

JEROLD C. LAMBERT  
BRESNAN COMMUNICATIONS, LLC  
1 Manhattanville Road  
Purchase, NY 10577  
[jlambert@bresnan.com](mailto:jlambert@bresnan.com)

THORVALD A. NELSON  
HOLLAND & HART LLP  
8390 East Crescent Pkwy, Suite 400  
Greenwood Village, CO 80111  
[tnelson@hollandhart.com](mailto:tnelson@hollandhart.com)

JAMES HOLTKAMP  
HOLLAND & HART LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, UT 84111-1031  
[jholtkamp@hollandhart.com](mailto:jholtkamp@hollandhart.com)

Attorneys for Bresnan Broadband of Utah, LLC

---

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

In the Matter of 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

**BRESNAN BROADBAND OF  
UTAH, LLC'S POST-HEARING BRIEF**

DOCKET NO. 07-2476-01

---

**I. INTRODUCTION**

Issuing a Certificate of Public Convenience and Necessity (“CPCN”) for Bresnan Broadband of Utah, LLC (“Bresnan”) to operate as a Competitive Local Exchange Carrier (“CLEC”) in the Vernal local exchange is consistent with Utah Code Ann. § 54-8b-2.1, Utah public policy as set forth in Utah Code Ann. § 54-8b-1.1, and the Public Service Commission of Utah’s (“Commission”) rules regarding competitive entry. Therefore, Bresnan respectfully requests that the Commission issue an order granting Bresnan a CPCN to operate as a CLEC in the Vernal exchange. Additionally, as set forth in Bresnan’s application and pursuant to Utah

Admin. Code § R746-100-15, Bresnan requests that the Commission's order: (a) waive the requirements of Utah Admin. Code § R746-349-3.A.2 and permit Bresnan to submit a letter of credit in lieu of a bond; and (b) waive the requirements of Utah Admin. Code § R746-349-3.A.12 and permit Bresnan to rely on its various financial statements and proof of a letter of credit sufficient to protect customer deposits or other liabilities in lieu of a five-year projection of its proforma income and cash flow.

## **II. ARGUMENT**

### **A. Utah Law**

There are three aspects of Utah law and precedent that bear on the issues before the Commission in this proceeding.

First, Utah Code Ann. § 54-8b-2.1 establishes a two-part test for the Commission to apply when faced with an application requesting a CPCN to become a CLEC. Specifically, the Commission should issue a CPCN if the applicant: (a) has sufficient technical, financial and managerial resources and abilities to provide the public telecommunications services applied for; and (b) the issuance of the certificate to the applicant is in the public interest.<sup>1</sup>

Second, while the statute does not define the specific elements that must be included in the Commission's analysis of the "public interest," the statute does declare that it shall be the policy of the State of Utah to:

(1) endeavor to achieve the universal service objectives of the state as set forth in Section 54-8b-11; (2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state; (3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state; (4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops; (5) facilitate and promote the

---

<sup>1</sup> Utah Code Ann. § 54-8b-2.1.

efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection; (6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis; (7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations; (8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry; (9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and (10) endeavor to protect customers who do not have competitive choice.<sup>2</sup>

Further, with respect to examining the public interest associated with telephone competition in rural areas of Utah, prior Commission precedent has been to consider and balance the positive and negative impacts on the public that may flow from a grant of the requested authority.<sup>3</sup>

Third, in accordance with Utah law, the Commission has adopted rules and procedures regarding applications for a CPCN to be a CLEC.<sup>4</sup> In particular, Utah Admin. Code § R746-349-3 sets forth the requirements that must be met and the documentation that must be submitted in order to receive a CPCN.

In light of these legal requirements and standards, the following sections of this brief will discuss the evidence in the record regarding each of these legal issues.

### **B. Bresnan Has Sufficient Technical, Financial, And Managerial Resources**

The first part of the two-part test applicable to applications for a CPCN to become a CLEC is whether the applicant has sufficient technical, financial, and managerial resources to provide the applicable telecommunications services. As set forth in Bresnan Exhibit 2 (Bresnan's Verified Application), Bresnan is requesting the authority to provide local exchange

---

<sup>2</sup> Utah Code Ann. § 54-8b-1.1.

