

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF: The) Docket Number

Application of Bresnan) 07-2476-01 and 02

Broadband of Utah, LLC)

for a Certificate of)

Public Convenience and) TRANSCRIPT OF

Necessity to Operate) PROCEEDINGS

as a Competitive Local)

Exchange Carrier in)

Utah)

September 4, 2007 * 9:00 a.m.

Location: Public Service Commission

160 East 300 South, Hearing Room

Salt Lake City, Utah

Steve Goodwill

Administrative Law Judge

1 A P P E A R A N C E S

2 FOR BRESNAN BROADBAND, LLC:

3 Thorvald A. Nelson, Esq.

4 HOLLAND & HART, LLP

5 Attorneys at Law

6 8390 East Crescent Parkway, Suite 400

7 Greenwood Village, CO 84111

8 Tel: 303.290.1601

9 Fax: 303.975.5290

10 E-mail: tnelson@hollandhart.com

11 FOR UBTA-UBET COMMUNICATIONS, INC:

12 Stanley K. Stoll, Esq.

13 Kira M. Slawson, Esq.

14 BLACKBURN & STOLL

15 Attorneys at Law

16 257 East 200 South, Suite 800

17 Salt Lake City, Utah 84111

18 Tel: 801.531.6088

19 Fax: 801.578.3579

20 E-mail: kslawson@blackburn-stoll.com

21 FOR DIVISION OF PUBLIC UTILITIES:

22 Michael L. Ginsberg, Esq.

23 ATTORNEY GENERAL'S OFFICE

24 160 East 300 South, 5th Floor

25 Salt Lake City, Utah 84114

26 Tel: 801.366.0353

Fax: 801.366.0352

FOR COMMITTEE OF CONSUMER SERVICES:

Paul H. Proctor, Esq.

ATTORNEY GENERAL'S OFFICE

160 East 300 South, 5th Floor

Salt Lake City, Utah 84114

Tel: 801.366-055

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E X H I B I T S

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Bresnan 2		16
Bresnan 2.1-2.11 (2.4 and 2.5 confidential)	9	11
Bresnan 3 (Confidential)	14	14
Bresnan 4	14	15
Bresnan 5 (Data Request 1.9.3 Confidential)	15	15
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Bresnan 7 (Confidential)	99	99
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CCS-1	231	231
URTA 1, 1.1-1.4 (Confidential)	245	245
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P R O C E E D I N G S

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JUDGE GOODWILL: All right. Let's go on the record. This is Public Service Commission Hearing In The Matter: The Application of Bresnan Broadband, LLC, for a Certificate of Public Convenience and Necessity to Operate as a Competitive Local Exchange Carrier in Utah, Public Service Commission Docket No. 07-2476-01.

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I'm Steve Goodwill, the Administrative Law Judge for the Commission and I've been assigned by the Commission to hear this matter. Notice of this hearing was issued by the Commission on the 4th of June, 2007.

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At this time I'll go ahead and take appearances for the record. We'll start with the Applicant Bresnan.

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MR. NELSON: Good morning, your Honor.

Thor Nelson of the law firm of Holland & Hart appearing on behalf of Bresnan. With me at counsel table are Jerold Lambert and Ms. Katherine Kirchner also of Bresnan.

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JUDGE GOODWILL: All right. Thanks.

We'll turn to UBTA.

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MR. STOLL: Stan Stoll and Kira Slawson of

1 the law firm of Blackburn & Stoll appearing on behalf
2 of UBTA-UBET Communications, Inc.

3 JUDGE GOODWILL: And for URTA?

4 MR. MECHAM: Steve Mecham from the law
5 firm of Callister, Nebeker & McCullough appearing for
6 the Utah Rural Telecom Association.

7 JUDGE GOODWILL: For the Division?

8 MR. GINSBERG: Michael Ginsberg appearing
9 for the Division of Public Utilities.

10 MR. PROCTOR: Paul Proctor on behalf of
11 the Committee of Consumer Services.

12 JUDGE GOODWILL: Prior to going on the
13 record we just had a brief discussion of how we would
14 proceed this morning. And I think we'll just go
15 ahead and start with Bresnan and then go through the
16 UBTA, URTA since their position -- given their
17 position and then we'll go with the Division and the
18 Committee.

19 I did want to mention prior to starting
20 into testimony, remind everybody we do have a
21 confidential matter that's been prefiled in this
22 docket and we may well have confidential testimony
23 here this morning. If necessary, we can close this
24 hearing to only those who have signed the appropriate
25 appendix to the Protective Order. If we need to get

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1 into that confidential information my preference will
2 be that we leave the hearing open as much as possible
3 or completely, and I'll ask the attorneys to help
4 with that and, if we can, refer to confidential
5 information without actually disclosing that
6 information in open hearing.

7 Of course, if we do need to close the
8 hearing so that parties are able to get on the record
9 what they need to get on the record, we'll certainly
10 do that.

11 Also, I will ask the assistance of counsel
12 to flag for me when we appear to be approaching any
13 confidential information so that we have the
14 opportunity to make those determinations prior to the
15 matter being disclosed in public forum.

16 With that we'll go ahead and start with
17 Bresnan. Mr. Nelson.

18 MR. NELSON: Thank you, your Honor. We
19 would call Ms. Kirchner to the stand as our first
20 witness.

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KATHERINE KIRCHNER,

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24 called as a witness, being first duly sworn, was

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examined and testified as follows:

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DIRECT EXAMINATION

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BY MR. NELSON:

4

Q. Ms. Kirchner, please state and spell your name for the record.

5

6

A. It's Katherine Kirchner, K-A-T-H-E-R-I-N-E K-I-R-C-H-N-E-R.

7

8

Q. And by whom are you employed and in what capacity?

9

10

A. Bresnan Communications. I'm the Vice President of Telephone Operations.

11

12

Q. I had placed in front of you what's been marked for identification as Bresnan Exhibit 1. Do you see that?

13

14

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A. Yes.

16

Q. Could you please identify what that document is?

17

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A. That's my Direct Testimony on behalf of Bresnan.

19

20

Q. And did you cause this testimony to be prefiled in this proceeding?

21

22

A. Yes.

23

Q. If I asked you the questions contained in that testimony today, would your answers be the same under oath?

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1 A. Yes.

2 MR. NELSON: We would move the admission
3 of Bresnan Exhibit 1.

4 JUDGE GOODWILL: Any objections?

5 MR. MECHAM: No objection.

6 MR. PROCTOR: No.

7 MR. STOLL: No objection.

8 JUDGE GOODWILL: All right. We'll admit
9 it.

10 Q. (BY MR. NELSON) Ms. Kirchner, I have
11 placed in front of you what has been marked as
12 Bresnan Exhibit Number 2 which is the Verified
13 Application filed by Bresnan in this case. Do you
14 have that in front of you, ma'am?

15 A. Yes, I do.

16 Q. I just did this, but can you identify
17 that?

18 A. Yes. It is Bresnan Broadband of Utah's
19 Verified Application of Utah to be a certified CLEC
20 in Utah.

21 Q. Okay. And is this a complete copy of that
22 as filed with the Commission?

23 A. Yes.

24 MR. NELSON: Just for the record, your
25 Honor, this exhibit includes two exhibits that are

26

1 filed on yellow paper. Those pages were filed as
2 confidential to the Commission and that's why they're
3 represented on yellow paper.

4 We move the admission of Exhibit 2.

5 JUDGE GOODWILL: All right. Now, we
6 normally wouldn't go ahead and admit the actual
7 Application since it's simply a matter of record in
8 the docket. With respect to the exhibits, we could
9 certainly mark those as Bresnan 2.1, 2.2, et cetera,
10 and look to have them admitted.

11 Was there any particular reason that
12 within the Verified Application itself, Mr. Nelson,
13 that you wanted to make sure it was admitted as
14 evidence?

15 MR. NELSON: The only issue was to ensure
16 that I was able to refer to the Application and to
17 ensure it was part of the record. The practice that
18 it's considered part of the record even if it's not
19 admitted is perfectly fine. And I would be very
20 happy to request the admission of simply the
21 exhibits. Whatever your Honor would choose to do.

22 JUDGE GOODWILL: I think that makes sense.
23 Now, I think the list of exhibits shows Exhibit A
24 through Exhibit L.

25 MR. NELSON: Right.

26

1 JUDGE GOODWILL: If those were
2 correspondingly marked as 2.1, 2, 3, 4, 5, 6, 7, 8,
3 9, 10, 11 through 2.12. I'm not sure what
4 verification is at Exhibit L.

5 MR. NELSON: The verification is just an
6 attestation as to the accuracy of the contents of the
7 exhibits.

8 JUDGE GOODWILL: Okay. Again, we can mark
9 that as 2.12. I would not see that as necessary to
10 be admitted.

11 MR. NELSON: I would agree. We could
12 simply mark 2.1 to 2.11 then.

13 JUDGE GOODWILL: Okay. We will mark L as
14 2.12, but with respect to Bresnan 2.0 which we will
15 mark as the Verified Application, and 2.12, I think
16 we'll just mark those for identification but not
17 admit them. Is there any objection to the admission
18 of the Exhibits A through K now having been marked
19 2.1 through 2.11?

20 MR. PROCTOR: No objection.

21 MR. MECHAM: No objection.

22 MR. STOLL: No objection.

23 JUDGE GOODWILL: We'll go ahead and admit
24 those as such.

25 Is there any further need to discuss with
26

1 respect to the Verified Application and the treatment
2 of that Application? I think we're okay not actually
3 admitting that into the record. Okay.

4 Continue on. Go ahead, Mr. Nelson.

5 MR. NELSON: Your Honor, would you like me
6 to have the official copy returned to the Court
7 Reporter to mark those 2.1 through 2.12 before I
8 forget?

9 JUDGE GOODWILL: Why don't we go ahead and
10 do that then.

11 MR. NELSON: Before at least I forget.

12 MR. MECHAM: So is the Application, your
13 Honor, just deemed to be just entered already? I
14 mean, if we want to refer to it in cross-examination
15 or he wants to refer to it in his brief --

16 JUDGE GOODWILL: Well, I guess, yes. I
17 mean, to the extent that there are factual statements
18 within the Application that need to be established.
19 I mean, I'm certainly willing to admit them. It's
20 just typically my experience not our normal practice.
21 It is a matter of record. They're simply statements
22 being made by the Applicant in support of its
23 Application. They can be supported either through
24 witnesses or other documentation or if we want to
25 admit those here we can. I just don't see the need,

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1 I guess. Am I seeing that wrong, Mr. Mecham, in your
2 view?

3 MR. MECHAM: No. It's fine as long as we
4 can cross-examine on them. I'm sure Mr. Nelson wants
5 to refer to them in his brief.

6 JUDGE GOODWILL: Sure.

7 MR. MECHAM: They establish what they
8 believe makes Bresnan qualified to be a CLEC in the
9 State.

10 JUDGE GOODWILL: Okay. Well, let's
11 proceed. If we need to revisit this, we can.

12 Q. (BY MR. NELSON) Ms. Kirchner, I've
13 placed in front of you what's been marked for
14 identification as Bresnan Exhibit 3. Do you see
15 that, ma'am?

16 A. Yes.

17 Q. Can you please identify what that is?

18 A. That is the financial statements of
19 Bresnan Broadband of Utah, LLC.

20 Q. And can you identify whether these
21 documents were previously provided to the Division of
22 Public Utilities?

23 A. Yes.

24 Q. And were those provided in accordance with
25 an informal request that Bresnan received from the
26

1 Division?

2 A. Yes.

3 MR. NELSON: We would move the admission
4 of Bresnan Exhibit 3.

5 JUDGE GOODWILL: Any objections?

6 MR. PROCTOR: No objection.

7 MR. STOLL: No.

8 JUDGE GOODWILL: Okay, we'll admit it.

9 Q. (BY MR. NELSON) Okay. Turning to Bresnan
10 Exhibit 4, we've placed in front of you what's been
11 marked for identification as Bresnan Exhibit 4. Do
12 you see that, ma'am?

13 A. Yes.

14 Q. And can you identify what's included with
15 Bresnan Exhibit 4?

16 A. These are Bresnan Broadband's Responses to
17 UBTA-UBET's First Set of Data Requests in response to
18 Data Requests 1.8, 1.9, 1.10, 1.20, 1.21, 1.22, 1.23,
19 1.24, 1.28, 1.29, 1.30, and 1.35.

20 Q. And were these discovery responses
21 provided to the parties in the course of this
22 proceeding?

23 A. Yes.

24 MR. NELSON: Move the admission of Bresnan
25 Exhibit 4.

26

1 JUDGE GOODWILL: Any objections?

2 Okay. We'll admit it as such.

3 Q. (BY MR. NELSON) I would like you to now
4 turn, if you would, ma'am, to Bresnan Exhibit 5, and
5 could you identify what that is?

6 A. This is Bresnan Broadband of Utah's
7 Supplemental Response to UBTA-UBET's First Set of
8 Data Requests in response to Data Request 1.9.3,
9 1.9.4, and 1.38.

10 Q. Okay. And were these data responses
11 provided to the parties in this proceeding
12 previously?

13 A. Yes.

14 MR. NELSON: Move the admission of Bresnan
15 Exhibit 5.

16 JUDGE GOODWILL: Any objection?

17 Okay. We'll admit Bresnan Exhibit 5.

18 Q. (BY MR. NELSON) And lastly, could you
19 please turn to what's been marked for identification
20 as Bresnan Exhibit 6. Do you see that?

21 A. Yes.

22 Q. And can you please identify what that is,
23 that document is?

24 A. This is Bresnan Broadband of Utah's
25 Response to Utah Rural Telecom Association's Second

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1 Set of Data Requests, and it's Data Request 2.1.

2 Q. And as before, was this response
3 previously provided to the parties in this
4 proceeding?

5 A. Yes.

6 MR. NELSON: We would move the admission
7 of Exhibit Bresnan Exhibit 6.

8 JUDGE GOODWILL: Any objection to the
9 admission of Bresnan Exhibit 6?

10 Okay. We'll admit it.

11 MR. NELSON: And for the record, I just
12 would like to note that, again, there are portions
13 of -- well, actually, the entirety of Bresnan Exhibit
14 3 and portions of Bresnan Exhibit 5 and the entirety
15 of Bresnan Exhibit 6 are also confidential, provided
16 under the Protective Order of this docket, and as
17 indicated by the yellow paper that they're copied on.

18 JUDGE GOODWILL: Thanks, Mr. Nelson.

19 And why don't we just, just because there
20 seemed to be some concern, why don't we just revisit
21 Bresnan 2.0. Any objection to its admission since it
22 was offered in evidence?

23 Okay. We'll just go ahead and do that so
24 it makes it clear. Exhibit 2.0 will also be admitted
25 and that is the Verified Application.

26

1 Sorry, Mr. Nelson. Go ahead.

2 MR. NELSON: Thank you, your Honor. I
3 have no further questions on Direct for Ms. Kirchner
4 and she's available for cross-examination.

5 JUDGE GOODWILL: Mr. Stoll, I guess we'll
6 start with you since that's the order we're going to
7 proceed in.

8 MR. STOLL: Ms. Slawson will be handling
9 the cross-examination on behalf of UBTA-UBET.

10 JUDGE GOODWILL: Ms. Slawson?

11 CROSS-EXAMINATION

12 BY MS. SLAWSON:

13 Q. Good morning, Ms. Kirchner. I'm Kira
14 Slawson, I'm representing UBTA-UBET Communications,
15 Inc.

16 You indicate that Bresnan typically offers
17 Digital Voice service through cable telephony where
18 calls originate via telephone connected to a cable
19 modem and transported via the PSTN for termination on
20 traditional phone lines; is that correct?

21 A. That's correct.

22 Q. Can you tell me where your switch that
23 switches the calls originating in the Vernal area is
24 located?

25 A. We're still assessing where that switch
26

1 would be located.

2 Q. As of yet you do not have a switch for
3 those calls; is that correct?

4 A. We do not have a switch for Vernal, no.
5 We have several switches throughout the network and
6 we are assessing which one we would use for this
7 purpose.

8 Q. And are any of the switches located in
9 Utah?

10 A. No.

11 Q. Please describe for us how each of the
12 following -- I'm going to set up some calls for you
13 and then I would like for you to describe how those
14 calls would be handled by Bresnan, how they would be
15 switched.

16 Specifically a call to -- originating in
17 the Vernal exchange, and it's a call to another
18 Bresnan Digital Voice customer in the Vernal
19 Exchange.

20 A. How that call would route?

21 Q. Yes. How that call would be switched.

22 A. It would transit our plant from the
23 customer who is making the call and transit to the
24 switch of our choosing and then be handed off to the
25 other customer via that switch. It would never

26

1 transit the Public Switch Telephone Network.

2 Q. Okay. And a call originating from the
3 Vernal Exchange to a non-Bresnan Digital Voice
4 customer within the Vernal Exchange.

5 A. That call would transit over our cable
6 plant to the switch and be handed off to our
7 interconnect trunk and then transit the PSTN to that
8 customer.

9 Q. Okay. And bear with me, I've got a couple
10 more examples for you. A call originating from the
11 Vernal Exchange to a non-Bresnan Digital Voice
12 customer located, for example, in the Roosevelt
13 Exchange.

14 A. So it's a Bresnan customer in Vernal?

15 Q. Yes. A Bresnan customer in Vernal to a
16 non-Bresnan customer in Roosevelt.

17 A. That would largely depend on the
18 interconnect arrangement that we would hope to obtain
19 with UBET and depending on whether or not Roosevelt
20 is in the local calling area and whether we're
21 subject to that same local calling area. But it
22 would transit interconnect trunks via either a local
23 interconnect or axis tandem depending on that
24 arrangement over the Public Switched Telephone
25 Network.

26

1 Q. Okay. And lastly, a call from a Bresnan
2 customer to a non-Bresnan customer in Los Angeles, a
3 Bresnan customer in Vernal to a non-Bresnan customer
4 in Los Angeles.

5 A. That call would transit our switch -- or
6 actually our plant to our switch and get handed off
7 to a long distance carrier who would terminate that
8 call for us in Los Angeles.

9 Q. And I believe you touched on this a little
10 bit. With respect to the calls to a non-Bresnan
11 Digital Voice customer in the Vernal Exchange, how
12 would Bresnan anticipate compensating UBTA-UBET for
13 use of its network on that terminating call?

14 A. For a local terminating call?

15 Q. Yes.

16 A. It would be subject to, you know, I guess
17 the arrangement with UBTA-UBET. And in some cases we
18 have a reciprocal compensation arrangement and some
19 cases we do a bill and keep.

20 Q. And with respect to calls to a non-Bresnan
21 Digital Voice customer in the Roosevelt Exchange,
22 would Bresnan pay UBTA-UBET terminating access for
23 that inter-exchange call?

24 A. If that's what's negotiated in the
25 agreement and it's not part of the local calling

26

1 area, yes.

2 Q. And by local calling area, are you
3 referring to extended area service?

4 A. Correct.

5 Q. And if it is part of the extended area
6 service, how would Bresnan compensate UBTA-UBET
7 terminating that inter-exchange call?

8 A. It would be subject to the terms agreed to
9 with UBET-UBTA in the agreement.

10 Q. With respect to calls to a non-Bresnan
11 Digital Voice customer, say, in Los Angeles, would
12 Bresnan or the IXC through whom the call is
13 terminated pay terminating access charges to the LEC
14 or CLEC that terminates that call?

15 A. The IXC will do that.

16 Q. And what steps will Bresnan take to ensure
17 that its IXCs are not contributing to the phantom
18 traffic problem?

19 A. Bresnan will do all the -- or will
20 actually transfer the call to the provider and they
21 will use the appropriate SS7 technology to terminate
22 that call.

23 Q. And will Bresnan ensure that they use the
24 SS7 technology in each instance?

25 A. We use SS7 today, yes.

26

1 Q. And will it ensure that the inter-exchange
2 carriers also forward that information?

3 A. I don't know.

4 Q. I would like to refer now to your
5 testimony in lines 77 through 102. I'm going to have
6 a line of questioning through that. If you need to
7 refer to your Direct Testimony, I believe you have it
8 in front of you.

9 A. Yes.

10 Q. This is regarding the public interest test
11 or standard. Can you explain to me how Bresnan's
12 entry into the market serves to achieve universal
13 service objectives of the State?

14 A. Bresnan in Utah will contribute to the
15 Universal Service Fund, just as we do in every other
16 state that we operate in. So we do collect and remit
17 Universal Service Fund on behalf of the customers
18 that we serve.

19 Q. And correct me if I'm wrong, but the
20 customers that you're choosing to serve in your
21 Application are within the Vernal Exchange, correct?

22 A. Within the Vernal Exchange, yes.

23 Q. But they are not all the customers in the
24 Vernal Exchange; is that correct?

25 A. We will service the customers that are
26

1 served by our cable plant and then also look at
2 surveying any other customers who request service.

3 Q. Would you be able to provide the digital
4 phone service and its enhanced features that you
5 allude to in your Direct Testimony to customers not
6 served by your cable?

7 A. It would depend on the method of
8 technologies for delivery of that. If we do
9 unbundled loops or resell would define that.

10 Q. Can you explain to me how Bresnan's entry
11 into the Vernal market serves to facilitate access of
12 high-quality, affordable telecommunications services
13 to all residents and businesses in the State of Utah?

14 A. I can't answer that.

15 Q. In fact, you're not going to be able to
16 provide your digital phone service with its enhanced
17 calling features to all residents of the State of
18 Utah, you're not seeking that now; is that correct?

19 A. We're only seeking it in the markets that
20 we specify in the Application.

21 Q. And in fact, you're not going to be able
22 to provide those services even to all residents in
23 the Vernal area; isn't that correct?

24 A. I can't answer that.

25 Q. Explain to me how Bresnan's entry into the
26

1 Vernal market enhances the general welfare and
2 encourages the growth of the economy of the State
3 through increased competition when your services will
4 be so limited in scope.

5 MR. NELSON: Object to the
6 characterization. Object to the question as
7 mischaracterizing the witness's testimony as to "be
8 so limited in scope."

9 Q. (BY MS. SLAWSON) The "limited in scope"
10 was mine. I believe from your Direct Testimony you
11 indicated that you would enhance the general welfare
12 and encourage the growth of the economy of the State
13 through increased competition.

14 And my question to you is, how do you
15 intend to do that when the service that you're
16 offering is so limited in its scope?

17 A. And by "scope" do you mean area?

18 Q. I mean area and the number of customers
19 that you're going to serve.

20 MR. NELSON: Withdraw the objection now
21 that the definition of "scope" has been clarified.

22 THE WITNESS: Well, I think we feel at
23 Bresnan that adding a competitor into the area allows
24 for pricing that's more favorable to the customers,
25 that they have places, as well as adding new

26

1 technology to the area that will also drive
2 businesses coming into the area if they have more
3 choices and affordable rates for being able to get
4 those services.

5 Q. (BY MS. SLAWSON) But, again, the
6 favorable prices will only be limited to a select few
7 customers within the Vernal Exchange; is that
8 correct?

9 MR. NELSON: Object to the statement
10 "select few" as evidence not in the record.

11 MS. SLAWSON: Your Honor, I believe she's
12 testified it's not going to be offered to all of the
13 residents of Vernal. So it would be a select few
14 that their services would be offered to.

15 JUDGE GOODWILL: Ms. Slawson, I think
16 that's your characterization. I think it's fair to
17 say as long as everybody recognizes that's your
18 characterization, I will go ahead and let the
19 question be answered.

20 THE WITNESS: Okay. Repeat the question?

21 Q. (BY MS. SLAWSON) What my question was is
22 how -- when the pricing is only, the enhanced pricing
23 or the comparable pricing, competitive pricing will
24 only be offered to some of the residents of Vernal,
25 how is that going to benefit the entire area?

26

1 A. Well, if it's offered to businesses and
2 the majority of residents then the service would be
3 available to a very large portion of the service
4 area.

5 Q. But it's not going to assist those to whom
6 the service is not offered, is it?

7 A. If we are to provide service to all
8 residents, which is I guess a question in this
9 hearing, then it would be.

10 Q. And that poses an interesting question to
11 me. My understanding is that you're only going to be
12 able to provide the Digital Voice and the enhanced
13 services to people, to customers that your cable
14 passes; is that correct?

