and the mutual exchange of traffic between networks (as each of those terms are  
114 used in Utah law, independent of federal law definition or interpretation of similar  
115 words or terms). Therefore, the PSC has agreed to resolve the dispute under  
116 Section 54-8b-2.2 of Utah code concerning the terms of an Essential Facilities  
117 Agreement between Bresnan and UBET—which is the subject of this hearing.

118 **Q: NOW THAT THE UTAH PUBLIC SERVICE COMMISSION HAS**  
119 **DETERMINED THAT BRESNAN DOES HAVE RIGHTS TO AN**  
120 **ESSENTIAL FACILITES AGREEMENT EXCLUSIVELY UNDER STATE**  
121 **LAW, IS UBET WILLING TO NEGOTIATE AN AGREEMENT?**

122

123 A: Yes. UBET did not undertake any negotiations regarding the language in the  
124 Mutual Traffic Exchange Agreement proposed by Bresnan, previously, because

125 until the Commission issued its order on November 17, 2008, UBET believed  
126 Bresnan was not qualified to request interconnection.. Now that it is clear that  
127 interconnection is required under State law only, UBET has developed a Essential  
128 Facilities Agreement which is attached to this testimony as Exhibit 1 to govern  
129 the relationship of the parties specifically under state law. UBET will fully  
130 comply with the Commission's order and invites Bresnan to redline the UBET  
131 proposed agreement to start negotiations.

132 **Q: WHAT RULES APPLY TO THE COMMISSION APPROVAL OF THE**  
133 **AGREEMENT BETWEEN UBET AND BRESNAN?**

134 A: Section 54-8b-4.5 (3)(c) apply.

135 (c)In determining whether or not to approve a contract under this section,  
136 the commission shall consider all relevant factors, including, whether or  
137 not the contract for any rate, toll, fare, rental, charge, or classification of  
138 service

139 (i) Complies with Section 54-8b-3.3;

140 (ii) Provides for adequate service at just and reasonable rates.

141

142 Since UBET has under 30,000 access lines, it is not required to comply with 54-  
143 8b-3.3. UBET's proposed the agreement with Bresnan provides adequate service  
144 at just and reasonable rates.

145 **Q. WHICH AGREEMENT SHOULD BE USED WHEN BOTH PARTIES**  
146 **OFFER AGREEMENTS?**

147 A: When two telecommunications corporations propose agreements for essential  
148 facilities, the agreement from the company that is providing the majority of the



149 facilities should act as the basis for the agreement. The Utah code 54-8b-2.2(1)  
150 (b)(ii) requires telecommunications corporations to provide essential services on  
151 terms no less favorable than those it provides to itself. In this case, UBET is  
152 providing interconnection, EAS, porting, and initially will have the majority of  
153 end user customers. Bresnan will be receiving substantially more services from  
154 UBET than UBET will be receiving from Bresnan. In addition, other competitors  
155 that enter the market will be focused on obtaining essential facilities from UBET  
156 and not from Bresnan. Therefore, UBET will have more exposure to other  
157 providers demanding the same terms than Bresnan. As a result, the Commission  
158 should use the UBET agreement as the base for this dispute.

159

160 **UBET AGREEMENT**

161 **Q: PLEASE DESCRIBE THE AGREEMENT PROPOSED BY UBET.**

162 A: UBET proposes an agreement that complies with all the State Essential Services  
163 requested by Bresnan. The agreement includes the exchange of local traffic;  
164 addresses local number portability (LNP) and the proposed network  
165 configuration; provides details on the identification of traffic jurisdiction; and  
166 addresses 911, operator services and directory. Unlike the Bresnan proposed  
167 agreement, the UBET agreement includes all the terms including pricing and  
168 enforcement provisions.

169 **Q: ARE THERE PROVISIONS BETWEEN THE TWO AGREEMENTS**  
170 **THAT ARE SIMILAR?**

171 A: Yes. In fact the majority of the topics addressed in each of the agreements  
172 address the same concerns in a similar manner. This is particularly true of the  
173 more general legal terms such as term, termination confidential information,  
174 entire agreement, expenses, force majeure; Good Faith Performance, independent  
175 contractor status, and Bankruptcy. Some of the terms are very similar but have  
176 different time periods recommended. Sections that fall into this category are the  
177 renegotiation notice in the term section, default cure period, billing notice of  
178 dispute, back billing timeframes, and audit intervals.

179 **Q: ARE THERE ANY OPERATION OR TECHNICAL SIMILARITIES**  
180 **BETWEEN THE AGREEMENTS?**

181 A: Yes. UBET is prepared to provide dialing parity and to implement LNP with  
182 Bresnan as suggested by Mr. Harris<sup>1</sup> and has proposed language to document this  
183 commitment. The agreements are also similar with regard to traffic routing, trunk  
184 interface types, network management, and traffic blocking.

185 **Q: IS THE WORDING IN THE SECTIONS MENTIONED THE SAME?**

186 A: No. The topics are the same and seem to conceptually cover the same material.  
187 However, the wording is different. Part of this difference is the overall style of

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<sup>1</sup> Harris Direct at 9 185:188 and at 11 234:

188 the agreement. UBET recommends that its agreement and wording be used for  
189 these sections so ensure the overall flow of the agreement is maintained. If some  
190 of Bresnan's language were to replace UBET's proposed language, there is a risk  
191 that some issues would fall though the cracks due to the organizational structure  
192 of the agreement. If Bresnan's has an issue with the UBET agreement, the best  
193 approach would be for Bresnan to suggest wording changes to the UBET  
194 Agreement.

195 **Q: WHERE ARE THE MAJOR CONFLICTS BETWEEN THE UBET AND**  
196 **BRESNAN PROPOSED AGREEMENTS?**

197 A: There are eight (8) of major conflicts between the two agreements:

- 198 1. Scope of traffic covered by the agreement
- 199 2. Direct connection only vs. indirect moving to direct connection
- 200 3. Location of the Point of Interconnection (POI)
- 201 4. Jurisdiction of Traffic
- 202 5. Compensation
- 203 6. Remedies for non-compliance with the agreement
- 204 7. Recognition of Ancillary services
- 205 8. Exclusion of certain Terms

206 **ISSUE 1**

207 **SCOPE OF TRAFFIC COVERED BY THE AGREEMENT**

208 **Q: WHAT IS THE ISSUE ON THE SCOPE OF TRAFFIC?**

209 A: The language in the Bresnan agreement allows all traffic, local, EAS, intraLATA,  
210 InterLATA, and Interstate to be included in the essential facilities agreement. The  
211 UBET agreement limits the scope of the agreement to Local and EAS traffic.

