

EXHIBIT A

- 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.

DOCKET NO. 08-2476-02

REPORT AND ORDER RESOLVING
INTERCONNECTION DISPUTE

ISSUED: May 21, 2009

By The Commission:

BACKGROUND

This matter is before the Commission on Bresnan Broadband of Utah, LLC's (Bresnan) Petition for resolution of a dispute with UBTA-UBET Communications, Inc. (UBTA-UBET) over interconnection of essential facilities and for resolution of a dispute regarding the interconnection agreement (Agreement).

The Utah Rural Telecom Association (URTA) and the Division of Public Utilities (Division), along with UBTA-UBET, were intervenors in this docket.

On November 16, 2007, after a hearing before Administrative Law Judge Steven A. Goodwill, the Commission issued a Certificate of Public Convenience and Necessity (CPCN) to Bresnan in Docket No. 07-2476-01.

In 2008, Bresnan requested that UBTA-UBET enter into a mutual traffic exchange agreement pursuant to federal law. Because it felt it had no obligations to interconnect with Bresnan, as Bresnan was a provider of VoIP¹ service, UBTA-UBET declined to interconnect. Bresnan requested mediation and the Commission assigned Commission counsel, Sander J. Mooy,

¹ Voice over internet protocol

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as the hearing officer. However, the Commission initially declined to resolve the interconnection dispute because Bresnan's request, as filed with the Commission, solely requested mediation, which authority only arises from federal law. The Commission declined to mediate because it lacked authority to mediate the dispute under state law. In July 2008, Bresnan made a request to "resolve the dispute over interconnection of essential facilities . . . pursuant to Utah Code Ann. § 54-8b-2.2(1)(e)." On September 4, 2008, UBTA-UBET filed its Motion to Intervene and Motion to Dismiss Bresnan's Petition. Bresnan responded to the Motion. (The particulars of the moving and responding papers are contained in the pleadings and in the Commission's November 17, 2008 Report and Order) The Commission denied UBTA-UBET's Motion to Dismiss, ultimately finding that because Bresnan was a certificated provider of telecommunications services, it had the right to have the interconnection dispute resolved by the Commission. The Commission proceeded with the docket to determine whether Bresnan had a right to interconnect, the essential facilities needed for interconnection, and the terms and conditions upon which those essential facilities would be made available.

A hearing was held on January 27, 28, and 29 of 2009. Counsel for Bresnan, Thorvald A. Nelson and Jerold Lambert appeared for Bresnan. Alex Harris testified on behalf of Bresnan. Counsel for UBTA-UBET, Kira Slawson, appeared for UBTA-UBET. Valerie Wimer testified for UBTA-UBET. Stephen Mecham appeared for the URTA. Douglas Meredith testified on behalf of URTA and UBTA-UBET. Michael Ginsberg, Assistant Attorney General, appeared for the Division. Casey Coleman testified for the Division.

At the hearing, the parties agreed to submit their issues matrix February 17, 2009, with initial post-hearing briefs due March 2nd, and post-hearing reply briefs by March 16th. After

additional negotiations, Bresnan and UBTA-UBET agreed to a proposed Agreement, with only six disputed issues related to the language in the Agreement. They submitted those six remaining issues on March 4, 2009, pursuant to a Commission grant of a time extension. Bresnan, UBTA-UBET, the URITA, and the Division all submitted initial post-hearing briefs on March 23, 2009. They submitted reply briefs on April 9, 2009.

UBTA-UBET'S RENEWED MOTION TO DISMISS

At the hearing, UBTA-UBET renewed its previously filed Motion to Dismiss and also renewed it in its post-hearing briefs. UBTA-UBET contended that because Bresnan was a provider of VoIP services, the Commission's issuance of a certificate was not controlling. Rather, the issue was one properly addressed only before the Federal Communications Commission (FCC), and not before a state Commission. The main basis for moving for dismissal was that "federal law preempts the state laws in this matter with respect to timelines, procedures, duties and rights of telecommunications providers." Additionally, UBTA-UBET argued that Bresnan is not entitled to interconnection because "there simply has been no ruling from the FCC in which the FCC has conclusively determined that VoIP services are telecommunications services." *UBTA-UBET Motion to Dismiss*, pp. 6-7.

For the reasons stated in the Commission's November 17, 2008 Report and Order, the Commission denies UBTA-UBET's renewed Motion to Dismiss. Additionally, UBTA-UBET has failed to adequately explain to the Commission how "the federal law preempts the state laws in this matter with respect to timelines, procedures, duties and rights of telecommunications providers." *See id.* UBTA-UBET fails to fully

explain how state law is expressly or impliedly preempted, including, if impliedly preempted, whether such preemption is “occupy the field” or “conflict” preemption.² This would have been especially helpful where, as Bresnan has pointed out, federal law explicitly states that “nothing” in the Telecommunications Act

shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

or from

imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part

47 U.S.C. § 261.

The Commission does not find that state law is preempted by the Telecommunications Act as argued by UBTA-UBET.

Also, Bresnan is a certificated telecommunications corporation. As such, it clearly has the right to petition the Commission for resolution of a “dispute over interconnection of essential facilities.” *Utah Code Ann. §54-8b-2.2(1) (e)*. The Commission has the obligation to resolve that dispute. *See id.* It would be improper for it to dismiss Bresnan’s petition to resolve the dispute especially where Bresnan has expressly requested Commission action under state law. The Motion must be denied.

² Some case law and commentators additionally refer to “frustration of federal purpose” implied preemption.

The parties submitted their matrix with six unresolved issues. Bresnan and UBTA-UBET submitted their preferred language for each disputed section of the Agreement. The Commission addresses the unresolved issues in the order they were presented in the matrix, as follows: 1) direct vs. indirect interconnection; 2) intercarrier compensation: reciprocal vs. "bill and keep"; 3) compensation, if any, for calls terminated in the areas served by UBTA-UBET's extended area service (EAS)³; 4) reciprocal compensation or call termination charge; 5) if EAS compensation is appropriate, the amount of compensation for traffic terminating in the EAS area; 6) general terms and conditions: rights of parties.

ANALYSIS

Direct v. Indirect Interconnection

The Commission must determine whether applicable statutes and Rules require either indirect or direct interconnection. Bresnan has requested indirect interconnection at the Provo tandem, through a third-party (Qwest) with whom both Bresnan and UBTA-UBET are already interconnected, and for which they already incur expenses. The parties, however, dispute whether Bresnan may request interconnection, and whether its request for interconnection at the Provo tandem is permitted.

UBTA-UBET argues that the Utah Code and Commission Rules require direct interconnection unless the parties mutually agree to indirect interconnection. It argues that the Rules dealing with transport facilities, with types of connections, and with

³ EAS is a service feature provided to a customer, in which the customer pays a higher flat rate to obtain wider geographical coverage without paying per-call charges for calls within the wider area. In this case, the EAS would extend from Vernal to the outlying rural areas.

technical requirement of interconnection, use language that is characteristic of direct interconnection not indirect interconnection. UBTA-UBET also argues that the only Rule addressing indirect interconnection and mentioning third-party involvement, does so only in the circumstance where there is mutual agreement of all parties. As UBTA-UBET does not agree to indirect interconnection, and as Qwest or another possible third party have not agreed on the record to indirect interconnection, indirect interconnection cannot be ordered.

In sum, UBTA-UBET contends that while the "Utah Code does not specifically state whether that interconnection must be made by direct or indirect interconnection, review of the Utah Code together with the PSC Rules suggests that direct interconnection within the ILEC's service territory is contemplated, unless the parties agree otherwise." *UBTA-UBET Initial Brief*, p. 7. UBTA-UBET argues that Utah law "requires a direct physical interconnection." *Id.* (emphasis added).

URTA makes similar arguments with regards to indirect interconnection. It stated that when Utah Code Ann. § 54-8b-2.2 and R746-348-3 were enacted and promulgated, Qwest was the only ILEC to which the law applied⁴. No one contemplated that Qwest would have to interconnect outside of its territory. It also argued that indirect interconnection could only be recommended by looking at federal law, and not state law, as state law made no reference to it. It argued as well that neither state law nor Commission Rules explicitly compel an ILEC to indirectly interconnect outside of its network.

⁴ Incumbent local exchange carrier

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The Division contends that state law and Commission rules permit either direct or indirect interconnection. It also argues that indirect interconnections through a tandem are not prohibited, and that interconnection need not take place within the local calling area or even within the certificated service territory of the ILEC. The Division did state that the Rules require that interconnection must take place where the ILEC has facilities, which would not be at the Provo tandem.

Utah law states that "interconnecting telecommunications corporations shall permit the mutual exchange of traffic between their networks without unreasonable blocking or other unreasonable restrictions on the flow of traffic." *U.C.A. 54-8b-2.2(1)(a)(ii)*. Pursuant to section 54-8b-2.2(1)(a)(i) of the Utah Code, the Commission "may require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping service territory." "Essential facilities" as defined in Utah Code section 54-8b-2(5)

means any portion, component, or function of the network or service offered by a provider of local exchange services: (a) that is necessary for a competitor to provide a public telecommunications service; (b) that cannot be reasonably duplicated; and (c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.

With regards to this interconnection, Utah Admin Code R746-348-3 states that an

incumbent local exchange carriers shall allow any other public telecommunication service provider to interconnect its network *at any technically feasible point*, to provide transmission and routing of public telecommunication services. A local exchange service provider requesting interconnection with an incumbent local exchange carrier shall identify a desired point of interconnection. (emphasis added)

UBTA-UBET is correct in stating that neither the Rules nor the statutes explicitly state whether interconnection must be made by direct or indirect interconnection. UBTA-UBET and URTA attempt to “interpret” the statutes and Rules applicable to interconnection to show that interconnection may only be made directly, when an interconnection dispute arises. Initially, when interpreting a statute like 54-8b-2.2, or Commission Rules, the Commission must “look first to [their] plain language to determine [their] meaning.” *Utah State Tax Comm’n v. Stevenson*, 2006 UT 84, ¶ 32; *see also Burns v. Boyden*, 2006 UT 14, ¶ 19 (stating that “we interpret court rules, like statutes and administrative rules, according to their plain language”). However, “only when [] a statute [or rule] is ambiguous do we look to other interpretive tools.” *Id.* Bresnan is a certificated telecommunications corporation and has the right to request interconnection. In this instance, the language of the statute is clear. It states simply that Bresnan—not UBTA-UBET, may identify a “desired point of interconnection” with UBTA-UBET’s essential facilities “at any technically feasible point”—including at the Provo tandem. Therefore, the question is twofold: if UBTA-UBET has essential facilities at the Provo tandem and if indirect interconnection is technically feasible. There is no dispute that UBTA-UBET has essential facilities at the Provo tandem. It already has a portion, component, or function of its network (a trunk) that it uses to provide public telecommunications service, specifically, to carry toll-traffic at the Provo tandem. That cannot be reasonably duplicated by Bresnan and there is no other “adequate economic alternative to the competitor *in terms of* quality, quantity, and price.” Otherwise, Bresnan would have to directly connect, which process would, at least in terms of price, be significantly more expensive than indirect

interconnection, as detailed below. UBTA-UBET has the essential facilities at the Provo tandem.

In this matter, it is technically feasible for UBTA-UBET to interconnect with Bresnan at the Provo tandem. First, UBTA-UBET and URTA's own witness, Mr. Meredith admitted on cross-examination that the indirect interconnection requested by Bresnan was technically feasible. *See Transcript*, p. 9, ll. 7-25, p 210-218. Additionally, as evidenced by the Union Telephone Company and UBTA-UBET interconnection agreement submitted by the Division as Exhibit DPU 2, UBTA-UBET already provides for indirect interconnection with a wireless company. *See DPU Exhibit 2*, § 3.4.1 (stating: "Indirect Network Interconnection: Either party's traffic may be transited through one or more intermediaries for interconnection with the other Party's system."). UBTA-UBET would not have allowed the indirect interconnection with Union had it not been technically feasible. It is technically feasible for UBTA-UBET to interconnect with Bresnan at the Provo tandem.

UBTA-UBET and URTA both contend that statutory language requiring UBTA-UBET "to interconnect its essential facilities with another telecommunications corporation that *provides public telecommunications services in the same, adjacent, or overlapping service territory*," *U.C.A.* 54-8b-2.2(1)(a)(i), when interpreted with other related statutes and Rules, mean that Bresnan must request interconnection "within [UBTA-UBET's] service territory", i.e. "within the Vernal exchange." *UBTA-UBET Initial Brief*, p. 7. In fact, Mr. Meredith when examined as to that portion of 54-8b-2.2(1)(a) (i), opined that the statute requires interconnection to "happen *within* the same,

adjacent, or overlapping service territory.” *Transcript*, p. 207, ll. 15-21. The Commission agrees with Bresnan, however, that the plain language of the statute refers to “who has to interconnect, not how that interconnection is to be accomplished. *Bresnan Reply Brief*, p.5. Under the rule of construction known as the “‘last antecedent’ rule, [UBTA-UBET’s] formulation is the least plausible. ‘Qualifying words and phrases are generally regarded as applying to the immediately preceding words, rather than to more remote ones.’” *Day v. Meek*, 1999 UT 28, ¶ 10 (quoting *Salt Lake City v. Salt Lake County*, 568 P.2d 738, 740(Utah 1977)). Therefore, the phrase “telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping service territory” describes the entities which provide services “in the same, adjacent, or overlapping service territory,” but does not mandate the location in which those entities must indirectly interconnect.

The Division contended that the interconnection must take place at a location “where the ILEC has facilities. A CLEC⁵ cannot require interconnection where the ILEC has no facilities.” The Division, however, provides no support for its contention that “a CLEC cannot require interconnection where the ILEC has no facilities.” In fact, its own expert, Mr. Coleman, stated: “[i]f both Bresnan and UBTA-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 [] option.” *DPU Exhibit 1, Direct Testimony of Casey Coleman*, at p. 11, ll.230 to 233.

⁵ Competitive local exchange carrier

UBTA-UBET raises other arguments which it contends argue against indirect interconnection. First, UBTA-UBET and URTA both argued that it would not be technically feasible for UBTA-UBET to indirectly interconnect because it lacked the capacity on existing trunk groups between UBTA-UBET and the Qwest tandem switch to which UBTA-UBET's end office switch currently subtends. In response to Bresnan's contentions that the trunk group on the Provo tandem had sufficient capacity to interconnect, Mr. Meredith and Ms. Wimer both testified that the trunk group was at or near capacity and that Bresnan would not be able to use the trunk for local traffic. *See Transcript*, p. 352, ll. 20-25, p. 353, ll. 1-4. In Exhibit UU-2, UBTA-UBET stated that the Provo tandem's full capacity was 4,250,000 minutes of use (MOU), and that its total MOU was at about 4,124,953, or 97.06% utilization. Ms. Wimer contended that "essentially they're fully utilized." Therefore, it was not technically feasible to indirectly interconnect.

Mr. Harris, however, pointed out that ultimately, even assuming the MOU's in UU-2 as correct, UBTA-UBET will have the capacity to carry Bresnan's traffic. Under one scenario, by Ms. Wimer's admission, UBTA-UBET will already have to increase its capacity of the trunk group. Referring to Exhibit UU-2, she stated that "the Qwest trunk group to the Provo tandem is at 97.06 percent utilization. . . .[U]sually you augment the trunk group . . . somewhere between 85 and 93 percent utilization. Q. [Kira Slawson] And so they need to augment the trunk group there? A. It seems like it should be augmented." *Transcript*, p. 352, ll.7-15. Mr. Harris responded that "they're very likely . . . based on her testimony, going to be augmenting this trunk group very soon. So the available capacity will increase, and will be available regardless of whether or not we exchange traffic over

that trunk group.” *Transcript*, p. 625, ll. 22-25, p. 625, ll. 1-2. The second scenario, one in which “the traffic stays flat and they don’t augment,” *Transcript*, p.625, 20-21, Harris testified the following would occur:

[as Bresnan wins] an access line in that market, we can assume that 210⁶ minutes will be removed from that trunk group . . . because when that customer comes to Bresnan, we will have our own trunk group to that tandem, and that traffic to and from that customer will travel over our separate trunk group that we will purchase, own and maintain, and will be removed from this trunk group. So that, as we win customers, in addition to the 125,000 that’s currently available, according to their exhibit, we will be freeing up minutes per customer.

Id. at p. 626, ll.8-19.

Harris admitted that Bresnan would also be adding minutes so that the freeing-up of capacity will not be a “one-to-one relationship,” *See id.* at p.626, ll. 20-25, p. 627, ll. 1-25, but that in the end, even with Bresnan adding its traffic to UBTA-UBET’s trunk group, and even if traffic stays static and UBTA-UBET does not augment, there is capacity for Bresnan traffic.⁷

Mr. Meredith also criticized Bresnan’s assumptions about the usage and capacity of each remote UBTA-UBET switch to the Vernal host switch—in Bresnan assuming that such trunk groups were “not operating at or near exhaust level.” *See Exhibit B-2, Spreadsheet 5*, “Bresnan Response to Staff Data Requests 2.2BB and 2.3BB-Host-Remote Expense.” Bresnan made these assumptions (and Mr. Harris testified regarding these assumptions) in spreadsheet 5, attached to Exhibit B-2, *See Transcript*, p. 192, ll.19-

⁶ “According to the numbers here, [UBTA-UBET has] about 4,125,000 minutes of use currently going over that trunk group.” *Transcript*, p.625, 23-25. “That comes to about 210 minutes of use for every one of UBTA-UBET’s access lines.” *Id.* at p 626, ll. 6-7.

⁷ Harris also testified that assuming Bresnan is correct in stating that most of their traffic on the trunk group is toll traffic, and assuming that most of Bresnan’s traffic is local and EAS traffic, then those traffic types have peak periods which don’t align, which may provide additional capacity. *Transcript*, p. 627, ll. 16-23.

25, p.193, ll.1-12. Mr. Meredith contended that because Bresnan “inflate[ed] the denominator of their ratio, they achieve a very small number” *Id.* at p. 193, ll. 8-12 and that its assumptions about capacity for these areas were wrong. But Mr. Meredith admitted he had no data with which to counter Bresnan’s assumption:

Q. (Mr. Nelson) If the information is not available to say what the actual [MOU] are on these trunk groups between Vernal and these various remote sites, isn’t it true that you have no basis in fact or knowledge, to challenge the assumption[] made by Mr. Harris in his exhibit?

