

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petitions)
of Bresnan Broadband of Utah,) Docket No.
LLC, to Resolve Dispute Over) 08-2476-02
Interconnection of Essential)
Facilities and for Arbitration)
to Resolve Issues Relating to)
an Interconnection Agreement)
with UBTA-UBET Communications,)
Inc.)

TRANSCRIPT OF HEARING PROCEEDINGS
VOLUME II

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

DATE: 28 January 2009

TIME: 9:30 a.m.

REPORTED BY: Debra A. Dibble; CSR, RPR

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BRESNAN EXHIBITS:

- 1 Petition to Resolve Dispute over
Interconnection of Essential Facilities.
- 2 Bresnan Broadband of Utah, LLC's Response
To Division of Public Utilities' Second
Set of Data Requests.
- 3 Quest Utah SGAT Seventh Revision,
Exhibit A.
- 4 UBTA-UBET Communications, Inc's Responses
To Bresnan Broadband of Utah, LLC's
Second Set of Data Requests.
Harris replacement pages.
- 6 12/6/04 letter to Stanley Stoll from
Julie Orchard, with attachments.
- 7 Direct Testimony of Peggy N. Egbert/
Docket 03-2403-02.
(ADMINISTRATIVE NOTICE.)
- 8 Rebuttal Testimony on Cost Analysis
For Interconnection rates of Peggy
N. Egbert/Docket 03-2403-02.
(ADMINISTRATIVE NOTICE.)
- 9 Direct Cost Analysis Testimony of
Jonathan Lee/Docket 03-2403-02
(ADMINISTRATIVE NOTICE.)
- 10 Rebuttal cost Analysis Testimony of
Jonathan Lee/Docket 03-2403-02
(ADMINISTRATIVE NOTICE.)

UBTA-UBET EXHIBITS:

- 1 Direct Testimony of Valerie Wimer on
Behalf of UBTA-UBET communications, Inc.
- 2 Current interconnects.
- 3 Proposed language changes for UBTA-UBET's
original Essential Facilities Agreement.
- 4 Bresnan Broadband of Utah LLC's Response
To UBTA-UBET Communications, Inc.'s
First Set of Data Requests.
- 5 U.S. Code Collection. (Withdrawn)

1 EXHIBITS (continued)

2 URTA EXHIBITS:

- 3 1 Direct Testimony of Douglas Duncan
4 Meredith on behalf of URTS and UBTA-
5 UBET, Communications, Inc.

6 DEPARTMENT OF PUBLIC UTILITIES EXHIBITS:

- 7 1 Direct Testimony of Casey J. Coleman.
8 2 Interconnection Agreement.
9 (Union/UBTA-UBET)
10 3 Interconnection Agreement (UBTA-UBET/WWC)
11 4 UBTA-UBET Responses to DPU's Second Set
12 of Data Requests.

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1 P R O C E E D I N G S

2 ADMINISTRATIVE LAW JUDGE: We're on the
3 record.

4 Did everybody get what they needed today?

5 Mr. Nelson, did you get your -- what you
6 needed from --

7 MS. SLAWSON: Yes, Your Honor. I gave them
8 a -- this morning I gave them a spreadsheet. I have
9 one for you.

10 ADMINISTRATIVE LAW JUDGE: Okay. That would
11 be great.

12 MR. NELSON: And is this going to be marked
13 as an exhibit? Is that the idea?

14 ADMINISTRATIVE LAW JUDGE: Yeah.

15 MS. SLAWSON: That would be the idea.

16 ADMINISTRATIVE LAW JUDGE: Yeah.

17 MS. SLAWSON: I don't have anyone on the
18 stand to authenticate the exhibit.

19 Can we mark this as UU-2?

20 (Whereupon, Exhibit No. 2
21 was marked for identification.)

22 MR. NELSON: And then additionally, Your
23 Honor, you had requested that the changes that
24 Mr. Harris had made on the stand to the red-line
25 document be reflected in replacement pages.

1 ADMINISTRATIVE LAW JUDGE: Right.

2 MR. NELSON: Which I have prepared a little
3 package of, and would be happy to have these marked as
4 a an exhibit as well, if that would be your pleasure.

5 ADMINISTRATIVE LAW JUDGE: If you could.

6 (Whereupon, Exhibit No. B5
7 was marked for identification.)

8 MR. GINSBERG: And this is Bresnan 5?

9 MR. NELSON: Bresnan 5, replacement pages.

10 MR. GINSBERG: And what was the other
11 document called? UBET's --

12 MS. SLAWSON: UU-2.

13 MR. GINSBERG: Are these all -- each one of
14 these are separate?

15 MR. NELSON: Yeah.

16 If I might, Bresnan 5 is six pages.

17 Each one of them is a replacement page to
18 Exhibit B2, and it has then marked, and typed, the
19 language that Mr. Harris indicated on the stand were
20 his proposed corrections.

21 So, for example, Exhibit B5, page one of
22 six, is a replacement page as Bresnan would propose to
23 page three of the General Terms and Conditions as
24 reflected on Exhibit B2.

25 ADMINISTRATIVE LAW JUDGE: Okay.

1 MR. NELSON: And I'd be -- I don't know if
2 you want to call Mr. Harris to have these admitted, or
3 if not, because he already has them in his testimony.

4 I'll just move for the admission of B5.

5 ADMINISTRATIVE LAW JUDGE: You can just move
6 for the admission.

7 MS. SLAWSON: No objection.

8 ADMINISTRATIVE LAW JUDGE: We'll admit that.

9 (Whereupon, Exhibit No. B5
10 was admitted.)

11 Anything else that I need to take care of
12 before we commence?

13 Okay. If you'd like to proceed, Ms. Wimer.

14 Ms. Wimer, I'll just remind you you're still
15 under oath.

16 MR. NELSON: Did you move UU-2?

17 MS. SLAWSON: I didn't. I'm going to
18 wait --

19 MR. NELSON: Okay.

20 MS. SLAWSON: Actually Your Honor, with
21 respect to UU-2, what I would like to do is proffer
22 that that is the information that was requested by
23 Mr. Nelson yesterday, and move for its admission.

24 ADMINISTRATIVE LAW JUDGE: Okay. No
25 objections?

1 MR. NELSON: No objection.

2 And I would just ask, is Ms. Wimer prepared
3 to answer questions about this, or will -- if we have
4 questions about this, would that be something that
5 Mr. Meredith will have to address?

6 ADMINISTRATIVE LAW JUDGE: I would say
7 Mr. Meredith.

8 MS. SLAWSON: Ms. Wimer is prepared to
9 answer those. So that might be the most efficient.

10 MR. NELSON: Okay.

11 And if I could, Your Honor, I think
12 UBTA UBET and Ms. Wimer had made a series of
13 corrections to the Exhibit B2, which I thought were
14 going to be typed up. Is that -- has that happened
15 yet.

16 MS. SLAWSON: They have been typed up. It
17 doesn't look like yours. And we had two additional
18 changes to our language that I was going to go over
19 with her and then I'll move the admission. But I'll
20 give that to you now.

21 MR. NELSON: Okay. Great.

22 MR. GINSBERG: I guess this will be UU-3?

23 MS. SLAWSON: Right. UU-3.

24 (Whereupon, Exhibit No. UU-3
25 was marked for identification.)

1 MS. SLAWSON: May I approach the witness?

2 ADMINISTRATIVE LAW JUDGE: Yes.

3 DIRECT EXAMINATION (continued)

4 BY MS. SLAWSON:

5 Q. And since we're talking about what has been
6 marked as UU Exhibit 3, Ms. Wimer, why don't we start
7 with that.

8 Yesterday, on the stand, you had made some
9 modifications to UBTA UBET's proposed language in the
10 Essential Facilities exhibit. Have you had a chance to
11 look at UU-3?

12 A. Yes.

13 Q. And I believe yesterday you testified to
14 changes in 1.3, Section 8, section 35, which was
15 Bresnan's proposed -- 35 was a new proposed section,
16 and then C, from the pricing list. Is that correct?

17 A. Correct.

18 Q. And are the changes that you testified to
19 yesterday reflected in this agreement UU-3?

20 A. Yes.

21 Q. Okay. Now I'd like to direct your attention
22 to Section 9.6.

23 Was there -- which is the section on
24 deposits.

25 Was there language in that section that you

1 wanted to modify?

2 A. Yes. We're proposing to delete the last
3 phrase that says "or a minimum of \$35,000."

4 Q. And other than that, the language proposed
5 by UBTA UBET in the Deposit Section 9.6 would remain
6 the same?

7 A. Correct.

8 Q. Okay.

9 Additionally, turn your attention to
10 Section 16 of the General Terms and Conditions, which
11 is the section on force majeure. Was there language
12 that you wanted to add to that section?

13 A. Yes. In the first sentence after the word
14 agreement, insert the words "other than payment
15 obligations set forth in --" the section number is not
16 there, but I believe it's section nine.

17 Q. Okay. And I noticed, on the UU-3 that I
18 typed this morning, there's a typographical error in
19 the language that you're adding. It should say "other
20 than," not "other that." Is that correct?

21 A. Correct.

22 Should I mark that on here?

23 MS. SLAWSON: Would it be all right with the
24 parties if she marked it on the exhibit?

25 MR. NELSON: No objection to that.

1 MS. SLAWSON: And with those two additions,
2 I would move for the admission of UU-3.

3 ADMINISTRATIVE LAW JUDGE: No objection?

4 MR. NELSON: No objection.

5 ADMINISTRATIVE LAW JUDGE: We'll admit UU-3.

6 (Whereupon, Exhibit No. UU-3
7 was admitted.)

8 Q. (BY MS. SLAWSON) All right, Ms. Wimer. I'd
9 like to continue with your testimony.

10 As I recall, yesterday afternoon we were
11 talking through the Essential Facilities Agreement,
12 which was set forth in B2.

13 My notes indicate that we ended our
14 discussion yesterday with Section 9.1.

15 I would like to turn your attention to
16 Section 9.2.

17 Have you reviewed Bresnan's proposed
18 modifications to Section 9.2.1?

19 A. Yes.

20 Q. And do you have any changes that you'd like
21 to make, or do you accept those changes?

22 A. No.

23 Q. Okay. What would you like to change?

24 A. Well, 9.2, I'm not accepting their changes
25 of the intervals that are -- that are listed there.

1 And, in fact, it -- it's particularly
2 problematic, having these changes along with the
3 changes -- or their proposed language for deposits,
4 which is Section 9.6, because, based on the length of
5 time they could provide any detail on a dispute
6 resolution, or a billing dispute, along with having
7 only a few type -- having to be late on payments to
8 ever get to a deposit, we could never get there.

9 So the two together don't work.

10 In addition, that if somebody is disputing a
11 bill, that dispute, a backup for the dispute should be
12 given at the time the bill is actually disputed, and
13 not 90 days later.

14 Q. Okay. So you would suggest that the
15 Commission stick with the 30 days?

16 A. Correct.

17 Q. Okay.

18 I'd like to turn your attention next to
19 Section 9.6 that you were just referring to.

20 You had indicated a modification this
21 morning when we first started that UBTA UBET would be
22 agreeable to deleting the language "or a minimum of
23 \$35,000" at the end of their deposit language.

24 Have you reviewed the red-line changes that
25 Bresnan has made to that section?

1 Okay. And is it your testimony that
2 UBTA UBET would like to stick with its original
3 language?

4 A. Correct.

5 Q. And would that be for the reasons that
6 you've just articulated to us?

7 A. Yes.

8 In addition, they have items on deposit that
9 talk about bank credit, and those mechanisms are not
10 used at UBET.

11 Q. Okay.

12 I'd like to turn your attention next to
13 Section 25 of the Essential Facilities Agreement.

14 Have you reviewed their red-line changes
15 proposed by Bresnan to that section?

16 A. Oh. I went too far.

17 Something happened to that page.

18 Q. Oh, page 16? I've got another copy of it.

19 A. I must have gotten them out of order
20 somehow.

21 Q. Are you looking at the Exhibit B2?

22 A. Yes.

23 Q. Here's the actual Exhibit B2.

24 A. Sorry.

25 Q. And here's another copy.

1 So we're talking about page 16 of Exhibit
2 B2?

3 A. Yes.

4 Q. What has Bresnan added in Section 25?

5 A. They've added that they permit successors
6 and assigns in the no third-party beneficiaries
7 section. And this is linked to our comments yesterday
8 on the assignment clause, which I think assignment is
9 maybe number six. That it's not appropriate. If we're
10 not doing assignments, we should not talk about the
11 successors of assigns.

12 Q. Okay. And I just noted that the
13 language "and their permitted assigns," looks like it's
14 in black. So that would have been our language to
15 begin with. Are you suggesting a modification to our
16 language as well?

17 A. Yes.

18 Q. I can add that to the --

19 MR. NELSON: I'm sorry, now I -- I better
20 write that down. Remind me which section you're on?

21 MS. SLAWSON: Section 25, page 16.

22 MR. NELSON: And that's the language you are
23 suggesting be stricken is which?

24 MS. SLAWSON: And "their permitted
25 successors and assigns."

1 MR. NELSON: Thank you.

2 Q. (BY MS. SLAWSON) Now, if you could turn
3 your attention to the glossary attachment. I'll refer
4 you to Section 2.13.

5 A. Yes.

6 Q. Have you reviewed Bresnan's proposed
7 changes?

8 A. Yes.

9 Q. And what issues, if any, do you have in
10 those changes?

11 A. Well, I don't accept those changes at all.

12 First of all, they're really not
13 definitional changes. It's really conditions of how
14 the agreement would be implemented, and are really not
15 appropriate for a definition in there.

16 In addition, it seems kind of a back-door
17 way to say that all of the EAS is going to be included
18 in an end office connection. Because the wording talks
19 that once you make an interconnection at a host office,
20 any of the remotes, that in this case would serve EAS
21 exchanges that are beyond that host, would be included
22 in that connection.

23 Q. Okay.

24 Moving forward through the glossary,
25 Section 2.38.

1 A. Can you -- the numbers are all changed here.

2 Q. Yeah. I'm sorry. Let's see.

3 A. Which -- which definition is it?

4 Q. It's the definition that -- it was marked
5 2.40.

6 A. The pole attachment?

7 Q. The red-line pole attachment definition.

8 A. And we would like to have that retained in
9 the agreement. And the section that we offer -- the
10 new section that we offered yesterday, hopefully will
11 make that more relevant.

12 Q. Okay.

13 Moving to the Interconnection Attachment at
14 this point.

15 I refer you to Section 1.1 of the
16 Interconnection Attachment.

17 It looks to me like Bresnan has red-lined or
18 deleted the word directly at the end of that paragraph.
19 And the clause there is where each party directly
20 provides local exchange service.

21 Is that an acceptable change for you?

22 A. No. And yesterday Mr. Meredith was asked
23 about where some of the other wholesale paragraphs
24 were, and although this doesn't say wholesale, by
25 saying that they are not directly providing service to

1 the end user customer allows a wholesale carrier --
2 another carrier to be in between Bresnan and the actual
3 end user retail customer.

4 So both in this section and in Section 2.3,
5 there is a similar deletion of the word directly, when
6 referencing the end user -- directly providing exchange
7 service or providing service directly to the end user
8 customer.

9 Q. Okay.

10 Moving down that page to Section 1.4.
11 Bresnan has red-lined the first part of that paragraph.
12 Do you accept or are you comfortable with that change?

13 A. No.

14 You know, Bresnan has stated, and we had
15 some discussion on this yesterday, that Bresnan stated,
16 Oh, we don't offer ISP services. We're not going to do
17 these things. But there's no force and effect unless
18 there's wording in the agreement that says that.

19 Yesterday, Mr. Harris brought up some
20 concerns about them offering services in other areas.
21 And if it's in other states, and they're not
22 terminating to us, that may be fine.

23 And if they want to make tweaks to the
24 language, we would be open to that, but completely
25 eliminating that language and not making a commitment

1 that they have made verbally to this Commission, would
2 not have force and effect in the agreement unless we
3 had some wording addressing that.

4 And you may -- we also say that UBET is not
5 promoting, so this is reciprocal. That UBET also is
6 not promoting dial-up ISP services. So this is not
7 something we're asking them to do unilaterally.

8 Q. Okay.

9 And further down that page, Bresnan has made
10 a change -- some changes to 2.2 under Responsibility
11 for Traffic.

12 It appears that they attempted to make this
13 paragraph reciprocal.

14 Do you have any problems or concerns with
15 this -- with their red-lines in this section?

16 A. Yes.

17 And there's a couple things.

18 First of all, the reciprocal nature we are
19 not concerned about, however, they did cross out, in
20 the first sentence, that they are not agreeing that
21 they are going to provide service that is mobile. And,
22 in fact, in one of their data responses, there seem to
23 be some weasel words in a data response that in fact
24 their service could be moved.

25 I think they say they can move service from

1 exchange to exchange, and at least right now the
2 telephone number changes, but it's a question of is
3 that always going to be the case.

4 Q. And do you recall, was it in data responses
5 to UBTA UBET or to the Division?

6 A. I believe it was to UBET.

7 (Whereupon, Exhibit No. UU-4
8 was marked for identification.)

9 Q. (BY MS. SLAWSON) I'll show you what's been
10 marked as UU-4. It is the Bresnan Broadband LLC's
11 Response to UBTA-UBET Communications, Inc.'s First Set
12 of Data Requests.

13 And I'm referencing response to 1.10(B),
14 where they can move from one Bresnan location to
15 another. And when they get to the new presence,
16 however in that context such inter-rate center
17 relocation the end user will not be able to retain its
18 telephone number, but it seems they can still move
19 their service. And I don't see a commitment that
20 forever they're -- you know, that they're going to
21 move -- if they can technically move, then Bresnan may
22 not even know if they have.

23 MS. SLAWSON: I would also, as a clean-up
24 matter, move for admission of UU-4.

25 ADMINISTRATIVE LAW JUDGE: And UU-3 as well?

1 MS. SLAWSON: And UU-3, as well.

2 ADMINISTRATIVE LAW JUDGE: And no
3 objections?

4 MR. NELSON: No objection. We'll admit UU-3
5 and UU-4.

6 (Whereupon, Exhibit Nos. UU-3
7 and UU-4 were admitted.)

8 Q. (BY MS. SLAWSON) So, Ms. Wimer, I
9 understand your testimony as it relates to B2, you just
10 like the words that were crossed out "provide nor."
11 You would like those added in. Is that correct?

12 A. Correct.

13 Q. Or left in, I should say.

14 A. Right.

15 And also, concerning the deletion they had
16 done yesterday, we would prefer to keep that language
17 in -- or that statement in, because, again,
18 it reaffirms that the service is from a fixed location
19 that is within the UBET's service territory.

20 However, they had another red-line in there,
21 if the sentence stayed, which added operating
22 parameters. And we don't know what those are, so would
23 not accept that change, but would prefer that sentence
24 to stay in.

25 Q. So you'd like the sentence in without their

1 modification?

2 A. Yes.

3 Q. Which they have since deleted?

4 A. Right.

5 And then lastly -- and there's several
6 places with this. The last sentence of that paragraph
7 references charging of access charges more as a
8 penalty. And UBET had proposed that it be under UBET
9 tariffs switched access rates. And Bresnan has changed
10 that to be the highest applicable rate of either -- of
11 the terminating party.

12 And the issue there is that, you know,
13 Bresnan does not do any cost backup. They essentially
14 file their rates. Although verbally they have said
15 they will commit to rates that are no higher than the
16 ILEC, so far they've crossed out any wording that
17 commits them to that.

18 And we agree to make these things
19 reciprocal, but we're not going to submit ourselves to
20 some open amount of a penalty rate that we don't know
21 what it is.

22 So we can either leave these as -- on the
23 penalties referencing the UBET access rates when
24 they're used as a penalty, or we need a commitment from
25 Bresnan that their access rates are not going to exceed

1 the UBET rates.

2 Again, if the penalty is a certain amount,
3 we don't want the penalty of one carrier to be five
4 times higher than the other.

5 Q. And, as I read that language, is your
6 understanding that it would be that each side would
7 charge their highest applicable tariff rates, or that
8 the highest applicable tariff rates of either would be
9 charged as the penalty?

10 A. The way they're wording rates, it says the
11 highest applicable switch rates of the terminating
12 party.

13 So if it's going from UBET to Bresnan,
14 Bresnan would be the terminating party, and it would be
15 their rate.

16 If it was Bresnan to UBET, then it would be
17 the UBET rate.

18 Q. Okay.

19 A. And we're saying whatever that rate is, it
20 should be the same.

21 And there are several other paragraphs. And
22 I may not have gotten them all, but there are several
23 other paragraphs that have that same concept in them in
24 this Interconnection Attachment.

25 So in addition to this Section 2.2; 4.1.3,

1 4.2.4, and 5.2 have similar provisions. And I may have
2 missed one in there, but all of those -- the rationale
3 is the same for all of those.

4 Q. Okay.

5 Okay. Let's move forward in the
6 interconnection to Section 3, which we had -- UBET had
7 entitled Physical Connection, and which has been
8 proposed to be changed by Bresnan to Interconnection.

9 Have you reviewed the proposed red-lines
10 for -- by Bresnan in this section?

11 A. Yes.

12 Q. And can you walk me through any concerns
13 that you have with their changes here?

14 A. Yes.

15 First of all, we feel that under State
16 rules, as Mr. Meredith had discussed yesterday, that a
17 direct connection is required.

18 There are several areas in the State rules
19 that Mr. Meredith had talked about yesterday where the
20 requirement is to have a technically feasible point on
21 the Bresnan network, which implies a physical
22 connection.

23 Mr. Meredith talked about the overlapping
24 service territories. That had to be within the
25 overlapping service territories.

1 In addition, the financial obligations
2 listed in the Utah code says that the financial
3 responsibility of the interconnection changes at the
4 point of interconnection. And that implies, to me,
5 that there must be a point of interconnection between
6 the two interconnecting carriers.

7 If after that point of interconnection
8 Bresnan wants to take it through a tandem, they are
9 able to do that. But it seems to me from the Utah
10 code, that in fact that's the financial transport
11 point.

12 Q. And so, as I understand your testimony,
13 indirect connection, UBTA UBET is not agreeable to an
14 indirect connection.

15 A. Correct.

16 Q. And --

17 A. And in addition, if -- even if we were, the
18 terms that they have listed in this paragraph, we don't
19 think are -- are very reasonable.

20 That one, when they defined 512 CCS, it
21 needs to be defined over a time period, which it's not.

22 Frankly, we would be preferred to have a --
23 you know, if we were required, have a number minutes of
24 use.

25 Plus, even if you meet that requirement, it

1 still requires, you know, the parties to agree that you
2 have met it. And so it -- it still seems there's a lot
3 of negotiation before you could ever get to a direct
4 connection under these terms.

5 Q. And while we're on the subject of direct and
6 indirect connection, we heard a lot of testimony
7 yesterday about -- about this, about direct and
8 indirect connection.

9 And I have a question in my mind about
10 indirect connection.

11 There's been testimony that indirect
12 connection involves the use of a third-party for
13 transiting. Is that correct?

14 A. Correct.

15 Q. And so help me understand this. If a CLEC
16 goes into a Qwest area, are they -- is it -- wouldn't
17 that always be a direct connection?

18 A. Correct.

19 And I -- there was a lot of testimony by
20 Mr. Harris yesterday talking about the CLECs connecting
21 to a tandem, and then after they get enough traffic
22 they would go to an end office. But in fact, when
23 they're interconnecting with the RBOC, or say Qwest or
24 a large independent that owns the tandem, that is
25 always a direct connection. There's no intermediate

1 there. That is a direct connection between the CLEC
2 and the incumbent carrier.

3 So, based on that, you know, when they
4 interconnect with Qwest, they have a direct
5 interconnection, you know, in each of the states.

6 Q. They may or may not have direct end office?

7 A. They may not have direct end office, but
8 they still have a direct connection with the -- with
9 the incumbent LEC in those cases.

10 So all of those are direct connects, even
11 though they may go through a tandem. Since the ILEC is
12 the tandem owner, it's a direct connect with them.

13 Q. And there's no third-party intermediary?

14 A. And there's no third-party.

15 And lastly, under Federal rules, the
16 carriers end up wanting -- you know, wanting a direct
17 connect. They all get it. The only reason why there's
18 one to start with is because the FCC requires them to
19 do it that way.

20 So we're getting Federal rules, you know,
21 mixed in here, in what the requirements are.

22 You know, we feel, on the State rules, that
23 State rules require, you know, a direct connect. And
24 if we only have an end office, that's all we have.

25 Q. Do you have any other concerns with indirect

1 connections in general in this instance?

2 A. Yes.

3 Mr. Harris said that there's no
4 out-of-pocket cost for us to do these indirect
5 connections. And we have only toll trunks to the two
6 tandems that we go to. There's only toll traffic on
7 those trunk groups. We get access for any transport
8 that's provided in there.

9 So when they talked about the meet point
10 billings yesterday, all of that transport that we're
11 doing from the Vernal switch to that meet point, or the
12 Vernal switch to the UFN tandem, we have a revenue
13 stream on that.

14 And so really, we build the trunks based on
15 meeting the traffic, knowing we're going to get X
16 amount of revenue.

17 What Bresnan is asking us to do is move a
18 meet point to some distant location, because they have
19 chosen to put their switch in Colorado, and have us pay
20 for the transport.

21 Both of us are only competing within the
22 Vernal exchange, and, based on their own business
23 plans, they've determined that they want to have their
24 switch in Colorado, yet when it comes to reciprocal
25 compensation, they're asking me to support their

1 decision to have a switch in a distant location.

2 Q. And are there any problems with regard to
3 phantom traffic that can arise when you send the
4 traffic through a third-party tandem?

5 A. Yes.

6 And there has been discussion here between
7 the Qwest tandem and the UFN tandem. And UBET has been
8 getting phantom traffic that they can't identify, and
9 have had trouble collecting revenue on.

10 Q. And -- before you go on, can you maybe just
11 break it down one more notch on what phantom traffic
12 is, so that --

13 A. Yes. Yes.

14 When two carriers interconnect, you get a
15 lot of information delivered to you that tells you
16 where the origination -- what the originating telephone
17 number is, what the originating switch is, what
18 carrier's carrying that traffic, and then what the
19 terminating party is, and the terminating telephone
20 number.

21 So typically, when you bill the call, you
22 look at the originating and terminating telephone
23 numbers, because theoretically they are
24 geographic-based, so you can tell, are you in this
25 exchange or that exchange, and is that a toll call.

1 What happens when they go -- and which
2 carrier do I, in fact, bill.

3 What happens when a call goes through the
4 tandem, sometimes the tandem provider changes some of
5 those parameters, so by the time the call gets to the
6 terminating party, it does not have enough information
7 to either, one, determine the originating and
8 terminating telephone numbers, so they can't tell is it
9 a toll call or not a toll call, or they don't have the
10 carrier name that they can actually bill for the
11 traffic.

12 So, therefore, I get a lot of minutes that
13 I'm unable to bill.

14 So that's what phantom traffic is.

15 So every time I go through a tandem, the
16 tandem provider, having a third-party there, based on
17 how they have their switch set up, may either change
18 some of those parameters, not pass the parameters, or
19 something happens in the middle, and then UBET ends up
20 having the cost of terminating the call, but no place
21 to get revenue from.

22 And that would be the same. There was a
23 particular problem with a Qwest tandem, and so they
24 moved some of their traffic to have more control of
25 their toll traffic to the UFN tandem. But even at UFN,

1 since it's brand new, there are still possibilities of
2 that happening.

3 If you have a direct connection between
4 Bresnan and UBET, there's nothing in between. So if
5 there's a missing parameter, I know I can point to
6 Bresnan and say, Where is that? And they can do the
7 same thing in the opposite direction, if UBET has not
8 provided those -- that information, so that billing can
9 occur.

10 They -- they can point to us and say, You
11 didn't provide it. And there's several paragraphs in
12 this agreement that say both parties will provide this
13 signaling information. And, in fact, we're in
14 agreement on most of those.

15 And then there is a penalty built in, again,
16 if we don't provide the signaling parameters. Those
17 same arrangements, you know, we can't get from the
18 tandem providers.

19 Q. Thank you.

20 Moving through the Interconnection
21 Agreement, turn your attention to Section 3.4.

22 Bresnan has made some significant red-line
23 changes to this section in the agreement. Have you had
24 a chance to review those?

25 A. Yes.

1 Q. And what problems or concerns do you have,
2 if any?

3 A. I'm going to address this whole Section 3.4.
4 There's a number of subparagraphs here, but now in the
5 red-line all of the numbers have changed. So it's hard
6 to determine, when we reference numbers, whether it was
7 a deleted section or not.

8 Conceptually -- and it doesn't seem that
9 we're conceptually that far off, but we don't agree on
10 the wording.

11 Conceptually we want to have a trunk that
12 only has local -- local EAS and ISP-bound traffic on
13 it.

14 We want a positive recognition that the
15 other traffic is on separate trunk groups.

16 And the way that Bresnan has written the
17 language, it seems that you would have to have
18 something actually written in the law that requires a
19 trunk group. And I don't know of any law that gets to
20 the detail of actually specifying trunk groups.

21 In addition, when you do get to the toll
22 trunk groups, there should be a positive indication
23 that in fact, you know, toll is outside this agreement
24 and covered by the access traffic.

25 So we're just saying, Here's the limits of

1 this agreement. Toll is over here, and that's covered
2 by a separate arrangement.

3 In addition, they cut out -- and this
4 somewhat relates to the definition of the end office
5 that we spoke about earlier.

6 We agree, from a physical connection piece,
7 that physically, when they come to our host switch, and
8 all of the remotes are coming off the host switch, they
9 can have one interconnection trunk that carries, again,
10 local EAS and ISP-bound to that host switch. And from
11 there, UBET will carry it to the far offices. However,
12 the compensation for that is different, and we'll get
13 to the compensation later.

14 The way they've changed our wording, and
15 talk about an interconnected end office -- and, again,
16 that's an undefined term, and I think somewhat nebulous
17 compared to our language.

18 Q. And --

19 A. And actually, lastly, they had crossed out
20 our notice on 9-1-1 trunks, but I believe they've moved
21 that to another location. So we'll talk about that
22 later.

23 Q. Okay.

24 Moving through to Section -- let's
25 see. -- 3.5. It looks like they've -- Bresnan has

1 red-lined the last sentence of that section, cutting
2 out the words "Bresnan will order trunks in the agreed
3 upon quantities via an access service request,
4 according to UBET's procedures."

5 They've crossed that out. Do you have any
6 concerns with that red-line?

7 A. Yes.

8 They've crossed it off there. They've added
9 a new 3.6 that just references the Ancillary Services
10 Attachment. And perhaps we can address it there, but
11 one, we do -- you know, we feel Bresnan will be
12 ordering the trunks, and not UBET.

13 Q. Okay.

14 And yesterday we also discussed the
15 deletions to the -- or Bresnan's references to standard
16 industry procedures. And you had offered some
17 testimony on UBET's procedures, and had offered some
18 additional wording changes on industry standards versus
19 the party standards. Is there any concern with that in
20 this section?

21 A. Yes. There are several sections in --
22 several sections that then reference standards. And
23 the deleted language does reference the UBET
24 procedures.

25 And, again, the wording would change for

1 each paragraph, and I'm sure, if we get agreement on
2 Section 8, this would be a section that every time we
3 reference UBET procedures, we would need to have some
4 kind of reference of each party's procedures.

5 So if you're doing ordering, if Bresnan is
6 doing the ordering, it is going to go to UBET
7 procedures and other locations.

8 There are -- and I can hopefully read them
9 off.

10 And this references both standards
11 procedures. There's this section, there's 3.4.1.2.
12 The -- in the Interconnection Attachment.

13 There's a -- again, because of cross-outs,
14 there's been some numbering -- there was a new section
15 3.4.2 that references procedures or standards. And
16 Section 7 references procedures.

17 And again, all of those would have to have
18 something that refers to each party's procedures, or
19 one party's procedures as defined in Section 8.

20 In addition, in the ancillary section --
21 Ancillary Services, Section 1.1.1, Section 1.2.1,
22 Section 3.1, Section 3.2, Section 5.1, Section 5.2.1,
23 and Section 6.4, all reference either industry
24 standards, or UBET procedures, or something to that
25 note, that, based on discussions again, if Section 8 is

1 worked out, there would be some type of wording
2 modifications on those.

