

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application of Bresnan ) DOCKET NO. 07-2476-01  
Broadband, LLC, For A Certificate of )  
Public Convenience and Necessity To )  
Operate as a Competitive Local Exchange )  
Carrier in Utah )

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REBUTTAL TESTIMONY

OF

RAYMOND A. HENDERSHOT

ON BEHALF OF

UBTA-UBET COMMUNICATIONS, INC.



1 Q. WOULD YOU PLEASE STATE YOUR NAME AND ADDRESS.

2 A. My name is Raymond A. Hendershot and my business address is 2270 La Montana Way,  
3 P.O. Box 25969, Colorado Springs, Colorado 80936.

4 Q. ARE YOU THE SAME RAYMOND A. HENDERSHOT THAT PREVIOUSLY FILED  
5 DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF UBTA-UBET  
6 COMMUNICATIONS, INC. (“UBTA-UBET”)?

7 A. Yes, I am.

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9 A. I am again filing testimony on behalf of UBTA-UBET. This testimony is being filed to  
10 provide additional comments in this case. I am responding to the testimony filed by  
11 Casey J. Coleman and Laura L. Scholl of the Division of Public Utilities Department of  
12 Commerce (“Division”), and Eric Orton of the Utah Committee of Consumer Services  
13 (“Committee”).

14 Q. DO YOU AGREE WITH THE WITNESSES FOR THE DIVISION AND THE  
15 COMMITTEE THAT THE PUBLIC INTEREST STANDARD IS MET IN  
16 CONSIDERATION OF BRESNAN’S APPLICATION.

17 A. No. The Division and the Committee’s positions are primarily that competition, in and  
18 of itself, is good, and, therefore, the statutory public interest test is met. Their respective  
19 positions’ are too simplistic given the complexities of the rural telecommunications’  
20 markets and the potential scope of any decision made by the Commission in this matter.  
21 The Division and the Committee ignore the fact that the Commission’s grant of  
22 Bresnan’s application will have far reaching impacts beyond the issue of competition in

23 the Vernal Exchange. Any decision by the Commission, granting such authority will  
24 establish a precedent that will open rural areas of Utah to all competition in the future.  
25 This will be so even though neither the Division nor the Committee have conducted any  
26 studies to determine the impact of such competition on the quality or availability of  
27 services or the effect on the State Universal Service Fund. The consideration of  
28 Bresnan's Application by the Commission requires a much broader analysis and a much  
29 more thorough investigation of whether competition in the rural markets is truly in the  
30 public interest or, as indicated in my prior testimony, it will benefit only a few consumers  
31 which competitors choose to serve in those markets at the expense of the other rate  
32 payers in those areas and in the State generally.

33 Q. IS THERE ANY INDICATION THAT THE DIVISION OR THE COMMITTEE HAS  
34 CONDUCTED ANY STUDY ON THE IMPACT COMPETITION IN THE RURAL  
35 AREAS ON THE QUALITY OR AVAILABILITY OF SERVICES OR THE EFFECT  
36 ON THE STATE UNIVERSAL SERVICE FUND?

37 A. No. In fact, Mr. Coleman in his testimony at Lines 310-313 acknowledges that the  
38 Division has no such data nor has conducted any such studies. Therefore, the Division  
39 has no credible basis upon which to assess the likelihood of competition in rural areas  
40 and the impact of such competition on the quality or availability of telecommunications  
41 services or the effect on the State Universal Service Fund. As such the Division and the  
42 Committee would have the Commission grant the authority sought by Bresnan without  
43 any information upon which the Commission could reasonably anticipate such impacts.  
44 Mr. Coleman's statement that it would be unfair to deny a company the opportunity to

45 compete in a specific area because there “may be companies wanting to serve other  
46 areas” misses the point. The issue is not whether it would be unfair, but, rather, if  
47 competitive entry in the rural areas of Utah is in the public interest. Given the dearth of  
48 any credible evidence as to the likelihood of competition in the rural areas and the impact  
49 that such entry would have on rural telecommunications in this State, it is clear that  
50 neither the Division nor the Committee have a sufficient basis upon which to conclude  
51 that competition in Utah’s rural markets is in the public interest.

