

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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**The Application of Bresnan Broadband of Utah, LLC for a Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Carrier in Utah** )  
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**DOCKET NO. 07-2476-01**  
**DPU Exhibit 1.0**

**Direct Testimony of**  
**Laura L. Scholl**

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**DIVISION OF PUBLIC UTILITIES**  
**DEPARTMENT OF COMMERCE**

**July 27, 2007**

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND ADDRESS.**

3 A. My name is Laura L. Scholl. I am employed by the Utah Division of Public Utilities as the  
4 manager of the Telecommunications Section.

5 **Q. PLEASE REVIEW YOUR EDUCATION, WORK EXPERIENCE, AND PRESENT**  
6 **RESPONSIBILITIES.**

7 A. As the manager of the Telecommunications Section, I am responsible for ensuring that the  
8 DPU acts in accordance with its statutory charge to balance the interests of consumers and  
9 telecommunications providers. I also supervise a staff of engineers, accountants, and other  
10 technical experts.

11 I worked for nearly 28 years for Qwest Communications and its predecessors in a variety of  
12 positions. I retired from Qwest in December of 2005 as the Utah Director of Regulatory  
13 and Legal Issues; I was primarily responsible for all aspects of regulatory compliance for  
14 Qwest's regulated Utah operations. My duties included oversight of regulatory filings and  
15 advocacy, including presentation of testimony. I was also the primary liaison between  
16 Qwest and the Public Service Commission of Utah, the Utah Division of Public Utilities,  
17 the Committee of Consumer Services and the regulatory entities of CLECs and R-ILECS  
18 operating in Utah.

19 My education and work experience are detailed in Exhibit DPU-1.1.

20 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

21 A. Yes. I testified before the Commission and filed testimony in numerous dockets on behalf  
22 of Qwest, also detailed in Exhibit DPU-1.1. However, this is the first time I have offered  
23 testimony on behalf of the Division.

24 **II. PURPOSE AND SUMMARY**

25 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

26 A. My testimony outlines the policy considerations raised in this proceeding. This is the first  
27 petition filed by a Competitive Local Exchange Carrier (CLEC) seeking to serve in a  
28 territory historically operated by a rural ILEC. As a result, it is likely that many policy  
29 issues and considerations not previously brought before the Commission will be raised in  
30 this docket.

31 Additional Division testimony calculating potential competitive effects includes Universal  
32 Service Fund impacts and subscription rates likely to be achieved by Bresnan will be  
33 presented by Mr. Casey Coleman.

34 **Q. TO WHAT ISSUES ARE YOU REFERRING?**

35 A. The first issue is the precedent setting nature of the request by Bresnan to serve in a rural-  
36 ILEC territory. UCA 54-8b-2.1 allows competitive entry into exchanges greater than 5,000  
37 access lines.

38 **Q. DOES THE LINE COUNT IN THE VERNAL EXCHANGE EXCEED 5,000**  
39 **ACCESS LINES?**

40 A. Yes. According to the most recent annual report filed by UBTA/UBET reflecting 2006  
41 operations, the Vernal exchange serves more than 5,000 access lines.

42 **Q. PLEASE SUMMARIZE THE CONCLUSIONS REACHED BY THE**  
43 **DPU IN THIS DOCKET.**

44 A. After a great deal of analysis and consideration, the DPU has concluded that granting a  
45 CPCN to Bresnan is in the public interest. As a result, the DPU is recommending that the  
46 PSC grant Bresnan a CPCN and that the PSC require Bresnan to serve the entire Vernal  
47 exchange. Additionally, our analysis leads us to conclude that any potential impacts on the  
48 USF over time are within reason and can be addressed as necessary in the ongoing  
49 management of the fund.

50

51 **III. STATUTORY REQUIREMENTS FOR GRANTING CPCN**

52 **Q. WHAT CRITERIA DO THE UTAH STATUTES REQUIRE BE MET IN ORDER**  
53 **TO RECEIVE A CPCN?**

54 A. A petitioner must show that it has the managerial, technical and financial expertise to  
55 provide service and that granting their CPCN is in the public interest.

