

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

* * *

IN THE MATTER OF THE)
COMPLAINT OF BRESNAN)
BROADBAND OF UTAH, LLC,) DOCKET NO. 09-2476-01
AGAINST UBTA-UBET)
COMMUNICATIONS, INC.)
_____)

TRANSCRIPT OF HEARING PROCEEDINGS

HELD AT: Public Service Commission
160 East 300 South, Room 451
Salt Lake City, Utah

DATE: August 31, 2009

TIME: 4:00 p.m.

REPORTED BY: RENEE L. STACY, CSR, RPR

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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August 31, 2009

4:00 p.m.

P R O C E E D I N G S

JUDGE ARREDONDO: My name is Ruben Arredondo. I'm the hearing officer assigned to this matter. This is Docket Number 09-2476-01.

There's somebody supposed to be calling on the phone, Michele King. Michele, are you on the phone?

MS. KING: I am.

JUDGE ARREDONDO: Who else is on the line with you?

MS. KING: Jerry Lambert is also on the line with Bresnan Broadbant.

MR. LAMBERT: This is Jerry.

JUDGE ARREDONDO: Anybody else on the phone? Okay.

This is all going to be pretty informal, but I wanted to take appearances just so -- especially so the people on the phone know who is here.

Let's start with Steve Mecham.

MR. MECHAM: Good afternoon, your Honor. Steve Mecham, representing Utah Rural Telecom

1 Association.

2 MS. SLAWSON: Kira Slawson on behalf of
3 UBTA and UBET Communications, Inc.

4 MR. HARRINGTON: John Harrington of Holland
5 & Hart on behalf of Bresnan Broadband of Utah. Your
6 Honor, as well, Michele King of Holland & Hart in
7 Denver, and Mr. Gerald Lambert, associate general
8 counsel of Bresnan Communications there in New York.

9 JUDGE ARREDONDO: All right. Thank you.

10 MR. GINSBERG: Michael Ginsberg, appearing
11 for the Division of Public Utilities.

12 MR. PROCTOR: Paul Proctor on behalf of the
13 Office of Consumer Services.

14 JUDGE ARREDONDO: Okay. Anyone else?
15 Okay.

16 This is going to be pretty informal. It's
17 a scheduling conference. You'll notice the statute
18 says we have to have a prehearing conference within
19 ten days of the filing of the complaint. Today, I
20 believe, is the tenth day.

21 Essentially I'm just trying to find out a
22 date that we can have a hearing. It has to be within
23 25 days, which my calculations put that at Monday,
24 September 14th. That's the 25-day cutoff. And then
25 we have to act on that within 45 days, "that" meaning

1 the complaint, which puts my calculation at Monday,
2 October 5th, as -- the 45th day, actually, is on a
3 Sunday.

4 Let me get your feedback, I guess, on what
5 you think the purpose of the hearing is. Anybody?

6 MR. HARRINGTON: Yeah. Your Honor, John
7 Harrington. Quite simply, we think this is a very
8 simple matter. In fact, we don't believe that
9 there's any need for discovery. Very limited
10 briefing in this regard. It is simply a matter of
11 having UBET sign the interconnect agreement. It has
12 already been ordered both by the Commission and
13 yourself. It has been reheard.

14 Quite simply, we think that the remedy that
15 is called for by Bresnan is injunctive relief to go
16 ahead and compel UBET to sign that.

17 Now, today we have also received the answer
18 from UBET in this regard, and I think there are,
19 quite simply, some irrelevant and tangential matters
20 raised in that, so we think that as soon as this can
21 be heard -- in fact, to be quite sincere with you, we
22 think it could be heard right now, but go ahead
23 within that 14 days and get it heard.

24 We don't think there's any ancillary other
25 matters that need to be brought before the Court.

1 Sign the agreement as ordered.

2 JUDGE ARREDONDO: Okay.

3 MR. GINSBERG: I think it would be helpful
4 if each party, though, could describe what has
5 transpired since the order on rehearing,
6 reconsideration came out between each of them and --
7 also, I understand they think it's irrelevant, but --
8 between each of them and Qwest.

9 JUDGE ARREDONDO: Okay. Let me finish
10 getting your opinions on what you think. I think
11 it's kind of generally, I mean, apparent what's been
12 happening with the complaint and answer, but --
13 Ms. Slawson?