A. (Mr. Meredith) . . .to assume that we have 250,000 [MOU] per trunk . . . to those locations . . . seems a little unreasonable

Q. I understand that. But you have no better information to give us as to what the actual numbers are?

A. I have no information, that’s correct.

Transcript, p. 197, ll.8-13, 24-25, p. 198, ll.1-3, 17-20.

Even UBTA-UBET admitted it did not have the information for those remote sites. *See Transcript*, p. 195, ll.2-19, p. 196, ll.9-11. Absent contrary evidence, the Commission must assume that the spreadsheet assumptions about usage and capacity made by Bresnan which were based on the best evidence available to it⁸ and the best available evidence before the Commission, are correct.

Second, UBTA-UBET also stated that because their Provo tandem trunk group is used “exclusively for toll traffic, and . . . [is] not set up to do local traffic,”

Transcript, p. 353, ll. 2-4. It contended that Bresnan would not be able to use the capacity

⁸ Bresnan used the Qwest Schedule of Generally Available Terms (SGAT), *See Transcript*, p. 12, ll.15-25, p. 13, ll.1-8, and responses to data request from UBTA-UBET, *see id.* at p. 13, ll.12-25, p. 14, ll.1-10 in making assumptions used on the spreadsheets for B-2. An SGAT, “schedule of generally available terms” is filed under 47 U.S.C. § 252(f), by a Bell operating company with a state commission. It sets forth its standard contract offering for items required under section 251 of the Federal Telecommunications Act. The SGAT, once approved, provides a comprehensive set of local interconnection terms that allows a CLEC without an existing interconnection agreement to opt-in to the SGAT.

for local traffic, *see id.* at p. 352, ll.20-25, p. 353, ll. 1-4, or that UBTA-UBET would have to “establish a separate trunk group for local traffic.” *UBTA-UBET Initial Brief*, p. 11.

Mr. Harris testified that it would still be technically feasible to use the trunk group for Bresnan’s local and EAS traffic, that it was “nothing more than translations . . . it’s a simple matter of updating the translations in the switch” and that the process for indirect interconnection provided a process that was “easy and quick, and inexpensive for both parties.” *Transcript*, p. 88, ll. 5-18. Ms. Wimer, later confirmed that this process of translation to allow the trunk group to be used for local traffic was “technically” correct. *See id.* at p. 353, ll.6-13 ([Mr. Harris] was stating that all that needs to be done is to do translations and you could add traffic on to these trunk groups. Technically that is correct . . .”). Therefore, even though the UBTA-UBET trunk group at the Provo tandem is used for toll traffic, it is technically feasible to use it for Bresnan’s local and EAS traffic.

Third, UBTA-UBET raised issues regarding the costs it would incur in establishing an indirect interconnection, arguing that indirect interconnection would disproportionately impose costs on it. The Division witness opined that, in addition to the technical feasibility of indirect or direct interconnection, the Commission should look at economic feasibility as well. R746-348-3 does not make a mention of economic feasibility. Regarding costs, however, Bresnan noted that when parties negotiate meet points for interconnection, “neither party may impose a meet point that would require that one party incur significantly greater construction costs to build to the meet point than the other party.” R746-348-3(B)(1). Therefore, the Commission will make a determination, in part, on the economic feasibility of interconnection based on whether establishing the

indirect or direct interconnection would "require that one party incur significantly greater construction costs to build to the meet point than the other party."

The evidence in the record shows that indirect interconnection at the Provo tandem would impose about the same costs on Bresnan and UBTA-UBET, and does not show that UBTA-UBET would incur significantly greater costs than Bresnan. UBTA-UBET argued that "[s]ignificant effort is required by . . . UBET to implement an indirect interconnection" and that if required to establish a separate trunk group for local traffic . . . this activity would be at UBET's expense" *UBTA-UBET Initial Brief*, p.11. The Division also noted that UBTA-UBET raised "significant economic . . . objections to the Commission ordering an indirect interconnection." *Division Reply Brief*, p. 2. In fact, Ms. Wimer, though admitting that translations allowing local traffic to be carried on trunk groups carrying toll traffic were possible, stated that "you have to have the arrangements and agreements [with] the other parties to make sure you have all of the compensation and business arrangements set up to do that," *Transcript*, p. 353, ll. 9-13, which would impose costs on UBTA-UBET. Mr. Meredith also stated that two of the "costs" that could be incurred would be either those incurred for a new trunk group, or those incurred in establishing agreements necessary to have local traffic go over the existing trunk group. *See Transcript*, p. 213, ll. 19-25, p. 214, ll.1-15.

However, even with those allegations, there is simply no evidence of those costs alleged by UBTA-UBET. UBTA-UBET's own witnesses admitted as much. Upon questioning regarding costs, Ms. Wimer stated as follows:

Q. (Mr. Nelson) Has UBTA-UBET performed any cost studies that you have offered up into evidence in this proceeding with respect to the costs associated with any of the services that are being contemplated in the Interconnection Agreement that we've been discussing?

A. (Ms. Wimer) No.

....

Q. And so it would be fair to say that at this point there's nothing in the record that would document what UBTA-UBET's costs are?

A. []—as far as this hearing goes . . . although there's been costs provided by UBET in other proceedings, there are not costs that have resulted in this proceeding itself.

Transcript, p. 357, ll.4-23.

Although Mr. Meredith alleges that there will be costs for having UBTA-UBET having to "go out of its network and pay a fee in order to get interconnection to Bresnan," *Transcript*, p. 212, ll.14-16, that there were costs for a new trunk group, and that there would be costs incurred in establishing agreements necessary to have local traffic go over the trunk group, *See id.* at p. 213, ll. 19-25, p. 214, ll.1-15, UBTA-UBET provided no evidence of those costs.

The Division's witness, Mr. Coleman, stated that the Division had asked for cost data from UBTA-UBET—"some cost numbers that we would be able to look at to be able to determine what the costs would be for both parties for direct and indirect interconnection," but apparently had not received that information. *Transcript*, p. 673, ll.4-10. "Absent any hard cost data, which the Division did try [to obtain]" Mr. Coleman opined that if indirect interconnection did not impose significantly greater costs for a company, then either option should be permissible. *Id.* The Division also noted in its Initial Brief that neither Bresnan nor UBTA-UBET had performed any cost studies for this

docket, and evidence of costs were limited mainly to proxies for what the costs would be, or only Bresnan's evidence of costs.

There is no dispute that UBTA-UBET already has existing trunk groups between it and the Qwest tandem switch in Provo to which the UBTA-UBET end office subtends. Therefore, regardless of whether Bresnan interconnects, UBTA-UBET will have costs for maintaining the trunk group at the Provo tandem⁹, where Bresnan is seeking to indirectly interconnect. Absent any evidence of UBTA-UBET's claimed costs, the Commission cannot find support for UBTA-UBET's alleged "significant" costs of indirect interconnection, nor that it would bear costs of indirect interconnection disproportionately. It appears that indirect interconnection would impose roughly the same costs on Bresnan and UBTA-UBET and is preferable.

Although there might not be evidence of costs developed specifically for this docket, Bresnan did submit some evidence of what an appropriate proxy of those costs might be. In the second spreadsheet of Exhibit B-2, "Bresnan Response to Staff Data Requests 2.2BB and 2.3BB-indierect and Direct Interconnection (Scenario 1)", Bresnan estimated that "each party's total monthly cost of interconnection, transport, and termination for local/EAS traffic at various DS1 traffic capacity levels was as follows:

<i>Capacity %</i>	<i>Minutes/Month</i>	<i>UBET total</i>	<i>Bresnan total</i>
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⁹ Q. (Mr. Mecham) So with respect to an indirect connection, are there greater cost burdens on one party over another? A. (Mr. Harris) To the extent that both parties have . . . independent requirements to be connected to that tandem, and already have the trunk groups in place, no. . . . [T]he cash out-of-pocket is not really a difference . . . both sides are going to have to undertake the same translations ('that means just telling your switch to point bearing certain NPA and XX, or certain local routing number, at a certain destination'). You have to do that for all traffic, so it doesn't matter whether you're going direct or indirect. There's one other advantage of indirect interconnection. . . . you haven't set up anything special for indirect. You're just using what's already there. . . . The other costs are costs that they're already bearing. So the cash out-of-pocket is really just the transiting fee." *Transcript*, p.90, ll. 3-23, p. 91, ll. 14-25, p. 92, ll.1.

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0%	0	\$0	\$ 0
25%	62,500	\$34.93	\$34.93
50%	125,000	\$69.86	\$69.86
75%	187,500	\$104.80	\$104.80
100%	250,000	\$139.73	\$139.73

In calculating these costs, Bresnan used mileage and transit charges from the Qwest SGAT to estimate costs for Bresnan and UBTA-UBET. The information used in the SGAT "were originally created based on cost characteristics of a group of rural exchanges, including the Vernal, Roosevelt, and Duchesne exchanges which UBET subsequently purchased."

Exhibit B-2, spreadsheet 2, "Bresnan Response to Staff Data Requests 2.2BB and 2.3BB- Indirect and Direct Interconnection (Scenario 2)." Absent any other evidence, this is the best evidence before the Commission of what such transiting charges would be. Based on these numbers each party's total incremental costs (money they would each pay to Qwest, assuming they are already connected) would be equal, ranging from \$34.93 a month to \$139.73 a month, according to usage and capacity.¹⁰ Neither party would incur greater costs than the other as a result of indirect interconnection. Bresnan did make an assumption that neither party's trunk group is at or near capacity, so that neither will have to add another trunk group. This assumption was later shown not to be so, when UBTA-UBET submitted the information in Exhibit UU-2, showing that its trunk group was near capacity. But Mr. Harris addresses this concern in the hearing, and as discussed herein. UBTA-UBET does have or will have capacity to carry Bresnan's traffic, with little, if any,

¹⁰ The reason the costs are the same in scenario one is "because each party already has the transmission facilities in place. Neither [one] is going to be establishing new facilities." *Transcript*, p.13, ll.9-14.

out-of-pocket costs besides those that would already be incurred for maintaining the trunk group at the Provo tandem.

Bresnan additionally submitted evidence in its third spreadsheet to Exhibit B-2, "Bresnan Response to Staff Data Requests 2.2BB and 2.3BB-Indirect and Direct Interconnection (Scenario 2)." This scenario used information from the SGAT and showed allocated (not actual out-of-pocket) costs of interconnecting with the Provo tandem. According to this scenario, each party's total allocated monthly costs of interconnection, transport, and termination for local/EAS traffic were estimated as follows:

<i>Capacity %</i>	<i>Minutes/Month</i>	<i>UBET total</i>	<i>Bresnan total</i>
0%	0	\$0	\$ 0
25%	62,500	\$134.49	\$159.37
50%	125,000	\$268.97	\$318.74
75%	187,500	\$403.46	\$478.11
100%	250,000	\$537.95	\$637.48

Even according to this scenario, with an allocated internal transport and termination expense for use of already existing capacity on the existing trunk groups, the costs are roughly equal, but with Bresnan's costs slightly higher. Again, Bresnan assumes that the UBTA-UBET trunk is not near capacity and used Qwest's SGAT reciprocal compensation rates as a "reasonable proxy for UBET's internal per-MOU costs." In the end, however, the proxy is the best evidence of what UBTA-UBET's transport expense would be.

Bresnan also submitted evidence of what the costs might be for direct interconnection. *See Exhibit B-2*, "Bresnan Response to Staff Data Requests 2.2BB and 2.3BB-Indirect and Direct Interconnection (Scenario 3: Direct Interconnection)." Under this scenario, Bresnan "illustrated how one might compare cost of direct interconnection

trunking/transport to indirect interconnection.” *See id.* Bresnan put forth the “actual monthly recurring lease price” if it leased DS1 from its Grand Junction, Colorado switch to the point of interconnection at Bresnan’s Vernal head end, per UBTA-UBET’s proposal. *See id.* The cost for a UBET entrance facility to the point of interconnection for direct interconnection would be \$1,598 per month. The Division questioned Mr. Harris, and stated that absent this cost, the monthly amortized incremental expense for a dedicated DS1 switch port would be only \$100 per month, which would make direct interconnection the cheapest choice. Mr. Harris stated that at some level that would be correct, but that the costs associated with direct interconnection, with the “physical interface that each party is putting on their own switch” *Id.* at p.129, ll. 6-18, are incurred “at minute zero. The time you establish that direct connection, you’ve got all of the costs associated with that connection.” *Id.* Therefore, the monthly recurring charge for Bresnan would be about \$1,698. Bresnan also assumed that UBTA-UBET’s costs for direct interconnection at Bresnan’s Vernal head end would be about \$175 per month. Mr. Harris did admit that the \$175 was “an assumption . . . I can’t vouch that they’re true costs,” *Id.* at p.134, ll. 9, 24-25, but did state how he arrived at that number.

[UBTA-UBET] list in their access tariff a dedicated entrance facility price of \$125. And so I said, well maybe their costs [are] \$75, maybe it’s much closer to \$125. And for trunk ports . . . looking out at what different players have, as amortized trunk, \$100 is probably to low. But I didn’t want to bias this by making it look like, oh this is extremely expensive. . . . But, you know, it could be higher or lower. . . but, it’s probably not terribly far removed.

Id. at p. 135, ll. 1-17. Absent any better evidence to the contrary, the Commission finds that the cost for direct interconnection for UBTA-UBET would be about \$175. In scenario

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three, for direct interconnection, if the costs for Bresnan would be about \$1,698, and the costs for UBTA-UBET would only be about \$175 per month, then direct interconnection would impose significantly greater costs on Bresnan than it would on UBTA-UBET. In such a case, the Commission must find that direct interconnection, at least initially, is not the most economically symmetric way for both parties to interconnect.

The language the legislature implemented does not make direct and indirect interconnection mutually exclusive. Utah Admin Code R746-348-3 states an "incumbent local exchange carriers shall allow any other public telecommunication service provider to interconnect its network at any technically feasible point, to provide transmission and routing of public telecommunication services. A local exchange service provider requesting interconnection with an incumbent local exchange carrier shall identify a desired point of interconnection."

In this instance, both indirect and direct interconnections are technically feasible. The plain language of the statute allows Bresnan to pick its method for interconnection with UBTA-UBET's essential facilities and Bresnan has selected indirect interconnection at the Provo tandem. The costs of indirect interconnection do not impose significantly greater costs on one party than the other. The costs of direct interconnection would impose significantly greater costs on Bresnan than UBTA-UBET, however. Therefore, the Commission finds that Bresnan's request for indirect interconnection at the Provo tandem is permissible under our state laws and Rules and that UBTA-UBET must permit interconnection at the Provo tandem.

Having determined that indirect interconnection is permissible, the Commission determines whether Bresnan's or UBTA-UBET's proposed language for indirect interconnection should be used. Having reviewed the language submitted by both parties in the issues matrix, having reviewed the parties' briefs, and based on the analysis discussed previously on the appropriateness of indirect interconnection, the Commission determines that Bresnan's language is that which is most consistent with this Order and more reasonable. First, UBTA-UBET's Section 3.1.2 mandates that if indirect interconnection is permitted, then such indirect interconnection "shall be effected though the tandem switch of a 3rd party to which both parties are interconnected for the exchange of local traffic." *See Issues Matrix*, Section 3.1.2. As Bresnan points out, UBTA-UBET does not connect to any third party tandem for purposes of exchanging local traffic. It specifically stated that it connects to the Qwest Provo tandem for toll traffic only. Therefore, selecting this section would undermine the purpose of this Order requiring indirect interconnection.

Second, UBTA-UBET's proposed language in Section 3.1.3 would impose duties on Bresnan inconsistent with Commission Rules and ultimately make indirect interconnection significantly more expensive for Bresnan than for UBTA-UBET. Rule 746-348-4(B)(1) states each party is responsible for "the costs of constructing its facilities to the meet point." UBTA-UBET's language proposes that "each party shall be solely responsible for all connectivity between its network and a POI inside the UBET service area." This, however, would require Bresnan to pay all transiting charges, even for calls originating from UBTA-UBET customers. Bresnan's language, however, would make

each carrier responsible for its own network. Additionally, UBTA-UBET's language would render meaningless the Commission's order to indirectly interconnect at the Provo tandem. As Bresnan notes, the provision "makes no sense" because the third party tandem will not be in the UBTA-UBET service area. It will be managed by UBTA-UBET or the third party, and Bresnan could not be "solely responsible" for that connection. Finally, as Bresnan points out, this provision ignores the "fundamental principle of indirect interconnection", i.e. that where two carriers exchange minimal amounts of traffic, it is more efficient to use existing trunks that carry traffic to a common tandem, so that no carrier bears the burden of constructing an entirely new facility. Forcing Bresnan to construct a new facility would impose greater costs for indirect interconnection on Bresnan than on UBTA-UBET. Thus Bresnan's language for this section is more appropriate.

The parties also offer competing language for section 3.1.5. Bresnan states that it is willing to accept the list of information proposed by UBTA-UBET so long as its introductory language is used and that the acronyms are spelled out for clarity. The new language for 3.1.5 would read:

For all Local, EAS and ISP-Bound Traffic exchanged between the Parties via Indirect Interconnection, the originating Party shall supply to the terminating Party, at no charge to the terminating Party, call records which include: Record ID, Date of Call, Called Party Number (CdPN), Calling Party Number (CPN), CIC (if applicable), Time of Call, Elapsed Minutes, Elapsed Seconds, and valid OCN (Operating Company Number).

Bresnan Initial Brief, p.7.

The Commission finds Bresnan's language more reasonable. As Bresnan notes, UBTA-UBET's language refers to "all indirectly routed traffic" which might be

construed to cover long-distance traffic, which is not covered by the Agreement, but which Bresnan might route through the tandem. Also, UBTA-UBET's language refers to a specific report, the Call Detail Record (CDR). Bresnan noted that a provider might charge for such a record, but Bresnan's language would allow Bresnan to provide the information requested in the CDR with more generic, and less-expensive options. The Commission feels this less-expensive and less burdensome option is preferable.

Finally, the parties differed as to section 3.1.6, related to the threshold that must be met before the parties switch to direct interconnection. UBTA-UBET proposes that the parties switch to direct interconnection upon the first occurrence of the traffic exceeding 512 CCS¹¹ in the busy hour. This provision, however, would not account for simple "one time or transitory increase in traffic." *Bresnan Initial Brief*, p. 8. The more reasonable approach would be that suggested by Bresnan, where the 512 CCS threshold would have to be met for three consecutive months. That way, the parties would have a more certain basis upon which to proceed before incurring costs for direct interconnection.