<sup>3</sup> See, e.g., *WWC Holding Co. v. Pub. Serv. Commn.*, 44 P.3d 714, 718 (Utah 2002).

<sup>4</sup> Utah Admin Code § R746-349-3.

telecommunications services in the Vernal exchange.<sup>5</sup> At hearing, abundant evidence was provided regarding Bresnan's technical, financial, and managerial resources and the fact that such resources are sufficient to provide local exchange services in the Vernal exchange.

First, Ms. Katherine Kirchner, Bresnan's Vice President of Telephony Operations, testified that Bresnan has the technical ability to deliver high quality service to customers in the Vernal exchange and that Bresnan is currently doing this very thing in 40 other markets.<sup>6</sup> Ms. Kirchner further testified that Bresnan is a financially-sound company with more than adequate financial resources.<sup>7</sup> Bresnan's financial resources were further documented in the record in the financial statements attached to Bresnan Exhibit 2 (Bresnan's Verified Application) and in Bresnan Exhibit 3 (the supplemental financial statements provided to the Division in response to its investigation in this docket). Finally, Ms. Kirchner testified that Bresnan has an experienced group of managers who are well capable of providing local exchange services.<sup>8</sup> The specific experience of Bresnan's management team was documented in the attachments to Bresnan Exhibit 2.

Upon review of the documentation and evidence provided by Bresnan, the Division of Public Utilities also reached the conclusion that Bresnan met this part of the statutory test. Mr. Casey Coleman testified:

The Division believes that Bresnan has shown sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for. Specifically, Bresnan indicated that they are currently serving over 82,000 telephone customers in Montana, Wyoming and Colorado. The areas they are serving would be communities similar to those in this Docket and the managerial team assembled by Bresnan appears to have the ability to run a telecommunications company in those areas. Therefore the Division believes they would be able to offer the similar expertise and experience to customers in

---

<sup>5</sup> Bresnan Exhibit 2 at p. 2.

<sup>6</sup> See Bresnan Exhibit 1 at p. 3-4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Vernal.<sup>9</sup>

Similarly, Mr. Eric Orton on behalf of the Committee of Consumer Services, agreed with Ms. Kirchner and Mr. Coleman and testified that Bresnan met the requirements to be a CLEC as outlined in Utah Code Title 54.<sup>10</sup>

Finally, Mr. Bruce Todd on behalf of UBTA-UBET conceded that there was nothing in his testimony challenging Bresnan's technical, financial or managerial resources.<sup>11</sup> And Mr. Raymond Hendershot on behalf of UBTA-UBET testified that he generally assumed the Division was carrying out its due diligence and its responsibility to analyze these issues.<sup>12</sup>

### **C. The Issuance Of A CPCN To Bresnan Is In The Public Interest**

The second part of the two-part test applicable to applications for a CPCN to become a CLEC is whether grant of the application is in the public interest. Again, at the hearing, substantial evidence was introduced supporting the assertion that the public interest is best served by granting Bresnan's application and allowing the benefits of competition to flow to customers in the Vernal exchange.

Ms. Kirchner testified that allowing Bresnan entry into the Vernal exchange would:

(a) allow customers a competitive option for local exchange telecommunications services that is affordable and high-quality; (b) encourage the development of competition in rural Utah; (c) allow for the possibility of flexible regulation for the incumbent; (d) encourage the deployment of advanced telecommunications networks; (e) encourage the development of new technologies; and (f), as a result, promote economic development in the Vernal exchange.<sup>13</sup> As a result, many of the public policies goals articulated by the legislature would be furthered by

---

<sup>9</sup> DPU Exhibit 2 at p. 3.

<sup>10</sup> CCS Exhibit 1 at lines 96-98.

<sup>11</sup> Hearing Transcript, Sept. 4, 2007 at p. 74:7 - 75:8.

