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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Bresnan Broadband of Utah, LLC, a Utah limited liability company, Petitioner, vs. UBTA-UBET Communications, Inc., a Utah corporation, Respondent.	UBTA-UBET COMMUNICATIONS, INC.'S ANSWER Docket No. 09-2476-01 August 31, 2009
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UBTA-UBET Communications, Inc. ("UBET"), through its undersigned counsel, hereby answers the allegations of Bresnan Broadband of Utah, LLC ("Bresnan") as follows:

1. Upon information and belief, UBET admits the allegations of paragraph 1 of Bresnan's Complaint.
2. UBET admits that Bresnan was issued a Certificate of Public Convenience and Necessity ("CPCN") in docket No. 07-2476-01, on November 16, 2007, to provide public telecommunications services within the Vernal exchange in and around Vernal, Utah. UBET denies any remaining allegations of paragraph 2 of Bresnan's complaint.

3. Upon information and belief UBET admits the allegations of paragraph 3 of Bresnan's Complaint.

4. Admitted.

5. Admitted.

6. UBET denies that the Commission has jurisdiction over Bresnan's Complaint. Bresnan is seeking to interconnect its VoIP service to UBET. Federal law preempts state law in this matter and jurisdiction properly lies with the Federal Communications Commission.

GENERAL ALLEGATIONS

7. UBET incorporates the foregoing answers as stated in paragraphs 1-6 as though fully set forth herein.

8. Admitted.

9. UBET admits that the Commission issued a CPCN to Bresnan by Order dated November 16, 2007. UBET affirmatively alleges that the CPCN and the Commission's Order speak for themselves. UBET denies Bresnan's attempted characterization of the CPCN and Order.

10. Paragraph 10 of Bresnan's Complaint is a legal conclusion to which no response is necessary.

11. UBET admits that it is authorized to provide, and does currently provide, telecommunications services in the Vernal area. UBET is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 11, and therefore denies the same.

12. UBET denies the allegations of paragraph 12 of Bresnan's Complaint. UBET affirmatively alleges that implementation of the Commission's May 21, 2009 Order on Interconnection and the Commission's August 3, 2009 Order on Reconsideration and Rehearing (collectively the "Interconnection Orders") is not predicated on execution of the Essential Facilities Agreement. The Commission, by its Interconnection Orders, has determined the terms by which Bresnan and UBET must interconnect. UBET affirmatively alleges that the Essential Facilities Agreement, as drafted, fails to address the potential for significant costs to the parties to implement indirect interconnection through Qwest at the Provo Tandem. UBET affirmatively alleges that since the August 3, 2009 Order, UBET has made at least four email attempts and has made several phone calls to Qwest (August 6, 2009; August 17, 2009; and August 18, 2009) to attempt to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements. Copies of the emails are attached hereto as **Exhibit A**.

13. In answering paragraph 13 of Bresnan's Complaint, UBET admits that the Commission issued Bresnan a CPCN in November of 2007. UBET affirmatively alleges that UBET was not ordered to interconnect until August 3, 2009. UBET denies the remaining allegations of paragraph 13 of Bresnan's complaint. UBET affirmatively alleges that since the August 3, 2009 Order, UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the

technical implementation of indirect interconnection including timing, cost, and technical requirements.

14. UBET denies the allegations of paragraph 14 of Bresnan's complaint.

15. UBET admits that Bresnan petitioned the Commission to resolve the dispute over interconnection between Bresnan and UBET. UBET denies the remaining allegations of paragraph 15 of Bresnan's Complaint.

16. In answering paragraph 16 of Bresnan's Complaint, UBET admits that the Commission took evidence concerning the interconnection dispute from Bresnan, UBET, Utah Rural Telecom Association ("URTA"), and the Division of Public Utilities ("DPU"). UBET denies the remaining allegations of paragraph 16 of Bresnan's Complaint.

17. UBET admits that on May 21, 2009, the Commission issued its Report and Order Resolving Interconnection Dispute in Docket No. 08-2476-02. UBET denies Bresnan's attempted characterization of the Commission's May 21, 2009 Order, and affirmatively alleges that the Commission's Order speaks for itself.

18. UBET admits that the May 21, 2009 specified the language and form of the Essential Facilities Agreement that would govern the interconnection between the parties. UBET denies the remaining allegations of paragraph 18 of Bresnan's Complaint.

19. Admitted.

20. UBET admits that the Commission issued its Order on Reconsideration on August 3, 2009. UBET affirmatively alleges that the Commission's August 3, 2009

Order speaks for itself. UBET denies the remaining allegations of paragraph 19 of Bresnan's Complaint.

21. In answering paragraph 21 of Bresnan's Complaint, UBET affirmatively alleges that the Commission's August 3, 2009 Order speaks for itself, and denies Bresnan's attempted characterization of the Commission's August 3, 2009 Order.