Intercarrier Compensation: Reciprocal v. "Bill and Keep"

Bresnan and UBTA-UBET also differed as to whether the interconnection agreement should require reciprocal compensation¹² or "bill and keep"¹³ compensation. Bresnan presented testimony that, based on experience gained in other markets in which it operates, the traffic exchanged between it and UBTA-UBET would be in balance. *See*

¹¹ Centi-call seconds

¹² Reciprocal compensation is designed to compensate a local exchange carrier (LEC) for completing a local call from another LEC, e.g. the originating caller's LEC compensates the LEC who completed the call.

¹³ Bill and keep is an arrangement where each LEC recovers from its own end users the cost of both originating traffic that it delivers to the other LEC and terminating traffic that it receives from the other LEC.

Bresnan Initial Brief, p. 8; *Transcript*, p. 631, ll. 22 to p. 632, ll.3. Because the process of billing and collecting reciprocal compensation payments could be time-consuming and costly, the Commission should order “bill and keep” methods of compensation. Bresnan stated that “bill and keep” is widely used across the country. Additionally, Bresnan proposed that if traffic is out of balance, then a party may initiate and pay for traffic studies to determine if traffic is out of balance. If so, then Bresnan proposed language for a reciprocal compensation agreement. *See Issues Matrix-Bresnan*, 4.2.1.

UBTA-UBET opposes “bill and keep” for various reasons. First, it stated that there was no evidence that traffic would be in balance. In her pre-filed direct testimony, Ms. Wimer testified that Bresnan would only compete for residential customers, and that “business customers will remain with UBTA-UBET,” *see Pre-filed Direct Testimony of Valerie Wimer (Wimer Direct)*, p. 29, ll.531-532, so traffic would likely be out of balance. (Mr. Harris, however, later testified that Bresnan intends to compete for residential and business customers. *See Transcript*, p. 620, l. 24.) She also stated that more customers would be on UBTA-UBET's network than Bresnan's initially. UBTA-UBET secondly argued that only under a reciprocal compensation arrangement will “each party be compensated for every minute of traffic that it completes. There is a direct correlation between the number of minutes and the compensation.” *Wimer Direct*, p.29, ll. 541-543. Additionally, with the party's moving to reciprocal compensation only when traffic is in balance 60%/40%, UBTA-UBET argues the “other party would have to subsidize the party with the high traffic for up to 20% of the traffic. In a competitive market a 20% cost difference can be significant.” *Id.*, ll. 544-546. Additionally, UBTA-UBET argues that

since other carriers, e.g. wireless carriers, will be able to "opt in" to a similar "bill and keep" arrangement in the interconnection agreement, UBTA-UBET could have significant reduction in its revenues.

The Division opined that "each party should compensate the other party for carrying and terminating the other party's traffic. That objective can only be accomplished through rates charged each carrier." *Division Initial Brief*, p. 6. It further contended that the Utah laws and Rules were silent on whether reciprocal compensation or "bill and keep" should be required, although it noted that many interconnection agreements have included "bill and keep" provisions. The Division also noted that although Bresnan asserted that in its past experience, traffic would be in balance, "neither party presented any empirical evidence on this subject."

There is no empirical evidence as to whether the traffic between Bresnan and UBTA-UBET would be in balance. Despite Bresnan's relevant testimony that in all other markets where they have had experience the traffic is in balance, the Commission is concerned with some of the issues raised by Ms. Wimer. The Commission is concerned that in such a small market as UBTA-UBET's, the 20% cost difference mentioned by Ms. Wimer can be significant, and that, combined with the possibility of other carriers opting-in to the same "bill and keep" arrangement, could lead to potential downturn in revenue. It is unlikely that any meaningful empirical evidence regarding traffic being in balance could be gathered until after the parties interconnect. At this point, neither party disputes that reciprocal compensation (though, as alleged by Bresnan "time consuming and costly"), would compensate the parties for traffic terminated on its network from the moment they

interconnect. It will ensure that UBTA-UBET is compensated for traffic terminated on its network, while "Bresnan will not be harmed by such an arrangement if their asserted claim of in-balance traffic is proven to be correct." *Division Initial Brief*, p.7. The Commission therefore finds that the interconnection agreement should begin with the reciprocal compensation arrangement and the reciprocal compensation language proposed by UBTA-UBET. If the parties choose to move to "bill and keep" later, they may do so.

Compensation for Calls Terminated in UBTA-UBET's EAS Network

The parties dispute whether there should be a charge for Bresnan's use of UBTA-UBET's EAS area. The parties submitted various alternatives for compensation for calls terminated in UBTA-UBET's EAS area. The most disputed choice was the proposed \$1.80 flat-rate charge UBTA-UBET would charge Bresnan per customer, per month, for use of UBTA-UBET's EAS area. UBTA-UBET argues that this rate is a cost-based rate developed in another docket, and compensates UBTA-UBET for costs of delivering calls to the EAS area. The flat-rate charge is a retail rate charged by UBTA-UBET to each of its customers for use of the EAS. UBTA-UBET contends that without the ability to use its EAS, a customer's calls (including Bresnan's) to locations in the EAS area would be intrastate toll calls, subject to intrastate access charges. The flat-rate charge allows customers to make toll-free calls to the EAS area for one small flat-rate. UBTA-UBET argues that since Bresnan customers will have use of the EAS, Bresnan should pay the flat-rate charge for each customer it gains. *See UBTA-UBET Initial Brief*, p.18.

The Division opposed the flat-rate charge. It firstly contends that the flat-rate charge is "a retail rate and has nothing to do with a wholesale rate to be charged

Bresnan.” *Division Initial Brief*, p.7. It notes that no interconnection agreement in the state contains such a flat-rate charge. It further stated that UBTA-UBET does not charge this flat-rate charge to its own affiliate, Uintah Basin Electronic Telecommunications (UBET Wireless). *See Exhibit B-6*.

The Division also agreed that such a rate would be anti-competitive. First, Bresnan would have to pay that rate to UBTA-UBET which it collected while a monopoly provider, even when the customer had never been a UBTA-UBET customer. Also, paying the flat-rate would provide UBTA-UBET sensitive information regarding access line count which UBTA-UBET could use against Bresnan, information which no other company is required to provide UBTA-UBET.

Bresnan argues that the flat-rate charge would present a substantial barrier to competition—counter to the legislative mandate found in our State telecommunications statute to promote competition, and over-compensate UBTA-UBET for any costs it might incur. Bresnan argues that “UBET suggests that terminating calls from Bresnan customers in Vernal to other exchanges outside Vernal is the ‘same service’ as terminating a call from a UBET customer in Vernal to a UBET customer outside Vernal.” *Bresnan Initial Brief*, p. 10. In data requests, UBTA-UBET responded that Vernal customers make about 115 minutes of calls per month to other EAS exchanges. Bresnan contends that under UBTA-UBET's proposal, Bresnan would pay \$.01 per minute in termination charges and \$1.80 per month in a flat-rate charge for use of the EAS, totaling \$2.95 in monthly charges. Yet, for same amount of calling, and using the same UBTA-UBET transport facilities, a UBTA-UBET customer would only pay \$1.80 per month for the service. *See id.* at p.11.

However, UBTA-UBET desires to charge Bresnan 64% more for the "same service" using the same facilities.

Bresnan also argued that charging the flat-rate charge would be anticompetitive by "providing competitively sensitive information to UBTA-UBET"—information which UBTA-UBET acknowledged would be sensitive information. *See id.* Bresnan also stated that the flat-rate charge would be paid to UBTA-UBET in perpetuity, regardless of costs, making Bresnan less profitable and UBTA-UBET more profitable. Finally, Bresnan disputes that UBTA-UBET has a legal obligation to charge Bresnan the flat-rate charge. It states that no statute or rule imposes upon UBTA-UBET the obligation to impose charges it assesses to retail customers upon interconnected carriers.

The Commission agrees with the Division and Bresnan that the flat-rate charge is not appropriate and would violate our state statutes. First, the flat-rate charge is not appropriate because there is simply no basis for UBTA-UBET's desire to use a *retail* rate it charges its customers as a basis for a *wholesale rate* to be charged Bresnan. UBTA-UBET contends that Commission rules and statutes require it to assess the flat-rate charge to Bresnan. It has not established how such a retail charge is properly imposed as a wholesale rate. Although it argues that "this is a cost-based rate" used "in order to compensate UBET for the costs of delivering" calls to the EAS area, *UBTA-UBET Initial Brief*, p.18, it has presented no evidence that the flat-rate would be its actual wholesale costs for terminating calls in the EAS area.

Second, UBTA-UBET does not charge the flat-rate to at least one of its own affiliates. The Division presented evidence that the interconnection agreement between

UBTA-UBET and UBET Wireless contains no such flat-rate charge, even though UBET Wireless customers terminate calls to the EAS area. Also, as Bresnan pointed out, assessing the flat-rate charge would impose greater costs on Bresnan customers than UBTA-UBET charges its own customers for usage of the same transport facilities. As Section 54-8b-2.2(b)(ii) mandates, UBTA-UBET "shall permit access to and interconnection with its essential facilities and the purchase of its essential services on terms and conditions, *including price*, no less favorable than those the telecommunications corporation *provides to itself and its affiliates*." Assessing the flat-rate charge to Bresnan would be violative of this provision.

Finally, a flat-rate charge would be anticompetitive. UBTA-UBET admitted that the number of access lines a carrier serves is confidential information. *See Exhibit B-4*, pp.4-5; *Transcript*, p. 389, ll.1-25, p. 390, ll.1-15, because it gives information as to "the number of customers there are in the market." *See id.* As Bresnan stated, UBTA-UBET could use the information obtained from Bresnan "to its competitive advantage to decide, for example, whether and the extent to which marketing efforts are successful or should be increased." *Bresnan Initial Brief*, p.11. As the Division noted, no other company has this obligation to provide this type of competitively and economically sensitive information to UBTA-UBET, and the Commission concludes that it would not satisfy its legislative mandate to "encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state." *Utah Code Ann.* §54-8b-1.1 (3).

Even though other alternatives for the use of the EAS were submitted, the Commission concludes, given UBTA-UBET's responses to data requests, that there should not be any extra charge for calls that terminate outside of Vernal, i.e. in the EAS area. Exhibit B-4 contains Bresnan's Second Set of Data Requests to UBTA-UBET. Part of Data Request 2.2 requests as follows: "In regard to your testimony on EAS, please identify each discrete trunk group connecting each UBTA-UBET Remote Switch to the Vernal Host Switch, providing the following information: . . . b) identify the current capacity of each trunk group; c) identify which of the following traffic types was carried over that trunk group during the last twelve months" *Exhibit B-4*, p.2. Sub-part (c) requests various data from UBTA-UBET including "EAS traffic originated from or terminated to UBTA-UBET local exchange service customers physically located in the Vernal exchange, EAS traffic which neither originated from nor terminated to UBTA-UBET local exchange service customers physically located in the Vernal exchange," *Exhibit B-4*, p. 2-3, and other information regarding types of traffic carried over the trunk group.

In response to sub-part (b), UBTA-UBET objected to the information requested "on the grounds that this request is unduly burdensome." It then stated that "UBTA-UBET *does not have discrete trunk groups for EAS traffic.*" *Exhibit B-4*, p.3. In response to sub-part (c), UBTA-UBET again reiterated that "*All of the traffic types identified in [c]i-xii above travel over each of the trunk groups.*" *See id.*

From these statements, in this docket, the Commission must conclude that the costs of originating/terminating calls within the Vernal Host are no different than the costs of originating/terminating calls in remote areas. As Bresnan pointed out in Exhibit

B-2, Spreadsheet 5, "Bresnan Response to Staff Data Requests 2.2BB and 2.3BB-Host-Remote Expense," all trunk groups "carry all traffic between the Vernal Host and each Remote in a wholly un-segregated manner." Based on this evidence, the Commission will not order an extra EAS charge, flat-rate or otherwise.

Reciprocal Compensation or Call Termination Charge

The parties also disputed the compensation rate for the transport and termination of traffic between UBTA-UBET and Bresnan.

Bresnan gives a range of possible compensation rates ranging from \$.001798/MOU to \$.01/MOU. Bresnan contends that the agreement between UBTA-UBET and Western Wireless contains a negotiated rate for termination within the Vernal exchange of \$.01/MOU. Absent any cost studies by UBTA-UBET, charging a higher rate would be discriminatory, it argues. Bresnan argues that other cost data shows the costs to UBTA-UBET for terminating calls is less than \$.01/MOU. It stated that the "FCC and others across the country have recognized a proxy for a cost-based rate for traffic termination in the absence of a specific cost study to be \$.0007 per minute." *Bresnan Initial Brief*, p. 13. Second, it stated that a cost study was done to determine Qwest's wholesale costs for terminating traffic to rural exchanges, including the Vernal, Roosevelt, and Duchesne exchanges, which are now served by UBTA-UBET. That study established a rate of \$.001798/MOU. Given that the cost study covered exchanges now served by UBTA-UBET, the \$.001798/MOU would be the best proxy for what UBTA-UBET costs would be.

UBTA-UBET argues against the \$.0007/MOU rate. It argues that the rate was based on a federal cost standard that has no place in these proceedings, where state law has been used to resolve the interconnection dispute. It states that "absent a cost study establishing the actual cost of call termination service . . . the Commission [should] adopt the \$.01 per minute of use rate as the rate for call termination service by both parties." *UBTA-UBET's Initial Brief*, p.18. It did not speak to the \$.001798/MOU rate.

The Division argued that the Commission should pick a rate, absent any cost studies that reflects a more specific data than the national proxy rate or the rate reflected in the Qwest SGAT. It argued that the national proxy rate of \$.0007/MOU would violate the ruling in *Telecommunications Resellers of Utah v. PSC*, 747 P.2d 1029 (Utah 1987). In that matter, the Supreme Court set aside a Commission order establishing tariffs based on nationwide cost data and containing no Utah-specific cost data. The Court stated that "there was no reasonable relationship between the tariff rates established by the PSC order and the purpose they are intended to serve, which is the recovery of costs associated with providing access to local networks for resellers." *Id.* at 1030. The Division contends that the national proxy would violate the holding in *Telecommunications Resellers*. It contends that the Western Wireless compensation rate would better "reflect UBTA-UBET specific data than any of the other choices that were presented" *Division Initial Brief*, p.9, including the rates in the Qwest SGAT.

The Commission finds that the compensation rate most suited to this docket would be the rate found in the Western Wireless interconnection agreement, i.e. \$.01/MOU, a rate which UBTA-UBET conceded, in its Briefs, was a reasonable rate given

no cost data specific to this docket. The national proxy does not have a relation to Utah-specific cost data, and under the analysis of the Court in *Telecommunications Resellers*, is not likely not properly used as a proxy. Although that case dealt with the tariff, its holding would be analogous to this docket, and without any relationship to Utah-specific cost data, the Commission is not willing to order the national proxy as the compensation rate here. The rates listed in the Qwest SGAT do have more of a relationship with Utah-specific cost data, as some of the studies were performed for rural exchanges now served by UBTA-UBET. However, those rates were based on cost data specific to Qwest, and not to UBTA-UBET. Assuming UBTA-UBET negotiates rates that adequately compensate it for the costs of terminating calls, the \$.01/MOU rate in the Western Wireless agreement (being a negotiated rate) would be the best evidence (absent any cost data specific to this docket) of UBTA-UBET's true costs for terminating calls.

If EAS Compensation Is Proper, Compensation for Traffic Terminating in the EAS Area

The Commission, above, concluded that there should not be any extra charge by UBTA-UBET to Bresnan for calls that terminate outside of Vernal, i.e. in the EAS area. Given UBTA-UBET's responses to Bresnan data requests, the Commission must conclude that the costs of originating/terminating calls within the Vernal Host are no different than the costs of originating/terminating calls in remote areas, and that any EAS traffic would be already compensated as local traffic. The Commission will not order an extra EAS charge and section 4.2.2 of the Agreement should be deleted.

General Terms and Conditions: Rights of Parties

The parties also submitted competing language regarding the language of Section 36 of the Agreement dealing with the rights of the parties. Bresnan states that the language is unnecessary as it improperly affects or preserves the appeal rights of the parties to the Commission's order. To the extent the language does not affect the parties' appeal rights, then it is irrelevant. UBTA-UBET argues that it desires the language "to ensure that there is no misunderstanding regarding [its] negotiation of the terms of the Interconnection Agreement." UBTA-UBET argues that at the outset, it has no obligation to interconnect its "telecommunications facilities with Bresnan's VoIP facilities" and that its "participation in this process does not constitute its acquiescence of any interconnection obligation" *UBTA-UBET Initial Brief*, p. 20. Bresnan contends that UBTA-UBET's ability to appeal the "particulars of any provision of the agreement with which it has now agreed by stipulation", or to argue a case for irreparable harm, might be impacted by its actions here and any language ordered by the Commission purporting to affect any such waiver, if it exists, would be improper.

The Division agrees with Bresnan that the appeal language should be stricken, as the Agreement should not limit, enlarge, or otherwise affect the parties' rights of appeal.

The Commission agrees with Bresnan and the Division that the parties' rights exist independent of this Report and Order. The Agreement should not enlarge or modify the parties' rights of appeal with regards to any portion of this Report and Order. The Commission finds that Bresnan's proposed language of Section 36 is more appropriate. It simply states that the Agreement neither restricts nor modifies either party's

ability to petition for relief with the Commission to modify or terminate the agreement should any state or federal court or the FCC later determine that any service rendered by UBTA-UBET or Bresnan is not eligible for interconnection or traffic exchange. This language is also consistent with the Commission's November 17, 2008 Report and Order where it stated that any relief granted might have no further application should it be later determined that state law has no application, or that the Commission lacks authority over the services provided by Bresnan or authority to grant relief given in this docket.

ORDER

Therefore, based on the findings and conclusions listed above, the Commission orders as follows:

1. Bresnan has a right to interconnect with UBTA-UBET;
2. UBTA-UBET shall permit Bresnan to obtain indirect interconnection with UBTA-UBET's essential facilities at the Provo tandem. If the parties mutually select another location, they may also interconnect at that location;
3. The parties' interconnection shall be governed by the terms of the parties' Agreement. With relation to the six remaining disputed terms of the Agreement, the parties' shall incorporate the Commission's resolution of the dispute (as detailed in the Order above) into the Agreement;
4. The Commission retains jurisdiction over this matter and the parties to ensure compliance with this Order and any related orders that may be issued subsequently;

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5. Bresnan shall provide the Commission with a status report within one month after entry of this Order, updating the Commission regarding the parties' interconnection;
6. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing within 30 days after issuance of this Order by filing a written request with the Commission. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirement of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 21st day of May, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

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Approved and confirmed this 21st day of May, 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
G1162137

EXHIBIT B

- BEFORE THE 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.

