

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petitions of Bresnan)
Broadband of Utah, LLC to Resolve Dispute) DOCKET NO. 08-2476-02
Over Interconnection of Essential Facilities and) DPU Exhibit 1.0
for Arbitration to Resolve Issues Relating to an)
Interconnection Agreement with UBTA-UBET) Direct Testimony of
Communications, Inc.) Casey J. Coleman
)

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE

January 12, 2009

CONTENTS

I. IDENTIFICATION OF WITNESS	1
II. SUMMARY	1
III. UNIQUE NATURE OF THIS INTERCONNECTION ARBITRATION	2
IV. GENERAL OBSERVATIONS	6
V. INTERCONNECTION ISSUES.....	7
A. SCOPE OF TRAFFIC COVERED BY THE AGREEMENT.....	7
B. DIRECT CONNECT VS. INDIRECT CONNECT.....	8
C. LOCATION OF THE POINT OF INTERCONNECTION.....	10
D. JURISDICTION OF TRAFFIC.....	11
E. COMPENSATION.....	11
F. RECOGINITION OF ANCILLARY SERVICES.....	12
G. EXCLUSION OF CERTAIN TERMS.....	13
VI. CONCLUSION.....	13

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I. IDENTIFICATION OF WITNESS

2 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.**

3 A. My name is Casey J. Coleman. I am employed by the Division of Public Utilities for the
4 State of Utah. My business address is 160 East 300 South Salt Lake City, UT 84114.

5 **Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.**

6 A. Before working for the Division of Public Utilities for the State of Utah, I was employed
7 by a telecommunications consulting firm as a Financial Analyst. For approximately three
8 years I worked for the Division of Public Utilities as a Utility Analyst. For the past few
9 years I have worked as a Technical Consultant for the Division of Public Utilities.

10 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

11 A. I received a Bachelor of Science degree from Weber State University in 1996 and a
12 Masters of Business Administration from Utah State University in 2001.

13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC SERVICE
14 COMMISSION?**

15 A. Yes. I testified before the Commission as an expert witness in Docket Nos. 01-2383-01,
16 02-2266-02, 02-049-82, 03-049-49, 03-049-50, 05-053-01, 05-2302-01 and most recently
17 in the Bresnan CPCN application 07-2476-01.

18

II. SUMMARY

19 **Q. PLEASE SUMMARIZE AND DESCRIBE THE PURPOSE OF YOUR**
20 **TESTIMONY.**

21 A. Bresnan Broadband of Utah, LLC (“Bresnan”) filed an application for a Certificate of
22 Public Convenience and Necessity (CPCN) on February 5, 2007 with the Utah Public
23 Service Commission (the “Commission”) requesting a single CPCN to serve all of the
24 Qwest exchanges and the local exchange area in Vernal, Utah.

25 On November 16, 2007 the Commission issued an order granting the request of Bresnan
26 for a CPCN authorizing Applicant to provide public telecommunications services within
27 the Vernal exchange in and around Vernal, Utah.

28 As a result of being granted a CPCN, Bresnan sought an interconnection agreement with
29 the incumbent local exchange carrier (“ILEC”) UBTA-UBET Communications, Inc.
30 (“UBTA-UBET”). Currently in this Docket, the Commission is being asked to arbitrate
31 the interconnection agreement between Bresnan and UBTA-UBET.

32 My testimony will outline some general observations the Division has regarding prior
33 interconnection agreements that the Commission has acknowledged between ILECs and
34 competitive local exchange carriers (CLECs) in the state of Utah. Additionally, in
35 testimony filed by Ms. Wimer, UBTA-UBET discusses some issues with the proposed
36 interconnection agreement by Bresnan. My testimony will discuss some of these issues
37 and the Division’s position regarding the issues.

38 **III. UNIQUE NATURE OF THIS INTERCONNECTION ARBITRATION**

39 **Q. DOES THE DIVISION BELIEVE THIS INTERCONNECTION ARBITRATION IS**
40 **UNIQUE?**

41 A. Yes. Because this interconnection is relying solely on Utah Law instead of following the
42 federal laws and regulations, this makes the arbitration proceeding unique and different
43 from all of the other interconnection agreements acknowledged or arbitrated by the
44 Commission.

45 **Q. WHY DOES THIS CASE RELY ONLY ON UTAH LAW?**

46 A. Because, originally Bresnan sought interconnection under federal law and UBTa-UBET
47 does not believe they have a right to interconnect under federal law, Bresnan resubmitted
48 the petition in this docket seeking interconnection under state law.

