

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application for Increase)	<u>DOCKET NO. 05-053-01</u>
in USF Eligibility for Uintah Basin)	
Telecommunications Association, Inc. and)	
UBET Telecom, Inc.)	<u>REPORT AND ORDER</u>

ISSUED: November 4, 2005

SHORT TITLE

UBET-UBTA USF Increase Application

SYNOPSIS

The Commission approves the Stipulation by and among Uintah Basin Telecommunications Association, Inc., UBET Telecom, Inc., Division of Public Utilities and Committee of Consumer Services, increasing Applicants' intrastate revenue requirement and annual Universal Service Support Fund disbursement.

TABLE OF CONTENTS

APPEARANCES iii

I. PROCEDURAL HISTORY 1

II. STIPULATION 2

A. REVENUE REQUIREMENT 3

B. BASE AFFORDABLE RATE AND VERNAL EXTENDED AREA SERVICE RATE 3

C. USF SUPPORT 3

D. OTHER PROVISIONS 4

III. DISCUSSION, FINDINGS AND CONCLUSIONS 4

IV. ORDER 6

APPENDIX: STIPULATION BY AND AMONG UINTAH BASIN TELE-COMMUNICATIONS ASSOCIATION, INC., UBET TELECOM, INC., DIVISION OF PUBLIC UTILITIES AND COMMITTEE OF CONSUMER SERVICES 8

DOCKET NO. 05-053-01

-iii-

APPEARANCES:

Stanley K. Stoll
Attorney at Law
Blackburn & Stoll, L.C.

For UBTA and UBET

Michael L. Ginsberg
Assistant Attorney General

" Division of Public Utilities

Paul H. Proctor
Assistant Attorney General

" Committee of Consumer Services

By The Commission:

I. PROCEDURAL HISTORY

On April 27, 2005, Uintah Basin Telecommunications Association, Inc. (“UBTA”) and UBET Telecom, Inc. (“UBET”) (hereinafter referred to jointly as “Applicants”) filed an Application for Increase in USF Eligibility (“Application”) seeking a \$7,238,847 increase in their consolidated intrastate Universal Service Support Fund (“USF”) distribution from its current level of \$81,153. On May 9, 2005, in response to a request from Applicants also filed on April 27, 2005, the Commission issued a Protective Order.

On May 11, 2005, the Division of Public Utilities (“Division” or “DPU”) filed its Initial Response of DPU and Request for Hearing, noting the Application raised significant issues, such as inclusion in the rate base and revenue requirement of the acquisition premium UBTA paid to acquire the UBET exchanges from Qwest, the Commission’s expressed desire to reevaluate how rate of return is calculated for cooperatives, and the propriety of the current level of affordable rate used in calculating the USF draw of telecommunications companies in Utah.

On July 7, 2005, following a duly noticed scheduling conference held May 25, 2005, the Commission issued a Procedural and Scheduling Order setting an agreed schedule for this docket and noting the Commission’s intent that this docket examine each of the issues raised by the Division in its May 11, 2005, filing, as well as whether it is appropriate for cooperatives to make patronage payments based on basic residential service when said service is subsidized by USF receipts.

Pursuant to this schedule, on July 15, 2005, Applicants filed Direct Testimony in support of their Application. The Division and the Committee of Consumer Services

(“Committee”) filed testimony on September 9, 2005, addressing a number of issues, such as revenue requirement calculation, affiliate and subsidiary transactions, proper treatment of patronage credits, and the cost and necessity of building a redundant route. As a result of its initial analysis, the Division recommended the Commission approve a \$746,516 increase in annual USF support in concert with a \$3.00 per month increase in both the residential and business base affordable rates (“BAR”) and a \$1.00 per month increase in the Extended Area Service (“EAS”) rate for the Vernal exchange. The Committee did not provide a specific recommendation regarding the amount of any USF increase, but recommended the Commission reject Applicants’ attempt to include the acquisition premium and additional income tax costs in revenue requirement calculations.