52 Q. IS COMPETITION IN THE RURAL AREAS NECESSARILY IN THE PUBLIC  
53 INTEREST?

54 A. No. Congress recognized there was an additional test that was required before  
55 certification for competition in rural areas--that being the public interest test. When  
56 Congress established the Telecommunications Act of 1996 (“Act”), it required that for  
57 areas served by rural telecommunication carriers regulators find that a request for  
58 competitive service be in the public interest. This additional requirement indicates that  
59 Congress was well aware of the difference in the service areas of the BOC’s and the rural  
60 areas, and imposed different standards for competition in those two areas.

61 Absent credible information as to the impact of competition on rural telephone  
62 companies and their customers, such as we have in this case, the Commission is without  
63 sufficient information to determine whether or not the granting of Bresnan’s application  
64 is in the public interest.

65 Q. SINCE THERE HAVE BEEN NO STUDIES ON THE IMPACT OF COMPETITION  
66 IN RURAL AREAS IN UTAH, ARE YOU AWARE OF ANY SUCH STUDIES IN

67 OTHER STATES?

68 A. Yes. I recently reviewed a study done in Texas and completed in July of this year, on the  
69 impact of competition in rural areas of the state. The study was conducted by Balhoff &  
70 Rowe and included a review of the Texas USF. The study offers important insights to the  
71 significant challenges in high cost areas. I would like to just restate the important  
72 insights of the study for the benefit of this case without going into all of the details.

73 - There are clear signs that the current federal universal service system will soon fail to  
74 meet the needs of consumers in high-cost areas.

75 - Although competitors increasingly are serving consumers in rural towns where costs  
76 are lower, they generally do not serve consumers outside of those towns where costs  
77 are higher; importantly, competitors appear unlikely to offer services in those regions  
78 in the foreseeable future.

79 - Competitors are making the financially rational choice to avoid serving high-cost  
80 areas altogether, but carriers of last resort are compelled to serve the areas outside of  
81 rural towns – often at a significant loss.

82 - With growing competition in lower cost areas, regulators increasingly are unable to  
83 count on, among other things, averaging costs between rural towns and outlying rural  
84 areas to support universal service goals. As such, explicit support mechanisms  
85 become more, not less, critical. (Letter on Ex Parte Presentation sent to

86 Commissioner Deborah Taylor Tate and Commissioner Ray Baum on July 12, 2007)

87 The study does not provide recommendations but serves as an economical  
88 analysis using actual data of the current situation in the state where there is competition

89 in the rural areas of Texas. The current system of investment, rate of return, internal  
90 subsidies, and requirements of universal service support are all discussed within the study  
91 as it relates to rural areas served by rural telephone companies.

92 Q. DO YOU KNOW IF THE DIVISION WAS AWARE OF THE STUDY DONE IN  
93 TEXAS?

94 A. I don't know whether the Division is aware of the Texas study. However, Mr. Coleman  
95 did not cite this study, and he further indicated in the Division's responses to UBTA-  
96 UBET Data Requests that no studies were conducted by the Division as to the effect of  
97 competition in the rural Utah markets. Given the Division's failure to conduct any  
98 studies of its own and its failure to consider studies conducted in other states, I can see no  
99 basis upon which the Division could conclude that granting Bresnan's application for  
100 competitive service in the Vernal Exchange is in the public interest.

101 Q. ARE THERE OTHER CONCERNS YOU HAVE REGARDING BRESNAN'S  
102 APPLICATION THAT YOU BELIEVE THE COMMISSION NEEDS TO ADDRESS?