49 **Q. DO YOU BELIEVE THE FFEDERAL LAW AND REGULATIONS DEALING
50 WITH INTERCONNECTION AGREEMENTS CAN BE USEFUL IN THIS
51 PROCEEDING?**

52 A. Yes. Even though the Division recognizes that this proceeding is being decided under Utah
53 Law, a reading of Utah Admin. Code § R746-348 references different sections of the
54 federal rules and regulations. Additionally, every interconnection agreement previous to
55 the Bresnan / UBTa-UBET interconnection has been submitted and acknowledged by the
56 Commission following the federal guidelines.

57 **Q. IF THIS ARBITRATION AGREEMENT IS BEING DECIDED USING UTAH
58 LAW, HOW CAN THE FEDERAL REGULATIONS BE USEFUL IN THIS
59 PROCEEDING?**

60 A. Because the Commission has approved numerous other interconnection agreements within
61 the State of Utah using the federal guidelines, it is difficult to envision how previously

62 established rulings of the Commission would not be used in this proceeding. In fact the
63 opposite is probably true. Generally, a company submits an interconnection agreement
64 according to the federal rules and regulations. Implied in the application to the
65 Commission is the fact that those interconnection agreements are also following Utah law.
66 If an interconnection agreement was inconsistent with Utah law, then those inconsistencies
67 would have been dealt with at the time of the filing or arbitration of the interconnection
68 agreement. Therefore, the Division believes that, looking at the federal regulations provides
69 procedural insight to how interconnection agreements were contemplated to be arbitrated
70 on the federal level, and absent any specific orders or rules by the Commission, those
71 federal regulations could be used as a reference to guide all parties in this proceeding.

72 **Q. ARE YOU SUGGESTING THAT CERTAIN FEDERAL REGULATIONS SHOULD
73 BE WAIVED, SUCH AS THE RURAL EXEMPTION?**

74 A. No. Because this interconnection agreement will be decided following Utah law, the
75 Division is not arguing that any specific federal protections or provisions would be
76 removed, eliminated, or waived. Instead, if Utah law does not specifically state how to
77 proceed, then the general parameters of federal law could be considered.

78 **Q. CAN YOU GIVE US AN EXAMPLE OF WHAT YOU ARE SUGGESTING?**

79 A. Yes. 47 USC Section 251, which is referenced in Utah Admin. Code § R746-348-3 Terms
80 and Conditions of Facilities Interconnection, discusses general duties that each local
81 exchange carrier is obligated to offer. One of those requirements is the following: To
82 interconnect directly or indirectly with the facilities and equipment of other
83 telecommunications carriers. Even though the Commission rules do not specifically state
84 that an ILEC would need to offer interconnection via direct or indirect connection, the

85 Division believes that the Commission has followed this principle in hundreds of other
86 interconnection agreements filed in the State.

87 **Q. IS THE EXAMPLE MENTIONED ABOVE THE ONLY INSTANCE WHEN**
88 **REFERRING BACK TO FEDERAL LAWS AND REGULATIONS MIGHT BE**
89 **BENEFICIAL?**

90 A. No. Later in my testimony other instances will be given to show where federal regulations
91 can be used as a guide to what might be an acceptable approach. Again the Division is not
92 suggesting that Federal law applies here, but that federal law can be used as a reference
93 regarding what has been generally accepted with other interconnection agreements in the
94 State of Utah.

95 **Q. ARE THERE OTHER INSTANCES WHERE THIS ARBITRATION WOULD BE**
96 **CONSIDERED UNIQUE?**

97 A. Yes. In all other arbitration proceedings of which I am aware, both parties are dealing with
98 one interconnection agreement where issues that are still in dispute have been submitted to
99 the Commission for arbitration. I do not recall ever having two different interconnection
100 agreements that the Commission is working from.

101 Additionally, once a petition is filed for arbitration, parties usually have had some
102 settlement negotiations to establish the general terms, conditions, and framework for the
103 interconnection agreement. With this proceeding we have two parties that have not had
104 any settlement discussions as of January 12, 2009, although the Division is aware that both
105 parties will be meeting January 13, 2009 to discuss the interconnection agreement.

106 The settlement conference taking place after the filing of testimony from the Division
107 presents an additional wrinkle in this proceeding. The Division wishes to avoid prejudicing

108 this conference. Therefore the Division will give broad testimony dealing with
109 interconnection agreements and past decisions with the Commission but allowing the
110 parties the ability to negotiate what specific terms they feel are best for their respective
111 companies.