56 **Q. HAS BRESNAN BEEN GRANTED A CERTIFICATE OF PUBLIC CONVENIENCE**  
57 **AND NECESSITY TO OPERATE IN UTAH?**

58 A. Not as of the date this testimony was filed. However, the DPU has made a recommendation  
59 to the Public Service Commission that it grant Bresnan a CPCN to operate in Cedar City,  
60 where the incumbent provider is Qwest. The DPU reviewed Bresnan's technical, financial  
61 and managerial qualifications, as required by statute, and concluded that Bresnan satisfied

62 all the requirements and that granting a CPCN in the Cedar City area is in the public  
63 interest.

64 **Q. IS THE PUBLIC INTEREST CONSIDERATION IN VERNAL UNIQUE?**

65 A. No. The statute requires the Commission make a finding that granting any  
66 certificate is in the public interest. All CPCN petitions which are granted by  
67 the PSC must find that there is a public interest in approving the certificate.  
68 To date the PSC has granted CPCNs to dozens of CLECs, there are roughly  
69 90 certificated CLECs in Utah at present. The only difference in this docket  
70 is that the CPCNs previously granted allowed entry into a service area of a  
71 price regulated company as opposed to a rate of return company.  
72 Nonetheless, the public interest test in this docket is likely still a balancing  
73 test between consumer choice and potential USF impacts.

74 **Q. ARE THERE PSC OR COURT ORDERS OR DECISIONS WHICH ADDRESS THE**  
75 **PUBLIC INTEREST TEST?**

76 A. Yes, some related issues were addressed in Docket No. 98-2216-01, the Western Wireless  
77 petition asking to be granted Eligible Telecommunications Carrier (ETC) status in Utah.  
78 Both the PSC and the Utah Supreme Court issued decisions outlining what could be  
79 considered in the public interest standard in that application. There have also been one or  
80 two ETC petitions granted to other carriers for the sole purpose of receiving federal USF.

81 **Q. IS BRESNAN SEEKING ETC STATUS LIKE WESTERN WIRELESS WAS?**

82 A. No. However, the Western Wireless decisions are the only ones with which I am familiar  
83 that are even partially “on point” on that issue. The orders addressed the impact on the USF

84 of allowing competitive in a rural ILEC service territory and enunciated the public interest  
85 test that was found to be appropriate at that time and given that specific set of facts.

86

87 **I. THE WESTERN WIRELESS DOCKET**

88 **Q. PLEASE PROVIDE A SHORT OVERVIEW OF THE WESTERN WIRELESS**  
89 **DOCKET.**

90 A. In May 1997 the Federal Communications Commission issued its Universal Service Report  
91 and Order, CC Docket 96-45, FCC 97-157 which determined that only eligible  
92 telecommunications carriers (ETCs) designated by state commissions could receive federal  
93 universal service support. In August of 1998, WWC Holding Co Inc (Western Wireless)  
94 petitioned the Utah Public Service Commission for designation as an ETC in Utah.  
95 Western Wireless was seeking that designation so that it might receive both federal  
96 universal service support and Utah USF support.

97 Western Wireless sought ETC designation in all the U.S. West (now Qwest) exchanges and  
98 in each rural telephone company's exchanges that fell within its signal coverage area.  
99 There were numerous interveners and extensive discovery was conducted. Ultimately, the  
100 major issue became a determination of what is included in the public interest test.

101 Hearings were held in late 1999 and the PSC issued its order in July of 2000.

102 **Q. WHAT DID THE PSC FIND?**

103 A. In its Report and Order the PSC granted conditional ETC status for the U S WEST  
104 Communications exchanges included in its petition. It denied ETC status in the rural ILEC  
105 exchanges based on a finding that it was not in the public interest to designate a second  
106 ETC in those areas because of the potential impact on the Utah Universal Service Fund.