14 MS. SLAWSON: Yes, your Honor. Obviously
15 we don't think that the issues raised in our answer
16 are tangential or irrelevant. We think it's crucial
17 to figure out what -- how we implement indirect
18 interconnection with Bresnan through Qwest at the
19 Provo Qwest tandem, and we have been in contact with
20 Qwest since August 6th when Stan Stoll returned to
21 town. He called Qwest on several occasions.

22 We were finally directed to contact Carl
23 Quintana, which we've done, and it's attached in our
24 answer. We just can't get any -- haven't been able
25 to get any response from Qwest. The last response we

1 got from them was, "Look, it's premature for us to
2 talk to you because Bresnan hasn't even come to us
3 requesting facilities or interconnection and we don't
4 know how to implement this," and so -- and that's
5 where UBET comes out on this.

6 JUDGE ARREDONDO: Okay. Mr. Mecham?

7 MR. MECHAM: Well, I'm sort of in a
8 position of observing at this point, your Honor.

9 JUDGE ARREDONDO: Okay.

10 MR. MECHAM: But, you know, obviously we
11 take the same position as UBET, because, as UBET
12 goes, so go future interconnection agreements for our
13 clients that are members of the association.

14 JUDGE ARREDONDO: Okay. Do you want to
15 tell us what you think the purpose of the hearing is,
16 Mr. Ginsberg?

17 MR. GINSBERG: I think I fall into the
18 category of somewhat observing.

19 JUDGE ARREDONDO: Okay.

20 MR. GINSBERG: I think the purpose of the
21 hearing is to enforce the interconnection agreement
22 that has been entered by the Commission and determine
23 why it's not being implemented.

24 JUDGE ARREDONDO: Okay.

25 MR. GINSBERG: Whether that takes discovery

1 or not, I think it could be done within the time
2 period that's in the statute.

3 JUDGE ARREDONDO: Okay. Thank you.
4 Mr. Proctor?

5 MR. PROCTOR: Like Mr. Mecham and
6 Mr. Ginsberg, I'm in a similar situation; however,
7 there was one concern that was raised for me in
8 UBET's response, and that was whether or not Qwest is
9 a necessary party to this matter. I haven't
10 researched the matter, but my sense from the progress
11 of this litigation, leading up to the Commission's
12 order, they are not, and I'd hate to see that issue
13 bog down the process of the hearing, so I think
14 that's one thing that could be resolved immediately,
15 and then we could go forward. The Office does not
16 foresee the need for discovery.

17 JUDGE ARREDONDO: Okay. Mr. Harrington, do
18 you want to add anything, clarify?

19 MR. HARRINGTON: Yeah. Your Honor, what
20 UBET is, in effect, doing is creating a sequential
21 problem that doesn't exist. The sequence is, the
22 Court -- excuse me -- the Commission has ordered the
23 execution of the interconnect agreement. That is
24 devoid of any involvement with Qwest. What UBET is
25 doing is saying, "Oh, no. We can't sign the

1 agreement because we need to go to the next question,
2 is the involvement of Qwest."

3 Qwest doesn't become involved with this
4 issue right now, and it won't become involved with
5 it, because once the agreement is signed, the
6 agreement speaks to what needs to happen, and, quite
7 simply, that is, is that if, in fact, it can be
8 enacted and enabled, it then is to put into effect.

9 If it's not -- and this is under Paragraph
10 3.1.1 that was revised by you and the Commission with
11 respect to that -- is you have to sign it first.
12 There is no involvement of Qwest in this at this
13 juncture. And then, once it is enabled, if it is
14 enabled and it routes through, there is no cost.
15 Only if it doesn't enable does there become a cost.

16 So all of this as to what Qwest will or
17 won't do or cannot do, the first and the only step
18 right now is the signing of the agreement. Once it
19 is signed, then it is implemented according to the
20 terms mandated by the Commission.

21 JUDGE ARREDONDO: Okay. Does anybody feel
22 they need discovery or to present evidence? Here's
23 my feeling on reading the statute. I've looked at
24 some previous dockets -- actually, just one --
25 involving this same statute regarding the resolution

1 of an interconnection agreement, but that really
2 dealt with two parties that had already been
3 essentially acting according to the terms of an
4 interconnection agreement, and I think here we're
5 kind of at the very -- still at the very beginning
6 that one party is not signing the interconnection
7 agreement.