112 Finally, this interconnection agreement is unique because it is the first time that a CLEC
113 has been allowed access into an exchange that is above 5000 access lines but not part of
114 Qwest's territory. This distinction means that decisions in this interconnection agreement
115 will affect Bresnan, UBTA-UBET, and the Utah Universal Service Fund ("USF").

116 **IV. GENERAL OBSERVATIONS**

117 **Q. IN REVIEWING THE INTERCONNECTION AGREEMENTS SUBMITTED BY**
118 **THE PARTIES, WHAT DID YOU OBSERVE?**

119 A. The first observation was how difficult it would be for parties, the Division, or even the
120 Commission, to be able to blend aspects of one interconnection agreement with another.
121 Even though both parties are attempting to develop an interconnection agreement, the
122 concerns, criteria, and terms are so different that "picking or choosing" the best wording or
123 practice from one interconnection agreement would create a document full of potential
124 flaws.

125 **Q. DO YOU BELIEVE THAT HAVING TWO SEPARATE INTERCONNECTION**
126 **AGREEMENTS SUBMITTED TO THE COMMISSION IS THE MOST**
127 **PRACTICAL WAY TO ARBITRATE AN INTERCONNECTION AGREEMENT?**

128 A. No. In fact the opposite is true. Having one interconnection agreement that both parties
129 have largely agreed upon and with specific issues submitted to the Commission is how
130 each arbitration agreement has been resolved to date. Additionally, 47 USC Section 251

131 implies one interconnection agreement with issues that could not be resolved by both
132 parties submitted to the state Commission for arbitration. The Division is skeptical that
133 requiring the Commission to choose one party's interconnection agreement over another
134 party's interconnection agreement will result in a workable standard that can be applied to
135 other interconnection agreements in rural Utah exchanges. The Division strongly suggests
136 that both parties work toward one interconnection agreement that is generally acceptable to
137 all parties instead of the current posture of "mine instead of theirs".

138 **V. INTERCONNECTION ISSUES**

139 **SCOPE OF TRAFFIC**

140 **Q. DOES THE DIVISION BELIEVE THERE IS AN ISSUE ON THE SCOPE OF
141 TRAFFIC?**

142 A. No. When the Division reads the testimony and definitions suggested by both parties it
143 appears they are essentially saying the same thing. According to Ms. Wimer on line 209 of
144 her direct testimony she states: "[t]he UBET agreement limits the scope of the agreement to
145 Local and EAS traffic".

146 In Bresnan's proposed interconnection agreement they define Local Traffic as:

147 Local Traffic is traffic (excluding CMRS traffic) that is originated and terminated
148 between end users within the Local Calling Area, or mandatory Extended Area
149 Service (EAS) area, as defined in RLEC's local exchange tariffs. Local Traffic
150 does not include optional local calling (i.e., optional rate packages that permit the
151 end-user to choose a Local Calling Area beyond the basic exchange serving area
152 for an additional fee), referred to hereafter as "optional EAS". Local Traffic
153 includes Information Access Traffic to the extent the calling party and the called
154 party are physically located in the same RLEC Local Calling Area.

155 Additionally, Bresnan's interconnection agreement discusses methods to capture local calls
156 that might be co-mingled with non-local traffic using either a Percent Local Usage or

157 Percent Interstate Usage factor when the traffic is mixed. From our perspective the parties
158 are saying essentially the same thing that local traffic should be traffic originated and
159 terminated within the Vernal exchange and Extended Service Areas and toll traffic should
160 be classified and treated separately.

161 **DIRECT CONNECT VS INDIRECT CONNECT**

162 **Q. WHAT DOES THE DIVISION UNDERSTAND THE POSITION OF THE PARTIES**
163 **TO BE REGARDING DIRECT AND INDIRECT CONNECTION?**

164 A. The Division believes there is a difference between the parties on direct interconnection
165 versus indirect interconnection. In Bresnan's interconnection agreement they propose the
166 option of using indirect connection initially and transitioning to direct connection when
167 traffic volumes warrant. UBT-AUBET is proposing only the option of directly
168 interconnecting at Bresnan's head end office.