212 **Q: WHY SHOULD THE SCOPE OF THE AGREEMENT BE LIMITED TO**  
213 **LOCAL AND EAS TRAFFIC?**

214 A: UBET provides access traffic on a non-discriminatory basis under the filed tariffs  
215 with the Commission and with the FCC. Bresnan's proposed language included  
216 all non-local traffic including intraLATA and Interexchange traffic.<sup>2</sup> UBET does  
217 not want to create confusion as to which terms and conditions govern the access  
218 traffic: the tariff or the agreement. Excluding the provision of access traffic from  
219 this agreement ensures there is no conflict.

220 **Q: ARE THERE ANY PARTICULAR CONFLICTS BETWEEN THE**  
221 **PROPOSED LANGUAGE AND THE UBET TARIFF?**

222 A: Yes. The language in Bresnan's proposed agreement Bresnan discusses  
223 development of the Percent Interstate Usage (PIU) and the billing specifications  
224 for both the interstate and local usage. The NECA tariff covers these provisions  
225 for UBET's interstate access (toll). Unless the language is exactly the same as the

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<sup>2</sup> Bresnan Agreement Article IV Sections 1 "Either party may choose to utilize the interconnection trunk groups provided in this Article to deliver both local Traffic and non-local traffic, on an un-segregated basis for termination on the other Party's network, subject to the PLU and PIU requirements"

226 NECA tariff, and is updated every time the NECA tariff or the state tariff is  
227 updated, there is a potential conflict between the agreement and the tariff.  
228 UBTA's proposed Agreement avoids this conflict.

229 **Q: DOES UBET ROUTE ANY ACCESS TRAFFIC TO ANOTHER LEC?**

230 A: No. UBET routes all toll calls originated by UBET customers to IXC's. Since it is  
231 not a toll provider, UBET does not handle any toll traffic, nor does it pay access  
232 charges to any entity. Therefore only Bresnan would benefit from provisions to  
233 include toll traffic in the agreement.

234 **Q: WOULD INCLUSION OF TOLL/ACCESS TRAFFIC IN THE**  
235 **AGREEMENT PROVIDE BRESNAN AN UNFAIR COMPETITIVE**  
236 **ADVANTAGE OVER OTHER TOLL PROVIDERS?**

237 A: Yes. Allowing Bresnan to bundle tier toll and local traffic on a single trunk group  
238 would allow greater efficiencies that would not be available to other IXC's. These  
239 terms would be discriminatory to other IXC's which is contrary to Utah law.

240

241 **Q: ARE THERE OTHER CONCERNS WITH BRESNAN'S PROPOSAL FOR**  
242 **TRAFFIC?**

243 A: Yes. Bresnan does not propose to measure the traffic but to use traffic factors  
244 such as PIU and Percent Local Usage (PLU) to determine the jurisdiction of the  
245 traffic. This is inappropriate since Bresnan first has the opportunity to perform

246 rate arbitrage to terminate toll traffic as local, and UBET has their own traffic  
247 measurement capabilities and assumes that Bresnan also has traffic measurement  
248 capabilities. There is no reason to rely on a traffic factor when both Parties can  
249 measure the actual traffic.

250 **Q: WHAT IS YOUR RECOMMENDATION?**

251 A: I recommend that the Commission adopt UBET's position that only Local and  
252 EAS traffic be included in the agreement.

253

254 **ISSUE 2**

255 **DIRECT VS INDIRECT CONNECTION**

256 **Q: WHAT IS THE DISAGREEMENT ON INDIRECT CONNECTION?**

257 A: Bresnan proposed an indirect connection and will move to a direct connection if  
258 the volume of traffic reaches 512 CCS while UBET proposes only a direct  
259 connection.

260 **Q: WHAT IS THE DIFFERENCE BETWEEN A DIRECT CONNECTION**  
261 **AND AN INDIRECT CONNECTION?**

262 A: A direct connection is when two carriers have a trunk that directly connects each  
263 of the Parties switches. The direct connection handles only traffic between the  
264 two connecting carriers. An indirect connection is when both Parties are

265 connected to a third party's switch, usually a tandem. Traffic is routed to the third  
266 party and the third party then routes it to the other carrier.

267 **Q: WHERE IS THE TANDEM THAT BRESNAN PROPOSES?**

268 A: Bresnan proposed to meet at the Qwest tandem in Provo.

269 **Q: DOES UBET HAVE FACILITIES TO THE QWEST TANDEM?**

270 A: No. In addition, Qwest is not the local tandem for UBET's NPA-NXX's. UBET  
271 only subtends the Qwest tandem for Intralata toll traffic routing and not for local  
272 or for Feature Group D.<sup>3</sup>

273 **Q: DOES UBET EXCHANGE ANY LOCAL TRAFFIC VIA THE QWEST**  
274 **TANDEM?**

275 A: No. Currently, all local traffic that is exchanged with other carriers is via a direct  
276 connection to the UBET Vernal switch.

277 **Q: WHAT TRAFFIC IS ROUTED BETWEEN THE QWEST PROVO**  
278 **TANDEM AND UBET?**

279 A: Qwest toll traffic is routed via the Qwest tandem. The only calls that originate  
280 from UBET customers that are routed to the Qwest tandem are calls from UBET  
281 customers are that are presubscribed to Qwest toll service. In reverse, Qwest

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<sup>3</sup> UBET's numbers subtend the Utah Fiber Network tandem in Salt Lake City in the LERG for Feature group D and local traffic. Qwest tandem in Provo only handles intraLATA traffic.

282 terminates traffic from both Qwest customers and other intraLATA IXC's that  
283 connect to their tandem. The vast majority of traffic to UBET customers is routed  
284 via the Utah Fiber Network ("UFN") tandem.