<sup>12</sup> Hearing Transcript, Sept. 4, 2007 at p. 176:24 - 177:5.

<sup>13</sup> Bresnan Exhibit 1 at p. 5-9.

Bresnan's competitive entry.

The Division concurred with Ms. Kirchner's analysis. Mr. Coleman testified, "The Division's analysis has shown that customers in Vernal will benefit from having a competitor offering telecommunications services. Some of those benefits include reduced costs, better service quality, and increased choice. These benefits tip the 'public interest' scale in favor of granting a CPCN when the maximum perceived negative would be a projected cost to individual customers throughout the state of Utah of \$0.012 annually."<sup>14</sup> Ms. Laura Scholl also testified for the Division and echoed Mr. Coleman's conclusions, "[T]he DPU considered the value of competitive choice for consumers whose interests we also represent and concluded that the benefits of [Bresnan's] Digital Voice service and the very existence of customer choice served the public interest. Our position was fortified by the fact that our projections do not indicate that current contributors to the State USF or the USF itself will be damaged. Since both national and state policy supports competitive entry while preserving Universal Service, and we conclude that both are possible in this instance, we support Bresnan's petition."<sup>15</sup>

Further, Mr. Orton on behalf of residential and small business consumers, concluded that granting Bresnan's application promotes the competition favored by Utah policies and has an acceptable impact on the state USF.<sup>16</sup> Therefore, Mr. Orton testified that there are no valid reasons, from the customer's point of view, why Bresnan's application should be denied.<sup>17</sup>

Messrs. Todd and Hendershot on behalf of the incumbent UBTA-UBET and Mr. Douglas Meredith on behalf of the Utah Rural Telecom Association ("URTA") testified in opposition to Bresnan's application. These witnesses raised two general arguments why the application was,

---

<sup>14</sup> DPU Exhibit 2 at p. 21.

<sup>15</sup> Hearing Transcript, Sept. 5, 2007 at 352:25 – 353:11.

<sup>16</sup> CCS Exhibit 1 at line 76-94.

<sup>17</sup> CCS Exhibit 1 at line 103-106.

from their perspective, contrary to the public interest. However, these arguments were not supported by the facts in this case and were often internally inconsistent. In particular, these witnesses argue that Bresnan's application should be denied because (a) it represents unreasonable cherry-picking; and (b) it would impose an unreasonable burden on the USF with no offsetting benefits to customers. This brief will address each of these issues in turn.

### **1. Bresnan Is Not Cherry-Picking**

Messrs. Todd, Hendershot, and Meredith all claimed, in one form or another, that Bresnan's entry would not serve the public interest because Bresnan only intended to serve a small segment of the market. Specifically, Mr. Todd testified his belief that Bresnan would only serve those "select areas in which it currently has cable plant or to those areas into which it might choose to expand."<sup>18</sup> Mr. Hendershot testified his belief that Bresnan would serve "only a fraction" of the Vernal exchange with its own facilities.<sup>19</sup> Finally, Mr. Meredith stated that Bresnan sought to only serve a "doughnut shaped area" within Vernal itself.<sup>20</sup>

However, these statements are not factually supported. First, in response to discovery, Bresnan identified the number of households in the Vernal exchange where Bresnan's facilities passed such that Bresnan could provide cable/data and voice services.<sup>21</sup> Bresnan also put evidence into the record regarding the number of residential households currently served by UBTA-UBET in the Vernal exchange.<sup>22</sup> In comparing these two figures, the evidence in the record is that Bresnan's facilities pass, and, therefore, are capable of serving 100% or virtually 100% of the residential homes in the Vernal exchange.<sup>23</sup> Second, under cross-examination,

---

<sup>18</sup> UBTA Exhibit 1 at p. 7.

<sup>19</sup> UBTA Exhibit 2 at p. 6.

<sup>20</sup> URTA Exhibit 1 at p. 10.

<sup>21</sup> See Bresnan Exhibit 6 at p. 2.