169 **Q. WHAT IS THE DIVISION'S POSITION ON DIRECT CONNECT VERSUS**
170 **INDIRECT INTERCONNECTION?**

171 A. The Division believes that either direct connection or indirect connection should be
172 allowed in an interconnection agreement. Utah Admin. Code § R746-348-3(A) provides
173 the requirement that the:

174 Incumbent local exchange carriers shall allow any other public
175 telecommunication service provider to interconnect its network at any **technically**
176 **feasible point**, to provide transmission and routing of public telecommunication
177 services [emphasis added].

178 In addition to Utah Law, looking at the federal regulations can also provide some guidance
179 in this matter. 47 USC Section 251 states a general duty of telecommunications carriers:
180 "to interconnect directly or indirectly with the facilities and equipment of other

181 telecommunications carriers". The federal laws allow for parties to determine if direct,
182 indirect or both would be included in an interconnection agreement.

183 Finally, in Docket No. 06-053-01 the Commission approved an interconnection agreement
184 between UBTA-UBET and Union Telephone Company. As illustrated below, as part of
185 the agreement the parties allowed for either indirect interconnection until the traffic
186 supported transitioning to a direct connect arrangement.

187 2.1.16 "Interconnection" means the physical connection, either direct or indirect,
188 of two networks for the transmission and routing of telecommunication traffic.

189 3.4 Network Interconnection.

190 3.4.1 Indirect Network Interconnection. Either party's traffic may be transited
191 through one or more intermediaries for interconnection with the other Party's
192 system. Indirect Local Traffic will be subject to Reciprocal Compensation
193 described in Section 3.2.1.

194 3.4.2 Direct Network Interconnection. In the event traffic volumes exceed a DS-
195 1 level (512 centum call seconds or CCS) when measured at the busy hour at least
196 fifteen (15) times per month over a three (3) month period, the Parties will jointly
197 work to establish one or more direct interconnection (s) pursuant to this Section.

198 Generally, it appears that the Commission has allowed parties to determine what method of
199 interconnection was "technically feasible" and to implement interconnection according to
200 those terms. The Division agrees with this approach with an additional level of expectation
201 in regard to the interconnection. That additional criterion or requirement would be
202 "economically feasible". The Division feels that the current rule does not include a
203 requirement that a point of interconnection makes sense economically for the type of
204 interconnection. If Bresnan and UBTA-UBET can interconnect directly or indirectly with
205 minimal costs to each party, then that could be a feasible outcome. Instead, if a direct or
206 indirect interconnection was "technically feasible" but required additional investments that
207 could be avoided by an alternative interconnection method, then the Division would
208 recommend using the method that is "technically feasible" and economically prudent.

210 LOCATION OF THE POINT OF INTERCONNECTION (POI)

211 Q. CAN YOU SUMMARIZE YOUR UNDERSTANDING OF THE POSITIONS
212 DEALING WITH A POI?

213 A. Yes. Mr. Meredith's direct testimony lines 101 – 136 discusses UBTA-UBET's position
214 that a POI must be within the Vernal Local exchange. Bresnan, according to the proposed
215 interconnection agreement would like to establish a POI in the Provo exchange.

216 Q. ARE THERE ANY STATE RULES DISCUSSING A POI?

217 A. Yes. Utah Admin. Code § R746-348-3(B)1. That rule states:

218 The incumbent local exchange carrier and the requesting local exchange service
219 provider shall negotiate meet points for interconnection. Each party shall be
220 responsible for the costs of constructing its facilities to the meet point, and neither
221 party may impose a meet point that would require that one party incur
222 significantly greater construction costs to build to the meet point than the other
223 party.

The rule basically states that a POI must be negotiated. No specific mention is made as to whether that POI must be within the local exchange. Again the Division believes that parties should be able to negotiate a POI that is “technically feasible” for both parties. As discussed previously the Division would also recommend looking at the economic cost of the POI. The rule is specific in that each party should be responsible for the costs of constructing its facilities to the meet point, and that the burden should not be greater for one party over another. If both Bresnan and UBTB-UBET have trunks and the other technology needed to have a meet point be in the Provo exchange, or any other switch or tandem, and this meet point is economically efficient for both parties, then the Division would recommend using that “technically feasible and economically viable” option. Conversely, if the most cost-efficient method of interconnection is to remain within the Vernal exchange, then the interconnection agreement should use Vernal as the POI.