DOCKET NO. 08-2476-02

ORDER ON RECONSIDERATION,
REVIEW OR REHEARING

ISSUED: August 3, 2009

SYNOPSIS

UBTA-UBET Communications, Inc. petitioned for Reconsideration and Rehearing. The Utah Rural Telecom Association also petitioned for Reconsideration, Review or Rehearing. We affirm our previously entered order resolving interconnection dispute, except that we modify Section 3.1.1 of the Interconnection Agreement as detailed below.

By The Commission:

This matter is before us on UBTA-UBET Communications, Inc.'s (UBTA-UBET) Petition for Reconsideration and Rehearing and Utah Rural Telecom Association's (URTA) Petition for Reconsideration, Review or Rehearing.

This matter involves an interconnection dispute between Bresnan Broadband of Utah, LLC (Bresnan) and UBTA-UBET. The administrative law judge (ALJ) of the Commission held a hearing on the dispute resolution January 27, 28, and 29, 2009, where Bresnan, UBTA-UBET, URTA—an intervenor, and the Division of Public Utilities (Division) all presented evidence and testimony related to the issues related to the interconnection dispute. Pre-filed testimony was also submitted prior to the hearing. Subsequent to the hearing, Bresnan and UBTA-UBET resolved some of the issues they

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raised at the hearing and submitted the remaining six disputed issues to the Commission. The Commission addressed the six unresolved issues as follows: 1) whether applicable statutes and rules require either indirect or direct interconnection; 2) whether the intercarrier compensation rate would be reciprocal vs. "bill and keep" compensation; 3) whether there should be any extra compensation for calls terminated in the areas served by UBTA-UBET's extended area service (EAS)¹; 4) the rate of the reciprocal compensation rate or call termination charge; 5) if the EAS compensation was appropriate, the amount of compensation for traffic terminating in the EAS area; 6) which provision regarding the rights of parties should be included in the Agreement. *See Report and Order Resolving Interconnection Dispute, May 21, 2009* (Interconnection Order), pp. 4-5.

In addition to selecting among competing provisions of the Interconnection Agreement (Agreement), the Interconnection Order also found Bresnan had the right to interconnect with UBTA-UBET, either directly or indirectly, that UBTA-UBET had essential facilities at the Provo tandem² as defined in U.C.A. § 54-8b-2(5), and that UBTA-UBET must "permit Bresnan to obtain indirect interconnection with UBTA-UBET's

¹ EAS is a service feature provided to a customer, in which the customer pays a higher flat rate to obtain wider geographical coverage without paying per-call charges for calls within the wider area. In this case, the EAS would extend from Vernal to the outlying rural areas.

² "Tandem switch: Tandem is a telephony term meaning to 'connect in series.' Thus a tandem switch connects one trunk to another. A tandem switch is an intermediate switch or connection between an originating telephone call location and the final destination of the call." HARRY NEWTON, NEWTON'S TELECOM DICTIONARY 778 (19th ed. 2003). *See also Transcript*, p. 102, ll.2-25 ("Q: And what is a tandem? A: . . . end offices are offices that directly terminate to customers. Tandem switches are switches that connect various end offices together. And the reason you have tandems is because they're aggregation points. Because you [may have] tens or hundreds of end offices potentially servicing a single LATA (local access and transport area, or service area), for instance. And it would be inefficient to have direct [connectivity] between each and every end office and each and every other end office . . .")

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essential facilities at the Provo tandem.”³ The Interconnection Order further ordered that the “interconnection agreement should begin with the reciprocal compensation arrangement and the reciprocal compensation language proposed by UBTA-UBET [but that the parties could] choose to move to “bill and keep” later.” *See Interconnection Order*, p.25. The Interconnection Order also ordered that Bresnan would not be required to pay an extra charge for calls terminated “in the areas served by UBTA-UBET’s extended area service (EAS)” *See Id.* at p. 29, and p. 5. The Commission also ordered that the compensation rate for the transport and termination of traffic between Bresnan and UBTA-UBET would be \$.01/MOU. The Commission also selected Bresnan’s language for Section 36 of the Agreement dealing with the rights of the parties.

UBTA-UBET filed its Motion for Stay of our Interconnection Order on or about June 22, 2009. We granted a stay of the Interconnection Order on June 25, 2009. UBTA-UBET additionally filed its Petition for Reconsideration and Rehearing on or about June 22, 2009. It requested we reconsider and reverse our decisions on

1) whether UBET is obligated to interconnect to Bresnan as a VoIP provider; 2) whether UBET is required to indirectly interconnect with Bresnan at the Qwest Provo Tandem; 3) whether Bresnan would be required to pay a flat-rate charge for use of UBET’s EAS network; and 4) whether UBET can charge Bresnan any additional charge to terminate calls outside of the Vernal exchange.

UBTA-UBET’s Petition, p.2. UBTA also petitioned for Reconsideration, Review or Rehearing. It contended that we should reconsider our Interconnection Order and hold that Utah law does not permit indirect interconnection through a third party intermediary, that

³ The Commission also stated that if “the parties mutually select another location, they may also interconnect at that location.” *Interconnection Order*, at p. 34.

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we reverse our finding that UBTA-UBET has essential facilities at the Provo tandem, and that we reverse our finding that it is technically feasible for UBTA-UBET to indirectly interconnect at the Provo tandem. It also asks that we reverse our holding that UBTA-UBET permit Bresnan to indirectly interconnect at a location outside of UBTA-UBET's service territory. URTA also claims we denied UBTA-UBET compensation for terminating Bresnan traffic in its EAS area, and requests we reverse this decision.

Bresnan responded to the Motions for reconsideration, review, and rehearing on or about July 8, 2009. It argued that it did have a right to interconnect with UBTA-UBET and that we had jurisdiction to resolve this interconnection dispute. It also agreed that Utah state law permits indirect interconnection, including at the Provo tandem. It further reiterated that the Commission's conclusion that UBTA-UBET has essential facilities at the Provo tandem is correct, and that interconnection at the Provo tandem was technically feasible.

ORDER

We have reviewed UBTA-UBET's and URTA's Petitions and decline to reverse our decision in the Interconnection Order for the reasons below. (We do, however, amend section 3.1.1 of the Agreement as stated below.)

First, for the reasons stated in the Interconnection Order and for reasons stated in previous orders denying UBTA-UBET's Motion to Dismiss, we do not find that our jurisdiction is preempted by federal law in this matter.

Second, there is substantial evidence that UBTA-UBET does have essential facilities at the Provo tandem. Both URTA and UBTA-UBET dispute that UBTA-UBET has essential facilities at the Provo tandem. Specifically, UBTA-UBET argues:

Th[e] conclusion [that UBTA-UBET has essential facilities at the Provo tandem] is not reasonably supported by the evidence. In fact, the undisputed evidence is that UBET has facilities to Whiskey Springs, where its facilities meet Qwest's facilities, not to the Provo tandem. There was absolutely no evidence presented during the three day hearing that indicated that UBET owns, controls, or maintains facilities at the Provo tandem. In this case, where the Commission is considering a proceeding relating to interconnection of essential facilities (not an interconnection agreement subject to, and governed by the Federal Telecommunications Act), the primary question that must be answered is whether the ILEC has essential facilities at the Qwest tandem. In this case, the answer to that question is unequivocally "no".

UBTA-UBET Petition, pp.7-8. URTA argues as follows:

Utah Code Ann. § 54-8b-2.2(1)(a)(i) allows the Commission to "...require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping service territory." . . . The Commission identified trunks⁴ in Qwest's Provo tandem office as the essential facilities under Utah Admin. Code § R746-348-7 to which it is requiring UBET to interconnect with Bresnan. The Commission, however, has mistaken Qwest's facilities at the Provo tandem for UBET's and therefore its Order requiring UBET to interconnect Bresnan's facilities to Qwest's is contrary to law. The Commission can only require a telecommunications corporation to interconnect its facilities with another telecommunications corporation. UBET does not own, control, or manage the trunks at Qwest's Provo tandem or the tandem itself. URTA testified at hearing that UBET's facilities end at Whiskey Springs and everything beyond that to and within the Provo tandem belongs to Qwest.

URTA Petition, pp. 2-3 (emphasis added in original).

We disagree with UBTA-UBET and URTA. We recognize that UBTA-UBET and URTA maintain that UBTA-UBET has no essential facilities at the Provo tandem. In fact, we

⁴ "Trunk: A communication line between two switching systems." HARRY NEWTON, NEWTON'S TELECOM DICTIONARY 825 (19th ed. 2003). See also *Transcript*, p.109, ll.7-8 ("A trunk group is a unique hardware interface on a switch.")

note that Valerie Wimer, witness for UBTA-UBET, testified that UBTA-UBET did not have essential facilities at the Provo tandem.⁵ Douglas Meredith, witness for URTA, opined that UBTA-UBET's essential facilities ended at Whiskey Springs.⁶ He further testified that Qwest owns the trunks from "Whiskey Springs to the Provo tandem." *Transcript*, p.250, ll.20-21.

However, UBTA-UBET and URTA interpret the term "essential facilities" as requiring that UBTA-UBET "owns, controls, or maintains," *UBTA-UBET Petition*, p.9, or "own, control, or manage," *URTA Petition*, p.3, some or the entire Provo tandem. They focus solely on whether UBTA-UBET maintains some physical plant, or equipment, etc., or whether UBTA-UBET owns the trunks at the Provo tandem, or the tandem itself. They ignore the language of U.C.A. § 54-8b-2(5) defining "essential facilities." As stated in the Interconnection Order, a telecommunication corporation's "essential facilities"

means *any portion, component, or function* of the network or service offered by a provider of local exchange services: (a) that is necessary for a competitor to provide a public telecommunications service; (b) that cannot be reasonably duplicated; and (c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.

U.C.A. § 54-8b-2(5) (emphasis added). UBTA-UBET is a local exchange service provider.⁷ It has a "portion, component, or function" of its "network or service" located at the Provo tandem, i.e. trunks, which it—as a local exchange service provider, uses to provide public

⁵ "Q: Does UBET have facilities to the Qwest Tandem? A: No. . . . UBET only subtends the Qwest tandem for IntraLATA toll traffic routing and not for local or feature Group D." *Pre-filed Direct Testimony of Valerie Wimer on Behalf of UBTA-UBET Communications, Inc.*, p. 15, ll.269-272.

"Q: Does UBET have essential facilities at the Bresnan proposed location at the Qwest tandem? A: No. As mentioned earlier, the only traffic from UBET customers to the Qwest tandem is Qwest toll traffic. UBET does not own any facilities to the Qwest tandem." *Id.* p. 19, ll.352-355, p. 20, l. 356.

⁶ "However, if Bresnan is connecting with the essential facilities of UBTA-UBET, those essential facilities exist in the network of UBTA-UBET. And we've talked about Whiskey Springs as the point of terminus, a point of termination for UBET's facilities, and where Qwest's facilities and network actually begins." *Transcript*, p. 191, ll.17-23.

⁷ "UBTA-UBET is a rural incumbent local exchange carrier ("ILEC") . . ." *Pre-filed Direct Testimony of Valerie Wimer on Behalf of UBTA-UBET Communications, Inc.*, p. 4, l. 40.

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telecommunications service, specifically, to carry toll-traffic at the Provo tandem.⁸ The statute does not state that the essential facilities are “essential” in nature only if owned—or even managed, controlled, or maintained, by the provider of local exchange service, in this case UBTA-UBET. Neither does the statute require the “portion, component, or function” of the “network or service” be used to transport local traffic. It simply states that the “essential facility” be “any portion, component, or function of the network or service offered by a provider of local exchange services.” In our view, UBTA-UBET and URTA’s interpretation would mean that interconnection would occur only where an ILEC has physical facilities that it owns, controls, maintains, or manages, and only when a CLEC could sustain the costs to directly interconnect its end office to an ILEC’s end office or other physical facilities. In effect, if we were to adopt UBTA-UBET’s and URTA’s interpretation, only direct interconnections would be permitted. The costs involved in having “direct connectivity between each and every end office and each and every other end office”, *Transcript*, p. 102, ll.18-19, would not only be inefficient, but would create a significant barrier to competition.

The other components of the definition of “essential facilities” we consider is that they be “(a) ☐ necessary for a competitor to provide a public telecommunications service; (b) ☐ cannot be reasonably duplicated; and (c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.” *U.C.A. § 54-8b-2(5)*. It is necessary for

⁸ See e.g. Exhibit UU-2; *Transcript*, p.180, ll. 15-20 (“existing feature group C, intraLATA toll trunk group that is used between UBTA-UBET and Provo—or Qwest’s Provo tandem . . .”); *Transcript*, p.309, ll. 2-16 (“we have only toll trunks to the two tandems we go to. There’s only toll traffic on those trunk groups . . . we build the trunks based on meeting the traffic . . .”); *Transcript*, p.112, ll.3-6 (“because we would be employing trunk groups that are already in place. . .”); *Transcript*, p.118, ll.9-11 (“ . . . according to the LERG (local exchange routing guide), there’s already a trunk group in place for intraLATA toll and feature group B ☐ traffic”).

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Bresnan to indirectly interconnect at the Provo tandem in order to provide a public telecommunications service. Alex Harris, in his pre-filed testimony, responded to the question

Q: Will the interconnection agreement proposed by Bresnan provide the necessary means for Bresnan to compete in the Vernal exchange? A: Yes. In order to compete for telephone subscribers in Vernal, Bresnan only needs a mechanism to ensure that traffic is properly exchanged and that numbers are ported. Once those mechanisms are established, Bresnan will be able to compete with UBTA-UBET.

Pre-filed Direct Testimony of Alex J. Harris, p. 5-6, 111-117. Additionally, Mr. Harris testified that although Bresnan has leased "coax facilities that terminate at [Bresnan's] head end in Vernal", *Transcript*, p.50, ll.22-25, p.51, l.1, which carry data and video, they do not and are "not capable of providing a trunk interface to an external carrier", *Transcript*, p.52, ll. 14-18. This and other evidence before us shows that the indirect interconnection is "necessary for [Bresnan] to provide a public telecommunications service."

We also find that the tandem switch at which Bresnan proposed indirect interconnection cannot be reasonably duplicated. As stated in footnote 2, a tandem switch "connects one trunk to another. A tandem switch is an intermediate switch or connection between an originating telephone call location and the final destination of the call." As Mr. Harris stated, "tandem switches are switches that connect various end offices together. And the reason you have tandems is because they're aggregation points. . . . You [may have] tens or hundreds of end offices potentially servicing a single LATA, for instance, And it would be inefficient to have direct [connectivity] between each and every end office and each and every other end office"

Based on the evidence presented by Mr. Harris, it would not be reasonable for Bresnan to duplicate a tandem switch when it will only use the indirect interconnection to interconnect with UBTA-UBET, not to interconnect "various end offices together." Not only would the tandem be

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duplicative, and an inefficient use of resources, but practically useless for Bresnan. In addition, requiring Bresnan to duplicate a tandem switch would violate the underlying purpose of indirect interconnection as stated in the Interconnection Order: "[W]here two carriers exchange minimal amounts of traffic, it is more efficient to use existing trunks that carry traffic to a common tandem, so that no carrier bears the burden of constructing an entirely new facility."

Finally, as stated more fully in the Interconnection Order, "there is no other 'adequate economic alternative to the competitor in terms of quality, quantity, and price.' Otherwise, Bresnan would have to directly connect, which process would, at least in terms of price, be significantly more expensive than indirect interconnection." The Interconnection Order details the evidence which we relied on to find that Bresnan's costs as compared to UBTA-UBET's would be significantly greater if we ordered direct interconnection.

Third, we do not agree with UBTA-UBET and URTA that there should be an additional compensation to UBTA-UBET for terminating Bresnan calls in the EAS area. URTA contends that we denied UBTA-UBET compensation for terminating Bresnan traffic in its EAS area. URTA's interpretation of the Interconnection Order is not correct, however. The Interconnection Order stated clearly that "there should not be any *extra* charge for calls that terminate outside of Vernal, i.e. in the EAS area." *Interconnection Order*, p.31. *See also* p. 32 ("... the Commission will not order an *extra* EAS charge, flat-rate or otherwise"); p. 34 (the Commission ... concluded that there should not be any *extra* charge by UBTA-UBET to Bresnan for calls that terminate outside of Vernal ... the Commission will not order an *extra* EAS charge") (emphasis added). We specifically found that UBTA-UBET would be compensated by the \$.01/MOU rate for terminating

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Bresnan traffic to the Vernal area, and that any EAS traffic would already be compensated as local traffic at the \$.01/MOU rate. *Interconnection Order*, p.34. For the same reasons stated in the Interconnection Order, we disagree with UBTA-UBET that the \$1.80 flat-rate charge is charge that may be properly charged to Bresnan as compensation for termination of calls in the EAS area. Additionally, contrary to UBTA-UBET's assertions that Bresnan's customers "would not be required to pay for that access [to the EAS area]," we find the \$.01/MOU rate will be a rate which Bresnan customers will pay to have calls terminated to the Vernal or EAS areas. As stated in the Interconnection Order:

From [UBTA-UBET's own] statements, in this docket, the Commission must conclude that the costs of originating/terminating calls within the Vernal Host are no different than the costs of originating/terminating calls in remote areas. As Bresnan pointed out in Exhibit B-2, Spreadsheet 5, "Bresnan Response to Staff Data Requests 2.2BB and 2.3BB-Host-Remote Expense," all trunk groups "carry all traffic between the Vernal Host and each Remote in a wholly un-segregated manner."

Interconnection Order, pp. 31-32. Given the evidence on cost before us, and given UBTA-UBET's own admissions, our order found that a \$.01/MOU rate was a rate that adequately compensated UBTA-UBET for terminating Bresnan traffic in the Vernal Host and each remote area. We do not find that an extra charge for terminating traffic to the remote areas is proper.

Fourth, we do not agree with UBTA-UBET that our Interconnection Order constitutes rule-making outside of the Utah Administrative Rulemaking Act, U.C.A. 63G-3-101 *et seq.* We have explicitly stated that this docket was commenced to resolve a dispute over interconnection of essential facilities between Bresnan and UBTA-UBET, pursuant to Utah Code § 54-8b-2.2(1) (e). Additionally, as correctly stated by Bresnan:

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The ARA specifically indicates that "orders" and "rulings by an agency in adjudicative proceedings" are not rules under the ARA. Under the Utah Administrative Procedure Act, an "adjudicative proceeding" means a state agency action or proceeding "that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license." This proceeding determined the legal right of Bresnan to indirectly interconnect with UBET and the Commission Order in this matter was agency action granting such right.