On October 12, 2005, the Applicants, Division and Committee (hereinafter referred to collectively as the “Parties”) filed a Stipulation by and among Uintah Basin Telecommunications Association, Inc., UBET Telecom, Inc., Division of Public Utilities and Committee of Consumer Services (“Stipulation”).

The Stipulation was presented to the Administrative Law Judge at hearing on October 18, 2005, during which Casey Coleman and George Compton presented testimony for the Division in support of the Stipulation. No party presented testimony in opposition to the Stipulation. The Administrative Law Judge questioned the Parties and witnesses regarding various aspects of the Stipulation and the evidence presented.

II. STIPULATION

Without modifying its terms in any way, the following is a brief summary of the Stipulation included as an Appendix:

A. REVENUE REQUIREMENT

The Applicants agree to withdraw from their Application any request pertaining to the Plant Acquisition and Amortization Adjustment relating to the purchase of the Vernal, Roosevelt, and Duchesne exchanges on April 21, 2001. Applicants also agree to withdraw from the Application any request pertaining to an alternate or redundant route. The Parties agree Applicants' Return on Debt, Return on Equity, and overall Rate of Return shall be set at 6.01%, 9.50%, and 6.08%, respectively, as applied to the Applicants' actual capital structure rather than any hypothetical structure. Based on the foregoing, the Parties agree that a \$1,719,646 increase in Applicants' intrastate revenue requirement is just and reasonable.

B. BASE AFFORDABLE RATE AND VERNAL EXTENDED AREA SERVICE RATE

The Parties agree the Base Affordable Rate for Applicants' basic local residential and business rates should be increased by \$3.00 each per month, resulting in the basic local residential rate increasing from \$13.50 to \$16.50 per month and the business rate from \$23.00 to \$26.00 per month, calculated pursuant to *Utah Code Annotated* § 54-8b-15 and Commission Rule 746-360.

The Parties also agree, based on increases in Vernal traffic in connection with Basin-wide Extended Area Service implemented pursuant to Commission order in Docket No. 02-053-02, the EAS rates for Vernal customers should be increased by \$1.00 per month from \$0.80 to \$1.80 per month.

C. USF SUPPORT

The Parties agree the balance of the intrastate revenue requirement increase shall be funded by a \$1,035,243 increase to the Applicants' current \$81,153 USF distribution,

resulting in total annual USF support in the amount of \$1,116,396.

D. OTHER PROVISIONS

The following is a brief summary of the Stipulation with respect to other provisions:

Timing. The Parties recommend in Paragraph 15 of the Stipulation that the increase in the authorized USF distribution be effective upon Commission order authorizing the increase and that the BAR and EAS increases be effective upon Applicants' satisfaction of the requirements of *Utah Code Annotated* §§ 54-7-12(6) and (7).

Notification of Proposed Patronage Payments. Applicants agree that, until such time as Applicants' capital structure shall achieve a ratio of 20% equity and 80% debt, Applicants shall provide not less than 30 days prior written notice to the Division and Committee of proposed patronage payments to the members of the UBTA-UBET cooperative.

III. DISCUSSION, FINDINGS AND CONCLUSIONS

We note at the outset that, although our Order of November 26, 2004, in Docket No. 04-053-03 approved the merger of UBTA and UBET, UBTA and UBET have not yet merged. Despite this fact, Applicants submitted their Application on a consolidated basis and the Division and Committee analyzed the USF increase request under the assumption that the merger will be consummated. Likewise, the Stipulation treats Applicants as a single merged entity.

At hearing, counsel for Applicants stated Applicants do not intend to implement any rate increase until all statutory requirements have been satisfied and the merger of UBTA and UBET into one cooperative entity has been completed. Therefore, any Commission order

mandating that the provisions of the Stipulation not take effect until completion of the merger would not interfere with Applicants' planned course of action. We proceed accordingly in our evaluation of the offered Stipulation.