3 Q. Okay.

4 And moving forward to Section 3.6, they had
5 eliminated UBET's proposed language at 3.6.

6 And this -- this section discusses if
7 Bresnan's request requires UBET to build new
8 facilities, Bresnan will bear the cost of construction.

9 Have you had a chance to review that
10 deletion?

11 A. Yes.

12 And there's a similar concept between
13 Bresnan deleted 3.6, and they also deleted wording on
14 4.1.4. They deleted the first sentence of 4.1.4.

15 Both of those have similar concepts, that,
16 you know, we're going to build facilities. We're going
17 to agree to a meet point. If they make us move off
18 our -- move off our meet point and, you know, extend
19 fiber to someplace to meet them, we may do that. But
20 if it's not on our network, we want to get reimbursed
21 for that, if we're accommodating their requirements.

22 Q. Okay.

23 And you had mentioned briefly there, their
24 new Section 3.6 entitled -- or that discusses local
25 interconnection trunk connected at the POI. Was there

1 a -- did you have an issue with that section?

2 A. I think it's linked in with the -- it just
3 replaces. It goes along with what I had already
4 mentioned about the ordering procedures.

5 Q. Okay.

6 Moving through the Interconnection Agreement
7 to 4.1.3, this is the section that had initially been
8 proposed by UBET, and has been deleted and then a new
9 Section 4.1.3 has been added by Bresnan. Have you had
10 a chance to review those modifications?

11 A. Yes.

12 Q. And what concerns or issues do you have with
13 those, if any?

14 A. Again, here it -- it's one of the issues on
15 the applicable tariff, that they're referencing that
16 it's applicable tariff or contract terms. And, again,
17 it's the issue of our -- Bresnan's applicable tariff
18 rates aren't all that different from ours.

19 In addition, their wording talks about the
20 purchasing party network to the POI. Well, there's
21 modifications that would need to be made, and frankly
22 we like our language better.

23 But conceptually, those are some of the
24 issues that we have with the language.

25 Q. And that's that those are the issues with

1 their language on 4.1.3 of UBET's language that they
2 have deleted. Did you have an issue with that
3 deletion?

4 A. I think their language was trying to make
5 ours reciprocal, but, again, we like our wording
6 better. And if they want a reciprocal, we can make it
7 reciprocal, but we don't have -- we don't intend to
8 ever purchase transport facilities from Bresnan, so we
9 don't see a real need to make it reciprocal.

10 Q. Okay.

11 Moving down now, we're going to talk a
12 little bit about traffic compensation. Termination
13 compensation. This is section 4.2 of the
14 Interconnection Attachment.

15 Bresnan's made some significant revisions to
16 that section. Would you like to discuss those
17 conceptually, and then, if you need to, specifically?

18 A. Okay.

19 First of all, for traffic compensation,
20 what -- maybe I'll explain first what the UBET proposal
21 is.

22 What UBET's proposal is that we have
23 reciprocal compensation. So for every minute that we
24 pass back and forth, there's a minute of use payment.

25 So it starts out one way. It's going to be

1 the same way throughout the agreement. You don't have
2 to measure and keep track of this. You know what we're
3 doing.

4 Having that type of compensation is
5 consistent with the way we have our wireless
6 compensation agreements, and, in fact, the 1.2 rate for
7 that is the same as what we have in the wireless. Or
8 that we proposed is the same that we have in the
9 wireless agreements. And it seems that the Commission
10 has, you know, approved those agreements, and they're
11 operational, you know, within the State, although they
12 are under 251-type agreements.

13 So we think that is consistent with the Utah
14 law, and consistent with the way we treat other
15 carriers.

16 In addition to that minute of use
17 compensation, we have additional cost for EAS. That in
18 reciprocal compensation we're covering just local
19 traffic.

20 The Commission has ordered us to have EAS
21 traffic to all our customers. This is not something
22 that we've had for 20 years. I believe it's, you know,
23 four or five years that this EAS rate has been charged
24 to our customers. And so, in addition to that 1.2
25 rate, we would have a rate, essentially the same as

1 what we charge our end users, that the Commission
2 determined was reasonable compensation for providing
3 that service. And we would charge Bresnan that same
4 rate, because they're essentially getting the same
5 service.

6 The --

7 Q. Can I stop you there for just a second?
8 And maybe explain what the EAS service area is, or
9 the -- what -- what we're charging for.

10 A. Okay.

11 Local service is within the exchange of
12 Vernal. Only.

13 So that would cover just those areas.
14 Vernal customer calling a Vernal customer.

15 EAS is when you would have a Vernal
16 customer, say calling Roosevelt, or -- I'm forgetting
17 the exchange names, but all of the other -- I believe
18 there's ten exchanges. So when a Vernal customer calls
19 one of the other nine customers -- or exchanges, those
20 calls are included in a flat rate amount that's charged
21 on the customer bill.

22 So now, when Bresnan comes in, and they
23 interconnect at the -- or the trunk ends off at the
24 Vernal switch, their -- when their customer wants to
25 call a customer in Roosevelt, in addition to having the

1 end office charges that we -- costs that we have, you
2 know, just for recip comp in Vernal, we have an
3 additional cost to get to Roosevelt, and to all of the
4 other ten locations which are various distances away.

5 And so the Commission has said, This is the
6 proper compensation for this amount. It is \$1.80 for
7 the Vernal customers. And that was based on a whole
8 proceeding.

9 And so our recommendation is that same
10 amount get charged to the Bresnan customers, because
11 essentially they're getting that same benefit, that
12 they can call the customers in those remote locations.
13 They are not competing in those locations so they're
14 getting access to the same number of customers that a
15 UBET customer is.

16 And there was a question on Casey Coleman,
17 why would there be two charges? And it's somewhat
18 similar to how Qwest has their reciprocal compensation.
19 A little bit different, but similar thought process.

20 Qwest has their reciprocal compensations in
21 various rate elements that are similar to access.

22 For their rate element, they have a PMM rate
23 element, they have a transport rate element per minute
24 of use, and they have an end office rate element.

25 So on their EAS, if somebody was -- or their

1 recip comp, if somebody was connected in at the end
2 office, they would pay just one of those -- the end
3 office rate element.

4 If they were connected at the tandem, then
5 they would pay the tandem rate element, the exact
6 transport between that tandem and the end office, and
7 the end office charge.

8 So there are various charges for -- from
9 Qwest, of getting there.

10 So that's not the case. We have it set up a
11 little bit differently here. It's a different rate
12 mechanism, but it's a similar concept as what Qwest
13 has.

14 So our \$1.80, that we're proposing to
15 charge, covers what Qwest has as the transport piece,
16 to get from Vernal out to those locations. And it's
17 flat rated.

18 And then the end office rate would still be
19 that 1.2 cents, which is the base reciprocal comp rate.

20 So, in fact, there are two rate elements to
21 cover the entire service.

22 Q. So if -- if UBTA UBET has a customer in
23 Vernal who makes very few calls, or never calls outside
24 of Vernal, can that customer opt out of paying the EAS?

25 A. No.

1 Q. So they're required, in all instances, all
2 UBET customers in Vernal are required in all instances
3 to pay the EAS, regardless of their -- how much they
4 call?

5 A. Correct.

6 Q. And so, as I understand, Bresnan --
7 And Bresnan is proposing something
8 different. Is that correct?

9 A. Yes.

10 Q. And is Bresnan proposing that their
11 customers would pay the flat rate \$1.80 EAS charge?

12 A. No.

13 Q. But they want access to the outlying areas?

14 A. Correct.

15 Q. Okay.

16 A. And -- can I go on to contrast that with
17 the --

18 Q. Please.

19 A. Because I was kind of in the middle of
20 things.

21 What Bresnan proposes to do is to have
22 bill-and-keep, and assume that, to start with, traffic
23 isn't balanced, so we're not going to bother to bill
24 each other. And then, if it comes out of balance, and
25 having it ten percent out of balance, then we're going

1 to start to bill.

2 Which means we have to constantly look at
3 this traffic and determine, are we going to want to
4 bill or not? From -- and this is different than what
5 we have with our other carriers.

6 Our proposal, we just want to make it
7 simple. We start off, we measure the traffic, we issue
8 the bills. And then you don't have to change it, or
9 monitor it every day to determine what you're going to
10 do, you know, the next month, or the next several
11 months to meeting that criteria.

12 Q. If they -- if the UBET customers in Vernal
13 are paying \$1.80 EAS rate to get access to the outlying
14 areas, and the Bresnan customers are not paying that,
15 is that a level playing field?

16 A. No.

17 If, as Bresnan is suggesting, there's some
18 other compensation method in there that they're
19 driving, whether what they think is a cost-based
20 reciprocal compensation rate, but they've used Qwest
21 rates. You know, they've used a lot of different
22 numbers out there, which are not necessary -- you know,
23 are not our costs. They're saying they should provide
24 a cost base rate, and then that base rate is very
25 small, so it would never come up to the \$1.80. And we

1 don't think that's the appropriate mechanism.

2 If they -- their customers, everything is
3 included. If -- and, in fact, they choose customers
4 that don't make a lot of calls, essentially what's
5 going to happen is they take, you know, all of those
6 users out, revenues out, which drives up the cost for
7 the remaining Vernal customers.

8 So if, in fact, the high usage Vernal
9 customers or high EAS Vernal customers are left, UBET
10 ends up footing the bill for that, and, you know, may
11 have to go back to the Commission and say, Hey, what am
12 I going to do with this rate? It drives it up.

13 And in addition --

14 So say that happens, that, you know, they
15 choose low EAS customers, drives up our cost. If we
16 have to increase that, our customers say, Oh, UBET
17 continues to increase their rates, but really, we're
18 subsidizing the Bresnan customers. Because they're
19 getting something lower. They're taking the average
20 out of how the Commission developed that 180 rate to
21 start with.

22 Q. Let's have you keep going through the
23 document.

24 In Section 5.4 of the Interconnection
25 Agreement, they have made some significant red-line

1 changes.

2 Have you reviewed those changes?

3 A. Yes.

4 Q. And what concerns, if any, do you have with
5 those changes?

6 A. Yeah. I have several changes.

7 Although they seem to be saying they're --
8 Hang on a second.

9 Sorry, were you on 5.4 or 5.2?

10 Q. I meant 5.2.

11 A. Okay.

12 Q. Did I say 5.4?

13 A. I don't know. That's why I verified.

14 On 5.2, we kind of have an issue. Again, it
15 gets into the nomadic traffic. Although they seem to
16 say, Well, I'm not doing nomadic, and I'm not doing
17 this service, and I'm not doing virtual NXX, one of the
18 important concepts we have here in the second sentence
19 is that parties agree not to assign numbers to
20 customers inside the location.

21 And the way they've changed that, there's
22 not really a positive recognition that they're not
23 using geographic-based numbers.

24 And once we get away from geographic
25 numbers, that phantom traffic that I talked about, when

1 you're -- you're getting numbers from another location,
2 or you're allowing numbers, you know, from Vernal area
3 to be assigned in California, you -- it makes it more
4 difficult to tell if it's a toll call or not. And so
5 we want positive recognition that, in fact, telephone
6 numbers will be treated geographically, being -- when
7 they're assigned.

8 In addition, there is FX service out there
9 that we have. We want to make a recognition that there
10 is FX service that has been traditionally provided by
11 UBET, and, in fact, Bresnan may provide that.

12 And, in fact, our stating that, yes, we
13 agree the service does not match these concepts, and
14 we're willing to pay access charges on that, and if a
15 similar service is offered by Bresnan, they should also
16 do it, and they've deleted that language.

17 And then lastly, they talk about the
18 switched access charges here, which is the same issue
19 as in the other penalty issues. That the switched
20 access charge needs to be the same when it's used as a
21 penalty.

22 Q. Okay. And moving down from there, they've
23 deleted UBTA UBET's proposed 5.3. Do you agree with
24 that deletion?

25 A. They have a different paragraph that goes

1 there, so.

2 Q. Okay.

3 A. They've moved it around.

4 Q. Okay.

5 And then Section 5.4. Have you reviewed
6 their red-lines to that section?

7 A. Yes.

8 And this section is addressing traffic that
9 may be mis-routed to us.

10 We have several wireless carriers that
11 direct connect with our -- our switch. And,
12 unfortunately, sometimes, when the wireless carrier
13 sends us traffic, and a number has been ported, it may
14 be mis-routed to us.

15 And what happens, on ported numbers, is when
16 you get a number, normally you might route the call
17 based on the NPA-NXX.

18 I have described how we have geographic
19 numbers. You look up in a table and say the NPA-NXX
20 belongs to a certain carrier, so I'm sending it based
21 on that number.

22 When a number is ported, you look in a
23 database and you say, Oh, well this number no longer
24 goes to what they call the code holder, that has the
25 majority of the numbers. It's going to another

1 carrier. And it gets -- it gives you a number called a
2 local routing number, that tells you what that other
3 carrier is.

4 Sometimes the wireless carriers don't look
5 in the database to find out what the proper carrier is,
6 and they just send it to the Vernal switch. The UBET
7 switch.

8 And at that point, we find out who the
9 carrier is, and route it to them. It is not something
10 that we want to do, but it's something we end up doing.

11 And so that is what this paragraph
12 addresses. That we do that service. And when we do
13 it, we don't want to be financially harmed by doing it.

14 And if wireless traffic is mis-routed to us,
15 because they didn't do the database dip, we want
16 Bresnan to pay the reciprocal compensation, not to us,
17 but they need to pay the reciprocal compensation to the
18 wireless carrier, and we should really be out of the
19 picture.

20 From our knowledge, we have not seen that
21 any wireless carrier actually connects with them, or
22 any other carrier connects with their switch.

23 Q. With whom? With Bresnan?

24 A. With Bresnan, yes.

25 Q. I see.

1 A. And so they've proposed to make one do some
2 major wording changes here, but also, make it
3 reciprocal. And, again, there, we don't think it's
4 appropriate. If they don't have anybody direct
5 connect, they shouldn't be getting this traffic,
6 because it's coming through somebody else.

7 So we have a couple problems with their
8 language, that one, they're not really agreeing that --
9 that we're going to try to stop this type of traffic,
10 which we're trying to do. We don't want to promote
11 this at all, because it does cause problems, and you
12 can get that phantom traffic that I was talking about.

13 Again, our end office doesn't have a lot of
14 the same capabilities, so there's issues with phantom
15 traffic there.

16 And so the changes that they've made don't
17 seem to be appropriate. One, we want to make sure that
18 both parties are trying to not do this traffic; and
19 then, two, that we're not responsible when we're kind
20 of forced to do the database dips for the wireless
21 carriers and forward it on. We don't want to be
22 responsible -- financially responsible.

23 Q. Moving through the Interconnection Agreement
24 to Section 7.

25 A. And, again, that was one of the sections for

1 the standard procedures that if Section 8 were adopted,
2 there would be a wording modification there.

3 Q. Okay.

4 And moving on to the Ancillary Services
5 Attachment. They've had significant changes to
6 Section 1.1. Have you reviewed those changes?

7 A. Yes.

8 And, just to make it real simple, this
9 section references ordering. There are two types of
10 orders that can be done. We talked a lot about the
11 interconnection trunks, and so when we get arranged,
12 we're going to set up some interconnection trunks
13 between wherever the meet point is and -- or, you know,
14 wherever the two switches are. They're going to get
15 connected somehow. Orders have to be placed for those
16 trunks. And those are more carrier to carrier.

17 The second type of order that goes in is
18 when a customer is transferred or changes from UBET to
19 Bresnan, or Bresnan to UBET, there is another order
20 that will need to be done.

21 So the -- in our proposed agreement, we did
22 not really have a lot of discussion on the trunk
23 ordering, and Bresnan has proposed a significant number
24 of paragraphs to address that.

25 We're not opposed to addressing how ASRs are

1 done, but we feel that the proposed language goes way
2 beyond; one, what's required in the agreement, and
3 simply would like wording that states that, one, first
4 of all, that only one carrier can put an order in for a
5 trunk. You can't have two carriers ordering the same
6 thing.

7 So there needs to be a determination that
8 one carrier actually order the trunk, and we propose
9 that that be Bresnan. They know what their business
10 plan is, and will know, at least initially, how big
11 that trunk would need to be.

12 Then UBET would have an opportunity to say,
13 you know, Hey, if you put a connection in that was big
14 enough to serve the entire Qwest territory, we could
15 object to that. But if it's within reasonable term --
16 you know, reasonable amount, that, you know, Bresnan's
17 calls are kind of going to size the trunk. After that,
18 traffic fill-rates would determine whether there's any
19 additions to the trunk.

20 That second, it would then move into more
21 standard arrangements that I would use -- if Bresnan's
22 ordering, it would be the UBET procedures on how they
23 process ASRs.

24 And an ASR is an access service request, and
25 that's an industry standard documents that's used to

1 order trunks.

2 And the same procedure we would be using to
3 fulfill that order would be the same thing that we
4 would use with our access customers. And the
5 timeframes, and everything would go along with -- with
6 that.

7 Along with the standard charges, or rate
8 elements that are charged, that Bresnan is proposing
9 that they put in an order, and there not be any service
10 order charge when that trunk goes in.

11 Service order charge is technically when
12 this order goes in, it's typical under interconnection
13 agreements, and Bresnan has stated that they've paid
14 other carriers' charges for that service order for
15 trunks when they've put it in.

16 The -- they also have language for service
17 orders when it's expedited over time, a change charge,
18 a cancellation charge. And most of those are okay,
19 except that there really is no such thing as an ASR
20 overtime charge.

21 If things are required to be done out of
22 normal working hours, labor hours apply. And so we can
23 reference labor hours, but the way they have their
24 wording put in is not applicable.

25 So that's conceptually what we would like to

1 see in this section, compared to the wording that
2 Bresnan has.

3 Q. If you look at Section 1.2, it's entitled
4 Local Number Portability and Customer Service Record
5 Ordering.

6 Have you reviewed those changes as well?

7 A. Yes.

8 And, again, there's several things in this
9 section.

10 First of all, this is one with the standard
11 procedures. Again, our procedures are going to be
12 consistent with standards, but probably some subset.

13 In this particular area, this covers when a
14 customer actually gets transferred from UBET to
15 Bresnan, or Bresnan to UBET. So we would be using the
16 UBET procedures when Bresnan submits an order to us.

17 Bresnan would have their own procedures when
18 I submit -- I would have to follow their procedures
19 when I submit a request to them.

20 And the -- and I would also -- kind of just
21 a side point. They have this labeled as local number
22 portability. This is really not local number
23 portability, this is a service transfer request.

24 Because a lot of other things happen when that happens,
25 besides just LNP, so the title is somewhat a misnomer.

1 In this section, they also talk about
2 customer service records, and they reference service
3 orders by FCC ATIS and ATIS subgroups.

4 Again, we've committed that we're consistent
5 with industry procedures. Those intervals are listed
6 in our -- our documents, and, in fact, we are compliant
7 with the four-day interval that they have listed there.

8 And the same thing with the trunk order.
9 That they're requesting that when a customer get
10 transferred, there be no service order charge. We feel
11 service order charge is appropriate.

12 Bresnan has other agreements, particularly
13 the Century agreement in Colorado, where they've agreed
14 to pay service order charges when they put these types
15 of orders in. It's within the industry standard.

16 You know, they continue to talk about
17 industry norms. It's within the industry norm that in
18 fact they've been paying such charges.

19 Lastly, this section covers customer service
20 requests. And what a customer service request is,
21 they -- we have a lot of information. We know what
22 services the customer is buying. Say how many lines.
23 What features they have on that line. What their long
24 distance carrier is.

25 However, that information is proprietary to

1 that particular customer, and so, in order to release
2 that information, Bresnan would need to have an
3 authorization from the end user customer in order to be
4 able to get that. And there is an order form to -- or
5 a form to get that information; however, they
6 incorrectly have it listed as an LSR, I believe, in
7 this language. So there's technical issues there.

8 But in addition, that is not something that
9 UBET has done. We are willing to provide some of that
10 information, but the -- the process has to be worked
11 out somewhat on how that is done, and we don't agree to
12 do it without a charge.

13 And I think the -- the charges. I think the
14 last paragraph of this section, section 14, we don't
15 agree to do it without being compensated for it.

16 Q. Can I ask you a question about customer
17 service records? Are they required to transfer the
18 customer?

19 A. It's somewhat a two-part process. There's
20 a -- the customer can say, I'm allowing Bresnan to look
21 at my records to see if they can give me a better deal.
22 Like it's somewhat a marketing thing. Instead of them.
23 They may not have the bill handy. So they may have to
24 find out what are all of the details of what I'm
25 getting charged for.

1 And so there needs to be an authorization
2 for that. And that can be used for marketing purposes.

3 And then there's an LOA that says, I am
4 actually authorizing Bresnan to switch my service.

5 So there are somewhat two authorizations
6 that need to be done. So the first one is one
7 document, and then the second one is, in fact, another
8 document.

9 Sometimes they are submitted at the same
10 time.

11 Q. And so -- and do you -- but the customer
12 service that -- service record that they're requiring
13 here, do they -- does UBET need to provide that in
14 order for a customer to actually be transferred?

15 A. No. No.

16 Q. Is there anything in the State rules, as you
17 reviewed them, that requires UBET to provide the
18 customer service record?

19 A. No. I have not seen anything that discusses
20 a customer service record in the State rules. Under
21 essential facilities.

22 Q. And is it difficult for UBTA UBET to provide
23 a customer service record?

24 A. It's a manual process. They have, on their
25 customer service record, because here we're only

1 talking about regulated services. The way they have
2 their system set up, on a customer service record, they
3 have a lot of additional information that is not
4 appropriate for what would be provided to Bresnan.

5 For example, having some deregulated
6 services on there. So there's no right for them to
7 be -- have those deregulated services, nor the exact
8 prices that the end user customers charge.

9 So there's a manual process to go through
10 and actually either retype what is in the record, or
11 somehow manipulate to get that information off.

12 Q. Okay.

13 And in 1.2.2, Bresnan has suggested an LSR
14 expedite charge.

15 And it has some modification of the
16 languages -- or the UBET language regarding charges
17 here. Have you reviewed those portions?

18 A. Right. And, again, you said you were
19 working on 2.2?

20 Q. Right.

21 A. Yes. And, again, you have the FCC industry
22 standards, and, you know, we're not here under FCC
23 rules. We're under State rules.

24 So those don't apply.

25 And then the same thing as I had mentioned

1 with the trunk ordering. There is no such thing as an
2 LR overtime charge. That would simply refer to labor
3 hours. That would be in the pricing attachment if it
4 were done out of hours.

5 Q. Okay.

6 Moving on now to Section 2 of the Ancillary
7 Services Agreement.

8 Have you reviewed those proposed red-lines?

9 A. Yes.

10 Q. And what -- what questions or concerns do
11 you have with their proposed changes?

12 A. Well, in our proposed wording, this has to
13 do with inside wiring.

14 Mr. Harris gave a discussion yesterday about
15 where -- how their equipment interfaces with the inside
16 wire, and pretty much stated that, if possible, they go
17 to the customer side of our inside wire, remove, from
18 the customer's side, remove the connection so that it's
19 used for their service.

20 And that is what we're trying to validate in
21 this language. That there's no destruction of the
22 inside wire. There's no destruction of our actual
23 Network Interface Device on the outside of the house.

24 And that things -- you know, hopefully, if
25 customers move back and forth, it can be re -- that

1 inside wire can be re-used without being actually
2 re-wired and having to be done all over again.

3 And our language has positive statements
4 that those destructive things will not happen. And it
5 seems to be replaced with language that gives positive
6 recognition that Bresnan has the right to cut and
7 destroy that wiring, so it can't be re-used without --

8 You know -- we don't own it, but we're
9 asking for a nice way that things can be re-used, if
10 customers move back and forth. And they seem to be
11 asking for carte blanche, that, yes, hey, I have every
12 right to go cut the inside wire to make it difficult
13 for you to come back, if, in fact, the customer moves.

14 So we have not said -- there may be
15 sometimes that, yes, wire does have to be cut, but it
16 seems, from Mr. Harris's testimony, that's few and far
17 between. So to have a statement in here to protect
18 their right to destroy the plant seems to be the
19 opposite. That our wording, that is trying to
20 preserve, for both parties, that the inside wire is
21 preserved that either could be used.

22 Q. Okay.

23 Moving now to Section 3, entitled
24 Maintenance and Repair. This is in the Ancillary
25 Services Attachment still.

1 Have you reviewed their red-line provisions?

2 A. Yes.

3 Q. And what issues, if any, do you have with
4 those?

5 A. Well, I have a problem here, because I have
6 to provide non-discriminatory maintenance. And they're
7 asking for prior -- and to be -- excuse me. To repair
8 processes to be on a priority basis above other
9 customers and other carriers. I can -- I can't agree
10 to that.

11 Q. Okay.

12 And what about moving down? They've
13 numbered it Section 3.2 now. What concerns do you have
14 with that section?

15 A. They reference the pricing attachment here.

16 And I think, if we were suggesting that we
17 have time and material charges.

18 And frankly, our thought process is if there
19 is a trouble report between the two carriers, that
20 there is a charging situation that would somewhat
21 follow what we have in our -- our access -- the
22 procedures we have in our access charges.

23 And I don't -- hang on a second. I've got
24 to check on this.

25 Sorry, they do reference. Sorry.

1 Q. It looks to me like Bresnan has made that
2 portion reciprocal. Do you have any problem with it
3 being reciprocal?

4 A. It's the same tariff issue. They -- the
5 question is, they are referencing our tariffs. The
6 definitions in there would have to follow our tariffs
7 also, and I'm not sure if that's the intent there.

8 Q. I believe we've probably covered this, or at
9 least your testimony in my opinion would have covered
10 this.

11 With regard to the change proposed in
12 Section 5.1 where they've changed UBET's procedures to
13 mutually agreeable procedures, am I correct that --
14 well, do you have an issue with that?

15 A. Yes. That -- that 5.1 and then 5.2.1 below
16 would be, again, attached with that Section 8 that
17 would reference the -- each party's procedures.

18 Again, the wording would be somewhat
19 different depending on the context of each of these
20 sections.

21 Q. Okay.

22 Moving down to Section 6.6.1.

23 And I'm going to refer you now to the
24 changes that were offered by Mr. Harris yesterday,
25 orally, which have now appeared in print.

1 A. Yes. This -- as I had mentioned earlier,
2 about the customer service request, which hopefully is
3 not a every -- every-order occurrence, but this was to
4 cover and get us to labor rates that would pay for that
5 customer service request, or other special requirements
6 that are somewhat beyond the norm.

7 We've had issues in other interconnection
8 agreements where essentially the CLEC asked the
9 incumbent LEC to continually provide more and more
10 information. And if we're doing research for them, we
11 feel like we should be compensated.

12 Q. Okay.

13 A. Having said that, if there are particular
14 concerns that Bresnan has with that agreement, and want
15 to put some limitations, we're open to that.

16 Q. Okay.

17 Moving on towards what used to be Section 9,
18 and is now No. 8, on 9-1-1 and E9-1-1 arrangements, I'd
19 like to refer you down to the Section No. 8.3.

20 A. Yes.

21 Q. Have you reviewed that language?

22 A. Yes.

23 And just initially, we don't think it's
24 necessary to have this reciprocal. But since we're not
25 going to use it, that's not that much of an issue.

1 We would just want to make sure that, since
2 it is referencing the applicable tariff, that, again,
3 the applicable tariff is not, again, higher than ours,
4 and that it make it clear that a provision of that --
5 out of the tariff is not part of this agreement.

6 Q. And which -- which tariff would be the
7 applicable tariff?

8 A. 9-1-1, I believe, are local calls, so I
9 would say it's the local or intrastate access tariff.

10 Q. Okay.

11 Moving on to section -- what's now Section
12 No. 9, under Directory. What issues, if any, do you
13 have with their proposed red-lines in that section?

14 A. We have an issue with Yellow Pages listings.
15 The directory publisher does Yellow Pages, and the last
16 sentence talks about restrictions on how we have
17 agreements.

18 And I think, in -- in this directory
19 section, we can agree that there's no issue about
20 providing listings, or the inclusion of the Bresnan
21 listings, but I don't think we can go beyond that.

22 Q. Okay.

23 And so as I understood, you wanted the
24 Yellow Pages reference deleted?

25 A. Yes.

1 Q. Going down to Section 12, entitled Dialing
2 Parity. What issues, if any, do you have with that
3 proposed addition?

4 A. I think we can agree that we're going to
5 comply with 548(B)2.21(A)(ii); however, I don't see
6 that that section addresses dialing parity.

7 Q. And moving down there through the rest of
8 the Ancillary Services Agreement, Sections 13 and 14.

9 With regard to 13, what changes or issues do
10 you have with their language, proposed language on
11 intercept and referral announcements?

12 A. On intercept and referral, the issue we have
13 with that, in this agreement, is that we provide, as
14 part of our local exchange service, to the end user
15 customer, when they disconnect service, they can
16 request that there's a referral announcement.

17 So that customer can continue to do that,
18 but --

19 And so that doesn't have any relationship
20 with Bresnan. That's a relationship directly between
21 our customers.

22 Having said that, we're willing to agree
23 that any customer end user that calls us and asks us
24 for the referral announcement, we'll provide it to
25 them. But, again, it needs to be clear that Bresnan --

1 you know, it's not part of this agreement. It's part
2 of our local exchange tariff.

3 And I don't think that the wording proposed
4 exactly does that. It comes closer than what they had
5 proposed in their original agreement, but I think the
6 wording needs to be worked on.

7 Q. And I believe the customer service record
8 attached -- it looks to me to be a definition of
9 customer service record here in the ancillary services.

10 And I believe we covered this in 1.2. Is
11 there any -- are there any other issues that you have
12 with that section?

13 A. No.

14 Q. Okay. Let's move forward through the
15 pricing attachment.

16 Have you reviewed Bresnan's proposed changes
17 to our pricing attachment?

18 A. Yes.

19 Q. And what issues or concerns do you have
20 with -- with regard to the pricing?

21 A. Well, I -- I believe I mentioned earlier, on
22 the reciprocal compensation, the one -- we stand by our
23 1.2. We don't think 0007, which is an FCC rate, is
24 appropriate here.

25 We disagree with deleting the EAS charge.

1 The manual service order charge -- the service order
2 charges, as I had mentioned earlier, should remain in
3 here.

4 We don't -- on the ASR -- the ASR charges,
5 we're willing to use the charges that are in our tariff
6 for the expedite charge -- or the base charge on ASRs.
7 So that needs to be included.

8 And we agree that we use our tariff for the
9 expedite charge, change charge, cancellation charge,
10 but I think we have to look at the wording.

11 I'm not exactly going to agree to the exact
12 wording listed in there. I think there needs to be
13 some discussion on that.

14 The LSR charge, the expedite. The LSR
15 charges should be, again, according to our tariffs.

16 And, let's see. The LNP hot-cut charge,
17 which they proposed yesterday, references the labor
18 rates; however, as I had mentioned before, there's, I
19 believe, several other places, like on these expedites,
20 that are not -- really there's no expedite charge.
21 Should reference labor rates.

22 So the labor rates that are in here,
23 referenced, I believe -- subject to check, in the
24 intraLATA feature group D.

25 I believe a reference to the tariff is okay,

1 but the issue of having it limited only to LNP hot-cut,
2 it should be a more general reference so it applies to
3 those other factors in addition.

4 Q. And we've gone over quite a few sections in
5 this agreement. We have not obviously gone over every
6 section.

7 Is UBET accepting all of the other changes
8 in this agreement?

9 A. No.

10 You know, these are the major ones.

11 I think there's some areas that conceptually
12 we're fine with, but may need to tweak the wording.

13 But the -- they are probably more minor issues.

14 Q. So, as I understand your testimony, the
15 issues that we've covered here, last night and then
16 again this morning, would be the issues that you have
17 problems conceptually?

18 A. Yes.

19 Q. And additional wording, but anything
20 remaining would be primarily wording changes.

21 A. Yes.

22 Q. I'd now like to direct your attention to the
23 exhibit that UBET offered this morning. I believe it's
24 UU-2.

25 I'll grab it for you.

1 Have you had a chance to review that
2 exhibit?

3 A. Yes.

4 Q. And can you kind of walk us through
5 Exhibit UU-2?

6 A. Okay.

7 UU-2 addresses two trunk groups, and has the
8 trunk group listed that goes to the Provo tandem, which
9 is the Qwest tandem, and the UFN tandem has the number
10 of DSO trunk, so that's an individual voice trunk, and
11 the number of DS1s.