107 The order read, in part:

108 The independent companies are currently regulated under rate of return regulation.  
109 In a sense the State Fund is the final revenue that makes these companies rate of  
110 return meet the required levels. After all other sources of funds are considered, the  
111 State Fund must make up the difference between reasonable costs and all revenues.  
112 If, by designating an additional ETC in the respective study areas of the URTA  
113 Companies, the effect is to reduce the companies' revenues, without an equal  
114 reduction in costs, the State Fund would be called upon to make up the difference.  
115 Such a situation would cause a significant increase in the burdens placed upon the  
116 State Fund without corresponding public benefits.<sup>1</sup>

117

118 **Q. DID WESTERN WIRELESS APPEAL THAT DECISION?**

119 A. Yes, Western Wireless appealed the decision to the Utah Supreme Court.

120 **Q. WHAT WAS THE RESULT OF THE SUPREME COURT APPEAL?**

121 A. In its March 2002 decision, the Utah Supreme Court affirmed the Commission's order. It  
122 held that substantial evidence supported the PSC's finding that the state universal service  
123 fund would be negatively impacted if the company were allowed to become a second ETC  
124 in rural areas. The finding did not say that the PSC would never allow competition in rural  
125 areas, but that increased burdens on the state USF was not in the public interest in the  
126 absence of offsetting public benefits.

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<sup>1</sup> Order at pages 10 – 11.

127 The Court's order also states that the PSC order does not preclude competition in rural  
128 areas:

129 ... the PSC's Order is not against competition per se, but rather merely recognizes  
130 that in *some instances* competition in *rural areas* by multiple ETCs receiving state  
131 universal service support may not be in the public interest.<sup>2</sup>

132

133 **Q. WHAT POSITION DID THE DPU TAKE IN ITS TESTIMONY IN THE**  
134 **PROCEEDING?**

135 A. The testimony of George Compton filed on September 23, 1999 presented the DPU's  
136 position on the public interest question. Dr. Compton reviewed several criteria he though  
137 relevant at the time in assessing public interest impacts. He finally concluded that granting  
138 ETC status to Western Wireless in the rural areas was not in the public interest.

139 **Q. HOW ARE THE PUBLIC INTEREST ISSUES SIMILAR IN THIS PROCEEDING?**

140 A. The only similarity is that a petition filed by a competitor, if granted, may  
141 result in unknown impacts on the USF.

142 **Q. HOW DO THE ISSUES DIFFER?**

143 A. Bresnan is not seeking ETC designation or USF support. Western Wireless was seeking  
144 authority to compete in exchanges with fewer than 5000 access lines. Western Wireless  
145 was proposing to serve with wireless technology and there were service quality issues  
146 raised. Bresnan could serve customers in most of the Vernal exchange without a certificate  
147 as long as it doesn't desire state or federal USF support.

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<sup>2</sup> 44 P.3d 714 ¶ 13



148 In sum, there are not similar USF impact issues. The only potential USF impact would be  
149 based on any increases in USF support that UBTA-UBET might request if it suffers  
150 significant competitive losses.

151 **Q. HOW HAS THE COMPETITIVE LANDSCAPE CHANGED IN UTAH IN THE**  
152 **LAST DECADE OR SO SINCE WESTERN WIRELESS FILED ITS ORIGINAL**  
153 **REQUEST?**

154 A. First, there have been changes in the Utah statutes. In the 2005 legislative session,  
155 significant changes were made to UCA 54-8b -2.3 which allowed Qwest Communications  
156 to move from price and service quality regulation to pricing regulation similar to that  
157 enjoyed by CLECs. The same statute (UCA 54.8b.2.3(10)) also enables a fairly straight-  
158 forward process under which rural ILECs can move out of rate-of-return regulation and into  
159 a pricing flexibility plan.

160 Additionally, new technologies have emerged to provide more consumer choice: wireless  
161 service has taken over as the major contributor to the state USF. Altogether new  
162 technologies such as IP-enabled voice services (e.g. VoIP) are widely available requiring  
163 only a broadband connection. Wi-Fi and Wi-Max , both radio technologies, are also  
164 supplanting traditional landline services. In other words, competition has arrived in Utah  
165 throughout the state, including the area that is the subject of Bresnan's petition, but many of  
166 the providers/technologies are not regulated by the Public Service Commission.

167 **Q. GIVEN THOSE DIFFERENCES, WHAT POSITION IS THE DPU TAKING**  
168 **REGARDING WHETHER GRANTING BRESNAN A CPCN IS IN THE PUBLIC**  
169 **INTEREST?**

170 A. The DPU has concluded that the “public interest” test as developed in the Western Wireless  
171 case is of little use in determining whether Bresnan should be granted a CPCN. The issues,  
172 the requests, the changes in the marketplace, new developments in technology, and  
173 statutory changes make the facts in this docket considerably different.