22. UBET admits that Bresnan modified Section 3.1.1 of the Interconnection Attachment to the Essential Facilities Agreement. UBET denies the remaining allegations of paragraph 22 of Bresnan's Complaint.

23. UBET admits that on August 4, 2009, Bresnan sent a letter to UBET's counsel which presented two signed originals of the Essential Facilities Agreement and requested that UBET return the signed Essential Facilities Agreement by August 10, 2009. Upon information and belief, UBET admits that Exhibit C appears to be a copy of said letter. Upon information and belief, UBET admits that Exhibit D appears to be a copy of the Essential Facilities Agreement. UBET denies the remaining allegations of paragraph 23 of Bresnan's Complaint.

24. UBET admits that it has not signed the Essential Facilities Agreement. UBET affirmatively alleges that the Essential Facilities Agreement, as drafted, fails to address the potential for significant costs to the parties to implement indirect interconnection through Qwest at the Provo Tandem. UBET admits that its counsel sent a letter to counsel for Bresnan on August 13, 2009 and that Exhibit E appears to be a copy of that letter. UBET affirmatively alleges that the letter speaks for itself, and denies the remaining allegations of paragraph 24 of Bresnan's Complaint.

25. In answering paragraph 25 of Bresnan's Complaint, UBET affirmatively alleges that the Commission's Interconnection Orders speak for themselves. UBET denies Bresnan's attempted characterization of the Interconnection Orders. UBET admits that the Commission ordered and approved the terms of the Essential Facilities Agreement and ordered that the terms contained therein would govern the interconnection between the parties. UBET admits that Bresnan provided to UBET a signed Essential Facilities Agreement in accordance with the form specifically prescribed and mandated by the Commission, and admits UBET is bound by the Commission's Interconnection Orders. UBET denies that all of the issues regarding the language of the Essential Facilities Agreement were fully and completely litigated, and affirmatively alleges that Qwest has subsequently indicated that indirect interconnection at the Qwest Provo Tandem may not be possible without significant technical modifications resulting in high costs to the parties. UBET denies the remaining allegations of paragraph 25 of Bresnan's Complaint.

26. UBET denies the allegations of paragraph 26 of Bresnan's Complaint.

27. UBET denies the allegations of paragraph 27 of Bresnan's Complaint and affirmatively alleges that since August 3, 2009, UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements.

28. UBET denies the allegations of paragraph 28 of Bresnan's Complaint. UBET affirmatively alleges that Bresnan could obtain numbers from NANPA by providing a

letter of self certification of switch readiness which shows the switch location and CLLI code and a declaration that is ready or will be ready for service on a specific date.

29. The allegations of paragraph 29 are legal conclusions, and thus response is not necessary. Nevertheless, UBET denies the legal conclusions of paragraph 29 of Bresnan's Complaint.

30. UBET denies the allegations of paragraph 30 of Bresnan's Complaint and affirmatively alleges that UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements. UBET further affirmatively alleges that Bresnan has taken no steps to interconnect with UBET. As indicated from the email from Karla Quintana to counsel for UBET, Bresnan has not contacted Qwest about indirect interconnection with UBET through the Qwest Provo Tandem. (See Exhibit A).

FIRST CLAIM FOR RELIEF—EXPEDITED INJUNCTIVE RELIEF

31. UBET incorporates the foregoing answers stated in paragraph 1 through 30 as though fully set forth herein.

32. The allegations of paragraph 32 of Bresnan's Complaint contain Utah Code citations to which no response is necessary.

33. The allegations of paragraph 33 of Bresnan's Complaint contain Utah Code citations to which no response is necessary.

34. Admitted.

35. UBET admits it has not signed the Essential Facilities Agreement, and affirmatively alleges that the Essential Facilities Agreement, as drafted, fails to address the potential for significant costs to the parties to implement indirect interconnection through Qwest at the Provo Tandem. UBET denies the remaining allegations of paragraph 35, and affirmatively alleges that UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements.

36. The allegations of paragraph 36 of Bresnan's Complaint are legal conclusions to which no response is necessary. UBET affirmatively alleges that UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements.

37. The allegations of paragraph 37 of Bresnan's Complaint are a characterization of the relief sought in this action to which no response is necessary. Nevertheless, UBET denies the allegations of paragraph 37 of Bresnan's Complaint.

38. The allegations of paragraph 38 of Bresnan's Complaint are a characterization of the relief sought in this action to which no response is necessary. Nevertheless, UBET denies the allegations of paragraph 38 of Bresnan's Complaint.

SECOND CLAIM FOR RELIEF—EXPEDITED SPECIFIC PERFORMANCE

39. UBET incorporates the foregoing answers stated in paragraph 1 through 38 as though fully set forth herein.

40. The allegations of paragraph 40 of Bresnan's Complaint contain Utah Code citations and legal conclusions to which no response is necessary.