285 **Q: ARE THERE ADVANTAGES TO A DIRECT CONNECTION?**

286 A: Yes. A direct connection exchanges traffic directly between the originating and  
287 terminating carriers for local traffic. There is no intermediary that can modify  
288 traffic indicators or change signaling information to change the jurisdiction of the  
289 traffic. The carrier originating the traffic has full control over and responsibility  
290 for the traffic delivered to the other Party. Both Parties can easily measure traffic  
291 and can more readily identify the jurisdiction.

292 **Q: ARE THERE ANY OTHER ADVANTAGES TO A DIRECT**  
293 **CONNECTION BESIDE TRAFFIC IDENTIFICATION AND**  
294 **MEASUREMENT?**

295 A: Yes. The tandem provider charges a transit fee for passing the call to the other  
296 carrier. The transit fee is eliminated when the parties are directly connected.

297 **Q: WHAT IS YOUR RECOMMENDATION ON DIRECT VS INDIRECT**  
298 **CONNECTION?**

299 A: I recommend that the Commission require Bresnan to establish a direct  
300 connection with UBET.



301

**ISSUE 3**

302

**LOCATOIN OF THE POINT OF INTERCONNECTION (POI)**

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**Q: WHERE DOES UBET PROPOSE TO ESTABLISH A POINT OF**

304

**INTERCONNECTION (“POI”) WITH BRESNAN?**

305

A: UBET proposed a POI at the Bresnan location at 2495 East Highway 40, Vernal,

306

Utah (“Bresnan Headend”). UBET currently has a fiber terminal with spare

307

capacity installed at that location and is able to interface with Bresnan at a DS1 or

308

DS3 level. Bresnan currently hands off data traffic at the Bresnan Headend

309

location so Bresnan has facilities established on the Bresnan network at that

310

location.

311

**Q: DOES THIS LOCATION MEET THE STATE’S RULES FOR**

312

**INTERCONNECTION?**

313

A: Yes. This location is technically feasible as demonstrated by the fact that there is

314

already a facilities meet location existing for data traffic.

315

**Q: WHAT POI HAS BRESNAN PROPOSED?**

316

A: Bresnan has proposed two different POI’s; one if the interconnection is direct and

317

one for an indirect connection. If the connection is a direct connection, Bresnan

318

does not propose a specific location only that the POI (or IP as used by Bresnan)

319 be located somewhere in the LATA.<sup>4</sup> Bresnan then provides options that the POI  
320 could be a fiber meet point, dedicated transport via a third party, or provided by  
321 Bresnan.

322 Bresnan recommends that the POI associated with an indirect connection  
323 be at the each Party's POI with the third party tandem provider.<sup>5</sup> Using this  
324 approach the originating Party would be required to pay the tandem transport  
325 charges to the third party tandem provider.

326 **Q: DOES IT MAKE SENSE TO HAVE A POI OUTSIDE THE AREA WHERE**  
327 **THE PARTIES ARE COMPETING?**

328 A: No. As stated in Mr. Meredith's testimony the Parties should have a POI within  
329 the area where the competition is occurring. There is no reason to transport local  
330 traffic that is going to terminate inside the local area to a designated point  
331 anywhere in the entire LATA. Reference to the LATA may make sense for a  
332 carrier like Qwest that serves the entire LATA and multiple LATA's but is not  
333 rational when connecting for a rural carrier which serves a small fraction of the  
334 LATA.

335 **Q: ARE THEIR OTHER COSTS WITH ESTABLISHING A POI OUTSIDE**  
336 **THE AREA WHERE THE PARTIES ARE COMPETING?**

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<sup>4</sup> Bresnan Agreement Article IV Section 4.1 "designate at least one Interconnection Point (IP) within each LATA n which the Parties intend to exchange Local Traffic."

<sup>5</sup> Id Article IV Section 5.2

337 A: Yes. There are additional transport costs. When local and EAS calls are made  
338 today, the call stays within the local and EAS areas. If the Bresnan proposal were  
339 adopted, the calls would have to travel 214 route miles from Vernal to Provo then  
340 back to Vernal to be completed. In total there would be 424 additional miles of  
341 transport.

342 **Q: IS IT DIFFICULT FOR BRESNAN TO ESTABLISH A POI AT THE**  
343 **BRESNAN HEADEND LOCATION?**

344 A: No. Bresnan has facilities at that location today. Data traffic is handed from the  
345 Bresnan system to be transported to the internet at that location. Seemingly,  
346 Bresnan has access to separate data traffic from their video system at that  
347 location. In typical CATV networks, the voice signals can also be separate from  
348 Video at the same location where the data is separated. Therefore, it seems that  
349 Bresnan could pass their voice traffic at the Vernal location without the addition  
350 of facilities. There is also spare capacity in the UBET fiber system installed at that  
351 location.

352 **Q: DOES UBET HAVE FACILITIES AT THE BRESNAN PROPOSED**  
353 **LOCATION AT THE QWEST TANDEM?**

354 A: No. As mentioned earlier, the only traffic from UBET customers to the Qwest  
355 tandem is Qwest toll traffic. UBET does not own any facilities to the Qwest

356 tandem. In addition, routing local traffic to UBET customers via the Qwest  
357 tandem is not consistent with the LERG.

358 **Q: WHICH PROPOSED POI IS MORE CONSISTENT EITHER**  
359 **COMMISSION RULES?**

360 A: The Commission rules state:

361 “Neither Party may impose a meet point that would require that one party  
362 incur significantly greater construction cost to build to the meet point than  
363 the other party.”<sup>6</sup>

364 The both Parties have facilities at the UBET proposed POI. Therefore there is no  
365 construction required by either party. However, UBET does not have facilities at  
366 the Bresnan proposed POI. UBET would incur costs to establish facilities and be  
367 required to pay transit charges once established.

368 **Q: SHOULD A SPECIFIC LOCATION BE DESIGNATED IN THE**  
369 **AGREEMENT OR SHOULD THE POI BE LEFT FOR NEGOTIATION?**

370 A: Bresnan does not propose a specific location for the POI when there is a direct  
371 connection. UBET believes the agreement should be specific on the location of  
372 the POI. A specific location will allow each party to better anticipate their costs  
373 for interconnection, and will avoid disputes as to the location of the POI once the  
374 agreement is affective. In addition, it eliminates the need to have multiple options  
375 for interconnection methods such as leased transport and fiber meet point.