103 A. Yes. I have several concerns about Bresnan's application and its proposal to provide  
104 services to a select group of customers in the Vernal Exchange.

105 Q. WHAT ARE THOSE CONCERNS?

106 A. In Mr. Coleman's testimony he talks about the positive benefits of digital phone service  
107 or digital voice product for consumers. Digital phone service is a technology that uses  
108 the Internet or Voice over Internet Protocol ("VoIP"). UBTA-UBET offers all of the  
109 services that Bresnan will offer to its customers. The one big difference is that UBTA-  
110 UBET does not offer unlimited Long Distance within the United States and Canada.

111 UBTA-UBET has a subsidiary, UBET Long Distance (“UBLD”), that provides long  
112 distance service or interexchange service to UBTA-UBET customers. UBLD has  
113 contracted with an interexchange carrier to take all of its long distance traffic and  
114 terminate it across the United States and the world. UBLD pays UBTA-UBET  
115 originating access, and the interexchange carrier pays terminating access to telephone  
116 companies across the United States to terminate a long distance call.

117 Q. DOES BRESNAN PAY ACCESS CHARGES FOR TERMINATING ITS LONG  
118 DISTANCE SERVICE?

119 A. I don’t know, but I don’t know how it could. Bresnan says they pass their long distance  
120 traffic over the Public Switched Telephone Network (“PSTN”) and terminate those calls  
121 over a long distance provider. I have yet to see a viable business plan in which a carrier  
122 can provided unlimited long distance service and still pay access charges. Mr. Coleman  
123 has admitted the Division has not conducted any investigation to determine how Bresnan  
124 can offer unlimited long distance calling while paying appropriate access charges.  
125 Further, the Division has not conducted any inquiry as to whether Bresnan will utilize  
126 long distance carriers that pay applicable access charges for long distance calls.

127 The Division has admitted it has no position as to whether a CLEC has an  
128 obligation to insure that applicable terminating access charges are being paid. In a sense,  
129 the Division has determined to turn a blind eye to the impact which unlimited calling  
130 plans have on “phantom traffic.” As the Commission is well aware, “phantom traffic” is  
131 a huge problem for every rural local exchange company in the state, including UBTA-  
132 UBET. This impacts rates which the customers pay, the State Universal Service Fund,



133 and revenues available to the rural telephone companies to further provide enhanced  
134 telecommunications services.

135 Q. IF BRESNAN CHARGED ON A USAGE BASIS FOR LOCAL AND LONG  
136 DISTANCES, DO YOU HAVE ANY STUDIES THAT WOULD SHOW THE  
137 AVERAGE NUMBER OF MINUTES A CUSTOMER USES EACH MONTH?

138 A. Yes. Today, studies indicate that customers spend an average 2,131 minutes per month  
139 using their telephone for local calls and measured interstate and intrastate long distance  
140 calls. Experience shows that unlimited long distance calling at a flat rate substantially  
141 stimulates a customer's usage of long distance service, just as a flat rate EAS stimulates  
142 usage which would otherwise be interexchange traffic. Since Bresnan indicated that it  
143 would be offering unlimited calling, if we priced the service at \$0.02 per minute, the cost  
144 for the service using the average minutes per line would be greater than the monthly rate  
145 that Bresnan proposes to charge. I don't know how they do it, but there is No Free  
146 Lunch.

147 Q. IS UNLIMITED LONG DISTANCE THE SAME AS EXTENDED AREA SERVICE  
148 OR EAS?

149 A. No. EAS is unlimited local calling for a flat rate, which each customer pays. There are  
150 no access charges paid for calls that originate or terminate in the local calling area.  
151 UBTA-UBET owns all of the facilities in the Uintah Basin ("the Basin") or the EAS  
152 calling area of the customers in the Basin. The Division worked with the Company in  
153 analyzing customer calling patterns and in developing the costs that customers pay. EAS  
154 costs for customers in the Uintah Basin or UBTA-UBET's serving area varies based on

155 the size of the community. As the area becomes more rural, the cost increases. The EAS  
156 costs for customers in the Vernal exchanges are the lowest of all of the exchanges in  
157 UBTA-UBET's serving area. The reason is very simple; the density of the Vernal  
158 exchange is the highest of any area in the Basin and thus the lowest cost to serve. Long  
159 Distance has different costs, such as originating and terminating access to the local  
160 telephone company and transport costs across the state or across the country.