12 And essentially they're fully utilized, so
13 that the -- there's 24 DSOs in the T1, so there's a
14 direct relationship there between the number of DS1s
15 and the number of DSOs.

16 We listed the actual number of minutes of
17 use that are right at capacity, and then have another
18 column which designates what we're considering full
19 capacity.

20 And for the purposes of this, we used the
21 250,000 minutes per T1 to designate full capacity.

22 And that number had been bandied around,
23 both in exhibits that Bresnan had provided and in
24 testimony yesterday.

25 And then show the utilization of the trunk

1 groups, which essentially just takes the actual minutes
2 of use and divides it by full capacity.

3 And then they had requested the billing
4 percentage for UBET and for Qwest, and those columns
5 are filled in.

6 And it shows, as testified to yesterday by
7 Douglas Meredith, that the Qwest trunk group to the
8 Provo tandem is at 97.06 percent utilization.

9 And although I haven't done this for a
10 little while, when I did engineering, usually you
11 augmented the trunk group between -- somewhere between
12 85 and 93 percent utilization.

13 Q. And so do they need to augment the trunk
14 group there?

15 A. It seems like it should be augmented.

16 You also have to look at blocking. You
17 know, how much actually got -- how much traffic did get
18 blocked because at any one moment there were too many
19 calls for the size of the trunk group.

20 Q. And as I understand it, there's been some
21 testimony back and forth about the type of traffic that
22 is sent on those trunks.

23 If they were to augment it to accommodate
24 this capacity issue, would that trunk -- would they be
25 able to use that trunk for the local traffic that

1 Bresnan is suggesting?

2 A. No. Both of these trunk groups are used
3 exclusively for toll traffic, and so they are not set
4 up to do local traffic.

5 And I think, as -- I forget who was
6 testifying at the time, but they were stating that all
7 that needs to be done is to do translations and you
8 could add traffic on to these trunk groups.
9 Technically that is correct; however, you have to have
10 the arrangements and agreements on the other parties to
11 make sure you have all of the compensation and business
12 arrangements set up to do that, and that it matches the
13 third party's arrangements in their own switch.

14 So just saying technically do the
15 translations, Qwest or UFN can say, no.

16 So we don't have, necessarily, control over
17 add -- one, adding local traffic to there. And then,
18 as I had testified this morning, there's additional
19 complications. Even though technically you can do it,
20 doesn't necessarily mean it's a good idea to do it.

21 Q. Okay.

22 A. Because of the phantom traffic issue.

23 Q. And I wanted to talk to you a little bit
24 more about this direct interconnection.

25 As I understood Mr. Harris's testimony --

1 and you probably understood it better than I did, but
2 as I understood his testimony yesterday, Bresnan has a
3 pipe, for lack of a better word, from Vernal to
4 Grand Junction, but he indicated that it was not
5 possible to use that pipe for voice traffic. Is -- is
6 that accurate? Do I have his testimony paraphrased
7 accurately?

8 A. Yes. That's what I understood him to say,
9 although I -- I think he also put a qualifier on it
10 that today he could not do that.

11 Q. And that was going to be my next question.

12 I think he indicated that it was -- today it
13 was not technically feasible.

14 Do you have an understanding of what would
15 make it technically feasible?

16 A. Yes. In a broad sense.

17 My understanding of what Mr. Harris said is,
18 I have a big pipe that goes between my Vernal head end
19 and my Grand Junction location. And today, that is an
20 IP pipe, and it has all IP on it.

21 And more and more, even telephone companies
22 are using IP to transport services. So just the fact
23 that it's IP does not limit that voice communications
24 can be sent back and forth on it, or that it could be
25 put in a format that could be handed off.

1 But today, he says it's all an IP.

2 He also said that even when they start to
3 offer voice service, that a Bresnan to Bresnan call,
4 that is within Vernal, that that call would send its
5 signaling up to Grand Junction, to get the call set up,
6 and then, once the call remained, it would not -- the
7 actual voice call would not travel all the way to
8 Grand Junction and back.

9 And in that, their equipment can do that
10 type of call, I believe he also said that he would need
11 gateway equipment in order to be able to do that same
12 function of keeping the call within the Vernal area.
13 He would need a piece of equipment, which he referenced
14 as a piece of gateway equipment.

15 And so, when we talk about are things
16 technically feasible, you know, today perhaps he
17 doesn't have the equipment provisioned, in the same way
18 as our trunk group to Provo is all filled up. We would
19 have to provision something else to accommodate that.

20 Bresnan could add a piece of equipment to
21 provision capacity in order to keep the call
22 100 percent within Vernal.

23 So, although it's not equipped that way
24 today, it does seem that it's technically feasible to
25 do that.

1 MS. SLAWSON: Thank you. I have no other
2 questions at this time.

3 ADMINISTRATIVE LAW JUDGE: Mr. Nelson?

4 MR. NELSON: Yes. Thank you.

5 CROSS EXAMINATION

6 BY MR. NELSON:

7 Q. Before we get started, do you have one of
8 those very handy little statute books up there with
9 you, Ms. Wimer?

10 A. No, but I have some copies.

11 ADMINISTRATIVE LAW JUDGE: Do you want to
12 use mine?

13 Q. (BY MR. NELSON) That's cool. We'll see
14 what you've got, and go from there. Do you happen to
15 have the Utah --

16 A. I have the really small print versions.

17 Q. And do you happen to have up there the Utah
18 rules relating to interconnection, as we've been
19 talking about that on occasion?

20 A. Yes.

21 Q. Okay. Great.

22 A. I think I've got them.

23 They are short. They're only about three
24 pages long.

25 Q. Yes. Simple and sweet.

1 All right. Ms. Wimer, I wanted to start
2 today by just making sure we understand some
3 preliminaries.

4 Has UBTA UBET performed any cost studies
5 that you have offered up into evidence in this
6 proceeding with respect to the costs associated with
7 any of the services that are being contemplated in the
8 Interconnection Agreement that we've been discussing?

9 A. No.

10 Q. Earlier today you testified that the Qwest
11 costs are not your costs. Do you recall that
12 testimony?

13 A. Yes.

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

17 A. If -- as far as this hearing goes, one, my
18 understanding of the State rules is that for
19 interconnection purposes we don't fall under a
20 cost-base standard.

21 So, although there's been costs provided by
22 UBET in other proceedings, there are not costs that
23 have resulted in this proceeding itself.

24 Q. Okay. Good. And that's actually leading up
25 to my second question, which is, do you think it is in

1 the public interest, given the -- as you've testified
2 to, the uncertainties associated with the State rules
3 of interconnection, would you say it's in the public
4 interest for the Commission to adopt cost-based
5 standards with respect to the interconnection
6 arrangements between Bresnan and UBTA UBET?

7 A. Clearly, you want to have something that's
8 reasonable and efficient, and sometimes costs fit into
9 that.

10 I think the prices that we've been reporting
11 are rates that primarily the Commission has approved
12 already. I can't say all of those are cost-based or
13 not, but they are approved ways to charge. I can't say
14 that everything is necessarily the current rates that
15 we charge are 100 percent cost-based, and it seems the
16 Commission has found those to be in the best interest
17 of the State.

18 So I don't think I can make a judgement call
19 that everything is cost-based.

20 Q. Okay.

21 So your testimony is that it would be
22 consistent with Utah State law, for interconnection
23 under Utah State law, to be based on something other
24 than cost.

25 A. Yes. There can be negotiated rates, and

1 there can be --

2 Q. And --

3 A. -- rates that have been approved. So yes.

4 Q. And I'm -- I apologize. Let me just make
5 sure I'm clear. I'm not talking about negotiated
6 rates. I'm talking about a result of this arbitration,
7 your position would be that this Commission is free to
8 identify rates for this Interconnection Agreement that
9 are not based on cost.

10 MR. MECHAM: Are you asking her for a legal
11 opinion?

12 MR. NELSON: I'm asking her for her policy.
13 She's testified as to how the Commission, in numerous
14 cases, ought to apply the Utah State statute in the
15 State rules, and I'm asking her, as a policy witness,
16 whether that would be good public policy.

17 MR. MECHAM: So it's a policy question.

18 MR. NELSON: That's what I'm asking. I
19 think it's pretty clear the statute and the rules are
20 something less than clear so, we're going with policy
21 here.

22 Q. (BY MR. NELSON) Ms. Wimer, do you
23 understand the question?

24 A. Yes. I think so.

25 Q. Okay. And what would be your response to

1 whether or not, then, the Commission could consider, on
2 a policy basis, something other than cost, for purposes
3 of setting interconnection rates?

4 A. They have public good, and they have level
5 playing field issues, as we have discussed in the EAS
6 pricing.

7 Q. Okay.

8 Let me talk then about the proposal that
9 UBTA UBET has made with respect to the termination of
10 local traffic, and the rates associated with that.

11 I think I'm up to six.

12 (Whereupon, Exhibit No. B6
13 was marked for identification.)

14 MR. NELSON: Permission to approach?

15 ADMINISTRATIVE LAW JUDGE: Yes.

16 Q. (BY MR. NELSON) Ms. Wimer, I've placed
17 before you what's been marked for identification as
18 Exhibit B6. Do you have that in front of you, ma'am?

19 A. Yes, I do.

20 Q. And can you identify that document?

21 A. It says it's the Interconnection Agreement
22 between -- or sorry, matter of Interconnection
23 Agreement between Uinta Basin Telecommunications
24 Association, Inc., UBET Telecom Inc., and Uinta Basin
25 Electronic Telecommunications.

1 Q. Okay. And attached to this, if you flip
2 back several pages through the PFC documents and the
3 various documents from the Division, do you see
4 attached to this -- oh, I don't know, what is that,
5 about six pages back, a copy of that Interconnection
6 Agreement?

7 A. Yes, I do.

8 Q. Okay.

9 MR. NELSON: Move the admission of
10 Exhibit B6.

11 ADMINISTRATIVE LAW JUDGE: Any objections?

12 MS. SLAWSON: No. No objections, Your
13 Honor.

14 ADMINISTRATIVE LAW JUDGE: B6 is admitted.

15 (Whereupon, Exhibit No. B6
16 was admitted.)

17 Q. (BY MR. NELSON) Ms. Wimer, your testimony
18 suggests that the appropriate rate for reciprocal
19 compensation, in this proceeding, is 1.2 cents per
20 minute. Is that correct?

21 A. Yes.

22 Q. And your recommendation is that that rate be
23 charged to all of the traffic that's exchanged in
24 accordance with the Interconnection Agreement that's
25 being discussed. Is that fair?

1 A. Yes.

2 Q. Do you know who Uinta Basin Electronic
3 Telecommunications Wireless is?

4 A. I know they -- that UBET has an affiliate
5 wireless company. I was not aware of the exact name.

6 Q. Okay.

7 So is it -- is it -- would it be fair to
8 assume -- will you assume with me that, perhaps subject
9 to check, that UBET wireless, as it's referred to in
10 this agreement, is the affiliated wireless agreement
11 that you recall UBTA UBET as having?

12 A. Yes. Subject to check.

13 Q. Okay.

14 All right. Flipping back to the
15 Interconnection Agreement, and I apologize these pages
16 aren't numbered. But if you look back, I would like to
17 call your attention to Section 4.2.1, which is -- it
18 looks like it's about five pages from the end maybe?

19 A. Yes.

20 Q. Okay.

21 Do you see that in Section 4.2.1 -- and let
22 me just back up.

23 We're talking about, in here, Article 4 of
24 this agreement entitled Interconnection and Transport
25 and Termination of Traffic. Do you see that?

1 A. Yes.

2 Q. Okay.

3 And in Section 4.2.1 there are some rates
4 and charges that are set forth. Do you see those?

5 A. Yes.

6 Q. Okay.

7 I want to ask you first, do you see that
8 they have two separate rates there, one that's
9 described as end office termination and one that's
10 described as tandem/host and remote termination?

11 A. Yes.

12 Q. Okay.

13 In your understanding, what would be end
14 office termination?

15 A. That seems like it would -- or I would
16 assume that it would cover Vernal.

17 Q. Okay.

18 And then, in your understanding, what would
19 the host -- I'm sorry, excuse me -- the tandem/host and
20 remote termination cover?

21 A. Again, this is an assumption, but it seems
22 like it would cover beyond Vernal.

23 Q. And this is, just to make sure I'm following
24 you, as you indicated before, UBTA UBET operates a host
25 and remote system in its service territory. Is that

1 correct?

2 A. Mm-hmm. (Witness nods.)

3 Q. I'm sorry, I think you might have to say
4 yes.

5 A. Yes.

6 Q. Just make sure the court reporter got that.
7 And the host in this case is a switch that
8 exists in Vernal. Is that right?

9 A. Correct.

10 Q. And then there are a number of remotes, I
11 think you said there might be ten of them? Let me
12 just count here. I count nine.

13 A. I --

14 Q. Remotes coming off of that host. Is that
15 fair?

16 A. Yeah. There's, I guess ten total exchanges,
17 one host and nine remotes.

18 Q. Great. Thank you. I understand now.

19 Can you explain to me why it would be the
20 case, in your mind, that the agreement would have one
21 rate for end office termination in Vernal, and a second
22 higher rate for termination in the host and remote
23 situation? Why would that be a different rate?

24 A. Not having looked at this agreement before,
25 I can't tell all of the terms on here, so I can't

1 exactly say.

2 Q. Okay. The terms you're not sure about are
3 what?

4 MS. SLAWSON: Your Honor, I'm going to
5 object. Mr. Nelson's asking Ms. Wimer to give
6 testimony as to what the terms in this contract mean,
7 and what application they might have. She's had this
8 contract in her hand for about four minutes, and I'm
9 quite certain she hasn't read the entire thing. So I
10 just don't think she can offer an opinion on those
11 subjects.

12 ADMINISTRATIVE LAW JUDGE: I'm going to
13 sustain it.

14 MR. NELSON: Okay.

15 Q. (BY MR. NELSON) Ms. Wimer, the rate here
16 that's listed as host termination, that's the same rate
17 that you're suggesting be adopted in this case. Right?

18 A. Correct.

19 Q. And that's the same rate that applies for
20 the host remote termination? That Western Wireless
21 deal that you've been referring to?

22 A. I believe so.

23 Q. Okay.

24 A. I think there's -- my understanding is that
25 there's a single rate in the Western Wireless.

1 Q. Okay.

2 Well I'm going to talk about this one,
3 because this is the agreement that you had with the
4 affiliate.

5 You say in your testimony that there's an
6 end office termination which you would understand to be
7 a termination in Vernal. And this agreement calls for
8 a rate of \$0.01. Right?

9 A. That's your interpretation. Since I haven't
10 read the whole thing.

11 Q. Okay.

12 A. But --

13 Q. Let me ask this. Putting aside, then, the
14 language, which will speak for itself, the contract
15 speaks for itself, could you imagine a policy reason
16 why the rate for the host remote termination would be
17 higher than the rate for the end office termination?

18 A. A policy reason could be that there's more
19 transport.

20 Q. Okay.

21 What's different between terminating in
22 Vernal and terminating at, say, Flat Top? One of the
23 nine other exchanges? What are the different
24 facilities that are involved?

25 A. If I -- if I go to Vernal, I go to the host

1 switch, and it goes directly out on a loop to the end
2 user.

3 When I go to Flat Top, there will be use of
4 the switching facility in both the host switch, then
5 there would be transport out to the remote, and then
6 switching capacity in the remote used.

7 So somewhat like three -- you know, three
8 cost elements versus one.

9 Q. Okay.

10 So in the case of the host and remote
11 termination, in addition to the end office termination
12 expense, you would have transport to the remote, and
13 switching at the remote. Is that correct?

14 A. Yes.

15 Q. And those have costs. Is that correct?

16 A. Yes.

17 Q. Okay.

18 And this agreement calls for those costs to
19 be recovered through -- on an incremental basis, a
20 two-tenths of \$0.01 charge. Do you see that?

21 A. You're subtracting the -- I mean, I haven't
22 read how these are done, whether they're actually
23 additive or not. Does it say that somewhere in here?

24 Q. Okay.

25 I understand that you haven't read the rest

1 of this agreement, so let's just -- let me just
2 assume -- let me just ask you to make an assumption
3 with me.

4 Let's assume that the end office termination
5 rate, and the tandem/host remote termination rate are
6 two independent charges. The end office termination
7 charge rate applies to Vernal, and the host remote
8 termination rate applies when a call is transferred to
9 one of the other nine remotes.

10 A. Mm-hmm.

11 Q. Do you have that in mind?

12 A. Okay.

13 Q. Okay.

14 If that's -- and like I said, the agreement
15 will speak for itself, but if that's the way this
16 agreement works, would you agree with me that the
17 incremental cost associated with that transport and
18 that remote switch, under this agreement to UBET
19 Wireless, would be two-tenths of \$0.01?

20 A. If that were the case, but it's purely
21 hypothetical.

22 Q. I'm asking you to make an assumption. What
23 I'm saying is the judge is a lawyer. He'll be able to
24 read through this agreement and decide for himself
25 whether these are additive or not.

1 If they're not additive, that's what would
2 be the incremental cost. Correct?

3 A. That would be the incremental rate, yes.

4 Q. The incremental rate. Okay.

5 Now, this agreement, it suggests, was a
6 negotiated agreement.

7 If that were true, and I understand that you
8 may not know that, but let me just say, assume that
9 that's true, and, again, the document will speak for
10 itself. If that were a negotiated agreement, would you
11 agree that, from the perspective of UBTA UBET, that the
12 agreement would include rates that are reasonably
13 compensatory?

14 A. Can you restate that question again?

15 Q. Sure.

16 If UBTA UBET were a willing signatory to
17 this agreement. Do you have that assumption in mind?

18 A. Yes.

19 Q. Would you agree with me that by having done
20 so, they would have drawn the likely conclusion that
21 the rates in the agreement were reasonably compensatory
22 for the costs that UBTA UBET would expect to incur by
23 providing the services called for under this agreement?

24 A. I would agree that they agreed to those
25 rates. I do not know if they ever did an analysis -- a

1 cost analysis that said they were compensatory or not.

2 Q. Is it your experience that UBTA UBET often
3 signs agreements that it thinks are not compensatory?

4 A. I would hope not.

5 Q. Do you think that, in serving the best
6 interests of their cooperative member customers, that
7 they would be looking out for their interests, and only
8 signing agreements that are reasonably compensatory?

9 A. You know, there's a lot of things in the
10 agreement. I'm not sure if this is the only rate
11 that's -- that's in there.

12 And just as the Commission balances rates on
13 where revenue was collected, I'm not -- overall, this
14 agreement is compensation to this agreement, I'm sure,
15 compensatory to UBET, but I can't say that they did
16 analysis on each and every individual rate.

17 Similar to the way that the Commission has
18 required UBET to charge a flat rate EAS charge, and
19 they determined, based on total compensation, how much
20 that rate would be.

21 Q. Okay. Well, why don't we do this. Why
22 don't you take a moment and look through the operating
23 terms of this agreement. And you tell me if there are
24 any other rates in here. Because my review of the
25 document suggests that there are none.

1 A. Well, it's kind of hard to do that, because
2 I would think there would be references on -- you know,
3 there may not be dollar values.

4 But just as our current agreement references
5 that things are going to be paid for out of the tariff,
6 I would have to read each and every one of these
7 paragraphs to see if there's any references to such.

8 Q. Okay.

9 Let me do this, since we're pressed for
10 time, let's go ahead and we'll skip that one. We'll
11 save that one for later.

12 Let me do this then. Continuing with my
13 assumption -- and again the document will speak for
14 itself -- that the end office termination rate and the
15 tandem/host remote termination are two different rates
16 that are charged in the two different circumstances
17 that you've identified, where you have, in the one
18 instance, a termination just to Vernal, in the other
19 instance a termination to one of the other remote
20 exchanges.

21 A. Mm-hmm.

22 Q. Do you recall that series?

23 A. Yes.

24 Q. Those assumptions we're going to make?

25 A. Yes.

1 Q. Okay.

2 I want to understand sort of the logistics
3 of how a wireless agreement, and how a wireless call
4 might work as compared to a land-line call.

5 So let's -- let's take this assumption.

6 I want you to assume that a UBET wireless
7 customer is standing at his buddy's house in Vernal.
8 Do you have that in mind?

9 A. Yes.

10 Q. Okay.

11 And that customer wants to call his wife,
12 who's also in Vernal. Okay?

13 A. Mm-hmm.

14 Q. All right.

15 Now, when that call happens, would I be
16 correct that the first thing is that the UBET wireless
17 side of the network would pick up the call, run it
18 through whatever its network was, and deliver it at
19 some interconnection point with UBTA UBET?

20 A. Oh, I have to go back to your example for a
21 minute. I'm assuming the wireless carrier has a
22 telephone number that's rate center in Vernal, or has a
23 geographic designation either in Vernal or within the
24 EAS area.

25 Q. Sure. If you'd like we can make that

1 assumption. I'm not sure it matters, but make that
2 assumption.

3 A. Well, if it were outside the rate center, we
4 would send it to an IXC.

5 Q. When you say "we," do you mean --

6 A. I'm sorry. UBET.

7 Q. The wireless company or the land-line
8 company?

9 A. The land-line company.

10 Q. Okay.

11 Let's say they're in the same NAP-NXX then.
12 Okay?

13 A. Okay.

14 Q. The number is the same from the guy with the
15 wireless phone, calling his wife in Vernal on a
16 land-line phone.

17 A. Okay.

18 Q. Okay?

19 In that case, the wireless carrier picks up
20 the call, routes it over the wireless carrier's
21 network, and delivers that call to a meet point
22 interconnection somewhere with UBTA UBET the land-line
23 company. Correct?

24 A. Correct.

25 Q. And at that point, UBTA UBET will switch

1 that call, route it appropriately, and terminate it at
2 the wife's home. Correct?

3 A. At the land-line, yes. I kind of got mixed
4 up on who was in whose area.

5 Q. Sorry?

6 A. But on the land-line, yes.

7 Q. Okay.

8 Now, again, understanding as we are that
9 you're not 100 percent sure what this agreement says,
10 if it is the case that the agreement says end office
11 termination means termination in Vernal, would you
12 agree with me that what would happen then is that
13 UBTA UBET, the land-line company, would charge the
14 wireless company \$0.01 a minute for that termination?

15 A. Yes. If that's what the agreement says.

16 Q. Okay.

17 Now, same basic process, except now the guy
18 on the cell phone is going to call a friend of his in
19 Flat Top. Which is one of the nine remote exchanges.
20 Do you have that in mind?

21 A. Yes.

22 Q. Now, in that instance, the cell phone call
23 will route through the wireless network to the meet
24 point in Vernal.

25 A. Can I just make sure?

1 The land-line customers in Flat Top. Is
2 that correct?

3 Q. Yes. That is correct.

4 A. Okay.

5 A. So it comes around.

6 Q. It comes around from the wireless line, and
7 it hits UBTA UBET at their meet point with UBET
8 wireless in Vernal.

9 A. Yes.

10 Q. Do you understand that?

11 A. Yes.

12 Q. At that point, the Vernal switch will do
13 whatever it does. I don't know whether the switching
14 happens there or the remote, but whatever it does, it
15 does. Routing the call for the trunk group to Flat
16 Top. Correct?

17 A. Correct.

18 Q. The call then routes over that trunk group
19 to Flat Top.

20 A. Mm-hmm. (Witness nods.)

21 Q. To the remote out in the field. Correct?

22 A. Mm-hmm. (Witness nods.)

23 Q. That remote then completes whatever the
24 operation is with respect to routing, and terminates
25 the call on the land-line customer's end in Flat Top.

1 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. And if the agreement is as I've asked you to
5 assume it is, and again, we'll sort that out later,
6 that the charge for that is 1.2 cents, in that specific
7 instance then the wireless company would be paying
8 UBTA UBET 1.2 cents a minute to terminate that call.
9 Correct?

10 A. Right. Assuming that the two rates are not
11 additive.

12 Q. Right.

13 Okay. Now, I want to run through that
14 again, and I want to try to compare that to the way it
15 would work under the proposal that you've made with
16 respect to the termination rates and the other charges
17 for Bresnan. Okay?

18 A. Okay.

19 Q. All right. Now in this instance, let's
20 start with the first example where the guy is on the
21 phone, but instead of being a wireless phone, he's on a
22 Bresnan phone, in Vernal, with a Vernal telephone
23 number.

24 Do you have that in mind?

25 A. Yes.

1 Q. Okay.

2 And he then wants to call the same house
3 that the wireless customer was calling in our previous
4 example. Do you recall that?

5 A. Yes.

6 Q. Okay.

7 In that instance, what would happen is that
8 the Bresnan call would route over Bresnan's network,
9 however that happens, and, under your proposal,
10 terminate into the meet point, the direct
11 interconnection between Bresnan and UBTA UBET in
12 Vernal. Correct?

13 A. So we're assuming, for this example, you do
14 have a direct connection.

15 Q. Yes.

16 A. Okay. Yes.

17 Q. Okay?

18 Now, once it hits the meet point, on the
19 Bresnan example, would I be correct that again the
20 switch would perform its function in Vernal. Right?

21 A. Right.

22 Q. And that switch would then route the call to
23 the land-line home in Vernal. Correct?

24 A. Correct.

25 Q. Now, the UBTA UBET facilities in both of

1 those examples, the wireless customer calling the same
2 land-line in Vernal, and the Bresnan customer calling
3 the same land-line in Vernal, once it hits the two
4 respective meet points, interconnections at the Vernal
5 switch, at that point the facilities that are being
6 used by UBTA UBET are identical, are they not?

7 A. Yes, and they're the same identical
8 facilities that I use when I do terminating access too.

9 Q. Understand.

10 Now, for those two identical
11 interconnections?

12 A. Yeah.

13 Q. And the facilities that then go from there,
14 would I be correct that under your proposal, Bresnan
15 would be charged a 1.2 cent per minute termination
16 rate?

17 A. Yes.

18 Q. And that would be -- just doing some
19 simple math -- 20 percent higher than the termination
20 rate that would be charged to the UBET wireless
21 company. Correct?

22 A. Seemingly so.

23 Q. Okay. Yet the facilities that are being
24 used are identical. Correct?

25 A. Correct.

1 And as I said, they're identical to access,
2 which has yet another rate.

3 Q. I understand. And the cost of those
4 facilities, presumably hasn't changed between one call
5 or the other. Correct?

6 A. The capital costs -- I mean, the facilities
7 are there. I don't -- you know, there's all sorts of
8 nice cost allocations that are done.

9 I don't say under all of the jurisdictions
10 all of the cost allocations are the same, but the
11 physical plant is the same.

12 Q. Let me ask you this. If a minute of use
13 comes from a UBET wireless customer, hits Vernal,
14 terminates at that land-line house, or a Bresnan call
15 hits Vernal, terminates at the exact same house, isn't
16 it true that the impact on the network, of those two
17 different calls, is identical? On the UBTA UBET
18 network?

19 A. The same equipment is used to do those
20 functions, but in accounting things, sometimes costs
21 change. But yes, all of the same equipment is used.

22 Q. Is all of the same equipment. And that --
23 okay.

24 Now let's go back to the example of Flat
25 Top. Okay?

1 And here we have a Bresnan customer, who,
2 like the wireless customer, is in Vernal.

3 A. Yes.

4 Q. Makes a call to a buddy in Flat Top,
5 UBTA UBET customer on a land-line. Do you have that in
6 mind?

7 A. Yes.

8 Q. Okay.

9 Now, in that instance, the call is going to
10 be routed, first over Bresnan's network, just like
11 before.

12 A. Mm-hmm.

13 Q. Until it hits that interconnection point
14 with UBTA UBET. Correct?

15 A. Yes.

16 Q. From that point, the call goes through the
17 UBTA UBET switch in Vernal. Right?

18 A. Yes.

19 Q. Over those trunks to Flat Top. Correct?

20 A. Yes.

21 Q. Through the router, or the remote switch in
22 Flat Top. Right?

23 A. Yep.

24 Q. And then terminates at the house. Correct?

25 A. Yes.

1 Q. Okay.

2 And again, in that instance, comparing the
3 wireless call and the Bresnan call, the facilities of
4 those two calls are identical as it relates to the
5 facilities being used by UBTA UBET, aren't they?

6 A. Yes.

7 Q. Now, in the Bresnan case, though, instead of
8 being charged 1.2 cents a minutes, UBTA UBET is
9 proposing to charge 1.2 cents a minute plus \$1.80 a
10 month for the privilege of using that EAS network that
11 you've described. Correct?

12 A. Per customer, yes.

13 Q. Per customer. Right.

14 So let's take a look at that on a monthly
15 basis.

16 In discovery, am I correct that you
17 indicated -- and I don't mean you personally
18 necessarily, I mean your client -- indicated that on
19 average, a customer in Vernal terminates approximately
20 something like 114 minutes per month to the nine remote
21 switches.

22 A. Yes.

23 Q. Do you recall that?

24 A. Yes.

25 And I think you have it -- it's somewhere on

1 your spreadsheet.

2 Q. It is. It's on the very last -- the very
3 last spreadsheet there is a breakdown of minutes, and
4 it all adds up to about 114 -- I think 114.7, if my
5 memory is -- serves.

6 A. But we have -- you have the individual
7 minutes, I just don't see a total here.

8 But yes. Yes. Subject to check.

9 Q. Subject to check?

10 A. I've seen that number.

11 Q. It's actually 114.9.

12 A. Okay.

13 Q. If you take 114.9, or we'll call it 115 for
14 rounding, would you agree with me that, looking again
15 at the incremental difference between the \$0.01 to go
16 to Vernal and the 1.2 cents to go up to Flat Top, would
17 you agree with me that over -- over the course of a
18 month, if a wireless customer, or a Bresnan customer,
19 made that 115 minutes of calls to wherever it is that
20 they go, that the simple math of multiplying two-tenths
21 of a cent times 115 minutes would get you about \$0.23?

22 A. Subject to check, yes.

23 Q. Okay.

24 So if a wireless customer sat on the porch
25 of the Bresnan customer, and made 115 minutes of calls

1 in the average place, in the average disbursement that
2 they do from Vernal, under the agreement between
3 UBTA UBET and UBET wireless, again, with the
4 assumptions we've made, I understand that they would
5 pay that 1.2 cents per minute for that 115 minutes of
6 calls. Right?

7 A. Yes. And wireless is under State rules and
8 Federal rules, regulated very differently than two
9 land-lines.

10 And in this case, the Commission has found
11 that UBET needs to charge \$1.80 for that --

12 Q. I understand that.

13 A. -- call.

14 Q. And I'll let you make your defense
15 eventually, and if I don't get to do it, Ms. Slawson
16 I'm sure will let you elaborate on redirect.

17 But I'm just asking the simple question:
18 115 minutes of calls, increment we're looking at is
19 two-tenths of a cent, in the wireless case that will
20 result in \$0.23 of termination charges above and beyond
21 the \$0.01 that would be the case if it was just going
22 to Vernal. \$0.23 would be the wireless charge for that
23 collection of calls. Right?

24 A. Doing the math, yes.

25 Q. In the Bresnan case it would be that \$0.23,

1 plus a buck 80, or \$2.03. Right?

2 A. Let me just go back. Let me just repeat to
3 make sure I have this right.

4 The \$0.23 was 1.2 times the 114. Correct?

5 Q. The \$0.23 is just --

6 A. I thought the \$0.23 was .2, and so, in our
7 case, it would be 1.2 times the 118, or whatever, or
8 114 plus the \$1.80.

9 Q. Okay. And let me just -- I'm just trying to
10 get that -- the apples to apples of the incremental
11 cost for going past Vernal. And so I'm taking out of
12 both sides the penny for the termination in Vernal.

13 And just looking at that -- for the
14 termination rates in both equations, the two-tenths of
15 a cent, which accounts for the cost of the facilities
16 past Vernal, in the Bresnan case, am I not correct that
17 in addition to that two-tenths of a cent to go outside
18 of Vernal, you're proposing to charge \$1.80 a month.
19 Right?

20 A. No. I don't think so.

21 Q. Okay.

22 A. Can I just explain what -- what our proposal
23 is? Is it's \$1.20 for all, and so there's no
24 incremental two-tenths between Vernal and the others.