174 As a result, the DPU is recommending that Bresnan should be granted a CPCN in the  
175 Vernal exchange.

176 **Q. WHAT DID YOU TAKE INTO CONSIDERATION IN REACHING THAT**  
177 **POSITION?**

178 A. This was a much discussed and debated topic. Although I am not an attorney, it appears to  
179 me that the statute and the legislative policy pronouncements clearly intended to allow this  
180 sort of competitive entry.

181 Nonetheless, the DPU also has a primary statutory charge to balance the interests of utility  
182 customers and the utilities providing the services. So the DPU also reviewed the potential  
183 impacts of competitive losses on UBTA-UBET. The testimony of DPU witness Casey  
184 Coleman discusses our analyses and conclusions. Because UBTA-UBET is eligible to  
185 receive Universal Service Fund payments from the Utah fund, UBTA-UBET is under no  
186 imminent threats to its financial viability. Under the current USF rules, UBTA-UBET will  
187 have the opportunity to request USF support or rate increases up to the affordable base rate  
188 for competitive losses it may incur as a result of the grant of this CPCN.

189 We also considered the value of competitive choice for the consumers, whose interests we  
190 also represent. We concluded that the benefits of new VoIP based services and the very  
191 existence of consumer choice serve the public interest, especially since our projections do  
192 not indicate that current contributors to the state USF or the USF itself will be damaged.  
193 Since both national and state policy supports competitive entry while preserving universal  
194 service and we conclude both are possible in this instance, we support Bresnan's petition.

195 **II. RESPONSE TO TESTIMONY OF UBTA-UBET**

196 **Q. THE CONCERNS OF BOTH WITNESSES FOR UBTA-UBET SEEM TO BE**  
197 **FOCUSED ON POTENTIAL ILEC LOSSES AND CONSUMER PRICES IN THEIR**  
198 **TERRITORY. IS THAT APPROPRIATE?**

199 A. Certainly, that is their fiduciary duty. However, the DPU's statutory charge is much  
200 broader. The DPU is directed to balance the interests of telecommunications consumers  
201 statewide with the interests of the telecommunications providers. We are also ever aware  
202 of the policy directives of the legislature to encourage competition and advanced  
203 telecommunications infrastructure while endeavoring to achieve universal service goals.  
204 The certification of a provider such as Bresnan does not, in and of itself, threaten the  
205 availability of quality, affordable service but it does promote competition and advanced  
206 infrastructure placement.

207 **Q. MR. TODD EXPRESSES CONCERNS ABOUT THE IMPACT OF GRANTING A**  
208 **CPCN TO BRESNAN ON UBTA-UBET'S EARNINGS (PAGE 6, LINES 96- 105).**  
209 **WOULD YOU LIKE TO COMMENT ON THAT CONCERN?**

210 A. Yes, I would like to comment. First, receiving a certificate is not the same as immediately  
211 gaining customer subscriptions. As I discuss elsewhere in this testimony, UBTA-UBET  
212 apparently maintains a slight price advantage for its telephony service over Bresnan's  
213 bundled service. Any competitive gains or losses will take some time. By virtue of  
214 Bresnan's petition and this proceeding, UBTA-UBET is receiving advanced notice of this  
215 potential competitor's arrival, its price points and its general business plan as laid out in its  
216 testimony. Those are luxuries UBTA-UBET does not enjoy in the case of wireless and  
217 VoIP entry.

218 Additionally, if UBTA-UBET sells either unbundled network elements or finished services  
219 for resale to Bresnan it will receive new wholesale revenue streams which will replace at  
220 least part of the associated retail revenues it may lose. There will undoubtedly be access  
221 revenues, as well.