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<sup>6</sup> R746-348-3 B1

376 **Q: WHAT IS YOUR RECOMMENDATION ON THE LOCATION OF THE**  
377 **POI?**

378 A: I recommend that the Commission approve the POI located at the Bresnan  
379 Headend location because it is technically feasible, it is located within the area  
380 where the parties are competing, both parties have facilities at that location, and  
381 designating a specific location will prevent future disputes between the parties.

382 **ISSUE 4**

383 **TRAFFIC TYPES AND JURISDICTION NEED TO BE**

384 **SPECIFICALLY IDENTIFIED**

385 **Q: PLEASE EXPLAIN THE DIFFERENT TYPES OF TRAFFIC.**

386 A: There are several types of traffic that may be exchanged between the two parties.  
387 The traffic types include traditional voice traffic, IP-Enabled Voice traffic, mobile  
388 and information services traffic.

389 **Q: PLEASE EXPLAIN THE DIFFERENCES IN THE DIFFERENT TYPES**  
390 **OF TRAFFIC.**

391 A: Traditional voice traffic starts from an analog or digital phone and is transmitted  
392 on a traditional circuit switched network and terminated at a second analog or  
393 digital phone.

394 An IP-Enable Voice call uses a device at the customer premise that is in IP  
395 format on one end of the call and a traditional analog or digital phone on the other

396 end. In between the two ends the call is transported in a mix of IP, packet and  
397 circuit switched technologies.

398 Mobile telecommunications service may also be referred to as wireless  
399 service. Traditional telephones are from a fixed location. Mobile service allows  
400 customers to move that device anywhere during the call or between calls.

401 Information services or ISP-Bound calls are communications that travel to  
402 the public internet or between two computers. Many of these calls never touch  
403 the public switched telephone network (PSTN). However, some calls such as  
404 calls to a dial up ISP do involve the PSTN.

405 **Q: ARE THESE DIFFERENT TYPES OF CALLS TREATED DIFFERENTLY**  
406 **UNDER UTAH LAW?**

407 A: No. All these types of calls are considered Public Telecommunications Service  
408 under Utah law.

409 **Q: IF ALL TYPES OF TRAFFIC TREATED THE SAME, WHY IS IT**  
410 **IMPORTANT TO IDENTIFY THE DIFFERENT TYPES?**

411 A: Utah law does not differentiate between the types of traffic. Federal law,  
412 however, does make distinctions in how different types of traffic are treated.  
413 Since this agreement is under state law only, it is important to demonstrate how  
414 each type of traffic is treated since the treatment may be different than federal

415 law. UBET wants to make this point clear by identifying each type of traffic and  
416 stating how each type of traffic will be treated.

417 **Q: HOW DOES BRESNAN TREAT THE DIFFERENT TYPES OF TRAFFIC**  
418 **IN THEIR PROPOSED AGREEMENT?**

419 A: Bresnan does not identify IP-Enable traffic or wireless traffic separately from  
420 traditional voice traffic. However, Information Access Traffic is identified and  
421 treated differently than other voice traffic.<sup>7</sup>

422 **Q: HOW DOES UBET PROPOSE TO TREAT THE DIFFERENT TYPES OF**  
423 **TRAFFIC?**

424 A: UBET proposes to treat all wireline voice traffic the same. Both traditional voice  
425 and IP-Enabled Voice will be treated exactly the same. ISP bound traffic will  
426 also be treated the same if the traffic is de minimis Wireless traffic is not included  
427 in the agreement because Bresnan is not a wireless carrier and because the FCC  
428 has taken full jurisdiction over wireless traffic.<sup>8</sup>

429 **Q: IS THERE EXPECTED TO BE MUCH ISP BOUND TRAFFIC**  
430 **EXCHANGED BETWEEN THE PARTIES?**

---

<sup>7</sup> Bresnan Agreement Article IV Appendix B Section 1.21 "Local Traffic"

<sup>8</sup> Developing a Unified Intercarrier Compensation Regime T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs 35 CR 291, 20 FCC Rcd 4855 (February 24, 2005) FCC 05-42 CC Docket No. 01-92

431 A: No. My understanding is that Bresnan Voice customers must have a broadband  
432 connection and Bresnan does not offer dial up internet service. It is expected that  
433 Bresnan customers will only subscribe to broadband services. Broadband service  
434 is not switched on the telephone network so would not be routed to the UBET  
435 switch. In addition, Bresnan has stated that it does not target ISPs as customers.<sup>9</sup>  
436 Similarly, UBET is promoting broadband service to UBET customers. Overall  
437 the dial up internet traffic is decreasing. Therefore, the traffic is expected to be  
438 minimal if any.

439 **Q: WHY IS THE JURISDICTION OF THE CALL IMPORTANT?**

440 A: Because the intercarrier compensation and routing of calls differs depending on  
441 the jurisdiction: local calls fall under mutual compensation, intraLata/intrastate  
442 calls are governed by state access and interstate calls are governed by federal  
443 access. Accordingly, UBET proposes that the local/EAS calls be routed directly  
444 between Bresnan and UBET while toll calls are routed to the corresponding IXC's  
445 based on where the IXC chooses to interconnect.<sup>10</sup>

446 **Q: HOW IS THE JURISDICTION OF THE CALLS DETERMINED?**

447 A: For Intercarrier compensation purposes calls can be either local, EAS, intraLATA  
448 access or interLATA access.

---

<sup>9</sup> Harris Direct at 12 252:253

<sup>10</sup> Certification proceeding Tr at 20 "That call would transit our switch—or actually our plat to our switch and get handed off to a long distance carrier who would terminate that all for us in Low Angeles."



449 **Q: WHAT IS THE MEASURE OF THE CALL JURISDICTION?**

450 A: According to Utah code, the physical location of the customer is the measure of  
451 the proper jurisdiction of the call. This is demonstrated by the definitions of  
452 Intrastate Telecommunications and Local Exchange Service.

453

454 "Intrastate telecommunications service" means any public  
455 telecommunications service in which the information transmitted  
456 originates and terminates *within the boundaries* of this state.

457

458 "Local exchange service" means the provision of telephone lines to  
459 customers with the associated transmission of two-way interactive,  
460 switched voice communication *within the geographic area* encompassing  
461 one or more local communities as described in maps, tariffs, or rate  
462 schedules filed with and approved by the commission.<sup>11</sup> (emphasis added)

463

464 These definitions make clear that the physical location of the customer determines  
465 if a call is local or intrastate. UBET proposes to include this requirement in the  
466 agreement.