8 So my feeling is -- and you tell me what
9 you think. My feeling is that any testimony, if
10 there is any, would be very limited, really dealing
11 only with the order that was issued by the Commission
12 and the extent to which one party has or has not
13 complied with that order. And, really, it's just
14 going to be mostly, I guess, proffer or legal
15 argument. I don't know that we need discovery or
16 testimony, but...

17 MR. HARRINGTON: Your Honor, the only thing
18 that Bresnan will offer in is the August 13th letter
19 authored by counsel for UBET, and I think that's
20 self-authenticating in and of itself, refusing to
21 sign the interconnect agreement. Other than that,
22 there is no discovery or evidence that we will put
23 in.

24 MS. SLAWSON: Your Honor, I have maybe a
25 couple of questions. As I read Bresnan's complaint,

1 they were complaining, one, that we didn't sign the
2 interconnection agreement, that UBET didn't sign the
3 interconnection agreement, and also that that failure
4 to sign has prejudiced them in some way.

5 Steps are being taken to implement the
6 Court's orders, and UBET, so far, as I've heard this
7 afternoon and in any pleadings and in my discussions
8 with Qwest, is the only party who has taken any steps
9 to implement the Commission's order. UBET is
10 governed by the Commission's order. The Commission's
11 order sets forth the terms of the agreement between
12 the parties.

13 It's just impossible for us to advise a
14 client to sign an interconnection agreement that has
15 open terms, and it may be impossible for that client
16 to comply with. The Division -- or the Commission
17 has ordered UBET to indirectly interconnect at the
18 Qwest Provo tandem, and if that's not possible --
19 it's not feasible for them to sign an agreement if
20 that's not possible.

21 JUDGE ARREDONDO: Okay.

22 MR. MECHAM: And, your Honor, I guess I
23 don't view Qwest's reaction as irrelevant, either.
24 It seems to me like, in some fashion, they ought to
25 be participating in this, because I don't view the

1 interconnection agreement as necessarily
2 self-governing.

3 You can look at 3.1.1 all you want, but the
4 fact is, is, as Ms. Slawson points out, Qwest is kind
5 of the 800-pound gorilla in this deal, and they're
6 out of the control of either party, and there could
7 be issues that arise that are unintended and unknown,
8 and I -- again, I'm sort of viewing this from my
9 perspective of the other case that we were involved
10 in, the interconnection case itself, as opposed to
11 this one, but I think there's a complexity there that
12 is greater than others do.

13 JUDGE ARREDONDO: Okay. What about this,
14 then, as far as scheduling goes: I don't know if I'm
15 comfortable with hearing argument today; however,
16 what we can do is set a deadline and set a hearing
17 date and work back from there, but we set a date
18 where Bresnan and UBET can file motions. They can --
19 you can put your positions on in those briefings. We
20 set a date for response. DPU and OCS can respond as
21 they like, and then we have a hearing date.

22 Today is the -- well, tomorrow will be the
23 1st. September 14th is the deadline for the hearing.
24 Does anybody have a problem with Monday, September
25 14th, being the hearing date? No?

1 MS. SLAWSON: No.

2 JUDGE ARREDONDO: Let's put that at 9:30.
3 If -- how much time -- we have one, two, three, four
4 -- about 13 days, 13 calendar days. Why don't we put
5 Monday, September -- well, that's too late.
6 Thursday, the 3rd, as an initial date -- or the date
7 for initial briefings, if you like, by the parties,
8 by UBET, URTA, and Bresnan, to file what they think
9 should be happening as far as whether we need
10 additional evidence or if it's just a simple matter
11 of the Commission ordering UBET to sign the
12 interconnection agreement or -- essentially what you
13 posited here today. And then response date would be
14 the 8th, and -- well, that would cut it down to --
15 what about response date on the 7th? And then the
16 Division and the Office by the 10th.

17 MS. SLAWSON: Is the 7th a Monday?

18 JUDGE ARREDONDO: Monday.

19 MS. SLAWSON: Is that Labor Day?

20 JUDGE ARREDONDO: Oh, that's right. Let's
21 do it the 8th, then.

22 MR. GINSBERG: When was the first filing
23 due?

24 JUDGE ARREDONDO: September 3rd. Thursday,
25 September 3rd. And that would be URTA, UBET, and

1 Bresnan all file their initial briefings. You
2 respond to each other on the 8th, and then the
3 Division and OCS, Office of Consumer Services, can
4 reply by the 10th. And, actually, let's move this
5 hearing date. Does anybody have any problem with the
6 afternoon of the 14th?

