

- 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 for Arbitration to Resolve Issues Relating)
to an Interconnection Agreement with) REPORT AND ORDER
UBTA-UBET Communications, Inc.)

ISSUED: October 1, 2009

By The Commission:

This matter is before the Commission on UBTA-UBET Communications, Inc.'s (UBET) Motion for Stay Pending Judicial Review. UBET filed its Motion on September 2, 2009. Bresnan Broadband of Utah, LLC (Bresnan) responded on September 16, 2009. UBET did not file a Reply.

Additionally, Bresnan submitted a Supplemental Status Report on September 16, 2009, where Bresnan informed the Commission that it and UBET had, via Letter of Agreement, clarified their interpretation and application of section 3.1.1 of the Essential Facilities Agreement (Agreement) as modified by the Commission in its August 3, 2009 order on reconsideration. Bresnan included a copy of that Letter in its Supplemental Status Report, as well as a copy of the Agreement.

The Commission has previously dealt with UBET's argument that it lacks jurisdiction to order UBET to interconnect with Bresnan, and UBET does not provide any new basis upon which the Commission should disturb its previous findings.

UBET contends that should the Utah Supreme Court set aside the Commission's order on interconnection dispute, Bresnan's customers will be "cut off immediately" as UBET

would have no obligation to continue to interconnect. However, Bresnan correctly notes that only one of UBET's issues on appeal—that of federal preemption, would result in Bresnan's inability to interconnect if UBET prevailed. The remainder of the issues would only deal with the terms of interconnection, but would not result in terminating Bresnan's right to interconnect. If the Supreme Court were to find Bresnan had no right to interconnect with UBET, Bresnan argues that any harm its customers would face from being "cut-off" would be avoidable. It noted that CLEC's have exited markets on occasion and that there has been an orderly transfer of customers to the ILEC or other providers. Bresnan committed that should it no longer be entitled to interconnect, it would "work with UBET and the Commission not only to notify customers that their service will be discontinued, but also to facilitate the orderly and prompt transfer of customers who desire to be transferred back to UBET" or to terminate their service. *Bresnan Response*, p.9. In fact, the Commission has rules in place, i.e. Utah Admin. Rules 746-350-1 *et seq.*, that govern situations where a telecommunications corporation exits a service area, and details procedures for the exit. The Commission agrees that the potential harm raised by UBET would be avoidable, and would not cause the irreparable harm suggested by UBET.

UBET also raised arguments it has raised previously, namely that the Commission's order requiring UBET to interconnect with Bresnan would require it to "enter into agreements with Qwest associated with interconnecting at the Qwest Provo Tandem . . . and incur[] obligations with Qwest." *UBET Motion*, p.6. The Commission's May 21, 2009 Order, however, noted that the Commission had not been presented with evidence of such alleged costs arising from any agreements or obligations. *See Report and Order Resolving Interconnection*

Dispute, p.15. In fact, the Commission’s order also noted that “regardless of whether Bresnan interconnects, UBTA-UBET will have costs for maintaining the trunk group at the Provo tandem” *Id.* at p.17. Also, the Commission amended its May 21, 2009 Order, and later clarified, in its August 2009 order on reconsideration, to be clear about what obligations its orders in this docket imposed on a third party, like Qwest (*see Agreement* paragraph 3.1.1), and also what UBET's duties were under the Agreement—as the parties themselves later affirmed in the Letter of Agreement.

In that Letter Agreement, the parties indicated that indirect interconnection would only occur if the Qwest tandem switch is “enabled,” meaning that: (a) traffic completes correctly over trunk groups otherwise maintained between the parties and Qwest, (b) the per minute charge for transiting the Qwest switch is the same or less than the standard transiting charge applicable to local traffic, and (c) any lawful one-time charges imposed by Qwest are paid by Bresnan – not UBET.

Bresnan Response, p. 5.

Taking the language of the Agreement, together with the Letter of Agreement, and the evidence already presented to the Commission, the Commission finds a stay should not be granted.

ORDER

For these reasons, the Motion for Stay is denied.

DATED at Salt Lake City, Utah, this 1st day of October, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

DOCKET NO. 08-2476-02

- 4 -

Approved and confirmed this 1st day of October, 2009, as the Report and Order of
the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#63757