467 **Q: DOES BRESNAN PROPOSE A METHOD FOR DETERMINING THE**  
468 **JURISDICTION OF THE CALL?**

469 A: Yes. Bresnan seems to have two or three measures for determining the  
470 jurisdiction. First, Bresnan does propose to use the physical location only for  
471 information services traffic.<sup>12</sup> However beyond the general statement that  
472 information service traffic will be based on the physical location, there are not

---

<sup>11</sup> Utah Code Annotated §54-8b-2

<sup>12</sup> Bresnan Agreement Appendix B section 1.21 "Local Traffic"

473 terms in the agreement that actually implement this distinction. Second, Bresnan  
474 proposed to use traffic factors (PLU and PIU) as the primary method to  
475 distinguish between the jurisdictions. Third, Bresnan will accept actual recording  
476 as the last option.<sup>13</sup>

477 **Q: HOW ACCURATE IS THE USE OF A TRAFFIC FACTOR?**

478 A: In this case, traffic factors are not very accurate. A traffic factor can be fairly  
479 accurate when the traffic is stable is there is not much change. However, in this  
480 case where customers will be constantly moving from UBET to Bresnan and  
481 back, I would not expect the traffic to be stable at all. Traffic patterns will change  
482 significantly as customer move between the two carriers. Even the Utah law  
483 recognizes that there will be a major change in traffic.<sup>14</sup> Therefore traffic factors  
484 will not be an accurate reflection of a mix of local and toll traffic.

485 In addition Bresnan proposed that the traffic factor may only be changed  
486 once per year. The long lead time in adjusting the factor would make even less  
487 accurate.

488 **Q: HOW DOES UBET PROPOSE TO DETERMINE THE JURISDICTION**  
489 **OF THE CALL?**

---

<sup>13</sup> Id Article IV Section 3.1

<sup>14</sup> Utah Code Ann. §54-8b-2.2 1(s)(ii) ‘time required for adapting the network to respond to significant changes in usage patterns.’”

490 A: UBET proposes that the jurisdiction of all calls be based on the physical location  
491 of the customer and directly measured. To determine the physical location  
492 typically the telephone number is used. UBET proposes that the both parties  
493 commit to only assign telephone numbers to customers that are physically located  
494 in the exchange area associated with the NPA-NXX. Both Parties would then  
495 measure the traffic directly and bill actual amounts of traffic. With the UBET  
496 proposal of a direct trunk group that only transmits local traffic, IP-Enable traffic  
497 and ISP Bound traffic, there is no toll traffic on the trunk group therefore there is  
498 no need for traffic factors.

499 **Q: WHAT ARE THE ADVANTAGES OF THE UBET PROPOSAL?**

500 A: First, the UBET proposal is consistent with Utah code and makes the compliance  
501 with the physical location explicit for all types of traffic. Second it provides a  
502 mechanism to comply with the code via number assignment. Third it is  
503 completely accurate because billing is based on actual measurements that will  
504 vary as the traffic changes from month to month. There is no time delay as there  
505 is with a traffic factor. Forth, the commitment to provide signaling information  
506 provides an audit trail which can be validated if there are any unusual traffic  
507 patterns.

508 **Q: WHAT IS YOUR RECOMMENDATION ON TRAFFIC TYPES AND**  
509 **JURISDICTION?**

510 A: I recommend that the Commission adopt the UBET proposed wording that  
511 specifically identifies the various traffic types and basis jurisdiction on the  
512 physical location of the customer that is directly measured by the Parties.

513

514

## ISSUE 5

515

### COMPENSATION

516 **Q: HOW DO BRESNAN AND UBET PROPOSE TO BE COMPENSATED?**

517 A: Bresnan proposed that mutual compensation apply only to local traffic, and that  
518 EAS and toll traffic be compensated under the access mechanisms. Bresnan  
519 further proposes that mutual compensation be on a bill and keep basis while  
520 traffic is in balance and a minute of use rate when traffic is out of balance. UBET  
521 proposes that local and EAS fall under mutual compensation, and only toll traffic  
522 fall under access mechanism. UBET proposes a minute of use rate be paid for  
523 each local and EAS minute exchanged between the Parties. In addition, UBET  
524 proposes that Bresnan pay a per customer fee to compensate UBET for the EAS  
525 calls beyond the Vernal Exchange.

526

527 **MUTUAL COMPENSATION**

528 **Q: IS THERE ANY REASON TO BELIEVE THAT THE TRAFFIC WILL BE**  
529 **IN BALANCE ACCORDING TO BRESNAN’S PROPOSAL FOR BILL**  
530 **AND KEEP?**

531 A: No. Bresnan has stated in its application that it will provide services to residential  
532 customers.<sup>15</sup> Therefore the business customers will remain with UBET. This  
533 factor alone means the traffic may be out of balance. In addition, more customers  
534 will be on the UBET network than on the Bresnan network. This can also sway  
535 the traffic to be out of balance. Therefore, the basic premise for Bill and Keep is  
536 not valid. UBET proposes to have a single mutual compensation structure instead  
537 of trying to start under one mechanism then move to a different mechanism after a  
538 period of time.

539 **Q: WHY IS MINUTES OF USE (“MOU”) COMPENSATION MORE**  
540 **ADVANTAGEOUS?**

541 A: Each party will be compensated for every minute of traffic that it completes.  
542 There is a direct correlation between the number of minutes and the  
543 compensation. In the Bill and Keep proposal, Bresnan identifies “out of balance”  
544 to be when either Party is terminating more than 60% of the traffic. The other  
545 Party would have to subsidize the party with the high traffic for up to 20% of the  
546 traffic. In a competitive market a 20% cost difference can be significant. Minutes  
547 of use mutual compensation does not require one party to subsidize the other.

---

<sup>15</sup> Bresnan Application Section II.3

548 **Q: WHAT DOES UBET RECOMMEND?**

549 A: UBET recommends that mutual compensation only be under a minute of use  
550 mechanism.

551 **Q: PLEASE EXPLAIN THE EAS CHARGE?**

552 A: UBET proposes that Bresnan pay for access to the EAS area to compensate  
553 UBET for completing calls to the additional EAS exchanges. UBET recommends  
554 the rate to be the average rate charged for EAS to the UBET customers.