25 The incremental is \$1.80 only.

1 Q. Okay.

2 Let's -- let's do it this way.

3 Can we agree that for the wireless customer,
4 calling 115 minutes of people outside of Vernal, they
5 would pay 1.2 cents a minute?

6 A. Correct.

7 Q. For the Bresnan customer, under your
8 proposal, which is the same 1.2 cents, they would pay
9 that same rate for all of those customers outside of
10 Vernal. Right?

11 A. Yes.

12 Q. But in addition to that, they'd pay \$1.80 a
13 month as a flat charge, because of --

14 A. Yes.

15 Q. -- as you've said, that EAS network.

16 A. Right.

17 Q. Correct?

18 A. Correct.

19 Q. So would you agree with me, that for rates
20 being charged to Bresnan, under your proposal, for
21 termination in Vernal, with the assumptions that we've
22 made about what this contract says, that the rates
23 you're proposing for Bresnan are higher than the rates
24 that you're -- that UBTA UBET charges its affiliated
25 wireless company?

1 A. Again, there is a whole agreement. I
2 haven't read the whole agreement.

3 If you're talking about a particular rate
4 element is \$0.01 -- or is 1.2 cents higher than \$0.01?
5 The answer is yes.

6 Q. Okay. And let me ask you about that.
7 Because I see we're nearing the lunch break here.

8 Let me ask you this. If we -- I just have a
9 couple more questions that I want to go through, and
10 then, would you be able to, over lunch, review the rest
11 of this agreement and consult with your client and tell
12 me whether or not the assumptions that we've been
13 making are accurate or not?

14 A. I will see if I can do it in that timeframe.

15 Q. Okay.

16 That would be helpful, because I think we
17 want to make sure that the record is clear, and I don't
18 want my reading of this contract -- if I'm reading it
19 wrong, it certainly would be nice to know.

20 You said you have Utah law in front of you
21 there.

22 Let me ask you if you could read me a
23 section of that.

24 I'd like you to look at section --

25 A. Can I just ask, can I get a copy that is not

1 the exhibit to review over lunch?

2 Q. Sure.

3 A. I have a tendency to write on things.

4 Q. Yeah. And let's not do that, because that
5 will make the court reporter cranky with us.

6 ADMINISTRATIVE LAW JUDGE: You can ask the
7 office for a copy.

8 MR. NELSON: We'll get you a copy, or you
9 can steal Ms. Slawson's copy.

10 Q. (BY MR. NELSON) All right. I'd like you to
11 look at 54-8(B)-2.2 interconnection. In the statute.

12 A. Okay.

13 Q. And I'd like you to look in particular at
14 Section 1(B)(2) little ii, or romanette two, starting
15 "Each telecommunications corporation?"

16 A. Yeah.

17 Q. Do you see that?

18 A. Yeah.

19 Q. I'd like you to please read that sentence
20 into the record.

21 A. "Each telecommunication corporation shall
22 permit access to and interconnection with its essential
23 facilities, and the purchase of essential facilities
24 on -- services on terms and conditions, including
25 price, no less favorable than those telecommunications

1 corporations provide to itself and its affiliates."

2 Q. The first part of this, I think you agreed
3 with me that UBET wireless is an affiliated company
4 with UBTA UBET. Correct?

5 A. Correct.

6 Q. Okay.

7 A. Can I just add something to that, though?

8 This talks about a telecommunications
9 corporation. What I don't know -- I think I saw
10 somewhere in the law where there is an exclusion from
11 wireless carriers to a telecommunication corporation.
12 So I'm not sure that the wireless would fit into that
13 statement.

14 Q. You understand that it says that the issue
15 here is "each telecommunication corporation shall
16 permit access to and interconnection with its essential
17 facilities --" and there's some stuff in the middle --
18 "on terms and conditions, including price, no less
19 favorable than the telecommunications corporation
20 provides to itself and its affiliates."

21 And there's no restriction in there that
22 says the affiliate has to be a telecommunications
23 corporation, is there?

24 A. I don't see that, no. But Kira might.

25 Q. Do you have up there what's been marked as

1 Exhibit B4? Which is the data responses submitted by
2 UBTA UBET to Bresnan's second set?

3 A. It might take me a second. I've tried to
4 clip all of these together.

5 Can you tell me what -- was that the January
6 22nd one?

7 Q. Yes, ma'am.

8 A. And it starts W-2.1?

9 Q. Correct.

10 A. Okay.

11 Q. I'd like to draw your attention to question
12 number seven, which starts on page four of that
13 document.

14 A. Of 2.7?

15 Q. Yes.

16 A. Okay.

17 Q. Excuse me, 2.7.

18 Question 2.7 asks for each UBTA UBET rate
19 center, in subpart A, the number of access lines
20 served. Do you see that?

21 A. Yes.

22 Q. Okay.

23 Now, I'd like you to turn to page five and
24 tell me what UBTA UBET's response to that was.

25 A. "UBET objects to this data request on the

1 grounds that it seeks confidential information that is
2 not relevant to the purposes of arbitrating the
3 Essential Facilities Agreement."

4 Q. So am I understanding it correctly that
5 UBTA UBET considers the number of access lines that it
6 serves as a piece of confidential information?

7 A. That seems to be what it says.

8 Q. Do you have any idea, or in your experience
9 with other companies, why is it that companies consider
10 their access line counts as a confidential piece of
11 information?

12 A. Because it gives information around the
13 number of customers there are in the market.

14 Q. And is that something that competitors can
15 use to their competitive advantage then?

16 A. Potentially.

17 Q. Okay.

18 Under your proposal, if it is adopted, would
19 it not be the case that Bresnan, in order to compute
20 the flat EAS charge you're proposing, would be required
21 to report to UBTA UBET the number of access lines that
22 it serves every month?

23 A. Or to the Commission.

24 Q. Well, but presumably UBTA UBET would have to
25 know, because how else would you derive the charge?

1 And even if the Commission told us what the
2 charge was, when we wrote you a check and you divided
3 it by a buck 80, I bet you could figure out how many
4 access lines there were, couldn't you?

5 A. Probably.

6 Q. Okay.

7 So would you agree with me that under your
8 proposal, using a flat rate, Bresnan would be required
9 to disclose confidential and commercially sensitive
10 information to its competitor, every month? Right?

11 A. They would tell us the number of -- the
12 amount of the charge that we would have to bill them.

13 Q. And included in that would be the number of
14 access lines?

15 A. Customers. The -- I think -- I believe the
16 rate is on customers.

17 Q. So if a customer has three lines at their
18 house, is it a single \$1.80, or is it \$1.80 times
19 three?

20 A. The way we've stated it is per customer. I
21 will have to check that.

22 Q. Let's take a look at that.

23 Is it your understanding that if a customer
24 at UBTA UBET -- and maybe you didn't know the answer to
25 this. If a customer in the ordinary course has three

1 lines, do they pay that EAS charge once, or three
2 times?

3 A. I do not know.

4 Q. Okay.

5 Is that something you might be able to check
6 on over lunch?

7 A. Right.

8 In the way we have it listed in the
9 agreement, it was a rate per customer. On the pricing
10 attachment.

11 Q. Okay.

12 Would you agree with me that if a rate were
13 adopted that were on a per-minute-of-use basis rather
14 than on a flat basis, for example, two-tenths of a cent
15 per minute of use like we've been discussing in that
16 wireless case, would you agree with me that that would
17 not require Bresnan to disclose the number of customers
18 that it has, or the number of lines it has, whichever
19 the metric is, to UBTA UBET on a monthly basis?

20 A. No. It would be on the minutes of use.

21 Q. Okay.

22 MR. NELSON: We've reached a breaking point
23 for me in my schedule. Is that enough -- do you want
24 to take a lunch break now?

25 ADMINISTRATIVE LAW JUDGE: Yeah. Let's take

1 a lunch break. We'll be back about 1:45 again. That
2 would give each party some time to review any material
3 you need to.

4 Okay. Thank you.

5 (Whereupon, a break was taken.)

6 MS. SLAWSON: Your Honor, Mr. Mecham has
7 been delayed, but we can go ahead and start.

8 ADMINISTRATIVE LAW JUDGE: Okay. We are
9 back on the record then.

10 You can proceed, Mr. Nelson.

11 THE WITNESS: Okay.

12 Q. (BY MR. NELSON) Ms. Wimer, over the lunch
13 break, did you have an opportunity to take a closer
14 look at Exhibit B6? Which is the Interconnection
15 Agreement between Uinta Basin Telecommunications
16 Association and Uinta Basin Electronic
17 Telecommunications, or UBET -- I can't even say this --
18 UBTA UBET and UBET wireless?

19 A. Yes.

20 Q. Okay.

21 First thing, just wanted to clear up. There
22 was some discussion about whether this was a negotiated
23 agreement or an arbitrated agreement. Let me just call
24 your attention to page two of what has been marked as
25 Exhibit B6, which is a recommendation from the

1 Division. Do you see that?

2 A. The recommendation acknowledge receipt?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. And would I be correct that if you
6 look at the very last sentence on that page, it
7 indicates that this agreement was arrived through
8 voluntary negotiations?

9 A. Yes.

10 Q. Okay.

11 Additionally, a second issue had come up
12 with respect to whether the charges identified in
13 Section 4 of this agreement, in particular 4.2.1, were
14 as we had been discussing earlier, and that is to say
15 that there's a charge where there's an end office
16 termination, and that a separate, higher charge, when
17 the termination uses the host remote situation. Do you
18 recall that discussion we were having before lunch?

19 A. Yes.

20 Q. And what were you able to discover over the
21 course of lunch, if anything, about how those rates are
22 applied?

23 A. Although the agreement terms are not
24 specific on how those rates are actually implemented,
25 we did call the people that bill it, and the -- the

1 rates are not additive.

2 Q. Okay.

3 A. But --

4 Q. Oh, I'm sorry. Please go ahead.

5 A. I do want to point out, because I also -- I
6 don't know if you're going to ask me this or not, but I
7 reviewed the other compensation that is included in
8 this agreement.

9 Q. Okay.

10 And what have you concluded or deduced from
11 that?

12 A. In this agreement, there are other areas of
13 compensation.

14 And so, for example, in section -- I think
15 it's 4.5. 4.4.1, on the trunking requirements.

16 Essentially what happens is there is a meet
17 point that's set up between the two carriers, and the
18 wireless carrier pays on their side of the meet point,
19 and for the trunk that goes from on the UBET side, the
20 cost for that is split 70/30, whereas the wireless
21 carrier pays for 70 percent of that transport and
22 the -- and UBTA UBET pays for 30 percent.

23 Q. Okay.

24 A. So there is other compensation. If there's
25 any other leasing of facility, there are a couple of

1 places where it references purchasing that facility out
2 of the NECA tariff, and that those rates would be -- be
3 applied.

4 And lastly, when that 1.2 is applied, it is
5 also a reciprocal amount, because, in this case, the
6 wireless carrier is also offering service in those EAS
7 areas.

8 So instead of it being one party providing
9 transport to say Roosevelt and Flat Top, wireless calls
10 also originate from those locations. So when UBET has
11 a call going to a wireless carrier in Flat Top, UBET
12 pays that amount on the other side.

13 So it is a reciprocal charge, whereas, in
14 this case, it is not a reciprocal charge, because there
15 are no Bresnan customers out in those exchanges.

16 Q. Anything additional?

17 A. I think that's it.

18 Q. Okay. Let me just take those and make sure
19 I'm tracking then.

20 With respect to the trunking issue. And
21 you've talked about terms and conditions in the
22 agreement that's reflected in Exhibit B6, there is --
23 there are provisions in the proposed interconnection
24 agreement between UBTA UBET and Bresnan that also
25 discuss the trunks relating to that interconnection

1 point. And that's -- I just want to make sure that's
2 separate for the discussion of the rate, the
3 termination of traffic. Is that correct?

4 A. Correct.

5 Q. Okay.

6 A. But as I had said earlier, when you look at
7 the .1 charge versus a .2, there were other factors,
8 financially, within the entire agreement.

9 Q. Right.

10 And the trunking charge, though, just to
11 make sure, I want to -- I just want to make sure that
12 the answers you gave me previously are still valid.

13 Where we were talking previously, we were
14 talking about the costs and the termination rates that
15 would apply once you hit the Vernal switch and then
16 continued on. Do you recall that?

17 A. Yes.

18 Q. And so whatever the trunking issues are,
19 that would have been before you got to the switch. It
20 would be --

21 A. Correct.

22 Q. It wouldn't cause the answers you gave
23 previously to be wrong, is what I'm saying. Is that
24 correct?

25 A. Subject to check.

1 In general, that is correct, about the
2 facilities. But as I had just mentioned in the
3 reverse. We didn't talk about the reverse, I would
4 never get into a situation with Bresnan when I'm paying
5 them transport out into that EAS area, where, in fact,
6 in the wireless carrier, they are serving out there,
7 and it is a reciprocal nature.

8 Q. Okay.

9 So just -- just to understand then, purely
10 for the -- if you look purely at the termination
11 issue -- and I just want to make sure I understand your
12 point about the reciprocal part.

13 If we were to apply the rate structure
14 that's reflected in Exhibit 6, in 4.2.1, would I be
15 correct that --

16 Let me give you three different facts. And
17 I just want to then see if I understand how this would
18 apply, given the differences between UBTA UBET and
19 Bresnan.

20 For a Bresnan call into Vernal, from Vernal
21 to Vernal, the end office termination rate would apply.
22 A Bresnan call, from Vernal to one of the other remote
23 areas, the host remote termination would apply.

24 For all calls from UBTA UBET, either from
25 Vernal or from one of these remote areas back to

1 Bresnan, UBTA UBET would only pay the \$0.01 end office
2 rate, because, as you explained, Bresnan doesn't have
3 that host remote structure.

4 Would that be correct?

5 A. The other -- our recip comp proposal -- and.

6 I mean, you're saying if the rates that were
7 here were applied to the wire line agreement.

8 Q. That's what I'm saying.

9 A. On a minute of use.

10 Q. That's what I'm saying.

11 A. Then the -- when you called Flat Top,
12 Bresnan to UBET, Vernal to Flat Top would -- under this
13 agreement, would pay the 1.2 cents.

14 In that same call in the opposite
15 direction --

16 Well, actually, the way this agreement is
17 set up, I don't know it would actually work in the --
18 since it's not specifically written in here, I'm saying
19 what their billing practices are. And so it is -- this
20 agreement itself does not have a non-balanced
21 arrangement when it's between an EAS and not.

22 So if it goes the other direction, the way
23 this has been implemented, which is not written down in
24 here, but the way it's been implemented, that would
25 still come under a 1.2, because the assumption is of

1 both arrangements.

2 Q. Okay.

3 A. So --

4 Q. I'm sorry.

5 A. -- it would be something different to say
6 that it was non-reciprocal.

7 Q. And in your opinion, would it be -- if you
8 were to apply this rate -- and we talked about the
9 Bresnan to UBTA UBET calls. I'm going to now say for
10 the calls going the other direction. Would you agree
11 with me that because Bresnan doesn't have the host
12 remote termination agreement, that, under that
13 scenario, it would be inappropriate for UBTA UBET to
14 pay anything more than just the penny for everything
15 coming back?

16 A. It would be inappropriate. But that's not
17 what this -- that's not what's in this agreement.

18 Q. I understand.

19 In this agreement, the suggestion is is that
20 it's possible that you would be required to pay a
21 higher rate. And I'm just confirming that that would
22 be inappropriate, in your opinion, for traffic coming
23 back.

24 A. Correct.

25 Q. Okay.

1 Let me move on to another topic in the
2 compensation area. You've offered up some suggestions
3 in your proposal with respect to the charge for a
4 change to the -- I think we call it the LSR charge?

5 And I'm --

6 A. Yes.

7 Q. My problem is I'm just now blanking it out.
8 Is that what you call it, or is that what we call it,
9 or do we all call it the same thing?

10 A. I think we called it a service order charge.

11 Q. Service order charge. Okay. And I
12 apologize. I just want to make sure we're using the
13 right terminology for your proposal.

14 A. Yeah. You may have been thinking I had
15 changed -- you called one of the sections an LNP
16 section, and it was really an ordering section.

17 Q. Okay.

18 The service order charge that you're
19 proposing applies, as I understand it, when a customer
20 of UBTA UBET desires to switch service from UBTA UBET
21 to Bresnan. Is that correct?

22 A. Correct.

23 Q. Okay.

24 Now I want to talk about this again with
25 relationship to what happens on the wire line side and

1 what happens on the wireless side. Okay? So we're
2 going to go through a similar kind of process, just to
3 get everyone squared away on how these things might
4 compare.

5 Let me start on the wireless side.

6 A. Okay.

7 Q. I want you to imagine a hypothetical where a
8 customer in Vernal decides that she wants to terminate
9 service on her land-line.

10 A. Mm-hmm.

11 Q. And take service only on a wireless phone.

12 A. Yes.

13 Q. Do you have that in mind?

14 A. Yes.

15 Q. And I want, in particular, to assume,
16 because we have the agreement out here as B6, assume
17 that the wireless service that she wants to take is
18 from UBET wireless. Okay?

19 A. Okay.

20 Q. When that customer decides to shut off the
21 land-line and switch over to wireless, would I be
22 correct that the customer would have the right to port
23 her number from UBTA UBET land-line company to UBET
24 wireless?

25 A. Yes.

1 Q. Okay.

2 Can you tell me, when doing that process,
3 what does UBTA UBET have to do to allow that customer
4 to port her number to her wireless carrier?

5 A. We have to take in the service order, type
6 it into our system.

7 Even if it comes via e-mail, it's not in our
8 electronic system, so we would have to retype it into
9 the actual service order system.

10 We have to validate that, based on the
11 information on the service order, that we have the
12 correct user.

13 We then give a firm order confirmation back
14 to the wireless carrier saying that, yes, everything on
15 the order is proper, and we can meet the due date that
16 you have requested.

17 If we cannot do that, we send a different
18 piece of information back that says something is wrong,
19 and whatever it is.

20 You know, if they don't have the proper
21 information, or things don't match up, we give a
22 response to that effect back to the carrier.

23 Assuming everything is fine, there is then a
24 port request put into the end pack.

25 I believe -- I'm not sure if that's

1 subcontracted or not. I believe it is.

2 But we have a vendor that actually types
3 into the national database that we agree that this
4 number is going to port. And then do translations in
5 our switch to accommodate that, and set it for the time
6 that -- or the day of the due date.

7 And then, after the port is complete,
8 assuming that Bresnan has then done their side of the
9 work, after the timeframe has -- on our due date is
10 done, we then go back and do translations in our
11 switch, and complete that port to show our switch and
12 tell our switch that that number has been ported out.

13 And so as I explained before, after that
14 date, every time a call, an internal UBET call was
15 made, we would look up in the database to find this
16 number is supposed to go to Bresnan, and we would then
17 route the call appropriately.

18 Q. Okay. Now you said Bresnan twice there, and
19 I think you probably meant to say UBET wireless.
20 Because the -- the question was, what would happen if
21 you went between UBTA UBET wire line and UBET wireless.

22 A. Yeah.

23 Q. Okay.

24 A. Yes. I apologize.

25 Q. That's okay, because it kind of leads me to

1 my second question, which is let's say that customer,
2 instead of desiring to go from UBTA UBET to UBET
3 wireless, she wants to switch to Bresnan.

4 Do you have that change of a hypothetical in
5 mind?

6 A. Yes.

7 Q. In that case, the customer also has the
8 right to port their telephone number, does she not?

9 A. Yes.

10 Q. And would the process that's been used that
11 you've just described for UBET wireless, to a wired
12 telephone number, be exactly the same for the number
13 being transferred from UBTA UBET to Bresnan?

14 A. Yes.

15 Sorry, no, it won't.

16 Q. It won't? What's different?

17 A. There are different -- I did skip a part of
18 what had to be done.

19 When you disconnect a -- when you're porting
20 to wireless, we go into the database on 9-1-1 to say we
21 don't have 9-1-1 more. When you move to another
22 land-line customer, there is a hand-off of the 9-1-1,
23 so that that end user customer is never without a 9-1-1
24 service and listing in the database anymore.

25 Q. So with that minor difference, is the

1 process essentially identical?

2 A. Pretty much.

3 Q. Okay.

4 A. I mean, I don't think UBET has done a wire
5 line one yet, so. But I would not think there was any
6 major changes.

7 Q. Okay.

8 Now I want to ask what happens to UBTA UBET
9 on the other issue, which is the customer wants to
10 disconnect service, and you have a call then migrate
11 over to either wireless or Bresnan. We talked about
12 the local number portability side.

13 With respect to the disconnection of
14 service, on the wireless side, what does UBTA UBET have
15 to do to disconnect service to that customer?

16 A. I'm not understanding what you're saying.
17 Are you saying that UBET wireless customer disconnects?

18 Q. What I'm saying is that the customer decides
19 to cut her line, if you would, and terminate service
20 with UBTA UBET land-line and transfer, so that she's
21 taking only service from UBET wireless. Okay?

22 From the wireless side, you have to do the
23 number portability issue which we just talked about?

24 A. Mm-hmm.

25 Q. Additionally, you have to disconnect the

1 service from the local -- the local service, that had
2 previously been provided by UBTA UBET.

3 A. Yep.

4 Q. What does UBTA UBET have to do to disconnect
5 their services?

6 What, in general, are the steps involved in
7 doing that?

8 A. I have not done that one recently, so I'm
9 going to go in general, because I'm not sure exactly if
10 this is what UBET does, but.

11 Q. Then let me see if I can shortcut it to you.
12 Maybe I can just get you to agree on the end.

13 Would you agree with me that whatever the
14 process is to disconnect a service, that it would be
15 the same process, whether the customer wanted to
16 disconnect service and was then choosing to take all
17 wireless, or was wanting to disconnect service and take
18 service over their cable facilities from Bresnan?

19 Is there any reason to believe that that
20 process would be any different?

21 A. I'm not sure what you're getting at. I
22 think the processes are --

23 Are you saying without LNP? You're now
24 disconnecting from my network, without LNP?

25 Q. No.

1 A. So an end user calls me up and says, I'm
2 disconnecting. Is that what you're asking?

3 Q. Okay. Let me back up.

4 A. They're changing their telephone number say.

5 Q. The customer wants to change her service
6 provider.

7 A. Yes.

8 Q. In the first example she wants to change her
9 service provider and go from a land-line service to a
10 wireless service.

11 In the second example --

12 A. And they're porting.

13 Q. And they're porting.

14 A. Yeah.

15 Q. In the second example she wants to change
16 her service and go from the land-line service from
17 UBTA UBET to the land-line service from her cable
18 company, Bresnan.

19 A. Correct.

20 Q. I'm trying to understand the processes of
21 each, and what, if any, differences there are between
22 those two processes.

23 In both cases, I think we suggested that the
24 customer may want to port her phone number. And the
25 question was then, is the process of doing that port

1 essentially the same? And I believe your answer was
2 with the exception of this slight difference in 9-1-1,
3 the process is the same.

4 Now, a second thing that has to happen, in
5 both scenarios, that UBTA UBET's land-line service has
6 to be disconnected.

7 A. Oh, okay. I get --

8 Q. Correct?

9 A. Yes.

10 Q. So what I'm getting at is --

11 A. Now I know what you're getting at.

12 Q. Is the process of disconnecting the old
13 service the same, whether the customer is disconnecting
14 and migrating to a wireless service, or the customer is
15 disconnecting and migrating to Bresnan's cable service?

16 A. Yes.

17 Q. On the Bresnan side, when a customer wants
18 to migrate from UBTA UBET to Bresnan, should a customer
19 decide to do so, putting aside local number portability
20 which we've talked about, putting aside UBTA UBET
21 disconnecting its service, is there anything else that
22 UBTA UBET has to do before that service can be
23 transferred and Bresnan can commence service?

24 A. Not that I can think of. I told you what
25 the process is, as far as I know it. And there may be

1 other things, but I explained what I know.

2 Q. Okay.

3 So to the best of your knowledge there's
4 nothing else that UBTA UBET has to do, once the
5 customer elects to migrate to Bresnan? UBTA UBET has
6 to shut off its service, numbers have to be ported if
7 the customer wants it, and then they're done. Right?

8 A. Yeah.

9 Q. Okay.

10 When a customer migrates under the wireless
11 agreement that we've been talking about, B6.

12 A. Mm-hmm.

13 Q. Am I correct that there is no charge listed
14 in this document for a customer migrating from
15 wireless -- from a wire line carrier to a wireless
16 carrier, and porting her telephone number?

17 A. I don't see -- I did not see, in my quick
18 over-the-lunch look, any reference to LNP in here. So
19 if you saw a reference to LNP, I would appreciate if
20 you could point it out.

21 Q. I actually think that's sort of the point.

22 There is no charge in here. There is no
23 discussion in here of a charge of any sort for local
24 number portability. That's -- the absence of the
25 language is exactly what I'm trying to get you to see

1 if you agree with me.

2 A. Well, the absence of language is based on an
3 FCC rule. And the FCC rule, when they require LNP
4 between wire line and wireless carriers, there was a
5 specific provision in that wireless order that said,
6 much to rural company's chagrin, that porting was not
7 based on having an Interconnection Agreement. And so
8 from that point on, wireless carriers refused to
9 address, at all, any provisions on LNP, and any type of
10 interconnection.

11 Not just the UBET affiliate, but any
12 wireless carrier. Which we feel is a very bad
13 precedent from the FCC.

14 And since we're not under FCC rules here,
15 would not apply and be pulled over to these State
16 proceedings.

17 Q. Okay.

18 You referred earlier that you disputed
19 Mr. Harris's characterization of the service order
20 charge for local number portability. Do you recall
21 that?

22 A. Yes.

23 Q. Do you charge customers who want to
24 disconnect their service from you?

25 A. It's included in their rate development

1 from -- or -- if I would take specific rate development
2 of what I know of local exchange service, not
3 particular to UBET, but those are -- costs are included
4 somewhere in the rate development, and not in specific
5 charges of the customer.

6 Q. So if a customer from UBTA UBET has been
7 taking service for some period of time, and she decides
8 that she wants to stop taking service, for whatever
9 reason, to go to Bresnan or otherwise, whatever expense
10 is associated with her stopping taking service she's
11 already paid for, and you don't send her a bill to shut
12 off service, do you?

13 A. Assuming there were not other circumstances,
14 like volume agreements and things like that, typically
15 there is not a disconnect -- or I am not aware --

16 I have not looked at the rates. I am not
17 aware that UBET has a rate for that. Some carriers do.
18 I do not know if UBET has a specific rate or not.

19 Q. Okay.

20 So my question is, if you agree with me that
21 when Bresnan takes a customer from UBTA UBET, two
22 things happen: Number portability, if they desire
23 portability, and disconnection. And there's no charge
24 for disconnection, then isn't the charge that's left
25 only conceivably for number portability? Because

1 that's the only thing else that UBTA UBET is being
2 asked to do?

3 A. As I said, there's 9-1-1 things in there
4 too, so.

5 There's 9-1-1 in there in addition.

6 Q. As part of the number portability.

7 A. No. I -- I look at that as a separate
8 process.

9 Q. Okay.

10 So for doing number portability, in the
11 agreements that we talked about here with wireless
12 companies, I think you agreed with me that there is no
13 charge for local number portability.

14 With respect to the Qwest service territory,
15 are you aware that there is no charge for local number
16 portability in the Qwest service territory either?

17 A. I -- I can't -- I don't know. I did not
18 look at that in their agreement.

19 Q. Okay.

20 A. I do know I looked at a Century agreement,
21 that I -- and I had several of them, so I'm -- or
22 several agreements that were either Bresnan agreements
23 or IDT agreements. But I know I looked at an agreement
24 in Colorado, which I think Bresnan was either the
25 signatory or adopted, where there was a specific

1 charge, and it stated for LNP that was based on
2 business rates. Business service order rates.

3 Q. Would you agree that we -- if we went ahead
4 and established that charge for LNP in this agreement,
5 that we could also have then the termination provisions
6 and the bill-and-keep provisions and the rest of the
7 Century Tel agreement in Colorado?

8 A. No. I'm just saying there's precedence that
9 you've paid this charge.

10 Q. Well, there's precedence we've agreed to it,
11 but you agree with me we're under Utah law here.
12 Correct?

13 A. Correct.

14 Q. And Utah law, are you aware of any
15 interconnection agreements in the State of Utah that
16 have a charge for LNP?

17 A. I have not done an extensive look at
18 interconnection agreements in Utah.

19 And yesterday, Mr. Harris, every other word,
20 was talking about industry practice and what was the
21 norm. And I'm presenting evidence that there is norm
22 that surface order charges are applied, and I
23 personally have probably 30 agreements that I've
24 negotiated for rural carriers that include service
25 order charges when the customer transfer occurs.

1 Q. The agreements that you just referred to,
2 are those agreements with cable companies, or are those
3 agreements with other CLECs?

4 A. A lot of them are with cable companies.

5 Q. Okay. And --

6 A. Can I just -- they're with cable companies
7 or the cable company's wholesale provider.

8 Q. Okay.

9 Let me ask, do you have Exhibit B there?

10 A. Can you tell me what that is? So I can --

11 Q. Oh, excuse me. That's the red-line
12 agreement.

13 A. Yes.

14 Do you have a section number?

15 Q. Yeah. First of all, I want to make sure I
16 understand the service order charge that you're
17 proposing is \$35? Is that correct?

18 A. I think the service order originally
19 referenced our local exchange tariff. The manual
20 service charge was \$35, and --

21 When I look at my original, without the
22 red-lines, on the screen, but I can't find it here, I
23 believe there was a -- oh. It's hidden in the
24 red-lines.

25 If you look at the -- on page two, there's

1 something that ends up in the middle of the column, and
2 SO, which stands for service order, is crossed out.
3 And it says LSR charge, and then it's deleted to say
4 intrastate tariff and Bresnan has filled in \$35 per
5 changed LSR.

6 So the original that was proposed here
7 referenced our tariff.

8 Q. Okay.

9 So, for the LSR, actually understanding
10 correctly, that your proposal is that the rate being
11 charged to Bresnan is based on your tariff?

12 A. Yes.

13 Q. And that rate includes hourly charges? Is
14 that correct?

15 Is it a flat charge or an hourly charge?

16 A. I have not looked at the tariff, so I can't
17 say that.

18 I would say, in -- with most of my clients
19 it's a flat charge, but I have not looked at the UBET.
20 I was just referenced what they had told me.

21 Q. I see.

22 So when you have the manual service order
23 charge in D1 in your draft, to what does that charge
24 apply?

25 A. I believe the manual service order charge

1 was when it was faxed in, and the other was when it
2 came via e-mail.

3 Q. And as you sit here today, you don't know
4 the charges you're proposing for Bresnan for a service
5 order? Is that what we're left with?

6 That the charge is something we don't know
7 what it is?

8 A. It's listed in our tariff, and frankly I --
9 well, it's listed in our tariff, so it's a published
10 rate. Unfortunately I didn't look exactly what the
11 dollar value was.

12 Q. Okay. So here's the question. When you do
13 a service order, in your access tariff, aren't you in
14 fact doing much more than merely porting a telephone
15 number?

16 A. I think this is referencing the local
17 exchange tariff.

18 If -- it's meant to reference local -- it
19 says in intrastate tariff.

20 Q. Okay.

21 A. Which means the local exchange tariff.

22 Q. So if you're signing up a new customer?

23 A. Yeah.

24 Q. Aren't you doing a lot more than simply
25 porting a telephone number?

1 Don't you have to hook up their facilities,
2 set up their accounts, get all of their billing
3 information sorted out, conduct a myriad of other
4 operations associated with initiating service on your
5 system above and beyond simply porting a telephone
6 number?

7 A. Not necessarily. There are several
8 different types of orders. There is an initiation
9 order, but there is also things where I'm adding a
10 feature, or changing something on my service.

11 And there are things called change charges,
12 but change charges are where I, at least my
13 understanding, is that when I put a service order in,
14 and before that service order is completed, I call up
15 and I change it to say change the date, or I want
16 another feature on the initial order, a change charge
17 applies.

18 However, if I come in later, and I have
19 existing service, and I want to add a feature, or
20 change a billing name, or something like that, a
21 service order also applies to those, at the same rate.