222 **Q. MR. HENDERSHOT DISCUSSES MANY OF THE SAME CONCERNS AS MR.**  
223 **TODD, BUT HE ALSO RAISES ISSUES AROUND EXCHANGE OF TRAFFIC,**  
224 **FACILITY RESALE AND NUMBER PORTABILITY . DOES THE LACK OF A**  
225 **PRECEDENT IN UTAH FOR AN INTERCONNECTION AGREEMENT**  
226 **BETWEEN A RURAL ILEC AND A CLEC CAUSE YOU CONCERN?**

227 A. I understand those issues may arise but at this time I am not overly concerned. Certainly  
228 there are template agreements from other states where there has been competitive entry into

229 rural ILEC service territories. There are also many agreements entered into in this state,  
230 wholesale cost dockets and numerous arbitrations which defined the terms and conditions  
231 of interconnection, at least between Qwest and various CLECs. I see the issues raised by  
232 Mr. Hendershot as part of the ongoing responsibility of the DPU to facilitate competitive  
233 entry in Utah, per the legislature's policy directive. If Bresnan is granted a CPCN, of  
234 course the Division stands ready to work with all stakeholders on these issues.

235 **III. RESPONSE TO TESTIMONY OFFERED BY URTA**

236 **Q. MR. MEREDITH OFFERS HIS OPINION OF POSSIBLE FINANCIAL IMPACTS**  
237 **OF ALLOWING BRESNAN A CPCN IN THE VERNAL EXCHANGE AREA.**  
238 **DOES THE DPU AGREE WITH THE ASSUMPTIONS USED BY MR. MEREDITH**  
239 **IN HIS PROJECTIONS?**

240 A. No. The DPU would use different assumptions than those proposed by Mr. Meredith. The  
241 DPU has conducted its own sensitivity analyses, calculating likely impacts based on various  
242 customer "take rates" for the Bresnan service. The testimony of Mr. Casey Coleman on  
243 behalf of the DPU describes its assumptions and shows the range of potential impact on the  
244 Universal Service Fund.

245 **Q. DO YOU TAKE ISSUE WITH OTHER ASPECTS OF MR. MEREDITH'S**  
246 **TESTIMONY?**

247 A. Yes. Mr. Meredith provides confidential information regarding UBTA-UBET's average  
248 revenue per line for its telephony service. That calculation would include the revenues  
249 received by UBTA-UBET for services actually purchased and used by its customers,  
250 whether a la carte or bundled.

251 It is interesting to note that Bresnan will only be offering a packaged service or bundle.  
252 The price of that packaged offering is somewhat higher than the average revenue per line  
253 currently received by UBTA-UBET. In terms of retaining customers, certainly many  
254 price-sensitive customers of UBTA would be likely to maintain service with UBTA rather  
255 than switch to the higher cost Bresnan package. One could argue that UBTA retains a  
256 price advantage for the services its current subscribers actually buy and use.

257 **Q. IF YOU ACCEPTED MR. MEREDITH'S PROJECTIONS, WOULD THE**  
258 **EXISTING USF SURCHARGE HAVE TO BE INCREASED TO COVER UBTA-**  
259 **UBET'S INCREASED USF DRAW?**

260 A. Not immediately, maybe not at all. However, the rate of the USF surcharge has fluctuated  
261 over the years. It is presently at 0.5 percent on intrastate retail revenues, but has been as  
262 high as one percent in 1999 when the USF was last restructured. In the last several months,  
263 two companies which previously received USF support either are foregoing or substantially  
264 reduced their support payments. As a result, I don't believe an increased surcharge on  
265 intrastate retail revenues would be necessary. Therefore, customers outside of Uintah  
266 Basin's serving territory would be no worse off.

267 Nonetheless, the DPU has taken that possibility into account. The testimony of Casey  
268 Coleman provides a range of potential impacts based on sets of assumptions. Even if there  
269 was an increased required, I can't see that as significant enough a reason to deny  
270 competitive choice to the citizens of Vernal.

271 **Q. MR. MEREDITH ALSO RAISES A CONCERN ABOUT GRANTING A**  
272 **CERTIFICATE TO SERVE IN JUST A PORTION OF A RATE-OF-RETURN**  
273 **CARRIER’S EXCHANGE. DO YOU HAVE COMMENTS?**

274 A. I understand his concern, but mismatched service territories are inevitable. Since Bresnan’s  
275 cable franchises are granted by political subdivisions, of course that is where it would  
276 initially place its infrastructure. Political subdivisions and telephone exchange boundaries  
277 rarely match up exactly; that has long been an issue in maintaining plant records, gaining  
278 construction permits and in assessing correct tax rates on bills. Those issues haven’t  
279 stopped any provider in its tracks yet.