555 **Q: IS EAS A MANDATORY FOR ALL UBET CUSTOMERS?**

556 A: Yes. EAS was ordered by the commission under the EAS Order, Docket No. 02-  
557 053-02 (the "EAS Order").

558 **Q: WHAT WAS CONSIDERED IN THE EAS ORDER?**

559 A: In the EAS Order, the commission determined a rate that would be charged to  
560 each exchange for the ability to call within the entire UBET service territory.  
561 Stimulation of calling was considered in the original rate development. Each of  
562 the UBET exchanges has a different flat rate depending on the size and calling  
563 patterns.

564 **Q: WERE TERMINATION COSTS CONSIDERED WHEN SETTING THE**  
565 **RATE TO THE END USERS?**

566 A: No. It was assumed that UBET was terminating the calls on its network. There  
567 were no access charges or any other third party charges included in the price  
568 development.

569 **Q: IS IT REASONABLE THAT UBET SHOULD PAY ACCESS TO**  
570 **BRESNAN WHILE THE RATE TO THE END USER REMAINS THE**  
571 **SAME?**

572 A: No. Access rates are much higher than mutual compensation rates as discussed in  
573 the rates section below. UBET is required to charge a fixed flat rate to the end  
574 user for the EAS calling. If UBET has to pay Bresnan a high access rate for every  
575 minute completed to a Bresnan customer, UBET could easily surpass the end user  
576 revenue with access payments.

577 **Q: WOULD CHARGING THE MUTUAL COMPENSATION RATE FOR**  
578 **THE EAS CALLS ALSO PUT A STRAIN ON THE FLAT RATED END**  
579 **USER CHARGE?**

580 A: As mentioned earlier, the assumption in the EAS proceeding was that there was a  
581 cost for UBET to terminate a call the EAS calls on its network. The proposed  
582 mutual compensation rate is a proxy for that termination cost. Although, the rate  
583 may not be exactly the same, UBET's payment of a mutual compensation rate for

584 completing calls to Bresnan should not significantly change the UBET costs<sup>16</sup>.  
585 Bresnan will receive some compensation for every EAS call terminated to a  
586 Bresnan customer but at a lower rate than access.

587 **Q: WHAT DO YOUR RECOMMEND?**

588 A: UBET recommends that the Commission approve a MOU mutual compensation  
589 structure and include EAS under mutual compensation because it is consistent  
590 with the mandatory calling requirements and would not overly burden the current  
591 end user flat rate structure.

592

593 **Q: WHAT RATE LEVEL IS PROPOSED FOR THE EAS CHARGE?**

594 A: UBET recommends the average rate that is charged to the UBET customers for  
595 the same service. UBET customers all pay for this benefit, Bresnan customers  
596 should also have to also pay for similar types of calls. An average rate is  
597 reasonable because the rate assigned to Vernal is low compared to the actual  
598 usage achieved. The original filing assumed that the outlying areas would call  
599 Vernal much more when a flat rate charge was implemented. However, there was  
600 very little stimulation projected for Vernal, which turned out to be very wrong.  
601 UBET has seen significant growth in traffic from Vernal to the more rural areas.  
602 The Bresnan customers will have the benefit of calling to these rural areas and

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<sup>16</sup> UBET costs should not change significantly assuming voice calling patterns. ISP-Bound traffic could sway the traffic so is proposed to be de minimis in the agreement.



603           should pay a rate that is compensatory. An average rate is would more fully  
604           compensate UBET for the service provided.

605   **Q:    IS THERE OTHER REASONS WHY THIS RATE IS REASONABLE?**

606   A:    Yes. Bresnan suggested that EAS be compensated under access. UBET access  
607           charges are much higher than mutual compensation. Although the EAS will  
608           increase that total cost somewhat, UBET believes that the flat rate for EAS will  
609           actually benefit Bresnan compared to access.

610   **Q:    WHAT DOES UBET RECOMMEND?**

611   A:    UBET recommends that Commission approve a charge of \$2.73 be charged to  
612           Bresnan as compensation for EAS termination.

613

614                   **UBET PROPOSED RATE LEVELS ARE REASONABLE**

615   **Q:    WHAT ARE THE DIFFERENCES IN THE PRICING SCHEDULES?**

616   A:    UBET has identified all the pricing that is listed in the agreement. These rates  
617           include the mutual compensation rate, transport reference to the tariff, service  
618           order rates and labor rates. Bresnan proposes only a mutual compensation rate.

619   **Q:    HOW DO THE MUTUAL COMPENSATION RATE LEVELS**  
620           **COMPARE?**

621 A: Bresnan rate is \$0.0007 which is the same rate as the FCC default rate for ISP-  
622 Bound traffic. The UBET rate is \$0.012.

623 **Q: IS THE UBET PROPOSED RATE NONDISCRIMINATORY?**

624 A: Yes. This is the same rate that is charged to the wireless carriers that exchange  
625 local traffic with UBET.

626 **Q: WHY IS THE UBET RATE REASONABLE?**

627 A: The \$0.012 rate is much less than the UBET access rates of approximately  
628 \$0.0199 for interstate and \$0.047 for intrastate access. If UBET preformed a full  
629 cost study, it believes the rate would be higher than the \$0.012 rate. However,  
630 UBET does not want to spend the effort to perform a detailed cost study if it is  
631 able to negotiate a rate. In that light, UBET is willing to offer the \$0.012 rate

632 **Q: IS THE BRESNAN PROPOSED RATE REASONALBE?**

633 A: No. Assuming that Bresnan did select the Federal rate for ISP traffic, this rate has  
634 no relation to UBET or costs in the state of Utah. The Federal rate was initially  
635 proposed based on information submitted by several RBOCs. These densely  
636 populated large corporation's costs are vastly different from UBETs. It is  
637 unreasonable to think that the costs of RBOCs that have over 10 M lines have any  
638 relationship to UBET's costs to serve fewer than 20 K lines. The Bresnan  
639 proposed rate should be rejected because it bears no relationship to UBET.

640 **Q: WHAT ARE THE TRANSPORT RATES?**

641 A: Bresnan has the option of ordering transport from UBET. The recurring and non-  
642 recurring transport rates are according to the applicable tariff. This is restated in  
643 the Pricing Attachment as a convenience.

