

MICHAEL L. GINSBERG (#4516)
PATRICIA E. SCHMID (#4908)
Assistant Attorneys General
Counsel for the DIVISION OF PUBLIC UTILITIES
MARK L. SHURTLEFF (#4666)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition 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.	Reply Memorandum of the Division of Public Utilities Docket No. 08-2476-02
--	--

The following is a response by the Division of Public Utilities (Division or DPU) to the Initial Briefs of Bresnan, UBTA-UBET and URТА.

1. Use of the 1996 Federal Telecommunications Act and associated rules- Both URТА (URТА Initial Brief p. 3) and UBTA-UBET (UBTA-UBET Brief p. 20.) are critical of the Division’s use of the federal act to guide the Commission in these proceedings. They argue that it is unfair and arbitrary to use certain federal rules and not use others, such as conducting a rural exemption under the federal law. The arguments presented misconstrue the Division suggestion that the Commission make use of the federal law and its rules only for guidelines where state law is silent. The Division’s testimony was that numerous interconnection agreements have been entered into in this state and that these can provide the Commission with insight on how some of the issues in this proceeding have been

decided. When state rules do not clearly determine how a decision is to be made, the Division's suggestion was that the federal rules and interconnection agreements entered into under those rules could provide general parameters on how to decide an issue.¹ Looking at the federal guidelines does not mean the Commission is obligated to follow those federal guidelines. Instead when state rules are silent or unclear, use of the federal rules provides options to the Commission.

2. Direct-Indirect Interconnection - After reviewing the Briefs of UBTA-UBET and Bresnan, the DPU does not believe the Utah statutes and rules prohibit the use of indirect interconnections through a tandem. The Utah rules do not require that the interconnection take place within the local calling area of the ILEC or even within the certificated service territory of the ILEC. However, the rules do seem to require that interconnection must take place where the ILEC has facilities. A CLEC cannot require interconnection where the ILEC has no facilities. If this was not true, and the Bresnan switch was located in Utah, Bresnan could request interconnection at a switch where UBTA-UBET has no facilities. In reviewing the record, it appears that UBTA-UBET has no facilities at the Provo tandem. Instead, their facilities end at Whisky Springs. With respect to the UFN tandem it is not clear what rights the ILEC has at that tandem.

The question the Commission should ask is if there is an adequate record to Order an indirect interconnection when the ILEC objects to the arrangement. UBTA-UBET has raised significant economic and practical objections to the Commission ordering an indirect interconnection. In their brief, UBTA-UBET

¹ DPU Ex. 1 p. 4.

outlines the significant effort needed by both parties to develop an indirect interconnection. (UBTA-UBET Brief p. 8-15). Both parties acknowledge that the indirect interconnection will be temporary. How a direct interconnection in Vernal would occur is not in dispute. Therefore, if the Commission finds that the record does not provide sufficient evidence on an indirect interconnection, then it should Order that the two parties directly interconnect in Vernal.

3. Bill and Keep vs. Reciprocal Compensation - The main reason presented by Bresnan to support a Bill and Keep arrangement is that the “process of billing and collecting reciprocal compensation payments can be time consuming and costly...” (Bresnan’s Brief, p. 8). Since they believe the traffic will be roughly in balance, they argue that this burden is not necessary. If the traffic is in balance, other than the burden of measuring and billing, Bresnan will not be harmed by beginning this interconnection agreement with the assumption that each party compensates the other for traffic they terminate on each other’s network. UBTA-UBET should be compensated for terminating the traffic of Bresnan. They believe that the traffic will not be in balance, and pointed out that it could take quite a while to switch from a Bill and Keep arrangement to a reciprocal compensation arrangement. As the DPU indicated in its initial Brief, in the absence of an agreement, we believe the presumption should favor reciprocal compensation initially rather than Bill and Keep. If the traffic is in balance and each party finds the burden of measurement and collection too great, they then can switch to Bill and Keep.
4. Issue 6 Section 36 of the agreement - The Division agrees with Bresnan that this agreement should not attempt to preserve a right to appeal the Commission ruling that may not exist absent the language in Section 36. UBTA-UBET rights to

appeal, and what issues can be appealed, should not be either diminished or enhanced by language in the agreement.

Respectfully submitted this _____ day of April, 2009.

Michael Ginsberg
Patricia Schmid
Attorneys for the Division of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Reply Memorandum of the Division of Public Utilities was sent by electronic mail to the following on April ____, 2009:

Paul Anderson
Pmanderson@utah.gov

William Duncan
WDuncan@utah.gov

James Holtkamp
jholtkamp@hollandhart.com

Jerold Lambert
jlambert@bresnan.com

Stephen Mecham
sfmecham@cnmlaw.com

Thorvald Nelson
TNelson@hollandhart.com

Eric Orton
EORTON@utah.gov

Phil Powlick
PHILIPPOWLICK@utah.gov

Paul Proctor
PPROCTOR@utah.gov

Kira Slawson
KiraM@blackburn-stoll.com

Stan Stoll
StanS@blackburn-stoll.com