15 A. To customers that our cable passes today.
16 We're always upgrading and passing more homes in
17 every market that we serve. Every year we're adding
18 more and more customers to that footprint.

19 Q. Okay. I guess my question is, how is
20 Bresnan's entry as a CLEC going to facilitate access
21 to all residents and businesses in the State of Utah
22 when its services will not be offered to even all
23 residents in the Vernal area? And we're getting back
24 now to the public interest test.

25 A. I can't address the question about the
26

1 entire State of Utah. The application itself is for
2 Vernal. And we assess every customer who is
3 interested in service and may or may not serve them
4 depending upon our assessment.

5 Q. In Ms. Scholl's testimony at line 46 and
6 47 she states that the Department of Public Utilities
7 -- sorry, the Division of Public Utilities is
8 recommending that the Commission require Bresnan to
9 serve the entire Vernal Exchange.

10 If the Commission requires Bresnan to
11 provide services to customers not serviced by
12 Bresnan's facilities, how is Bresnan going to provide
13 that service?

14 A. We would do that either through an
15 arrangement potentially through the interconnect with
16 unbundled loops or a pure resale type of arrangement
17 UBET or UBTA-UBET as the incumbent.

18 Q. And will that service the Bresnan's
19 Digital Voice service product that it has offered,
20 and I believe you indicated that in some instances it
21 might just be resold to service UBTA-UBET; is that
22 correct?

23 A. Yes. If it's resold then it would be the
24 same service that you're offering today.

25 Q. Okay. And none of the elements that
26

1 you've indicated as Bresnan's enhanced services; is
2 that correct?

3 A. Right. We would be limited to whatever
4 service offering UBTA-UBET has.

5 Q. Does Bresnan have any current plans to
6 extend its facilities into any brownfield areas of
7 Vernal or does it only anticipate constructing new
8 facilities in greenfield subdivisions?

9 A. I don't know that.

10 Q. Specifically can you tell me how granting
11 Bresnan a CPCN will encourage new technologies in the
12 Vernal market?

13 A. It will bring cable telephony service to
14 the rental market, which is a widely available
15 service in some of the larger metropolitan areas, as
16 well as our more rural areas that we serve.

17 Q. I believe you indicated on line 187 to 194
18 of your Direct Testimony that Bresnan's entry into
19 the Vernal market will encourage economic
20 development. You don't have any evidence that
21 competition in telephone service encourages economic
22 development, do you?

23 A. I don't have any, no.

24 Q. And you also indicate on lines 199 to 202
25 of your testimony, that by allowing Bresnan to
26

1 compete in Vernal, the people in Vernal benefit --
2 the Commission benefits by having fewer people to
3 protect, I believe your words were, those without
4 competitive choices, and as a result that everyone in
5 the State benefits.

6 And my question is, in fact, under
7 Bresnan's current plan, not even everyone in Vernal
8 is going to benefit by granting your Application
9 since the Digital Phone service will not be available
10 to all of the customers; isn't that correct?

11 A. I can't answer that.

12 MS. SLAWSON: I have no other questions.

13 JUDGE GOODWILL: Mr. Mecham?

14 CROSS-EXAMINATION

15 BY MR. MECHAM:

16 Q. Ms. Kirchner, you just in response to Ms.
17 Slawson's question about whether or not Bresnan had
18 any plans to expand in the brownfield areas, you said
19 you didn't know. Who would know?

20 A. I would imagine that our plant engineers
21 and our engineering departments would be outlining
22 those areas for buildout within their budgetary
23 plans.

24 Q. Have they done that already?

25 A. We're starting our budget process now for
26

1 next year. But as far as any advances in the Vernal
2 area, I'm not aware of any.

3 Q. So is that information available from
4 someone in the company?

5 A. I would assume so, but I don't have the
6 information.

7 Q. Could you make it available to us?

8 A. I'll have to defer to counsel on that.

9 MR. NELSON: I'm going to at this point
10 object to that question. I think Bresnan's
11 competitive business plan of how it's looking at
12 expanding its facilities in the Vernal Exchange runs
13 far afield of the scope of this proceeding and is
14 irrelevant. I have no objection to questioning as to
15 this witness's personal knowledge, but I do object to
16 the request that Bresnan make that very competitive
17 information available to our potential competitor and
18 don't feel that it has any bearing on the public
19 interest test that's at issue in this case.

20 MR. MECHAM: Well, it does, your Honor,
21 because it's a matter of what customers will have
22 this choice that's supposed to go to the public
23 interest test that they're proposing. They're saying
24 that because they'll have choice in this area it is
25 in the public interest. That's sort of the same

26

1 position the regulators take, well, we don't know if
2 they're going to go anywhere but in greenfield new
3 development. And I think that's perfectly good.
4 Whether or not it comes to us, certainly the
5 Commission ought to know that.

6 MR. NELSON: Forgive me.

7 JUDGE GOODWILL: Go ahead.

8 MR. NELSON: Your Honor, the parties URTA
9 and UBTA-UBET have asked for extensive discovery
10 about Bresnan's existing cable plant, much of which
11 has -- some of which has already been introduced into
12 evidence through the discovery responses we've put
13 in, and our existing cable plant has been extensively
14 discussed, and I expect will be extensively
15 discussed. I would agree that where we currently
16 serve is a germane set of questions. My objection
17 goes to the issue of where we intend to expand our
18 facilities into the future and, frankly, on behalf of
19 Bresnan we will take our chances that our existing
20 cable plant is adequate to meet the public interest
21 test, and we are not asserting that it is satisfied
22 because of future expansion plans. That's nowhere
23 found in our Application or Ms. Kirchner's testimony.
24 Hence my concern that this line of questioning is
25 irrelevant.

26

1 JUDGE GOODWILL: Mr. Mecham, I think your
2 question was would Bresnan provide that information?

3 MR. MECHAM: Yes.

4 JUDGE GOODWILL: It sounds to me like
5 that's been answered. You're welcome to have the
6 witness say yes or no, but I think beyond that we can
7 probably move on.

8 MR. MECHAM: Well, I agree with you, your
9 Honor, except that this is the only Bresnan witness
10 we have, and it really does, the public interest
11 consideration, does go to the customers being served.
12 And if we're looking at cherry picking, which is a
13 huge concern to the companies, the rural companies,
14 that does go to the public interest question and it
15 is not in the public interest to allow that to
16 happen. But with that I'll move on.

17 Q. (BY MR. MECHAM) I believe Bresnan in
18 discovery stated -- well, we know from your
19 Application that Bresnan is not seeking Eligible
20 Telecommunications Carrier status; is that correct?

21 A. Correct.

22 Q. Do you intend to ever seek ETC status?

23 A. I can't answer that.

24 Q. So it's possible, anyway, that the
25 Commission may at some point then face the question

26

1 of whether or not you ought to be an ETC?

2 A. I agree it's possible.

3 Q. Okay. And is it your understanding that
4 if you're granted ETC status you would be eligible
5 for Universal Service Funds?

6 A. Yes.

7 Q. And would that have a more significant
8 impact on the Universal Service Fund than what you
9 purport in your Application to be in this case?

10 A. I don't know.

11 Q. On page 6 of your Application you state
12 that Bresnan has deployed digital phone in 32 markets
13 in Colorado, Wyoming and Montana. Are the 32 markets
14 that you referred to in the Application in Qwest's
15 territory?

16 A. Yes. Some are in Qwest and some are in
17 some independent territories.

18 Q. Well, is it true that in Wyoming it's
19 exclusively in Qwest's territory?

20 A. That's correct.

21 Q. And so in Montana and in Colorado you're
22 partially -- are you in all of Qwest's territory in
23 Colorado and Montana?

24 A. We're in territories where we offer cable
25 TV service.

26

1 Q. Well, but your Application says you've
2 deployed digital phone in 33 markets in those three
3 states. So you're providing digital phone service
4 wherever you provide cable?

5 A. Right. If it's not a market that we serve
6 with cable, we're obviously not going to provide a
7 phone there.

8 Q. Okay, obviously. And in the two states,
9 Montana and in Colorado, you're in independent rural
10 telecom territory?

11 A. Yes.

12 Q. What percentage of the 33 markets has
13 digital phone service?

14 A. In all of the 33 markets, but we have more
15 than 33 markets in these states that we provide
16 cable. Am I misunderstanding your question?

17 Q. Well, state it again and let me hear what
18 your answer was and I'll tell you if you're
19 misstating it. Go ahead. I'm asking what percentage
20 of the 33 markets has digital phone service?

21 A. Penetration rates?

22 Q. Yes.

23 A. That was entered as confidential
24 information in this case. Not in the Qwest markets.
25 Was it just in the independents? I would have to go
26

1 back and look.

2 MR. NELSON: Your Honor, I apologize, I
3 think the witness is possibly misunderstanding Mr.
4 Mecham's question. So before we go into a
5 confidential portion of the record, could I ask if
6 Mr. Mecham might restate his question.

7 Q. (BY MR. MECHAM) Well, if there's a
8 response to the penetration rates in the 33 markets
9 that's been supplied either through discovery or
10 otherwise, if you could point me to it that would be
11 great. I'm not aware of it.

12 A. Are you talking about the Qwest markets or
13 the independents? Because we were asked for that in
14 the independent areas, correct?

15 Q. Well, your Application says you're
16 providing digital phone service in 33 markets in
17 three states. You've told me in Wyoming you're
18 completely in Qwest's territory and in the other two
19 you're partially in Qwest's territory and partially
20 in independents.

21 So in the 33 markets, what's your
22 penetration rate? I don't care if it's in Qwest's or
23 in independent territory. If there's a response
24 somewhere in there, I would like to have it.

25 MR. NELSON: Okay. If I could perhaps

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1 refresh the witness's recollection in order to answer
2 Mr. Mecham's question. And if you could, Ms.
3 Kirchner, could you look at Bresnan Exhibit 4, the
4 response to Data Request 1.9.1 and 1.9.2. And then
5 secondly, if you would refer to Bresnan Exhibit 5,
6 you can then show Mr. Mecham in response to 1.9.3 and
7 1.9.4, and I believe you may be able to then respond
8 to Mr. Mecham's questions.

9 THE WITNESS: Correct. And that was where
10 I was going. 1.9.3 and 1.9.4 specifically discuss
11 penetration rates for the independent markets and not
12 the Qwest areas.

13 Q. (BY MR. MECHAM) Now I'm looking at 1.9.3
14 and it appears that there was an objection to that
15 stating that it bears no relationship to the issue of
16 whether Bresnan's entry into the Vernal market is in
17 the public interest. I happen to differ with that.
18 But that doesn't tell me what the penetration rate
19 is.

20 MR. NELSON: If you look at Bresnan
21 Exhibit 5 you will see there was a supplemental
22 response --

23 MR. MECHAM: I stand corrected, you're
24 right.

25 MR. NELSON: -- after discussions with
26

1 counsel for UBTA and UBET where those two questions
2 were responded to. Now, if you're going to ask Ms.
3 Kirchner about the information contained in 1.9.3 and
4 1.9.4, that's where she was saying we get into the
5 confidential portion of the record, and we can
6 certainly do that as you direct.

7 Q. Well, if we go there we'll certainly be
8 careful.

9 In your supplemental response to 1.9.3, do
10 you have a weighted average of those numbers?

11 A. I don't. I would have to calculate that.
12 We just did it by market.

13 Q. Could you do it, could you provide that to
14 us?

15 A. A weighted average?

16 Q. Yes.

17 A. I'll defer to counsel.

18 MR. MECHAM: Does he do that too? I'm
19 sorry.

20 MR. NELSON: If I could, I don't know
21 whether we have that information with us. So if I
22 could, Mr. Mecham, if we could take a --

23 THE WITNESS: I don't have it with me.

24 MR. NELSON: But at a break I can figure
25 out possibly whether we can access that information

26

1 to do that calculation because I didn't bring the
2 spreadsheet with me. But we can certainly
3 investigate that and if we have the spreadsheet
4 available, we'll certainly supplement the record with
5 that and whatever time we can get that during the
6 course of the hearing. Just so I'm clear, would that
7 request extend to 1.9.3 and 1.9.4 or was it just one
8 of those you were interested in?

9 MR. MECHAM: Both, please.

10 MR. NELSON: Okay. Your Honor, we'll
11 endeavor to do that on a break and try to get that
12 information.

13 JUDGE GOODWILL: All right. Thanks.

14 Q. (BY MR. MECHAM) And how long ago did you
15 get into the markets in Montana and Colorado?

16 A. We launched our first market the end of
17 March 2005.

18 Q. This is in the digital phone service
19 market?

20 A. Correct.

21 Q. And how about Colorado?

22 A. That was in Colorado, the first market we
23 launched.

24 Q. So maybe I'm a little slow this morning.

25 In Colorado it was '05 and Montana was --

26

1 A. It was also '05, but later in the year.

2 Q. And then Wyoming?

3 A. Also in '05, but later in the year.

4 Q. So all three were in '05?

5 A. Correct.

6 Q. How does Bresnan propose to interconnect
7 with UBTA?

8 A. Without having discussions I can only
9 discuss how we interconnect with Qwest or CenturyTel
10 or anyone else, and that would be to negotiate an
11 interconnect agreement subject to terms and
12 conditions of similar scope, I would assume, with the
13 interconnects that we have with the other companies.
14 And that's through a pure TDM trunk handoff with
15 different types of trunking depending on what kind of
16 traffic we plan to send.

17 Q. And are those commercial relationships or
18 did you use any section of the Federal law to
19 interconnect with Qwest or anyone else?

20 A. With every carrier we've interconnected
21 with they usually have a template or we have utilized
22 their template and negotiated any changes to that.

23 Q. Has anyone refused?

24 A. No.

25 Q. And in responses to Ms. Slawson's
26

1 cross-examination you talked about basically either
2 having unbundled elements or reselling. Are those
3 basically what your expectations are insofar as
4 UBTA-UBET is concerned?

5 A. Yes. Those are -- also coincide with the
6 relationships with all of our interconnects as well.

7 Q. Thank you.

8 Now let me go back to the three states of
9 Colorado, Wyoming and Montana. Were any of those
10 cases where you applied for CLEC status contested?

11 A. I don't remember. Let me think about that
12 for a minute. I believe we did have intervention in
13 Wyoming.

14 Q. From anyone other than staff?

15 A. The Union intervened and I believe we had
16 intervention from the Rural Telephone Association.

17 Q. This was in Wyoming?

18 A. Yes.

19 Q. Which was exclusively in the Qwest
20 territory?

21 A. We did do a split application after that,
22 if I recall.

23 Q. Meaning that the split application also
24 went into, say, Union's territory?

25 A. We did the split and then went ahead with
26

1 the Qwest area application. We would be in a similar
2 position that we are here where if we wanted to go
3 into those independent areas we would need to file an
4 application for that.

5 Q. But that hasn't happened?

6 A. No.

7 Q. Now, as I read the stipulation in the
8 Colorado case, apparently that requires that Bresnan
9 adjust its letter of credit that's there to protect
10 the customer deposits, as I understand it, once it's
11 reached 1,000 customers. Has Bresnan had to make
12 that adjustment yet?

13 A. No.

14 Q. So you entered the market in '05 and you
15 haven't hit your thousand yet? You haven't reached
16 1,000 customers so you didn't have to adjust your
17 letter of credit?

18 A. The application that we recently filed is
19 for business customers and that has that letter of
20 credit information in there.

21 Q. And I'm sorry, when you say you recently
22 filed it, is this the '05 application?

23 A. The underlying CLEC for our Colorado
24 operations is IDTAmerica and we utilized their
25 certificate. Or they actually provide the
26

1 interconnect, the number block, and all the porting.

2 Q. Just out of curiosity, why does Bresnan
3 prefer a letter of credit rather than a bond as
4 required by the rules here?

5 A. I can't answer that.

6 Q. Is there anyone here who can?

7 A. I'm not in our Financial Department so I
8 would say no.

9 Q. You're all I've got Ms. Kirchner so I need
10 answers from you.

11 Again in the Application on page 9 it
12 lists some of the reasons why the public interest is
13 served by awarding Bresnan a CPCN here. Tell me how
14 issuing a CPCN will lower the cost of providing
15 service?

16 A. I don't know.

17 Q. So that isn't one of the reasons that
18 granting a CPCN would be in the public interest,
19 then, it wouldn't lower cost?

20 A. I don't know.

21 Q. What do you anticipate happening to prices
22 of phone service in the area where you serve in the
23 Vernal Exchange?

24 A. I would anticipate that we'll provide a
25 competitive product at a competitive price and if

26

1 that creates pricing pressures then UBTA and UBET
2 have the opportunity to adjust their prices as they
3 see fit.

4 Q. Won't it drive prices closer to cost?

5 A. I don't know. I'm not familiar with your
6 cost so --

7 Q. What if costs are higher and it drives
8 prices toward cost, is that in the public interest?

9 A. I can't answer that.

10 Q. Now, as I understood a response that you
11 gave Ms. Slawson on the promotion of the universal
12 service objectives you basically said that Bresnan,
13 assuming it has a certificate, would contribute to
14 the Universal Service Fund. Was that what I --

15 A. That's correct.

16 Q. Did I miss anything else? Was there any
17 other way that it promoted Universal Service?

18 A. I don't know. I mean, we contribute to
19 the Universal Service Fund everywhere else we service
20 and we plan to do it here too.

21 Q. Are you already providing telephone
22 service in the Vernal Exchange?

23 A. No, we're not.

24 Q. Well, isn't it kind of a zero sum game
25 because if those customers of UBTA shift to take your
26

1 digital phone service, they're already paying
2 Universal Service Funds on the UBTA side, are they
3 not?

4 A. Yes.

5 Q. And so when they shift to the Bresnan
6 digital phone service they're paying the same
7 surcharge that they otherwise would be paying?

8 A. Correct.

9 Q. So does that mean there's no gain or
10 shouldn't that mean there's no gain to the Universal
11 Service Fund?

12 A. I can't answer that.

13 Q. Will you be paying Universal Service Funds
14 on just the digital phone service?

15 A. We don't contribute to it today on
16 broadband, if that's what you're asking.

17 Q. Would you be paying on any services that
18 you buy from UBTA?

19 A. I would say yes because that would be a
20 wholesale service and we are the end user biller. So
21 we would be assessing that fund and remitting it.

22 Q. Let me quickly go back to the Colorado
23 application. In one of the exhibits to your
24 Application there's the recommended decision by Judge
25 William J. Fritzel and it's dated July 26 of 2006.

26

1 Does that mean that you didn't get into
2 the market in Colorado until sometime in 2006 as
3 opposed to 2005?

4 A. We entered all the markets in Montana,
5 Wyoming and Colorado through a partnership with IDT.
6 They're the CLEC of record, they have the CLEC
7 application and they provide all of the trunking and
8 interconnect numbers, everything from that
9 perspective as a wholesale partner.

10 Q. Now, if you accept the Division's
11 testimony, Bresnan doesn't need a certificate to
12 provide digital phone service. If that's true, and
13 Bresnan began providing service, wouldn't they
14 already have a choice that you're claiming would be
15 there and available if the certificate were granted?

16 A. I think those choices are there with other
17 types of services. You know, Vonage, some of the
18 overtop providers that go over the PF or public
19 internet, which we don't intend to do. We feel that
20 we want to provide the service like we have
21 everywhere else where we interconnect in with the
22 PSTN, we exchange local traffic, we port telephone
23 numbers, we're connected with the selective routers.
24 A similar service to what the LECs offer today.

25 Q. I guess I'm trying to figure out what
26

1 choice is really added by this Application. If the
2 Division is correct, it seems to me there are no
3 choices added, and that goes directly to the public
4 interest standard, does it not?

5 A. I don't know.

6 Q. Okay. On line 170 of your testimony you
7 indicate that Bresnan may need access, and we've
8 talked about this a little bit already, to unbundled
9 network element and resale to reach a few remote
10 customers in the Vernal Exchange where you don't have
11 facilities.

12 Is it really going to be that limited? I
13 mean, are you really that broadly available in the
14 Vernal Exchange that you're really only talking about
15 nibbling at the edges when this Application is done?

16 A. Well, our franchise area includes Naples,
17 Uintah County and Vernal. I don't have access to the
18 actual complete households in the Vernal Exchange or
19 any of your line counts, obviously, but I do know how
20 many households we pass, and it is quite a large
21 majority of the area.

22 Q. Let me just make sure that I understand.
23 With respect to the provision of digital phone
24 service in the three other states besides Utah that
25 you've basically been doing it for two years?

26

1 A. Uh-huh (affirmative).

2 Q. Is your service branded under Bresnan's
3 name or under IDT's name?

4 A. It's branded under Bresnan's name.

5 Q. So Bresnan of Colorado, Bresnan of
6 Montana, Bresnan of Wyoming?

7 A. Correct.

8 Q. And that's all since 2005?

9 A. Correct.

10 Q. And again, Ms. Slawson touched on this as
11 well, but let me do it because I'm not sure I
12 understood. On lines 199 through 202 of your
13 testimony you indicate that everyone will benefit by
14 granting Bresnan's Application. And I quote,
15 "Specifically, the Commission's burden of protecting
16 those in the State without competitive choices is
17 diminished."

18 How does granting Bresnan's Application
19 benefit me along the Wasatch Front who is a Qwest
20 customer? Do I get any benefit from that?

21 A. I don't know.

22 Q. I mean, I can call those customers today
23 who are served by UBTA. So I don't get any new
24 customers, I don't get access to any new customers.
25 Will you serve any customers not currently served?

26

1 A. I don't know.

2 Q. Is there any unserved territory out there?

3 A. I'm sure there is.

4 Q. Will you serve it?

5 A. I can't answer that.

6 Q. Let me just ask a logistical question to
7 learn how your network operates. Is there battery
8 backup on the customer's premise?

9 A. Yes.

10 Q. And it lasts for how long?

11 A. Up to eight hours.

12 MR. MECHAM: Thank you, your Honor. I
13 think I'm done.

14 JUDGE GOODWILL: Mr. Ginsberg?

15 CROSS-EXAMINATION

16 BY MR. GINSBERG:

17 Q. If we could, could you look at Exhibit 5,
18 the first two pages? Those are the list of the
19 exchanges that you serve in for independent areas?

20 A. That's correct.

21 Q. And did you get a certificate in those two
22 states?

23 A. We did get a certificate in both of those
24 states. We do have interconnect arrangements with
25 these companies, as well as IDTAmerica also has those

26

1 arrangements.

2 Q. And can you describe the interconnection
3 agreement that you have? Do you port numbers back
4 and forth?

5 A. Yes.

6 Q. Do you exchange traffic?

7 A. Yes, we do.

8 Q. Do you pay access charges?

9 A. Yes, we do.

10 Q. And each of these companies are rural
11 independent telephone companies?

12 A. Blackfoot Telephone is a small rural
13 independent telephone company or a cooperative,
14 actually. Now, CenturyTel, of course, is an
15 independent, but it's a rather large independent and
16 they operate separately in each state.

17 Q. Do you know if any of these cities in
18 these independent are above 5,000 access lines?

19 A. Yes. Kalispell is above 5,000 access
20 lines. Many of those -- it's almost all one area now
21 up in Western Montana, but Kalispell is above that as
22 well as the surrounding areas of Columbia Falls and
23 Whitefish and that area and then Lamar/La Junta area
24 down in Colorado.

25 Q. Do you receive State or Federal USF

26

1 support in any of those states?

2 A. No.

3 Q. Are you an ETC in any of those states?

4 A. No.

5 Q. You haven't requested it?

6 A. No, we have not.

7 Q. And as far as you know, there were no
8 objections to your starting providing phone service
9 in these independent telephone companies?

10 A. No.

11 Q. Do you serve the entire exchange, each of
12 these phone companies, similar to how you have
13 proposed to serve in Vernal?

14 A. That's correct.

15 Q. So the obligation that you said you're
16 willing to assume that's in Utah Code 54-8b-2.14 you
17 assumed in all those states?

18 A. We haven't been asked to assume that, but
19 if we were, we would do that.

20 Q. Do you serve currently in these areas
21 phone service outside of your cable footprint?

22 A. No, we don't presently.

23 Q. Do you know if either of these states have
24 State USF support?

25 A. Both of them do, or actually all of them

26

1 do.