<sup>22</sup> See Bresnan Exhibit 7 at p. 1.

<sup>23</sup> Since an analysis was not done (and could not realistically have been done) to compare the two data sets address-by-address, it is possible that there are a very small number of residential homes currently served by UBTA-UBET

Mr. Meredith admitted that if he misunderstood the Bresnan application and if, in fact, Bresnan were seeking authority to serve in the entire Vernal exchange that his concerns regarding the “doughnut shaped area” would be alleviated.<sup>24</sup>

Thus, the evidence in the record is that Bresnan is not cherry-picking. To the contrary, Bresnan’s facilities could serve 100% or nearly 100% of the customers in the exchange and Bresnan has accepted, should the Commission wish to impose it, the obligation to serve every customer in the Vernal exchange who requests service.<sup>25</sup>

Having said that, Bresnan urges the Commission to carefully consider whether it wishes to impose that requirement. Since Vernal has more than 5,000 access lines the Commission is not obligated under Utah Code § 54-8b-2.1(4) to impose a requirement that Bresnan serve any customer who requests service. In lieu of this requirement, Bresnan suggests that the Commission could order Bresnan to serve any customer who requests service and is passed by Bresnan’s facilities. Bresnan would further suggest that the Commission could order Bresnan to extend new cable facilities in the Vernal exchange on a non-discriminatory basis. The advantages of this alternative approach is that Bresnan would have virtually the same obligation (given the fact that Bresnan’s facilities pass nearly 100% of the residential homes) yet Bresnan, UBTA-UBET, and the Commission would be spared a tremendous amount of regulatory effort. Specifically, because of the chance that there are a few customers in the Vernal exchange who are not passed by Bresnan’s facilities, if the Commission imposes the obligation to serve all customers who request service, Bresnan will need to negotiate an interconnection agreement with UBTA-UBET which includes provisions for resale and unbundled elements. Unfortunately, there is the chance that this could be a difficult process, resulting in multiple contested

---

in the Vernal exchange which are not passed by Bresnan’s facilities.  
<sup>24</sup> Hearing Transcript, Sept. 5, 2007 at 280:14 – 281:4.



proceedings, and ending with all parties incurring potentially significant costs with little or no actual benefit to customers in Vernal.

## **2. Bresnan's Entry Will Create More Positive Benefits To Customers Than Negative Impacts On The USF**

Commission precedent in the *Western Wireless* case suggests that a public interest test should consider and weigh the positive and negative impacts of a proposed course of action.<sup>26</sup> As such, the issue of balancing the positive and negative impacts from Bresnan's entry into the Vernal exchange is at the very crux of the dispute in this proceeding. Unfortunately, while a great deal of written testimony and hearing time was spent on this topic, a great deal of confusion was also created in the process. In the end, there are two schools of thought on this subject. One school of thought was advanced by the Division, the Committee, and Bresnan and concludes that there are positive impacts associated with Bresnan's entry into the market in terms of more choices, lower rates, and better service. This school of thought then considers the impact on the State USF and concludes that any negative impact is speculative and minimal in relation to the benefits created. The other school of thought was advanced by UBTA-UBET and the URTA and suggests that there are no positive benefits from Bresnan's competitive entry and that the negative impacts are both real and substantial.

The debate between these two schools of thought focuses on three main areas. First, the parties disagree on just how big the impact on the USF will be if Bresnan is permitted competitive entry. Second, the parties disagree on whether there are any benefits to customers from Bresnan's competitive entry. As a result, the parties disagree on how the Commission should apply the *Western Wireless* decision to this case. This brief will look at these three areas in turn.

---

<sup>25</sup> See Bresnan Exhibit 1 at p. 5.

**a. Negative Impact On USF**

The issue of the magnitude of the impact on the USF if Bresnan is allowed to enter the market is tied to a few key variables. There is the issue of just how many customers will switch to Bresnan. There is also the issue of whether UBTA-UBET would need to recover 100% of those lost revenues from the fund or would be able to manage their business in such a way as to diminish in whole or in part the impact on the USF.