236 **JURISDICTION OF TRAFFIC**

237 **Q. WHAT IS THE DIVISIONS POSITION ON THE JURISDICTION OF TRAFFIC?**

238 A. The Division agrees with the testimony of Ms. Wimer that the use of traffic factors is not
239 very accurate. The Division believes that whenever possible, the actual costs of using one
240 carrier's network should be paid by the other interconnecting carrier. The most accurate
241 method to determine that the fair cost is borne by either party is to measure the actual local
242 and toll traffic. The Division would support using traffic factors only in an instance where
243 a company does not have the capability to record calls accurately.

244 The Division does not believe that it is necessary to differentiate the calls in any greater
245 detail than "local calls" and "toll" calls. In lines 389 to 404 of Ms. Wimer's testimony she
246 describes the potential traffic types as traditional voice, IP-enabled Voice traffic, Mobile
247 telecommunications traffic, and Information services of ISP-Bound calls. It appears that
248 Ms. Wimer also recognizes that in Utah law there is nothing to differentiate the call traffic
249 depending on the technology used. Utah law considers all the above traffic types as calls
250 that would be Public Telecommunications Services.

251 The Division believes routing of "local" calls and "toll" calls should be adequate to ensure
252 that fair and reasonable compensation is paid for the use of another company's network.

253 **COMPENSATION**

254 **Q. WHAT GENERAL GUIDELINES DOES THE DIVISION HAVE REGARDING
255 COMPENSATION?**

256 A. There seem to be two major areas of concern with compensation. Paying for the Extended
257 Area Service ("EAS") network and a "bill and keep" versus a "minutes of use" method.

258 First the Division believes that either company should be compensated when a competitor
259 is using the competitor's network to complete a call. UBTA-UBET proposed using a flat
260 rate of \$2.73 plus additional charges of \$.012 per minute for use of the EAS network.
261 Although the Division recognizes that the parties can negotiate any arrangement that is
262 acceptable to both, the Division recommends that either a flat rate or some charge for the
263 minutes used on the network should be adopted but the Commission should not allow both
264 a flat rate per subscriber **and** a usage rate per call.

265 In researching this topic, the Division reviewed numerous interconnection agreements filed
266 in the state of Utah, as well as, talked to industry representatives who are familiar with
267 interconnection agreements. Assessing a flat charge per subscriber would be abnormal for
268 any interconnection agreement. Additionally, representatives from Qwest generally
269 indicated that they were not aware of any interconnection agreements that included a
270 charge per subscriber for use of the EAS network.

271 Finally, the Division would recommend that the Commission mirror the same rate of \$.012
272 per minute that was developed by the Division and approved by the Commission in the
273 interconnection agreement between Western Wireless and UBTA-UBET Docket No. 03-
274 2403-02.

275 **RECOGNITION OF ANCILLARY SERVICES**

276 **Q. DOES THERE SEEM TO BE A DISPUTE REGARDING ANCILLARY**
277 **SERVICES?**

278 A. No. It would seem that there was a general misunderstanding of what the parties meant in
279 their testimonies. It appears that both parties recognize that, as part of an interconnection
280 agreement ancillary services need to be made available and that each party will provide the

281 necessary resources for those ancillary services. The only additional item the Division
282 would recommend is that both parties offer the same terms and conditions for these
283 ancillary services that they would provide for their own companies or affiliates.

284 **EXCLUSION OF CERTAIN TERMS**

285 Q. UBT-A-UBET PROPOSES EXCLUDING CERTAIN TERMS THAT WERE
286 INCLUDED IN THE INTERCONNECTION AGREEMENT PROPOSED BY
287 BRESNAN. SHOULD THE COMMISSION EXCLUDE THOSE ITEMS?

288 A. Generally, the Division recommends letting the parties determine what items are included
289 or excluded. Each company will understand what is important to the operation of their
290 business in greater clarity than the Division or the Commission. When there is a dispute
291 among the parties of what should be included or excluded, the Division believes the
292 Commission should include those items requested. To disallow a term to an
293 interconnection agreement simply because one party does not feel it applies seems heavy
294 handed. At minimum the burden of proof of “excluding” the items should fall to the party
295 requesting that those topics be excluded.

296 VIII. CONCLUSION

297 Q. WHAT ARE THE DIVISION'S RECOMMENDATIONS AT THIS TIME?

298 A. The Division recommends that Bresnan and UBTB-UBET should have one substantially
299 agreed-upon interconnection agreement to submit to the Commission with the parties
300 demonstrating the issues that remain unresolved. Additionally, the Commission should
301 adopt the policy of looking at the terms and conditions of an interconnection agreement on
302 a “technically and economically feasible” standard.

303 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

304 A. Yes it does.