280 I would also note that the statute allows certification in either all or part of an ILEC area.  
281 Furthermore, Bresnan has indicated its willingness to serve the entire Vernal exchange if  
282 the PSC so desires. Of course, the DPU would stand ready to work through whatever issues  
283 might arise (e.g. interconnection, number portability) if the Commission required Bresnan  
284 to serve in the entire exchange area.

285 **VII. UNIVERSAL SERVICE FUND CONSIDERATIONS**

286 **Q. MR MEREDITH IMPLIES THAT USF IS ALMOST AN ENTITLEMENT OF**  
287 **RURAL ILECS. (PAGE 9, LINES 181-191). DO YOU BELIEVE IT IS AN**  
288 **ENTITLEMENT?**

289 A. No. I am aware of several states which have no USF program at all. The Utah statutes  
290 (UCA 54-8b-15) require that the USF be:

291 “non-discriminatory and competitively and technologically neutral in the collection  
292 and distribution of funds, neither providing a competitive advantage for, nor

293 imposing a competitive disadvantage upon, any telecommunications provider  
294 operating in the state. The fund shall be designed to: (a) promote equitable cost  
295 recovery of basic telephone service through the imposition of just and reasonable  
296 rates for telecommunications access and usage; and (b) preserve and promote  
297 universal service within the state by ensuring that customers have access to  
298 affordable basic telephone service.”

299 **Q. WHO DETERMINES THE DEFINITION OF AFFORDABLE BASIC TELEPHONE**  
300 **SERVICE?**

301 A. The Utah Public Service Commission established the rules governing the Universal Service  
302 Fund (R746-360). The rule defines both basic service and the process of determining the  
303 “affordable base rate.”

304 **Q. SO, COULD THOSE DEFINITIONS AND PROCESSES BE CHANGED?**

305 A. Certainly. There is a well-established administrative rulemaking process. In my  
306 experience, it can take some time to amend existing rules which deal with topics of such  
307 great interest, but it has been done before. Given the changes in the industry, it may well be  
308 time to address the Utah USF policy again.

309 **Q. WHAT IS THE FEDERAL PHILOSOPHY ON USF?**

310 A. The most recent proclamation I have heard comes from FCC Chair Kevin Martin:

311 Competitive forces spur innovation and push prices down. When a regulatory issue  
312 comes before me, my first instinct is to pick the action that will help facilitate and  
313 promote competition, innovation, and consumer choice. Sometimes that is de-  
314 regulation. Sometimes that is enforcing existing regulations designed to level the  
315 playing field or promote new entry. I have tried to apply such competitively and  
316 technologically neutral policies consistently across all platforms.<sup>3</sup>

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<sup>3</sup> Remarks of FCC Chairman Kevin J. Martin, National Cable & Telecommunications Assoc. Las Vegas, NV May 7, 2007



317 In sum, the goals of federal Universal Service are to promote the availability of quality  
318 services at just, reasonable, and affordable rates and increase access to advanced  
319 telecommunications services throughout the country.

320 **Q. VIRTUALLY ALL OF THE ARGUMENTS PRESENTED BY UBTA-UBET AND**  
321 **THE URTA ARE BASED ON THE PRESUMPTION THAT THE COMPANY WILL**  
322 **CONTINUE TO BE RATE-OF-RETURN REGULATED OR AS A COOPERATIVE,**  
323 **UNDERGO EARNINGS REVIEWS TO ESTABLISH USF SUPPORT. IS THAT A**  
324 **REASONABLE ASSUMPTION IN TODAY'S MARKETPLACE.**

325 A. Not necessarily. I believe the dynamics in the marketplace, the technologies that are being  
326 actively substituted by customers for traditional land line service and the development of  
327 new telecommunications modes all are pushing the telecommunications marketplace  
328 towards fewer regulations and vigorous competition will lead to fewer subsidies.