161 Q. HOW CAN THE BASIC RATE BE THE SAME FOR ALL OF THE CUSTOMERS IN  
162 UBTA-UBET'S SERVING AREA AND EAS COSTS BE DIFFERENT?

163 A. The difference in pricing is the way that the industry has priced telephone service  
164 historically. In an effort to have universal service, local telephone rates have been  
165 averaged. The state of Utah wants to encourage universal service at affordable rates, so  
166 the state has established a state Universal Service Fund ("USF") and set the monthly local  
167 rate for UBTA-UBET at \$16.50 to ensure that basic telephone service is affordable in the  
168 rural areas and comparable to customers receiving telephone service on the Wasatch  
169 Front of the state.

170 Customers living in high density communities like Vernal cost less to serve than  
171 the more rural areas of UBTA-UBET's service area. An internal subsidy takes place  
172 within the company where the low cost areas provide internal financial support to the  
173 costs of the rural areas of the company. The Vernal exchange provides an internal cost  
174 subsidy to the other exchanges within the company. The state USF provides the  
175 additional support necessary for the rural telephone companies to provide affordable  
176 universal service within its service area.

177 EAS costs are based on the calling patterns and reflect basically the costs of the  
178 service for the exchange. The Vernal exchange has a high calling pattern, but due to the  
179 number of customers; the cost is lower on a per customer basis than the other exchanges  
180 in the company.

181 Q. DOES THE DIVISION UNDERSTAND HOW THESE COSTS WORK?

182 A. I believe they do. Laura Scholl worked at Qwest Communications (“Qwest”) at the time  
183 Qwest sold the rural areas of the state. Qwest was aware that the rural areas were high  
184 cost, that local rates within the Qwest exchanges had been averaged state wide, and that  
185 the telephone customers on the Wasatch Front were providing an internal subsidy to the  
186 customers in the rural exchanges such as Vernal. There were probably several reasons  
187 why Qwest sold its rural areas, but a major reason was the high costs to serve rural areas  
188 of the state. By Qwest eliminating the rural areas of the state, it was able to keep the  
189 internal subsidy and position itself for competition. Local rates were frozen, and Qwest  
190 was able to compete using pricing flexibility. Eliminating the rural internal subsidy gave  
191 Qwest a lot of room for pricing flexibility.

192 Q. WILL COMPETITION PROVIDE THE EFFICIENCIES AND SERVICES ACROSS  
193 THE ENTIRE SERVICE AREA OF UBTA-UBET THAT MR. CASEY COLEMAN  
194 ADVOCATES?

195 A. No. If we look at history and learn from the lesson of the airline industry and railroad  
196 industry we can see that the rural areas of the country either lost service or received less  
197 service depending on the economic viability of serving the area. In both of these  
198 industries, deregulation has resulted in increased economic efficiencies, but neither has

199 resulted in increased availability and affordability in the rural areas. In a report prepared  
200 by Dale Lehman, entitled “Universal Service and the Myth of the Level Playing Field”,  
201 he discusses the difficult task of achieving competition, efficiency and universal service  
202 simultaneously. Competition may lead to lower prices but not to universal service.  
203 Universal service is not economically efficient in the offering of all services to everyone.  
204 There are obvious tradeoffs between Universal service and economic efficiency. The  
205 goal of universal service is affordable service for everyone.

206 It is my understanding that the public policy goals in the state of Utah are for  
207 comparable services at comparable rates to consumers in all regions of the state.