Bresnan Response, p.19. As such, the proceedings were adjudicative in nature, not rule-making proceedings.

Finally, the evidence before the Commission as presented to the ALJ, and as stated in the Interconnection Order, was that indirect interconnection was technically feasible and that UBTA-UBET could permit Bresnan to indirectly interconnect at the Provo tandem. We will, however, amend the Interconnection Order to be clear about the obligations the Interconnection Order imposes on a third party tandem provider, like Qwest, who is not a party to these proceedings. We modify the Interconnection Order to provide that Section 3.1.1. of the Agreement shall read as follows:

3.1.1 Unless otherwise mutually agreed, and only to the extent that transiting of Local/EAS traffic between the Parties is enabled within the tandem switch of a third party to which both Parties are Interconnected, the Parties shall initially employ Indirect Interconnection between their networks for purposes of exchanging Local, EAS and ISP-Bound Traffic between Bresnan End User Customers located in the Exchange Areas listed in Exhibit 1, attached hereto, and UBET End User Customers. Nothing in this Section 3.1 shall be construed to impose any obligations on any third party tandem provider, which would not otherwise apply to such third party tandem provider.

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Finally, UBTA-UBET claims that we found "that Bresnan is permitted, under R746-348-3 to mandate the point of interconnection." *UBTA-UBET Petition*, p.6. Although Bresnan identified the desired point of interconnection, we ultimately agreed that the Provo tandem was a proper location for Bresnan to request indirect interconnection and "mandated" that UBTA-UBET permit indirect interconnection at the Provo tandem, or at another mutually selected location.

ORDER

For these reasons we affirm the Interconnection Order, except that we order Section 3.1.1 of the Agreement be modified immediately as stated previously. The stay previously entered is hereby lifted.

DATED at Salt Lake City, Utah, this 3rd day of August, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#63054

EXHIBIT C



Communications

Bresnan Communications
One Manhattanville Road
Purchase, NY 10577-2596
Tel: 914.641.3300
Fax: 914.641.3301
www.bresnan.com

Via Overnight Delivery

Ms. Kira Slawson
Blackburn & Stroll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111-2048

RE: Essential Facilities Agreement Pursuant to Docket No. 08-2476-02

Dear Ms. Slawson:

Enclosed please find two signed originals of an Essential Facilities Agreement between UBTA-UBET Communications, Inc. and Bresnan Broadband of Utah, LLC. Each original is in the form approved by the Public Service Commission of Utah in its Order on Reconsideration, Review or Rehearing dated August 3, 2009.

Bresnan requests that you return one of these originals with the appropriate UBTA-UBET counter-signature to me no later than August 10, 2009. If you have concerns that the Agreement we have signed is inconsistent with the Commission's Order on Reconsideration, Review or Rehearing, please let me know as soon as possible so that those concerns may be resolved.

Further, we request that your client provide us with proposed times during the weeks of August 10th and August 24th when your client's business representatives might be available to meet with Bresnan's business representatives to work out any logistical details needed to begin exchanging orders and implementing interconnection as ordered by the Commission.

Thank you and best regards,

A handwritten signature in black ink, appearing to read "Jerold C. Lambert".

Jerold C. Lambert
Vice President and
Associate General Counsel

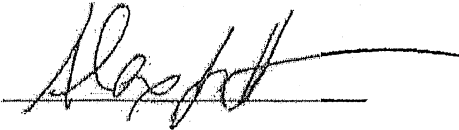
CC: Alex Harris, Bresnan
Thorvald Nelson, Holland & Hart LLP
Michelle King, Holland & Hart LLP

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

UBTA-UBET COMMUNICATIONS, INC.

BRESNAN BROADBAND OF UTAH, LLC

By: _____

By: _____

Name: _____

Name: Alex J. Harris

Title: _____

Title: Vice President Network
Planning & Industry Affairs

Date: _____

Date: August 4, 2009

EXHIBIT D

ESSENTIAL FACILITIES AGREEMENT

BETWEEN

UBTA-UBET Communications, Inc.

AND

Bresnan Broadband of Utah, LLC

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ATTACHMENTS:

- Glossary Attachment
- Interconnection Attachment
- Ancillary Services Attachment
- Pricing Attachment
- Exhibit 1

ESSENTIAL FACILITIES AGREEMENT

THIS AGREEMENT ("Agreement") is effective upon approval by the Commission (the "Effective Date"), by and between Bresnan Broadband of Utah, LLC ("Bresnan") with offices at One Manhattanville Road, Purchase, NY 10577-2596, and UBTA-UBET Communications, Inc. ("UBET") with offices at 211 East 200 North, Roosevelt, Utah 84066. This Agreement may refer to either UBET or Bresnan or both as a "Party" or "Parties."

WHEREAS, UBET is a Telecommunications Corporation, as defined in the Utah Code Annotated §54-8b-2 (18), authorized to provide Public Telecommunications Services in the State of Utah and

WHEREAS, Bresnan is a cable television provider and a Telecommunications Corporation, as defined in the Utah Code Annotated §54-8b-2 (18), authorized to provide Public Telecommunications Services in the State of Utah; and

WHEREAS Bresnan has requested interconnection with UBET under Utah Code §54-8b-2.2 et. seq.; and

WHEREAS, the Parties agree to interconnect their facilities and exchange Traffic specifically as defined herein pursuant to Utah Code Annotated §54-8b-2.2 et. seq.; and

WHEREAS, the Parties agree that capitalized terms not otherwise defined in this Agreement shall be assigned the meanings given to such term(s) by the Glossary, attached hereto and incorporated herein for all purposes.

NOW THEREFORE, in consideration of the mutual agreements contained herein, UBET and Bresnan agree as follows:

1. Purpose
 - 1.1 The Parties agree to the rates, terms and conditions contained within this Agreement, including all Attachments for the exchange of Local Traffic, EAS Traffic and ISP-Bound Traffic.
 - 1.2 This Agreement only governs the exchange of Local Traffic, EAS Traffic and ISP-Bound Traffic. Exchange of all other traffic shall be subject to the Parties' applicable Access Tariffs or equivalent price lists, except that in no case shall Bresnan's Access Tariff or equivalent price list rates charged within UBET's incumbent LEC operating territory exceed UBET's applicable rates in that territory. All references to a Party's Tariff in this Agreement, the associated Interconnection Attachment, and the associated Ancillary Services Attachment shall be subject to the restriction in this Section.
 - 1.3 Neither Party shall provide local number porting for third parties that are not End User Customers or transmit over the interconnection arrangements provided for in this Agreement, any traffic that is generated by a third party that is not an End User Customer of that Party ("Third Party Traffic"). Notwithstanding the

foregoing, Third Party Traffic shall not include traffic as set forth in Section 5.3 of the Interconnection Attachment. If a Party (the "Originating Party") delivers Third Party Traffic to the other Party (the "Terminating Party") via the interconnection arrangements established under this Agreement, such Third Party Traffic delivered by the Originating Party via such interconnection arrangements shall be subject to the Terminating Party's intrastate Access rates until such time as the Third Party Traffic is removed from those interconnection arrangements.

2. Term of the Agreement

- 2.1 This Agreement will commence upon approval by the Commission and has an initial term of three (3) years.
- 2.2 The Parties agree that no earlier than two hundred ten (210) days prior to the conclusion of the initial term of this Agreement, either Party will have the right to request the negotiation of a subsequent agreement. Such requests for renegotiation must be in the form of a written notice to the other Party ("Renegotiation Request").
- 2.3 If no Party requests renegotiation, this Agreement shall be extended on a month-to-month basis. Upon conversion to a month-to-month term, either Party may terminate this Agreement upon ninety (90) days written notice to the other Party. A Party's right to make a Renegotiation Request shall continue as long as the Agreement is extended on a month-to-month basis but in no case shall such right continue beyond sixty (60) days after the receipt of a notice of termination.
- 2.4 Once a Party has made a Renegotiation Request, if the Parties are unable to negotiate a subsequent agreement, either Party may institute the Dispute Resolution Process to resolve the remaining open issues in the new agreement. During the pendency of any negotiation or dispute resolution initiated by a Party and until the Public Service Commission issues its decision approving the subsequent agreement resulting from such proceedings, the Parties will continue to provide services to each other pursuant to this Agreement.
- 2.5 If neither Party has initiated efforts to exchange traffic pursuant to the Interconnection Attachment within 210 days after the Effective Date of the Agreement, then either Party may terminate this Agreement upon thirty (30) days written notice to other Party.
- 2.6 Cessation of Local Exchange Service operations in Vernal by either Party shall result in termination of the Agreement. Any Party ceasing such operations shall immediately notify the other Party. Failure to notify of cessation of such operations shall be considered a default of the Agreement.

3. Termination of the Agreement

3.1 Default

Default means a Party's refusal or failure in any material respect to perform its obligations under this Agreement, or the violation of any of the material terms or

conditions of this Agreement. If a default continues for thirty (30) Days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. The failure of either party to enforce any of the provisions of this Agreement or the waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

3.2 Termination for Continuing Default

Either Party may terminate this Agreement in whole or in part in the event of a continuing default by the other Party; provided however, that the non-defaulting Party has notified the defaulting Party in writing of the alleged default pursuant to Section 3.1, above, and that the defaulting Party does not cure the alleged default nor invoke the Dispute Resolution process set forth in Section 13 of the Agreement within thirty (30) calendar days of receipt of written notice thereof.

3.3 Liability Upon Termination

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party, or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

4. Contact Exchange

Each Party agrees that it shall be the other Party's sole contact for all services provided hereunder. The Parties agree to exchange and to update contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.

5. Amendments

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

6. Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate Affiliate or an entity under its common control without the consent of the other Party, provided that the performance of this Agreement by any such assignee is guaranteed by the assignor and the assignor provides to the other Party, upon request, documentation demonstrating that assignee is an Affiliate. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

7. Authority

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents that he or she has had the opportunity to consult with legal counsel of his or her choosing.

8. Standard Practices

Each Party agrees to employ procedures that are not inconsistent with the industry practices to satisfy their respective obligations under this Agreement to the extent such practices are not in conflict with the terms of this Agreement.

9. Billing and Payment

9.1 In consideration of the services and facilities provided under this Agreement, each Party shall bill the other Party on a monthly basis all applicable charges set forth in this Agreement or, if not set forth herein, in their respective applicable tariff(s). The Party billed ("Billed Party") shall pay to the invoicing Party ("Billing Party") all undisputed amounts within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday, or a designated bank holiday, payment shall be made by the business day immediately following. Neither Party shall back bill the other Party for services provided under this Agreement that are more than one (1) year old. If a Party fails to bill for a service within one (1) year of when it was rendered, then that Party waives its rights to bill for that service, absent fraud or willful misconduct by the Billed Party.

9.2 Billing Disputes Related to Unpaid Amounts

If any portion of an amount invoiced to a Billed Party under this Agreement is subject to a bona fide dispute between the Parties, the Billed Party may withhold payment of the disputed amount ("Disputed Amount"). The Billed Party shall provide written notice to the Billing Party of the Disputed Amount(s) within thirty (30) days from the bill date. Once such written notice has been submitted to the Billing Party, the Billed Party has sixty (60) days from the bill date to provide documentation of specific details regarding the Disputed Amount, as well as the circumstances surrounding and reasons for disputing each billing item, or pay the Disputed Amount in full. All disputes must be in good faith and have a reasonable basis. The Billed Party shall pay when due all undisputed amounts on the invoice to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Billed Party shall pay the disputed amounts with interest at the lesser of (i) one and one half percent (1-1/2 %) per month or (ii) the highest rate of interest that may be charged under Utah's applicable law. In addition, the Billing Party may suspend terminating traffic for the Billed Party if Disputed Amounts resolved to be due to the Billing Party are not paid within ninety (90) days after they are determined to be due, provided the Billing Party has given the Billed Party an additional thirty (30) days written notice and opportunity to cure the

default. If the dispute is resolved such that payment is not required, the Billing Party will issue the Billed Party a credit for the Disputed Amounts on its next invoice following the date of resolution of the dispute.

9.3 Except for Disputed Amounts pursuant to Section 9.2 herein, the following shall apply:

9.3.1 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1½%) per month or (ii) the highest rate of interest that may be charged under Utah's applicable law.

9.3.2 If payment of undisputed amounts is not received thirty (30) days from the bill date, the Billing Party may provide written notice to the Billed Party that additional applications for service will be refused, and that any pending orders for service will not be completed unless payment is received by the fifteenth (15th) day following the date the Billed Party receives said notice. If the Billing Party does not refuse additional applications for service on the date specified in the notice, and the Billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to thereafter refuse additional applications for service without further notice.

9.3.3 If, following the notice under Section 9.3.2, the Billed Party fails to pay all amounts due within thirty (30) days, the Billing Party may thereafter, on thirty (30) days prior written notice to the Billed Party (the "Discontinuance Notice"), discontinue the provision of existing services to the Billed Party. Notice shall be as provided in Section 26 below. In the event services are discontinued, all billed charges, as well as applicable termination charges, if any, shall become due. If the Billing Party does not discontinue the provision of service on the date specified in the Discontinuance Notice, and the Billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to thereafter discontinue the provision of service to the Billed Party without further notice.

9.3.4 If payment is not received within sixty (60) days after the Discontinuance Notice given under Section 9.3.3, the Billing Party may terminate this Agreement.

9.3.5 After disconnect procedures have begun, the Billing Party shall not accept any service orders from the Billed Party until all unpaid charges are paid in full and such funds are available to the Billing Party.

9.4 Billing Disputes of Paid Amounts

If any portion of an amount paid to a Billing Party under this Agreement is thereafter subject to a bona fide dispute by the Billed Party ("Disputed Paid Amount"), the Billed Party may provide written notice to the Billing Party of the Disputed Paid Amount, and seek a refund of such amount, at any time prior to the

date that is one (1) year after the receipt of a bill containing the Disputed Paid Amount ("Notice Period"). If the Billed Party fails to provide written notice of a Disputed Paid Amount within the Notice Period, the Billed Party waives its rights to dispute its obligations to pay such amount, and to seek refund of such amount, absent fraud or willful misconduct by the Billing Party. If it is determined that the Billed Party is entitled to a refund of all or part of the Disputed Paid Amount, the Billing party will refund such amount.

- 9.5 Issues related to Disputed Amounts and Disputed Paid Amounts not resolved by the Parties shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 13 of this Agreement.

9.6 Deposits

9.6.1 If either Party at the end of the initial 6 months has a delinquent balance related to any undisputed amounts then the other Party may assess a Security Deposit in the amount of the last two months billing.

9.6.2 Either Party may assess a security deposit in the event that the other Party is repeatedly delinquent in making its payments, or is being reconnected after a disconnection of Service or discontinuance of the processing of orders due to a previous failure to pay undisputed charges in a timely manner (the "Delinquent Party"), the Non-Delinquent Party may require a deposit to be held as security for the payment of charges before the orders from Delinquent Party will be provisioned and completed or before reconnection of Service ("Delinquency Security Deposit"). "Repeatedly delinquent" means any payment of a material amount of total monthly Billing under the Agreement received after the Payment Due Date, three (3) or more times during the last twelve (12) month period. The Delinquency Security Deposit may not exceed the total monthly charges for the most recently completed two (2) month period based upon recent Billing.

9.6.3 Any deposit assessed pursuant to this section 9.6 may be a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and non-payment is subject to Section 9.3 of this Agreement.

9.6.4 For the return of a Security Deposit or Delinquency Security Deposit paid as cash, the deposit will be credited to Party's account or refunded, as appropriate, upon the earlier of the expiration of the term of the Agreement or the establishment of satisfactory credit with the Non-Delinquent Party, which will generally be one full year of timely payments of undisputed amounts in full by the Delinquent.

9.7 Audits

9.7.1 Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party may audit the other Party's relevant books, records and other documents

pertaining to services provided under this Agreement once in each Contract Year and/or following termination of the Agreement to evaluate the accuracy of the other Party's billing, data and invoicing, including usage data, source data, and other information and documents in accordance with this Agreement. The relevant books, records and other documents include, but are not limited to, usage data, source data, traffic reports and associated data and other information and documents in accordance with this Agreement. Such audit will take place at a time and place agreed on by the Parties no later than sixty (60) days after notice thereof.

- 9.7.2 Any audit shall be performed as follows: (i) following at least thirty (30) days prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party and at single location designated by the audited party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules. The review will consist of an examination and verification of data involving usage data, records, systems, procedures and other information related to the traffic delivered or services performed by either Party as related to settlement charges or payments made in connection with this Agreement as determined by either Party to be reasonably required. Each Party shall maintain reasonable records for a minimum of eighteen (18) months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement. Such records shall include usage records for the traffic delivered by the Party to the other Party. Such call records shall provide call detail from the originating End User Customer to the terminating End User Customer
- 9.7.3 Each Party will cooperate fully in any such audit, providing reasonable access to any and all appropriate employees, subcontractors and other agents and books, records and other documents reasonably necessary to assess the accuracy of the Party's billings, data and invoices.
- 9.7.4 Each Party has bear their own cost of the audit except that if the auditing party finds discrepancies greater than twenty percent or more, the audited Party with the discrepancies shall pay the full cost of the audit and reimburse the other auditing Party for the discrepancies.

9.8 Recording

The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard Automatic Message Accounting ("AMA") records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call

including ANI or service provider information necessary to identify the originating company and originating signaling information.

10. Compliance with Laws and Regulations

Each Party shall comply with all applicable federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

11. Confidential Information

11.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software, and documentation of one Party (a "Disclosing Party") that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party upon disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 11.2 of this Agreement. Nothing herein shall prohibit or restrict a Receiving Party from providing Proprietary Information in response to a request of the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration, or in connection with Dispute Resolution, provided that the Disclosing Party is first given the opportunity to seek appropriate relief under the provisions of Section 11.2.

11.2 If any Receiving Party is required by any governmental authority, or by Applicable Law, to disclose any Proprietary Information, or believes it is necessary to disclose Proprietary Information pursuant to Section 11.1 above, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party may disclose the Proprietary Information within the time required by the governmental authority or Applicable Law,

provided that the Disclosing Party has been provided with written notice under this section 11.2 and protective relief has not been obtained by the Disclosing Party.