644 **Q: ARE THE TARIFFED TRANSPORT RATES JUST AND REASONABLE?**

645 A: Yes. The Commission reviews the UBET filings prior to approval. Interested  
646 parties have the opportunity to challenge the filed rates. The Commission  
647 addresses any concerns to ensure the rates are just and reasonable prior to  
648 approval.

649 **Q: WHAT ARE THE SERVICE ORDER RATES?**

650 A: The service order rates are for each time a service order is submitted to UBET.  
651 Primarily the service order will be to transfer a customer to Bresnan. UBET  
652 offers a rate for a manual service order, a normal service order, and a record  
653 order. The normal service order would be submitted by Bresnan via email. This  
654 order may include disconnection of a customer's service, LNP and record updates  
655 on the same order.

656 **Q: WHAT IS DIFFERENT ABOUT A MANUAL SERVICE ORDER?**

657 A: A manual service order is submitted via Fax or some other non-electronic basis.  
658 Because the order is manual, there is additional tracking, audits and typing of the

659 order into the UBET system. The manual process is prone to errors due to the  
660 manual intervention. With an electronic format, the orders are automatically  
661 tracked and the information can be electronically transferred into the system thus  
662 reducing typing errors.

663 **Q: WHAT IS THE BASIS FOR THE SERVICE ORDER RATE?**

664 A: The base service order rate is based on the rate in the UBET Local Exchange  
665 Tariff 1. These rates have been approved by the Commission. UBET submits  
666 that the work effort to place and process the Bresnan orders will be similar to that  
667 of the Service Change Charge (Name or number change or Move Change) in the  
668 tariff.

669 The basis for the manual order is to recover the additional labor to process  
670 the manual order. This rate recovers the additional tracking, typing, error  
671 correction and processing required for manual orders.

672 **Q: WHAT ARE THE LABOR RATES?**

673 A: The labor rates will apply to any special work that Bresnan may request from  
674 UBET. Coordinated conversions of customer transfers would fall into this  
675 category. If there is special maintenance function, labor rates would also be  
676 charged.

677 **Q: WHAT IS THE BASIS FOR THE LABOR RATES?**

678 A: The labor rates are current fully loaded labor rates including vehicles where  
679 appropriate.

680 **Q: ARE THE LABOR RATES COST BASED?**

681 A: Yes.

682 **Q: WHAT IS YOUR RECOMMENDATION CONCERNING RATES?**

683 A: I recommend that the Commission adopt the UBET proposed rates because they  
684 are just and reasonable and consistent with state requirements for pricing.

685

686 **ISSUE 6**

687 **REMEDIES FOR NON-COMPLAINE**

688 **Q: ARE THERE REMEDIES IN THE AGREEMENT TO PROMOTE**

689 **COMPLIANCE WITH THE AGREEMENT?**

690 A: Yes. Both Parties have remedy provisions in their proposed agreements. Both  
691 Parties charge interest on late payments. Both Parties also have instances where  
692 the aggrieved Party may stop processing services order. However, those are the  
693 only two remedies included in the Bresnan agreement. The UBET proposed  
694 agreement contains additional remedy provisions.

695 **Q: WHAT ADDITIONAL REMEDIES ARE REQUIRED IN THE**  
696 **AGREEMENT?**

697 A: It is very important that UBET be properly compensated for the traffic in the  
698 proper jurisdiction. There is a \$.007 and \$.021 difference in the proposed mutual  
699 compensation rates and the UBET federal and state access rate respectively. This  
700 creates an incentive for carriers to represent traffic to be in the jurisdiction with  
701 the lowest rate. The UBET agreement has several sections in the agreement<sup>17</sup> to  
702 protect against this practice and to set remedies if one party were to misrepresent  
703 traffic. UBET proposes that either Party be able to charge access rates for traffic  
704 that is actually access traffic but delivered as local, or EAS traffic. This remedy  
705 would only charge the offending carrier that rate that should have been paid if the  
706 traffic were properly identified and routed.

707 In addition to the remedy for traffic, there are certain cases where UBET  
708 wants the option to terminate the agreement or discontinue service completely.  
709 This remedy is only for extreme circumstances and is subject to dispute  
710 resolution.

711 **Q: ARE THERE EXAMPLES IN THE INDUSTRY THAT HAVE INVOKED**  
712 **CONCERN THAT CARRIERS' NONCOMPLIANCE WITH**  
713 **AGREEMENTS WILL REQUIRE REMEDIES?**

---

<sup>17</sup> UBET agreement sections General Terms and Conditions section 1.3, Definitions Section 2.28,,  
Interconnection Attachment Section 2.1. 2.2, 2.6, and 5.2,

714 A: Yes. In Georgia, there has been a long standing billing dispute between BellSouth  
715 Telecommunications, Inc. d/b/a AT&T Georgia (“AT&T”) and Global NAPs  
716 Georgia, Inc. (“GNAPS”). After several years of billing disputes with GNAPS,  
717 AT&T issued a disconnect notice to GNAPS on December 15, 2003, pursuant to  
718 the terms of the interconnection agreement between the parties.<sup>18</sup> In or about  
719 September 2007, AT&T disconnected its interconnection facilities from GNAPS.<sup>19</sup>  
720 The Georgia Public Service Commission (“GPSC”), in November 2007,  
721 responding to GNAPS request for emergency relief, concluded that AT&T was  
722 within its right to discontinue GNAPS service pursuant to the notice provisions of  
723 the agreement.<sup>20</sup> However, for four years after providing a disconnect notice,  
724 AT& T was forced to continue to provide service to GNAPS without  
725 compensation.<sup>21</sup>  
726  
727 Through the same arrangement that GNAPS had with AT&T, calls were sent  
728 through the AT&T Tandem to independent telephone companies. Because AT&T  
729 had been unable to stop the termination of service with GNAPS, the independent  
730 companies were also harmed. GNAPS defaulted on its payment of intrastate  
731 access charges to four independent telephone companies that were terminating

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<sup>18</sup> See *Complaint and Request for Emergency Relief of Global NAPs Georgia, Inc. Against BellSouth Telecommunications, Inc. d/b/a AT&T Georgia*, Final Order, Docket No. 12921, Doc. No. 107315, p. 1 (Nov. 15, 2007) (“*GPSC Final Order*”).