As to the issue of how many customers will switch to Bresnan, this is, unfortunately, an unknowable thing. Both Mr. Coleman and Mr. Meredith conducted an extensive analysis of the possible impacts on the State USF from Bresnan competitive entry into the Vernal market.<sup>27</sup> Ultimately, they used different assumptions and reach different conclusions. In particular, Mr. Coleman's analysis assumes a modest market penetration by Bresnan and estimates a resulting \$125,000-275,000 annual impact on the fund or, stated in another way, a potential increased surcharge of about one cent per year per Utah customer. Conversely, Mr. Meredith developed an estimate of the impact assuming not only that Bresnan earned very large market share in Vernal but that this precedent was applied across every independent territory in Utah such that every local telephone company was assumed to lose substantial market share to a competitive cable company.<sup>28</sup> Based on Mr. Meredith's assumptions, Mr. Coleman estimated that the ultimate impact under those assumptions would still be less than a quarter a year per Utah customer.<sup>29</sup>

Of course, as explained by Ms. Scholl, just because UBTA-UBET loses revenues does not necessarily mean that there will be any adverse impact on customers.<sup>30</sup> First, Ms. Scholl explained that UBTA-UBET may well be able to manage their business so as to reduce costs to

---

<sup>26</sup> See, e.g., *WWC Holding Co. v. Pub. Serv. Commn.*, 44 P.3d 714, 718 (Utah 2002).

<sup>27</sup> See DPU Exhibit 2 at p. 12-15; URTA Exhibit 1 at p. 7-9.

<sup>28</sup> URTA Exhibit 1 at p. 8.

<sup>29</sup> DPU Exhibit 2 at p. 14.

<sup>30</sup> See, e.g., DPU Exhibit 1 at p. 13.

respond to new competition.<sup>31</sup> In that event, there may be no need for UBTA-UBET to increase its USF draw.<sup>32</sup> Ms. Scholl also stated that, even if a greater USF draw was awarded, that the actual USF surcharge may be unaffected.<sup>33</sup> As Ms. Scholl concluded, “Based on a review of [Exhibit DPU 1.1SR] it’s clear that the potential additional disbursements to UBTA-UBET anticipated by Mr. Meredith’s worse case scenario could be absorbed by the fund at its present surcharge.”<sup>34</sup>

**b. Positive Impacts From Competitive Entry**

With that framework in mind with respect to the possible negative impacts associated with Bresnan’s competitive entry into the Vernal exchange, there were also two schools of thought with respect to the potential positive impacts. One school of thought advanced by the Division, the Committee, and Bresnan is that there are benefits customers enjoy from greater choice. Mr. Coleman explained it well when he testified that Bresnan’s competitive entry into Vernal would increase choices, reduce costs to consumers, increase service quality and increase technological innovation.<sup>35</sup> Conversely, Mr. Meredith argued the other view that Bresnan’s entry into the Vernal market offered no benefits to consumers.<sup>36</sup>

Mr. Meredith’s analysis and conclusion should be rejected. First, Mr. Meredith’s conclusion is inconsistent with the policies adopted by the legislature. The Utah legislature stated that competition should be encouraged because competition can be a means to provide wider customer choices, enhance customer welfare and encourage the growth of the economy of the state.<sup>37</sup> Further, the legislature decreed that regulatory policies should be modified to allow

---

<sup>31</sup> Hearing Transcript, Sept. 5, 2007 at 387:13-22.

<sup>32</sup> *Id.*

<sup>33</sup> See DPU Exhibit 1 at p. 13 and DPU Exhibit 1.1SR.

<sup>34</sup> Hearing Transcript, Sept. 5, 2007 at 352:15-19.

<sup>35</sup> DPU Exhibit 2 at p. 19-21.

<sup>36</sup> URTA Exhibit 2 at p. 19-20.