22 Q. Okay. Well now I'm really confused
23 Ms. Wimer, because under your contract then, which one
24 of those rates are you proposing UBTA UBET charge to
25 Bresnan when it files a local service request?

1 A. A regular service order charge. And as we
2 have listed in here --

3 Q. Ms. Wimer.

4 A. -- there are other charges for a change
5 order, which I believe we have listed in here.

6 Q. We'll get to those. All I'm trying to ask
7 is a Bresnan customer, a customer from UBTA UBET wants
8 to transfer to UBTA UBET?

9 A. Correct.

10 Q. Bresnan puts in an LSR?

11 A. Yes.

12 Q. You send us a bill.

13 What is that bill going to be based on?
14 What number is going to be on there? Is it \$35, or is
15 it something from your tariff?

16 And if it's something from your tariff,
17 which line in your tariff are you suggesting we look to
18 to learn what the charge is supposed to be?

19 A. Can I get back to you on that? And I will
20 get a line number in the local exchange tariff for you.

21 Q. Do you know conceptually? Is it the service
22 initiation charge?

23 A. I don't know. All of my clients have
24 different names for their service order charge. So
25 whether it's service initiation, a lot of them just say

1 it is a service order charge, and then I have an
2 expedite charge, and then I have a different charge.
3 The specific name in the UBET tariff, I believe is just
4 a service order charge, but I have to validate that.

5 Q. And that would be the same charge a customer
6 would pay if a customer walking in the door, newly
7 arrived in Vernal, wants to sign up service with
8 UBTA UBET. It's the same charge that first-time
9 customer pays. Correct?

10 A. Correct. That is one of the examples.

11 Q. Okay.

12 A. Correct.

13 Q. And all I'm trying to say is, when a new
14 customer signs up, isn't it true that UBTA UBET has to
15 do a lot more things than what you're suggesting needs
16 to be done with a simple local number portability port?

17 A. They have to do some more things. I don't
18 know if I would say a lot.

19 Q. Well, don't they have to hook up the phone?

20 A. Yes.

21 Q. And isn't that -- well. Okay.

22 About the -- despite the fact that you have
23 to do a lot more things, or you have to do more
24 things -- we'll just leave it at more things. -- the
25 more things for one than the other, you're suggesting

1 the charge be the same. Correct?

2 A. As I said, initial -- hooking up the initial
3 service is one thing that is covered by that. There
4 are several flavors that are covered by that service
5 order change. So when you pick one out that does a lot
6 of things, versus another one that doesn't do a lot,
7 you know, as a lot of things in the regulatory road,
8 it's a mix of several different functions.

9 So, yes, putting in initial service order
10 may be more than that. And there may be other things
11 like, you know, changing the spelling of my name when I
12 get married is a whole different thing.

13 Q. Okay.

14 A. So -- which is a lot less than porting a
15 number.

16 So there's a variety of things that are
17 being done, and there's one charge for all of those.

18 Q. Do you think you charge \$35 for a customer
19 to change their name on their account?

20 A. Like I said, I don't even know what the rate
21 is. But, yes, I've seen that happen.

22 Q. Okay.

23 Let's look at the Ancillary Services page
24 three. Where we have the words associated with this
25 charge.

1 And at some point actually I would -- I
2 would appreciate if somebody would be able to put into
3 the record what actually the charges you're suggesting
4 would be the case.

5 And I apologize. We were under the
6 impression it was the \$35 charge, and so this is new
7 information.

8 Do you see Section 1.1.3, which has been
9 stricken out?

10 A. Yes.

11 Q. Okay.

12 This says that Bresnan will incur a service
13 order charge for submitting an LSR. Do you see that?

14 A. Yes.

15 Q. This does not say, does it, that UBTA UBET
16 will incur a charge should the event ever happen that
17 Bresnan loses a customer back to UBTA UBET, does it?

18 A. No, it doesn't.

19 Q. Okay.

20 A. You're free to suggest that.

21 Q. Thank you. I think we'd like to do it all
22 for free, because for us it's not a big deal.

23 But, moving along from that.

24 Let's talk about the ideas of the access
25 service charges.

1 Let me look, if you would, at the
2 Interconnection Agreement, Section 3.5.

3 It's on page six of the Interconnection
4 Attachment on --

5 A. Thank you. Right.

6 Q. All right. In 3.5, the stricken -- the
7 words that are appearing in red strike-through were
8 words that you had suggested that Bresnan will order
9 trunks in the agreed-upon quantities via an access
10 service request. Do you see that?

11 A. Yes, I do.

12 Q. Okay.

13 I'm trying to understand how this is going
14 to work, as you propose.

15 Let's say we're doing direct intersection,
16 as you propose. Do you have that in mind?

17 A. Yes.

18 Q. Okay.

19 And in that instance, Bresnan is responsible
20 for constructing the facilities on its side of the meet
21 point. Correct?

22 A. Correct.

23 Q. And Bresnan is responsible for paying for
24 all of those facilities. Correct?

25 A. Correct.

1 Q. All right.

2 Now, on the -- from the -- on the other side
3 of the meet point, do I understand your proposal that
4 Bresnan is required to order trunks sufficient to carry
5 traffic from the meet point to a port at the Vernal
6 switch?

7 A. Which is the typical procedure that one
8 carrier -- when there's a meet point, one carrier
9 orders a trunk.

10 So just like in the access, carriers will go
11 to say Qwest and order a trunk that's going from Qwest
12 say all the way to UBET. They make one order with
13 Qwest, and that comes all the way through between the
14 two carriers.

15 Q. Okay.

16 And when they make that order, do I
17 understand your proposal correctly that there is a
18 charge assessed for the order itself?

19 A. Correct.

20 Q. Okay.

21 And now I have lost all confidence in me, so
22 I'm going to ask you to tell me, what's the charge for
23 that trunk ordering, as you propose in the pricing
24 attachment?

25 A. That charge would be the -- via the -- in

1 our original proposals, the facilities charge on the
2 pricing attachment under A, that they would be
3 according to the applicable access tariff.

4 Q. Okay.

5 A. So in this case, if it were the
6 interconnection trunk, which only has local traffic on
7 it, it would be under the State access tariff.

8 Q. Okay.

9 So Bresnan is required to pay a -- we'll
10 start with a one-time order charge. Is that correct?

11 A. Correct.

12 Q. Okay.

13 Are there any additional recurring charges
14 associated with those trunks which Bresnan has ordered
15 pursuant to the applicable access tariff?

16 A. Based on the meet point obligation, no.

17 Q. Okay.

18 What if the trunks okay? That are currently
19 there?

20 I think the testimony was that there's
21 already some facilities there between the ported Vernal
22 switch and the Bresnan head end, which is your proposed
23 meet point.

24 Am I understanding that correctly?

25 A. There is a facility that goes between the

1 two.

2 There's a facility that goes between the two
3 transport facilities.

4 Q. Does UBTA UBET need to do anything to that
5 trunk group to make it capable of accepting traffic
6 from Bresnan in a direct interconnection?

7 A. I am not sure.

8 My understanding, the way that trunk has
9 been explained to me, is that it's transport, and it
10 does not, at this point -- or it was told me that it
11 has data on it. So I would somewhat suspect, based on
12 Mr. Harris's testimony yesterday where he said that
13 there is an IP trunk, or IP facility that goes from the
14 Vernal all the way to Grand Junction, that that goes
15 through the UBET-Vernal switch location, and then goes
16 off.

17 So I don't know if there is access or not.

18 I would suspect that there is some kind of
19 access to the trunks there, but, as he testified
20 yesterday, that that was not broken into smaller parts.
21 That they're using the whole band width in one pipe.

22 Q. Okay. Let me just ask this question. And I
23 appreciate that answer very much.

24 Let me just say, if UBTA UBET has to do
25 something, engineering wise, to make those trunks, on

1 its side of the meet point, capable of delivering the
2 interconnection services we've been talking about.

3 A. Mm-hmm.

4 Q. Is UBTA UBET going to charge Bresnan for
5 making those adjustments to those trunk groups?

6 A. We're not charging for --
7 Say we have to add a multiplex or something
8 like that. No. We're not charging for those piece.
9 That's facilities on our side.

10 Q. Okay.

11 If, over time, those trunk groups become
12 exhausted, and they need to be expanded, is UBTA UBET
13 proposing that the expanded facilities, that there will
14 be some charge associated with the expansion of those
15 facilities on its side of the meet point?

16 A. Not on a recurring basis.

17 Q. Is there a non -- the non-recurring charge
18 is the ordering charge?

19 A. Correct.

20 Q. Why is it the case -- well, let me back up.

21 These trunk groups that we're talking about
22 are -- that connect to the meet point, are designed to
23 be sort of two-way. To allow traffic to go back and
24 forth between UBTA UBET and Bresnan. Correct?

25 A. Correct.

1 Q. And they're designed so that our customers
2 can call your customers, and your customers can call
3 our customers. Correct?

4 A. Correct.

5 Q. So why is Bresnan paying an order charge for
6 the trunks on your side of the meet point, but you're
7 not proposing that UBTA UBET pay an order charge for
8 the exact same facilities on Bresnan's side of the meet
9 point?

10 A. Again, I haven't seen that offered.

11 I'm not going to offer my client to spend
12 money that -- you know, am I going to voluntary that
13 I'm going to spend money? I mean, I don't volunteer
14 to pay my taxes. I pay the taxes that I need to pay.

15 Q. Okay.

16 You agree --

17 A. I haven't had a request for that.

18 Q. You agree with me, don't you, that Utah law
19 specifies clearly that each interconnecting provider is
20 responsible for the costs on its side of the meet
21 point?

22 A. Yes.

23 Q. Okay.

24 And you would agree with me that the trunks
25 on -- that we're talking about are on the UBTA UBET

1 side of the meet point. Correct?

2 A. Part of the trunk is.

3 And I would also say, you referred to the
4 affiliate wireless agreement. And under the affiliate
5 wireless agreement, the affiliate wireless company pays
6 me a service order charge when they install their
7 trunks.

8 Q. I understand that. And I'm -- I understand
9 that. All I'm saying is that for -- in the Utah law
10 that we're talking about, there's a requirement. And
11 let me just go ahead and make sure we're all looking at
12 it so we're all the same.

13 Do you have the rules up there handy?

14 A. Yes.

15 When I --

16 Okay. What section?

17 Q. Let's look at R746-348-3(B)(1).

18 Do you see that, ma'am?

19 A. Yes, I do.

20 Q. Do you see the second sentence of B1? "Each
21 party shall be responsible for the costs of
22 constructing its facilities to the meet point, and
23 neither party may impose a meet point," and then it
24 goes on from that.

25 A. Right. And I would say ordering is

1 constructing.

2 Q. So you're -- your testimony is that Bresnan
3 should pay ordering charges to you, but UBTA UBET
4 should have no reciprocal obligation to pay ordering
5 charges to Bresnan. Is that your testimony?

6 A. No. My testimony is our offer was that we
7 want to be paid service order charges. Bresnan has not
8 asked for the reciprocal to respond to.

9 Q. If Bresnan asked for that, would that be
10 something that you'd think would be consistent with
11 Utah law then?

12 A. I don't think -- from reading this, I'm not
13 sure it's covered by Utah law. Because it says that
14 I'm constructing. It doesn't talk about service
15 orders.

16 Q. Let me back up.

17 Is UBTA UBET's proposed rate consistent with
18 Utah law in general? Not just this section, in
19 general. Is your rate consistent with Utah law?

20 A. I think so. That, you know, our rates and
21 our tariff have been approved by the Commission, so I
22 would say they are consistent with Utah law.

23 Q. So if it's consistent for one party to
24 charge the other, wouldn't that work both direction?

25 A. It could, but it's not on the table at this

1 point.

2 Q. Now, if both parties each charged each other
3 for the same trunk groups that were being ordered,
4 wouldn't that have a cause pretty quickly just to net
5 out to zero?

6 A. It's a hypothetical situation, at this
7 point.

8 And it --

9 I know I can't ask the questions, but in the
10 data responses that Bresnan submitted, they said they
11 do pay a service order charge to establish trunks in
12 other jurisdictions.

13 Q. I understand that. All I'm saying is if
14 it's -- if, as you invited us to, Bresnan suggests that
15 there be a comparable service order charge the other
16 direction, and if, as a comparable rate they were also
17 ordered that both parties would mutually order the
18 trunks on the other side, all I'm suggesting was if the
19 trunk orders were done one to one, and if the rate were
20 the same, at the end of the day, it would net out to no
21 payments between the parties. Right?

22 A. Right. If both parties billed the same
23 rate, then there would be a net of zero.

24 Q. And as a practical matter, it's been your
25 consistent position that Bresnan should charge

1 UBTA UBET the same rate that you charge Bresnan.

2 Right?

3 A. Correct.

4 Q. Let's talk about the other labor charges
5 that you have in your proposal.

6 All right. Putting aside the -- if I look
7 at the pricing attachment on page five? I'm sorry, on
8 page one of two. There is no page five.

9 There's additional labor charges on page two
10 which are the hourly charges that UBTA UBET has
11 proposed for a central office in-plant technician and
12 customer service representative, and turning over the
13 page three. Do you see that?

14 A. Yes.

15 Q. First of all, for the specific categories
16 that are in blue, that Bresnan has discussed, is it
17 your understanding that what Bresnan is contemplating
18 here is that we would take the hourly rates, whatever
19 those are in the intrastate access tariff, and use
20 those instead of the specified rates identified in your
21 proposal under Section E?

22 A. My understanding is in the change that
23 you -- well, my understanding is that Bresnan, under
24 the ASR overtime charge, the LSR -- I thought there
25 were two. -- and the LNP hot-cut, that both of those

1 reference time -- or sorry, no. That's in effect at
2 the time.

3 But that the coordinated hot-cut -- or
4 sorry, the LNP hot-cut charge that you proposed
5 yesterday would reference labor rates.

6 These other ones seem to reference a
7 specific charge. And you can correct me if I'm wrong,
8 but they reference a specific charge versus actual
9 labor.

10 Q. Okay.

11 A. So hopefully I'm interpreting that
12 correctly.

13 Q. And let me just --

14 A. As to your proposal.

15 Q. My understanding is that the proposal is for
16 the expedite charge, the -- what we're calling the
17 overtime charge, the change charge, cancellation
18 charge, no triple phone charge.

19 In all of those cases, what Bresnan is
20 agreeing to is to pay a labor rate based on the access
21 tariff.

22 And that's --

23 A. That was not my understanding.

24 Q. Well, let me just clarify our position then.

25 Our position is, on those -- for those

1 special orders, Bresnan would agree to pay the labor
2 rates set forth in the access tariff.

3 A. Okay.

4 Q. Do you understand that?

5 A. Yes.

6 And reading the language, just to be clear,
7 I had interpreted it separately.

8 So, for example, on a -- I believe a change
9 charge, an expedite charge in our tariff, in our access
10 tariff, there is, I believe a flat rate charge in our
11 tariff for that.

12 So when I read this reference to our
13 intrastate access tariff, I was relating that to a
14 specific flat rate charge in our tariff. Versus a
15 labor charge. Since it was -- didn't specifically say
16 labor.

17 Q. Okay.

18 Now, the -- as I understand that, we were --
19 let me just back up here.

20 Mr. Harris might be able to clarify this
21 when he gets up there, but let me just ask you a
22 hypothetical, and assume it's the case and he'll
23 clarify it later. But assume it's the intention that
24 for these specified instances, that there's either a
25 labor charge, or for the two LSR there is a specific

1 \$35 charge. Can you assume that with me?

2 A. Yes.

3 Q. Okay.

4 Then, if that's true, then the only
5 difference between what Bresnan is doing and what
6 you're proposing, in the specific numerated examples in
7 blue, would be the difference between -- if any,
8 between the labor rates in the intrastate access tariff
9 and the labor rates you've identified in Section E. Is
10 that correct?

11 A. Right. And I try -- yes. And I tried to
12 state, based on your change, which I thought only
13 applied to LNP, that we would use -- we would agree to
14 use the labor rates in the tariff, versus the ones we
15 have listed.

16 But I think we have an issue on the
17 application of those, since some of these had some flat
18 rate charges.

19 But, as far as the level of the rates that
20 we have for central office technician, customer
21 service, and customer service rep, the actual rates
22 that are listed in the tariff are acceptable for us to
23 use in this agreement.

24 Q. Okay.

25 Now what I want to talk about, though, is

1 I -- I believe, and I want to see if you can help me --
2 see if I'm wrong.

3 I think there are two instances where there
4 is a discussion of a potential for a labor rate in the
5 agreement that are not covered by one of these blue
6 categories.

7 A. Okay.

8 Q. And so I want to talk about those particular
9 two instances to see whether or not we need those other
10 labor charges, or if maybe you could agree with me that
11 we could just live with just the blue stuff edited to
12 make sure everyone is clear that it's the labor rate.

13 So, incident number one. Let's look at the
14 ancillary service agreement on page four.

15 A. Okay.

16 Q. All right.

17 I understood that, in Section 2, access to
18 inside wire.

19 When I was looking through this agreement,
20 it struck me that the last sentence in red, that's
21 stricken, includes a discussion of time and material
22 charges. Do you see that?

23 A. Yes, I do.

24 Q. Okay.

25 So if that sentence were to exist, then that

1 would be -- that would look to perhaps one of these
2 rates in red, as compared to one of the rates in blue.
3 Is that fair?

4 A. Yes.

5 Q. Okay.

6 Now, I guess I want to -- now I want to
7 check, why it is that you want that sentence to exist?

8 Because you understand, from Bresnan having
9 stricken it out, we don't want that sentence. Is
10 that --

11 Let's just start there. Do you understand
12 that by striking it, our proposal is we don't want that
13 sentence?

14 A. Well, the other place that it would come in,
15 although --

16 Q. I just want to talk about this one.

17 A. Oh, okay. Sorry.

18 Q. And we'll get to that other one. I think
19 we're both going the same place next.

20 On this one, this sentence says if Bresnan
21 requests a different form of access, or requests any
22 form or -- of upgrade or rearrangement, such work will
23 be subject to a bona fide request process, and time and
24 material charges shall apply. Do you see that?

25 A. Yes.

1 Q. Okay. First question on that, what exactly
2 are you contemplating Bresnan might be asking for?

3 Because I will confess to you, we've thought
4 about this, and we can't figure out what it is you
5 think we want to be asking for here.

6 A. Well, we've had cable companies asking us to
7 move our NID. I mean -- or sorry, not "we." My --
8 other clients that I have, in real-life situations,
9 have come up and said, We want you to actually take
10 your box, your network interface out, and move it so
11 that we can put our equipment in where we want to have
12 it.

13 Q. Okay.

14 Is that something, given that example, is
15 the ability for Bresnan to ask to move the NID,
16 something you would be fine with if Bresnan simply, by
17 taking this sentence out, agreed we wouldn't do?

18 That is, does -- let me put this this way.
19 Do you care if Bresnan says, Look, we don't want a
20 different form of access, we don't want to ask you to
21 move the NID, therefore, we would just as soon not have
22 a rate in the agreement that discusses something that
23 we would be happy to bind ourselves not to do?

24 A. Okay.

25 Q. Does that cause you any problems?

1 A. Yeah. If you agree that you're not going to
2 ask for anything like that, that would take care of it.

3 Q. Okay.

4 And you would agree that if --

5 A. And I will have to say, this is negotiating
6 on the stand. I would have to -- subject to check with
7 my client.

8 Q. Sure. All right.

9 But -- let's just leave it out there.

10 So let's talk about this second example,
11 where I think we're going to have a discussion. And
12 that's in Section 7. Just a few pages back.

13 On page seven of Ancillary Services, the
14 special requests paragraph?

15 A. Yes.

16 Q. Let me see if I was guessing right. Is that
17 the section you were thinking about?

18 A. It certainly was.

19 Q. Ahh. Me too.

20 All right. Bresnan has also suggested that
21 we strike this section.

22 Now, in your earlier testimony, you
23 indicated that one of the examples of a special request
24 is you have experienced instances where the
25 interconnecting party has asked your client to conduct

1 research. Do you recall that testimony?

2 A. Yes.

3 Q. Would you agree with me that if you took
4 this section out, that Bresnan would only have the
5 legal right to ask UBTA UBET to do those things that
6 are set forth in this agreement?

7 A. It would only have the right to ask for
8 those according -- I guess according to this agreement,
9 and we could say no to everything else if -- that we
10 didn't.

11 Q. So if Bresnan asked for research, that was
12 not an obligation under this agreement, UBTA UBET could
13 say no. Right?

14 A. They could say no. But to talk about what
15 had happened in my -- for one of my other clients, when
16 they complained that I don't have this information, and
17 they complained to the Commission and the Commission is
18 sitting on you, you have to do it. And if we have to
19 do it, we want to charge for it.

20 So even outside -- even outside this
21 agreement, and this is a real-life situation that
22 happened. And the company was asking for things that
23 were not in the agreement, requiring additional
24 information, complained to the Commission that we were
25 not doing this research for them. We were forced to do

1 it. And, you know, they wanted to get compensated for
2 it.

3 Q. Okay.

4 A. And I will say, this section also, which I
5 believe I testified to earlier, is -- covers the
6 provision of customer service records. That if we did
7 not include customer service records in our language,
8 if we are -- if Bresnan wants customer service records,
9 then we want to be reimbursed for providing those.

10 So there needs to be a place to cover
11 customer service records.

12 Q. Okay.

13 Do you understand the concern, though, that
14 the language here, where it says special requests, do
15 you understand that special requests, and maybe this is
16 an unavoidable fact that that's not defined?

17 A. Correct.

18 Q. And do you understand, then, that there is
19 the risk, from Bresnan's perspective, that every time
20 someone from Bresnan picks up the phone to speak to
21 someone at UBTA UBET, that could be deemed to be a
22 special request, and bills would start coming out?

23 A. Correct. And we are open to how you may
24 want to limit that.

25 Q. Well, do you understand that our proposal is

1 to limit it so that the parties only provide what's
2 provided in the agreement? Would that be one way to
3 fix it?

4 A. If something like that were proposed, as I
5 said, we still want to be reimbursed for CSRs, unless
6 you're going to withdraw your request for CSRs.

7 Q. Okay. Let's talk about CSRs, because
8 conveniently that's the next thing on my list. So
9 you're prescient.

10 In a CSR, if you look at the -- where is it?
11 Here it is.

12 A. And just to -- the CSR is a customer service
13 request. We kind of lapse into telephone language.

14 Q. Actually, we're calling it a customer
15 service record?

16 A. Record. Okay.

17 Q. So let's look at page eight of the Ancillary
18 Services Agreement.

19 ADMINISTRATIVE LAW JUDGE: Just so you know,
20 Mr. Nelson, I'm going to stop in about ten minutes.
21 Just for a quick break.

22 MR. NELSON: Cool. This will be a short
23 area, so a good stopping point.

24 Q. (BY MR. NELSON) A customer service record
25 discussion on page eight of the Ancillary Services is

1 paragraph 14 in blue. Do you see that ma'am?

2 A. Yes, I do.

3 Q. A customer service record is, as Bresnan
4 proposes, includes billing name, service address,
5 billing address, service and feature subscription,
6 directory listing information, and long distance
7 carrier identity. Do you see that?

8 A. Yes, I do.

9 Q. If a customer of UBTA UBET calls the
10 UBTA UBET office, and says, Would you please send me a
11 record which includes my billing name, service address,
12 billing address, service and feature subscription,
13 directory listing information, and long distance
14 carrier identity, so that I can confirm that your
15 records are accurate, would UBTA UBET provide the
16 customer with her own records?

17 A. I have no idea. I don't -- I don't know
18 what they do in that situation.

19 Q. Does a customer have a right to know what
20 services and features she's buying, how the directory
21 listing is included, and who UBTA UBET has listed as
22 her long distance carrier? Is that information the
23 customer has a right to know?

24 A. Sure. And usually they have it on their
25 bill.

1 Q. Understand, but if a customer calls and
2 wants to make sure this is correct, to confirm that the
3 billing is correct, wouldn't it be customary that the
4 telephone company would provide the customer with the
5 information of what's on her bill?

6 A. I'm sure it's -- I don't know how UBET does
7 it, but yes, they would provide the information most
8 likely to the end user.

9 Q. If the end user calls, would UBTA UBET send
10 her a charge to send her the information of what
11 services she's buying?

12 A. I don't know.

13 Q. If UBTA UBET did not charge for such a
14 service, and told the customer, without charge, what
15 services she was buying, what features she was buying,
16 and how her name was listed in directory assistance,
17 would you agree that a customer, who wanted to then
18 transfer service to another carrier, should be able to
19 get that same information for the same no charge as a
20 customer who simply wants to know just for her own
21 purposes?

22 A. I'm not sure what you're getting at.

23 It's very different to provide information
24 to a competing carrier versus going into a relationship
25 between a service provider and her end user.

1 Q. Stop right there, because I -- this is an
2 important point of distinction.

3 What we're suggesting, we, Bresnan, is not
4 that this information be provided to the competing
5 carrier, but what we're suggesting is that the end
6 user, who wants to switch her service carrier, has a
7 right to get her information, and she has a right to
8 provide it to the -- to Bresnan.

9 A. And that would be completely outside this
10 agreement. So, I mean, this is similar to our issue
11 with the intercept announcement.

12 UBET has a relationship with their end user
13 customer. You know, we build that relationship, we
14 have our customer service. We do a lot of things to
15 that customer. If the customer asks for things, we do,
16 to build our relationship with them.

17 It's a whole different issue when you have a
18 competing carrier come in, who wants to take away your
19 customer. And, frankly, by getting customer service
20 records, a lot of times that's to weed out whether it's
21 a customer they actually want or not, and they get
22 information to assist them in their own marketing.

23 And so, if an end user customer comes with
24 me -- if they want to have -- get information about
25 their services, that's between me and the end user.

1 If the end user then turns around and wants
2 to provide it to Bresnan, that, clearly, they're able
3 to do.

4 But if Bresnan is going to come to me and
5 ask for information, then there are completely
6 different obligations associated with that.

7 Q. If Bresnan has a letter of authorization,
8 isn't Bresnan authorized to act on behalf of the
9 customer?

10 A. It has authorization. I think it depends
11 what your authorization is.

12 My understanding of letters of authorization
13 is that it's an authorization to view. And, again,
14 this kind of comes into the Federal terms, that in the
15 Federal jurisdictions there's something called customer
16 proprietary network information, which talks about
17 information that is the customer's to release. And
18 there are a lot of Federal rules associated with the
19 provision, and protection of that information.

20 Q. So if -- if -- if this language is stricken,
21 from the agreement, what's to stop UBTA UBET from
22 saying, Okay. Customer one, you want your customer
23 records just to verify your bills, I'll give those to
24 you, no charge, no problem. Customer two, you want
25 your customer records, same work on my part, but I know

1 you want them because you're going to give them to
2 Bresnan. I'm going to refuse to give those to you.

3 Is there anything in this agreement that
4 Bresnan could then rely on to protect that second
5 customer's right to get her information?

6 A. The -- if the customer didn't like that --
7 if we refused to give the customer the information, the
8 customer's recourse would be to go to the Commission,
9 if we were not meeting our obligations under our local
10 tariffs.

11 Bresnan is not here to be an enforcement
12 bureau to UBET's local service.

13 Q. Same thing on intercept. If you say you're
14 going to leave our service territory, go to Maine,
15 we'll put an intercept message on there. You want an
16 intercept message on there because you're going to
17 Bresnan, we refuse. Is it the same answer that you're
18 saying the customer's only recourse is for the customer
19 to go and fire a letter to the Commission?

20 A. Yes.

21 Q. Isn't it true that throughout -- well --

22 A. I mean, if the same -- the same thing.

23 I mean, I have a relationship with a
24 customer. If I refuse to give service or cut them off
25 when they didn't pay their bill, and I was doing that

1 improperly, according to my tariff -- which Bresnan
2 does not, by the way -- then that would be an
3 enforcement by the Commission. And the Commission has
4 rules under, you know, local exchange on protecting end
5 users' service. And that's between -- you know, if
6 it's an enforcement action, that's between the
7 Commission and myself.

8 Bresnan is not the police here. I mean, I
9 don't think you want UBET coming and policing your
10 service either.

11 Q. Well, it turns out that throughout this
12 agreement, aren't you, in fact, proposing multiple
13 times where UBET is policing the services that Bresnan
14 is able to offer? That have nothing whatsoever to do
15 with this agreement? Wholesale services, ISP services,
16 NX -- or virtual NXX services? There's a whole list
17 of these services that you seem perfectly happy to be
18 the police about. Why isn't it something that we
19 should have the right on the other side?

20 A. We're policing the -- we're policing the
21 traffic that affects us. And whether there's an
22 announcement or not doesn't affect you. It affects the
23 end user. That doesn't affect you.

24 Q. If a customer understands that you're going
25 to refuse to give them an intercept message, because

1 they're switching to Bresnan, might that discourage the
2 customer from switching?

3 A. Frankly, most of the customers that I know
4 are doing LNP, so there is no announcement. I'm not
5 sure why they would want to be changing their telephone
6 number.

7 And when we put a data request in to say how
8 many people had intercept announcements, there was a
9 non-answer. I don't know if this is a one-time deal,
10 or, you know, all of the customers change their
11 numbers.

12 But every time I go in front of the
13 Commission, the -- the CLECs are crying that, Hey, I
14 have to have LNP because the vast majority of my
15 customers port their number, and this is not an issue.

16 So, you know, this is something between my
17 customer and myself, without Bresnan.

18 MR. NELSON: I promised the judge a break,
19 so I think I'm going to stop here.

20 ADMINISTRATIVE LAW JUDGE: Okay. Let's
21 break for ten minutes. Back at 3:10.

22 (Whereupon, a break was taken.)

23 ADMINISTRATIVE LAW JUDGE: Okay. Let's go
24 back on the record.

25 Go ahead, Mr. Nelson.

1 MR. NELSON: Thank you, sir.

2 Q. (BY MR. NELSON) Okay. Let's move on.

3 Are you ready?

4 A. Yes. I am.

5 Q. Let's talk about standards. I think in your
6 earlier testimony you agreed there are a variety of
7 different discussions, and we've got language back and
8 forth on standards. And I guess what I want to talk
9 about is this.

10 In a number of different places you have
11 included in your agreement that the standards will be
12 those standards that are employed by UBTA UBET. Do you
13 recall that?

14 A. Correct.

15 Q. Okay.

16 A. And I think -- I think I've referenced them
17 as UBET practices.

18 Q. Okay.

19 Now, would you -- would I be correct that
20 those -- that UBTA UBET practices, though, are
21 something which are subject to change, as UBET decides
22 to do them differently?

23 A. Yes.

24 Q. Okay.

25 A. From time to time.

1 Q. Okay.

2 Do you have an objection, conceptually, to
3 the application of either ATIS or Telcordia standards
4 to the issues being addressed in this Interconnection
5 Agreement?

6 And I'm sorry, I keep calling it -- you call
7 it Essential Facilities Agreement.

8 A. Yes.

9 Q. I'll try to get my nomenclature right and
10 get hip to the program.

11 Do you have any conceptual program applying
12 the ATIS, or what is sometimes called the ATIS, or the
13 Telcordia standards, to issues being discussed in this
14 Essential Facilities Agreement?

15 A. No. And as I had proposed the wording on
16 Section 8 -- and I'm going to give you a qualifier
17 here, of course. But in Section 8, that we're not
18 going to be inconsistent with the standards.

19 There are a lot of standards out there, and,
20 for example, on LNP, in the ATIS standards, there is,
21 in fact, a standard on how to do geographic
22 portability.

23 And clearly, we are not going to implement
24 that standard. And so there -- instead of having a
25 broad view, you're going to narrow down and say, here

1 are particular procedures. Here's how we apply with
2 things. And if they are -- you know, if we came up and
3 said, We're going to do, you know, 85 days to port a
4 number, clearly that would not be consistent with the
5 standard.

6 But there are a lot of things that -- there
7 are options in the standards where we might not be
8 implementing the entire standards in our operation.

9 And so that's -- we want to kind of skinny
10 it down as to what is actually going to be used.

11 Q. Do you understand the -- do you understand
12 Bresnan's concern with the idea that UBTA UBET's
13 standards, which are set in its own discretion, might
14 cause issues for Bresnan, depending on what those
15 standards may be, and how those standards may change
16 over time?