329 **Q. DOES UBTA-UBET CURRENTLY HAVE OPTIONS OTHER THAN**  
330 **TRADITIONAL RATE-OF-RETURN REGULATION?**

331 A. Yes. As mentioned previously, UBTA-UBET could petition the Commission to become  
332 price regulated. UCA 58-8b-2..3 (10) reads:

- 333 a. (a) An incumbent telephone corporation serving fewer than 30,000 access lines in  
334 the state may petition the commission to be regulated under price regulation rather  
335 than traditional rate of return regulation.  
336 (b) In implementing price regulation for an incumbent telephone corporation  
337 serving fewer than 30,000 access lines, the commission may modify the  
338 requirements of any provision of this section if necessary to the individual  
339 circumstances of the incumbent telephone corporation.

340 If memory serves, that particular section of the statute was added at the behest of the rural  
341 telephone companies so they would have the ability to opt-out of traditional rate-of-return  
342 regulation as competition developed in the rural service territories.

343 **Q. WHEN DID UBTA-UBET LAST COMPLETE AN EARNINGS REVIEW?**

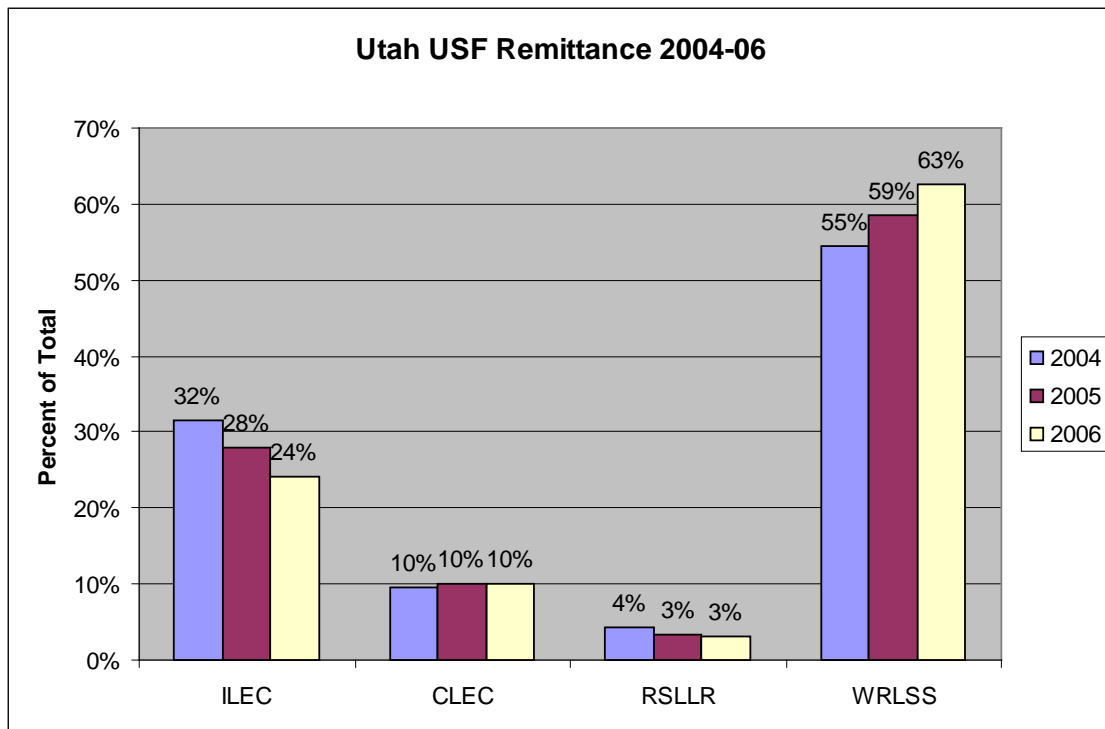
344 A. UBTA-UBET filed an application in early 2005 to increase its Utah USF support. In  
345 Docket 05-053-01, UBTA-UBET sought roughly \$7.2M in increased USF support. That  
346 docket was eventually resolved through a stipulation with the DPU and CCS which the PSC  
347 approved in late 2005.