2 Q. So they have a fund similar to what exists
3 in Utah?

4 A. Correct.

5 Q. And do you know if these companies are
6 rate-of-return regulated?

7 A. I do not know that.

8 Q. There has been quite a bit of discussion
9 about the type of service you intend to provide
10 outside of your cable footprint. And is that
11 dependent upon the interconnection agreement you
12 worked out?

13 A. It would depend, I suppose, if we didn't
14 have alternatives to our cable plant, we would either
15 -- if, obviously, if it was some area that we didn't
16 have plant we could build plant, if that's feasible.
17 We could lease unbundled loops or resell if it is
18 part of the interconnection agreement.

19 Q. The only two places you have cable TV in
20 Utah are Vernal and Cedar City?

21 A. We also have Delta, Utah.

22 Q. But you're not currently -- is that in the
23 Qwest area?

24 A. I believe that it is in -- I'm not sure.
25 I can't answer that.

26

1 Q. But you're not requesting to provide phone
2 service in Delta?

3 A. Correct. We have actually just an analog
4 cable system there so it won't support any advance
5 services today.

6 Q. You indicated in your -- I think in your
7 Application that you will be providing your phone
8 service over -- it was not IDT, it was a different
9 name.

10 A. Net2Phone?

11 Q. Yes.

12 A. Which is wholly owned by IDT.

13 Q. And your Application said that's who you
14 will be using at Cedar City. Is that who you will be
15 using in Vernal also?

16 A. That's unknown at this time if we'll go
17 ahead and use -- go ahead with our own interconnect
18 with Vernal, that's really actually our plan in
19 Vernal. We could potentially use IDT, but it's not
20 our intent at this time.

21 Q. So can you describe, if you're not using
22 IDT, how your interconnection would take place in
23 Vernal?

24 A. It would be a direct interconnect
25 arrangement with UBTA-UBET and we would procure all

26

1 those facilities and coordinate all that on our own.

2 Q. And in each of the other states did you
3 negotiate that interconnection agreement prior to
4 being service?

5 A. IDT negotiated the interconnect
6 agreements. And in addition, we have been obtaining
7 our own interconnection agreements for the purpose of
8 providing business services. Those we have
9 negotiated ourselves.

10 Q. But you envision that you will have to
11 have negotiated an interconnection agreement with
12 UBTA prior to beginning service?

13 A. Correct.

14 Q. And would that interconnection agreement
15 include excess charges that you will be paying?

16 A. Correct.

17 Q. And that will include resale and unbundled
18 network elements that you'll be purchasing from them?

19 A. Yes, that's correct.

20 Q. Do you consider them to have an obligation
21 to interconnect with you?

22 A. Yes.

23 Q. Under Federal law?

24 A. I would say under State law and probably
25 Federal. I guess I can't really answer that

26

1 question.

2 Q. How long do you envision the
3 interconnection negotiations to take before you begin
4 offering service?

5 A. What we've seen -- I can't state how long
6 this interconnect would take, but with Qwest and the
7 other carriers, they roughly took 60 to 90 days.

8 Q. The other carriers being the independent
9 phone companies?

10 A. Correct, yeah.

11 Q. Do you know if those independent phone
12 companies had preexisting interconnection
13 arrangements with other CLECs?

14 A. I know that CenturyTel did, but not in the
15 states that we were in. But they, of course, operate
16 in a lot of different states. And Blackfoot had a
17 template. They didn't have any interconnect
18 agreements other than with wireless carriers for the
19 purposes of wireless traffic exchange, but they did
20 have a template that we worked from.

21 Q. You also have to file a price list here
22 which would be the prices you intend to offer
23 service. Do you understand that?

24 A. Yeah.

25 Q. And that would include, then, a price list
26

1 and the service offerings that you will be making in
2 the entire Vernal Exchange?

3 A. Correct.

4 Q. So this idea that you will be cream
5 skimming, that is not your intent, your intent is to
6 serve everyone in the Vernal Exchange?

7 A. That's correct.

8 Q. Business customers, resident customers; is
9 that correct?

10 A. Correct.

11 Q. Do you consider Uinta Basin to be today a
12 competitor to you?

13 A. They compete with us today on broadband
14 services.

15 Q. Do they also provide satellite television?

16 A. I believe they do, yes.

17 Q. Is that a direct competition to cable TV?

18 A. Correct.

19 Q. In your Application you indicated that you
20 don't view that you are a public telecommunications
21 service in Utah; is that right?

22 A. I would have to refer back to the
23 Application.

24 Q. I think it's in paragraph 6. In other
25 words, you've sort of filed your Application saying

26

1 that you weren't sure you needed to actually get a
2 certificate in this State but you chose to do it
3 anyway?

4 A. Right. We've taken that stance -- sorry,
5 but I had to refresh my memory. We've taken that
6 stance in all the states that we've applied in, that
7 there's some question whether cable telephony is a
8 VoIP, is considered a VoIP information service or if
9 it's a traditional telephone service. So, you know,
10 understanding that that hasn't really been fully
11 defined, we still believe that we'll go forward with
12 applying in the State as a competitive provider.

13 Q. Any change in your certificate that you
14 felt was required because of changes in Federal law
15 you would have to come back to this Commission to
16 modify this certificate?

17 A. I don't know.

18 Q. I think you indicated that you will be
19 paying into the Universal Service Fund?

20 A. Correct.

21 Q. You'll also be paying into any other funds
22 required by CLECs or telephone companies?

23 A. That's correct.

24 Q. I think you indicated in Wyoming you were
25 serving in Qwest areas only?

26

1 A. That's correct.

2 Q. And you indicated, I think you said you
3 split your Application similar to how you did it
4 here?

5 A. That's correct.

6 Q. Is that because there was an objection?

7 A. I don't -- I don't know.

8 Q. In Colorado you're serving in both rural
9 areas and in Qwest areas?

10 A. That's correct.

11 Q. Was your application split there?

12 A. No, it was not.

13 MR. GINSBERG: Thank you.

14 JUDGE GOODWILL: Mr. Proctor?

15 MR. PROCTOR: No questions. Thank you.

16 JUDGE GOODWILL: Mr. Nelson, any redirect?

17 MR. NELSON: Yes, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. NELSON:

20 Q. Ms. Kirchner, do you recall the line of
21 questions from Ms. Slawson about Bresnan's
22 provisioning of long distance service?

23 A. Yes.

24 Q. Who is Bresnan's wholesale interexchange
25 partner?

26

1 A. It's Qwest Communications.

2 Q. And in your experience, is Qwest
3 Communications reliable as relates to providing the
4 necessary information to calculate access charges?

5 A. Yes, it is.

6 Q. I want to clear up one -- can you take out
7 Bresnan Exhibit 4, please.

8 A. Okay.

9 Q. I just want to make sure that the record
10 is cleared up on this. On the third page of that is
11 the response to question 1.9. Do you see that?

12 A. Yes.

13 Q. Okay. The table there, which includes a
14 number of exchanges, am I correct that that
15 represents the entire list of every exchange that
16 Bresnan offers Digital Voice service in in the three
17 states requested?

18 A. I'm just reviewing it.

19 Q. That's great.

20 A. One second. Yes, it appears to.

21 Q. Okay. And if you turn to 1.9.2 on the
22 next page; do you see that?

23 A. Yes.

24 Q. Am I correct that that response represents
25 the list of exchanges Bresnan serves in where the

26

1 incumbent is Qwest?

2 A. That's correct.

3 Q. So if you wanted to understand which of
4 the exchanges in response 1.9.1 were independent
5 exchanges it would be everyone not listed in 1.9.2?

6 A. That's correct.

7 Q. Okay. Do you recall, moving on now, to
8 some questions that Mr. Mecham raised regarding the
9 public interest standard in this case and call
10 providing service and Universal Service and adding
11 choices; do you recall those questions?

12 A. Yes.

13 Q. I want to ask a follow-up on those. Let
14 me start with the questions that Mr. Mecham had with
15 respect to whether Bresnan's entry might lower the
16 cost of providing service. In your experience, what
17 is the relationship between the existence of
18 competition and the incumbent provider's incentives
19 to become more efficient?

20 A. I think in our experience that we've seen
21 in other markets, we have typically seen the
22 incumbent counter with a similar package or a similar
23 price point that we are providing.

24 MR. MECHAM: John, I would object on the
25 grounds that she wouldn't know how much more

26

1 efficient the incumbent was becoming, she only knows
2 they lowered their price. That doesn't necessarily
3 address whether they have become more efficient.

4 JUDGE GOODWILL: Go ahead, Mr. Nelson. I
5 don't think she addressed efficiency in her answer.

6 MR. NELSON: I think that's an objection
7 to the answer, not the question. I'm not sure how to
8 deal with that, actually. I think the question and
9 answer speaks for itself and Mr. Mecham can do with
10 that what he would.

11 JUDGE GOODWILL: Go ahead.

12 Q. (BY MR. NELSON) Okay. So in the
13 markets -- let me just back up and make sure we're
14 all on the same page. In the markets you've been in,
15 it has been your experience that the incumbent has
16 lowered price in response to Bresnan's competitive
17 entry; is that correct?

18 A. That's correct.

19 Q. Might it be the case that they lowered
20 price because they were able to become more cost
21 efficient?

22 A. I don't know.

23 Q. Okay. Let me ask the question about
24 promoting Universal Service and let me ask it in this
25 way. What would happen to the customers in the
26

1 Vernal Exchange that are currently being served by
2 UBTA-UBET if at one point in time UBTA-UBET were to
3 go bankrupt, for example, to cease to be able to
4 provide service and there was no competitor in place?
5 What do you think would happen to those customers?

6 A. I would say they wouldn't have phone
7 service if there was no one here to offer it.

8 Q. Okay. Let me ask you the same question.
9 If UBTA-UBET were to go bankrupt or otherwise be
10 unable to provide service, and this time Bresnan was
11 there and had the application that it had been
12 granted presumably or hopefully by this Commission,
13 what would be the customer's choices at that point?

14 A. They would have us as a choice.

15 Q. Okay. Is it possible that, in your
16 experience, is it probable even, that there might be
17 customers in the Vernal Exchange who currently elect
18 only to have wireless service and not to take service
19 from a wire line company?

20 A. Yes, it's possible.

21 Q. In your experience, is wireless service
22 more or less reliable? Or how would you compare the
23 reliability of wireless service as compared to the
24 service Bresnan offers?

25 A. It would be less reliable due to coverage

26

1 area issues with cell site towers, of course, and
2 their signal levels.

3 Q. So with respect to reliability, I want to
4 go back to Mr. Mecham's hypothetical of how your
5 entry might benefit him sitting here in the Wasatch
6 Front. If you had a customer who currently was a
7 wireless customer, who elected to transfer to
8 Bresnan, assuming, again, this Application were
9 granted, what can you say would be the impact on the
10 reliability of that customer's service and the
11 ability of Mr. Mecham to call that customer?

12 A. That customer would have a more reliable
13 land line service that would work in the event of a
14 power outage and wouldn't be reliant upon signal
15 across the cell site towers to function.

16 Q. Do you think it would increase Mr.
17 Mecham's chances of being able to call that customer?

18 A. I think so.

19 Q. Okay. Let me ask you now about his
20 examination of adding choices. Do you recall that
21 discussion?

22 A. Yes.

23 Q. Is Bresnan today currently offering
24 telephone service in Vernal?

25 A. No, it's not.

26

1 Q. If this Application is granted, will that
2 change?

3 A. Yes.

4 Q. And what impact will that have on the
5 choices available to the customers in the Vernal
6 Exchange?

7 A. Those customers will have a second choice
8 for a land line telephone provider.

9 Q. If this application is not granted, is it
10 Bresnan's intention to nevertheless provide telephone
11 service in the Vernal Exchange?

12 A. I don't know. We would have to go back
13 and take a look at our options based on that.

14 Q. Would we also have to consider whether
15 that were legally permissible?

16 A. Yes.

17 Q. Thank you.

18 MR. NELSON: No further redirect
19 questions, your Honor.

20 JUDGE GOODWILL: Ms. Slawson?

21 RECROSS-EXAMINATION

22 BY MS. SLAWSON:

23 Q. Ms. Kirchner, will Bresnan market and
24 promote bundled digital services to everyone in the
25 Vernal Exchange?

26

1 A. I don't know what marketing plans we would
2 have for that exchange. We typically target
3 serviceable customers at the very least.

4 Q. And by serviceable customers you mean
5 those customers that already have your cable
6 facilities?

7 A. Our facilities don't necessarily have
8 services.

9 Q. And when I asked you about offering your
10 digital services to customers outside of your cable
11 footprint, I believe you testified that if you got a
12 request you would review it and determine and assess
13 whether it was feasible to offer the digital service
14 to that customer; is that correct?

15 A. That's correct.

16 Q. So, in fact, you are not going to be
17 offering digital service to everyone in the Vernal
18 Exchange, only those customers to whom it might be
19 feasible?

20 MR. NELSON: Your Honor, I'm going to
21 object to that question as beyond the scope of
22 redirect. I'm not sure what, if any, of the recross
23 examination -- I'm sorry, beyond the scope of
24 recross. I'm not sure of what, if any, portion of
25 the redirect this question alludes to. It appears to

26

1 be simply an effort to reargue points that Ms.
2 Slawson raised on her original cross-examination.

3 MS. SLAWSON: Your Honor, I think it all
4 goes into the public interest test, and that's
5 certainly been part of Mr. Nelson's redirect. It's
6 all part of the same public interest test.

7 MR. MECHAM: Apart from that, it seems to
8 me that as we've gone through, and we went first,
9 we've heard other additional questions that elicited
10 other questions from us, not exclusively redirect.
11 And I don't recall this process or the administrative
12 law process that we're being so narrowly drawn that
13 we get only these issues that Mr. Nelson brings up on
14 redirect.

15 JUDGE GOODWILL: Ms. Slawson, why don't
16 you ask your question again.

17 MS. SLAWSON: Certainly.

18 Q. (BY MS. SLAWSON) We were discussing the
19 customers that you would offer your service, your
20 digital services to, and I asked you, I believe it
21 was Mr. Ginsberg asked you if you would be offering
22 those services to everyone in the Vernal Exchange.
23 But in fact, you are only going to be offering those
24 services to customers currently within your cable
25 footprint or to customers that you determine it is

26

1 feasible to do so; is that correct?

2 JUDGE GOODWILL: You can go ahead and
3 answer, Ms. Kirchner.

4 THE WITNESS: That's correct.

5 MS. SLAWSON: I have no other questions.

6 JUDGE GOODWILL: Mr. Mecham?

7 MR. MECHAM: Thank you.

8 RECROSS-EXAMINATION

9 BY MR. MECHAM:

10 Q. In the other states where you're providing
11 service and you have interconnection agreements, were
12 those agreements negotiated or arbitrated?

13 A. Negotiations.

14 Q. All of them?

15 A. Yes. We never went to arbitration on any
16 of them.

17 Q. And insofar as the exchanges served, are
18 they predominantly over 5,000 access lines or not?

19 A. Not.

20 Q. They're predominantly smaller than 5,000?

21 A. I would say it's probably -- there's
22 probably about an even balance of both.

23 Q. So 50/50?

24 A. Roughly. And I'm estimating. I can't
25 tell you that for sure.

26

1 Q. And then in response to Mr. Nelson's
2 redirect when he asked if UBTA or any telephone
3 company goes bankrupt, what would happen to the
4 customers' service you said they would no longer have
5 service.

6 Are you aware that Section 214 of the
7 Federal law, 214(e) requires that company transition
8 to ensure that the customer doesn't lose its service?

9 A. No.

10 Q. Thank you.

11 MR. MECHAM: I have nothing further.

12 JUDGE GOODWILL: Mr. Ginsberg?

13 MR. GINSBERG: No more questions.

14 JUDGE GOODWILL: Mr. Proctor?

15 MR. PROCTOR: No thank you.

16 JUDGE GOODWILL: Mr. Nelson, anything
17 further from this witness?

18 MR. NELSON: Nothing further. Thank you.

19 JUDGE GOODWILL: I'm sorry, Mr. Proctor?

20 MR. PROCTOR: Would now be a good time to
21 take five minutes?

22 JUDGE GOODWILL: That's what I was going
23 to suggest. Let's go ahead and take five and then
24 come back.

25 (Recess taken.)

26

1 JUDGE GOODWILL: Let's go back on the
2 record. Mr. Nelson, do you have anything further?

3 MR. NELSON: No, your Honor. Nothing
4 further at this time.

5 JUDGE GOODWILL: We'll turn to UBTA-UBET.

6 MR. STOLL: Thank you, your Honor.

7 UBTA-UBET Communications calls Bruce Todd.

8

9 BRUCE TODD,

10

11 called as a witness, being first sworn, was examined

12 and testified as follows:

13

14 JUDGE GOODWILL: Please be seated.

15 MR. STOLL: May I approach the witness,
16 your Honor?

17 JUDGE GOODWILL: Certainly.

18 DIRECT EXAMINATION

19 BY MR. STOLL:

20 Q. Mr. Todd, would you please state your full
21 name and your position with UBTA-UBET Communications?

22 A. I'm Bruce Howard Todd, GM-CEO of UBTA-UBET
23 Communications.

24 Q. Mr. Todd, I have just delivered to you
25 what has been marked as UBTA-UBET 1. Do you have it

26

1 in your possession?

2 A. I do.

3 Q. This is entitled the "Direct Testimony of
4 Bruce Todd on behalf of UBTA-UBET Communications" and
5 consists of eight pages of questions and answers.

6 If the questions were given to you today,
7 would your answers be as you have responded herein
8 under oath?

9 A. Yes.

10 Q. Do you have any additional testimony that
11 you would like to present at this time?

12 A. No.

13 MR. STOLL: Mr. Todd is now available for
14 cross.

15 JUDGE GOODWILL: Mr. Stoll, were you
16 offering that for admission?

17 MR. STOLL: I'm sorry. We would move the
18 admission of UBTA-UBET Number 1.

19 JUDGE GOODWILL: Any objection?

20 MR. GINSBERG: No.

21 MR. PROCTOR: No.

22 MR. NELSON: No objection.

23 JUDGE GOODWILL: Okay. We'll go ahead and
24 admit it.

25 MR. TODD: I have a summary.

26

1 JUDGE GOODWILL: I'm sorry, Mr. Ginsberg?

2 MR. STOLL: I apologize, your Honor.

3 Q. (BY MR. STOLL) Mr. Todd, you have
4 prepared a summary of your testimony, have you not?

5 A. That's correct.

6 Q. Would you like to read it into the record
7 at this time?

8 A. Yes.

9 Q. Please do so.

10 A. In my Direct -- the whole thing? In my
11 Direct Testimony, I present UBTA-UBET Communications,
12 Incorporated's position on Bresnan Broadband of Utah,
13 LLC., Bresnan, Application for Certificate of Public
14 Convenience and Necessity. Specifically I address
15 certain financial and operational and managerial
16 factors which we believe the Public Service
17 Commission of Utah should consider in determining
18 whether it is in the public interest to grant Bresnan
19 the CPCN.

20 First I provide the Commission with a
21 brief history of UBTA-UBET and the efforts it has
22 made throughout the Uinta Basin to unify the numerous
23 rural communities. I then offered UBTA-UBET's
24 position positions on the public interest test that
25 the Commission should use to determine whether to

26

1 grant Bresnan's Application. The Commission should
2 first and foremost consider the welfare of the
3 telecommunications survivors (providers) in the
4 Vernal Exchange, the Uinta Basin, and the State of
5 Utah, including the impact of the development of the
6 telecommunications infrastructure that provides for
7 the continued availability of technologically
8 advanced services for subscribers in all of the areas
9 served by UBTA-UBET in the Vernal Exchange as well as
10 the Uinta Basin generally.

11 I testified regarding the impact that
12 Bresnan should have on UBTA-UBET's revenues because
13 UBTA-UBET is a rate-of-return regulated
14 telecommunications carrier under Federal and State
15 law. The loss of those revenues will need to be made
16 up in the form of either increased rates to the
17 customers, not only in the Vernal Exchange, but also
18 the Uinta Basin generally, or as an additional
19 support in the Universal Service Fund administered by
20 the State of Utah.

21 While there may be minimum reduction in
22 costs associated with the migration of customers from
23 UBTA-UBET to Bresnan, those reductions will not
24 offset the revenue lost experienced by UBTA-UBET. As
25 such, the burden of the competition which Bresnan
26

1 seeks to introduce will be borne by the remaining
2 customers of UBTA-UBET or by the subscribers
3 throughout the State of Utah.

4 Additionally, Bresnan has indicated it
5 does not propose to provide its own facilities-based
6 services to all the Vernal Exchange, but to only
7 those select areas in which it currently has cable
8 planned or to those areas into which it might choose
9 to expand. Bresnan has indicated that service
10 outside of its cable area would require it to use
11 UBTA-UBET's facilities. As a result, only a select
12 group of customers would realize the benefits, if
13 any, of the Digital Voice service which Bresnan touts
14 as a competitive alternative.

15 Therefore, while the benefits of
16 competition accrue only to the select group to which
17 Bresnan extends its own facilities, the burdens fall
18 on every other subscriber in the Uinta Basin as well
19 as the State of Utah. This amounts to permitting
20 Bresnan to cherry pick the desirable areas for
21 service, eroding UBTA-UBET's revenue stream without
22 corresponding decreases in UBTA-UBET's costs.

23 This is certainly not in the public
24 interest of those customers in the Uinta Basin.
25 Additionally, this will require UBTA-UBET to rely

26

1 more heavily on USF which will impact the customers
2 throughout the state as a whole.

3 Q. Thank you, Mr. Todd.

4 MR. STOLL: Mr. Todd is now available for
5 cross-examination.

6 JUDGE GOODWILL: Mr. Nelson?

7 MR. NELSON: Thank you.

8 CROSS-EXAMINATION

9 BY MR. NELSON:

10 Q. Good morning, Mr. Todd.

11 A. Good morning.

12 Q. Mr. Todd, my name is Thor Nelson. I'm an
13 attorney representing Bresnan in this proceeding. I
14 do have some questions for you.

15 First, may I approach the witness?

16 Mr. Todd, are you familiar with the Utah
17 law regarding competitive entry in the
18 telecommunications markets?

19 A. I'm aware.

20 Q. Okay. Are you aware that under the Utah
21 Code a new entrant has to establish sufficient
22 technical, financial and managerial resources and
23 abilities to provide the public telecommunications
24 services applied for?

25 A. I would state that I'm aware, but I'm not
26

1 an expert in the law.

2 Q. Okay. But you're aware that that's one of
3 the components, one of the requirements that a new
4 entrant must meet in order to be certified by this
5 Commission; is that correct?

6 A. Correct.

7 Q. Okay. Now, as I reviewed your testimony,
8 I just wanted to make sure, I could find no testimony
9 that you asserted that Bresnan lacks the technical
10 resources or abilities to provide the services that
11 it's seeking authority to provide. Am I correct?

12 A. I did not have anything in my testimony to
13 that nature.

14 Q. Okay. And I also couldn't find any
15 testimony that Bresnan lacks the financial ability or
16 the financial resources necessary to provide the
17 public telecommunications services we're seeking to
18 provide; is that correct?

19 A. I don't know that.

20 Q. And there's nothing in your testimony
21 about that, right?

22 A. Correct.

23 Q. And lastly, there's nothing in your
24 testimony challenging whether Bresnan has the
25 managerial resources or ability necessary to provide
26

1 the public telecommunications services we're seeking
2 authority to provide in this Application; is that
3 correct?

4 A. I don't know that either.

5 Q. Okay. So there's nothing in your
6 testimony that challenges Bresnan's managerial
7 abilities; is that correct?

8 A. Correct.

9 Q. So would I understand the UBTA-UBET
10 position correctly, that you are not challenging the
11 grant of a CPCN to Bresnan on the basis that Bresnan
12 lacks the technical, financial or managerial
13 abilities to provide the services that Bresnan is
14 seeking authority to provide, correct?

15 A. I'm not certain.

16 Q. Okay. So let me just make sure the source
17 of your uncertainty. There's nowhere in your
18 testimony where you challenge Bresnan's abilities
19 along those lines; is that correct?

20 A. That's my understanding, correct.

21 Q. Is the source of your uncertainty that
22 perhaps Mr., and I apologize, I'll try to pronounce
23 it, Hendershoot?

24 A. Hendershot.

25 Q. Is it possible that Mr. Hendershot raises
26

1 some issues on these lines that you're not sure
2 about?