- 11.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

12. Fraud

Neither Party shall bear responsibility for, nor be required to make adjustments to the other Party's account, in cases of fraud by the other Party's customers or on the other Party's customer accounts. The Parties agree to reasonably cooperate with each other to detect, investigate, and prevent fraud and to reasonably cooperate with law enforcement investigations concerning fraudulent use of the other Party's services or network. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other. Each Party expressly assumes responsibility, as between the Parties, and agrees to reimburse and make whole the other Party for damages incurred by the other Party due to fraud committed by a Party's End User Customers or any other third-party entities whose traffic is exchanged over the interconnection facilities established by this Agreement which, with the use of reasonable diligence and attentiveness and existing technology currently deployed, could have been prevented.

13. Dispute Resolution

The Parties desire to resolve disputes arising out of or relating to this Agreement without, to the extent possible, litigation. Accordingly, except for action seeking a temporary restraining order or an injunction, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

13.1 Informal Resolution of Disputes

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures

such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Proprietary Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties.

13.2 Formal Dispute Resolution

If negotiations pursuant to Section 13.1 fail to produce an agreeable resolution within sixty (60) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties, such disputes may also be submitted to binding arbitration. In the case of arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitrator but shall otherwise pay their own expenses associated with the arbitration.

13.3 Continuous Service

The Parties shall continue providing existing services to each other during the pendency of dispute resolution procedures (except as otherwise provided in this Agreement), and the Parties shall continue to perform their payment obligations including making payments in accordance with this Agreement.

14. Entire Agreement

This Agreement, together with all exhibits, addenda, schedules and attachments hereto, constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied have been made or relied upon in the making of this Agreement other than those specifically set forth herein. In the event there is a conflict between any term of this Agreement, the provisions shall be construed to give the greatest possible effect to the intent of this Agreement.

15. Expenses

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

16. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement, other than the payment obligations as set forth in 9, from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, equipment failure, power blackouts, volcanic action, other major environmental

disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). Notwithstanding the foregoing, the Parties have expressly agreed that the acts of any third-party entity using the services provided under this Agreement shall be deemed to be within the control of the Party through whose network such act originated and shall not be a Force Majeure Event. If any Force Majeure Event occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the condition resulting from the Force Majeure Event. During the pendency of the Force Majeure Event, the duties of the Parties under this Agreement affected by the Force Majeure Event shall be abated and shall resume immediately without liability thereafter.

17. Good Faith Performance

In the performance of their obligations, the Parties shall act in good faith under this Agreement. In situations in which notice, consent, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld, or delayed.

18. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah without regard to its conflict of laws principles.

19. Headings

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

20. Independent Contractor Relationship

Notwithstanding any other provisions of this Agreement, neither this Agreement, nor any actions taken by Bresnan or UBET in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between Bresnan and UBET, or any relationship other than that of co-carriers. Neither this Agreement, nor any actions taken by Bresnan or UBET in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between either Party and the other Party's End User Customers or other third parties.

21. Law Enforcement Interface

21.1 With respect to requests for call content interception or call information interception directed at a Party's End User Customers, the other Party will have no direct involvement in law enforcement interface. In the event a Party receives a law enforcement surveillance request for an End User Customer of the other Party, the Party initially contacted shall direct the agency to the other Party.

- 21.2 Notwithstanding 21.1, the Parties agree to work jointly in security matters to support law enforcement agency requirements for call content interception or call information interception.

22. Liability and Indemnity

22.1 **DISCLAIMER**

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES IT PROVIDES UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

22.2 Indemnification

22.2.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against claims for loss, cost, liability, damage, and expense (including reasonable attorney's fees) ("Claims") by End User Customers of the Indemnifying Party and other third persons, for:

- (1) damage to tangible personal property or for personal injury proximately caused by the negligence, willful misconduct or intentional acts or omissions of the Indemnifying Party, or the employees, agents or contractors of either of them; and
- (2) libel, slander, infringement of copyright, or invasion of privacy arising from the content of communications transmitted over the Indemnified Party's facilities by the Indemnifying Party, or other third party entities whose traffic is exchanged between UBET and Bresnan over the interconnection facilities established under this Agreement.

A Party's indemnification obligations hereunder shall not be applicable to any Claims to the extent caused by, arising out of or in connection with the gross negligence, willful misconduct or intentional acts or omissions of the Indemnified Party.

22.2.2 In addition to the indemnities in Section 22.2.1 above, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party") from and against claims for loss, cost, liability,

damage, and expense (including reasonable attorney's fees) ("Claims") caused to the Indemnified Party by any third party entity contracting, directly or indirectly, with the Indemnifying Party for use of the services provided by this Agreement, or otherwise using the Indemnifying Party to deliver traffic to or receive traffic from the Indemnified Party's facilities, including claims resulting from rate arbitrage, traffic pumping, phantom traffic, or failure to provide valid, accurate and complete CPN on all traffic subject to this Agreement so that the Indemnified Party is compensated in full for such exchanged traffic in accordance with the terms of this Agreement. The Indemnified Party will notify the Indemnifying Party of information it has received or discovered which appear to trigger this indemnity obligation and provide back-up to support its concerns. The Indemnifying Party will have thirty (30) days to respond to such concerns, and, to the extent such claims are shown to be valid, shall reimburse the Indemnified Party promptly for all loss incurred by the Indemnified Party. In, addition, the Indemnifying Party shall take immediate steps to prevent future problems from the offending third party entity to the extent they can be identified.

22.2.3 The Indemnified Party will notify the Indemnifying Party promptly in writing of any Claims for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, the Indemnifying Party will promptly assume the defense of such Claim.

- (1) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party, after no less than ten (10) days prior notice to the Indemnifying Party, may proceed to defend or settle said Claim and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense of such defense or settlement.
- (2) The Indemnifying Party shall consult with the Indemnified Party prior to undertaking any compromise or settlement of any Claim(s), and the Indemnified party will have the right, at its sole option and discretion, to refuse any such compromise or settlement that (in the indemnified Party's sole reasonable opinion) might prejudice the rights of the Indemnified Party, and, at the Indemnified Party's sole cost and expense, to take over the defense, compromise or settlement of such Claim(s); provided, however, that in such event, the Indemnifying Party will neither be responsible for, nor will it be further obligated to indemnify the Indemnifying Party from or against, any Claims in excess of the amount of the refused compromise or settlement.

- (3) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

22.3 Limitation of Liability.

22.3.1 Except for a Party's indemnification obligations under Section 22.2, and each Party's responsibilities for actions and traffic of its End Users and/or any third party entities as specified in other provisions of this Agreement, no liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

22.3.2 Except for a Party's indemnification obligations under Section 22.2, and each Party's responsibilities for actions and traffic of End Users and/or any third party entities as specified in other provisions of this Agreement, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct or actions of the other Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

22.3.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to, loss of anticipated profits or anticipated revenues or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

22.4 Intellectual Property

Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third person alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party, except that each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party (the "Indemnified Party") with respect to any switch configurations or methods

performed on the Indemnified Party's switches by the Indemnified Party for the Indemnifying Party at the written instruction of Indemnifying Party.

23. Joint Work Product

This Agreement is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

24. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same document.

25. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted successors and assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, expressed or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

26. Notices

All notices to be given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; or (iii) mailed, postage prepaid, certified mail, return receipt to the following addresses of the Parties:

To: Bresnan

Bresnan Broadband of Utah, LLC
Attn: Jerold C. Lambert
One Manhattanville Road
Purchase, NY 10577
Tel: 914.641-3338
Fax: 914.641.3438

To: UBTA-UBET Communications, Inc.

CEO/General Manager
Bruce Todd
211 East 200 North
P.O. Box 398
Roosevelt, UT 84066
Tel: 435.646.5007
Fax: 435.646.2000

or to such other address as either Party shall designate by proper notice. Notices will be deemed effectively given as of the earlier of: (i) the date of actual receipt; (ii) the next

business day when notice is sent *via* overnight express mail or by personal delivery; or (iii) five (5) days after mailing in the case of certified U.S. mail.

27. Impairment of Service

The characteristics and methods of operation of any services, circuits, facilities or equipment of a Party (the "Connecting Party") connected with the services, facilities or equipment of the other Party (the "Connected Party") pursuant to this Agreement shall not materially interfere with or materially impair service over any facilities of the Connected Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Connected Party's facilities or create hazards to the employees of the Connected Party or to the public.

28. Change in Law

28.1 The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement.

28.2 The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the State Act the rules and regulations promulgated thereunder by the Utah Public Service Commission as of the Effective Date ("Applicable Rules"). In the event of (i) any effective legislative action that is not stayed or overturned, (ii) any effective, final, non-appealable regulatory or judicial order, rule, or regulation, (iii) a final non-appealable dispute resolution under this Agreement, or (iv) any other final, effective, non-appealable legal action purporting to apply the provisions of the State Act to the Parties or in which the Commission makes a generic determination that is generally applicable to the pricing, terms and conditions of this Agreement, any of which revises, modifies or reverses the Applicable Rules (individually and collectively, "Amended Rules"), then either Party may, to the extent permitted or required by the Amended Rules, by providing written notice to the other Party, require that the provisions of this Agreement that are revised, modified or reversed by the Amended Rules be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions renegotiated by the Parties to reflect each such Amended Rule.

29. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission. Each Party covenants and agrees to fully support approval of this Agreement by the

Commission. In the event the Commission rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually-acceptable modification of the rejected portion(s).

30. Taxes and Fees

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be exempt from taxes, the purchasing Party shall furnish the providing Party a proper resale or other tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale or other tax exemption. Failure to provide the tax exemption certificate will result in no exemption being available to the purchasing Party until it is provided.

31. Trademarks and Trade Names

No patent, copyright, trademark or other proprietary right (the "Marks") is licensed, granted, or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use of the other Party's Marks, including, but not limited to, in sales, in marketing or in advertising of telecommunications services. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the services of the other Party, nor engage in any other activity that may result in a likelihood of confusion between the Party's services.

32. Non-Waiver

Failure of either Party to insist on the performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

33. Bankruptcy

If any voluntary or involuntary petition or similar pleading under any Section or Sections of any bankruptcy act shall be filed by or against a Party, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Party insolvent or unable to pay the Party's debts, or the Party makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Party or for the major part of the Party's property, the other Party may, if that Party so elects but not otherwise, and with or without notice of such election or other action by that Party, forthwith terminate this Agreement.

34. Subcontractors

A Party may enter into subcontracts with third parties or affiliates for the performance of any of its duties or obligations under this Agreement, provided that the Party remains liable for the performance of its duties and obligations hereunder and such subcontractors perform such duties consistent with this Agreement.

35. Facilities Usage

Neither party shall have the right to utilize the other Parties' facilities, structures, cabinets, or equipment, "Company Assets," without prior authorization. Unauthorized use of such Company Assets shall be subject to the same penalties as defined in Utah Rules 54-8b-17(3)(c)(ii)(A) and such use shall be immediately terminated.

36. Reservation of Rights

Nothing herein shall be construed to restrict or modify either Party's ability to file with the Utah Public Service Commission or any other appropriate agency or court to modify or terminate this Agreement based on a change to federal or state law including but not limited to a subsequent determination by the Federal Communications Commission, a Federal court, or a State court indicating that services, such as those provided by either Party are not eligible for interconnection or traffic exchange.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

UBTA-UBET COMMUNICATIONS, INC.

BRESNAN BROADBAND OF UTAH, LLC

By: _____

By: _____

Name: _____

Name: Alex J. Harris

Title: _____

Title: Vice President Network
Planning & Industry Affairs

Date: _____

Date: August 4, 2009

GLOSSARY

1. General Rule

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this Agreement are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below.

2. Definitions

2.1 ACCESS SERVICE REQUEST (ASR)

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

2.2 AFFILIATE

Shall mean an entity that now or in the future, directly controls, is controlled by, or is under common control with, a party to this Agreement. For purposes of the foregoing, "control" shall mean the ownership of (i) greater than fifty percent (50%) of the voting power to elect the directors of the company, or (ii) greater than fifty percent (50%) of the ownership interest in the company, or (iii) greater than fifty percent (50%) of the controlling interest in the company.

2.3 APPLICABLE LAW

All effective laws, government regulations and orders applicable to each Party's performance of its obligations under this Agreement.

2.4 AUTOMATIC NUMBER IDENTIFICATION (ANI)

The signaling parameter which refers to the number transmitted through the network identifying the calling number of the calling End User Customer.

2.5 CALLING PARTY NUMBER (CPN)

A Signaling System 7 (SS7) parameter that identifies the calling End User Customer's telephone number.

2.6 CENTRAL OFFICE

A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office

codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.7 CENTRAL OFFICE SWITCH

A switch used to provide Telecommunications Services including, but not limited to, an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as combination End Office / Tandem Office Switch.

2.8 COMMISSION

The Utah Public Service Commission.

2.9 COMMON CHANNEL SIGNALING (CCS)

A method of transmitting call set-up and network-control data over a digital signaling network separate from the public switched telephone network facilities that carries the actual voice or data content of the call.

2.10 DIGITAL SIGNAL LEVEL 1 (DS1)

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.11 DIGITAL SIGNAL LEVEL 3 (DS3)

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.12 DIRECT INTERCONNECTION FACILITIES

Dedicated one-way or two-way transport facilities installed between Bresnan's switch(es) (or equivalent) and UBET's switch(es).

2.13 END OFFICE SWITCH OR END OFFICE

End Office Switch is a switch in which End User Customer station loops are terminated for connection to trunks. The End User Customer receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

2.14 END USER CUSTOMER

The residence or business subscriber who is the ultimate user of Local Exchange Service provided directly by either of the Parties.

2.15 END USER CUSTOMER LOCATION

The physical location of the premises where an End User Customer makes use of Local Exchange Service as listed in the ALI database.

2.16 EXCHANGE AREA.

A geographic area defined by the Commission for the provision of Local Exchange Service.

2.17 EXTENDED AREA SERVICE (EAS)

Extended Area Service is any call, including IP-Enabled Traffic that originates from an End User Customer of one Party physically located in one exchange and terminates to an End User Customer of the other Party physically located in a different exchange that is within the mandatory local calling area associated with the originating End User Customer's exchange, as defined and specified in UBET's Local Tariff P.S.C. Utah Tariff 1. As clarification of this definition and for reciprocal transport and termination compensation, EAS Traffic does not include traffic that originates from or is directed to or through an ISP or traffic originated or terminated to wireless carriers.

2.18 FCC.

The Federal Communications Commission.

2.19 INFORMATION SERVICE.

Information service.--The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

2.20 INTEREXCHANGE CARRIER (IXC).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services.

2.21 INTERLATA TRAFFIC.

Telecommunications toll traffic that originates in one LATA and terminates in another LATA.

2.22 INTRALATA TRAFFIC.

Telecommunications toll traffic that originates and terminates in the same LATA.

2.23 INTERNET PROTOCOL CONNECTION (IPC).

The physical location where End User Customer information is originated or terminated utilizing internet protocol.

2.24 INTERNET PROTOCOL-ENABLED TRAFFIC (IP-ENABLED TRAFFIC)

IP-Enabled Traffic means any internet protocol-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony, and includes voice-over Internet protocol ("VoIP") traffic. For purposes of this Agreement, IP-Enabled Traffic includes:

- (a) Voice traffic originating on an Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and
- (b) Voice traffic originated on the PSTN, and which terminates on an IPC.

2.25 ISP-BOUND TRAFFIC.

ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet Service Provider (ISP) who is physically located in an area within the Local/EAS exchange of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS exchange will be considered Switched Access Traffic and subject to access charges. IP-Enabled Traffic is not ISP-Bound Traffic.

2.26 JURISDICTIONAL INDICATOR PARAMETER (JIP).

JIP is a six-digit number which provides a unique identifier representing the originating carrier. JIP is defined in the Alliance for Telecommunications Industry Solutions Reference Document ATIS-0300011.

2.27 LINE INFORMATION DATABASE (LIDB)

One or all, as the context may require, of the Line Information Databases owned individually by UBET and other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by UBET and other entities. A LIDB also contains validation data for collect and third number-billed calls; *i.e.* Billed Number Screening.

2.28 LOCAL ACCESS AND TRANSPORT AREA (LATA).

A Local Access and Transport Area is a contiguous geographic area—(1) Established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; (2) Established or modified by a Bell operating company after February 8, 1996 and approved by the Commission.

2.29 LOCAL EXCHANGE SERVICE

Local exchange service means the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communication within the geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

2.30 LOCAL SERVICE (LOCAL) TRAFFIC

Local Traffic is any call, including IP-Enabled Traffic that originates from an End User Customer of one Party physically located in the Vernal exchange and terminates to an End User Customer of the other Party physically located in the same exchange. As clarification of this definition and for reciprocal transport and termination compensation, Local Traffic does not include traffic that originates from or is directed to or through an ISP or traffic originated or terminated to wireless carriers.

2.31 LOCAL EXCHANGE ROUTING GUIDE (LERG).

The Telcordia Technologies reference customarily used to identify NPA/NXX routing and homing information, as well as network element and equipment designation.

2.32 NEW SERVICE PROVIDER (NSP).

When an End User Customer is changing its local exchange service from one provider to another, the NSP is the provider with whom the customer will reside at the completion of the change.

2.33 NORTH AMERICAN NUMBERING PLAN (NANP).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands for wireline telecommunications traffic. The NANP format is a 10-digit number that consists of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit Central Office code and a 4-digit line number.

2.34 NUMBERING PLAN AREA (NPA).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be

provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

2.35 NXX, NXX CODE, CENTRAL OFFICE CODE OR CO CODE.

The three-digit switch entity indicator (*i.e.*, the first three digits of a seven-digit telephone number). Each NXX Code contains 10,000 station numbers.

2.36 OLD SERVICE PROVIDER (OSP).

When an End User Customer is changing its local exchange service from one provider to another, the OSP is the provider from whom the End User Customer is disconnecting

2.37 POINT OF INTERCONNECTION (POI).

The physical location(s) mutually agreed upon and designated by the Parties for the purpose of exchanging Local Traffic and EAS Traffic. Each Party shall be responsible for all costs on its respective side of the POI.

2.38 PUBLIC TELECOMMUNICATIONS SERVICE

The two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

2.39 RATE CENTER AREA.

A Rate Center Area is a geographic location, which has been defined by the Commission as being associated with a particular NPA/NXX code, which has been assigned to UBET for its provision of Local Exchange Service. Rate Center Area is normally the same as the boundary of the UBET Exchange Area as defined by the Commission.