In reviewing the Stipulation, the admitted pre-filed testimony, and the testimony of the Division witnesses at hearing, we note the agreed terms are very similar to those propounded by the Division and the Committee in pre-filed testimony. First, the acquisition premium to which the Division and Committee objected has been removed from revenue requirement calculations. Second, Applicants have agreed to remove costs associated with construction of a redundant route. Finally, with some corrections and minor adjustments, the Stipulation's financial terms, including agreed capital structure, Return on Debt, Return on Equity, Rate of Return, revenue requirement, BAR and EAS rates, and increased USF support are all reasonably similar to those proposed by the Division following its analysis of the Application and Applicants' financial records.

The Parties' agree these terms are fair, just, reasonable, and in the public interest. The unrefuted testimony of two Division witnesses supports the Stipulation. No party provides testimony in opposition to the Stipulation.

Our consideration of the Stipulation is directed by *Utah Code Annotated* §54-7-1 that encourages informal resolution, by agreement of the parties, of matters brought before the Commission. After examining the Stipulation and the evidence contained in the record, the Commission concludes that its terms are just and reasonable and it is just and reasonable in result. Based upon the foregoing, the Commission approves the Stipulation. However, because the Division and Committee analyses, as well as the terms of the Stipulation itself, treat

Applicants as a merged entity, it is reasonable that we require none of the Stipulation's terms take effect until such time as UBET and UBTA have completed their merger. Furthermore, as we have indicated in previous cases, approval of this Stipulation is not intended to alter any existing Commission policy nor to establish any precedent by the Commission.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Stipulation By and Among Uintah Basin Telecommunications, Inc., UBET Telecom, Inc., Division of Public Utilities and Committee of Consumer Services is approved and its terms shall take effect upon completion of the merger of Uintah Basin Telecommunications, Inc. and UBET Telecom, Inc.

2. UBET-UBTA shall file appropriate tariff revisions increasing Utah jurisdictional revenues by \$1,719,646, to be effective upon completion of the merger of Uintah Basin Telecommunications, Inc. and UBET Telecom, Inc. The Division shall review the tariff revisions for compliance with the terms of the Stipulation.

This Report and Order constitutes final agency action on Applicants' April 27, 2005, Application. Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. 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 fails to grant a request for review or rehearing within 20 days after

DOCKET NO. 05-053-01

-7-

the filing of a request for review or rehearing, 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 requirements of *Utah Code Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 4th day of November, 2005.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 4th day of November, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#46341

APPENDIX: STIPULATION BY AND AMONG UINTAH BASIN TELECOMMUNICATIONS ASSOCIATION, INC., UBET TELECOM, INC., DIVISION OF PUBLIC UTILITIES AND COMMITTEE OF CONSUMER SERVICES

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION FOR INCREASE IN USF ELIGIBILITY FOR U I N T A H B A S I N T E L E C O M M U N I C A T I O N S ASSOCIATION, INC., AND UBET TELECOM, INC.

STIPULATION BY AND AMONG U I N T A H B A S I N T E L E - COMMUNICATIONS ASSOCIATION, INC., UBET TELECOM, INC., DIVISION OF PUBLIC UTILITIES AND COMMITTEE OF CONSUMER SERVICES

DOCKET NO. 05-053-01

Pursuant to Utah Code Annotated § 54-7-1, Uintah Basin Telephone Association, Inc. (“UBTA”) and UBET Telecom, Inc. (“UBET Telecom”) (collectively, the “Applicants”), the Division of Public Utilities (“Division”) and the Committee of Consumer Services (“Committee”), (collectively, the “Parties”), stipulate and move the Public Service Commission of Utah (“Commission”), as follows:

1. Applicants filed their Application for Increase in USF Eligibility on April 27, 2005 (the “Application”), pursuant to Utah Code Annotated § 54-8b-15 and R746-360 of the Commission’s Rules of Practice and Procedure.
2. The Application was filed by the Applicants with the Commission on a consolidated basis in anticipation of the implementation of the dissolution of UBET Telecom that results in the merger of the Applicants as described and approved by the Commission in Docket No. 04-053-03.