3 A. No. Mr. Hendershot will answer those
4 questions.

5 Q. And I apologize for being unclear on this.
6 I'm trying to figure out why you are not certain as
7 to whether or not your company is challenging
8 Bresnan's managerial, technical or financial
9 resources. And I'm assuming the source of your
10 uncertainty may be based on a discomfort with whether
11 or not Mr. Hendershot raises those issues in his
12 testimony?

13 A. That's not correct. I have not been
14 given, based on the confidentiality, the information
15 that you're stating. I did not get the information
16 on the financial information or the other information
17 based on the confidentiality. So --

18 Q. Okay. So you don't know whether or not
19 your company is challenging those issues; is that
20 right?

21 A. Yes. Our company is challenging the issue
22 of the CPCN, with all relationships to that.

23 Q. Okay. Let me try to make sure this is
24 clear. There's a second prong of the test. The
25 second prong is that the issuance of the certificate

26

1 has to be in the public interest. Do you recall
2 that?

3 A. Correct.

4 Q. You are clearly challenging that, correct?

5 A. Correct.

6 Q. And what I'm trying to figure out, are you
7 today testifying, and let me just limit it to you,
8 are you testifying that Bresnan lacks the technical,
9 financial, or managerial resources to provide these
10 services?

11 A. No.

12 Q. Okay. Now, you do testify regarding the
13 public interest test, correct?

14 A. Correct.

15 Q. Okay. So let me make sure I understand
16 the public interest objection that you raise. And
17 let me call your attention to your testimony on page
18 6 first, sir, which is Exhibit UBTA-UBET 1. Are you
19 there?

20 A. Page 6?

21 Q. Yes. And in particular you may want to
22 refer to, for example, lines 96 through 98. And let
23 me ask with you taking a look at that, am I correct
24 that your first concern regarding the public interest
25 is that UBTA-UBET will experience a loss of revenues

26

1 associated with customers switching to Bresnan's
2 service if Bresnan is granted a certificate in this
3 case?

4 A. Correct.

5 Q. And you further explain in your testimony
6 that the reason this is a concern to you is because
7 you believe that when you lose these customers you
8 will not lose costs to the same degree you lose
9 revenues; is that fair?

10 A. Yes.

11 Q. Okay. And based on that, you conclude
12 that if the Bresnan certificate is granted that your
13 company would either have to increase your rates or
14 increase your Universal Service Fund draw, correct?

15 A. Correct.

16 Q. And as to the Universal Service Fund, am I
17 correct that Mr. Hendershot discusses that at some
18 length in his testimony?

19 A. Yes.

20 Q. Now, your second concern, let me make sure
21 I understand that. On page 8 of your testimony, if
22 you look on lines 130 to 132, are you there, sir?

23 A. Yes.

24 Q. Am I correct that the second concern is
25 that if Bresnan enters your service territory and

26

1 draws customers away from UBTA-UBET that you may also
2 experience a revenue loss associated with providing
3 enhanced services and that revenue loss might
4 compromise your ability to deploy enhanced services;
5 is that fair?

6 A. Yes.

7 Q. Now, as I was reading through your
8 testimony, the third concern that I spotted was that
9 you believe that Bresnan will unfairly compete by
10 cherry picking, to use your term, those low cost
11 areas to serve and leaving UBTA-UBET with the more
12 high cost rural parts of the exchange; is that
13 correct?

14 A. Yes.

15 Q. And just so we're all on the same page,
16 you talk about that issue, for example, again on page
17 8 on lines 132 to 145, the end of that paragraph; is
18 that right?

19 A. Uh-huh (affirmative).

20 Q. Okay. A corollary to this third concern
21 that I got from your testimony was that on page 7,
22 from lines 107 to the end of that paragraph, you
23 indicated that part of your concern with Bresnan
24 cherry picking was that that also would mean that
25 there are some customers not reached by Bresnan's
26

1 facilities who, as you testified, would therefore be
2 unable to enjoy the plain benefits of Digital Voice
3 service; is that fair?

4 A. Yes.

5 Q. Now, those were all the issues I spotted
6 in your testimony. So let me ask you, are there any
7 other reasons as you sit here today that you believe
8 that granting a CPCN to Bresnan in the Vernal
9 Exchange is contrary to the public interest, or have
10 we covered the waterfront from your testimony on what
11 your concerns are?

12 A. The expert testimony from others
13 representing the company will be more clarified in
14 that, in those proceedings.

15 Q. I appreciate that. But let me just make
16 sure, from your perspective, as you sit here today,
17 you are not offering any testimony on any concerns
18 other than those concerns that we've just talked
19 about as articulated in your testimony; is that
20 correct?

21 A. I'm offering testimony through our public
22 experts and asking them to do it on behalf of the
23 company. So anything that is provided by our public
24 experts, our experts, is also my position.

25 Q. Okay. And what in your other experts'
26

1 testimony, what other public interest concerns have
2 they identified other than the ones we have just
3 talked about?

4 A. I'll allow them to answer those questions.

5 Q. Are you aware of any?

6 A. Yes, I am.

7 Q. And what are they?

8 A. They're stated in the testimonies that are
9 provided and I'll allow them to, as they are the
10 experts, provide that information.

11 Q. Well, sir, since you are adopting this
12 testimony as your own, can you point me to an area of
13 their testimony where there is another concern that
14 they've identified that we haven't talked about?

15 A. I don't have those testimonies in front of
16 me.

17 MR. NELSON: Okay. Mr. Stoll, do you have
18 an extra copy of Mr. Hendershot's testimony handy?

19 MR. STOLL: Do you need the exhibits?

20 MR. NELSON: Yes, I do.

21 Permission to approach the witness, your
22 Honor?

23 JUDGE GOODWILL: Certainly.

24 Q. (BY MR. NELSON) Mr. Todd, I've placed in
25 front of you Mr. Hendershot's testimony that's going

26

1 to be discussed later in this case. Is he the expert
2 that we've been discussing that UBTA-UBET has
3 retained to support your testimony in this case?

4 A. Yes.

5 Q. Now, taking a look at that testimony, can
6 you identify a public interest challenge to Bresnan's
7 Application that is something other than the issues
8 we have just identified that UBTA-UBET is raising in
9 this case?

10 A. Well, there's certainly the financial and
11 other regulatory issues that are there concerning the
12 public interest test, and I'll allow Mr. Hendershot
13 to clarify those issues.

14 Q. The financial issues meaning the issues of
15 the Universal Service Fund; is that correct?

16 A. As well as operation of a regulated
17 company.

18 Q. And these are financial issues as to
19 UBTA-UBET, correct?

20 A. As well as other companies under the same
21 responsibility carrier of last resort.

22 Q. Did Mr. Hendershot testify regarding
23 Bresnan's financial abilities?

24 A. Not in detail, no.

25 Q. Does he testify at all?

26

1 A. I'll allow Mr. Hendershot to answer that
2 question.

3 Q. Okay. Other than the three issues that
4 we've talked about the public interest, and whatever
5 Mr. Hendershot may have in his testimony that I'll
6 discuss with him later, are you aware of anything
7 else, any other reason why UBTA-UBET is challenging
8 the grant of the CPCN to Bresnan on the basis of the
9 public interest testimony that we're talking about?

10 A. At the moment, no, I don't.

11 Q. Okay. So let's talk about this public
12 interest test a little bit and the scope of what you
13 think that test incorporates. Would you agree with
14 me that it is in the public interest for
15 telecommunications customers to have reasonably
16 priced service?

17 A. Yes.

18 Q. Would you agree with me that Bresnan's
19 service, as it has been set forth in the testimony of
20 its witnesses, is a competitively priced offering?

21 A. I don't know.

22 Q. Let me ask you this because you have it
23 sitting there in front of you let me ask if you could
24 pull Mr. Hendershot's testimony and look at page 8 of
25 that.

26

1 MR. STOLL: His Direct Testimony or his
2 Rebuttal Testimony?

3 MR. NELSON: I'm sorry, Mr. Stoll, his
4 Direct Testimony.

5 Q. (BY MR. NELSON) Do you see that, sir?

6 A. Yes.

7 Q. Now, on page 8 Mr. Hendershot testifies
8 that he estimates that if Bresnan is allowed to enter
9 into the market, that UBTA-UBET could potentially
10 lose somewhere between \$450,000 to \$550,000 annually
11 in revenues. Do you see that, sir?

12 A. I do.

13 Q. Now, if Bresnan's price is not competitive
14 would I be correct, then, in assuming that this
15 revenue loss won't happen?

16 A. You've left out the costs associated with
17 those revenues in order to provide those services.

18 Q. Let me back up. If Bresnan's price is not
19 competitive, then why are customers going to switch
20 to Bresnan and create the revenue loss, the very
21 substantial revenue loss that you guys are worried
22 about?

23 A. I'll let Mr. Hendershot clarify that
24 information for you.

25 Q. Well, let me just ask you, sir, as a
26

1 consumer, do you buy services that are competitively
2 priced?

3 A. I buy services that are in the public
4 interest of the community that I serve.

5 Q. I'm sorry. I'm talking about you as a
6 consumer, you, Mr. Todd.

7 A. As a consumer I purchase based on public
8 interest on the communities that I serve.

9 Q. Okay. Do you think consumers care about
10 price?

11 A. Consumers care about price and they are
12 concerned about the public interest of their
13 community.

14 Q. Sure. If a consumer has two competitive
15 choices, for example, UBTA and Bresnan, and Bresnan
16 is not competitively priced, i.e., it's much more
17 expensive than UBTA-UBET, would you expect large
18 numbers of your customers to switch to Bresnan?

19 A. I don't know.

20 Q. Okay. Let me ask it this way. Do you
21 think it's in the public interest for
22 telecommunications customers to have high quality
23 service?

24 A. Yes.

25 Q. Do you agree that Bresnan's service is
26

1 high quality?

2 A. I don't know.

3 Q. Let me ask you the same question, then.

4 If Bresnan's service is not high quality, wouldn't
5 you agree that it's very unlikely that large numbers
6 of your customers will switch to the poor quality
7 service and, therefore, unlikely that you will
8 experience the revenue loss you are worried about?

9 A. I don't know.

10 Q. Okay. In a general sense, not just
11 limited to telecommunications, but in the world at
12 large, do you believe in competition?

13 A. Yes.

14 Q. And what are the benefits of competition,
15 in your mind?

16 A. Providing services that are for the
17 benefit for the customer.

18 Q. And do you think competition overall tends
19 to encourage efficiencies?

20 A. Depending on the costs in providing those
21 services.

22 Q. Do you think competition tends to
23 encourage competitors to offer better quality
24 service?

25 A. To the select few that they want to

26

1 provide service to cherry picking, but not to the
2 community as a whole.

3 Q. Then I'm confused as to why you support
4 competition then. I'm trying to ask you just a broad
5 general question. We're talking about cars and food
6 and all the things you buy as a consumer, is
7 competition a good thing?

8 A. Okay. You mentioned cars. There are only
9 a few dealerships in the Vernal-Roosevelt area,
10 mostly that have been there before. There are no new
11 competitors moving into the Vernal-Roosevelt area
12 selling cars because for the cost they don't move in
13 there.

14 Q. Is that a good thing for Vernal that there
15 aren't competitors in the car dealership world?

16 A. Depending.

17 Q. Do you think you would get better car
18 choices, better car prices if there were more
19 competitors for cars in Vernal?

20 A. The fact is that they are not moving in
21 there because of costs and their return are not there
22 for them to move into.

23 Q. So if you had a car dealership who wanted
24 to come into Vernal, was asking to come into Vernal,
25 would you oppose their coming into Vernal?

26

1 A. No. They do not have the same
2 infrastructure requirements that we do as a telephone
3 company.

4 Q. I understand. Do you agree with me that
5 the Utah legislature has determined that it is in the
6 public interest to have increased competition in the
7 telecommunications area?

8 A. I'm aware.

9 Q. Do you agree with that?

10 A. Where they are accurate, that competition
11 brings service and improves services to the
12 community.

13 Q. Do you agree that by allowing Bresnan's
14 entering into the market the number of competitive
15 choices available to the Vernal customers will
16 increase by one?

17 A. To the select customers that Bresnan
18 chooses to serve, which then creates additional cost
19 to those that they are not serving.

20 Q. Okay. Do you think it is in the public
21 interest to promote flexible regulation of
22 telecommunication services?

23 A. No.

24 Q. Do you agree that the Utah legislature has
25 declared that it is in the public interest to promote
26

1 the flexible regulation of telecommunication
2 services?

3 A. I don't know that they have.

4 Q. So do you not have knowledge that Utah
5 Code 54-8b-1.1 states at paragraph 4 that it is the
6 policy of the State of Utah to, quote, "allow
7 flexible and reduced regulation for telecommunication
8 corporations and public telecommunication services as
9 competition develops"?

10 A. I'm aware of discussion there, but I also
11 understand that there is also a concern for
12 communities being served, and all the communities
13 being served properly.

14 Q. Would you agree that if Bresnan's CPCN is
15 granted that that would increase UBTA-UBET's ability
16 to ask for flexible regulation should you desire it?

17 A. I don't know. I would have to check,
18 consult with legal advice to that position.

19 Q. Okay. Do you agree with the Utah
20 legislature that it's within the public interest to
21 promote the deployment of new telecommunications
22 technologies?

23 A. Yes.

24 Q. And do you agree that Bresnan's
25 cable-based Digital Voice service is a different
26

1 technology than that currently being utilized by
2 UBTA-UBET to offer telephone service?

3 A. I've heard two different scenarios and a
4 Technical Conference has reported that it was the
5 same as our services. Testimony in your statement
6 may say that it's different technology.

7 Q. Do you provide service over coaxial
8 cables?

9 A. No.

10 Q. Do you provide all digital service?

11 A. We provide digital service over copper and
12 fiber.

13 Q. To every one of your customers?

14 A. Yes.

15 Q. Do you make it available or you actually
16 provision it?

17 A. We make it -- we provide, to the extent
18 that we can, to all customers whatever they are
19 requesting from us.

20 Q. Right. But if they don't request a
21 digital service you don't provide it, correct?

22 A. We offer digital service to all the
23 customers that we can provide it to.

24 Q. But if they don't want it, can they buy
25 analog service from you?

26

1 A. Yes.

2 Q. All right. Let me cover now the three
3 different concerns that you've raised with Bresnan's
4 Application, and I'll do this in reverse order. Let
5 me start with the criticism you offer, which you have
6 repeated again numerous times, that you believe
7 Bresnan is cherry picking. Do you recall that, sir?

8 A. Yes.

9 Q. Let me refer you to your testimony on page
10 7 -- no, I'm sorry, that's the wrong reference. I
11 apologize, on the wrong piece of testimony. There we
12 go.

13 Page 7 of your testimony, lines 107 to
14 117, you discuss your understanding of Bresnan's
15 intentions as to who they will and will not serve
16 with their own facilities; is that correct, sir?

17 A. Yes.

18 Q. Now, I've placed in front of you Ms.
19 Kirchner's testimony. Do you see that, sir?

20 A. No.

21 Q. It's on the table.

22 A. Oh, right here?

23 Q. Yes.

24 A. Okay.

25 Q. Do you see that? And I would like you to
26

1 turn to page 5 of her testimony because I want to
2 make sure I understand the source of your intentions.

3 Did you review Ms. Kirchner's testimony before you
4 prepared your testimony?

5 A. Yes.

6 Q. And would I be correct that the
7 information that she offers, the testimony that she
8 offers on the top of page 5 with regard to how
9 Bresnan will handle the obligation to serve every
10 customer requesting service, that this is at least
11 one source of your understanding as to Bresnan's
12 intentions; is that correct?

13 A. One source.

14 Q. Okay. And you also got this, I gather,
15 from where? Let me just ask that, where else did you
16 get that information from?

17 A. When we were -- we have watched as Bresnan
18 does not serve even the areas of Vernal with cable
19 service. We have observed when new subdivisions go
20 in that they don't always provide service to those
21 subdivisions. We observe that there are a number of
22 customers that ask us concerning service, both
23 satellite and cable. We are aware because Bresnan
24 uses our facilities, poles, and in some cases
25 rights-of-ways, where they serve and where they don't

26

1 serve.

2 Q. Okay. Let's try to quantify all of those
3 things you just put out with some of the evidence we
4 have in the records here.

5 MR. NELSON: Permission to approach the
6 witness, your Honor?

7 JUDGE GOODWILL: Yes.

8 MR. NELSON: Let's mark that as Bresnan 7.

9 MR. STOLL: Mr. Nelson, Mr. Todd has not
10 signed the Confidentiality Agreement.

11 MR. NELSON: This is your information so
12 he can do that? Is that fair? What I'm passing out
13 is confidential information that is provided by Mr.
14 Todd's company, it's not Bresnan's confidential
15 information which he is precluded from seeing.

16 MR. PROCTOR: My reaction was that at this
17 point in time it would seem that you can't shelter a
18 witness from cross-examination by his refusal to sign
19 a Protective Order Agreement some six months ago and
20 so he should be compelled to answer the questions
21 pertaining to it regardless. That was my point, that
22 apparently it's his information.

23 MR. STOLL: It's his information. Plus
24 Mr. Todd did sign a Protective Order. However, it
25 was concluded after discussions with counsel for
26

1 Bresnan that no confidential information would be
2 provided to any company employees.

3 MR. PROCTOR: Is he the CEO of the
4 company?

5 MR. STOLL: He is the CEO-General Manager
6 of the company, that's correct.

7 MR. NELSON: Can I have just a moment to
8 confer with my client?

9 JUDGE GOODWILL: Sure.

10 MR. NELSON: Your Honor, to make this
11 easier, I actually would be willing on behalf of
12 Bresnan to withdraw any objection we have to Mr. Todd
13 signing the nondisclosure taking effect in this
14 proceeding because otherwise this will get very
15 complicated very fast. And so if Mr. Todd is willing
16 to live up to the terms of that nondisclosure
17 agreement we would be able to proceed through this a
18 lot more efficiently, if that would be acceptable to
19 Mr. Todd and counsel.

20 THE WITNESS: I have not seen Bresnan's
21 information.

22 MR. STOLL: I don't know that he's seen
23 any information or had the opportunity to review it.

24 MR. NELSON: Well, he's about to.

25 MR. STOLL: Well, I'm going to object on
26

1 the basis that he's not had an opportunity to review
2 it, to review this information or to consider it.
3 He's been precluded from reviewing it from the outset
4 at the insistence of Bresnan's counsel.

5 JUDGE GOODWILL: I guess let's take this
6 one step at a time. We've got a confidentiality --
7 we've got our Protective Order in place and
8 apparently Mr. Todd has signed Appendix A to the
9 Protective Order; is that correct, Mr. Todd?

10 MR. STOLL: That's correct. But it has
11 not been filed with the Commission.

12 MR. NELSON: Well, just one sec.

13 Okay. Let's go to plan C. We'll take this
14 one step at a time and then you can let us know if
15 you have any objections.

16 Q. (BY MR. NELSON) I have placed what's
17 before you -- did I place before you Exhibit 7, Mr.
18 Todd, or did I not give that back?

19 A. It's right here.

20 Q. I place before you what's been marked for
21 identification as Bresnan Exhibit 7. Can you
22 identify what this document is?

23 A. Do you want me to go ahead?

24 MR. STOLL: Go ahead.

25 THE WITNESS: It's a UBTA-UBET responses
26

1 to Bresnan Broadband on the First Set of Data
2 Requests.

3 Q. (BY MR. NELSON) Okay. Now, in order to
4 facilitate this, your Honor, after discussions with
5 my client, what I'm going to propose to do, is I'm
6 going to propose to place in front of Mr. Todd what
7 has already been admitted as Bresnan Exhibit
8 something --

9 MR. PROCTOR: It's 6, Mr. Nelson.

10 MR. NELSON: Yeah, Bresnan Exhibit 6. But
11 my client has agreed that we will withdraw our
12 assertion that the information contained in this
13 Bresnan Exhibit 6 is confidential. So, therefore, we
14 will not have this dispute that we've been having.

15 JUDGE GOODWILL: Okay. Let me make a
16 couple of comments to make sure we're all on the same
17 page. Number one, Mr. Stoll, just to clarify, I do
18 in the docket before me have a copy of the Appendix A
19 that was signed by Mr. Todd and you stamped by the
20 Commission on June 1st. It looks like it was signed
21 June 1st as well.

22 MR. STOLL: That's been brought to my
23 attention.

24 JUDGE GOODWILL: We do have that. Given
25 what you've said, Mr. Nelson, the only other thing

26

1 that I want to make sure everybody understands is
2 Bresnan Exhibit 6, which heretofore contained
3 information claimed by Bresnan to be confidential no
4 longer contains information claimed to be
5 confidential?

6 MR. NELSON: Correct.

7 JUDGE GOODWILL: And can be treated as an
8 open exhibit for everyone to see?

9 MR. NELSON: Correct. And hopefully that
10 will alleviate this problem. Is that satisfactory,
11 Mr. Stoll?

12 MR. STOLL: That's satisfactory.

13 Q. (BY MR. NELSON) Okay. Now, at this point
14 I am going to put onto the record the confidential
15 information that's contained in Bresnan Exhibit 7.
16 So I would ask, your Honor, if we might clear the
17 room of individuals who have not signed a
18 nondisclosure and move into a confidential portion of
19 the record.

20 JUDGE GOODWILL: And I take it you're
21 talking about numbers and percentages that are
22 contained in this exhibit?

23 MR. NELSON: Yes.

24 JUDGE GOODWILL: Is there no way, in your
25 estimation, to refer to those by line or other means

26

1 not actually talking about those numbers?

2 MR. NELSON: Well, let me ask counsel a
3 question if I might because maybe there is. That is,
4 Mr. Stoll, what I'm going to discuss is the number in
5 Response 1.2 which is the residential homes passed by
6 UBTA-UBET, and what I would like to do is compare by
7 direction and order of magnitude the difference
8 between that number, not the order of magnitude
9 precisely but just in general terms, that number and
10 the residential homes passed in what has now become a
11 public document which is the resident figure.

12 Now, we will not state -- I can certainly
13 avoid stating the UBTA-UBET number, but I need
14 guidance from you whether you consider the direction
15 of that number as confidential in light of the fact
16 that the Bresnan number that we'll be comparing it
17 against will be part of the public record.

18 MR. STOLL: Your Honor, could I confer
19 with my client for a second to make sure?

20 JUDGE GOODWILL: Certainly.

21 (Off the record.)

22 MR. STOLL: Your Honor, we're willing on
23 the basis of just general reference to the numbers
24 and not the numbers specifically to proceed.

25 JUDGE GOODWILL: Okay. Thanks. Just to

26

1 be clear, we're talking about references such as
2 higher or lower or substantially the same, those
3 sorts of general comments with respect to the
4 comparisons you want me to make, Mr. Nelson?

5 MR. NELSON: Yes, your Honor.

6 JUDGE GOODWILL: Okay. Go ahead and
7 proceed.

8 MR. NELSON: And let me do this as clouded
9 as I can and get the point across. And, Mr. Stoll,
10 let me know if we run afield of where we ought to be.

11 I apologize, I forgot, did I move the
12 admission of 7?

13 JUDGE GOODWILL: No, not yet.

14 MR. NELSON: Okay. I move the admission
15 of Bresnan Exhibit 7.

16 JUDGE GOODWILL: Any objection?

17 MR. STOLL: No objection.

18 THE WITNESS: I don't have Bresnan 7, I
19 have Bresnan 6. No, I've got it, sorry.

20 JUDGE GOODWILL: Okay. We'll go ahead and
21 admit Bresnan 7.

22 Q. (BY MR. NELSON) What I would like to call
23 your attention to, Mr. Todd, with respect to your
24 claim of cherry picking is, first of all, your
25 understanding, is it not, that Bresnan has agreed and

26

1 you understand they have agreed that they will
2 provide service, Digital Voice service to all the
3 customers at a minimum where their facilities pass?
4 Is that your understanding?

5 A. I don't know if that's -- as that's the
6 case.

7 Q. Okay. So page 7 of your testimony, line
8 109, do I understand your testimony correctly that
9 Bresnan proposes to provide service, now quoting, "to
10 only those select areas in which it currently has
11 cable planned"?