17 Do you understand that to be Bresnan's
18 concern?

19 A. Well, I don't know what your exact concern
20 is. If you're concerned that they're going to --

21 What I hear you saying is, we -- Bresnan is
22 concerned that those items are going to change.

23 Q. Well, let me ask it this way. Because maybe
24 I have to put the shoe on the other foot to understand
25 it better.

1 In order to make it clear, would you have an
2 objection to taking out everywhere it says UBTA UBET
3 standards and replacing that with everyone agrees to
4 comply with the Bresnan standards?

5 Would that be a problem for you?

6 A. I think what -- what I had suggested, and I
7 tried to go through that, what I was suggesting is
8 everywhere it says UBET standards, or it says -- or has
9 been replaced with industry standards, it would be
10 replaced with each party's standards, so that I am
11 agreeing that when I put an order into Bresnan, I would
12 be following Bresnan's procedures. When you say put an
13 order in to me, you would follow my procedures.

14 So that it would be -- all of the procedures
15 would be reciprocal, and both would be -- would not be
16 inconsistent with the standards.

17 So all of those places, except maybe for one
18 that I had mentioned, I think get into the reciprocal
19 nature that it's not one party's or the other's.

20 Q. Let me ask it this way.

21 To make it simpler, rather than having
22 everybody trying to figure out how to do that, would
23 you have any conceptual problem with, when we're
24 talking about standards, suggesting that the standards
25 ought to be the ATIS standards, Telcordia standards, or

1 such standards as Bresnan and UBTA UBET might mutually
2 agree on?

3 Imagining the possibility of some day when
4 we can all play in the sand box together, would you
5 have a problem if that were the language so that
6 Bresnan and UBTA UBET both would have predictability
7 and certainty about what the standards we're operating
8 under?

9 A. That seems like a reasonable request.

10 And to be clear, that we have the -- those
11 are referencing standards bodies, and that we would be
12 picking from the standards bodies.

13 But when it gets down to the exact
14 procedure, that there's not mutual agreement, say, for
15 example, when you get procedures that UBET would have
16 to have 15 service reps on hand to accept orders. I
17 don't -- we don't agree to have that -- that part
18 mutually agree. The mutual agree is the industry
19 document, not the actual implementation of how that is
20 done internal to our processes.

21 Q. Fair enough.

22 Okay. We have a potential agreement here,
23 so I'm just going to go ahead and move on while I think
24 we've got it.

25 Let's talk about service intervals. Look at

1 the ancillary service agreement, if you would.

2 On page two of the ancillary service
3 agreement, you understand that it is Bresnan's proposal
4 that these interconnection trunks, where they need to
5 be established, are done so within 30 days. Do you
6 recall that?

7 A. Yes.

8 Q. Do you have an objection to the
9 Interconnection Agreement setting forth a requirement
10 that where trunks need to be provisioned by both
11 parties, in order to accommodate a greater amount of
12 traffic along their interconnection path, whatever that
13 is, that that be accomplished within 30 days?

14 A. My suggestion would be, it would be our
15 standard intervals, which I think range from 30 to
16 45 days, so.

17 Q. Okay. So your suggestion would be 30 to
18 45 days?

19 A. Well, my suggestion would be in the
20 agreement that it's the standard interval. And I
21 believe those standard intervals are rather stable, but
22 they do change from time to time.

23 Q. And the standard interval is something
24 established in a tariff? In internal procedures?

25 Where does that standard exist?

1 A. That would be in -- you know, I'm
2 referencing an internal procedures document, which
3 would be a written document that is provided to
4 Bresnan.

5 I think -- probably not as extensive, but,
6 for example, Qwest has a Web site that has all of their
7 procedures on, that says this is how you're supposed to
8 do things. Clearly we don't have the resources of
9 Qwest, but it would have similar type information of
10 how that communication goes back and forth.

11 And similar to Qwest, they do have
12 adjustments from time to time, so when we provide a
13 document, then it's adjusted. It would be sent -- you
14 know, changes would be made available.

15 Q. I'm going to test the what maybe we had
16 agreed upon in just a moment.

17 To the extent the Interconnection Agreement
18 suggests that intervals for trunk provisioning would be
19 set forth in standards, would you have an objection to
20 having those standards, whatever they are, rather than
21 being unilaterally established by one party, be
22 something that was mutually agreed to by both parties?

23 A. I would have to check with my client on
24 that.

25 I am authorized to say that on the exchange

1 of the end user customers, their current interval is
2 the four days that you suggest here.

3 Q. Okay. You just skipped right ahead here.

4 So on the four-day interval, is that
5 something that UBTA UBET is willing to commit to?

6 A. Yes.

7 Q. And if a customer service record is part of
8 this agreement, and either with or without charge,
9 because all of those are moving parts here, but if it
10 is part of the agreement, do you have an objection to
11 the one-business daytime frame for the customer service
12 record request?

13 A. We've not done that at this point, so, at
14 this point, it's a little -- until they figure out
15 exactly what they have to do to get that into the
16 format required, which you had the elements listed,
17 there's a manual process to do that. They've not
18 addressed that.

19 The issue there is -- and I had a data
20 request on that, how many are there. If it's an
21 occasional item, most likely a one-day interval will be
22 okay.

23 I do have a client that was hit with 100
24 customer service requests a day, and they just couldn't
25 do it. I mean, they didn't have the labor to process

1 that.

2 So, you know, it somewhat depends on demand
3 also.

4 Q. So at this point you're not prepared to
5 suggest what interval UBTA UBET might be willing to
6 commit to on that particular issue?

7 Assuming?

8 A. Correct, but I would suggest that if there
9 were a reasonable number. You know, if there was some
10 limit in how many we got in a day, then perhaps we
11 could commit to the one day. If there was a reasonable
12 number of requests.

13 Q. Okay. Appreciate that.

14 All right. Let's talk about Federal
15 preemption. Because I know that's everybody's favorite
16 subject.

17 Your agreement, as you suggest, by my
18 record, identifies the issue of the Federal preemption
19 in three different spots.

20 A. Correct.

21 Q. I just want to flag those. We have, in
22 Exhibit B2, General Terms and Conditions, page three is
23 the first place this shows up.

24 And then again on page 12, in Section 18.

25 And then finally, on page 18 in

1 Section 28.4.

2 A. Correct.

3 Q. Okay.

4 Let me just ask this. Is there a -- this
5 may be a -- may be a dumb question. Is there a
6 particular reason why it's necessary to say the same
7 thing three times?

8 A. I think it's related to all of those
9 sections.

10 You know, there may be something where a
11 single -- I don't know. We need to get the idea
12 across, whether logistically it could be worked that
13 the other sections would refer to that statement.

14 Perhaps there could be a single statement,
15 and then reference in the other sections.

16 Q. Does it concern you at all that the language
17 is slightly different in the three different ways you
18 said it?

19 A. Does it concern me? Well, frankly I had
20 the lawyers -- the lawyers wrote that one, so that was
21 not --

22 MS. SLAWSON: It doesn't concern me.

23 MR. NELSON: Fair enough.

24 THE WITNESS: I would say that, since I'm an
25 engineer, the lawyers can write those things much

1 better than myself.

2 MR. NELSON: Fair enough.

3 Q. (BY MR. NELSON) Well, let's talk about the
4 first example of this, and then I think we'll sort of
5 assume that that discussion carries on to the other
6 versions of this.

7 I'll call your attention back to page three.
8 Termination for Federal Preemption Section 3.3 in your
9 original version.

10 A. Yes.

11 Q. Do you see that, ma'am?

12 A. Yes, I do.

13 Q. Okay. Under this provision it indicates
14 that UBET may terminate this agreement, in whole or in
15 part, in its sole discretion in the event that it is
16 subsequently determined by the FCC, Federal courts, or
17 State court, that VoIP service, such as that provided
18 by Bresnan pursuant to this agreement, is not
19 telecommunications services under Federal law, and that
20 Federal law is found to preempt State law in this
21 matter.

22 I want to talk to you about some different
23 pieces of that.

24 A. Okay.

25 Q. First part. UBET may terminate. I noted

1 that in this language there's no provision for a
2 timetable for that termination. And that seems to
3 suggest to me that the termination can happen
4 instantaneously. Is that the way you read that
5 language?

6 A. Strictly looking at the wording, correct.
7 It also does not require UBET to terminate.

8 Q. Okay.

9 Second thing, the agreement may be
10 terminated in whole or in part.

11 How is it that you imagine that UBTA UBET
12 would unilaterally decide to terminate part of the
13 agreement, but not other parts of the agreement?

14 A. If -- and I believe in your application for
15 service, you also mentioned that you were going to be
16 operating business service potentially under re-sale
17 that was non-VoIP, is my understanding of your
18 application.

19 So if you had implemented non-VoIP public
20 telecommunications service to business, then, in fact,
21 the agreement could continue on that side of things,
22 but terminate as to the VoIP traffic.

23 Q. Well, here's the part that I'm confused
24 about. In your whereas clause that you discussed, you
25 didn't like our deletion of -- you say Bresnan is a

1 voice-over-internet protocol provider, and my
2 understanding of your position is that this entire
3 agreement is predicated on that statement, and is
4 applicable only because of that statement.

5 Am I misunderstanding the purpose of this
6 whereas clause?

7 A. I don't think that -- I don't think that
8 whereas clause says that --

9 Excuse me just a second. I want to look at
10 it.

11 It doesn't say anything about it being
12 exclusively a VoIP provider.

13 Q. Okay. Well, there's nothing in this
14 agreement that contemplates the re-sale of UBTA UBET
15 services, is there?

16 A. No. But that does not mean -- I mean, I was
17 with a company that had circuits which services over
18 coax facility. So there's also no reason that UBET
19 could not implement a non-VoIP service on its coax
20 facilities.

21 MS. SLAWSON: Do you mean Bresnan?

22 THE WITNESS: Bresnan.

23 MR. NELSON: I'm sure UBTA UBET could do as
24 well. We'll talk about that in just a little while.

25 Q. (BY MR. NELSON) Let's move on then.

1 Actually, let me just double check.

2 Whole or in part. Do I understand that to
3 mean, though, that it's UBET's discretion which part it
4 keeps and which parts it deletes?

5 And further, that if it does so, that
6 Bresnan is legally obligated to continue to accept the
7 now truncated agreement as the Interconnection
8 Agreement?

9 A. That seems to be a legal question that I'm
10 not really comfortable with.

11 Q. Okay.

12 A. So I think --

13 I know a lot of regulations, but I think
14 that gets a little beyond what my knowledge is.

15 Q. All right. Well let's just skip that one.
16 Let's talk about the next part of this provision. Sole
17 discretion.

18 Sole discretion extends in this instance to
19 UBET. Is that right?

20 A. Yes.

21 Q. My understanding of UBET's -- or UBTA UBET's
22 position -- and you can correct me if I'm wrong -- is
23 that UBTA UBET's position is that Bresnan has no right
24 to interconnection under Federal law today. Is that
25 fair?

1 A. Correct.

2 Q. UBTA UBET's current -- also --

3 Let's try that again. UBTA UBET's position
4 is also, is it not, today, Federal law preempts Utah
5 State law, in -- with respect to interconnection.

6 Do you recall seeing that position
7 expressed?

8 A. Yes.

9 Q. Okay.

10 So would it be correct to say that if the
11 language that you proposed were enacted, that the day
12 after the agreement was signed, UBTA UBET, in its sole
13 discretion, could decide that what it already thinks to
14 be the case is the case, and terminate the agreement?

15 A. No. I don't think so.

16 Q. And what language in here limits UBTA UBET's
17 discretion to decide that its positions are correct,
18 and that the agreement ought to be terminated?

19 A. Because it goes on to say that it sub --
20 it's subsequently determined by the FCC, meaning a
21 future event.

22 So today, we have all sorts of statements
23 from the FCC which we claim support our position. I
24 believe the word subsequently refers to a future event
25 after this agreement is put in. So the FCC would have

1 to do something in addition to what they have done
2 currently.

3 Q. So if the FCC issues a press release saying,
4 Do you know what? We need to re-look at this
5 voice-over-internet protocol issue. Would that be
6 sufficient, then, to allow UBTA UBET to enact -- to act
7 based on its understanding of current Federal law --

8 A. No.

9 Q. -- and terminate the agreement?

10 A. A press release is not a determination.

11 Q. Okay.

12 Do you think -- let me back up.

13 Do you think it is the case that when the
14 FCC makes a determination, that those determinations
15 are always crystal clear and not subject to
16 interpretation?

17 A. There are different interpretations of
18 various FCC orders, yes.

19 Q. And isn't it the case that often, maybe even
20 always, when the FCC does something, you typically will
21 find that there is a great deal of dispute over what it
22 is that they did, resulting in subsequent litigation,
23 arbitrations, procedures in state processes? All of
24 that is not unheard of, isn't it?

25 A. There are certainly litigations over FCC

1 rules.

2 Q. Okay.

3 Why is it that UBTA UBET believes that it
4 deserves to have its sole discretion apply with respect
5 to interpreting FCC rules, which I think we all could
6 agree are oftentimes subject to different
7 interpretations?

8 Why is that in the public interest?

9 A. I'd have to think about that one for a
10 second.

11 We've not, to date, had our rights under the
12 FCC fully litigated. And, you know, frankly, by
13 getting into this agreement, we're going to have
14 interconnection already there, and -- without our day
15 in court. And yes, we believe we should have our day
16 in court under the FCC rules.

17 And so if there is a change, and, as it
18 says, it's determined by the FCC -- and I think there's
19 other conditions here, and so it also needs to be
20 found -- so there's several conditions here. One, it's
21 subsequently determined by the FCC that it's not a
22 telecom service, and Federal law is found to preempt
23 State law. So there are two qualifications. And by
24 stating that Federal law is found to be preempted, it
25 seems that that is a non-Bresnan -- or, sorry. I'm

1 looking at you and saying the wrong name. -- non-UBET
2 determination, but a Federal law determination, that,
3 in fact, the Federal law preempts the State law.

4 Q. You mentioned the concept "a day in court."
5 I think that's a very important concept.

6 By making it UBTA UBET's sole discretion to
7 decide whether or not this agreement should terminate
8 or not, based on whatever it is the FCC, some Federal
9 court or some State court has to say in the future,
10 aren't you in effect denying Bresnan its day in court
11 with respect to whether or not Bresnan might disagree
12 that whatever it is the FCC did, it's not what
13 UBTA UBET believes it to be?

14 A. I don't think so.

15 Q. Okay.

16 A. And, again, when we get into these court
17 items, I am not versed in the law. I know some
18 regulations, but I have to defer to my lawyer on that.

19 Q. All right. Well, let me ask you this
20 procedurally, based on your knowledge, if you can
21 answer this.

22 Let's say that all three of these sections
23 were taken out. As Bresnan has suggested.

24 Do you have that unhappy assumption in mind?

25 A. Yeah.

1 Q. I understand that's not your position, but
2 let's assume --

3 A. Very unhappy.

4 Q. -- that that's the result. Do you have that
5 in mind?

6 A. Yes.

7 Q. And let's say that the FCC, the Federal
8 courts, or the State courts do something which, in
9 UBTA UBET's opinion, mean that Bresnan is no longer
10 entitled to interconnection as it's set forth in this
11 Essential Facilities Agreement. Do you have that in
12 mind?

13 A. Yep.

14 Q. Does not UBTA UBET have the right, in either
15 a court here in Utah or before this Commission, to
16 carry its argument forward and say, We believe that
17 whatever the FCC has done, or the Federal courts have
18 done, means that Bresnan is no longer entitled to this
19 agreement?

20 UBTA UBET can make that argument, isn't that
21 right?

22 A. I think I might have lost something. Can I
23 repeat what I think you're asking?

24 Q. Let me try it again.

25 A. Okay.

1 Q. If UBTA UBET decides that these conditions
2 are met.

3 A. Yeah.

4 Q. And these three paragraphs don't exist in
5 this agreement, doesn't UBTA UBET have the right to
6 petition the Commission or a court in Utah to strike
7 down this agreement?

8 A. I would assume they do.

9 Q. And in such a process, then, wouldn't
10 Bresnan possibly have a right to raise its arguments
11 about whether or not the agreement should be struck
12 down or not?

13 A. I think what you might be missing here is,
14 we're saying that --

15 Q. I'm --

16 A. Can -- can I --

17 There's -- and this is addressing your day
18 in court.

19 That the preemption is a term of default.
20 The rest of this default, in termination of agreement,
21 have other items in there where I think Bresnan would
22 come back, because I think we're saying -- if you look
23 up earlier, it says, if you're notified of a default,
24 which the FCC determination would be a default
25 provision, and under these terms I believe we give you

1 a notice that you are in default.

2 So if we had determined under our sole
3 discretion that you were in default, you would go to
4 the 30 days under these default procedures, and then
5 follow through the default procedures.

6 And I believe one of the things in the
7 default procedures, which perhaps you have added in,
8 but is that there is a dispute resolution.

9 Q. Okay. Ms. Wimer --

10 A. Would that give you back your day in court?

11 Q. I want you to show me where in paragraph
12 3.3.1 the word default exists.

13 A. There is not default within that paragraph.

14 Q. Right. And the title of that Section 3 is
15 Termination of the Agreement. Correct?

16 A. Correct.

17 Q. Bottom line, Ms. Wimer, isn't it the proper
18 place for the Commission to decide whether or not State
19 law has been preempted, and for the Commission to
20 decide whether this agreement should continue or not,
21 and not one of the parties to this agreement in its
22 sole discretion?

23 MS. SLAWSON: Your Honor, I'm going to
24 object. He's already asked -- he's asked and she's
25 answered this question numerous times.

1 ADMINISTRATIVE LAW JUDGE: Sustained.

2 Q. (BY MR. NELSON) Okay. Would you agree with
3 me, Ms. Wimer, that the concept of VoIP service, as
4 expressed in this paragraph, means a lot of different
5 things to a lot of different people?

6 A. I think, as Mr. Meredith had talked
7 yesterday, and we have the definition of IP-enabled
8 voice. And typically, which perhaps has been a
9 deletion here, I have a parenthesis beside it that also
10 says VoIP.

11 So as far as this agreement goes, our intent
12 is to have the definition of IP-enabled and VoIP to be
13 interchangeable. And we can change -- make those
14 modifications so we have a defined term, if -- to clear
15 up your concern.

16 Q. Do you understand that, for example, the
17 VoIP service provided by someone like Vonnage, is very
18 different from the VoIP service provided by someone
19 like Bresnan?

20 A. You provision it separately, but it begins
21 on -- or my understanding of what you have said in your
22 application, that it's an IP service.

23 Q. If the FCC were to act in such a way as to
24 draw a point of distinction between different kinds of
25 VoIP service. Do you have that assumption in mind?

1 A. Correct.

2 Q. Okay.

3 How is it that, under this provision,
4 UBTA UBET would decide whether the kind of VoIP service
5 that the FCC has treated one way is the same as the
6 kind of VoIP service that Bresnan is providing? As
7 opposed to the kind of VoIP service that the FCC might
8 decide to treat differently?

9 A. Probably by examining your application for
10 certification, where you stated how you provide your
11 service.

12 Q. And, again, under your proposal, that would
13 be done in UBTA UBET's then sole discretion?

14 A. Yes.

15 Q. Okay.

16 Let's talk about indirect interconnection.

17 Let me first ask if you can pull out

18 Exhibit UU-2.

19 A. Thank you. I have one I can write on, just
20 in case.

21 Q. All right.

22 The connection with the Provo tandem, which
23 has the size then articulated there?

24 I assume that this is a fiberoptic facility,
25 but I wanted to confirm if that's true. Do you know?

1 A. I don't know off the top of my head. I --
2 based on the size of it, I would assume that.

3 Q. Okay.

4 Would you also assume that the connection
5 with the UFN tandem were a fiber optic facility?

6 A. As far as I know, all switches only take T1
7 connections, so.

8 I don't -- I don't think they have an
9 optical switch yet.

10 Q. Okay.

11 You indicated that -- it was your testimony
12 that the tandem -- the connection to the Provo tandem
13 would need to be expanded because of the high
14 utilization rate. Do you see that?

15 Or do you recall that testimony?

16 A. Yes, I do.

17 Q. Okay.

18 In your opinion, do you have an idea of what
19 the capacity would be, after the expansion, in order to
20 get to a utilization rate that you would suggest would
21 be a reasonable rate going forward?

22 A. No, I don't. No. I don't.

23 Q. One of the things that was discussed
24 yesterday, that Mr. Meredith kindly punted to you, and
25 I don't know whether this homework was accomplished or

1 not, was do you recall a question I had for
2 Mr. Meredith about whether or not UBTA UBET owned, in
3 part or through a -- some sort of corporate ownership
4 structure with some other entity, a portion of the UFN
5 tandem?

6 A. It does not.

7 Q. It does not. Okay.

8 MS. SLAWSON: I'm sorry, can you repeat the
9 question again?

10 It seemed like you added something in there.

11 Q. (BY MR. NELSON) The fundamental question is
12 does UBTA UBET have any ownership interest, either
13 directly or indirectly, in the UFN tandem?

14 And when I say indirectly, it means through
15 a -- it owns a piece of some other corporation, who, in
16 turn, owns the UFN tandem.

17 A. UBET -- I don't know how to answer the
18 second -- I don't know how to answer your indirect
19 question.

20 The party to this agreement that we're
21 discussing does not have ownership.

22 That's the question that was asked.

23 MS. SLAWSON: If I may.

24 MR. NELSON: Sure.

25 MS. SLAWSON: Do you know who owns -- go

1 ahead and explain the ownership of UFN, to the extent
2 that you know it.

3 We're not trying to hide the ball, it's just
4 the question is confusing.

5 Q. (BY MR. NELSON) My question is, according
6 to Mr. Meredith, a consortium of rural ILECs somehow
7 own the UFN tandem, and the question is, is UBTA UBET a
8 member of that consortium, or that ownership group who,
9 in turn, owns the tandem?

10 A. UBTA UBET is not a member of that ownership
11 group; however, their wireless affiliate is a member of
12 the group.

13 Q. Okay.

14 Thank you. I apologize for asking that in
15 an awkward way. That's --

16 And the wireless affiliate, are those -- is
17 the wireless affiliate and UBTA UBET owned by a common
18 corporate parent? Do you know?

19 A. I do not know that.

20 Q. I'm looking at the BIP. Can you explain
21 what a BIP is?

22 A. A billing interface percentage, I believe is
23 what it stands for.

24 Q. Do you know what that means?

25 A. Yes.

1 When two carriers are involved in access,
2 the mileage between the two, when it relates to access
3 service elements, that in access you have a tandem
4 switching element and you have several transport
5 elements.

6 You have a kind of a fixed charge that's at
7 a location, and then typically a rate element that's
8 mileage-based.

9 And when there's two people involved in
10 access, and have a meet point for access, they look at
11 the air-line miles between the beginning point and the
12 end point -- not the actual route miles, but the
13 air-line miles, and they determine that's what we're
14 going to bill on the mileage, and what percentage of
15 that should be billed by the one carrier, and what
16 percentage should be billed by the other carrier.

17 So when a facility is built, for access
18 purposes like it is in this case, we know, when we
19 build the facility, or contract the facility, if we're
20 leasing, a fixed amount, and then receiving
21 minute-of-use access on it, how we're going to get our
22 revenue back and forth.

23 And so you may have to -- and you may notice
24 in my testimony, I testified that the route miles
25 between Vernal and Provo, I believe were 210 miles.

1 When we take an air-line mileage, that comes down to
2 114. And that's why you have to do these percentages,
3 because part of that air-line thing may not work out
4 exactly right. So that's why you have to do the
5 percentages, to kind of get from route miles to
6 air-line miles.

7 Q. Okay.

8 So in the case of the UFN -- the connection
9 to the UFN tandem, the BIP associated with UBET -- fun
10 thing to say. -- is 100 percent?

11 So do I take that to mean that UBET is
12 responsible for 100 percent of the billing associated
13 with that facility?

14 A. It receives 100 percent of the access
15 charges for the mileage portion.

16 Q. Right.

17 Do you know if UBTA UBET owns the
18 connection, either wholly or through a lease
19 arrangement, between itself and the UFN tandem?

20 A. I would -- I can say it's financially
21 responsible for it. It may be leasing, you know, a T1
22 and then selling the T1 on a per-minute-of-use basis,
23 or the 20 T1s.

24 But it is financially responsible for the
25 fixed rates of getting that facility there.

1 And in doing that, it's based on -- you
2 know, it had made that decision based on the revenue it
3 anticipates to get from access, is how it made its
4 business decision on where it brought that facility
5 from, similar to how Bresnan decided to put their
6 switch in Colorado.

7 Q. Sure.

8 Now, in this instance, it sounds like,
9 though, that UBTA UBET has acquired this transmission
10 path all the way from Vernal up to presumably some port
11 in the UFN tandem in Salt Lake City. Is that correct?

12 A. Correct.

13 Q. So, unlike the situation with Qwest, where
14 there's some meet point at Whiskey Springs -- which
15 sounds very Old West. I sort of like that. Unlike
16 that, where it transfers from UBTA UBET to Qwest at
17 some point in the middle, in this case, UBTA UBET has
18 extended those facilities all the way into Salt Lake.
19 Right?

20 A. Yes.

21 Q. And that's outside of the UBTA UBET service
22 territory, isn't it?

23 A. Out partially.

24 Q. Okay. With respect to the tandem connection
25 in Provo, do you know -- you had mentioned in your

1 discussion earlier that there may be contractual limits
2 on whether or not local traffic can be carried over a
3 particular trunk group. Do you recall that discussion?

4 A. Yes.

5 Q. Okay.

6 For purposes of the Interconnection
7 Agreement that UBTA UBET has about Qwest, presumably
8 with respect to the Provo tandem, do you know whether
9 any such restrictions exist in that actual agreement?

10 A. No.

11 Q. Okay.

12 A. I mean, I -- frankly, we know what has been
13 ordered on the trunks, and frankly, because these have
14 been historical agreements, there's been some question,
15 you know, of finding what is out there.

16 But I would say you go by what is ordered on
17 the arrangement and the definition under the Qwest
18 tariff on feature group. It's a feature group C trunk,
19 and the feature group C trunk is an access trunk.

20 Q. And do you know whether or not, under the --
21 under the rules that apply to Qwest generally, that --
22 whether Qwest is allowed -- well, strike that.

23 On the UFN connection point, is the
24 Interconnection Agreement there between UBET and
25 whatever it is, this corporate entity who owns UFN, is

1 that the two parties to the agreement as to how that
2 interconnection happens at that port?

3 MS. SLAWSON: I'm sorry, what
4 Interconnection Agreement are you referring to?

5 Q. (BY MR. NELSON) Is there an agreement --
6 let me back up. Let me ask if there is an agreement.

7 Is there an agreement between UBTA UBET and
8 the company who owns and operates the UFN tandem, to
9 allow UBTA UBET to connect to that tandem?

10 A. From my understanding, there's service order
11 arrangements.

12 Q. Okay.
13 Is there a contract associated with that?

14 A. I'm not sure.

15 Q. Okay.
16 So I take it -- let me just ask to make
17 sure.

18 You wouldn't be sure whether or not,
19 whatever the contract is, would restrict also running
20 local traffic over that connection. Would that be
21 something you also don't know?

22 A. My understanding is that the UFN tandem was
23 set up for toll traffic. And so, when orders have been
24 placed, it's been placed for toll traffic, and not for
25 local.

1 Q. I understand that. But do you know whether
2 there's a contractual restriction on UBTA UBET's
3 ability to run local traffic through that as well?

4 A. Local traffic. It's kind of one of these
5 things, is it specifically excluded or not mentioned?
6 And I would say it is not mentioned. From my
7 understanding.

8 Q. Okay.

9 A. And can I just add to that, which means in
10 either of the cases, UBET has to make arrangements to
11 be able to provide --

12 You know, we talked about the magic
13 translations that happen. Either UFN or Qwest would
14 have to agree to make those translations, and
15 essentially establish a proactive relationship to take
16 on that local traffic.

17 Q. Okay. All right. Back to the agreement.

18 A. Okay.

19 Q. This is the part of this I'm dreading, so.
20 Hopefully it won't be as painful as I imagine it might
21 be.

22 Let's take a look at page one.

23 Are you there, Ms. Wimer?

24 A. I am now.

25 Q. Okay.

1 I notice one of the things you didn't talk
2 about when you were running through your routine with
3 Ms. Slawson is paragraph 1.2.

4 I wanted to ask you a question about that.

5 And this is a general area that I want to
6 suggest.

7 Okay.

8 There are two times -- two different ways in
9 this agreement that people's tariffs are invoked.

10 One way is when penalties are being
11 assessed. Do you recall that?

12 A. Yes.

13 Q. A second way is the agreement will
14 occasionally invoke someone's tariffs when a service
15 outside of this agreement is being provisioned.

16 Do you recall things along those lines?

17 A. Yes.

18 Q. Okay.

19 In 1.2, do you understand that it is
20 Bresnan's red-line, the intent of it, was to suggest
21 that any other traffic would be subject to each party's
22 own respective tariffs or price lists? Do you see
23 that?

24 A. Yes. I see your red-line.

25 Q. Okay.

1 So here's the question.

2 If, for whatever reason, UBTA UBET causes
3 something to happen, which would, for example, be a
4 switched access service, okay? So that you, in
5 essence, for whatever reason, were using switched
6 access service provided by Bresnan. Do you have that
7 in mind?

8 A. Yes.

9 Q. In that instance, would it not be
10 appropriate that if you are buying switched access
11 service from Bresnan, that whatever lawful rate Bresnan
12 is charging for switched access service, you would pay?

13 A. Well, I think the question is a lawful rate.

14 And when -- what I want to share with you,
15 for example, is we were in some negotiations in South
16 Carolina where the CLEC had a -- you know, one-day post
17 of their rates, and decided that they were going to
18 increase their intrastate access rates to I believe it
19 was \$0.15, and slide it in through the whole scenario.

20 And I would say, when the rest of the State
21 was at a penny, that although, I guess theoretically
22 they're lawful, they are not reasonable, nor were they
23 reviewed.

24 Q. I understand. But in the event -- if -- if
25 UBTA UBET buys switched access service from Bresnan,

1 and you don't like our rate, for whatever reason, the
2 recourse ought to be to come to the Commission. Right?

3 Or -- I back up. This Commission or the
4 FCC. Whichever Commission is regulating that
5 particular rate, oughtent it be the case that you pay
6 whatever the lawful rate is? If you don't like the
7 lawful rate, you take it up with the regulatory
8 authority?

9 A. Potentially that could occur.

10 Q. If Bresnan has a lawful rate for a switched
11 access service, and instead of charging that rate it
12 charged UBTA UBET's rate, wouldn't that be a violation
13 of Bresnan's obligation to provide non-discriminatory
14 service?

15 A. I don't know.

16 I know there is a different rate even in
17 the -- or my understanding is even in some of the Qwest
18 tariffs, that they decide to charge IntraLATA traffic
19 to their customers at the same recip comp rate, but
20 still charge switched access to other carriers. So
21 there are multiple rates out there.

22 Q. There's nothing in this agreement which
23 suggests that -- oh. Strike that.

24 I think we're good enough there.

25 Let's go to 1.3. And here I'll call your

1 attention to UU-3, because you've made a change here
2 that I want to just make sure that you have in front of
3 you when we're talking about this.

4 A. Yes.

5 Q. You suggested the insertion of that word
6 interconnection here in 1.3. Do you see that?

7 A. Yes.

8 Q. Okay.

9 First of all, after the word services there
10 is a little clause there that says, "including service
11 to ISPs by Bresnan to any entity."

12 Do you see that?

13 A. Correct.

14 Q. Okay.

15 Is service to an ISP a wholesale
16 interconnection service?

17 A. That depends how it's offered.

18 For example, level three offers wholesale
19 interconnection services to ISPs.

20 Q. Is it possible to serve an ISP in such a way
21 as to not be a wholesale interconnection service?

22 For example, when UBTA UBET service an ISP,
23 is it providing the ISP with a wholesale
24 interconnection service?

25 A. No. It's providing with a local exchange

1 service.

2 Q. Is Bresnan being prohibited, under this
3 language, from doing the same thing that UBTA UBET is
4 currently doing?

5 A. I don't think so.

6 Q. So UBTA UBET -- so Bresnan can provide local
7 exchange service to ISPs?

8 A. Yeah.

9 Q. Okay.
10 Wholesale interconnection service.
11 Is providing -- let me back up.
12 If Bresnan wanted to do a direct
13 interconnection with a wireless carrier. Do you have
14 that in mind?