348 **Q. UNDER THE TERMS OF THE STIPULATION, HOW WAS UBTA/UBET'S USF**  
349 **SUPPORT MODIFIED?**

350 A. UBTA/UBET, the DPU and Committee of Consumer Services entered into a stipulation  
351 allowing UBTA-UBET's USF support to increase by just over \$1M or about 14 percent of  
352 the originally requested amount. Under the terms of the stipulation, UBTA-UBET agreed  
353 to increase its local basic exchange rates up to the Affordable Base Rate (ABR) and  
354 increase its Extended Area Service (EAS) rates. Those increases were expected to generate  
355 about \$684,000 annually.

356 **Q. BOTH UBTA-UBET AND THE URTA VOICE CONCERN ABOUT POTENTIAL**  
357 **BURDENS ON OTHER LANDLINE CONSUMERS IN THE STATE BEARING**  
358 **THE COST OF INCREASED USF CHARGES. IS THEIR CONCERN WELL-**  
359 **FOUNDED? (MEREDITH, PAGE 6 LINES 129-132; TODD, PAGES 6-7, LINES**  
360 **103-107)**

361 A. While I am certain their concern is sincere, I'm not sure that it really captures the reality of  
362 the marketplace. First, the vast majority of USF surcharges are currently being paid by  
363 *wireless* subscribers, as shown by the chart below. Although wireless providers do not fall  
364 under the jurisdiction of the PSC, their customers nonetheless help fund universal service.



365

366 Furthermore, as I answered previously, I do not believe, at present, that any increase in the  
367 existing surcharge would be needed even if UBTA-UBET receives the significant  
368 percentage increase that Mr. Meredith projected it would need.

369 **Q. ARE SERVICES ALREADY OFFERED BY COMPETITORS TO UBTA-UBET IN**  
370 **THE VERNAL AREA?**

371 A. Absolutely. There are numerous wireless providers and Voice Over Internet Protocol  
372 (VoIP) providers who are willing, able and actively providing service in that area. DPU  
373 staff either directly contacted or checked websites of various VoIP providers to ascertain  
374 whether their service was available in Vernal, every provider contacted indicated service  
375 was available. Since all that is required to get VoIP service is a broadband connection, it is  
376 fairly simple for a VoIP provider to serve in Vernal or any location with broadband  
377 capabilities. As for wireless service, there are at least seven cellular companies in Vernal  
378 according to websites for two different directory providers. Coverage maps for  
379 Sprint/Nextel, Verizon and AT&T all indicate they have coverage in Vernal. Those  
380 providers are not regulated by the PSC, so the DPU doesn't receive annual reports or other  
381 subscribership data from them (with the exception of the USF payments previously  
382 mentioned).

383 **Q. DOES BRESNAN HAVE TO RECEIVE A CERTIFICATE IN ORDER TO**  
384 **PROVIDE ITS DIGITAL VOICE SERVICE IN VERNAL?**

385 A. No. Bresnan's witness Katherine Kirchner, indicated that Bresnan sought a CPCN so that it  
386 could potentially interconnect with UBTA-UBET and port numbers. If required to serve  
387 the entire area, which the Division would recommend, Bresnan would need to buy

388 unbundled network elements or resell services in order to serve customers in areas where  
389 Bresnan doesn't currently have its own facilities. Like other cable and VoIP providers, I  
390 assume Bresnan could execute the vast majority of its business plan without a CPCN.  
391 Quite frankly, it is hard to understand why one more "known and somewhat regulated"  
392 competitor poses any more threat to UBTA-UBET than the competition that we know  
393 already exists, but is not regulated.

394 **VIII. CONCLUSION**

395 **Q. DO YOU HAVE ANY FINAL THOUGHTS?**

396 A. Yes. This proceeding raises a number of issues that have not previously  
397 been decided by the Commission. However, it was inevitable that they  
398 would eventually be raised given the all the technologies which enable  
399 telecommunications but are not regulated by the Commission and the  
400 increase in competitive pressure created by those technologies on rural LECs  
401 which are still regulated by the Commission. Granting the CPCN may well  
402 be a first step in reshaping the dynamics of telecommunications in Utah.  
403 The Division weighed the precedent-setting nature of its recommendation  
404 carefully and concluded that it was in the public interest to grant a CPCN to  
405 Bresnan in the Vernal exchange.

406 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

407 A. Yes, it does.