<sup>37</sup> Utah Code Ann. § 54-8b-1.1(3) and (9).

greater competition in the telecommunications industry.<sup>38</sup>

Second, Mr. Meredith's conclusion is illogical and inconsistent with his analysis of the negative impacts associated with Bresnan's competitive entry. In particular, in order for there to be a real and substantial impact on the USF, large numbers of customers need to switch from UBTA-UBET to Bresnan. Unless these customers are assumed to be acting unreasonably, the fact that they have switched in large numbers is the best possible evidence that they receive a benefit from the switch. It is impossible to imagine how you could have no customer benefit from switching to Bresnan yet customers are nonetheless switching en masse. In short, Mr. Meredith cannot have it both ways.

Conversely, the Division is far more consistent when it assumes that Bresnan will achieve a modest market share resulting in some degree of customer benefits from increased competition with little or no impact on the USF.<sup>39</sup> Additionally, Mr. Orton makes the keen observation that if a higher switch rate happens than is assumed by the Division, that such an event would be indicative of even greater benefits from Bresnan's competitive entry such that the balance between the negative impact on the USF from the higher switch rate and the positive benefits from the competitive entry are likely to remain in balance.<sup>40</sup>

### **c. Application Of The *Western Wireless* Decision**

Mr. Meredith concludes that the Commission's decision in *Western Wireless* dictates that the Commission should deny Bresnan's application since, in his opinion, there are negative impacts on customers due to higher USF charges and no corresponding positive benefits.<sup>41</sup> Without repeating the various arguments with respect to the negative and positive impacts, there

---

<sup>38</sup> Utah Code Ann. § 54-8b-1.1(8).

<sup>39</sup> See DPU Exhibit 2 at p. 21.

<sup>40</sup> CCS Exhibit 1 at line 76-83.

<sup>41</sup> URTA Exhibit 2 at p. 19.

are some important differences between this docket and the facts before the Commission in the *Western Wireless* proceeding. Therefore, the fact that the Commission denied Western Wireless' application for Eligible Telecommunications Carrier ("ETC") status does not mean that the Commission should deny Bresnan's application. To the contrary, the key differences between the facts in these two cases supports the conclusion that Bresnan's application should be granted.

First, as Mr. Meredith conceded, the impact on the state USF is greater in cases where the applicant is requesting ETC status because, all other things being equal, in addition to the increased draw needed by the incumbent the ETC itself would also be drawing from the fund.<sup>42</sup> However, in this instance, Bresnan is not requesting ETC status. Therefore Bresnan's application will have a smaller negative impact on the state USF than was contemplated by the Commission in the *Western Wireless* case.

Second, there is substantially more evidence of benefit in this case than was advanced by Western Wireless. For example, in the *Western Wireless* case the Commission was concerned that the prices charged by Western would be greater than those charged by the incumbent.<sup>43</sup> However, in this case, Mr. Coleman testified that the prices charged by Bresnan would be competitive and actually lower for many customers.<sup>44</sup> Additionally, in the *Western Wireless* case the Commission was concerned that there would be service quality problems due to coverage gaps in the wireless service.<sup>45</sup> Conversely, in this case, not only was there evidence that Bresnan's facilities covered 100% or nearly 100% of the current households in the exchange, there was also testimony by Mr. Coleman that Bresnan's competitive entry would likely improve service quality for all customers in the Vernal exchange due to the healthy pressures of

---

<sup>42</sup> Hearing Transcript, Sept. 4, 2007, 266:25 – 267:11.

<sup>43</sup> *WWC Holding Co. v. Pub. Serv. Commn.*, 44 P.3d 714, 720 (Utah 2002).

<sup>44</sup> DPU Exhibit 1 at p. 19.

<sup>45</sup> *WWC Holding Co. v. Pub. Serv. Commn.*, 44 P.3d 714, 720-21 (Utah 2002).

competition.<sup>46</sup>

**D. Bresnan's Application And Supporting Documentation Meets The Commission's Requirements**

Utah Admin. Code § R746-349-3 establishes the filing requirements imposed upon an applicant for a CPCN to provide competitive telecommunications services. As set forth in Bresnan Exhibit 2 (Bresnan's Verified Application) and Bresnan Exhibit 3 (the supplemental financial statements provided to the Division in response to its investigation in this docket) Bresnan has complied with these requirements with only two exceptions. With respect to these two exceptions, Bresnan has requested a waiver.