41. The allegations of paragraph 41 of Bresnan's Complaint contain Utah Code citations to which no response is necessary.

42. The allegations of paragraph 42 of Bresnan's Complaint contain Utah Code citations to which no response is necessary.

43. In answering paragraph 43 of Bresnan's Complaint, UBET affirmatively alleges that the Commission's Interconnection Orders and the terms of the Essential Facilities Agreement speak for themselves.

44. In answering paragraph 44 of Bresnan's Complaint, UBET denies that it has violated the terms of the Essential Facilities Agreement. UBET affirmatively alleges that UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements.

45. The allegations of paragraph 45 of Bresnan's Complaint are a characterization of the relief sought in this action to which no response is necessary. Nevertheless, UBET denies that it has taken any steps to prevent interconnection or implementation of the Commission's Interconnection Orders. UBET denies the remaining allegations of paragraph 45 of Bresnan's Complaint.

46. The allegations of paragraph 46 of Bresnan's Complaint are legal conclusions and a characterization of the relief sought in this action to which no response is necessary. Nevertheless, UBET denies that it has taken any steps to prevent interconnection or implementation of the Commission's Interconnection Orders. UBET denies the remaining allegations of paragraph 46 of Bresnan's Complaint.

47. The allegations of paragraph 47 of Bresnan's Complaint are legal conclusions and a characterization of the relief sought in this action to which no response is necessary. Nevertheless, UBET denies that it has taken any steps to prevent interconnection or implementation of the Commission's Interconnection Orders. UBET denies the remaining allegations of paragraph 47 of Bresnan's Complaint.

48. The allegations of paragraph 48 of Bresnan's Complaint are legal conclusions and a characterization of the relief sought in this action to which no response is necessary. Nevertheless, UBET denies that it has taken any steps to prevent interconnection or implementation of the Commission's Interconnection Orders. UBET denies the remaining allegations of paragraph 45 of Bresnan's Complaint.

THIRD CLAIM FOR RELIEF—IMPOSITION OF PENALTIES

49. UBET incorporates the foregoing answers stated in paragraphs 1 through 48 as though fully set forth herein.

50. The allegations of paragraph 50 are legal conclusions to which no response is necessary.

51. The allegations of paragraph 51 contain Utah Code citations to which no response is necessary.

52. The allegations of paragraph 52 contain Utah Code citations to which no response is necessary.

53. The allegations of paragraph 53 contain legal conclusions and Utah Code citations to which no response is necessary.

54. The allegations of paragraph 50 are legal conclusions to which no response is necessary.

55. The allegations of paragraph 55 contain legal conclusions and Utah Code citations to which no response is necessary.

56. The allegations of paragraph 56 contain legal conclusions and Utah Code citations to which no response is necessary.

57. The allegations of paragraph 57 contain Utah Code citations to which no response is necessary.

58. The allegations of paragraph 58 contain legal conclusions and Utah Code citations to which no response is necessary.

59. UBET denies the allegations of paragraph 59 of Bresnan's Complaint and affirmatively alleges that UBET has been attempting to implement indirect interconnection through the Qwest Provo Tandem as ordered by the Commission, but Qwest has heretofore refused to meet with UBET to discuss the technical implementation of indirect interconnection including timing, cost, and technical requirements.

60. Denied.

61. Denied.

62. Denied.

The final paragraphs of Bresnan's Complaint represent a request for relief to which no response is necessary. Except to the extent specifically admitted or qualified above, UBET denies each and every allegation of Bresnan's Complaint

AFFIRMATIVE DEFENSES

Failure to Join an Indispensible Party

UBET has attempted to implement indirect interconnection with Bresnan at the Qwest Provo Tandem, but Qwest has failed and refused to discuss the same with UBET, and to move forward with the implementation. Thus, UBET is unable to comply with the Commission's Interconnection Orders at this time, and Qwest Communications is an indispensable party to the resolution of Bresnan's Complaint.

Bresnan's Failure to Contact Qwest to Implement Indirect Interconnection

UBET has attempted to implement indirect interconnection with Bresnan at the Qwest Provo Tandem, but Qwest has refused to discuss the same with UBET unless and until Bresnan contacts Qwest to discuss the matter with Bresnan. See Exhibit A. Thus, any delay in the implementation of indirect interconnection is caused by Bresnan's failure to contact Qwest.

DATED this 31st day of August, 2009.

BLACKBURN & STOLL, LC

Kira M. Slawson
Attorney for UBTA-UBET Communications,
Inc.

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of August, 2009, I caused to be emailed a true and correct copy of the foregoing UBTA-UBET Communications, Inc.'s Answer to the following:

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