208 Q. WILL COMPETITION IN THE VERNAL EXCHANGE EXTEND THE BENEFITS OF  
209 ENHANCED SERVICES TO ALL OF THE CUSTOMERS THROUGHOUT THE  
210 UBTA-UBET SERVING AREA AS IMPLIED BY MR CASEY COLEMAN IN HIS  
211 TESTIMONY ON LINES 345 TO 366?

212 A. No. UBTA-UBET has limited resources and will need to match competition in the areas  
213 where it occurs. UBTA-UBET would make prudent business decisions as to where the  
214 company invests its physical plant to address competition. Contrary to what Mr.  
215 Coleman asserts, UBTA-UBET will not necessarily offer the same services in those areas  
216 in which it competes with Bresnan, nor will it necessarily offer competitive services  
217 throughout its service territory.

218 Q. IF THE UTAH PUBLIC SERVICE COMMISSION (“UPSC”) GRANTED A  
219 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (“CPCN”) TO  
220 BRESNAN, WHAT IS UBTA-UBET’S POSITION WITH RESPECT TO BEING

221 ABLE TO COMPETE ON A LEVEL PLAYING FIELD?

222 A. In order for UBTA-UBET to effectively compete with Bresnan, it would have to offer  
223 comparable services to those offered by Bresnan including unlimited long distance.  
224 Currently, UBTA-UBET and its subsidiary, Uintah Basin Long Distance (“UBLD”)  
225 cannot economically offer unlimited long distance calling. In order to “compete on a  
226 level playing field” UBTA-UBET must be allowed to offer VoIP or VoIP type services  
227 through an unregulated affiliate just as Bresnan would be allowed to do so.

228 Q. BRESNAN SAYS THEY ARE WILLING TO PROVIDE SERVICE TO THE ENTIRE  
229 EXCHANGE OF VERNAL. HOW WILL THEY DO THIS?

230 A. Bresnan will offer service initially to customers where it currently has facilities. When  
231 Bresnan receives a request from an existing UBTA-UBET customer where Bresnan has  
232 no facilities or is in a high cost area and Bresnan does not want to build facilities to the  
233 customer, Bresnan proposes to purchase from UBTA-UBET, on a wholesale basis, the  
234 local drop to provide service to the customer. UBTA-UBET is unable to charge the true  
235 cost for the use of the drop due to regulatory requirements. The cost that UBTA-UBET  
236 will be able to charge will be an average cost, which is supported by internal cross  
237 subsidies and not the true cost thus increasing pressure on the state USF.

238 The Balhoff & Rowe study observes that competitors generally do not serve high-  
239 cost regions outside rural communities and appear unlikely to serve those areas. The  
240 study points out that the investment required for telephone service doubles when the  
241 served area is more than 12,000 feet from the central office. As the density decreases, the  
242 farther a customer is located from the central office switch, the higher the investment

243 required.

244 Q. SHOULD THE COMMISSION FIND THIS APPLICANT ELIGIBLE TO RECEIVE A  
245 CPCN IN A RURAL ILEC'S TERRITORY?

246 A. It is my opinion that a state commission must evaluate any such application very  
247 carefully before finding a second provider eligible to receive a CPCN in a rural ILEC's  
248 service territory. The commission must find that the requesting carrier meets the public  
249 interest test. It is critical for a second carrier to meet the public interest test in the rural  
250 areas, as these are the higher cost areas of the state to serve. There are numerous  
251 statutory and regulatory differences between granting a second CPCN status in a rural  
252 area vs. a non-rural area or Qwest territory.

253 The obligation of a telephone company that is the provider of last resort imposes  
254 substantial duties on that carrier. The rural telephone company has the responsibility to  
255 provide service to everyone within its service territory. Today, some of the high cost  
256 areas of the state have received one-time distributions from the state USF for  
257 establishment of telephone service to high cost areas.