2.40 RATE CENTER.

A Rate Center is the finite geographic point identified by a specific V&H coordinate which is used by UBET to measure, for billing purposes, distance-sensitive transmission services associated with the specific rate center; provided that a Rate Center cannot exceed the boundaries of the UBET Exchange Area as defined by the Commission.

2.41 SIGNALING SYSTEM 7 (SS7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). UBET and Bresnan currently utilize this out-of-band signaling protocol.

2.42 STATE ACT

Utah Public Telecommunications Law as set forth in Utah Code Annotated §54-8b-1 et. seq. as amended from time to time, and as interpreted in the duly authorized and effective rules and regulation of the Utah Public Service Commission.

2.43 SWITCHED ACCESS SERVICE.

The offering of transmission and switching services for the purpose of the origination or termination of toll traffic. Switched Access Services include, but may not be limited to, Feature Group A, Feature Group B, Feature Group D, 700 access, 8XX access, and 900 access.

2.44 TANDEM SWITCH.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among end office switches and between and among end office switches and carriers' aggregation points, points of termination, or points of presence, and to provide Switched Access Services.

2.45 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC.

Local Exchange Service traffic that originates on one Party's network and is transported through the other Party's Tandem to the Central Office of a third party, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other Telecommunications Corporation, where the switch homing arrangement for the dialed NPA-NXX-X is designated as UBET's tandem switch per the Local Exchange Routing Guide ("LERG"). Subtending Central Offices shall be determined in accordance with and as identified in the LERG.

2.46 TARIFF.

Any applicable Federal or State tariff of a Party, as amended from time to time.

2.47 TELCORDIA TECHNOLOGIES.

Formerly known as Bell Communications Research. The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides generic requirements for the telecommunications industry for products, services and technologies.

2.48 TELECOMMUNICATIONS CARRIER.

For purposes of this Agreement, the term "Telecommunications Carrier" means any provider of wireline Telecommunications Services, except that such term does not include aggregators of Telecommunications Services. A Telecommunications Carrier shall be treated as a common carrier under the

Telecommunications Act only to the extent that it is engaged in providing Telecommunications Services.

2.49 TELECOMMUNICATIONS CORPORATION

Any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning controlling, operating, managing, or reselling a public telecommunications service.

2.50. TELECOMMUNICATIONS SERVICE

The term "Telecommunications Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2.51 TELECOMMUNICATIONS TRAFFIC.

"Telecommunications Traffic" means traffic exchanged between the Parties, except for traffic that is interstate or intrastate exchange access, Commercial Mobile Radio Service, information access or exchange services for such access.

INTERCONNECTION ATTACHMENT

INTERCONNECTION

1. General

- 1.1 This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between UBET and Bresnan for the purpose of the exchange of Local, EAS, and ISP-Bound Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party physically located in the same Exchange Area, where each Party directly provides Local Exchange Service.
- 1.2 This Attachment also describes the physical architecture for the interconnection of the Parties' facilities and equipment for the transmission and routing of wireline Telecommunications Traffic exchanged between the Parties and the compensation for such facilities and traffic exchanged.
- 1.3 Traffic that is exchanged through an Interexchange Carrier (IXC) is not covered under this Agreement. Any traffic that is not Local, EAS, or ISP-Bound Traffic will be considered toll traffic and subject to Switched Access Service Tariffs.

2. Responsibility for Traffic

- 2.1 Each Party is solely responsible for all traffic that Party (the "Originating Party") originates to the other Party (the "Terminating Party") over the facilities established by this Agreement, including but not limited to local voice traffic, IP-Enabled Traffic, ISP-Bound Traffic and toll traffic of the Originating Party's End User Customers. The Originating Party shall not provision any of its services in a manner that permits the circumvention of the Terminating Party's applicable Switched Access Service Tariff charges. The Originating Party agrees to be responsible for and pay its portion of the Interconnection Facilities, and all Reciprocal Compensation and Switched Access Tariff charges associated with all traffic the Originating Party exchanges with the Terminating Party.
- 2.2 Each Party agrees that it will not terminate pursuant to this Agreement any traffic where the End User Customer is able to move its service location ("Nomadic Traffic"). Such traffic is not permitted in this Agreement. If Nomadic Traffic is delivered by a Party it shall be subject to Switched Access Service Tariff charges pursuant to the highest applicable Switched Access Service Tariff rates of the Terminating Party.
- 2.3 Neither Party owns an access tandem that is listed in the LERG, therefore neither Party shall charge the other any tandem transit fees.
- 2.4 Each Party agrees that it is responsible for implementing the proper Signaling and Signaling Parameters for determining the correct classification of traffic pursuant to Section 6 of this Attachment.

- 2.5 The delivery of traffic that has had Signaling or Signaling Parameters stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned ("Misclassified Traffic") is prohibited under this Agreement. Due to the technical nature of its origination, certain traffic that is not Misclassified Traffic may be properly transmitted without all the Signaling and Signaling Parameters pursuant to section 6 of this Attachment ("Unclassified Traffic").
- 2.6 If the percentage of total call traffic transmitted with Signaling and Signaling Parameters in a given month falls below 95%, the Party originating such traffic agrees to pay the terminating Party's highest applicable Switched Access Service Tariff rates for all Unclassified Traffic for the applicable month.
- 2.7 If the Terminating Party has been notified of the Misclassified or Unclassified traffic via billing according to Section 2.6, the Parties agree that if it is determined that more than two percent (2%) of the total traffic delivered by an originating Party during any consecutive three (3)-month period is Misclassified Traffic, such Party shall be in Default of this Agreement. To the extent that the Parties have enlisted the Dispute Resolution procedures pursuant section 13 of the General Terms and Conditions to determine the proper treatment of the traffic, a Default shall not occur while such dispute is pending. Each Party shall make a good faith effort to resolve any such pending dispute within a reasonable time period.
- 2.8 Each Party shall take all reasonable steps to correct the causes of misrouted toll traffic, misidentified traffic, Misclassified Traffic and Unclassified Traffic. Such traffic shall be rerouted to toll trunk groups and properly identified. This obligation applies during the pendency of a dispute.
- 2.9 In addition to the audit provisions of Section 9.7 of the General Terms and Conditions, or in the event of a dispute with regard to Misclassified Traffic, each Party shall have the right to audit the other Party's records to ensure that no traffic is misrouted, misclassified, or is otherwise in circumvention of Switched Access Service charges. Both Parties shall cooperate in providing the records required to conduct such audits. Upon request, the audited Party will cooperate in identifying the physical location of the End User Customer originating or terminating the call. No Party shall have the right to conduct an audit more than one time in a consecutive six-month period.

3. Interconnection

3.1 Indirect Interconnection

- 3.1.1 Unless otherwise mutually agreed, and only to the extent that transiting of Local/EAS traffic between the Parties is enabled within the tandem switch of a third party to which both Parties are Interconnected, the Parties shall initially employ Indirect Interconnection between their networks for purposes of exchanging Local, EAS and ISP-Bound Traffic between Bresnan End User Customers located in the Exchange Areas listed in Exhibit 1, attached hereto, and UBET End User Customers. Nothing in

this Section 3.1 shall be construed to impose any obligations on any third party tandem provider, which would not otherwise apply to such third party tandem provider.

- 3.1.2 Such Indirect Interconnection shall be effected through the tandem switch of a 3rd party to which both Parties are interconnected.
- 3.1.3 Each Party shall be solely responsible for all connectivity between its network and the 3rd party tandem switch. Each Party shall be responsible for paying any transiting charges which the 3rd party tandem provider may impose on traffic originated by that Party.
- 3.1.4 With regard to compensation between the Parties, Local, EAS and ISP-Bound Traffic exchanged via Indirect Interconnection as specified herein, shall be subject to Traffic Termination Compensation as set forth in Section 4.2, as if such traffic had been exchanged at a designated Direct Interconnection POI. No other charges between the Parties shall apply with respect to Indirect Interconnection.
- 3.1.5 For all Local, EAS and ISP-Bound Traffic exchanged between the Parties via Indirect Interconnection, the originating Party shall supply to the terminating Party, at no charge to the terminating Party, call records which include: Record ID, Date of Call, Called Party Number (CdPN), Calling Party Number (CPN), CIC (if applicable), Time of Call, Elapsed Minutes, Elapsed Seconds, and valid OCN (Operating Company Number).
- 3.1.6 Unless otherwise mutually agreed, the Parties shall implement Direct Interconnection when the two-way aggregate Local, EAS and ISP-Bound Traffic volume between their respective switches exceeds 512 CCS in the busy hour for three (3) consecutive months. Upon verification by both Parties that such traffic volume has been achieved, or is projected to be achieved within 60 days, the Parties shall use their mutual best efforts to implement Direct Interconnection within 40 Business Days.

3.2 Direct Interconnection

For purposes of Direct Interconnection, the Parties agree to physically connect their respective networks, at POI(s) so as to furnish Local, EAS, and ISP-Bound Traffic between Bresnan End User Customers located in the Exchange Areas listed in Exhibit 1, attached hereto, and UBET End User Customers. Bresnan may request additional UBET exchanges for which it is certified by providing notice and the Parties shall negotiate an amendment to this Agreement. This Agreement is expressly limited to the transport and termination of Local, EAS, and ISP-Bound Traffic originated and terminated to End User Customers at the POI located at the 2495 East Highway 40, Vernal, Utah ("Bresnan Headend"). Additional POIs may be established as may be mutually agreed upon, provided that any additional POI must be located on the UBET network at a technically

feasible point. UBET does not have any obligation to extend its facilities to accommodate an additional POI not physically located on its facilities.

- 3.3 Direct Interconnection Facilities between the Parties' networks shall be provisioned as two-way interconnection trunks. The dedicated interconnection facilities shall meet the Telcordia BOC Notes on LEC Network Practice No. SR – TSV – 002275.

- 3.4 Local Interconnection Trunks

- 3.4.1 The Parties will establish a local trunk group for the exchange of Local Traffic, EAS Traffic, and ISP-Bound Traffic ("Local Interconnection Trunks") on the Direct Interconnection Facility. The Parties agree that all Local Traffic, EAS Traffic and ISP-Bound Traffic exchanged between them will be on trunks exclusively dedicated to such traffic. Neither Party will terminate IntraLATA toll traffic or InterLATA toll traffic or originate untranslated traffic to service codes (e.g., 800, 888) over Local Interconnection Trunks.

- 3.4.2 If the Parties' originating Local Traffic, EAS Traffic and ISP-Bound Traffic is exchanged utilizing the same two-way Local Interconnection Trunk, both Parties will mutually coordinate the provisioning and quantity of trunks to be utilized in this arrangement according to standard practices as set forth in Section 8.

- 3.4.3 All traffic terminated over the Local Interconnection Trunks must terminate in the End Office or subtending Remote; i.e., no Tandem switching will be performed in the End Office, including transiting to other carriers connected to that End Office except as provided in Section 5.3 of this Attachment.

- 3.4.4 All non-local, non-EAS and non-ISP-Bound traffic shall be completed by a separate carrier(s) or on a separate trunk group(s).

- 3.5 The Parties will mutually agree on the appropriate sizing of the transport facilities and trunks. The capacity of transport facilities and trunks provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties to ensure a consistent P.01 grade of service.

- 3.6 Local Interconnection Trunks connected at the POI shall be ordered pursuant to the provisions of Section 1.1 of the Ancillary Services Attachment.

- 3.7 Interface Types:

- 3.7.1 If the POI has an electrical interface, the interface will be DS1 or DS3 as mutually agreed upon by the Parties.

3.7.2 When a DS3 interface is agreed to by the Parties, each Party shall provide any multiplexing required for DS1 facilities or trunking on that Party's own side of the POI.

3.8 Programming:

3.8.1 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the LERG guidelines to recognize and route traffic to the other Party's assigned NPA-NXX, NPA-NXX-X, and LRN codes. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities.

3.9 Equipment Additions:

Where additional equipment is required, such equipment will be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for the Parties' internal customer demand.

3.10 Each Party is responsible for engineering and delivering their facilities to the POI to meet the grade of service listed in Section 7.2 of the Interconnection Attachment. Neither Party shall have any right to demand that facilities of the other Party be provisioned in a particular manner or use a particular technology, provided that equipment installed to meet the interconnection obligations shall efficiently utilize the space at the POI.

4. Compensation

4.1 Facilities Compensation

4.1.1 For Direct Interconnection Facilities, each Party may utilize its own facilities, lease facilities from the other Party or lease facilities from a third party to reach the POI.

4.1.2 Each Party shall be responsible for all costs of the Direct Interconnection Facilities on its side of the POI. Each Party is responsible for any transport, transiting, or switching charges assessed by any third party on its respective side of the POI. Neither Party shall have any obligation to bear any charges, expenses or other costs assessed in connection with transporting, transiting or switching traffic on the other Party's side of the POI.

4.1.3 Any transport facilities purchased by one Party (the "Purchasing Party") from the other Party (the "Providing Party"), for any purposes, shall be subject to the applicable Tariff or contract terms of the Providing Party.

4.1.4 If a Party uses a third party network provider to reach the POI, that Party will bear all third party carrier charges for facilities and traffic in both directions on its side of the POI. A Party may utilize said third party facilities to establish interconnection with the other Party only if trunk

groups provided over such third party facilities are dedicated trunk groups used only for that Party's traffic under this Agreement and such trunk groups connect with the other Party at the POI.

4.2 Traffic Termination Compensation

This Section 4.2 is expressly limited to the transport and termination of Local Traffic, EAS Traffic and ISP-Bound Traffic originated by and terminated to End User Customers of the Parties to this Agreement. Neither Party expects to exchange significant amounts of ISP Bound Traffic between the two networks. The terms specified in this Section 4.2 shall apply to de minimis amounts of ISP Bound Traffic. If ISP Bound Traffic exceeds 50,000 minutes per month for three (3) consecutive calendar months, the Parties shall negotiate separate compensation terms specific to transport and termination of ISP Bound Traffic. No compensation shall be billed for ISP Bound Traffic during such negotiations.

4.2.1 The originating Party shall pay the minute of use intercarrier compensation rate listed in the Pricing Attachment for all traffic it originates.

4.2.2 Intentionally left blank.

4.2.3 Unless otherwise specifically addressed in this Agreement, compensation for all other traffic exchanged between the Parties will be in accordance with each Party's Switched Access Service Tariffs.

4.3 For the purposes of compensation under this Agreement, jurisdiction of all traffic, including IP-Enabled Traffic is determined by the physical location of the End User Customer originating such traffic. Signaling information associated with all traffic exchanged under this Agreement, including IP-Enabled Traffic, must comply with Section 6 of this Interconnection Attachment.

4.4 Neither Party shall represent Switched Access Service traffic as Local Traffic, EAS Traffic or ISP-bound Traffic for any purpose.

4.5 Transit Traffic Compensation

Neither Party has a Tandem switch listed in the LERG, therefore there is no Tandem Transit traffic between the Parties. Neither Party shall charge the other any transiting fees.

5. Routing

5.1 Both Parties will route traffic in accordance with Telcordia Traffic Routing Administration (TRA) instructions.

5.2 Both Parties shall adhere to the North American Numbering Plan (NANP) guidelines for wireline services. Both Parties agree to assign telephone numbers from an NPA-NXX Code(s) only to an End User Customer at an End User

Customer Location located inside the Rate Center with which the NPA-NXX is associated, except in cases where either Party offers foreign exchange (FX) Service; for purposes of this Agreement FX Service means a service provided over a dedicated facility to an End User Customer from an Exchange Area or Rate Center Area other than the Exchange Area or Rate Center Area from which the End User Customer would normally be served. To the extent either Party offers any service whereby a telephone number from an NPA-NXX Code is assigned to a End User Customer Location outside of the Rate Center with which that NPA-NXX Code is associated, such telephone number and the traffic associated with such service shall be identified to the other Party and shall be subject to the other Party's originating or terminating jurisdictional Switched Access Tariff charges according to the physical location of the customer.

- 5.3 Neither Party shall transit, via a switch belonging to the other Party, any traffic destined for a third party's network. However, if a wireless carrier, contrary to the LERG, routes calls destined for one Party's (the "Terminating Party's") customers to the other Party (the "Intermediate Party"), the Intermediate Party may attempt to complete such calls. Each Party is solely responsible for any necessary interconnection arrangements between its network and the networks of wireless carriers, and for directly paying and billing the wireless carriers for any intercarrier compensation associated with any traffic between its network and the networks of wireless carriers. The Intermediate Party shall not be responsible for any intercarrier compensation payments to the Terminating Party for such traffic.
- 5.4 Neither Party shall route un-translated traffic to service codes (e.g., 800, 888, 900) over the Local Interconnection Trunks.
- 5.5 N11 Codes: Neither Party shall route un-translated N11 codes (e.g., 411, 611, 711, and 911) to the other party over Interconnection Facilities.

6. Signaling

- 6.1 Each party shall provide accurate Calling Party Number ("CPN") and JIP associated with the End User Customer originating the call.

6.1.1 Accurate CPN is:

- 6.1.1.1 CPN that is a dialable working telephone number, that when dialed, will reach the End User Customer to whom it is assigned, at that End User Customer's Location.

- 6.1.1.2 CPN that has not been altered.

- 6.1.1.3 CPN that is the same as either: (i) the originating number; or (ii) the End User Customer's main billing telephone number within the Rate Center of the End User Customer's originating number.

6.1.1.4 CPN that follows the North American Numbering Plan Standards for wireline traffic and can be identified in numbering databases and the LERG as an active number.

6.1.1.5 CPN that is assigned to an active End User Customer.

6.1.1.6 CPN that is associated with the UBET Rate Center Area of the specific End User Customer Location.

6.1.2 JIP shall be populated as follows:

6.1.2.1 The SS7 JIP parameter must be populated in the Initial Address Message (IAM) of all wireline calls.

6.1.2.2 The JIP must be populated such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the physical location of the caller. In addition, Local and EAS Traffic should have a JIP associated with the Vernal Exchange.

6.1.2.3 When call forwarding occurs, the forwarded from Directory Number (DN) field must be populated, the JIP will be changed to a JIP associated with the forwarded from DN and the new called DN will be inserted in the IAM.

6.2 Signaling:

The Parties will connect their networks using SS7 signaling as defined in applicable industry standards including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for common channel signaling-based features in the connection of their networks. Each Party shall ensure that CPN is available for at least 95% of the calls it terminates to the other Party. Signaling information shall be shared, upon request, between the Parties at no charge to either Party.