7 MS. SLAWSON: That's fine.

8 MR. HARRINGTON: If I can just check my
9 notes here. No. I'm good.

10 JUDGE ARREDONDO: Okay. 2:30, then, the
11 14th. And then we have until October, but I assume
12 we'll try to get it in much earlier than that. Okay.
13 Anything else that needs to be scheduled today?
14 Okay. Then we will -- the Commission -- I'll make a
15 recommendation to the Commission to enter a
16 scheduling order consistent with today's scheduling
17 conference.

18 MR. HARRINGTON: Just a point of
19 clarification, your Honor, is, to the extent there is
20 going to be evidence offered by UBET, that will be
21 submitted when?

22 JUDGE ARREDONDO: Any evidence -- let's put
23 that for Friday, the 11th. We are closed on the
24 11th; however, we still accept e-filings that day.

25 MR. HARRINGTON: Your Honor, is there any

1 possibility of moving that up one day, at least for
2 us, for the ability -- to the extent we need to get
3 counter affidavits or anything else?

4 JUDGE ARREDONDO: Okay.

5 MR. HARRINGTON: Then we can do that on the
6 10th?

7 MR. GINSBERG: Affidavits -- couldn't they
8 just be filed with anyone's initial filing, like on
9 the 3rd? Couldn't they just be filed -- if someone
10 wants to file an affidavit, can't they just file them
11 when they make their regular filings?

12 JUDGE ARREDONDO: Yeah.

13 MS. SLAWSON: They could be, but there
14 might -- we might be -- after we've seen the
15 additional briefs --

16 JUDGE ARREDONDO: Why don't we file initial
17 affidavits that day, and you can submit some kind of
18 responsive affidavit -- you can submit them by the
19 10th. Okay. Anything else?

20 MR. HARRINGTON: So, therefore, your Honor,
21 what we're going to do is, September 3rd, initial
22 briefing by all parties?

23 JUDGE ARREDONDO: And affidavits, initial
24 affidavits.

25 MR. HARRINGTON: And initial affidavits.

1 Responses by September 8th. The OCS will respond by
2 the 10th, and any supplemental affidavits are due on
3 the 10th?

4 JUDGE ARREDONDO: Right. The OCS and the
5 DPU, Division, on the 10th. And the hearing date is
6 set for September 14th at 2:30. Okay?

7 MR. PROCTOR: Judge, can I ask, because
8 this is so compressed, would it be -- and this is for
9 the benefit of the other parties, not the Office.
10 Would it be appropriate to give everyone until six
11 o'clock on -- or five o'clock on Friday, the 4th? I
12 mean, rather than having them rush to file it -- and
13 I suspect it would be late in the day, and so the
14 Commission likely would not see it until the 7th.
15 Well, certainly, if they had the extra day, the
16 Commission would still have that opportunity.

17 JUDGE ARREDONDO: I'm okay with moving it
18 to the 4th, if nobody has any objections, before
19 5:00.

20 MS. SLAWSON: That would be fine.

21 MR. GINSBERG: We have no problem, your
22 Honor.

23 MR. PROCTOR: I think the 10th should
24 remain the same, just given the fact that you've got
25 the hearing beginning on the 14th, so -- but I think

1 for this week, giving them that extra day might be
2 very helpful. Thank you very much.

3 JUDGE ARREDONDO: All right. Anything
4 else? Okay. Thank you very much.

5 (Whereupon the taking of the hearing was
6 concluded at 4:17 p.m.)

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STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, RENEE L. STACY, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public for the State of Utah, certify:

That the foregoing transcript, consisting of Pages 1 to 18, was stenographically reported by me at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form, and that the foregoing is a true and correct transcript of those proceedings.

I further certify that I am neither counsel for nor related to any party to said action nor in anyway interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 2nd day of September, 2009.

RENEE L. STACY, CSR, RPR
Notary Public in and for the
County of Salt Lake, State of Utah

My Commission Expires:
November 9, 2011