12 A. Would you repeat where you're at?

13 Q. Sure. Page 7, line 109.

14 A. Okay.

15 Q. Do you agree with me that you testified
16 that your understanding is that Bresnan does not
17 provide, does not propose to do the whole thing, but
18 here's your testimony, "to only those select areas in
19 which it currently has cable planned." Do you see
20 that, sir?

21 A. Yes.

22 Q. And is that, in fact, your testimony
23 today?

24 A. Yes.

25 Q. Okay. Now, if you look at Bresnan Exhibit
26

1 6, I'll get the one with the number on it so I can
2 stop getting confused, do you see there in response
3 to 2.1, Bresnan's sworn statement that their cable
4 plant passes a certain number of residential
5 households in the Vernal Exchange?

6 A. I do not understand the term "Bresnan
7 pass" as to what that means. Is that with -- what
8 type of facilities? So I'm uncertain as to the
9 quality or the capability of those services that you
10 state that Bresnan passes customers.

11 Q. Okay. Sir, I'm not asking you to say the
12 number. Do you see that Bresnan states that their
13 cable plant passes a certain number of residential
14 households in the Vernal Exchange? Do you see that,
15 sir?

16 A. Yes.

17 Q. Thank you.

18 And your statement is that Bresnan, in
19 your belief, will only serve those customers where it
20 has cable plant, correct?

21 A. Correct.

22 Q. Okay. Now, on Bresnan Exhibit 7, 1.2, do
23 you see there that UBTA-UBET has done an estimate of
24 the number of residential homes that it provides
25 service to?

26

1 A. Yes.

2 Q. And that estimate is the number of
3 residential homes in the Vernal Exchange, correct?

4 A. Correct, an estimate.

5 Q. Now, would you agree with me that
6 residence cable plant, if all of this is correct, and
7 we have sworn evidence of that fact, that Bresnan's
8 cable plant passes more homes in the Vernal Exchange
9 than you say you even serve; is that correct?

10 A. No, that is not correct.

11 Q. Okay. Do you agree with me that the
12 number in the Bresnan Data Response is bigger than
13 the number in the UBTA-UBET Data Response?

14 A. You're not comparing comparables there.
15 What is in our testimony is those that we serve, in
16 your testimony those that you pass. I do not know
17 the definition of Bresnan passing, how close they are
18 to the customer or anything. Our testimony is an
19 estimate. I did not have that information to a great
20 deal. We gave that information as an estimate.
21 Those are customers that are being served based on
22 our estimate.

23 Q. Okay. Now, are there customers in the
24 Vernal Exchange that you are currently not serving?

25 A. I do not know of any that cannot receive
26

1 service from our facilities.

2 Q. Are there customers who you are not
3 serving, whether you can or not, are there customers
4 who you are in fact not serving?

5 A. I don't know.

6 Q. Might there be?

7 A. Yes.

8 Q. So the number on your Response 1.2
9 reflects the number of residential homes that
10 UBTA-UBET estimates that you serve, correct?

11 A. Estimate.

12 Q. And assume this hypothetical. If, when
13 Bresnan says their cable plant passes, if they mean
14 by that they are within reach of their facilities, as
15 Ms. Kirchner has defined it in her testimony, would
16 you agree with me that that number of homes passed by
17 the cable plant is greater than the estimate of homes
18 that you say UBTA-UBET serves in this exchange?

19 A. No. Because I know we serve a bigger area
20 than what Bresnan does. And so if this is an
21 estimate and it shows that you cover more areas than
22 what our estimate is, then our estimate needs to be
23 upgraded to get more clear information. There is,
24 based on our knowledge from our technical people,
25 from our engineers, we know that we pass

26

1 substantially more area than what Bresnan does today
2 in the Vernal area.

3 Q. And I'm just trying to get some basis for
4 that assertion.

5 A. Well, you're making the assertion that
6 something that I haven't seen until right now to be
7 able to verify with our figures, if I would have seen
8 this prior to this time I would go back and say our
9 estimate is wrong.

10 Q. Okay. Well, let me ask you this.

11 A. Because we know we pass Bresnan more -- we
12 serve more of Vernal than Bresnan does. So the
13 estimate has to be wrong if your estimate by passing
14 is more than ours.

15 Q. Well, let me ask you this. Are you
16 confident you can count the number of access lines
17 you have?

18 A. If that was necessary for testimony, we
19 could.

20 Q. Okay. Well, turn the page on Bresnan
21 Exhibit 7, it's already been done, do you see that on
22 Exhibit Bresnan 7, 1.1, you have a count of
23 residential access lines in the Vernal Exchange?

24 A. Yes.

25 Q. And that number is just slightly higher
26

1 than your estimate of number of residential homes
2 passed, isn't it?

3 A. Yes.

4 Q. And some of your residential customers
5 have more than one line in their homes, don't they?

6 A. Yes.

7 Q. So the number of homes passed, if your
8 estimate is wrong, is going to be something less than
9 the number on Response 1.1, correct?

10 A. Yes.

11 Q. Now, the number on Bresnan's homes passed,
12 that's pretty darn close to the number as used on
13 your Response 1.1, isn't it?

14 A. There again, I do not know what the
15 definition is of passing, Bresnan passing homes. My
16 knowledge of Bresnan is that there are major
17 differences between your definition of pass and what
18 we would consider in the telecommunications world
19 what pass would be.

20 Q. And let me just be clear, Mr. Todd. I am
21 not asking you to attest to the validity of this
22 document. This is Bresnan's number. That number was
23 already introduced into evidence and sworn to by Ms.
24 Kirchner and it is her job to attest to the validity
25 of it. But this is now in evidence in this

26

1 proceeding. And I am just trying to get a sense of
2 comparing this piece of evidence to the piece of
3 evidence that we're talking about. So please do not
4 take me to be asking you to verify this. I've
5 already asked Ms. Kirchner to do that. I'm just
6 trying to get a feel for how this evidence compares
7 to the evidence you supplied.

8 Now, if Ms. Kirchner is correct and when a
9 cable plant, they say a cable plant passes this many
10 customers, okay? If Ms. Kirchner is correct,
11 wouldn't you agree that the Bresnan cable plant
12 passes virtually 100 percent of the residential homes
13 in the Vernal Exchange?

14 A. No. Because I know the facilities that
15 Bresnan has, based on reports from engineers and from
16 our technical people and comments from our customers,
17 I would not agree that they pass the same area that
18 we do as UBTA-UBET.

19 Q. Okay. And do you have any documentation
20 about that with you here today?

21 A. No, I don't.

22 Q. Okay. Just one second. Now, you have
23 this evidence you've discussed. In your mind, what
24 is cherry picking? How much of the service territory
25 do you have to serve to be deemed, in your view, a
26

1 cherry picker?

2 A. Cherry picking would be providing to those
3 that are most accessible, least costly to provide
4 service to, wherein as a company of carrier of last
5 resort our rates and structures are based on serving
6 the community or the exchange as a whole.

7 Q. In your mind, if a competitor were to
8 serve 50 percent of the homes in an exchange, would
9 that be cherry picking?

10 A. Yes.

11 Q. What if they were going to serve 75
12 percent of the homes in an exchange --

13 A. Yes.

14 Q. -- would that be cherry picking?

15 A. Yes.

16 Q. What percent do they have to serve in
17 order to be deemed to be not cherry picking, in your
18 mind?

19 A. A hundred percent.

20 Q. Okay. Is 95 percent enough?

21 A. No. Because the 5 percent that are -- are
22 usually the 5 percent of the higher cost customers to
23 serve and the cost per loop increases the farther you
24 get away from centers of business centers of
25 communities and generally the higher costs are

26

1 farther as you get farther away from the center of
2 town where the services are provided.

3 Q. Okay. If this Commission were to conclude
4 based on this evidence that Bresnan's facilities were
5 sufficient to serve all of the customers in the
6 Vernal Exchange, would you agree with me that they
7 were not cherry picking?

8 A. No.

9 Q. Okay. Even if the Commission felt they
10 were serving 100 percent of the customers, you would
11 still feel it's cherry picking?

12 A. Feel or actually serving?

13 Q. If the Commission, this Administrative Law
14 Judge, determined as a finding of fact that Bresnan
15 reached 100 percent of the service territory in the
16 Vernal Exchange, reached 100 percent of the
17 customers, would you agree that your concerns about
18 cherry picking would no longer be valid?

19 A. No. Unless they're serving 100 percent of
20 the same customer base that we serve it would be
21 cherry picking because the costs are not comparable
22 and the carrier of last resort requirements are not
23 the same.

24 Q. Okay. So you're saying that unless
25 Bresnan serves 100 percent of your entire service

26

1 territory it's inappropriate for them to get service
2 authority in the Vernal Exchange?

3 A. Based on the cost of providing service to
4 the entire Vernal Exchange, we don't really have the
5 same cost requirements, therefore, it's cherry
6 picking.

7 Q. Okay.

8 A. Bresnan would be serving the customers
9 that were at least cost or most advantageous to them,
10 whereas, a carrier of resort company would have the
11 requirement to serve all. And the fact that a
12 customer from Bresnan still calls, a potential
13 customer of Bresnan still calls people throughout the
14 Vernal area, we still have to bear the costs in order
15 to provide that service.

16 Q. Okay. Did you review in preparing for
17 this case the discovery responses provided by Bresnan
18 with their franchise agreements?

19 A. I'm unfamiliar with that. I would need to
20 look at it.

21 Q. Did you look at it?

22 A. I've looked at it.

23 Q. Did you reach a conclusion as to whether
24 or not those franchise agreements as to Vernal and
25 Naples had an obligation apparent in them by Bresnan

26

1 to provide service?

2 A. I'm not an expert in that assumption.

3 Q. So that didn't go into your thinking in
4 the testimony that you offered here today; is that
5 correct?

6 A. Would you restate your question?

7 Q. What Bresnan's obligations may or may not
8 be in those franchise agreements wasn't a factor you
9 considered in preparing your testimony today; is that
10 correct?

11 A. We considered the fact that Bresnan with a
12 certificate or agreement with Vernal City does not
13 even today serve the whole area of Vernal. And we
14 would assume that based on that assumption that they
15 would not also serve all the telephone customers that
16 were in the Vernal Exchange with that same activity
17 based on their profits and losses and capital
18 expenditures.

19 Q. Forgive me, sir. Are you done?

20 A. Yes.

21 Q. And have you reviewed Bresnan's technical
22 facility information to know where exactly their
23 facilities are and are not?

24 A. It was confidential.

25 Q. Have you reviewed that?

26

1 A. I have not been -- if it's in the yellow
2 papers, I have not seen anything that's in the
3 yellow. Is that how it was presented?

4 Q. It wasn't presented at all. It's never
5 been part of this case. It was objected to and we
6 never put it in. So I'm assuming --

7 A. Well, I don't have all the same
8 information you have.

9 Q. I know.

10 A. So I have not seen the yellow papers. So
11 I don't know if you're referring to the confidential
12 information or some other information.

13 Q. All I'm trying to say is that your
14 testimony about where Bresnan's facilities are and
15 are not is not informed by you actually having had an
16 opportunity to review Bresnan's facility maps,
17 correct?

18 A. Maps would be accurate. The actual
19 facilities that is not correct because I have
20 engineers and technical people from our office that
21 gave me an estimate on where they served and the
22 coverage that they had. We also have arrangements of
23 pole attachments so I'm aware of where they have
24 facilities based upon pole attachments, and we do
25 know based on that it's not completely serving the

26

1 Vernal area.

2 Q. Okay. Do you have an estimate in your
3 head, based on the estimates your engineers have
4 provided, of what percentage of the Vernal area you
5 think Bresnan serves?

6 A. That would be an estimate only.

7 Q. And what would it be?

8 A. Somewhere in the two-thirds or less. Not
9 passing, mind you, actual facility. There again,
10 that's the definition that we have not yet determined
11 as to what "passes" means versus "actually serving."

12 Q. Well, and let me just finish with this,
13 and I apologize for taking so long here. Bresnan has
14 agreed to accept an obligation to serve 100 percent
15 of the customers in the Vernal Exchange, correct?

16 A. I don't know that.

17 Q. Okay.

18 A. I don't know what that means. That's a
19 better statement.

20 Q. Well, are you aware that Bresnan made that
21 statement?

22 A. They made a statement in order to
23 facilitate their filing. I do not know the depth of
24 the meaning of that statement.

25 Q. Okay. Do you support this Commission
26

1 ordering Bresnan, if a CPCN is granted, that they
2 serve any customer who requests it within the Vernal
3 Exchange?

4 A. I'll have to review that with our legal
5 counsel to see -- to the carrier of last resort
6 comparables between us and Bresnan.

7 Q. Okay. All right. Let me move now to the
8 secondary concern that you had, which was the concern
9 about diminished revenues making it harder for you to
10 provision enhanced services. Do you recall our
11 discussion about that earlier, Mr. Todd?

12 A. Yes.

13 Q. Now, first of all, let me make sure this
14 is correct. Do your regulated telecommunications
15 revenues subsidize your unregulated enhanced service
16 offerings?

17 A. No.

18 Q. So your concern here is clearly not
19 predicated on losing regulated revenues, but rather
20 in the process of Bresnan acquiring customers your
21 fear must be that you're going to lose unregulated
22 revenues when customers who, for example, might be
23 DSL customers elect to go to Bresnan for their
24 service; is that correct?

25 A. Currently DSL is regulated for us as well.

26

1 Q. Okay. So the issues you're talking about
2 are the DSL service and the local service. With
3 respect to the enhanced services you're talking
4 about, is it anything other than DSL you're talking
5 about?

6 A. It's all services that would be regulated
7 either by Federal or State, and that's I believe as
8 the expert testimony has been presented.

9 Q. Okay. That helps. Would you agree that
10 today Bresnan offers data service through its cable
11 plant?

12 A. Yes.

13 Q. So would you agree that UBTA-UBET and
14 Bresnan are already competing for data customers?

15 A. Correct.

16 Q. Now, currently as the world exists,
17 UBTA-UBET is able to offer a one-stop shop where a
18 customer can get both of their local service and DSL
19 service from you, correct?

20 A. In a bundled effort, yes.

21 Q. Now, if Bresnan's CPCN Application is
22 denied, would I be correct that then Bresnan would be
23 precluded from offering that same one-stop shopping
24 opportunity because Bresnan couldn't offer its voice
25 service to those customers, correct?

26

1 A. I'm not certain that that's the case.

2 Q. Is it your opinion that Bresnan can offer
3 this voice service with or without Commission
4 approval?

5 A. You stated that.

6 Q. What's your opinion, sir?

7 A. I would have to ask my legal advice to
8 clarify that in my mind.

9 Q. Okay. All right. Let's talk now finally
10 about your first concern about revenue loss
11 experienced by UBTA-UBET from competition. Do you
12 agree with the Utah legislature that competition for
13 telecommunication service in urban areas of Utah,
14 such as here in Salt Lake City, is in the public
15 interest?

16 A. That's a broad definition of public
17 interest, and that's what we're trying to provide in
18 this hearing as to what exactly public interest is.
19 So I think you and I have a different definition of
20 public interest. So I can't necessarily agree with
21 your characterization of that.

22 Q. As you define public interest, do you
23 think it is in the public interest to have
24 telecommunications competition here in an urban area
25 like Salt Lake City?

26

1 A. Not always.

2 Q. So you disagree with the legislature that
3 competition in urban areas, at least, is in the
4 public interest?

5 A. Depending on the service and other issues.
6 We do know, for instance, that there are areas that
7 we provide better service in the area that we do than
8 are being provided in the Salt Lake area with
9 competition already in Salt Lake.

10 Q. Okay. Well, you do recognize that --

11 A. Because of cherry picking.

12 Q. You do recognize that competition is
13 allowed here in, for example, the Salt Lake area,
14 correct?

15 A. Yes.

16 Q. Now, would you agree with me that in order
17 to facilitate that competition, Qwest and the
18 competitors had to incur costs to facilitate number
19 portability?

20 A. I would assume so.

21 Q. Would you agree with me that Qwest and the
22 competitors had to incur costs associated with
23 co-location in developing the ability to do
24 co-location in central offices?

25 A. I would assume so.

26

1 Q. Could you agree with me that Qwest, in
2 particular, had to incur costs in order to make its
3 network able to be provisioned on an unbundled basis?

4 A. I would assume so.

5 Q. Would you agree with me that Qwest and all
6 of the competitors also incurred costs to facilitate
7 and accomplish interconnection?

8 A. I would assume so.

9 Q. Okay. Would you agree that these costs
10 for number portability, co-location, the cost of
11 provisioning elements, the costs of interconnection,
12 would you agree with me that these costs in large
13 part have been paid by all of the customers in these
14 areas where competition is happening in Utah?

15 A. There again, it's a definition of all the
16 customers, whereas, Salt Lake and other areas have
17 more people to spread those costs. That is not the
18 case in rural areas.

19 Q. I appreciate that. I'm just asking how we
20 did it in Salt Lake here.

21 A. But there's a big difference as far as
22 customer base in Salt Lake versus a Uinta Basin to
23 spread those costs, and that is our concern.

24 Q. Okay. But would you agree that in Salt
25 Lake those costs were spread to all of the customers,
26

1 for example, all of the Qwest customers paid some
2 portion of the costs of providing number portability,
3 co-location, interconnection and the ability to
4 provide unbundled elements?

5 A. I don't know.

6 Q. Okay. If it were the case that all
7 customers were asked in some respect to pay for those
8 costs, would you agree with me that that would mean
9 that customers who stayed with Qwest, even those
10 customers would have paid some portion of those
11 costs, correct?

12 A. I don't know.

13 Q. Do you think the legislature understood
14 that competition would have costs to develop?

15 A. There's also legislation concerning
16 Universal Service, and not all competition provides
17 Universal Service because of cherry picking.

18 Q. Okay. I apologize. I'm asking a
19 different question. Do you think when the
20 legislature determined that we would permit
21 competition in Salt Lake City, for example, do you
22 think the legislature understood that there might be
23 costs associated with transitioning from a monopoly
24 environment to a competitive environment?

25 A. I don't know.

26

1 Q. Okay. Despite the existence of those
2 costs, the legislature, as per Salt Lake in
3 particular, anyway, decided that on balance
4 competition was better, correct?

5 A. That would be your characterization.

6 Q. Well, let me ask this. The legislature
7 did approve this process and this Commission has
8 approved a process where competition is permitted in
9 Salt Lake despite the existence of the costs
10 necessary to accomplish competition, correct?

11 A. That's my understanding.

12 Q. Okay. Thank you, Mr. Todd.

13 MR. NELSON: I have no further questions
14 of this witness.

15 JUDGE GOODWILL: Mr. Mecham, I'm wondering
16 scheduling-wise if it makes sense to break now. Do
17 you have many questions for Mr. Todd?

18 MR. MECHAM: I don't.

19 JUDGE GOODWILL: Does that mean you have
20 no questions or --

21 MR. MECHAM: At this point I have no
22 questions.

23 JUDGE GOODWILL: Okay. Thanks. The
24 Division, do you want to break now for lunch?

25 MR. GINSBERG: That would be fine.

26

1 JUDGE GOODWILL: Let's do that. Do you
2 want an hour or an hour and-a-half?

3 MR. PROCTOR: An hour.

4 JUDGE GOODWILL: We'll come back at 1:30.
5 (Noon recess taken from 12:23 to 1:30
6 p.m.)

7 --ooOoo--

8 JUDGE GOODWILL: All right. We'll go back
9 on the record. And just for the record I'll note we
10 had a brief discussion amongst all the parties
11 concerning the schedule for the remainder of today
12 and perhaps tomorrow and we'll see how that goes with
13 perhaps taking some witnesses out of order. With
14 that, I believe, Mr. Ginsberg, we're looking to your
15 cross-examination.

16 MR. GINSBERG: Thank you.

17 CROSS-EXAMINATION

18 BY MR. GINSBERG:

19 Q. Good afternoon, Mr. Todd.

20 A. Good afternoon.

21 Q. Could we start off turning to your direct
22 testimony beginning with the last question beginning
23 on line 146?

24 A. Are you talking the UBTA-UBET 1?

25 Q. Yes, your testimony. There you answer
26

1 that --

2 A. Where again?

3 Q. Line 146. The question and then the
4 answer.

5 A. Okay.

6 Q. You state there that you are not opposed
7 to competition; is that correct?

8 A. Correct.

9 Q. And Uinta Basin is not looking for any
10 protection in this proceeding from competition?

11 A. We're looking for opportunity for all the
12 customers in Uinta Basin being served to the same
13 degree as stated in the legislation, the law that has
14 been passed now. And that is our concern is that
15 cherry picking does not necessarily mean true and
16 fair competition.

17 Q. And then you go on and say, "In fact, the
18 Uinta Basin is already subject to significant
19 competition from wireless and broadband"; is that
20 correct?

21 A. Correct.

22 Q. Can you describe the type of competition
23 and who they are?

24 A. You have the satellite providers that
25 provide broadband, you have wireless providers that

26

1 provide voice as well as data, and broadband
2 deployment. You have, besides national carriers, you
3 have local operators that provide wireless Internet
4 or this broadband besides, the Bresnans and the
5 others that are established.

6 Q. Do you have people providing Vonage VoIP
7 service?

8 A. There is Vonage in the area, correct.

9 Q. So how has that affected you, they have
10 taken local exchange customers from you?

11 A. I don't have a knowledge as to numbers.

12 Q. Well, have they taken any?

13 A. I'm sure that there have been some that
14 have been taken.

15 Q. By the VoIP type provider?

16 A. By the VoIP provider, correct.

17 Q. And what type of customer would the
18 wireless company take from you? Could they be
19 serving an end user who might have bought local
20 exchange service from you?

21 A. Yes.

22 Q. Do you know if that's happening?

23 A. We understand that it is happening.

24 Q. Significantly? You used the term
25 "significant competition." Does that --

26

1 A. There is significant competition in the
2 wireless business out there with the number of
3 providers. There is certainly competition in the
4 video with Bresnan and Direct TV and DISH and besides
5 other broadband or wireless providers beyond the
6 national scope.

7 Q. But you are aware that wireless companies
8 out there, is one of them Western Wireless?

9 A. Yes.

10 Q. So Western Wireless, who was denied ETC
11 status, is providing competitive services out there?

12 A. The more accurate statement is
13 complementary because they don't provide the same
14 services that we provide as a wire line company to
15 the degree and reliability that we do as well.

16 Q. But you indicated that the customers are
17 choosing to not have a local wire line phone and
18 choosing just to have a wireless phone?

19 A. There are cases of that nature, yes.

20 Q. And describe a little more about the type
21 of services you are losing because of broadband
22 providers.

23 A. Besides DSL, some voice services, we
24 understand. We are still increasing in our customer
25 base so it's difficult based on the low growth that's

26

1 out there to really determine the magnitude of loss.

2 Q. But you are convinced that you are losing
3 customers right now to competition?

4 A. What we are finding in some cases is that
5 we may lose them and then they come back because of
6 inferior service or offerings that are being
7 provided.

8 Q. Now, those companies are providing those
9 services and competing with you without a
10 certificate; is that right?

11 A. Correct.

12 Q. None of those companies have assumed the
13 obligation of 54-8b-2.14 that says that you have to
14 serve everybody within the exchange; is that right?

15 A. Correct.

16 Q. So these are true cherry pickers?

17 A. Yes.

18 Q. And as you used the term, would you
19 distinguish what they're doing a little differently
20 than what Bresnan is proposing to do?

21 A. There's a difference as far as carrier of
22 last resort requirements that we have currently on
23 the wire line side. So there's differences there.

24 Q. And my question was, do you distinguish
25 between what the broadband providers and the Vonage

26

1 providers and the wireless providers in taking your
2 wire line customers to be in any way different than
3 what Bresnan is proposing to do?

4 A. Yes, I do.

5 Q. What is that difference?

6 A. The CPCN request.

7 Q. Would you also place any difference in the
8 obligation that Bresnan is willing to assume?

9 A. Yes.

10 Q. Do you find that a good thing?

11 A. I find that the community interest and
12 public interests aren't served with cherry picking as
13 it's presented by the Bresnan Application, whereas,
14 the others do so through normal requirements without
15 carrier of last resort requirements. And I would say
16 also that Vernal itself is the cherry of the basin.
17 So it's not -- we're not talking just Vernal.
18 There's other areas besides Vernal that we have to
19 provide service for and Vernal is the cherry of the
20 basin as well. So not only is Bresnan choosing to
21 request service in the most low cost area in Vernal
22 itself, but also the most low cost area in the basin.
23 And there are wireless providers that do not serve
24 areas of the basin even now, nor to the degree that
25 the wire line provider does. Ourselves, for

26

1 instance.