DOCKET NO. 05-053-01

-9-

3. In the Application, the Applicants represented that their intrastate 2004 test year revenues fell short of the intrastate revenue requirement, on a consolidated basis, in the amount of \$7,238,847. As such, Applicants requested an increase of \$7,238,847 to the current intrastate USF distribution of \$81,153 for a total annual intrastate USF distribution of \$7,320,000.
4. The Division conducted an audit of the books and records of the Applicants pertaining to the Applicant's interstate and intrastate operations. Further, the Parties engaged in the discovery process and the Division and Committee filed testimony in response to the application. Based upon the audit results and recommendations and the testimony filed by each of the Parties, the Parties engaged in settlement discussions that concluded in the agreement described herein.
5. Applicants agree to withdraw from the Application any request pertaining to the Plant Acquisition and Amortization Adjustment relating to the purchase of the Vernal, Duchesne and Roosevelt exchange in April 21, 2001 as described in Exhibit 1.1, Note (f) to the Application.
6. Applicants agree to withdraw from the Application, for purposes of this Docket only, any request pertaining to the Alternate or Redundant Route described in Exhibit 1.1, Note (e) to the Application. The Division and the Committee agree that the foregoing shall not preclude Applicants from seeking rate increases or increased USF eligibility related to the Alternate or Redundant Route in the future. The Parties agree to jointly work together to address the feasibility of a redundant route that meets the needs of the subscribers/customers of the Applicants.

DOCKET NO. 05-053-01

-10-

7. The Parties agree that, for the purposes of this Docket only, the Return on Debt shall be set at 6.01%, the Return on Equity at 9.50% and the overall Rate of Return at 6.080%. The foregoing returns are applied to the actual capital structure of the Applicants rather than a hypothetical capital structure.
8. The Parties agree that, based on the foregoing, an increase in the intrastate revenue requirement for the Applicants, on a consolidated basis, of \$1,719,646 is just and reasonable.
9. The Parties agree, and recommend to the Commission, that the Base Affordable Rate for the Applicants' basic local residential and business rates be increased by \$3.00 per month. Such increases would result in the following:
 - a. Basic local residential rates increased by \$3.00 per month, from \$13.50 per month to \$16.50 per month.
 - b. Basic local business rates increased by \$3.00 per month, from \$23.00 per month to \$26.00 per month.

The increase in the basic local residence and business rates to \$16.50 and \$26.00, respectively, constitutes an increase in the Base Affordable Rate for the Applicants as calculated pursuant to Utah Code Annotated § 54-8b-15 and R746-360. The Applicants serve customers only in areas considered rural in Utah.
10. The Parties agree that, based on increases in Vernal traffic in connection with the Basin-wide EAS implemented pursuant to the Commission's Order in Docket No. 02-053-02, the EAS rates for Vernal customers should be increased by \$1.00 per month, from \$0.80 per month to \$1.80 per month.

DOCKET NO. 05-053-01

-11-

11. Of the \$1,719,646 increase in the intrastate revenue requirement described in paragraph 8, \$684,403 would be generated by the implementation of the rate increases described in paragraphs 9 and 10 above.
12. The balance of the increase in the intrastate revenue requirement for the Applicants shall be funded by the intrastate USF by a \$1,035,243 increase to the current \$81,153 USF support, resulting in intrastate USF support totaling \$1,116,396.
13. The rates described in paragraph 9 and 10, and the USF distribution set forth in paragraph 11, are fair, just and reasonable and in the public interest.
14. The Division and the Committee having reviewed the necessary information and schedules filed by the Applicants have determined that the increase in the revenue requirement and the rates, charges and USF eligibility set forth herein are in the public interest of the subscribers of the Applicants and are just and reasonable.
15. The Parties recommend to the Commission that the increase in the authorized USF distribution described in paragraph 11 be effective upon Commission's order authorizing such and that the increase in rates set forth herein paragraphs 9 and 10 become effective upon the Applicants' satisfaction of the requirements of Utah Code Annotated §§ 54-7-12(6) and 54-7-12(7).
16. The Division and the Committee further recommend that the Commission approve such revised tariff page(s) as may be required to implement the increase in rates set forth in paragraph 9 hereof.
17. Until such time as the Applicants' capital structure, as described in paragraph 7, shall achieve a ratio of 20% equity and 80% debt, Applicants shall provide not less than thirty