15 A. Yes.

16 Q. Would you agree that Bresnan would be
17 providing wholesale interconnection services to that
18 wireless carrier?

19 A. If it had a direct connection for service
20 going to Bresnan, yeah.

21 If it has -- and to be clear, essentially --
22 instead of going through all of this, why don't we --
23 I'll just say what we have in mind here.

24 Q. Well, I --

25 A. I'll use the example of what we're trying to

1 prohibit.

2 Q. And here's --

3 A. You have --

4 Q. Can I stop you right there?

5 A. Okay.

6 Q. My problem is, the word wholesale
7 interconnection services is very broad. I think it
8 could include such things at direct connection to a
9 wireless carrier.

10 I understand that you have concerns. What
11 I'm trying to see though, through this language, is --

12 Let me try it this way.

13 If you look at the second sentence of 1.3,
14 which says, Neither party shall transmit over the
15 interconnection arrangements provided for on this
16 agreement any traffic that is generated by a
17 third-party, that is not an end user customer -- we can
18 even add the via the facilities or other arrangements
19 contemplated by the agreement factor. I think we say
20 it twice, but I don't care.

21 Isn't it true that that sentence prohibits
22 every example you're about to give us from happening?

23 And if not, could you tell me what example
24 you have in mind that is not restricted by the sentence
25 beginning "neither party?"

1 A. Sorry. Are you going back to your proposed
2 language?

3 Sorry. I was still looking at ours. I was
4 wondering where the neither party came in.

5 Q. Forgive me.

6 If you look at the neither party?

7 A. Yes.

8 Q. Because the only issue there is --

9 A. Sorry, I was back on the wrong --

10 Q. The only issue there is we're making it
11 symmetrical. And I understand that -- I apologize for
12 that. But the point is, that sentence prohibits,
13 either unilaterally from Bresnan under your proposal or
14 reciprocally in our proposal, prohibits the exchange of
15 traffic that is generated by a third-party that is not
16 an end-user customer.

17 And doesn't that cover the waterfront of all
18 of the concerns you have about what you call
19 generically these "wholesale interconnection services?"

20 A. That seems to cover a lot of the type of
21 traffic that we're concerned about.

22 The second piece -- and, again, hopefully
23 we're not going to go through and actually get to
24 wording here. But, you know, the conceptual pieces,
25 that one, that wholesale interconnection is not given

1 to third-party carriers, and two, if it is used for
2 third-party carriers, that there's a penalty.

3 And not only have you stated your service as
4 is, but you've deleted the penalty. And without
5 getting there, one is somewhat meaningless, if there's
6 no enforcement of that particular section.

7 Q. All right. So if we put the penalty back in
8 if the Commission decides to put the penalty in, can we
9 still delete that ambiguous first sentence?

10 A. We can make it more clear. Whether your
11 language --

12 Yes. We can -- I am not going to agree to
13 your exact wording, but conceptually, if you agree that
14 you're not going to do wholesale, and we can work on
15 the wording for the definition, and there's a penalty,
16 conceptually we're in agreement.

17 Q. The problem is, you keep saying you want us
18 to agree we're not going to do wholesale.

19 Every time you use that word, what I have in
20 mind is a service that Bresnan provides to other
21 telecommunications carrier.

22 And we do a lot of that, through
23 interconnections, through direct transports, through
24 switched access. And my problem is, you keep using
25 that word as if it's narrow, but it's not.

1 A. But if it's switched access, it's not coming
2 to us.

3 I mean, one of the -- one of the issues
4 here, and which we tried to limit it, because we're
5 saying it's wholesale service that you're providing
6 over facilities and other arrangements contemplated in
7 this agreement. If you're providing a wholesale
8 service that is access service, that doesn't touch this
9 agreement, I don't care.

10 Q. Okay.

11 If you don't care, then here --

12 A. The limiting --

13 Q. If you --

14 A. The limiting factor is that it is here, and
15 you're transferring the traffic under this arrangement
16 to me. I mean, it seems like conceptually we're pretty
17 close here, but I think we're arguing about wording.

18 Q. Well, I think we are. And unfortunately,
19 this is the only forum we have to argue about wording.

20 So, my problem here, if you look at the
21 first sentence, would you agree with me, the first
22 sentence says the provision of wholesale services, by
23 Bresnan, to any entity, is strictly prohibited?

24 It doesn't say that we can't transmit
25 minutes over this agreement, it says we cannot provide

1 wholesale services to anyone. Whether we're
2 transmitting it under the agreement or not.

3 That's the first sentence. Isn't it?

4 A. Obviously you're interpreting it differently
5 than how we've interpreted it, and how it's intended.

6 We are willing to discuss a compromise, but,
7 frankly, I'm not -- I've not come prepared to talk
8 about individual wording on this.

9 If we can come to a conceptual agreement on
10 these things, hopefully we can negotiate the exact
11 wording outside the Commission.

12 And I'm sure the Commission, if we came back
13 and said, We now agree to these 15 sections, and we
14 agree on the wording, they would be very happy.

15 Q. All right.

16 Page two.

17 In the red-line that you have, in the red
18 language, the stuff that's stricken, I want to talk to
19 you about 2.4.

20 Your proposal is that, if you go through
21 this process with the renegotiation, 2.4 says that in
22 the event you get to a month-to-month arrangement, UBET
23 has the unilateral option to increase the rates to its
24 then current tariffs. Bresnan is obligated to continue
25 to provide service at the lower of this agreement or

1 its current tariffs.

2 Would you agree with me that that is an
3 asymmetrical provision?

4 A. Let me just state where this clause comes
5 in.

6 This is a situation where we've come to the
7 end of the term. There has been a request for
8 renegotiation, and during the negotiation, for a
9 replacement agreement, we're on a month-to-month basis.

10 And under those conditions, UBET's option --
11 you know, we can increase the rates to the then-current
12 tariffs. And, again, Bresnan is either under the same
13 terms or their rates.

14 And, again, the issue with going carte
15 blanch with the Bresnan tariffs is there is no review
16 process on their tariffs, so it's signing a blank
17 check.

18 Q. But we're actually on the lower of those two
19 options, aren't we? The lower of the current rates or
20 the -- in the tariff or the ones in the agreement?

21 A. Correct.

22 Q. I guess my fundamental issue here is, if
23 we're going to go month-to-month, would you have an
24 objection if this were done symmetrically, where we
25 either agree the month to month is on the agreement,

1 for everyone, or the month to month is on the lawful
2 tariffs that either party has in front of this
3 Commission?

4 Why is it that UBTA UBET gets to have its
5 cake and eat it too?

6 A. Again, because your tariffs are not
7 reviewed.

8 If I say it's just under your tariffs, I
9 don't know what I'm agreeing to. There's no -- there's
10 no reasonability check on what your tariffs are.

11 Q. But if the Commission --

12 A. And --

13 Q. I guess --

14 A. And I can say, I can go back and ask my
15 client. That is not something that I had reviewed with
16 them. That is a new offer on the table here.

17 Q. So fundamental position of yours is, even if
18 the Commission deems our tariff lawful, that's not good
19 enough for UBTA UBET? You may think it's excessive
20 anyway? Is that fair?

21 A. My understanding of the process is there is
22 no review of your tariff. That it is submitted. And
23 unless there is an objection, it is effective.

24 Q. Which then makes it lawful. Right?

25 A. And, like I said, it's not been reviewed.

1 There's no proactive review to say that it's lawful.
2 There is -- it automatically goes into effect.

3 Q. Okay.

4 Let's go to page three.

5 Section 3.1, termination for default not
6 cured within 30 days as it appears on this document.
7 Recognizing that Bresnan has suggested changes to that
8 language, I'm going to focus on your proposal here.

9 And I guess the simple -- let me just ask
10 what your intention is.

11 Is it your intention, because -- well, back
12 up.

13 As I read this language, it suggests to me
14 that if the defaulting party does not cure the alleged
15 default within 30 calendar days of receipt, then the
16 agreement may be terminated. And I see nothing in this
17 language to suggest that that termination would not
18 happen in the event that the parties had negotiated
19 dispute resolution.

20 And so let me just ask this question.

21 Is it your intent that UBTA UBET, for your
22 part, would be able to terminate the agreement if an
23 alleged default is not cured within 30 days, even if,
24 during that time period, Bresnan invoked the dispute
25 resolution procedures that are contemplated in the

1 agreement?

2 A. No, I don't believe that's the intent.

3 Q. Okay.

4 So if the dispute resolution procedures are
5 invoked, your intent would be that that would prevent
6 someone from terminating this default during the
7 pendency of that dispute resolution process?

8 A. I did not go that far.

9 Q. Okay. I was so close.

10 So while -- if the dispute resolution is
11 invoked while that process is ongoing, what rights
12 would the UBTA UBET, in this one case, have to
13 terminate the agreement? What would the -- what would
14 be an example of when that might happen?

15 A. So, for example, there is something going on
16 nationwide with a carrier called Global NAPs, where
17 Global NAPs goes into areas, they provide voice service
18 to end users, complete calls on people's networks,
19 which are toll calls, and then refuses to pay access
20 under the guise that it is IP traffic. And there are
21 cases going on for years and years and years as to
22 getting the service turned off, so that they no longer
23 have to continue to complete calls for free.

24 And, under that scenario, Global NAPs, every
25 month, disputes the bill. When it's turned out. And

1 even -- and it's been a long, drawn-out processes.

2 We have examples of, you know, clients in
3 Georgia where they've, you know, been out for four
4 years. There's cases of Global NAPs taking the money
5 to Grand Cayman Island, or something like that, so they
6 don't have to pay these charges.

7 And if we would have a carte blanche that
8 says you can't even go during this dispute
9 resolution -- we don't want to say you could never do
10 that, but there may be certain circumstances that
11 happens.

12 Clearly that would not be the norm, and
13 somewhat two things on a -- the default.

14 One, we don't want to be required to go to
15 dispute resolution before it's terminated, because
16 there are also instances where the carrier just doesn't
17 respond.

18 And if they don't bring a dispute to
19 resolution, I feel that we should be able to continue
20 on and, actually, if there's no response, no dispute
21 resolution, that we're able to terminate the agreement.

22 If there is a dispute resolution, you try to
23 work things out. Clearly our intent is that we're not
24 going to be turning off traffic anytime soon, but we
25 want to have the provisions, if it does turn into

1 something like a Global NAPs, that we would have the
2 right to terminate the agreement.

3 Q. So your intent would be that if UBTA UBET
4 believes the dispute resolution process is taking too
5 long, you could terminate the agreement unilaterally.

6 Is that my understanding of what you just
7 said you wanted to make sure your right was?

8 A. Correct.

9 Q. And just so we're clear, if Bresnan has
10 customers in Vernal?

11 A. Mm-hmm.

12 Q. If the agreement is terminated, at that
13 moment, Bresnan's customers and UBTA UBET's will not be
14 able to call each other, will they?

15 A. Not through that connection, but they would
16 be able to call each other if you send it through the
17 toll network.

18 Q. Is that what you would do? If a Vernal --
19 if the agreement was terminated, and your customer
20 called the Bresnan customer, would UBTA UBET route
21 those calls through a toll network and pay Bresnan
22 switched access terminating rates for all of those
23 calls?

24 A. I don't know. It's a hypothetical.

25 You asked can they -- you asked can they be

1 completed, and my answer is, yes, they can be
2 completed.

3 Q. Okay.

4 Let's talk about insolvency or bankruptcy.

5 3.2.

6 Again I want to ask -- make sure I
7 understand your intent here.

8 This provision, perhaps you would agree with
9 me, is written notwithstanding the form of bankruptcy
10 that's being contemplated. It just says bankruptcy.

11 Do you see that?

12 A. Yes.

13 Q. Do you understand that there are forms of
14 bankruptcy which include reorganization, which do not
15 have the entity stop existing? Do you understand that
16 there exists those kinds of bankruptcy?

17 A. In very general terms.

18 Q. Okay.

19 The problem is, is if -- let's say UBTA UBET
20 declared bankruptcy. We'll just make it your issue for
21 once.

22 Let's say you declare bankruptcy. If the
23 agreement was immediately terminated, without any sort
24 of even optional language in here, then at that moment,
25 wouldn't calls stop dropping? Between the two

1 networks?

2 A. I don't know. It's whether the agreement
3 was terminated and the trunks were turned off or not.

4 Q. The agreement was terminated, would you
5 believe it would be somebody's right to turn off the
6 trunks?

7 A. It would be somebody's right. I don't know
8 if they would necessarily do that, or complete calls
9 under, as I said, access in some other arrangement.

10 Q. All right. Well, conceptually speaking, if
11 the entity who is going bankrupt, whichever entity it
12 might be, might continue to exist going forward because
13 of doing reorganization, would you have a conceptual
14 problem with having the agreement continue to apply?

15 A. I don't know enough about bankruptcy law to
16 state that.

17 I mean, I don't know what happens there,
18 so -- I just don't know what the rules are.

19 Q. Okay.

20 A. I think this is one for the lawyers.

21 Q. All right. We'll call Ms. Slawson to the
22 stand next. We'll see what she knows about bankruptcy
23 law.

24 All right. Let's go to page four.

25 A. Okay.

1 Q. I was skipping all the way to Section 6. I
2 thought I might skip two pages, but we're not there.

3 Oh, well. Section 4. Assignment.

4 All right. You indicated, I think, that in
5 the red-line version here, with the language in red,
6 that -- do I understand correctly that you do not
7 object to making your language symmetrical?

8 A. Correct.

9 Q. Okay. Well, let's talk about that.

10 If Bresnan were to have a corporate
11 reorganization, and the entity which is currently
12 Bresnan Broadband of Utah, which is the entity which
13 exists now, were to be rolled up into some corporate
14 parent, or spawned off into some other corporate
15 affiliate, but the ownership structure ultimately
16 didn't change at all. Do you have that hypothetical in
17 mind?

18 A. I --

19 Q. The ultimate version?

20 A. Well, that's what I was going to ask, I
21 guess. I don't understand how that changes without
22 ownership.

23 Q. Do you understand that it's possible for
24 corporations to reorg, say, such that the corporate
25 operating Utah -- Bresnan Broadband Utah of LLC, move

1 up, move down, move sideways, but change its structure
2 within the greater corporate family. Do you have that
3 possibility in mind?

4 A. Okay.

5 Q. In that instance, why would you want the
6 agreement to terminate in the sense that it would be
7 unlawful, as I understand your language, for Bresnan
8 Broadband of Utah, LLC to assign this agreement to the
9 new corporate entity that it has become, whatever that
10 is? Or is it not your intent to prohibit that sort of
11 possibility?

12 A. Again, corporate structures are not my
13 forte.

14 I know, in particular -- and I'll tell you
15 the examples I know. But when we get into corporate
16 entities, that, you know, I've had agreements with
17 AT&T. AT&T morphed from a land-line company into a
18 wireless company, and now all it wants to use -- use
19 agreements for completely different scenarios.

20 And I know that's at least one example,
21 where, you know, they get different ownership,
22 different scenarios. Is it AT&T? I don't know, but
23 clearly we end up working with a different entity in
24 doing that.

25 So I know we want to protect against that.

1 Your other hypothetical example, I am not
2 knowledgeable enough to know and give you a good
3 answer.

4 Q. Okay.

5 If UBTA UBET merges with another entity,
6 mergers happen before, maybe it happens again,
7 UBTA UBET merges with someone else, why would it be
8 unreasonable for this agreement to be able to be
9 assigned to that new merged entity?

10 A. Again, it depends what the merged entity is.

11 Q. So you're saying if UBTA UBET were to
12 execute another merger, that Bresnan would have to go
13 through this process all over again with the new
14 corporate structure, because we would have no right to
15 just take this agreement, which we've spent so much
16 blood, sweat, and tears trying to sort through, and
17 just transfer it over to the new corporate ownership,
18 whatever that is?

19 A. Why wouldn't the new corporate -- I mean, if
20 they wanted to do that, why don't they adopt this under
21 their -- can't they just adopt the agreement?

22 Q. Yes. But I'm assuming that UBTA UBET, in
23 its new form, would very happily get out of this
24 agreement because you don't want the competition. And
25 so you merge with a new corporate entity, declare it's

1 unassignable, and bingo bango bongo, Bresnan's
2 customers get shut off. Is that a problem?

3 A. I think it -- I don't think it's very
4 likely.

5 Q. Well, I understand that it's not likely, but
6 you understand that contracts are designed to protect
7 against even the remote possibilities.

8 I mean, we've talked a lot --

9 A. Yes.

10 Q. -- about remote possibilities, and trying to
11 get protection from those?

12 A. Mm-hmm.

13 Q. You understand that Bresnan's proposed
14 language would suggest that you can't assign or
15 transfer to a third-party, but only if there's written
16 consent, so that the other party would have the
17 complete discretion not to consent to a transfer to a
18 third-party.

19 Do you understand that to be Bresnan's
20 proposal?

21 A. Yes.

22 Q. In that instance, then, wouldn't UBTA UBET
23 have the ability to prevent any perceived mischief or
24 bad action by withholding its consent?

25 MS. SLAWSON: Your Honor, I just want to

1 object, because I don't see that Bresnan's language
2 says that the other party has the discretion to
3 withhold consent for -- you know, in their sole
4 discretion. It's not in there. It's not in your
5 language, so.

6 ADMINISTRATIVE LAW JUDGE: Which language
7 are you referring to?

8 MR. NELSON: I'm referring to the first
9 sentence in blue. Neither party may assign or
10 transfer, blah blah blah, this agreement, blah blah
11 blah, to a third-party without the prior written
12 consent of the other party.

13 I am saying the plain reading of that says
14 that neither party can assign to a third-party unless
15 the other party consents.

16 ADMINISTRATIVE LAW JUDGE: I'm going to
17 overrule that objection.

18 Q. (BY MR. NELSON) So the question is, given
19 that language, isn't it true that if consent isn't
20 given, that would prevent the assignment or transfer?

21 A. Yes.

22 Q. Now, with respect to the other sentence, the
23 notwithstanding the foregoing, your previous testimony
24 suggested that you were concerned about the words "or
25 an entity under its common control."

1 A. Correct.

2 Q. Okay.

3 If we struck the clause "or an entity under
4 its common control," would you be agreeable to the
5 language there?

6 MS. SLAWSON: Are you talking about the
7 language in just that second sentence?

8 MR. NELSON: Yes. "Notwithstanding the
9 foregoing, either party may assign or transfer this
10 agreement to a corporate affiliate," delete the next
11 sentence "without the consent of the other party,
12 provided that the performance of this agreement by any
13 such assignee is guaranteed by the assignor" This
14 would allow those inter-corporation movements that we
15 were talking about.

16 Any problem with that, without that language
17 that you said you didn't know what it meant, meaning
18 "the common control?"

19 A. It seems reasonable, subject to check.

20 Q. Okay.

21 Now we get to skip a couple of pages. Let's
22 go to page seven.

23 Deposits.

24 ADMINISTRATIVE LAW JUDGE: Actually, let's
25 take a break. Five minutes.

1 MR. NELSON: Okay.

2 ADMINISTRATIVE LAW JUDGE: Come back at
3 4:35.

4 (Whereupon, a break was taken.)

5 ADMINISTRATIVE LAW JUDGE: Let's go back on
6 the record.

7 Go ahead, Mr. Nelson.

8 MR. NELSON: Thank you.

9 Q. (BY MR. NELSON) All right. I think we were
10 on 9.6. Page seven.

11 A. Yes.

12 Q. Are you there? Okay.

13 Okay. Do you understand that under this
14 agreement, UBTA UBET would be required to pay Bresnan
15 certain amounts for its termination of traffic.
16 Correct?

17 A. Yes.

18 Q. So why shouldn't Bresnan be allowed to
19 require a security deposit from UBTA UBET in the same
20 manner you've requested that UBTA UBET be allowed to
21 require a security deposit from Bresnan?

22 A. We are -- we're not -- but yes, we can make
23 our language reciprocal.

24 Q. Okay.

25 You also suggest that we ought to have a

1 security deposit before there's any proof that someone
2 has been delinquent in making payments.

3 Can you explain why the presumption of
4 guilt, if you would, instead of waiting to see if
5 somebody engages in the bad action before requiring the
6 security deposit?

7 A. In a lot of the interconnection agreements
8 that I've done, immediately the CLEC is delinquent on
9 their payments.

10 And just as you charge deposits to end user
11 customers --

12 And I will say, it doesn't say that we are
13 going to, it says that we may. And that's similar to
14 what you do with end user customers, is they may charge
15 a deposit to the end user customer.

16 And here, we may. It doesn't say we will
17 charge a deposit, but we may.

18 Q. Okay.

19 The other issue is you suggested that the
20 deposit ought to be -- if I understand correctly --
21 cash. Is that right?

22 A. Yes.

23 Q. Okay.

24 Alternatively, in the Bresnan language
25 there's a suggestion that the deposit could be an

1 irrevocable bank letter of credit?

2 A. Mm-hmm.

3 Q. Do you know what that is?

4 A. I've not worked with them, but I did ask
5 UBET whether they've gone through that process, and
6 they said no, and they prefer not to. Or prefer not to
7 accept that.

8 Q. Okay. So you don't know what an irrevocable
9 bank letter of credit is? Is that your testimony?

10 A. Co --

11 Q. Do you know what it is?

12 A. No. Not really. I have an idea, but not
13 really.

14 Q. For this deposit that is being contemplated,
15 what rate of interest could Bresnan expect? If the
16 UBTA UBET language was adopted and UBTA UBET decided to
17 exercise its desire to do a deposit, what rate of
18 interest might Bresnan receive?

19 A. These days, is there any interest?

20 Sorry. That was a side note.

21 Our language does not address any interest
22 charges.

23 Q. Okay. So in this instance, basically either
24 party would be able to demand cash from the other,
25 which they would then presumably be able to put in

1 their bank and earn the interest on, and there would be
2 no payment of interest to the party who has put this
3 deposit into place?

4 A. It does not address that possibility.

5 Q. Okay lastly, the other issue in the Bresnan
6 proposal, by way of conceptual agreement, is that
7 Bresnan suggests that after you pay timely for a year,
8 you get the get-out-of-jail-free card and you get to
9 get the deposit back.

10 In the UBTA UBET proposal, my understanding
11 is you can hold onto that deposit indefinitely. Do I
12 correctly understand your proposal?

13 A. It does not address paying it back, no.

14 Q. Okay.

15 Is there any substantive reason or policy
16 reason why, if after some period of time a payment
17 history was established as being satisfactory, either
18 party might reasonably be able to expect to get its
19 deposit back?

20 A. I do not know. That's UBET's policy at this
21 point.

22 Q. All right.

23 Let's go to page 14.

24 14?

25 15. Ooh. Look at that. Big skip.

1 A. 16 you said?

2 Q. 15.

3 A. 15.

4 Q. Section 22.3.3.

5 A. Okay.

6 Q. Okay. In that language, I think your
7 testimony was that you want the -- I think you
8 mentioned to Ms. Slawson that that strike-out you want
9 to preserve.

10 Did I understand this correctly, or was this
11 not a part of your testimony? Maybe I misunderstood
12 that.

13 A. No. I don't think we addressed this
14 section.

15 Q. Okay. Well then let me ask the question, do
16 you have any objection to the strike-out of the
17 language which Bresnan views as redundant, as it merely
18 refers back to the prior section?

19 A. You're on 22.3.3. Correct?

20 Q. Yes.

21 A. Yes, we can accept that deletion. We like
22 to cooperate.

23 Q. All right. Let's see how far that goes. I
24 bet that's it.

25 Let's look at the next page, page 16.

1 A. Yes.

2 Q. The language that you have here that's been
3 stricken by Bresnan, the "except that Bresnan will
4 indemnify and hold harmless."

5 A. What's -- sorry, what section number are you
6 on? I was looking at 27.

7 Q. Forgive me. It's -- it's page 16,
8 Section 22.4.

9 A. Oh.

10 Q. Which starts on page 15, and then continues
11 on the top of 16.

12 A. Oh. That's -- that was the page that I
13 lost. So hang on, I do have it.

14 Q. Okay.

15 A. And that's the intellectual properties
16 section?

17 Q. Yes, ma'am.

18 A. Okay.

19 Q. Looking at the -- we had suggested a
20 deletion at the end of that.

21 And maybe I'll just start by saying, does --
22 does this deposit in your discussion -- does UBTA UBET
23 have any objection to the deletion that Bresnan
24 recommends on the end of that paragraph?

25 A. Yes.

1 Q. Okay.

2 And first of all, what is it -- maybe this
3 is sort of an intentional issue. What switch
4 configurations or methods do you envision UBTA UBET
5 might do at the instruction of Bresnan?

6 A. What our concern is here, you know, kind of
7 it bring it up a level. That there has been a number
8 of patent infringement issues, I think between Verizon
9 and Sprint, that, in fact, the VoIP carriers have had
10 infringement on how they do addressing of their traffic
11 to get it through the network.

12 And it's been implied, my understanding, is
13 that, you know, it may reach into how the traffic flows
14 through other telecommunications switches.

15 And so we can process traffic how we
16 normally would do it, but we don't want to expose
17 ourselves to these patent infringements on VoIP
18 routing.

19 So if you come in and ask us, Well, do this
20 thing and do that thing, that's out of the norm, to get
21 your traffic through our network, we don't potentially
22 want to be in one of these VoIP patent litigation
23 issues.

24 Q. And is it your understanding that Bresnan
25 would have the right, under this agreement, or some

1 other applicable law, to ask you to do this thing or do
2 that thing as it relates to your switch?

3 I guess maybe that's the source of our
4 confusion. We weren't aware that we had such a right.

5 A. Once there's an arrangement between parties,
6 all information gets asked for. And we just want to
7 make sure that, you know, we don't expose ourselves to
8 these, you know, VoIP patent cases that are happening.

9 So that is what the concern is.

10 Q. Okay. That's helpful. Thank you.

11 Let's go to the develop -- oh, no, no. I
12 jumped ahead of myself. Let's go to page 19.

13 A. Yes.

14 Q. All right. We've proposed the addition of a
15 paragraph 34 relating to subcontractors. Do you have
16 an objection to that paragraph?

17 A. No. But I do just want to make clear that
18 we do feel that the subcontractor -- the subcontractor
19 statement does work with the -- I think it's Section 6,
20 about the contacts that UBET will be working directly
21 with Bresnan and not with -- directly with your
22 subcontractors. That our interfaces are with Bresnan,
23 and vice versa.

24 I think you've made that section --
25 Section 4.

1 Q. Okay. So with that understanding, you're
2 okay with paragraph 31?

3 A. Yes.

4 Q. Great.

5 Definitions.

6 Global question. At the end of the day,
7 whatever the Commission orders, or miraculously we
8 might agree to in the context of this agreement, do you
9 have any objection to removing from the definitions any
10 terms not used in the agreement?

11 A. No, we do not.

12 Q. All right. Let's talk about pole
13 attachments.

14 You have proposed a number of different
15 places in the agreement where we make reference to pole
16 attachments, including a new -- I forget what the
17 number is. What are we calling that? A new 35 that
18 relates to pole attachments. And there's also a
19 discussion of that at Section 2.4 and 3.1. Do you
20 recall generally--

21 A. Yes.

22 Q. -- those references?

23 A. Yes.

24 Q. Okay.

25 Let me ask a conceptual issue.

1 Is it UBTA UBET's intent that if one of the
2 other parties to this agreement is in breach of the
3 pole attachment agreement, that one of the remedies
4 available to the non-breaching party is a default of
5 the inter -- of the Essential Facilities Agreement?

6 That was a terrible question.

7 Did you understand what I said?

8 A. Well let me answer what I -- I --

9 I'm not 100 percent sure, but what I will
10 say is we want the agreements linked. And that -- for
11 example, when I look at the -- a Qwest 251 agreement,
12 they have their whole agreement, they have pole
13 attachments, and then they have an exhibit that has a
14 lot of detail on those pole attachments and other
15 rights of way.

16 So although here, it seems that they would
17 probably be separate agreements, we would like them
18 similarly linked.

19 Q. Okay.

20 A. Or linked in some manner. I don't know how
21 closely, again, this gets into some of the legal stuff.
22 We want them linked. I don't know how closely in
23 link -- closely or loosely linked it actually gets to,
24 but we would like them linked similar to how Qwest does
25 theirs.

1 Q. Okay. Let me just make sure I understand
2 what you're desiring here.

3 You understand, first of all, that the pole
4 attachment agreement applies not only for Bresnan
5 Broadband of Utah, which is the affiliate that offers
6 VoIP service, but it also applies to Bresnan's cable
7 service. Correct?

8 A. In that that facility handles multiple
9 services.

10 Q. Right. And, in fact, while we have no voice
11 service in Vernal currently, because we're muddling
12 through this.

13 A. Yes.

14 Q. We nevertheless do have pole attachments,
15 because we're offering cable and data service.
16 Correct?

17 A. Correct.

18 Q. Okay.

19 So one of the things it sounds like you want
20 is to have, as a function of this agreement, the
21 Essential Facilities Agreement, you want, it sounds
22 like, that the agreement require the existence of, and
23 the -- the existence of a pole attachment agreement.
24 Is that fair?

25 A. Yes.

1 Q. Okay.

2 And I'll represent, for what it's worth,
3 that Bresnan has no objection to that.

4 A. Okay.

5 Q. Now the question is, what additionally do
6 you want?

7 This agreement will have provisions in terms
8 of what happens if there's default, and we're haggling
9 and -- via the Administrative Law Judge on how this
10 position -- how this will work, and how default
11 happens, and what happens with default and how it's
12 terminated. And all of those propositions at some
13 point will be fleshed out. Is that your understanding?

14 A. In the pole attachment agreement.

15 Q. In the Essential Facilities?

16 A. Oh, in the Essential Facilities. Yes.

17 Q. Similarly, the pole attachment agreement,
18 presumably there will be other language with respect to
19 default, and termination, and all of the rest of that
20 if somebody is in violation of the pole attachment
21 agreement. Do you understand that?

22 A. Yes.

23 And seeing as that that has not been
24 submitted yet, the question is whether it would have
25 separate.

1 So, for example, when you look at the Qwest
2 agreement, it takes -- the boilerplate is the same for
3 them as part of one agreement.

4 Since the pole attachment agreement has not
5 yet been given, there's a question of whether it would
6 have separate terms for those, or we'd just reference
7 back to these terms.

8 Q. Just so we're clear, it is true, is not,
9 that the pole attachment agreement has yet to be
10 provided from UBTA UBET to Bresnan, as we sit here at
11 this moment. Is that fair?

12 A. That is correct.

13 Q. Okay.

14 Now, I guess where I'm -- where I'm trying
15 to see if this is what you want, because this is now
16 the part that Bresnan does have a problem with, is it
17 UBTA UBET's desire that a party defaulting on one of
18 these agreements, be it pole attachment or the
19 Essential Facilities Agreement, would cause that party
20 to be in default and subject to potential termination
21 of the other agreement?

22 A. I have to validate something.

23 We have included, in our Section 3.1, which
24 I think is re-numbered after yours, but in that last
25 sentence, that is -- and I'll just read our wording for

1 the sake of this, which could be reciprocal, but.

2 Bresnan's refusal -- failure in any material
3 respect to perform under this obligation under this
4 agreement or the pole attachment agreement or a
5 violation of material terms of this agreement would be
6 a default.

7 Q. Okay.

8 And I guess the question is, is if that's
9 what you're looking for, why isn't it sufficient that
10 if a party is in a default of one of these agreements
11 but not the other, why isn't it sufficient that
12 whatever the dispute resolution and the termination
13 provisions, and whatever those are in those separate
14 agreements, are allowed to stand on their own?

15 Why is it that UBTA UBET feels it's
16 necessary to expand, to this agreement, the additional
17 remedy of, if you're in violation of some other
18 agreement, we're not -- we're not only going to go
19 after you under that agreement, but we're going to deem
20 you in default of this agreement? What's the point of
21 that?

22 A. Well, as I had just mentioned, I don't know
23 if the pole attachment is going to have separate
24 default -- it may be using the particular language
25 here, and referencing this agreement versus that

1 agreement.