2 Q. But there are plenty of wireless providers
3 in Vernal?

4 A. But they choose where they put their cell
5 sites based on the rate of their return and there are
6 a number of areas that does not have wireless service
7 today.

8 Q. So these other providers like the wireless
9 providers and the Vonage providers are cherry
10 picking?

11 A. Correct.

12 Q. Can you estimate how much market you have
13 lost by these current competitors?

14 A. No, I couldn't. I could find that
15 information, but I don't have that now. It would be
16 guess and a estimate and I wouldn't want to do that.

17 Q. But since you used the term "significant"
18 it is significant?

19 A. Yes.

20 Q. And that loss is currently being made up
21 by the State USF when you file for rate recovery?

22 A. Well, when we file for rate recovery those
23 issues are taken into play. And it's been two years,
24 I believe, since our last filing.

25 Q. But under the USF rules as they currently
26

1 exist, those competitive losses will be made up by
2 the State USF, will they not?

3 A. I don't know. I hope so.

4 Q. So what's the difference, then, between --
5 why are you opposing the Bresnan Application when you
6 already are subject to all this competition and are
7 already losing the state -- or the State USF is
8 already supporting the competition? Are you just
9 opposing Bresnan's Application because they have to
10 ask for permission?

11 A. It's done under a process where they're
12 buoyed up through and have less regulatory
13 requirements than we do, carrier of last resort
14 requirements, are able to serve in areas that are at
15 least lower cost and so it is not a true competition
16 standard that's being placed here, as far as I'm
17 concerned, in the public interest.

18 Q. I don't think you answered my question.
19 My question is, you already are subject to all the
20 competition that you called significant. And you
21 didn't have any choice there, did you?

22 A. No.

23 Q. And the State USF, you said, is already
24 supporting the lost revenues that you're obtaining
25 from --

26

1 A. I didn't say that. I said I hope they do.
2 I hope they will. That has not been our view of it,
3 to a large degree.

4 Q. So my question to you, then, is why are
5 you opposing Bresnan's application?

6 A. I'll restate what I said earlier, because
7 it is not -- they do not have the same carrier of
8 last resort requirements that we do. They are cherry
9 picking the requests and their process will be cherry
10 picking the lower hanging fruit, which then requires
11 us to operate serving, based on carrier of last
12 resort, the areas that they do not want to serve.
13 And we already have investment in that area and it's
14 a matter of competition -- cherry picking is not true
15 competition.

16 Q. Now, Uinta Basin, when you acquired the
17 exchange from Qwest, was that above 5,000 access
18 lines?

19 A. I believe so. The Vernal area, yes.

20 Q. And Uinta Basin currently provides
21 unregulated services also, your company?

22 A. UBET regulated and we have another
23 subsidiary, UBET Wireless that provides our
24 nonregulated services.

25 Q. So that company provides wireless service?

26

1 A. Correct.

2 Q. Now your long distance is also provided
3 through an unregulated affiliate?

4 A. Yes.

5 Q. What about your broadband?

6 A. The broadband, our DSL is regulated on a
7 wholesale basis from the FCC, and then we're pulling
8 it from there and then we wholesale that based on
9 those rules and regulations.

10 Q. So you already will provide broadband
11 service to anyone who wants it?

12 A. Correct.

13 Q. And they could use that broadband to buy
14 Vonage service?

15 A. Yes. We do not offer naked DSL, I
16 probably need to make that clarification. Naked DSL
17 would be that there would not be a voice requirement
18 nor a local service requirement. And we do not based
19 on the regulations of the FCC in the naked pulling,
20 do not offer naked DSL.

21 Q. Now, you are also the ISP out there?

22 A. There are already ISPs out there.

23 Q. Is Uinta Basin one?

24 A. We have a subsidiary operation that offers
25 our Internet.

26

1 Q. Now, you also provide satellite
2 television?

3 A. We are a dealer in satellite television.
4 There are other dealers that provide the same service
5 that we do.

6 Q. So do you provide Direct TV?

7 A. We are a dealer of Direct TV.

8 Q. And you provide that in the Vernal area?

9 A. Yes.

10 Q. Do you provide it throughout the entire
11 Uinta Basin?

12 A. Yes.

13 Q. Do you currently package your services
14 together?

15 A. There are some services that we package.
16 Direct TV is not one of those.

17 Q. Why not?

18 A. It's a separate billing, separate
19 database. It's per the -- I guess the operation
20 requirements that Direct TV has on its dealers.

21 Q. Are you aware that Qwest packages --

22 A. Yes.

23 Q. -- its Direct TV together?

24 A. Yes.

25 Q. With their phone service?

26

1 A. Yes.

2 Q. Let's talk about this cherry picking for a
3 minute. You understand that resident -- let's assume
4 that Bresnan's cable facilities don't cover the
5 entire basin. There seemed to be some disagreement
6 on your questioning from Mr. Nelson; is that right?

7 A. Correct. Not only the Uinta Basin, but
8 the Vernal area as well.

9 Q. I'm talking only the Vernal area.

10 A. And when you talk Vernal, there's Vernal
11 City, there's Naples, there is Maeser, unincorporated
12 areas. So when you say "Vernal," are you saying
13 Vernal City or Vernal area?

14 Q. I'm talking about the Vernal Exchange.

15 A. Okay.

16 Q. The Vernal Exchange covers more than the
17 City of Vernal?

18 A. Correct.

19 Q. Now, you're aware, then, that Bresnan is
20 willing to accept the obligation to provide public
21 telecommunication services everywhere in the
22 exchange?

23 A. That is as I understand their statement.

24 Q. Now, you define cherry picking, then, as
25 -- or would you only then say a company is not cherry
26

1 picking if Bresnan had its own facilities through the
2 entire Vernal Exchange?

3 A. Based on a company that has a carrier of
4 last resort and obligation to provide services to
5 anyone that comes into our office and requests it,
6 without those full facilities then it would be cherry
7 picking, would it not?

8 Q. I don't think you quite answered my
9 question. Would you then define that Bresnan could
10 only satisfy their obligation under this statute that
11 they're willing to assume only if they had their own
12 facilities everywhere, but then -- and didn't either
13 buy, resale unbundled elements or other facilities
14 from the ILEC?

15 A. I believe one of our expert witnesses will
16 give more detail to that, but there's -- that could
17 be answered better by our expert witness that will
18 come later on that.

19 Q. Well, you're the one who said they were
20 cherry picking.

21 A. Well, they're cherry picking, yes.

22 Q. Would they still be cherry picking if they
23 were willing to serve everybody who requests service
24 from them wherever they are in the local exchange
25 except they might have to do it through unbundled

26

1 elements or resale? Is that still cherry picking?

2 A. In my definition, yes.

3 Q. This section in the statute 54-8b, was
4 that a section -- were you around when this was
5 passed?

6 A. Yes.

7 Q. Isn't that a section the independent
8 telephone companies wanted included?

9 A. This was more of a Qwest request, from my
10 understanding. And as long as Universal Service --
11 the discussion at the time when I was aware and the
12 discussion with the legislators is that this
13 legislation would not affect the independent
14 telephone companies.

15 Q. Well, you understand --

16 A. That's how it was presented to us as
17 independent companies.

18 Q. But you understand that this obligation
19 only exists for exchanges below 5,000 lines; is that
20 right?

21 A. Correct.

22 Q. So, I mean, it doesn't even apply unless a
23 resident is willing to accept that obligation from
24 companies above 5,000 lines, does it?

25 A. Okay.

26

1 Q. I think maybe Mr. Hendershot indicated in
2 his testimony that Uinta Basin doesn't have an
3 obligation to sell unbundled network elements and
4 interconnect with Bresnan; is that right?

5 A. I believe that is his testimony, correct.

6 Q. Is that your position as a company that
7 they will not negotiate an interconnection agreement
8 with Bresnan?

9 A. I will defer with our legal counsel at
10 that time -- or consult with our legal counsel at the
11 time when that issue presents itself.

12 Q. Now, if you sold unbundled network
13 elements and resold your services, would you not be
14 getting revenues that reflect your cost?

15 A. I don't know.

16 Q. Would you get revenues if you resold your
17 services?

18 A. We would get revenues, yes. They would
19 not meet our costs.

20 Q. Well, those rates are set by the
21 Commission?

22 A. Yes.

23 Q. The resale rates would be set by the
24 Commission?

25 A. That's my understanding.

26

1 Q. Also the unbundled element rates would be
2 set by the Commission?

3 A. In some cases that -- I'm not sure that's
4 true. I don't know.

5 Q. You have an interconnection agreement with
6 your wireless providers out there?

7 A. Yes.

8 Q. Western Wireless?

9 A. Yes.

10 Q. Other wireless companies?

11 A. Yes.

12 Q. So you exchange traffic and each of you
13 pay each other's terminating costs?

14 A. But that is from our subsidiary,
15 nonregulated company, not from our regulated company.

16 Q. Did you hear Bresnan indicate that they
17 will pay access charges?

18 A. Yes.

19 Q. And your current long distance subsidiary
20 pays you access charges?

21 A. Yes.

22 Q. So you have rates for access charges?

23 A. Yes.

24 Q. And those rates would be available to
25 Bresnan?

26

1 A. I'll consult our legal positioning at that
2 time.

3 Q. Well, are there any other long distance
4 providers who provide service in that area?

5 A. Yes.

6 Q. Who are they?

7 A. You have a number of them, AT&T, Sprint.
8 There's a number of pyramid schemes or positioning
9 out there, there are a number of long distance
10 carriers in the area, equal access.

11 Q. And some of those needed to get
12 certificates and some didn't?

13 A. Certificates?

14 Q. From this Commission?

15 A. I don't know.

16 Q. But you exchange traffic with those
17 companies?

18 A. Yes.

19 Q. On a mutually acceptable manner?

20 A. Phantom traffic is not mutually acceptable
21 for us. That is an area that we have grave concern
22 as that information is not being passed on for us to
23 be able to pay off access and cover our revenues
24 based on the costs that we're incurring.

25 Q. Did you hear Bresnan indicate that that
26

1 information would be passed along to you?

2 A. I heard that they would do that.

3 Q. So does that alleviate your concern about
4 it?

5 A. No.

6 Q. What is left?

7 A. There is phantom traffic out there. It
8 comes from the various sources, carriers, one of them
9 is a long distance provider for Bresnan. We're
10 uncertain to what reliability we can get in recouping
11 our revenues without a Commission or Division
12 directive to do away with phantom traffic.

13 Q. I thought I had understood Bresnan to say
14 that the traffic would be passed along to you in a
15 way that you would get your access revenues?

16 A. We also have other carriers that say the
17 same thing and we find that that is not the case. So
18 our experience would indicate that that does not
19 always happen.

20 MR. GINSBERG: I think that's all. Thank
21 you.

22 JUDGE GOODWILL: Mr. Proctor?

23 MR. PROCTOR: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MR. PROCTOR:

26

1 Q. Good afternoon, Mr. Todd. As you know, my
2 name is Paul Proctor and I represent the Utah
3 Committee of Consumer Services, whose primary
4 obligation, of course, is to represent the interests
5 of residential and small business consumers.

6 Did I hear you correctly that UBTA at the
7 present time does offer Digital Voice services
8 similar to those that Bresnan proposes?

9 A. No. We provide DSL services.

10 Q. But what is the difference between, as you
11 understand it, between the Digital Voice service that
12 Bresnan proposes and your DSL service?

13 A. Well, I believe that their process is
14 different than ours. We provide to our digital
15 switch voice traffic. My understanding is that they
16 will -- they have a different method and mannerisms
17 of providing that information. So I don't think it's
18 the same.

19 Q. Does your DSL service involve the use of
20 paired wire, paired copper wires?

21 A. Yes.

22 Q. And it's your understanding that Bresnan's
23 does not?

24 A. Coax at this time.

25 Q. And as I also understand it, you do not
26

1 provide --

2 A. I would add, that we also have fiber, just
3 not -- we have fiber and copper that provides
4 services throughout the basin.

5 Q. Are there any areas within the Vernal
6 Exchange where UBTA does not have installed
7 fiberoptic cable?

8 A. To the home or --

9 Q. Yes.

10 A. There are areas that we do not have fiber
11 to the home. We do have fiber, though, to serving
12 areas that would serve from there copper to the home.

13 Q. So to that extent, then, if Bresnan is
14 permitted to serve in the Vernal Exchange, they will
15 be providing a Digital Voice service that is
16 different from that is which is available to them now
17 by UBTA; is that correct?

18 A. Technically. Maybe not to the customer --
19 I'm not aware. I do not know enough if the customer
20 would recognize a difference.

21 Q. Well, UBTA customers, are they looking for
22 better telecommunication services in the Uinta Basin?

23 A. Is there any customer that isn't looking
24 for better telecommunication services?

25 Q. So your answer is yes?

26

1 A. I would say all customers throughout the
2 nation are looking for better service, and we at UBTA
3 strive to provide the best that we can.

4 Q. And your customers are no different than
5 anywhere else?

6 A. That's correct.

7 Q. And, in fact, UBTA is at the present time
8 engaging in a process to try to provide them what
9 they want, is it not?

10 A. That's correct.

11 Q. You're trying to give them faster delivery
12 speeds, more information, easier use, as well as
13 better equipment service options; is that correct?

14 A. That's correct.

15 Q. Now your DSL service, do I understand your
16 testimony to be that you provide it, but only bundled
17 with other services?

18 A. We do not provide naked DSL, which is a
19 stand-alone broadband offering.

20 Q. In order to get DSL, what must a customer
21 then purchase? What other services must they
22 acquire?

23 A. They just have to have a local service
24 voice line and then they can get their DSL.

25 Q. And that would be from UBTA?

26

1 A. From UBTA, the DSL, correct.

2 Q. And that would just be a basic telephone
3 service?

4 A. That would be all the entry requirement
5 for getting DSL, correct.

6 Q. The basic telephone service as it's
7 defined for the purposes of providing USF, correct?

8 A. Correct.

9 Q. Now, what efforts, then, is UBTA making in
10 order to enhance the telephone service provided in
11 the Vernal Exchange?

12 A. In every greenfield build we're putting
13 fiber to the home.

14 Q. That's in greenfields?

15 A. Yes.

16 Q. What about in every --

17 A. Any time we open up the earth or do any
18 construction project, we're building with the
19 anticipation of fiber at some point when it becomes
20 economically feasible to do so.

21 Q. And so --

22 A. I would also say our first effort is to
23 make sure that the broadband speeds are there for all
24 the customers, and that's where we're going with
25 fiber into serving areas.

26

1 Q. And one could then use that broadband to
2 bridge into a Vonage type process or service, then,
3 could they not?

4 A. Correct.

5 Q. Now, on Bresnan Exhibit 7, do you still
6 have that before you?

7 A. Bresnan 7?

8 Q. Yes.

9 A. Yes, I do.

10 Q. The question that was put to you was:
11 "Separately identify the number of residential and
12 business telephone access lines provisioned by
13 UBTA-UBET in the Vernal Exchange." And you have
14 given a number there, correct?

15 A. We'll need to clarify, have that looked
16 at. In the information that was provided in 1.2 was
17 just in the Vernal City area, not in the Vernal
18 Exchange.

19 Q. Sir, I'm looking at 1.1, residential
20 access lines.

21 A. And that is also in the Vernal area, not
22 the Vernal Exchange.

23 Q. Did you review this answer prior to it
24 being sent?

25 A. I reviewed it. My understanding is the
26

1 request was for the Vernal City area and so we did
2 not provide the Vernal Exchange.

3 Q. Well, sir, the question says the Vernal
4 Exchange.

5 A. Correct.

6 Q. And did someone mislead you to say that
7 was something other than the Vernal Exchange?

8 A. That information was given obviously with
9 not full disclosure of what was there. My
10 understanding, in talking to the person that provided
11 it, read it to be for the Vernal area, Vernal City
12 area, rather than the whole Vernal Exchange based on
13 the Vernal Exchange covers from near Daggett all the
14 way down to the Bookcliffs area into Green River.
15 And so the focus was on the area that Bresnan was
16 serving currently, and that was a mistake on our
17 part.

18 Q. When did you discover this mistake?

19 A. When -- I had not seen the comparables
20 because I was not -- I was directed not to look at
21 the confidential information. And when it was given
22 to me here on the stand I immediately could see that
23 the comparables were not accurate and so I had
24 someone look into why that was not comparable to my
25 understanding.

26

1 Q. And so over the lunch break you discovered
2 this. And did you or your counsel, immediately upon
3 returning, notify Mr. Nelson of the error?

4 A. My understanding is that we're trying
5 to --

6 Q. You're not answering my question.

7 A. -- as requested by -- to get closer to
8 exact numbers and so we're -- my understanding, this
9 was going to be brought up in cross-examination.

10 Q. So your answer is no, no one notified Mr.
11 Nelson upon returning; is that correct? Is that
12 correct, Mr. Stoll?

13 MR. STOLL: That's correct, Mr. Proctor.

14 Q. (BY MR. PROCTOR) Is that also true then
15 of your Response 1.2 with respect to the estimate of
16 the number of homes?

17 A. That is also a Vernal City area estimate.
18 When we purchased the Qwest facilities, not all their
19 information was given to us. We're still in the
20 process of putting forth their database. My
21 understanding is the estimate was valid at this
22 point. "Provide the following estimates regarding
23 current telephone service," and that's where we left
24 it.

25 Q. When was this estimate done, when you
26

1 acquired it, the exchange from Qwest?

2 A. The estimate was done based on this Data
3 Request.

4 Q. Well, let's go back then and try to
5 compare the number for the Vernal Exchange of
6 residential homes that are served by UBTA with the
7 number of residential households also in the Vernal
8 Exchange that are passed by Bresnan's cable plant.

9 Do you have any information about how many
10 of any residential homes within the Vernal exchange
11 are passed by the Bresnan cable plant?

12 A. Do I have information --

13 Q. Do you have information about that?

14 A. Not exact numbers, no.

15 Q. Now, you described that UBTA is very aware
16 of Bresnan facilities and you received information
17 from customers, for example. Do you have any
18 documentation, does UBTA have any documentation that
19 either the company has collected or has been
20 collected or compiled on behalf of the company that
21 reflects the extent of their facilities located in
22 the Vernal Exchange?

23 A. We have some information, yes.

24 Q. In what form is that documentation?

25 A. Pole counts, facilities that Bresnan rides

26

1 on our poles, where those locations are, areas that
2 they serve. They don't serve --

3 Q. So you've actually gone out into the field
4 and defined where they serve and where they do not?

5 A. We are defining it based on our pole
6 rental agreements where Bresnan has facilities on our
7 poles.

8 Q. Are you using any other method to
9 determine the extent and scope of their facilities
10 within the Vernal Exchange?

11 A. Not to a great extent.

12 Q. To a lesser extent, what are you doing to
13 find that out?

14 A. We're making sure that where our
15 facilities are and Bresnan facilities are, that we're
16 aware of where they're going and where they're not.

17 Q. So you're out in the field actually taking
18 an inventory of Bresnan's cable plant?

19 A. No.

20 Q. Now, there's been a lot of quarrel about
21 the term "pass." And if you'll look at Bresnan 6,
22 Exhibit 6, do you have that in front of you?

23 A. Yes.

24 Q. As I understand it, this was a response by
25 Bresnan to a question put to Bresnan by UBTA. Is

26

1 that your understanding?

2 A. Yes.

3 Q. And the question -- well, in fact, why
4 don't you read the question first.

5 A. Mr. Mecham wants to make sure that it was
6 the URTA that requested that.

7 MR. MECHAM: Just for the record.

8 Q. (BY MR. PROCTOR) Oh, good. Would you
9 read the question, please?

10 A. How many households -- 2.1?

11 Q. 2.1.

12 A. "How many households in the Vernal
13 Exchange does Bresnan pass today with its cable plant
14 where Bresnan could provide cable/data and voice
15 services? For purposes of this question, please
16 indicate if the response includes households
17 currently receiving any services from Bresnan."

18 Q. Now, given that it was URTA's question,
19 and you have certainly reviewed that question before
20 you came here today, have you not?

21 A. Yes.

22 Q. The term "pass" --

23 A. I did not review the answer because it was
24 confidential. This is the first I've seen it when
25 I've been on the stand.

26

1 Q. The question is the important one. It
2 says, "How many households in the Vernal Exchange
3 does Bresnan pass today with its cable plant where,"
4 and would this not define pass, "Bresnan could
5 provide cable and data and voice services," and that
6 would be to a household. So that's the definition of
7 pass as URTA has used it, is it not?

8 A. Okay.

9 Q. And is it your understanding that that's,
10 indeed, how Bresnan used the term when they said they
11 pass "X" number of residential households in the
12 Vernal Exchange?

13 A. I believe so.

14 Q. And that would be compared with what you
15 stated in Bresnan 7 about the number of residential
16 access lines in the Vernal Exchange, correct?

17 A. Repeat again?

18 Q. And so --

19 A. And which one are you talking about, 1.1
20 or 1.2?

21 Q. Bresnan 7.

22 A. Bresnan 7.

23 Q. Compared to Bresnan 6, they're both
24 talking about the number of residential access lines
25 or, in the case of 1.2, households passed within the
26

1 Vernal Exchange, correct?

2 A. Those are two different comparatives.

3 Q. Well, let's talk about residential
4 households. It's the same question in both as to
5 UBTA and as to Bresnan, correct?

6 A. The question of ours was residential homes
7 served. The question in Bresnan is passed. So
8 there's a distinction. I want to make sure that on
9 the record there's a difference between that as far
10 as even billing facilities. You pass doesn't mean
11 that you can necessarily provide the services even
12 with the facilities that you have passing those
13 areas.

14 Q. But did not URTA define the term "pass" in
15 its question as to where cable, data and voice
16 services can be provided to a household?

17 A. I'll let the URTA expert testify to that.

18 Q. Now, when, when was the data responses in
19 Bresnan 7, when were they prepared and submitted to
20 Bresnan?

21 A. I don't have that information.

22 Q. Perhaps your counsel does.

23 MR. STOLL: We're checking.

24 JUDGE GOODWILL: While that checking is
25 going on, just to be clear again, Bresnan 6 and the

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1 information provided there on yellow paper is no
2 longer considered confidential. I just want to make
3 sure everybody is clear on that. So if you need to
4 address those numbers you're certainly welcome to.

5 MR. PROCTOR: Well, I want to address them
6 all.

7 JUDGE GOODWILL: And if we need to go into
8 closed session, you certainly may.

9 MR. PROCTOR: Thank you very much.

10 Q. (BY MR. PROCTOR) While counsel is
11 searching for that date, I do have some other
12 questions. You continue to use the term "carrier of
13 last resort"?

14 A. Yes.

15 Q. And that is an element of being an
16 incumbent local exchange carrier, is it not?

17 A. Yes.

18 Q. And it's also an element that gives UBTA
19 access to State and Federal Universal Service Funds,
20 does it not?

21 A. Yes, it does.

22 Q. Is there any other ILEC within Uinta
23 Basin?

24 A. No.

25 Q. No other ETCs in Uinta Basin?

26

1 A. No.

2 Q. So in exchange for being a carrier of last
3 resort, obligated to serve whomever may ask within
4 your certificated territory, you receive USF,
5 Universal Service Funds from both the State and the
6 Federal Governments, correct?

7 A. Right.

8 Q. And in fact, taking over the Duchesne,
9 Roosevelt and Vernal territories from Qwest entitled
10 you to receive USF for those three exchanges, did it
11 not?

12 A. From State USF, but not from Federal USF.

13 Q. And that was because of Qwest's
14 circumstance?

15 A. That's correct.

16 Q. So you actually increased your USF
17 payments at that time?

18 A. I don't believe that is correct.

19 Q. Well, at the time, the State USF, you
20 began to receive them for Roosevelt, Vernal and
21 Duchesne when you assumed those companies or those
22 territories?