DOCKET NO. 05-053-01

-12-

- (30) days prior written notification to the Division and the Committee of proposed patronage payment to the members of the UBTA-UBET cooperative.
18. Based on the foregoing, the Parties assert that the increases in the Base Affordable Rate and USF eligibility provided herein is in the public interest and should be approved by the Commission.
 19. Nothing in this Stipulation alters or amends the provisions in the Protective Order entered in this Docket, or the Applicants' privileged or confidential classifications of the data, documents or testimony filed herein.
 20. The Parties agree that this Stipulation represents a resolution among them of the matters in this proceeding included within this Stipulation. As such, all discussions, evidence or conduct relating to this Stipulation are privileged and confidential.
 21. This Stipulation shall not become effective unless and until (1) the Commission enters a final order approving this Stipulation which is not subject to any further judicial review, and (2) the terms hereof have been fully implemented. In the event the Commission or a court rejects all or any portion of this Stipulation as resolving the issues included within this Stipulation, or imposes additional conditions with respect to such issues, each Party reserves the right to withdraw from this Stipulation. In such case, no Party to this Stipulation shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission order, to file any testimony it chooses, to cross-examine witnesses, and in general to put on such case as it deems appropriate. If this Stipulation does not become effective according to its terms, it shall be null and void unless otherwise agreed to by the Parties.

22. Except to the extent expressly stated in this Stipulation, nothing in this Stipulation shall be (1) cited or construed as precedent or as indicative of the Parties' positions on a resolved issue, or (2) asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions in this or any other proceeding, including those before the Commission, the state courts of Utah or of any other state, the federal courts of the United States of America, or the Federal Communications Commission. The limitation in this paragraph shall not apply to any proceeding to enforce the terms of this Stipulation or any Commission order adopting this Stipulation.
23. The Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties. By entering into the Stipulation, the Parties intend that the Commission exercise only that authority contained in applicable laws.
24. Each Party shall take all actions necessary and appropriate to enable it to carry out this Stipulation, including, providing witnesses and argument in support of the approval by the Commission of the Stipulation.
25. The Parties agree that their obligations under this Stipulation are subject to the Commission's approval of this Stipulation in accordance with its terms and conditions.

DOCKET NO. 05-053-01

-14-

26. The Parties recommend that the Commission adopt this Stipulation in its entirety. No Party shall appeal any portion of this Stipulation and no Party shall oppose the adoption of this Stipulation pursuant to any appeal filed by any person not a party to the Stipulation. The Applicants, the Committee, and the Division shall make witnesses available to provide testimony in support of this Stipulation, including testimony to explain the basis of their support for this Stipulation. In the event other parties introduce witnesses opposing approval of the Stipulation, the Parties agree to cooperate in cross-examination and in providing testimony as necessary to rebut the testimony of opposing witnesses.
27. The Parties agree that this Stipulation is in the public interest and that all of its terms and conditions are fair, just and reasonable.
28. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 12th day of October, 2005.

Blackburn & Stoll, L.C.

/s/Stanley K. Stoll

Attorneys for UBTA and UBET Telecom

Utah Division of Public Utilities

/s/Michael Ginsberg

Assistant Attorney General

Committee of Consumer Services

/s/Paul Proctor

Assistant Attorney General