

Stephen F. Mecham (Bar No. 4089)  
Callister Nebeker & McCullough  
10 East South Temple, Suite 900  
Salt Lake City, Utah 84133  
Telephone: 801 530-7300  
Facsimile: 801 364-9127  
Email: [sfmecham@cnmlaw.com](mailto:sfmecham@cnmlaw.com)

BEFORE PUBLIC SERVICE COMMISSION OF UTAH

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.	<b>DOCKET NO. 08-2476-02</b> Reply Brief of the Utah Rural Telecom Association
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**I. INTRODUCTION**

Pursuant to the Public Service Commission’s (“Commission”) scheduling order issued in this matter dated March 11, 2009, the Utah Rural Telecom Association (“URTA”) files this reply. The remaining issues in this proceeding of principal concern to URTA are indirect interconnection and the inappropriate use of federal law to justify the imposition of indirect interconnection when the Commission is acting solely under state law. Accordingly, URTA makes the following:

**II. REPLY**

**A. Reply to UBTA-UBET Communications, Inc. (“UBET”).**

1. There is no support for indirect interconnection in state law or in Commission rules

In its initial brief UBET argues that neither state law nor the Commission’s rules address types of interconnection, but the Commission’s rules imply that only direct interconnection is required. For example, Utah Admin. Code § R746-348-3 C identifies the principal types of

interconnection as DS-3, DS-1, and DS-0, three trunk groups that are normally used to directly interconnect telecommunications carriers.<sup>1</sup> They do not contemplate indirect interconnection through a third party as Bresnan Broadband of Utah, LLC (“Bresnan”) is requesting the Commission impose on UBET. Further, Utah Admin. Code § R746-348-5 also assumes that any interconnection will be direct by requiring that the interconnecting carriers deploy standard equipment in their respective networks so the originating carrier’s equipment will seamlessly interface with the terminating carrier’s interconnection facilities. Each interconnecting carrier is to make available the documentation for their equipment. There is no purpose for this requirement if the interconnection is not a direct, physical interconnection. A third party intermediary to provide indirect interconnection is not even a consideration in these rules. Parties may still voluntarily agree to interconnect indirectly, but the Commission did not mandate indirect interconnection under these rules. URTA supports UBET in these positions and urges the Commission to reject Bresnan’s request to impose indirect interconnection on UBET.

2. If indirect interconnection is required, UBET should bear no additional costs

URTA believes there is no support in state law or Commission rules to mandate indirect interconnection. Nor is there support to require a point of interconnection outside an incumbent carrier’s service territory. If the Commission nevertheless requires UBET to interconnect indirectly outside its service territory, URTA agrees with UBET’s position that UBET must not be required to pay costs it would not otherwise incur if the interconnection between UBET and Bresnan were a direct, physical interconnection. By requiring indirect interconnection, the Commission would only be accommodating Bresnan and as the cost causer, Bresnan should pay

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<sup>1</sup> UBET brief, p. 6.

the additional costs under traditional regulatory principles. While URTA opposes the imposition of indirect interconnection, if the Commission concludes it has the authority to impose indirect interconnection under state law, URTA urges the Commission to hold UBET harmless by requiring it to only pay the costs of direct interconnection.<sup>2</sup>

**B. Reply to Bresnan**

First, Bresnan maintains in its initial brief that indirect interconnection is a well-established means of interconnection in Utah.<sup>3</sup> That statement is of little to no value because every other interconnection agreement approved in the state of Utah has been approved pursuant to federal law which is not applicable to this proceeding. In addition, most of the current agreements in the state have been negotiated, not arbitrated. URTA does not dispute that parties can voluntarily negotiate indirect interconnection arrangements; URTA does not believe, however, that indirect interconnection can be mandated in arbitration under state law and rules and that is what Bresnan is asking the Commission to order.

Second, Bresnan points to an interconnection agreement with a wireless telecommunications provider to which UBET is party where indirect interconnection is available to make the point that indirect interconnection on UBET's network is feasible.<sup>4</sup> Once again, URTA does not dispute that parties can voluntarily enter into agreements that provide for indirect interconnection. Nor does URTA dispute that indirect interconnection is feasible. URTA simply believes that state law and rules do not require telecommunications carriers to provide indirect interconnection, particularly outside of their service territory.

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<sup>2</sup> In its brief Bresnan claims that UBET's costs of direct interconnection would be greater than the costs of indirect interconnection. *See* Bresnan brief p. 6. URTA believes the numbers in the brief require additional scrutiny.

<sup>3</sup> Bresnan brief, p. 3.

<sup>4</sup> *Id.*, p.4.

Finally with respect to Bresnan's brief, Bresnan argues that under the Commission's rules, the carrier requesting interconnection selects the point of interconnection.<sup>5</sup> Utah Admin. Code § 746-348-3 A. 1. actually says that the carrier requesting interconnection "... shall identify a desired point of interconnection." There is a distinction between selecting and identifying. Bresnan claims that UBET's only discretion is in determining if the identified point of interconnection is technically feasible. That is true as far as it goes, but it is clear that costs imposed on the incumbent is also a consideration. Utah Admin. Code § 746-348-3 B. 1 prevents both parties from imposing a meet point that requires one party to incur more construction costs to build the meet point than the other party. Likewise, if the point of interconnection the requesting carrier identifies causes the incumbent carrier to incur more costs than it otherwise would, it is not a foregone conclusion that the incumbent carrier must provide interconnection at the identified site if the requesting carrier refuses pay the additional costs that it causes. The point of interconnection must be economically feasible and fair as well as technically feasible. URTA therefore encourages the Commission to keep UBET whole if the Commission finds that it has the authority to require UBET to provide Bresnan the more costly alternative of indirect interconnection.