<sup>19</sup> See *id.* at p.1.

<sup>20</sup> See *id.* at 2.

<sup>21</sup> See generally, *GPSC Final Order; Global NAPS North Carolina, Inc. v. BellSouth Telecommunications, Inc.*, Order, Case No. 5:04-CV-96-BO(1) (Oct. 10, 2007); *Global NAPS North Carolina, Inc. v. BellSouth Telecommunications, Inc.*, Order, Case No. 5:04-CV-96-BO(1) (Sept. 20, 2007).

732 traffic from GNAPs pursuant to the companies' intrastate access tariffs.<sup>22</sup> On  
733 November 17, 2005, the independent companies filed a request for expedited  
734 review of GNAPs' default on the access charges and spent the next two and a half  
735 years before the GPSC in a dispute resolution proceeding before receiving a  
736 favorable result on April 8, 2008.<sup>23</sup> During the time that this matter was in  
737 dispute, the independent companies continued providing services to GNAPs while  
738 not being compensated for services they provided.<sup>24</sup> In its April 8, 2008 order,  
739 the GPSC ordered GNAPs to pay all intrastate access charges billed to GNAPs by  
740 the independent companies.<sup>25</sup>

741 It has yet to be seen whether the independent companies will be able to  
742 collect all monies, including interest and penalties, due from GNAPs. At best,  
743 pursuant to the Georgia Commission's order, the independent companies will be  
744 allowed to finally disconnect services being received by GNAPs. It is still a  
745 lose/lose situation for the independent companies because the companies have  
746 endured significant financial losses during the almost three years in which they  
747 were required to provide services without being paid, thereby causing hardship to  
748 their end user customers.

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<sup>22</sup> See *Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to Them by Global NAPs, Inc.*, Initial Decision, Docket No. 21905-U, p. 7 (Apr. 8, 2008) ("*Independent Companies Expedited Ruling*").

<sup>23</sup> See generally *id.*

<sup>24</sup> See *id.* at p. 12.

<sup>25</sup> See *id.*



749                   UBET wants to ensure that remedies are built into the agreement so that  
750                   disputes can be resolved in a timely manner and UBET will not have to endure  
751                   years of providing service without payment or relief.

752

753   **Q:    ISN'T BRESNAN'S COMMITMENT TO NOT PROVIDE VNXX AND**  
754   **OTHER PRACTICES SUFFICIENT?**

755   A:    Bresnan claims that it does not provide VNXX, target dial-up ISPs, does not  
756   traffic pump, or disguise ANI or CPN.<sup>26</sup> If Bresnan does not implement any of  
757   these practices the remedies in the agreement will never be invoked and there will  
758   be no harm to either party. However, if the remedies are not included these or  
759   other practices are implemented; UBET would not have any recourse under the  
760   agreement. If all carriers voluntarily complied with the rules there would be no  
761   need for enforcement provisions of tariffs, or agreements. However, the reality is  
762   that some carriers do not comply. Agreements must anticipate these situations,  
763   and ensure there are remedies that promote compliance.

764   **Q:    WHAT DOES UBET RECOMMEND CONCERNING REMEDIES?**

765   A:    UBET recommends that the Commission approve the traffic arbitration remedies  
766   and termination remedies proposed in the UBET agreement.

767

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<sup>26</sup> Harris direct at 12 252:256

768

**ISSUE 7**

769

**ANCILLARY SERVICES**

770 **Q: HOW WILL ANCILLARY SERVICES BE HANDLED?**

771 A: UBET includes statements in the agreement that Bresnan make its own  
772 arrangements for 911, directories, and operator services. When a number is  
773 ported from UBET, Bresnan would be fully responsible for these functions as  
774 soon as the port is completed.

775 **Q: DOES BRESNAN NEED TO INTERCONNECT WITH UBET TO OFFER**  
776 **911 SERVICES?**

777 A: Contrary to Mr. Harris' testimony,<sup>27</sup> UBET does not provide 911 services nor  
778 does Bresnan need any UBET facilities to obtain 911 for its customers in Vernal.  
779 Qwest and Intrado are the State approved 911 providers. 911 calls would  
780 typically be routed from Bresnan to the Qwest 911 tandem. The Qwest tandem  
781 would route the call to the Vernal PSAP over trunks purchased by Qwest. The  
782 Qwest 911 tandem also retrieves the address location from the Intrado database.  
783 UBET is not involved in this process.

784 **Q: DOES BRESNAN MAKE ANY OTHER STATEMENTS REGARDING**  
785 **ANCILLARY SERVICES?**

---

<sup>27</sup> Id at 8 171;172 'Article IV, Section 4 provides for the interconnection provision necessary to ensure seamless routing of 911 calls.'

786 A: No. Other than including 911 in a trunk forecast, 911, directory, and operator  
787 services are not mentioned in their proposed agreement or in testimony.

788 **Q: WHAT IS YOUR RECOMMENDATION?**

789 A: The commission should approve the UBET wording for ancillary services.

790 **ISSUE 8**

791 **EXCLUDED TOPICS**

792 **Q: ARE THERE ANY OTHER ISSUES YOU WANT TO ADDRESS?**

793 A: Bresnan included a few topics that UBET does not feel are appropriate for an  
794 essential facilities agreement. They are Intercept messaging, the definition of  
795 business day, and forecasting details.<sup>28</sup>

796 **Q: WHY SHOULD THESE TOPICS BE EXCLUDED FROM THE**  
797 **AGREEMENT?**

798 A: Intercept messaging is an end user service. End users will continue to receive the  
799 intercept message that is associated with the Basic Exchange service. Bresnan is  
800 not involved with this process. The definition of business day excludes holidays.  
801 UBET holidays vary. It is more appropriate to include the business day and hours  
802 in the company's procedures so they can be modified easily. Lastly, although

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<sup>28</sup> Bresnan agreement Article IV sections 10 intercept, section 4.4 forecasting and Appendix B definitions 1.6

803           UBET agrees that forecasts will be completed the detail of the forecasting process  
804           can be left to the company practices.

805   **Q:    WHAT DO YOUR RECOMMEND?**

806   A:    I recommend that the commission not require these sections to be included in the  
807           final agreement.

808   **Q:    DOES THIS CONCLUDE YOUR TESTIMONY?**

809   A:    Yes.

810