2 Q. Okay.

3 If the pole attachment agreement has a
4 separate default provision, and a separate termination
5 provision, and a separate all of the -- a separate
6 whole process to deal with what happens in the event of
7 default, would it be okay, then, to leave it be, that
8 the agreements refer to each other, maybe even require
9 the existence of each other, but that a default of one
10 does not constitute a default of the other?

11 A. I can't answer that on the stand. I mean,
12 we have a current dispute, as far as billing for pole
13 attachments. Or I should say we've rendered bills and
14 have not gotten a formal reso -- or dispute of the
15 bill, but it has not been paid. And we want to make
16 sure, as we're moving into this new arrangement and
17 expanded arrangement with Bresnan, that we end up with,
18 you know, an entire relationship.

19 And, again, this being the first time I have
20 heard that offer, I can not, you know -- we note your
21 offer, and I think we'll have to discuss it.

22 Q. Let's talk about the Interconnection
23 Attachment.

24 And I'd call your attention to page two of
25 the Interconnection Attachment.

1 A. Okay.

2 Q. In this agreement, on Section 1.4, your
3 proposed language would suggest, if I understand it
4 correctly, that Bresnan is barred from offering dial-up
5 ISP access service.

6 Is that correct?

7 A. To third-parties.

8 And frankly, when I wrote this language I
9 was taking it from the testimony that was offered by
10 Mr. Harris that said you currently did not do these
11 functions. So I was working off of that.

12 Q. What would the -- fundamental fairness
13 question here. I understand the testimony is we don't
14 do it currently. You understand that prohibiting us
15 from doing it into the future is something different
16 from saying we don't do it today. That's different,
17 isn't it?

18 A. Yes, it is. But hopefully, since ISP-bound
19 traffic is hopefully a dying service, it seems like a
20 far stretch that unless there was some issue that
21 the -- issue with dial-up ISP traffic is -- traffic is
22 one direction. So if you're getting paid for
23 reciprocal compensation, you can rack up a lot of
24 minutes from the other carrier, who has to pay you.

25 And so, in this, in that, from our

1 perspective, we're trying to discourage dial-up ISP.
2 And there are carriers out there who could adopt this
3 agreement, that could take advantage of a large amount
4 of traffic going in their direction. You know, we're
5 just trying to get established that, in fact, even if
6 Bresnan's not trying to do it, we can't have those
7 third-parties adopt this agreement and nail us with a
8 huge number of minutes and a huge bill under recip
9 comp.

10 Q. Right.

11 Now, you understand, from Bresnan's
12 perspective, the shoe is on the other foot. Because
13 UBTA UBET does offer dial-up ISP service, doesn't it?

14 A. Yes.

15 Q. And so that giant bill on recip comp, that's
16 coming Bresnan's direction. Isn't it?

17 A. It -- yes, it is. But, as I said, and
18 that's why this is reciprocal, because we're saying
19 we're not promoting dial-up ISP traffic, and, in fact,
20 we're trying to get people to move away from dial-up
21 ISP traffic.

22 Q. Well, if you're not promoting it, why don't
23 you just agree with what you want Bresnan to do, We're
24 not going to offer it? Shut it off?

25 A. Because, unfortunately, some of our

1 customers are still using it.

2 I mean, you can't migrate customers in a
3 short period of time, and customers hang on, or don't
4 want to change. But we're doing our best to get them
5 to move to a high-speed internet connection.

6 Q. But in the meantime, UBTA UBET is performing
7 a service which you are suggesting that Bresnan should
8 be barred from doing. Is that fair?

9 A. The intent was to put in words what you
10 committed -- what you presented in your testimony.

11 Q. The --

12 A. The intent is, we're putting in words, on
13 what you're -- going in testimony.

14 If we can all agree that neither party,
15 under some other set of words, because it seems like
16 you're concerned on the exact language that is being
17 used. If you can agree conceptually that you're not
18 going to go out and act like level three, and get, you
19 know, 100 million minutes on your network, and promote
20 the, you know, one-way dial-up ISP, we're committing
21 that we're trying to get our service down, but it is
22 taking time. Then I think we'd have agreement here.

23 But, I mean, conceptually, that's the
24 wording that we want to get in. And if you
25 conceptually agree to that, then I think, you know,

1 we -- we need our protections that we don't have the
2 ISP-bound people come in and get all of this. And if
3 you can commit that you're not one of those, which you
4 mentioned in your testimony, then we can work on
5 wording.

6 Q. I'm trying to get you to commit to it.
7 We've -- so let me ask you this question.

8 Would you agree, if we put in your language
9 that says, we're barred from doing it and you're not
10 going to promote it, would you agree that all
11 reciprocal compensation on terminations from your side
12 to us, for ISP-bound traffic, would be at a termination
13 rate of zero?

14 No termination compensation for any
15 ISP-bound traffic? Since you're not promoting it, but
16 want to retain the right to keep doing it, and you're
17 asking us to be prohibited from doing it, would you be
18 agreeable to say that then all ISP traffic would be at
19 a zero rate?

20 A. Again, that's a new offer. I will -- I'll
21 have -- you know. I think what we've said here is if
22 it exceeds 50,000 minutes over the three months, you
23 know, then it goes -- then it goes to zero. Up to
24 then, the question is, is it worthwhile trying to
25 subtract it all out.

1 Q. Well --

2 A. And I think that's the issue.

3 Q. The issue is it doesn't actually say it goes
4 to zero, it says if it exceeds 50,000 minutes, then
5 there is a negotiation for what it is. I guess part of
6 our concern is that the reciprocal compensation rates
7 that you're proposing, that's a non-trivial amount of
8 money if those ISP-bound minutes are substantial.

9 So the question is, is UBTA UBET, if you
10 want to insist that Bresnan not be allowed to offer
11 this service, but you can't take on a reciprocal
12 commitment that you won't do it, are you at least
13 willing to say that there will be no charge for that
14 traffic being exchanged?

15 MS. SLAWSON: Your Honor, I'm going to
16 object. He's already asked and she's answered this
17 question. He's asking her to negotiate from the stand.
18 She's indicated she has to go back to her client
19 anyway.

20 ADMINISTRATIVE LAW JUDGE: I'm going to
21 sustain the objection.

22 Q. (BY MR. NELSON) Would it be, as a policy
23 matter, if the fear that UBTA UBET has is somebody
24 adopting this agreement and then dumping ISP-bound
25 traffic on you, would you agree that one way to ensure

1 that doesn't happen is to set, by this agreement, the
2 reciprocal compensation rate for all ISP-bound traffic
3 at zero?

4 A. It could be. And the question is --
5 I mean, there's a lot of possibilities out
6 there.

7 The issue is, how much work do we want to do
8 with -- to separate the things out?

9 I mean, what do you think is a worthwhile
10 amount?

11 I mean, what I hear you saying is, you don't
12 like the 50,000 minutes.

13 Is what I'm interpreting your issue --

14 Q. The issue here is -- it's simple. It's
15 there's an asymmetric obligation being requested. And
16 the impact of that is we can't do something that I can
17 do, which costs us money to the extent any of those
18 minutes are terminated on us.

19 And we can't do the same thing the other
20 direction, and that seems fundamentally unfair.

21 All I'm suggesting are different ways of
22 potentially fixing that. But I understand I can only
23 go so far there, so we'll just move on.

24 Let me ask you to look at 3.4 on page five.

25 A. And since the numbers have changed on a lot

1 of these, you'll have to give me the title of the
2 section where you ask your question.

3 Q. Fair enough.

4 I want to ask you about your original number
5 3.4.2.2 Direct End Office Trunks.

6 A. Correct.

7 Q. Do you see that?

8 A. Yes.

9 Q. Okay.

10 Let me ask you a question first.

11 What is it that, in your mind, a direct end
12 office trunk is?

13 A. That's a trunk that goes -- we have a
14 definition for an end office, and it's a trunk that
15 goes to the end office.

16 Q. Okay.

17 In this instance, why do you have this in
18 the agreement?

19 In what circumstance would you imagine
20 either Bresnan or UBTA UBET ordering a direct end
21 office trunk group?

22 When might that ever happen?

23 A. Well, since we have our host office, when
24 you order the interconnection trunk, you will be
25 ordering a direct end office trunk group to the host.

1 Q. Okay.

2 A. I mean, frankly, I would --

3 Q. Let me ask this --

4 A. I would think that you would like this
5 section, because essentially the -- what we're
6 objecting to, in your definition of end office, you've
7 essentially tried to get, I believe the concept that I
8 have here in this paragraph that says, when I go to a
9 host's switch, I'm getting the geographic area covered
10 by that switch.

11 Q. I guess maybe -- maybe I'm just being the
12 slow kid in class.

13 A. And -- and --

14 Q. But --

15 A. I would also say it seemed like you tried to
16 move that concept down to your next section, under the
17 new 3.4.3.

18 It seems you're trying to move that concept
19 down -- and frankly, I think we're fairly close, but I
20 don't 100 percent agree on the wording, so.

21 Q. But --

22 A. Between the deletion of that and some of
23 your adds on the next, I think we somewhat have the
24 concept in, but we kind of have to get the wording
25 together.

1 Q. The --

2 A. Unless you have some other meaning that I'm
3 not reading into your other red-line.

4 Q. So no, I'm just trying to get an
5 understanding, what's the difference between a local
6 interconnection trunk, 3.4.2.1? And a direct end
7 office trunk, 3.4.2.2? Because when the example you
8 gave of the direct end office trunk, a trunk group that
9 we order to connect to Vernal, I thought was what you
10 were calling the local interconnection trunk.

11 And so maybe you could help me understand,
12 what's the difference between those two trunks?

13 A. Potentially you could also order a trunk to
14 a few of the remotes. But in general, you really want
15 do that.

16 Q. If we -- but here's the question. If we
17 ordered a trunk to the remote, the remote is not an end
18 office. So direct end office trunk groups wouldn't
19 apply. Right?

20 A. If they have stand-alone capability they do.

21 But, as I said, we -- we didn't object fully
22 to this deletion. You have, as I said, in 3.4.3,
23 conceptually, I think we have close to the wording that
24 we need to cover the concept, but there is a few --

25 For example, I don't know what

1 interconnected end office is.

2 So conceptually, I think we're pretty close
3 here. We need to get the wording worked out.

4 Q. Okay.

5 3.4.2.3, Toll Trunks.

6 A. Yes.

7 Q. The next paragraph, which has a set of
8 numbers too long, I won't read it. It says that
9 separate trunk groups for each such toll traffic must
10 be established on separate transport facilities. Do
11 you see that?

12 A. Yeah.

13 Q. By that, is it UBTA UBET's intent that
14 Bresnan is obligated to establish a stand-alone trunk
15 between Bresnan and UBTA UBET for termination of toll
16 traffic?

17 And I say that in lieu of a possibility of
18 terminating toll traffic through some other means, such
19 as an interexchange carrier.

20 Is that your intent here?

21 A. The intent is that we have a local
22 interconnection trunk, and any toll traffic that is
23 directly connected is on a separate trunk.

24 It does not eliminate the possibility that,
25 for example, for toll traffic, that that be routed via

1 a tandem, which it's able to do. But that there will
2 be no toll traffic on the local trunk group, and that
3 it's a completely different trunk group for toll, if it
4 is directly connected.

5 Q. Okay. So the intent here is not that the --
6 the intent here is simply to reinforce the idea the
7 local trunk group is local only?

8 A. Correct.

9 Q. And whatever toll is done, it's got to be
10 something separate.

11 A. Correct.

12 Q. Because this agreement generally doesn't
13 cover toll traffic. Right?

14 A. Correct. In fact, it specifically says a
15 toll is -- I think it has a statement in here that toll
16 is, you know, covered by your access tariffs.

17 Q. Right.

18 A. I think in 1.3 of the Interconnection
19 Agreement.

20 Q. Okay. Let's go to page six of the
21 Interconnection Attachment. 3.6.

22 A. Yes.

23 Q. If Bresnan requests -- requires UBET to
24 build new facilities, install new fiber optic, Bresnan
25 will bear the cost of construction.

1 Now, earlier today you testified, if I
2 understand your testimony correctly, that as it relates
3 to these interconnection trunks, that Bresnan will be
4 assessed a potential service order charge for the
5 installation of new trunks. Do you recall that
6 testimony?

7 A. Yes, I do.

8 Q. Do you recall also saying that if UBTA UBET
9 had to do anything to change the trunk that's currently
10 in place, that that would be an expense that UBTA UBET
11 would have to bear, because it's on its side of the
12 meet point? Do you recall that?

13 A. Yes.

14 Q. And you also testified that there would be
15 no recurring charges of those trunk groups on
16 UBTA UBET's side of the meet point. Do you recall
17 that?

18 A. Yes.

19 Q. Okay.

20 3.6. Can you explain to me why this is
21 appropriate in light of the fact that the law that we
22 had discussed earlier was that everything on your side
23 of the meet point is your responsibility to pay for,
24 just like everything on our side of the meet point is
25 our responsibility to pay for?

1 A. In some cases carriers decide, for whatever
2 reason, that they want multiple points of
3 interconnection.

4 And we've had instances, and probably I
5 spent more time discussing this with carriers than I
6 want to remember, but they want to have the right to
7 have additional points of interconnection, that are
8 fiber meet points, somewhere where it's close to their
9 network.

10 So it's not on my network, where I have
11 facilities, but they say, Well, you have facilities at,
12 you know, Junction 50 and 84. I have a facility a half
13 a mile away. And I have a building and everything. I
14 have a splice over here which does not have any
15 equipment. Can you come to my building? But I have to
16 build a half a mile of fiber to get there.

17 If I'm agreeing to move off my network and
18 build from, you know, the new half a mile fiber to get
19 to that building where they've requested the point of
20 interconnection to be, then that is the construction
21 that I'm talking about.

22 If Bresnan says I will have one meet point,
23 and I'm never going to have -- or interconnection POI,
24 I'm never going to have any other one, it's always
25 going to remain in the building, then perhaps we could

1 eliminate this section.

2 But other than that, it takes up the
3 possibility that you have an accomodation to extend
4 facilities that are essentially offering.

5 Q. Okay. So you understand Bresnan's testimony
6 to be, from Mr. Harris earlier, that we accepted the
7 point of interconnection at the location that we
8 proposed, which is the Vernal -- Bresnan's Vernal head
9 end?

10 A. Correct.

11 Q. Okay. So --

12 A. But I think you're allowed to have
13 additional ones. So this would be if there are
14 additional ones.

15 Q. Okay.

16 A. But this section would not apply to the new
17 interconnection point that we have listed in --
18 currently in the agreement. It would apply to perhaps
19 a new one.

20 Q. Okay.

21 So then, if I understand you, conceptually,
22 if this language were amended to make it clear that it
23 only applied in the case of a second requested point of
24 interconnection, that would be acceptable to accomplish
25 your intent here?

1 A. Yes.

2 Q. Okay.

3 Okay, page 7, 4.1.3.

4 A. Yes.

5 Q. This, again, is an area where, as I
6 understand it, you objected to Bresnan's language
7 because of a concern that you would not want to be
8 subject to the applicable tariff or contract term of
9 the providing party. Is that right?

10 A. Yes.

11 Q. Now, you understand that it would be
12 UBTA UBET's option, because no one's forcing you to buy
13 transport facilities from us, but if you wanted to buy
14 transport facilities from us, wouldn't it be fair that
15 Bresnan could charge you whatever our tariffed or
16 price-listed contract price was for that?

17 A. If it was a contract you could, but I --
18 again, I think the tariff rates would be the same
19 intern -- in the service territory.

20 Q. So you're saying that you should have the
21 right to force Bresnan to sell you transport facilities
22 at your rates. Bresnan should not have the right, if
23 you want to buy transport from us, to sell you those
24 facilities at our rates. Is that what you're saying?

25 A. No. The general issue around the tariff is

1 that, you know, your rates are not going to exceed
2 ours.

3 So it's more a cap situation.

4 And, again, that our rates have been
5 reviewed and gone over in detail by the Commission.
6 Your rates get filed and they're law.

7 Q. So as a result of it, I guess -- let me
8 just -- at the risk of asking the question again,
9 because I don't think I got an answer, you're saying
10 that you should be allowed to buy transport facilities
11 from Bresnan at UBTA UBET's tariffed rates, rather than
12 whatever rates Bresnan is lawfully allowed to charge.

13 A. I'm saying that the ceiling of the rate is
14 our rate.

15 Q. Why?

16 Why can't Bresnan -- if you want to buy a
17 service from Bresnan, which, in this case is transport
18 facilities not switched access, which is the poster
19 child for your problem you've been alleging -- This is
20 transport facilities. If you want to buy transport
21 facilities from Bresnan, why can't we charge you
22 whatever our regular rate is?

23 A. Well, frankly, when the -- under our
24 language, where it's one-way, if we wanted to go and
25 purchase facilities from you, it would be outside this

1 agreement, and you could charge us whatever you wanted.

2 So it seems to me it's not really in your
3 best interests to make that section reciprocal.

4 Q. Okay.

5 4.1.4.

6 In the event UBTA -- or in the event UBET is
7 required to modify its network to accommodate the
8 interconnection made by Bresnan, Bresnan agrees to pay
9 UBET reasonable charges for such modifications.

10 A. And this is similar to the last, up in the
11 3.6.

12 Q. So this sentence, like that other sentence,
13 you would suggest would only apply in the second -- in
14 the event of that second POI?

15 A. In the other -- this has a little more too.

16 If you, say, insisted -- if we were going to
17 put, say, copper facilities in, and you came to us and
18 say, No, I insist on fiber facilities, you know, I want
19 something different than you would have provisioned on
20 your own.

21 So I want fiber facilities, you have to do
22 fiber facilities. Where UBET said we're doing copper
23 facilities. Then, you know, that would somewhat fall
24 into that category too.

25 Q. Are you envisioning -- just a curiosity.

1 Are you envisioning provisioning these direct trunks
2 over copper facilities?

3 A. No. Because the same thing could be you
4 could come to ask us, Hey, we want -- we want to do
5 ethernet transport versus say sonic transport. You
6 know, which would be different than we would normally
7 do it.

8 Q. But wouldn't the agreement prohibit us from
9 doing that? That is, you have no obligation under the
10 agreement to accommodate such a request, do you?

11 A. No, I don't. But if you ask for it, I want
12 a mechanism to charge if I decide to accommodate it.

13 Q. Again, but this is --

14 A. Do you want to be prevented from asking for
15 it?

16 Q. Yes. Because the language that you have
17 could be viewed by you to apply to a myriad of
18 circumstances where it would be inappropriate for you
19 to assess a charge.

20 That's why we struck the language, to make
21 sure that it was clear that we could not impose those
22 obligations, and you could not assess charges on us
23 that fell under the general words that were included in
24 this.

25 So if we agree to accept that accommodation

1 and delete this section, except as it applies to the
2 second POI, do you have any policy problems with that?

3 A. No. But we would not have language to say
4 nothing special would be accommodated.

5 Q. Okay.

6 All right. Can you please turn to page nine
7 of the Interconnection Agreement?

8 A. Okay.

9 Q. And I want to talk about 5.2.

10 And the language that Bresnan had proposed
11 to strike out -- and I know you had talked about this,
12 and I'm trying to make sure I understand what your
13 objection is to this strike-out.

14 Is your concern with this strike-out, that
15 somehow by striking out this language, Bresnan has made
16 it more difficult for UBTA UBET to offer FX service?

17 A. No.

18 Q. And would you agree with me that where FX
19 service is engaged in, the language that Bresnan has
20 still in the bottom would apply? Which is, that if FX
21 is being done, that any termination of those calls
22 should be done under access charges? Is that your
23 position?

24 A. Yes. My -- my issue with this is you have
25 eliminated one of the important concepts in your

1 rewrite.

2 And the way our language reads, it says,
3 "Both parties agree to assign a telephone number from
4 an NPA-NXX code, only to end users -- only to an end
5 user at an end user customer located inside the rate
6 center which the NPA-NXX code is associated. Except for
7 an FX."

8 So there's a positive statement that both of
9 us are going to have geographic assignments between the
10 end user and the customer. The telephone number is
11 geographically significant.

12 The way it's re-worded it addressed
13 providing FX service, but it doesn't have that positive
14 statement that we, in our own provision of service,
15 are, in fact, assigning numbers geographically.

16 Q. Okay. So let me -- the real -- the real
17 issue here is through that language you make sure that
18 Bresnan is not offering VNXX service. Correct?

19 A. Correct.

20 Q. Am I understanding you correctly?

21 A. Correct.

22 And the -- you know, and part of the other
23 deleted language kind of puts -- you have FX, and as
24 you talk about -- FX is a foreign exchange service that
25 some customers want to have a telephone number. So

1 essentially they're paying for toll calls. It's kind
2 of a -- it used to be a cheap 800 service. I only want
3 to get a number over here so that my customers can
4 reach me.

5 It's not used very much anymore, but it's
6 still out there.

7 But essentially they get a non-geographic
8 number that they might have a Vernal telephone number,
9 but be in Flat Top. And we have a direct connection
10 between those two.

11 These days, there's a lot of ways of doing
12 that. And there's something called a virtual NXX,
13 with, instead of having a dedicated facility between
14 the two, they just take a telephone number and have us
15 route it so they can avoid toll charges.

16 So this is getting defined that what UBET is
17 doing is the dedicated service, and not a full VNXX
18 service.

19 And we also address the VNXX case. That
20 there's several ways of doing it.

21 Q. All right.

22 Let me move to 5.4. Again, on a conceptual
23 level here, part of the changes that Bresnan is trying
24 to accomplish here, you understand to be making this
25 provision reciprocal, and have this corresponding

1 obligation with respect to how inadvertently routed or
2 mis-routed wireless traffic would be exchanged from
3 UBTA UBET to Bresnan. Do you understand that to be
4 part of the intent here?

5 A. Yes.

6 Q. Okay. And as for that portion of the
7 intent, are you comfortable with the principal that
8 this paragraph should be applied reciprocally?

9 A. Well, I actually have a question about it,
10 because -- which is kind of hard to do on the stand
11 here.

12 But the question is, if you don't have a
13 direct connect, or you've stated you don't have direct
14 connects with the wireless carriers, and so I don't see
15 where there's default-routed calls necessarily coming
16 to your location that would end up in this situation.

17 Q. Do you understand that Bresnan's not yet in
18 business in Vernal?

19 A. Correct.

20 Q. You understand that once Bresnan gets into
21 business in Vernal, they will have a discussion with
22 wireless carriers and determine how it is that traffic
23 will be routed to wireless carriers?

24 A. Mm-hmm. (Witness nods.)

25 Q. And is it possible that Bresnan would elect,

1 via those negotiations with wireless carriers, to have
2 direct interconnection?

3 A. I'm sure you would ask, but I don't know of
4 any wireless carrier that connect with CLECs, to be
5 frank.

6 Q. I understand. But --

7 A. Yes.

8 Q. We're dealing in the world of possibilities
9 here.

10 All I'm saying is, if it were to somehow be
11 the case the wireless carrier connected directly with
12 Bresnan such that this became a legitimate problem,
13 both directions, wouldn't it be fair that this
14 paragraph be applied reciprocally?

15 A. If that would be the case, it would be fair.

16 But I would also say, in the way it's --
17 similar to the last discussion, the way you've
18 re-worded this, we've tried to have the concept that
19 neither of us are -- we don't want to be in this
20 transit business.

21 So this is not something we're doing because
22 we like to, and we want to have a statement in here
23 proactively saying, we are not trying to do this, but,
24 in fact, limit it.

25 Q. And --

1 A. And -- and so whether it's our way -- you
2 know, that concept needs to be listed in this
3 paragraph, one way or the other. In the way you've
4 re-worded it, that concept has been eliminated.

5 Q. And the product, is that the elimination of
6 that first sentence?

7 A. Yes.

8 Q. Is that the issue you're speaking to?

9 A. Yes.

10 So for example, on the other hand, we don't
11 want you sending us traffic that's bound for the
12 wireless carrier.

13 Q. And, from your perspective, do you see the
14 first sentence that we've suggested as being the
15 functional equivalent, albeit with what we view as more
16 precise words, to the first general principal that
17 neither party shall transit, via switch belonging to
18 the other party, any traffic destined for a
19 third-party's network. Doesn't that cover the concept?

20 A. Well, I have to think about that. Let's
21 keep it at the high level.

22 Q. Okay.

23 All right, 6.4.

24 Let's look at page 11.

25 This is one of the sections you didn't

1 discuss when you were walking through this this
2 morning, so I just need to understand some pieces of
3 this.

4 6.4 is the section that requires Bresnan to
5 provide some sort of electronic report in a format
6 acceptable to UBTA UBET on a monthly basis, detail
7 about every single call that a Bresnan customer has
8 made to a UBTA UBET customer. Is that fair?

9 A. Yes. And I'll add, we agree to your
10 deletion.

11 Q. Great. I should have started there.
12 All right.

13 Let me move on all the way here to the
14 Ancillary Service section, page four, looking at
15 Section 2, access to Inside Wire.

16 A. Yep.

17 Q. I'll just note I'm on page nine of nine of
18 my questions for Ms. Wimer.

19 A. Oh, my gosh.

20 Q. So we're almost there. I appreciate very
21 much your patience with me as we go through this
22 difficult process.

23 All right. The question is this:

24 First, you understand, do you not, that with
25 respect to the network interface device, or the NID,

1 that coming out of that box there are wires that are
2 UBTA UBET's, or the company's side, and there are wires
3 going the other direction, that are the customer's
4 wires that begin -- or the start of their inside
5 wiring. Correct?

6 A. Correct.

7 Q. And if the customer wants to cut the wires
8 on its side of the NID, any reason the customer can't
9 do that?

10 A. No, but --

11 Q. If --

12 A. -- the -- the issue is, if there's not a
13 need to cut them, we would hope that they are not cut.

14 And I've had several situations where we've
15 had cable companies -- and not Bresnan, but other cable
16 companies, and/or their contractors, either remove the
17 NID, take out our protection on the NID so that there's
18 a safety hazard, destroy the inside wire, and we're not
19 sure if they destroyed the inside wire as part of their
20 normal relation -- normal situation, or they destroy it
21 as they're disconnecting their own service.

22 And, you know, we would like to avoid that,
23 since it's usually not the customer asking the carrier,
24 Will you please cut my wiring?

25 Q. Okay. And I guess what we have here is the

1 classic position of two parties worry about the other
2 party doing the bad thing. And so both parties have
3 language that sounds like is causing a problem here, in
4 terms of going too far.

5 So let me just ask you about the language
6 from Bresnan's perspective.

7 Do you see that you're -- the first full
8 sentence of the red strike-out; "Furthermore, Bresnan
9 shall not remove or disconnect NID modules, protectors
10 or terminals from UBET NID enclosers." You have that.
11 "Nor cut or disconnect any other leads in the NID."

12 Do you see that?

13 A. Right.

14 Q. So I guess here's our question.

15 I understand your thought is that if, on the
16 customer's side of the NID there's a jack that you can
17 pull, great. If there's not, okay, we've got an issue.

18 What I'm saying is, from our perspective,
19 we're trying to understand if there is no jack,
20 wouldn't you agree that something is going to have to
21 be cut, or else that customer's phone service is going
22 to be, well, really kind of strange, because it will
23 have their phone system calling two different
24 directions? Right?

25 A. Correct.

1 Q. Okay. So you would agree with me that if
2 there isn't a jack, something would have to be cut.

3 And would I be correct in saying that, in
4 that instance, it would be UBTA UBET's presumably
5 strong interest, and legal right, that any such cutting
6 would happen only on the customer side of that device?
7 Correct?

8 A. Yes.

9 Q. But you would also agree with me that the
10 agreement should not prevent that from happening,
11 because that would then cause perhaps the unintended
12 effect of a customer being unable to select Bresnan as
13 an option in the event the only way to disconnect the
14 customer wires to the NID was to cut it.

15 A. Would it help -- and, again, this is
16 negotiating language on the stand -- if the -- that
17 statement were limited to the Bresnan -- or sorry, the
18 UBET side of the connection?

19 Q. I think maybe.

20 The happy coincidence would be that if the
21 language in red were limited to the UBET side of the
22 NID, and the Bresnan language in blue, which talks
23 about what happens on the customer side of the NID, I
24 think in that event, all of this language could live
25 perhaps in happy unity.

1 And then -- we already talked about that,
2 different from interconnection. That's moving the NID.
3 Right?

4 Okay.

5 Page six of the Ancillary Services
6 Agreement.

7 A. Okay.

8 Q. I don't -- I don't recall if you've
9 mentioned this, but this is language which Bresnan had
10 suggested changing, and I just wanted to see, were the
11 Bresnan changes with respect to 6.1.1 acceptable to
12 UBTA UBET?

13 A. All the concepts we need are there. I don't
14 know if we -- you know, most likely -- I don't know if
15 we have it tweaked to the wording, but it seems to
16 cover all of our interests.

17 Q. Fair enough.

18 All right. I think, then, I can skip all
19 the way to darn near the end. To the blue section
20 nine, or red section ten labeled Directory.

21 A. Yes.

22 Q. Okay. And you had talked about, when you
23 were going through this, the Yellow Pages issue. And I
24 understand that. I don't want to get into that. But I
25 want to talk about the other sentence there.

1 You understand Bresnan's concern here to be
2 that Bresnan does not want UBTA UBET to enter into an
3 agreement with a third-party directory provider which
4 would suggest that that third-party directory provider
5 would be somehow limited from doing business with
6 Bresnan.

7 A. Frankly, I didn't know what you were getting
8 at here.

9 Q. Okay.

10 A. Therefore, could it -- didn't know what you
11 were getting at.

12 We can make sure that we do not have
13 anything in the agreement that limits the carrier from
14 including your listings, or disturbing books to your
15 customers.

16 Q. Is it UBTA UBET's intention to make
17 arrangements with a directory provider that would limit
18 or impede that directory provider's ability to offer
19 directory listings to Bresnan?

20 A. No.

21 Q. Section 12. Dialing Parity. You talked
22 about that, and you suggested you weren't sure where
23 dialing parity was an issue in the statute that was
24 referenced there.

25 Do you recall that discussion?

1 A. Yes.

2 It seemed to deal -- that statute seemed to
3 deal more with traffic than with dialing parity.

4 Q. Okay. Well let me ask this.

5 Is it UBTA UBET's intention to impede the
6 flow of traffic between Bresnan and UBTA UBET by
7 requiring Bresnan customers to dial additional numbers
8 if they want to call a UBTA UBET customer?

9 A. I -- I don't think so, but I -- I think
10 there are some issues on what all comes out of EAS.

11 EAS used to be toll, and I don't know what
12 will come out of that.

13 Q. And I understand that. I'm just saying
14 that -- purely this. The issue here purely relates to
15 how many numbers you have to punch.

16 A. Correct.

17 Q. Bresnan's objective is that you have to
18 punch the same number of customers if you are a Bresnan
19 customer or a UBTA UBET customer. You understand that
20 objective?

21 A. Yes.

22 Q. You understand --

23 A. And I say there will be no issue inside
24 Vernal.

25 Q. Okay.

1 And do you agree that if you -- if it were
2 the case that a carrier were forced -- a carrier's
3 customers were forced to dial additional numbers, that
4 that would create an unreasonable restriction on the
5 flow of traffic?

6 A. No.

7 Q. Okay.

8 ADMINISTRATIVE LAW JUDGE: Let's stop there.

9 We'll start tomorrow again at eight o'clock,
10 and we'll proceed until we finish.

11 (Whereupon, the hearing
12 was adjourned at 5:50 p.m.)

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1 STATE OF UTAH)
2 COUNTY OF SALT LAKE) ss

3
4 THIS IS TO CERTIFY that the foregoing
5 proceeding in the foregoing cause named, was taken
6 before me, DEBRA A. DIBBLE, a Certified Shorthand
7 Reporter and Notary Public in and for the State of
8 Utah, residing at Woodland, Utah.

9 That the testimony of said proceeding was
10 reported by me in Stenotype, and thereafter caused by
11 me to be transcribed into typewriting, and that a full,
12 true and correct transcription of said testimony so
13 taken and transcribed is set forth in the foregoing
14 annexed transcript.

15 I further certify that I am not of kin or
16 otherwise associated with any of the parties to said
17 cause of action, and that I am not interested in the
18 event thereof.

19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this ____ day of
21 _____, 2009.

22
23
24
25
Debra A. Dibble, C.S.R., R.P.R.