23 A. I would have to go back and look at the
24 numbers. I do know at one point the USF funds were
25 almost completely taken away from UBTA-UBET from the

26

1 State USF funds.

2 Q. But they have been restored at this point?

3 A. Not to the same levels as they were
4 before.

5 Q. But they still have benefited the company
6 financially, have they not?

7 A. They are a source to provide services to
8 carrier of last resort in a growing area, in an area
9 that was underserved technically by Qwest at the
10 time.

11 Q. On June 14 of 2007 there was a press
12 release put out by UBTA in connection with your
13 annual meeting. And one of the statements that was
14 made quoted Carl Searle who is the Chief Financial
15 Officer who is reported as having said, "Much of the
16 financial health the company is experiencing is due
17 to the increase in land line telephone customers
18 added when it acquired the Duchesne, Vernal and
19 Roosevelt Exchanges and the infrastructure of those
20 exchanges." Do you agree with Mr. Searle's
21 statement?

22 A. Yes.

23 Q. Mr. Searle also noted that the UBTA
24 benefited financially from a rate increase in early
25 2006 that was prescribed by the Utah Public Service
26

1 Commission and from, and I'll quote, "continued state
2 support in the form of Universal Service Fund
3 monies." Do you agree with that?

4 A. In general, yes. I would say that to some
5 degree the citizens, the customers did not benefit as
6 much as we thought they would.

7 Q. But UBTA certainly benefited because in
8 fact for 2006 the co-op members' equity in UBTA rose
9 from 8 percent to 21 percent; is that correct?

10 A. Yes.

11 MR. PROCTOR: Now, did we get the date of
12 that response, Mr. Mecham?

13 MR. MECHAM: I don't have it.

14 MR. STOLL: As best we can tell, the date
15 of the response was August the 8th.

16 MR. PROCTOR: Okay. Thank you.

17 Q. (BY MR. PROCTOR) Now, in your summary of
18 testimony that you've handed out, Mr. Todd, and I
19 appreciate very much it being in writing, that's very
20 helpful, in the second paragraph in the middle you
21 stated, "Because UBTA-UBET is a rate of return
22 regulated telecommunications carrier under Federal
23 and State law, the loss of those revenues," and that
24 would be to Bresnan, I assume, "will need to be made
25 up in the form of either increased rates to

26

1 customers, not only in the Vernal Exchange, but also
2 Uinta Basin generally, or as additional support from
3 Universal Service Funds administered by the State of
4 Utah."

5 In the event that Bresnan is granted the
6 certificate they're seeking in this case, will UBTA's
7 sole response to the entry of Bresnan into the
8 market, the Vernal Exchange, be to raise revenues or
9 increase your USF request?

10 A. We'll review that at that time with house
11 consultants and legal advice.

12 Q. Well, have you even discussed that within
13 your company as to what your response would be?

14 A. We have discussed it but that is not yet
15 of public record.

16 Q. Well, what type of responses have you
17 discussed in the event that Bresnan is granted this
18 certificate?

19 A. I decline to comment at this point in
20 time.

21 Q. Are you refusing to answer that question,
22 sir?

23 A. Since not all decisions have been made, I
24 don't have an answer.

25 Q. I asked what has been discussed. Are you
26

1 refusing to tell this Commission what the company has
2 discussed would be its response in the event the
3 certificate is granted?

4 A. I'm unable at this point to --

5 MR. STOLL: Your Honor, I'm going to raise
6 my concern or objection at this point in time. I
7 think the discussions as to how or in what manner the
8 company may respond to a competitive entry are
9 confidential and propriety in nature and I don't
10 think that -- you know, what the response may or may
11 not be, particularly when it has not yet been
12 finalized, and in fact there is no competitive
13 entrant at this point in time, is particularly
14 germane to this proceeding.

15 THE WITNESS: And I don't want to appear
16 disrespectful either to you or your question or the
17 Commission, but it's a question that I can't answer
18 at this time.

19 MR. PROCTOR: Well, your Honor. I think
20 the situation is where Mr. Todd has testified that
21 the outcome of the Bresnan Application, if it's
22 successful, will be to force the company to raise its
23 rates or to seek more money from the State USF.

24 My question is, what other the responses
25 have you considered? Now, if they've considered none
26

1 then that's the answer. If they have considered
2 others which may to some extent respond to how the
3 company is addressing its own business as far as
4 trying to increase its market share, improve its
5 facilities, its services, that particular answer
6 would go to mitigate substantially the great and
7 severe harm that this company is suggesting Bresnan's
8 entry into the market will create.

9 In other words, we're testing how truly
10 dangerous, how truly harmful granting the Application
11 will be according to Mr. Todd's own assessment of
12 what his own company can do to respond to the
13 competition. That's why the question is asked. And
14 I believe insofar as it's proprietary and
15 confidential, well, you could say that about every
16 single thing here and keep people from asking
17 questions about it.

18 MR. NELSON: Just for the record, to the
19 extent that the response is confidential and
20 proprietary, we would be very happy to treat it as
21 such and ask the room to be cleared in accordance
22 with the procedures of this Commission.

23 JUDGE GOODWILL: It seems we had the same
24 discussion earlier about Bresnan's own plans for the
25 future, and it seems to where we're getting hung up
26

1 here.

2 MR. MECHAM: We absolutely did.

3 MR. PROCTOR: Well, I'm not the one who
4 asked the question, nor objected to it.

5 JUDGE GOODWILL: Understood, Mr. Proctor.

6 MR. MECHAM: I asked and got no answer.
7 You show me mine, I'll show you yours.

8 MR. PROCTOR: I don't have one.

9 JUDGE GOODWILL: That appears to me --

10 MR. GINSBERG: I guess the trouble is,
11 though, that Mr. Todd's testimony is what his
12 response will be. So it seems reasonable to be able
13 to inquire into if that's a valid statement.

14 MR. NELSON: And just to clear up what I
15 believe is an important distinction, the question
16 that Mr. Mecham asked Ms. Kirchner was related to
17 Bresnan's plans to expand its facilities into new
18 areas. And the statement that was made then in the
19 record by myself was that Bresnan is not relying upon
20 any future expansion plans in support of its
21 Application here and it's relying purely on the
22 testimony of the existing plant that exists.

23 To the contrary, Mr. Todd's statements as
24 to what UBTA-UBET will do if the request is granted,
25 namely raise rates or increase Universal Service

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1 funding, has been raised as a reason and, in fact,
2 the primary reason why in their opinion the request
3 is not in the public interest. And if you recall,
4 the objection was as to the relevance of the inquiry.
5 And I believe counsel has every right to object if he
6 believes this inquiry is irrelevant. I don't believe
7 I've heard that objection. The only objection I have
8 heard is that it's confidential. That wasn't the
9 basis for the refusal to provide the other
10 information that Mr. Mecham suggested.

11 JUDGE GOODWILL: Well, I think where we're
12 at, and I'm not sure if you had asked the question
13 already, Mr. Proctor, as a predicate to your current
14 question is whether or not there are other options
15 available besides the two that Mr. Todd has testified
16 to.

17 MR. PROCTOR: And a fine question.

18 Q. (BY MR. PROCTOR) Mr. Todd?

19 A. Please restate.

20 MR. PROCTOR: Your Honor?

21 JUDGE GOODWILL: Go ahead.

22 Q. (BY MR. PROCTOR) Are there other
23 responses that UBTA could take to Bresnan's
24 certificate and entry into the market in order to
25 retain or recapture customers that may move to
26

1 Bresnan?

2 A. I'm sure there are others.

3 Q. Has UBTA ever engaged or adopted such
4 projects before to combat competition such as in the
5 wireless industry?

6 A. Yes, we have.

7 Q. What types of things have you done?

8 A. Marketing opportunities, targeting
9 specific customer needs. All of those we'll look at.

10 Q. Have you --

11 A. Including other technologies that would be
12 beneficial.

13 Q. In other words, providing greater service,
14 perhaps, for the same price?

15 A. I think we provide great service right
16 now.

17 Q. And improving it even more?

18 A. We always try to improve our service.

19 Q. And for the same price, has the company
20 ever reviewed and reduced its prices in response to
21 competition?

22 A. Regulatory. That's a result of Commission
23 and regulatory -- are you talking about our
24 regulatory operations or nonregulated operations?

25 Q. Nonregulated.

26

1 A. Yes. We've done a number of things on our
2 nonregulated side.

3 Q. Would putting together discounted packages
4 be one of those needs?

5 A. Well, we also in our nonregulated make
6 decisions in areas that we may or may not serve. And
7 in the regulated arena as a carrier of last resort
8 and with the complaints that go into the Committee of
9 Consumer Services and the Division, it is our goal to
10 not have complaints from our customers with our
11 service. So we treat differently the regulated
12 issues versus the nonregulated issues.

13 Q. Well, and I will say, Mr. Todd, I know of
14 no complaints about UBTA that have come to the
15 Committee. And by the way, I appreciate very much
16 your statement about no disrespect. And certainly my
17 questions are the same respectful questions. I'm
18 just trying to get to the bottom line of what is this
19 going to do for the residential consumer, the small
20 commercial consumer. I hope you understand that.

21 A. Yeah. Well, I have -- go ahead.

22 Q. And in the regulated side, certainly the
23 company has in the past become more efficient. In
24 fact, even in your June 12, 2007 press release you
25 talked about the company becoming more efficient in

26

1 use of its employees and more productivity from
2 employees and things such as that, correct?

3 A. Correct.

4 Q. And those were largely in response to
5 trying to improve UBTA service quality, service
6 availability and also in response to competition, was
7 it not?

8 A. More to do with providing the services
9 that were demanded and requested with a growing oil
10 field industry.

11 Q. But also to retain the customer who may
12 have broadband and be looking at Vonage?

13 A. A customer to take Vonage would still need
14 the DSL or the broadband connection. Vonage does not
15 build its own facilities so they still need our
16 facilities in order to provide that.

17 Q. But you would still want to retain them as
18 a customer?

19 A. We would still want to retain them as a
20 customer.

21 Q. In the event that Bresnan was to gain the
22 certificate, how, if at all, would that cause the
23 costs that UBTA now pays to run its business, how
24 would it cause them to rise?

25 A. The cost to rise?

26

1 Q. The actual cost of service, how would that
2 go up?

3 A. Well, you would have areas that you
4 wouldn't be able to provide the same services as you
5 did before because of the number of customers that
6 were there. Similar to what we experience in our
7 different exchanges. The Vernal Exchange is the
8 least cost of all our exchanges based on numbers.

9 Q. That's the actual cost of service, not
10 counting revenues, the cost of service?

11 A. Right.

12 Q. So in the Vernal Exchange, what costs
13 would increase because Bresnan has a certificate and
14 has telephone customers?

15 A. Not only would there be -- you would have
16 less people to pay for those costs.

17 Q. Well, that's a reduction in revenues. I'm
18 talking about increased costs. Would there be any
19 greater cost of service in the Vernal Exchange for
20 UBTA if Bresnan was serving some of the customers you
21 now serve?

22 A. To some degree, based on volume, you get
23 discounts in order to provide services.

24 Q. A discount, you get a discount from?

25 A. From our vendors.

26

1 Q. The cable --

2 A. And so the more we are able to serve, the
3 more efficient that we are in providing those costs.
4 So if those costs, those numbers decline, we have
5 less efficiency in order to provide those services.

6 Q. Would you want --

7 A. So individually customers' costs would
8 increase.

9 Q. Would you not also save some costs,
10 however, because you wouldn't have to do the
11 buildouts, perhaps, that you would otherwise have to
12 do?

13 A. Very little. We are a very tight
14 operation, as with our numbers and operations.

15 Q. Thank you very much, Mr. Todd.

16 JUDGE GOODWILL: Mr. Stoll, before turning
17 to you, I just wanted to check. With respect to
18 Bresnan 7, Mr. Stoll, and Mr. Todd can answer, is the
19 company working on new numbers that reflect the
20 Vernal Exchange as the question was asked? And when
21 could we expect those?

22 MR. STOLL: We are working on those
23 numbers. We would hope to have them by tomorrow.

24 MR. PROCTOR: With the new numbers, I
25 assume will we have to go through and recall these

26

1 witnesses again or is that opportunity going to be
2 provided?

3 JUDGE GOODWILL: To the extent that the
4 parties feel the numbers are relevant and wish to
5 question witnesses on them, I think we need to make
6 the witnesses available.

7 MR. PROCTOR: Would the witness -- would
8 the person who actually prepared these first numbers
9 be made available so that we could examine that
10 person as well as to the reason for this rather
11 significant error, if indeed it was? I think that
12 that would only be reasonable.

13 MR. TODD: I take that responsibility so
14 I'll report it.

15 MR. PROCTOR: I'm sorry?

16 MR. TODD: I take that responsibility and
17 I will report those numbers if they do change when
18 they do change.

19 JUDGE GOODWILL: And I would think if the
20 Committee or the Division feel that further inquiry
21 is necessary, that can be done outside of hearing.

22 MR. PROCTOR: Very well. Thank you.

23 JUDGE GOODWILL: Mr. Stoll, any redirect?

24 MR. STOLL: Thank you.

25 REDIRECT EXAMINATION

26

1 BY MR. STOLL:

2 Q. Mr. Todd, I don't mean to beat a dead
3 horse to death.

4 A. Are you calling me a dead horse?

5 Q. Back on the issue of cherry picking, your
6 service responsibility as a company extends far
7 beyond the borders of the Vernal City?

8 A. Yes.

9 Q. Or even the Vernal Exchange, is that not
10 correct?

11 A. That's correct.

12 Q. You provide service essentially to the
13 entire Uinta Basin which includes all of Uintah
14 County and Duchesne County as well?

15 A. And including part of Wasatch County.

16 Q. And part of Wasatch County. Is the cost
17 to provide service in the more rural and remote areas
18 substantially greater than that than it is to provide
19 service in Vernal?

20 A. Yes.

21 Q. And so to the extent that you have
22 customers who migrate to another carrier's network in
23 the Vernal area, does that throw a burden, an
24 additional burden to those in those high cost areas?

25 A. Yes.

26

1 MR. STOLL: That is all.

2 JUDGE GOODWILL: Mr. Mecham?

3 MR. MECHAM: No questions.

4 JUDGE GOODWILL: Mr. Nelson?

5 MR. NELSON: No more questions at this
6 time.

7 JUDGE GOODWILL: Mr. Ginsberg?

8 MR. GINSBERG: Just one.

9 RECROSS-EXAMINATION

10 BY MR. GINSBERG:

11 Q. The areas that you just went over, Mr.
12 Stoll just went over with you, those where you
13 mentioned these counties, those are not in the Vernal
14 Exchange?

15 A. The Vernal Exchange is in the Uintah
16 County and there's also Duchesne County and Western
17 Wasatch County.

18 Q. But those are different exchanges?

19 A. There are other exchanges in the Uinta
20 Basin -- or in the Uintah County.

21 Q. His question, though, to you, about the
22 effect in other areas were outside of the Vernal
23 Exchange, were they not?

24 A. I'm not sure I grasp what you're asking.

25 Q. The question that Mr. Stoll asked you and
26

1 you mentioned these counties, were those all within
2 the Vernal Exchange?

3 A. The Vernal Exchange is exclusively in the
4 Uintah County.

5 Q. Okay.

6 A. But there are other exchanges in Uintah
7 County.

8 JUDGE GOODWILL: Is that all, Mr.
9 Ginsberg?

10 MR. GINSBERG: Yes.

11 MR. PROCTOR: Nothing, thanks.

12 JUDGE GOODWILL: Thanks, Mr. Todd.

13 And then just to kind of -- so all parties
14 are clear, are all witnesses going to be back and
15 present tomorrow so that when we get these new
16 numbers for Bresnan 7, the appropriate people will be
17 here to answer the questions that parties have? Any
18 witnesses that won't be here tomorrow? Okay.
19 Thanks.

20 MR. NELSON: Your Honor, could I make a
21 request of UBTA-UBET? And that would be that to the
22 extent, because there are other numbers in the record
23 that reflect at least the access line count for the
24 company as a whole. And so just as a verification
25 check, I think it would be helpful if the information

26

1 you provided were actually for all of your exchanges
2 so that we could verify that against the other
3 information in the record and make sure that that too
4 is accurate. If that would not create an undue
5 burden I think that would be helpful because we have
6 a lot of information that's been gone around about
7 how many access lines are in this area and what
8 percentage of the area Bresnan serves. So it seems
9 like a fairly important issue and I would just like
10 to make sure we're as accurate as possible.

11 MR. STOLL: Do you have specific Data
12 Requests in mind that we can look at?

13 MR. NELSON: I'm referring to the -- well,
14 I'll just note that in the testimony, the reply
15 testimony of Mr. Meredith, he identifies on Exhibit
16 D, a December 31 access line count for UBTA-UBET,
17 there's a number in his testimony that he cites. And
18 I'll also note on Exhibit I of Mr. Meredith's
19 testimony, which is also confidential, he has a
20 residential line count for UBTA-UBET in a calculation
21 he does on the potential impact on the Universal
22 Service Fund.

23 And I'll note that Mr. Meredith's number
24 in Exhibit I is ever so slightly different than the
25 number that was reported in the Data Request 1.1.

26

1 And so my concern is is that whatever the new numbers
2 are, to the extent that we can harmonize it with the
3 other numbers in the record, that would be ideal
4 because I really would like this to get nailed down.
5 And if Mr. Meredith's numbers are now incorrect then
6 I need to know that before Mr. Meredith goes up on
7 the stand and we get a whole bunch of
8 cross-examination on the record on that. So that's
9 the information to which I was referring that I
10 anticipate be coming on the record and wanting -- I
11 was operating on the assumption that these were
12 harmonious, but if they're not, then I think we need
13 to make sure we're got it all straightened out before
14 we close the record.

15 MR. MECHAM: Well, we'll check. If
16 there's any inconsistency, we'll see. But I think
17 we're okay.

18 MR. NELSON: Thanks.

19 JUDGE GOODWILL: Mr. Stoll?

20 MR. STOLL: UBTA-UBET Communications calls
21 Ray Hendershot.

22
23 RAYMOND A. HENDERSHOT,

24
25 called as a witness, being first sworn,

26

1 was examined and testified as follows:

2 JUDGE GOODWILL: Mr. Stoll?

3 MR. STOLL: May I approach the witness,
4 your Honor?

5 JUDGE GOODWILL: Certainly.

6 DIRECT EXAMINATION

7 BY MR. STOLL:

8 Q. Mr. Hendershot, would you please state
9 your full name and by whom you're employed and in
10 what capacity you're testifying in this proceeding?

11 A. It's Raymond A. Hendershot. I'm employed
12 with GVNW Consulting and we're at Colorado Springs
13 and I'm representing UBTA-UBET Communications today.

14 Q. Mr. Hendershot, before you I have placed
15 your Direct Testimony, Raymond A. Hendershot, marked
16 UBTA-UBET 2 consisting of questions and answers, nine
17 pages of questions and answers.

18 MR. STOLL: I've got a second rebuttal
19 testimony, your Honor. Do you want us to move the
20 admission of these, the testimony and rebuttal
21 separately or together?

22 JUDGE GOODWILL: You can certainly move
23 them together, that's fine.

24 Q. (BY MR. STOLL) And you also have before
25 you Rebuttal Testimony of Raymond A. Hendershot

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1 marked as UBTA-UBET 3 consisting of -- gee, we didn't
2 number the pages -- 13 pages of questions and
3 answers. And in addition to that what has been
4 marked as Exhibit UBTA-UBET 3.1, which is an article,
5 the "Universal Service Myth and the Myth of the Level
6 Playing Field" by Dale Lehman, and that which has
7 been marked as Exhibit 3.2, UBTA-UBET 3.2, which is a
8 report submitted by the -- or to the FCC and the
9 Oregon Public Utilities Commission.

10 Mr. Hendershot, if I were to ask you the
11 same questions as posed in Exhibits UBTA-UBET 2 and
12 UBTA-UBET 3, would your answers to these questions be
13 the same under oath?

14 A. Yes.

15 Q. Do you have any additional testimony or
16 would you like to supplement your testimony at this
17 time?

18 A. Not that I'm aware of has anything changed
19 at this point.

20 MR. STOLL: Your Honor, we move the
21 admission of UBTA-UBET 2, UBTA-UBET 3, and Exhibits
22 3.1 and 3.2.

23 JUDGE GOODWILL: Mr. Stoll, just to
24 clarify, mine might just be out of order. So the
25 exhibit that is dated July 12, 2007 and starts out to

26

1 Commissioner Debra Taylor Tate, that is what you've
2 marked as 3.2?

3 MR. STOLL: That is correct, your Honor.

4 JUDGE GOODWILL: And then 3.1 is the
5 "Universal Service and the Myth of the Level Playing
6 Field"?

7 MR. STOLL: Right.

8 JUDGE GOODWILL: Any objection to the
9 admission of Exhibit 2.0, 3.0, 3.1, 3.2?

10 MR. NELSON: No objection, your Honor.

11 JUDGE GOODWILL: Okay. We'll go ahead and
12 admit those.

13 MR. STOLL: Mr. Hendershot is available
14 for cross-examination.

15 JUDGE GOODWILL: Mr. Mecham?

16 MR. MECHAM: No questions.

17 JUDGE GOODWILL: Mr. Nelson?

18 MR. NELSON: Thank you.

19 CROSS-EXAMINATION

20 BY MR. NELSON:

21 Q. Mr. Hendershot, were you present earlier
22 today when I was asking questions of Mr. Todd?

23 A. I was. I stepped out briefly at one
24 moment later in the day, but yes, I was present.

25 Q. Do you recall I asked Mr. Todd a series of
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1 questions in an attempt to understand the different
2 issues that UBTA-UBET is raising with respect to --
3 or different arguments that UBTA-UBET is raising with
4 respect to why, in your collective opinion, granting
5 a CPCN is not in the public interest. Do you recall
6 generally those?

7 A. I do.

8 Q. Do you recall I had identified through
9 discussion with Mr. Todd three areas of concern
10 reflected in his testimony, the first being a loss of
11 revenues to UBTA-UBET if customers switched to
12 Bresnan; the second being a loss of ability to deploy
13 enhanced services because of a revenue shortfall as
14 well; and the third being a concern about this issue
15 of cherry picking and the merits of allowing entry if
16 the entrant is cherry picking. Do you recall those
17 three?

18 A. I recall them briefly, but I recall the
19 earlier discussion too, yes.

20 Q. And am I correct that you agree with Mr.
21 Todd that each of those represents a concern from
22 your perspective with respect to the request to
23 receive a CPCN to provide a local exchange service in
24 the Vernal Exchange?

25 A. Those are very important issues to us,
26

1 yes.

2 Q. Okay. My question is, is there any other
3 public interest concern other than the three that
4 we've just discussed?

5 A. Other than the public interest concerns?

6 Q. Yes. Do you have any other public
7 interest concerns that you have set forth in your
8 Direct or in your Rebuttal Testimony?

9 A. Well, I did rely, I believe, upon the
10 Division to do the initial parts, you know, the
11 financial, the technical and the managerial.
12 Remember those parts? And I'm assuming that they did
13 their due diligence, but I do have a couple of
14 concerns. Would you like to hear those?

15 Q. Well, let me back up. Are the concerns
16 you have on the managerial, technical or financial or
17 on the public interest side?

18 A. On the managerial, technical and
19 financial.

20 Q. Let me hold you off on that. Let me first
21 get to the public interest side.

22 A. We'll come back to it, right?

23 Q. We'll see.

24 A. Hey, I don't want to miss the opportunity.

25 Q. I'm sure.

26

1 A. I'll make a note here we'll come back.

2 Q. I'm sure the way this process works you'll
3 have ample opportunity to say whatever it is that's
4 on your chest that you want to say, Mr. Hendershot.

5 A. Okay.

6 Q. Now, as to the public interest issues, are
7 there any other concerns that you have, other than
8 the three that we've already talked about, as to why
9 granting Bresnan a CPCN is not in the public
10 interest?

11 A. Those are the three that come to my mind
12 at this point in time.

13 Q. Okay. Now, I know you're there so let's
14 go ahead and do this. What are the concerns that
15 have leapt to your mind about Bresnan's managerial,
16 technical and financial abilities?

17 A. Well, on the financial, I mean, when I
18 look at those financials that you have, and they have
19 losses there three years in a row --

20 Q. Okay. Just that?

21 A. -- that would be a concern to me.

22 Q. Wait, wait. I'm sorry. I think this
23 witness just went into a discussion of an exhibit
24 that's been marked as confidential.