258 The introduction of competition in rural communities of the state will potentially  
259 increase pressure on the state USF for one-time distributions for the establishment of  
260 telephone service in high cost areas, as who would want to take the financial  
261 responsibility to build facilities in these area. I believe the long-term cost for this  
262 experiment in competition in Vernal or any other rural area is not in the public interest.

263 Q. WILL DESIGNATION OF A SECOND CPCN NEGATIVELY IMPACT UBTA-UBET  
264 AND ITS CUSTOMERS AND BE CONTRARY TO THE PUBLIC INTEREST?

265 A. In my opinion, providing a second CPCN in a rural area of Utah will increase the risk of  
266 “cream skimming.” Rural telephone companies are exceptionally vulnerable to the  
267 effects of the loss of even a few of their higher volume customers. The loss of such  
268 customers will increase the costs on the remaining customers and lead to an increase in  
269 USF or local rates. An incumbent’s average costs would increase if customers abandon  
270 the incumbent to subscribe to the entrant’s services, since there would be very little  
271 reduction in the incumbent’s costs.

272 Designation of a second CPCN may also cause the diversion of revenues that will  
273 increase rates for other customers, discourage investment, and even provide incentives  
274 for UBTA-UBET to evaluate its responsibility as the carrier of last resort and consider  
275 the potential of withdrawing from providing service to the highest cost regions of their  
276 service areas. Duplication of facilities and loss of network investment is not in the public  
277 interest where market demand and foreseeable growth would not otherwise support  
278 multiple providers. One of two adverse effects will result: 1) the total costs of providing  
279 USF support will increase (and ratepayers will be required to pay those higher than  
280 necessary costs); or 2) UBTA-UBET will not have sufficient resources to provide and  
281 maintain a network in high cost areas.

282 The Balhoff & Rowe study done in Texas makes the statement that “in a  
283 monopoly system, policymakers were able to use cross-subsidies effectively; however,  
284 competition erodes sources of high profitability and eliminates the ability to rely on  
285 internal company cross-subsidies. Continuing, policy reliance on systems that average  
286 costs and depend on internal company cross-subsidies appears to [be] unsustainable.”

287 (Letter on Ex Parte Presentation sent to Commissioner Deborah Taylor Tate and  
288 Commissioner Ray Baum on July 12, 2007, study P.9)

289 It would be wise for the Commission to learn from the experience of Texas and  
290 evaluate the impact of competition in the rural areas of Texas before implementing a  
291 similar policy in Utah. Determination of the public interest requires this. Competition in  
292 the rural areas does not always lead to universal service and customer choice, and may  
293 ultimately adversely impact the state USF. Under such a scenario, it is difficult to see  
294 how such competition could be in the public interest.

295 Q. DO YOU HAVE A RECOMMENDATION?

296 A. In short, I recognize that the Division and the Committee recommend that Bresnan  
297 receive a CPCN for Vernal. This may be a short-sighted benefit for a few select  
298 customers that Bresnan chooses to serve while shifting the burden of maintaining and  
299 developing UBTA-UBET's telecommunication infrastructure to those customers that  
300 Bresnan chooses not to serve as well as all ratepayers in the state of Utah through  
301 additional USF contributions. In order to meet such competition UBTA-UBET may be  
302 compelled to make economic decisions focused on those areas of the Vernal Exchange  
303 served by Bresnan, and as a result, decrease the amount of its investment in its remaining  
304 service area. I recognize that the state USF supports the rural high cost areas of the  
305 state. If competition is allowed in Vernal there may be no end to the rural areas that  
306 could potentially have competition. Consequently, the burden on state USF could grow  
307 to the point that local rates for the rural telephone companies may not be affordable or  
308 may be de-averaged in a rural service area in an effort to keep the state USF solvent. I



309 believe the Commission should deny a second CPCN in Vernal as it is not in the public  
310 interest.

311 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

312 A. Yes, it does.

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