**C. Reply to the Division of Public Utilities ("Division")**

The Division's reliance on the federal law in its recommendation to the Commission is inappropriate and unfair.<sup>6</sup> In its November 17, 2008 order issued in this proceeding, the Commission made it amply clear that it would decide this case using its state authority exclusively. If the Commission now uses federal law to decide this case, it will have imposed the burdens of the federal law on UBET without allowing UBET to assert its rural exemption

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<sup>5</sup> *Id.* p. 3.

<sup>6</sup> Division brief, pp. 2, 3.

under the federal law.<sup>7</sup> To do as the Division recommends would be contrary to Commission order.

The Division argues that both direct and indirect interconnection are permitted under state law, but it provides no reference to the state law to support that position.<sup>8</sup> Presumably, that means that the Commission can mandate indirect interconnection in the Division's view. The only reference to indirect interconnection is in federal law and, apart from the fact that the Commission is not using federal law in this case, the reference in federal law to indirect interconnection would not apply to the facts of this case.<sup>9</sup> URTA finds no support for mandatory indirect interconnection in state law and requests that the Commission reject the Division's position on this issue.<sup>10</sup>

Like Bresnan, the Division points to an interconnection agreement with a wireless provider where indirect interconnection is available to support its position on mandatory indirect interconnection.<sup>11</sup> A negotiated agreement between two parties does not support the proposition that state law authorizes the Commission to require indirect interconnection.

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<sup>7</sup> UBET has an exemption under Section 251(f)(1) from having to arbitrate or interconnect with other providers' networks until the Commission finds that interconnection is technically feasible, not economically burdensome, and in the public interest. In the November 17, 2008 order, the Commission determined that it did not have to hold a rural exemption hearing because it was acting solely under state law.

<sup>8</sup> Division brief, p. 3.

<sup>9</sup> See Footnote 5 of URTA's Initial brief in this proceeding that explains direct and indirect interconnection.

<sup>10</sup> URTA agrees with the Division's position that any point of interconnection must be economically feasible.

<sup>11</sup> Division brief, p. 4.

Finally, the Division argues that the point of interconnection need not be in the incumbent's service territory.<sup>12</sup> While the law does not expressly state that a point of interconnection be in an incumbent's service territory, by requiring that carriers serving the same, overlapping, or adjacent areas interconnect, and given that Qwest was the only incumbent immediately affected by the law, it is clear the drafters intended that interconnection occur in the incumbent's territory.<sup>13</sup> Providers serving the same area typically require interconnection in that area, not at some distant point. URTA urges the Commission to require interconnection within UBET's service territory.

### **III. CONCLUSION**

Under Utah law the Commission is empowered to require direct interconnection in arbitration. Parties have the right to negotiate any provisions to which they can agree that are not discriminatory. This includes indirect interconnection which is not available through arbitration in Utah statute. Any point of interconnection should be within the incumbent's service territory to be consistent with the intent of Utah law. To the extent a point of interconnection identified by a requesting carrier imposes costs on the other carrier not required by a more efficient point of interconnection, the requesting carrier should pay those costs in accordance with the regulatory principle that the cost causer pays. URTA requests that the Commission decide this case in accordance with these conclusions. If the Commission determines that it can impose indirect interconnection on UBET through arbitration, URTA requests that Bresnan be required to pay any additional costs that indirect interconnection causes.

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<sup>12</sup> Division brief, p. 4.

<sup>13</sup> Utah Code Annotated § 54-8b-2.2(1)(a)(i). As noted above, the Commission's rules reflect the fact that the law contemplates direct, physical interconnection and it follows that it would occur in the incumbent's service territory.

Respectfully submitted this 9<sup>th</sup> day of April, 2009.

CALLISTER NEBEKER & MCCULLOUGH

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Stephen F. Mecham

Certificate of Service

I hereby certify that on April 9, 2009, I caused a true and correct copy of the foregoing Reply Brief of the Utah Rural Telecom Association to be emailed to the following:

Michael Ginsberg  
Patricia Schmid  
Assistant Attorneys General  
160 East 300 South, Fifth Floor  
Salt Lake City, Utah 84111  
[mginsberg@utah.gov](mailto:mginsberg@utah.gov)  
[pschmid@utah.gov](mailto:pschmid@utah.gov)

Stanley K. Stoll  
Kira M. Slawson  
BLACKBURN & STOLL, LC  
257 East 200 South, Suite 800  
Salt Lake City, Utah 84111  
[sstoll@blackburn-stoll.com](mailto:sstoll@blackburn-stoll.com)  
[kiram@blackburn-stoll.com](mailto:kiram@blackburn-stoll.com)Purchase

Bill Duncan  
Division of Public Utilities  
160 East 300 South, Fourth Floor  
Salt Lake City, Utah 84111  
[wduncan@utah.gov](mailto:wduncan@utah.gov)

Thorvald A. Nelson  
Holland & Hart  
PO Box 8749  
Denver, Colorado 80201-8749  
[TNelson@hollandhart.com](mailto:TNelson@hollandhart.com)

Jerold C. Lambert  
Bresnan Communications  
1 Manhattanville Road  
Purchase, NY 10577  
[jlambert@bresnan.com](mailto:jlambert@bresnan.com)

Paul Proctor  
Assistant Attorney General  
160 East 300 South, Fifth Floor  
Salt Lake City, Utah 84111  
[pproctor@utah.gov](mailto:pproctor@utah.gov)

Eric Orton  
Committee of Consumer Services  
160 East 300 South, Second Floor  
Salt Lake City, Utah 84111  
[eorton@utah.gov](mailto:eorton@utah.gov)

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