6.3 Signaling Parameters:

The Parties agree to utilize SS7 Common Channel Signaling ("CCS") between their respective networks for the traffic addressed in this Agreement in order to process, track and monitor the traffic. Each Party will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. For all traffic exchanged, the Parties agree to cooperate with one another and to exchange all appropriate CCS messages, for call set-up, including without limitation ISDN User Part ("ISUP"), Transaction Capability User Part ("TCAP") messages and Jurisdictional Indicator Parameter ("JIP") to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. Each Party will provide all CCS signaling parameters, including, but not limited to the originating CPN, in

conjunction with all traffic it exchanges to the extent required by industry standards.

7. Network Management

7.1 Network Management and Changes:

Both Parties will work cooperatively with each other to install and maintain the most effective and reliable interconnected telecommunications networks, including but not limited to, the exchange of toll-free maintenance contact numbers and escalation procedures. Both Parties agree to provide notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks. Details of network technical specifications, forecasting, and trunk implementation shall be in accordance with each Party's as set forth in Section 8 of the General Terms and Conditions.

7.2 Grade of Service:

Each Party will provision their network to provide a designed blocking objective of a P.01.

7.3 Protective Controls:

Either Party may use protective network traffic management controls such as 7-digit or 10-digit code gaps, as applicable, on traffic towards each Party's network, when required to protect the public switched network from congestion or failure, or focused overload. Bresnan and UBET will immediately notify each other of any protective control action planned or executed.

7.4 Mass Calling:

Both Parties will cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes. The Parties agree that the promotion of mass calling services is not in the best interest of either Party. If one Party's network is burdened repeatedly more than the other Party's network, the Parties will meet and discuss the cause and impact of such calling and will agree on how to equitably share the costs and revenues associated with the calls and on methods for managing the call volume.

7.5 Network Harm:

Neither Party will use any service related to or provided in this Agreement in any manner that interferes the use of the other Party's service, impairs the quality of service to other carriers or to either Party's End User Customers; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm will occur, or if a Party reasonably

determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required, provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

- 7.5.1 Promptly notify the other Party of such temporary discontinuance or refusal;
- 7.5.2 Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and
- 7.5.3 Inform the other Party of its right to bring a complaint to the Commission, FCC, or a court of competent jurisdiction.

ANCILLARY SERVICES ATTACHMENT

1. ORDERING

1.1. Local Interconnection Trunk Ordering.

Bresnan shall order the Local Interconnection Trunks using an ASR. Each such ASR shall specify: 1) the type and number of Interconnection facilities to terminate at the Point of Interconnection 2) the number of Ports to be provisioned at an End Office Switch; and 3) any optional features. The Parties shall mutually agree on the trunk sizing. When Bresnan requests facilities, routing, or optional features different than those determined to be available, the Parties will work cooperatively in determining an acceptable configuration, based on available facilities, equipment and routing plans.

UBET shall process ASR's submitted by Bresnan in the same intervals as provided in its state Access Tariff and according to standard practices as set forth in Section 8 of the General Terms and Conditions.

1.1.1. No Service Order or other charges of any kind shall apply to any aspect of the order or installation processes with respect to Local Interconnection Trunks provisioned at the POI, nor for either Party's own activities on its own side of the POI in regard to provisioning such trunks, except as explicitly provided in Section 1.1.2 of this Attachment and in Section 4.1.3 of the Interconnection Attachment.

1.1.2 Expedited, Changed or Cancelled Orders and Overtime Installation.
Charges for expedited orders, changed orders, canceled orders and for overtime on order installation performed at the request of Bresnan shall be applied according to the rates, terms and conditions which would otherwise apply to a comparable service order under UBET's state Access Tariff in effect at the time. Notwithstanding the above, no such charges shall apply to any order unless UBET advises Bresnan that such charges shall apply before they are incurred.

1.2 Local Service Request (LSR).

1.2.1 The NSP shall submit a Local Service Request (LSR) to the OSP according to standard practices as set forth in Section 8 of the General Terms and Conditions, for purposes of requesting Local Number Portability (LNP). The required fields of the LSR consist of: Account Number, Telephone Number, Zip Code, Customer Carrier Name Abbreviation, Purchase Order Number, Desired Due Date/Time, Requisition Type, Company Code, Telephone Number (Initiator), New Network Service Provider, End User Customer name, address and Supplemental Order Notice and Version (if applicable). The OSP may charge an LSR charge in accordance with the applicable UBET Tariff that

lists a specific charge applying to LSRs for Local Number Portability. In the event that UBET proposes to change one of its Utah State Tariffs to implement a specific LSR charge, UBET shall provide Bresnan advanced notice of any such proposed Tariff change or such LSR charges shall not be charged to either party during the term of this Agreement.

- 1.2.2 The Parties agree that the standard interval for an LNP Simple Port request shall not exceed 4 business days from the OSP's receipt of a complete and correct LSR, or the interval applicable to wireline carriers.
 - 1.2.3 LSR Expedite Charge. Should the NSP request provisioning of LNP in less than the interval specified in 1.2.2 above, expedite charges shall apply as specified in the Pricing Attachment of this Agreement.
 - 1.2.4 Overtime Charge. Each Party shall provision LNP during its regular working hours. To the extent the NSP requests provisioning of service to be performed outside the OSP's regular working hours, or the work so requested requires the OSP's technicians or project managers to work outside of regular working hours, overtime charges shall apply as specified in the Pricing Attachment of this Agreement. Notwithstanding the above, the OSP shall not apply any Overtime Charges unless it has first advised the NSP that such charges will apply to the request prior to the OSP's working the request.
 - 1.2.5 LSR Cancellation Charges. If the NSP cancels an LSR after being sent a Firm Order Confirmation (FOC) by the OSP, cancellation charges shall apply as specified in the Pricing Attachment to this Agreement.
 - 1.2.6 LSR Order Change Charges. If the NSP modifies an LSR after being sent a Firm Order Confirmation (FOC) by the OSP, order change charges shall apply as specified in the Pricing Attachment of this Agreement.
- 1.3 Customer Service Records (CSR)
- 1.3.1 Each request to access retail Customer Proprietary Network Information (CPNI) and Customer Service Record (CSR) will include for each customer account per location: billing name, service address, billing address, billed service and feature subscription, directory listing information, long distance carrier identity, and PIC freeze indication. Parties agree that the Parties' representatives will not access the information specified in this subsection without the End User Customer's permission, and that the requesting party has verification from the customer via including Third Party Verification, a Letter of Authorization (LOA), (Authorization) etc. that the customer has agreed to the release of this information. The Parties will obtain access to End User Customer record information only in strict compliance with applicable laws, rules, or regulations of the state.

- 1.3.2 If there is a customer complaint or an unusual request for CSRs (i.e., all business customers or a large increase in volume), the Parties reserve the right to audit each other's verification information on access to End User Customer record information. If the audit reveals that the End User Customer record information was obtained without the audited Party having obtained the proper legal permission (e.g., Third Party Verification or LOA), the auditing Party upon reasonable notice to the audited Party may take such corrective action as permitted by state law. All such information obtained through an audit shall be deemed Information covered by the Proprietary and Confidential Information section in the General Terms and Conditions of this Agreement.
- 1.3.3 The interval to complete a CSR is 3 business days for up to 12 CSR requests per day. The intervals for higher volumes of requests will be negotiated on a case by case basis.
- 1.3.4 The Party responding to a CSR request (the "Responding Party") may charge a CSR charge in accordance with the applicable UBET Tariff that lists a specific charge applying to CSR requests. In the event that UBET proposes to change one of its Utah State Tariffs to implement a specific CSR charge, UBET shall provide Bresnan advanced notice of any such proposed Tariff change or such CSR charges shall not be charged to either party during the term of this Agreement.

2. ACCESS TO INSIDE WIRE.

Each Party is responsible for accessing customer premise wiring without disturbing the other Party's plant or facilities. In no case shall a Party remove or disconnect the loop facilities, or grounding wires from the other Party's NIDs, enclosures, protectors or comparable demarcation devices. If a Party removes the other Party's loop in violation of this Agreement, the removing Party will hold the other Party harmless for any liability associated with the removal of the loop or ground wire. Furthermore, neither party shall remove or disconnect NID modules, protectors, or terminals from the other Party's NID enclosures. Notwithstanding the above, the NSP may disconnect the customer premise wires from the OSP's NID, enclosure, protector or comparable demarcation device on the customer-side of such NID, enclosure, protector or comparable demarcation device, as permitted by the End User Customer, in order to provide service in place of the OSP. Such disconnection shall be done in a non-invasive manner if possible but may require cutting the customer premise wiring connecting to such NID, enclosures, protector or comparable demarcation device. In such instances, the OSP shall have no claim against the NSP, and the NSP shall not be liable for any costs to reconnect the customer premise wiring to the OSP's NID, enclosure, protector or comparable demarcation device in the event the customer subsequently purchases service from the OSP.

3. MAINTENANCE AND REPAIR

- 3.1 The Parties agree to adhere to standard practices as set forth in Section 8 of the General Terms and Conditions for maintenance and repair, on a non-

discriminatory basis. Except as provided in Section 3.2 of this Attachment, no charges for maintenance, trouble or repair shall apply. Each Party shall be responsible to repair outages on Local Interconnection trunks or the underlying facilities on its own side of the POI. .

- 3.2 If a Party (the "Reporting Party") reports a trouble to the other party (the "Dispatching Party") and no trouble actually exists on the Dispatching Party's portion of the service ("no trouble found"), the Dispatching Party shall charge the Reporting Party according to the rates, terms and conditions which would otherwise apply to a "no trouble found" situation under UBET's applicable Tariff in effect at the time..

4. SERVICE STANDARDS

- 4.1. Both Parties will comply with the Commission standards and quality of service when providing service to the other Party.

5. CUSTOMER TRANSFER.

- 5.1. Service orders of both Parties will be in a standard format designated in accordance with industry standards and each Party's procedures as set forth in Section 8 of the General Terms and Conditions.

- 5.2. Letter of Authorization.

- 5.2.1. Each Party agrees that it will not submit an order to move an End User Customer's service from one Party to the other Party without the End User Customer's permission, and that the requesting Party has verification from the End User Customer a Letter of Authorization (LOA), etc. that the End User Customer has agreed to the change in service. LOA's will be submitted according to each Party's procedures as set forth in Section 8 of the General Terms and Conditions.

- 5.2.2. If, based on an End User Customer complaint, either Party (the "Complaining Party") determines that the other Party (the "Changing Party") has submitted an unauthorized change in local service, the Parties will reestablish service for the End User Customer with the appropriate local service provider. The Complaining Party will notify the Changing Party of the End User Customer complaint, and the Changing Party may provide proof that the change was authorized. Such proof is required regardless of whether the End User Customer is a customer of the Changing Party. If the Changing Party is unable to provide such proof, the Complaining Party may assess the Changing Party, as the Party initiating the unauthorized change, all costs to re-establish service with the Complaining Party according to Utah Code 54-8b-18 Section 14. No charges will be assessed if the Changing Party provides proof that the change was authorized.

- 5.3. Nothing in this Agreement shall restrict or otherwise limit the applicability of federal or state rules governing communications or marketing efforts directed at a specific customer concerning local exchange service during the course of a customer transfer.

6. LOCAL NUMBER PORTABILITY

- 6.1. Number portability is the ability of users of Telecommunications Services to retain, at the same location, existing telecommunications numbers when switching from one telecommunications carrier to another. In order for a port request to be valid, the End User Customer must retain his or her original number; be located at the same location before and after the port; and be served directly by the Telecommunications Carrier requesting the port with a Telecommunications Service.
- 6.2. The Parties agree that the industry has established Local Routing Number (LRN) technology as the method by which LNP will be provided in accordance with such rules, regulations and guidelines. As such, the Parties agree to provide to each other number portability via LRN.
- 6.3. This Agreement does not govern geographic portability where the End User Customer moves outside the Rate Center Area. Geographic portability is not allowed under this Agreement. If the End User Customer ceases to be physically located within the Rate Center Area associated with the ported number, the Party serving the End User Customer must terminate service and assign a new number to the End User Customer appropriate to the new Rate Center Area in which the End User Customer is physically located.
- 6.4. The Parties agree to comply with Commission rules and the other Party's procedures as set forth in Section 8 of the General Terms and Conditions concerning LNP.
- 6.5. N-1 Query.
 - 6.5.1. Each Party is responsible for performing its N-1 query obligations. It is within the discretion of each Party as to whether it will perform N-1 queries on misdirected calls.
- 6.6. Coordinated Cutovers.
 - 6.6.1. Coordinated Hot Cuts for LNP will be provided subject to the rates set forth in the Pricing Attachment.
- 6.7. Obligations of Both Parties.
 - 6.7.1. NSP is responsible for advising the NPAC of telephone numbers that it ports in and the associated data as identified in industry forums as being required for number portability.

- 6.7.2. Neither Party shall commence any service porting unless and until this Interconnection Agreement is approved and the Parties have established a conforming, functional direct network interconnection pursuant to the Interconnection Attachment.
- 6.7.3. When a ported telephone number becomes vacant, e.g., the telephone number is no longer in service by the original End User Customer; the ported telephone number will be released back to the carrier who is the code holder or block holder. The Telephone number shall not be re-assigned to a different End User Customer.
- 6.7.4. Each Party shall become responsible for the End User Customer's other telecommunications related items, e.g. E911, Directory Listings, Operator Services, Line Information Database (LIDB), when they port the End User Customer's telephone number to their switch.
- 6.7.5. The LRN associated with the ported number associated with OSP's Local area shall be derived from an NPA-NXX within the same Local areas.
- 6.7.6. Each Party is solely responsible for submitting requests to port numbers to the other Party.

7. RATES

All charges applicable to records, ordering, provisioning and maintenance and repair, shall be as set forth in the Pricing Attachment to this Agreement.

8. 911/E-911 ARRANGEMENTS

- 8.1. Each Party is responsible for connecting to State authorized provider of 911 and 911 database functions for its own End User Customers. Each Party shall be responsible for directly inputting its end user customer information into the database. All relations between State authorized provider(s) and each Party are totally separate from this Agreement and neither Party makes any representations on behalf of State authorized provider(s).
- 8.2. Each Party is solely liable for errors with respect to that Party's provision of 911/E-911 services to its own End User Customers.
- 8.3. Each Party shall be responsible for establishing all necessary 911 trunks for its End User Customer traffic with the appropriate Public Safety Answering Points.

9. DIRECTORY

Each Party is responsible for its own arrangements for white page listings. Each Party shall take responsibility for its listings with the directory provider on the due date of the customer transfer. Neither Party shall enter into any agreement with any directory provider, including an affiliated directory provider, which would in any way restrict or limit such directory

provider from including the other Party's customers' listings in the directory or distributing directories to such customers.

10. DIRECTORY ASSISTANCE

Each Party is responsible for its own arrangements for directory assistance. Each Party shall take responsibility for its listings with the directory assistance provider on the due date of the customer transfer.

11. TOLL AND ASSISTANCE OPERATOR SERVICES

Each Party is solely responsible for its end user access to toll and operator services.

12. DIALING PARITY

Each Party shall comply with the requirements of Utah Code Ann. § 54-8b-2.2(1)(a)(ii).

13. INTERCEPT AND REFERRAL ANNOUNCEMENTS – NON-DISCRIMINATION

The OSP shall offer End User Customer a referral announcement on the abandoned telephone number(s) according to that Party's End User Customer Tariffs or contracts on a non-discriminatory basis.

14. SPECIAL REQUESTS

If either Party makes any special requests in writing to the other Party that are not governed by this agreement but are related to functions performed in this agreement, the Party responding to the request may charge for any such special requests on an individual case basis provided that the Party making the request shall be notified in advance of work being done what the applicable charges will be.

PRICING ATTACHMENT

RATES AND CHARGES

Reciprocal Compensation	\$0.010 / MOU
EAS Charge	None
LSR Expedite Charge	\$35 per Expedited LSR
LSR Change Charge	\$35 per Changed LSR
LSR Overtime Charge	Charges billed to the NSP shall be according to the labor rates set forth in UBET's state access tariff in effect at the time.
LSR Cancellation Charge	\$35 per Canceled LSR
LNP Hot Cut Charge	Charges billed by the OSP shall be according to the labor rates set forth in UBET's state access Tariff in effect at the time.

EXHIBIT 1

EXCHANGES COVERED BY THE AGREEMENT

Vernal, Utah

4442767_2.DOC

EXHIBIT E

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August 13, 2009

VIA EMAIL

Michelle Brandt King
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202
mbking@hollandhart.com

Re: UBTA-UBET Communications, Inc.

Dear Ms. King:

As you know we are in receipt of your letter dated August 4, 2009. As I previously indicated to you my clients have been at a conference this week. We have finally had the opportunity to meet with our clients and review the proposed Essential Facilities Agreement. We have some concerns. The Utah Public Service Commission ordered UBTA-UBET Communications, Inc. (UBTA) to interconnect indirectly with Bresnan at the Qwest Provo Tandem.

Qwest has previously indicated that its Provo Qwest Tandem Switch has no local switching functionality, and that it will be very time consuming and expensive to indirectly interconnect Bresnan and UBTA for the purposes of exchanging local traffic. Qwest initially indicated that the modifications could cost hundreds of thousands of dollars and could take in excess of six months. Nevertheless, neither the Commission's Order on Reconsideration, nor your proposed agreement address the costs that will be associated with this indirect interconnection. Additionally, your proposed Agreement does not specifically require indirect interconnection at the Qwest Provo Tandem as indicated in the Commission's Order.

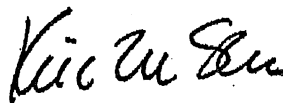
UBTA is reluctant to execute an agreement that fails to address the cost allocation of modification of Qwest's facilities, or the acquisition of additional facilities that may be needed for the indirect interconnection. Have you contacted Qwest to get an estimate of costs and a timeline for proceeding? What are your expectations regarding Qwest's costs and timelines? We have contacted Qwest regarding these issues, but have not yet received a response.

Michelle King
August 13, 2009
Page 2

Nevertheless, these issues must be addressed in the Essential Facilities Agreement before UBTA can execute the Agreement.

Sincerely,

BLACKBURN & STOLL, LC

A handwritten signature in black ink, appearing to read "Kira M. Slawson". The signature is written in a cursive, flowing style.

Kira M. Slawson

cc: Bruce Todd