First, Bresnan requests that the Commission waive the requirements of Utah Admin. Code § R746-349-3.A.2 and permit Bresnan to submit a letter of credit in lieu of a bond.<sup>47</sup> The basis for this request is that a letter of credit is substantially less expensive to acquire than a bond while providing essentially the same level of security for Utah customers. Ms. Scholl testified on behalf of the Division that the Division recommends that the Commission grant this request for a waiver.<sup>48</sup>

Second, Bresnan requested that the Commission waive the requirements of Utah Admin. Code § R746-349-3.A.12 and permit Bresnan to rely on its various financial statements and proof of a letter of credit sufficient to protect customer deposits or other liabilities in lieu of a five-year projection of its proforma income and cash flow.<sup>49</sup> Ms. Scholl explained that when the Division gets these projections of proforma income and cash flow they are "largely fiction."<sup>50</sup> Thus, Ms. Scholl testified on behalf of the Division that the Division also recommends that the Commission

---

<sup>46</sup> See Bresnan Exhibits 6 and 7; see also DPU Exhibit 1 at p. 20.

<sup>47</sup> Bresnan Exhibit 2 at p. 4.

<sup>48</sup> Hearing Transcript, Sept. 5, 2007 at p. 418:16-24.

<sup>49</sup> Bresnan Exhibit 2 at p. 7.

<sup>50</sup> Hearing Transcript, Sept. 5, 2007 at p. 359:19-24.

grant this request for a waiver.<sup>51</sup>

### **III. CONCLUSION**

The evidence in the record supports a finding that Bresnan has sufficient technical, financial, and managerial resources and abilities to provide local exchange service to the customers within the Vernal exchange. Further, the evidence supports a finding that granting Bresnan a CPCN is in the public interest as the benefits from Bresnan's competitive entry outweigh any negative implications on the state USF. Therefore, Bresnan respectfully requests that the Commission issue an order granting Bresnan a CPCN to operate as a CLEC in the Vernal exchange. Additionally, as set forth in Bresnan's application and pursuant to R746-100-15, Bresnan requests that the Commission's order: (a) waive the requirements of R746-349-3.A.2 and permit Bresnan to submit a letter of credit in lieu of a bond and (b) waive the requirements of R746-349-3.A.12 and permit Bresnan to rely on its various financial statements and proof of a letter of credit sufficient to protect customer deposits or other liabilities in lieu of a five-year projection of its proforma income and cash flow.

DATED this 10th day of October, 2007.

#### **HOLLAND & HART, LLP**

---

Thorvald A. Nelson  
Attorney for Bresnan Broadband of Utah, LLC

---

<sup>51</sup> Hearing Transcript, Sept. 5, 2007 at p. 359:25 – 360:5 and p. 418:16-24.

## CERTIFICATE OF MAILING

I hereby certify that on this 10th day of October, 2007, I caused to be emailed a true and correct copy of the foregoing Bresnan Broadband of Utah, LLC's Post-Hearing Brief to the following:

Stanley K. Stoll  
StanS@blackburn-stoll.com

Jerry Lambert  
jlambert@bresnan.com

Kira M. Slawson  
KiraM@blackburn-stoll.com

Eric Orton  
eorton@utah.gov

Casey Coleman  
ccoleman@utah.gov

Laura Scholl  
lscholl@utah.gov

Dennis Miller  
dennismiller@utah.gov

Michael Ginsberg  
mginsberg@utah.gov

Stephen F. Mecham  
sfmecham@cnmlaw.com

Paul Proctor  
pproctor@utah.gov

James Holtkamp  
jholtkamp@hollandhart.com

---

Thorvald A. Nelson  
Attorney for Bresnan Broadband of Utah, LLC