25 A. Okay.

26

1 Q. Well, so there we are. You have concerns
2 about the financial statements that we provided?

3 A. That's the only question, that's the only
4 comment I'll make on it. Now managerial?

5 Q. Is this anything confidential?

6 A. No.

7 Q. Excellent. What are your concerns about
8 the managerial issues?

9 A. Well, you know, I looked at the resumes
10 and I had no problems with those, but today, after
11 hearing the Vice President have a lot of these "I
12 don't know, I don't know," I have concerns. You
13 know, the Vice President should be very knowledgeable
14 of the operations and what's going on. So I just
15 point that out.

16 Q. Okay.

17 A. Okay.

18 Q. And as to technical?

19 A. I don't have any questions on that. I
20 know the Division has highly qualified technical
21 people and I'm assuming, and I hope I'm not assuming
22 -- I know what "assume" means -- that they have done
23 their due diligence in that area.

24 Q. Okay. But in your preparing of this
25 testimony you relied on the Division and its staff to
26

1 do an analysis of the managerial, technical and
2 financial issues, by and large; is that fair?

3 A. I didn't rely on them, I assumed that they
4 were carrying out their responsibilities as a
5 Division in doing their due diligence.

6 Q. Fair enough. And in your Rebuttal
7 Testimony where you actually discuss at length issues
8 you have with the Division testimony, nowhere in
9 there do you challenge the Division's conclusions
10 with regards to Bresnan's financial, managerial or
11 technical abilities, correct?

12 A. I didn't bring it up at that point, but I
13 just wanted to bring it up because it was a
14 discussion heavily with Mr. Todd this morning and he
15 referred to Mr. Hendershot. So I wanted to get my
16 comments in, you know, and clear that issue and close
17 that out.

18 Q. All right. Could you turn in your
19 testimony--

20 A. Direct or Rebuttal?

21 Q. The Direct Testimony, please, to page 9.

22 A. Okay.

23 Q. Are you there, sir?

24 A. Yes, sir.

25 Q. On page 9 you have a discussion with
26

1 respect to the necessity of an interconnection
2 agreement between Bresnan and UBTA-UBET should
3 Bresnan's Application be granted; is that correct?

4 A. Yes.

5 Q. Okay. Am I correct that there have been
6 several independent telephone companies, not
7 necessarily in Utah, but several independent
8 telephone companies in the United States who have in
9 fact implemented interconnection agreements with
10 competitors?

11 A. I don't have the numbers, but I read the
12 information out there and the literature and so forth
13 and there are some, I don't know the number, that
14 have complied with this requirement in that process.

15 Q. Okay.

16 A. And I think you mentioned a couple earlier
17 this morning that Bresnan has service with and has
18 interconnection agreements.

19 Q. Right. And are you aware that if an
20 interconnection agreement cannot be negotiated that
21 there are provisions in the law to have this
22 Commission arbitrate an appropriate interconnection
23 agreement between an incumbent and a new entrant
24 competitor?

25 A. Yes. And of course I'm sure you're aware

26

1 that under the '96 Telecommunication Act that there
2 are some exemptions or not the same requirements that
3 a fellow operating company like Qwest has relative to
4 what the rural and independent companies have.

5 Q. Right. Okay. Do you know of any reason
6 why it would be unusually difficult or impossible for
7 a Bresnan and UBTA-UBET to negotiate a mutually
8 agreeable interconnection agreement should the
9 Commission allow Bresnan to compete?

10 A. You know, those are the -- when you have
11 lawyers involved, and that would be something that
12 legal counsel would need, and those take a lot more
13 work involved than one realizes.

14 Q. Okay. But there's nothing -- what I'm
15 asking for, is there anything unique or different
16 about UBTA-UBET as compared to the other independents
17 in this country who have interconnection agreements
18 that, in your opinion, would make it more difficult
19 for UBTA-UBET to get to one than others have in the
20 past?

21 A. The key that it always comes down to is
22 the cost. And in UBTA's situation, what you have
23 there is you would have a lot of internal cross
24 subsidies taking place, whereas, Vernal is
25 significantly lower in cost and they had these other

26

1 costs. When they acquired those Qwest exchanges
2 there was an internal cross-subsidy taking place
3 there. And so to get the true cost, there's got to
4 be some effort done on that end. Well, you're going
5 to eliminate, you're taking away this cross-subsidy
6 which increases significantly the cost to the other
7 areas. So the key always comes down to the cost and
8 what is true cost.

9 Q. Okay. Let me turn to a new topic. Can
10 you go to page 8 of your Direct Testimony, please?

11 A. Okay.

12 Q. On page 8 you have an analysis there where
13 you estimate that UBTA-UBET could potentially lose
14 between \$450,000 and \$550,000 annually in local and
15 state access revenues. Do you see that, sir?

16 A. Yes, sir.

17 Q. Okay. For purposes of that analysis, how
18 much, what percentage of UBTA-UBET's customer base
19 did you assume would be lost to Bresnan?

20 A. What I did is -- and that's what you're
21 really after is how I came up with that number. I
22 mean, I looked at the information that Bresnan
23 provided in its Data Request and in turn went out to
24 the Internet and used the data out there that shows
25 the penetration levels, okay? Then using that

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1 penetration levels and using your cost level, which
2 is pretty close to the cost level that they provided
3 in the revenue on a per line basis, and using the
4 number of lines that Bresnan has today in broadband,
5 taking all of that, annualizing those numbers, I came
6 up with this range of costs of what will be lost
7 there.

8 Q. So is it fair to say that this number
9 assumes that Bresnan, every Bresnan broadband
10 customer becomes a Bresnan telephone customer? Was
11 that an assumption done in your analysis?

12 A. That was the assumption done in my
13 analysis. But on the other hand, if you look at when
14 you offer the triple play or in combination as the
15 articles have shown on the Internet, there's a higher
16 penetration that you pick up both sides from existing
17 customers that just have cable service. So I thought
18 that was a fair trade-off in that process. So
19 there's customers today that they don't have for
20 broadband that would swap over to pick up the
21 broadband and the phone service, and that's what the
22 information out there says for the cable industry.

23 Q. So your assumption is that Bresnan's, all
24 of their broadband data customers become voice
25 customers, none of their cable TV only customers

26

1 become voice customers?

2 A. Because I didn't have the data to be able
3 to do that survey. And that's the number on the
4 upper end and I figured that there would be a range
5 there.

6 Q. So when you did all of that, and I
7 apologize for being unable to follow the math here.

8 A. No problem.

9 Q. What percent of UBTA-UBET lines did that
10 result in being lost to Bresnan?

11 A. I don't have that number here. I don't
12 remember. I would have to look it up afterwards and
13 have it later tomorrow or something.

14 Q. What percent of their revenues --

15 A. I don't have that.

16 Q. -- is \$450,000 or \$550,000?

17 A. I don't have that impact, but it's a
18 significant number in my mind, \$450,000 or \$550,000,
19 and it potentially could be higher than that because
20 I didn't take into consideration the internal cross
21 subsidy.

22 Q. Okay. But you don't recall what percent
23 of the revenues that represents or what percent of
24 their line that represents?

25 A. I didn't calculate that part, no,

26

1 percents.

2 Q. Okay.

3 A. These were rough calculations, as I said.

4 Q. Do you recall roughly -- well, let's see
5 if there's anything you can recall. Can you
6 recollect whether this was more or less than 50
7 percent of the UBTA-UBET lines being lost to Bresnan?

8 A. Fifty percent?

9 Q. Yes.

10 A. You know, when you say "lines," are we
11 talking about total company, are we talking about the
12 city of -- out there or are we talking the exchange
13 or what?

14 Q. Well, I was hoping we could talk about the
15 exchange all the time, so let's focus on that.

16 A. Okay.

17 Q. On the exchange, because that's the area
18 that we're requesting to serve.

19 A. Okay.

20 Q. Do you think, does this number represent
21 losing half of the lines in the exchange?

22 A. I don't want to throw out a rough number
23 because I have seen the results of that a little
24 earlier today in the discussions here. So I would
25 want to calculate that number during some break or

26

1 so.

2 Q. Okay. Would now be an okay time to take a
3 break to let the witness make the calculation?

4 JUDGE GOODWILL: How long would you need,
5 Mr. Hendershot, to do that?

6 MR. HENDERSHOT: Let's make it ten
7 minutes. Five minutes to do it and then talk with
8 counsel.

9 JUDGE GOODWILL: All right. Great. We'll
10 take a ten-minute break.

11 MR. NELSON: Thank you, your Honor.

12 (Recess taken.)

13 JUDGE GOODWILL: Let's go back on the
14 record. Mr. Nelson.

15 MR. NELSON: Thank you, your Honor.

16 Q. (BY MR. NELSON) Mr. Hendershot, during
17 the break were you able to calculate an estimate of
18 how much of the Vernal Exchange market your testimony
19 on page 8, your Direct Testimony assumes will be lost
20 to Bresnan?

21 A. Approximately, roughly estimated, about 11
22 percent.

23 Q. Okay.

24 JUDGE GOODWILL: Mr. Hendershot is your
25 microphone on, the green light on?

26

1 MR. HENDERSHOT: Approximately 11 percent.

2 Thank you.

3 Q. (BY MR. NELSON) So then with that, I just
4 want to make sure I understand the ramifications of
5 that assumption. So would you agree with me that
6 Bresnan, if it were granted a CPCN, would need to
7 maintain a voice network, which for purposes of
8 illustration, let's just say they maintain the voice
9 network that passes a number of homes which shall be
10 unsaid as it's confidential, but they will need to
11 have incurred the cost to construct and maintain a
12 network of that scope. Would you agree with that?

13 A. State that again?

14 Q. Sure.

15 A. And what the objective is at the end.

16 Q. What I want to make sure I understand is
17 that your analysis as to what would happen if Bresnan
18 comes into the market. What I'm trying to understand
19 is, if that were to come true, I want to make sure
20 I'm understanding the situation that Bresnan finds
21 themselves in and the situation that UBTA-UBET finds
22 themselves in, okay?

23 A. Okay.

24 Q. So and the starting point is that Bresnan
25 has acquired 11 percent of the market, as you've just

26

1 testified?

2 A. Based on these numbers here, rough
3 estimates, no studies, no sampling.

4 Q. Understood. Now, let's start with first
5 the networks. In this happenstance Bresnan has
6 incurred the cost to build and maintain a network of
7 some size that we're having a big debate about, but
8 they have a network and they have paid to build that
9 network and they must pay to maintain that network to
10 keep these customers, correct?

11 A. Well, they're going to put in -- they're
12 putting a network in for their cable system. And
13 then on top of that incrementally they're adding the
14 broadband service and then incrementally they're
15 adding the phone service, is what you're saying. So
16 the real network is being supported in my perspective
17 or my analysis would be supported on the cable side.
18 And then the others are revenues that they've just
19 added on incrementally at minimal cost.

20 Q. Okay.

21 A. Because once you get a network out there
22 and you add services, you add incrementally.

23 Q. Okay. Nevertheless, to provide phone
24 service they have to maintain that network, correct?

25 A. Their network is going to be maintained
26

1 from three component pieces, cable, broadband and
2 telephone. You can't isolate and just say it's only
3 maintained by one service only.

4 Q. Okay. And let me go just through this
5 because UBTA-UBET provides multiple services over
6 their network, don't they?

7 A. Well, they provide telephone service and
8 they provide broadband service.

9 Q. Right.

10 A. In accordance with the regulatory tariffs
11 and rates that they're obligated under.

12 Q. And we can have a chicken and the egg
13 discussion over which one comes first, and I really
14 am hoping not to get into that discussion.

15 A. Okay.

16 Q. All I'm trying to say is that UBTA-UBET
17 serves 89 percent of the customers and Bresnan serves
18 11 percent of the customers for voice. Both
19 companies have a network which they paid for and
20 which they must maintain in order to facilitate that
21 service, okay?

22 A. Okay.

23 Q. Could you agree that Bresnan in this
24 hypothetical of them achieving this 11 percent market
25 share, could you agree with me that Bresnan would
26

1 only do that if they had a competitive price for
2 their telecommunications service?

3 A. I would assume that Bresnan in their
4 pricing has to be able to recover their costs.

5 Q. If --

6 A. And I don't know if it's an entry cost,
7 price that they're coming in with or if it's the
8 long-term cost.

9 Q. If Bresnan's price is not competitive,
10 meaning above market, meaning higher than UBTA-UBET
11 price, would you expect 11 percent of the customers
12 to switch to Bresnan's voice service?

13 A. Well, there is a group of customers out
14 there that are going to be driven by cost in the
15 process. Now, there was the analogy used earlier
16 that if we were comparing a wireless customer to a
17 land line customer or to a Bresnan plant line the
18 difference is, the statement was made that the
19 Bresnan plant line was more reliable than the
20 wireless. That customer, to be more reliable, would
21 have to stay there all the time. The wireless,
22 you're paying for the mobility of it there.

23 Now, let's remember that there's an
24 internal cross subsidy taking place from Vernal
25 because Vernal of this density and investment is
26

1 lower cost than the other areas but because of the
2 regulatory environment that we're here about, which
3 will mean changes will be deemed necessary if this is
4 going to happen if we're going to give a certificate
5 to Bresnan. That internal subsidy is lost and this
6 is not taken into consideration in the internal
7 subsidy.

8 Q. Okay. I'm trying to ask you a question
9 from the customer side. Does the customer care about
10 the internal subsidy?

11 A. You know, the customer just looks at the
12 price.

13 Q. Right. Okay. So we have a customer
14 looking at a price --

15 A. But I have to have these people be
16 sensitive to our needs.

17 Q. I got it. If a customer is looking at a
18 price, would you expect customers in large numbers to
19 switch from UBTA-UBET's phone service to Bresnan's
20 phone service if Bresnan's phone service is not
21 competitively priced with UBTA-UBET's service?

22 A. When you say "competitively priced," I
23 mean, who can compete to unlimited long distance
24 across the United States and Canada? Now, as an
25 accountant I would have to question how your pricing

26

1 is done because there's no switch in verbal so you've
2 got to transport out there and you've got all these
3 -- you're paying access charges and those things, and
4 in my simple mind of being an accountant it doesn't
5 register. But there is a group of people that look
6 strictly at cost.

7 Q. Okay. You testified earlier, did you not,
8 that when you did an analysis of the revenues per
9 line comparing UBTA-UBET and Bresnan, you testified
10 that you believed that the revenues per line were
11 roughly comparable; is that fair?

12 A. I used the \$39. And when we say
13 "comparable," that would be looking at the local that
14 they pay, the subscriber line charge, the loss in
15 access revenues, those kinds of things,
16 approximately.

17 Q. And am I correct that your conclusion was
18 that from the customer's perspective, who doesn't
19 give a fig about costs, who doesn't give a fig about
20 cross subsidies, if that customer is comparing the
21 price for the voice service for Bresnan and the price
22 of the voice service from UBTA-UBET, won't those
23 prices be roughly the same given the prices that
24 Bresnan put forth in their testimony?

25 A. I also base it on the assumption from
26

1 UBTA's side of the general toll statistics that a
2 customer makes in average long distance calls. And
3 as I pointed out in my testimony, I couldn't figure
4 out how you could come up with that cost to cover at
5 the rate you're charging.

6 Q. I got that you can't figure out how
7 Bresnan is making money on this deal.

8 A. It's a financial show. Okay.

9 Q. All I'm asking you is, from the customer's
10 side, would you agree with me that the price of the
11 long distance and local service as a package, using
12 the assumptions that you made with respect to the
13 volume of service, customers take on the long
14 distance side from UBTA-UBET, isn't it your testimony
15 that those prices are roughly comparable?

16 A. There will be a group of customers that
17 would switch.

18 Q. Okay. And I appreciate that. But would
19 they switch because the prices are roughly comparable
20 or because they're getting prices from Bresnan that
21 are better?

22 A. I wouldn't say they're going to switch
23 because it's better, they may switch because it's a
24 one-stop shop.

25 Q. Okay. All I'm asking at is, you look at
26

1 the prices of both. In your opinion, are those
2 comparable or not?

3 A. Well, I just looked at the price of what
4 the customer of UBTA pays today and I looked at the
5 price that you proposed out there and I had
6 additional questions that I keep trying to explain.
7 I can't clear in my mind how unlimited long distance
8 across the United States and Canada is in there for
9 that price and I can't say that they can do it on
10 that side, but I'm just trying to look at what the
11 averages were.

12 Q. But looking at that, was your conclusion
13 that they are comparable?

14 A. Well, I think there's some comparability,
15 yeah.

16 Q. Okay. Thank you.

17 All right. Now, if Bresnan offers the
18 price that they say they're going to offer, do you
19 understand that that will be subject to a price list
20 on file with this Commission?

21 A. Well, I understand subject to a price list
22 which is just for Bresnan, that you want to change
23 the price then you submit a new sheet and it's very
24 simply done. That's a price list.

25 Q. I understand that. But the price --

26

1 A. But the --

2 JUDGE GOODWILL: Mr. Hendershot, Mr.
3 Nelson is asking a lot of yes or no questions. If
4 you could restrict your answer to the question he
5 asks.

6 MR. HENDERSHOT: I will try to do the best
7 I can without --

8 Q. (BY MR. NELSON) Do you understand that
9 Bresnan will be filing a price list with the price
10 set forth in the testimony?

11 A. Yes.

12 Q. And you understand that that price list is
13 available for public inspection?

14 A. Yes.

15 Q. You understand that the Division will have
16 access to what that price is?

17 A. Everybody in the world will have access to
18 it.

19 Q. Okay. Am I also correct that -- let me
20 back up. So we have a price for Bresnan that is
21 roughly comparable to the price that UBTA-UBET is
22 being charged, if we can start there, hopefully.

23 Now, both companies have also other
24 revenues that they gather from broadband services or
25 other services that are provided over those

26

1 facilities, correct?

2 A. Okay.

3 Q. Okay. Now Bresnan, on the one hand,
4 though, as you estimate in your testimony, serves
5 only 11 percent of the customers, right?

6 A. That was what I used in my analysis.

7 Q. Right. And Bresnan does so with no
8 Universal Service subsidy, correct?

9 A. That's what they say.

10 Q. Now, UBTA-UBET, by comparison, serves
11 under this hypothetical 89 percent of the customers,
12 right?

13 A. Okay.

14 Q. And UBTA-UBET receives substantial Federal
15 and State Universal Servicing Funding, correct?

16 A. That's incorrect. Vernal does not receive
17 any Federal USF, and the State -- they receive some
18 State USF and there's an internal cross subsidy
19 taking place to support the other customers from
20 Vernal.

21 Q. Okay. But there is a State USF, monies
22 that are made that UBTA-UBET gets that Bresnan does
23 not, correct?

24 A. Okay.

25 Q. And your conclusion from your testimony is
26

1 that if this were to happen, that UBTA-UBET would be
2 required to raise its rates or ask for more USF
3 funding, correct?

4 A. Can I answer it more than yes or no?
5 Because yes or no is not a valid answer.

6 Q. Okay. Go ahead.

7 A. Thank you.

8 Q. I'll take the flack if the Judge yells at
9 you this time.

10 A. Okay. Thank you. To have a level playing
11 field, as you want to call it, and UBTA-UBET would
12 want to compete, and I think that's what you're
13 trying for say is let's get them competing on the
14 same basis, and when we talk about the price we have
15 a little difference in service because you have
16 unlimited long distance and they don't have that at
17 this point in time. But you have the flexibility of
18 adjusting price, they in turn don't have that
19 flexibility and there need to be some changes.

20 Now, when you talk about the internal
21 cross subsidy, the long-term effect is there's going
22 to have to be a rebalancing of rates this Commission
23 need to address if they're going to compete and match
24 your price, that internal cross subsidy gone, those
25 rural areas could have increased costs, there could

26

1 also be zone charges that could take place there,
2 mileage charges just like the EAS has done with
3 different rates out there in that basin, and then in
4 turn the local rates would need to be restructured to
5 match the business and residence rate, to match
6 yours, which in turn is going to cause a reshuffling
7 of rates to change the social policy that has been
8 out there in the telecommunications industry to
9 support Universal Service. So those are some changes
10 that need to be done and the regulatory lag would
11 need to be removed in that process and be some kind
12 of a streamlined process.

13 Q. Okay.

14 A. Thank you for giving me that time.

15 Q. Let me ask you some questions now on your
16 Rebuttal Testimony.

17 A. Okay.

18 Q. Actually, before I do that, can you turn
19 to your Exhibit 3.2?

20 A. Okay. That's the one on the study that
21 was done down in Texas?

22 Q. Yes. The Balhoff, B-A-L-H-O-F-F, & Rowe
23 study.

24 A. Okay.

25 Q. This study was performed by, was
26

1 commissioned I guess you could say, by a group of
2 independent telephone companies; is that fair?

3 A. Yes. And the information was provided to
4 -- it has up there Commissioner Tate and it has also
5 Commissioner Baum. That's the State, Federal and
6 State joint board, just for lack of a name, but it
7 was provided to them, but it was primarily prepared
8 for the Texas Legislature, this Texas PUC to evaluate
9 the USF in the rural areas of Texas.

10 Q. Okay. And I take it you found this
11 study's methodology and conclusions reasonable,
12 that's why you include it in your testimony; is that
13 fair?

14 A. I liked the results of the study.

15 Q. Okay. Fair enough.

16 Do you agree that the Vernal Exchange has
17 more than 5,000 access lines?

18 A. Yes.

19 Q. Okay. Can I ask you to turn to page 35 of
20 that study?

21 A. Okay.

22 Q. Do you see that big -- well, I don't know
23 if it's blue. Is yours in color, sir?

24 A. Mine is not.

25 Q. Well, there's a text box toward the bottom
26

1 of that page?

2 A. Yep.

3 Q. Do you see that?

4 A. Yep.

5 Q. Do you see that when they did this study
6 in Texas they concluded that on average the cable
7 companies covered 93.1 percent of the total lines in
8 the wire centers greater than that 5,000?

9 A. Right. And that's the results. And I
10 think something like this needs to be done in Utah.

11 Q. Okay. We haven't done that kind of study
12 here, have we?

13 A. No. I would hope that the Division would
14 do that before the final decision.

15 Q. Okay. Now turning to your Rebuttal
16 Testimony.

17 A. Okay.

18 Q. Which is here somewhere, on line 119, and
19 I apologize, I'm not sure what page that's on because
20 the pages aren't numbered.

21 A. I've got the line number.

22 Q. It looks like page 7. Do you see that?

23 A. Okay. I just have the line number.

24 Q. Okay. Looking at page 119.

25 A. Line 119.

26

1 Q. Line 119, I'm sorry. Thank you. You
2 state there that you don't know if Bresnan pays
3 access charges; is that correct?

4 A. That's my understanding at this point in
5 time.

6 Q. Did you review the Data Responses provided
7 by Bresnan in this proceeding?

8 A. I did, but I can't remember everything.

9 Q. Okay. Let's take a look at that.

10 MR. NELSON: Permission to approach the
11 witness, your Honor?

12 JUDGE GOODWILL: Certainly.

13 Q. (BY MR. NELSON) I'm handing him
14 Exhibit 4.

15 A. Okay.

16 Q. Mr. Hendershot, I've handed you what has
17 been admitted as Exhibit 4 in this proceeding, and I
18 would call your attention, if you would, to the
19 responses included in that exhibit to questions 1.28
20 first. It's a couple of pages in there.

21 A. Okay.

22 Q. Did you review this response in preparing
23 for your testimony?

24 A. I remember this response now. But if you
25 look at this, the whole thing that the concern is, is

26

1 over VoIP, Voice Over Internet Protocol traffic, and
2 there's a lot of them that don't necessarily have the
3 same level of integrity that I'm assuming Bresnan has
4 paying access charges. I know there is a problem in
5 this state with phantom traffic so --

6 Q. So this concern that you articulate here
7 was with VoIP providers generally, not with Bresnan
8 specifically? Is that fair?

9 A. Well, I've heard your witness this morning
10 saying that they would pay access charges, they have
11 turned it over to Qwest. So I am assuming that that
12 is covered there.

13 Q. Okay.

14 A. But there is a problem with VoIP in the
15 industry as a whole.

16 Q. Okay. You don't have any personal
17 knowledge of Bresnan having a problem paying access
18 charges or passing on the calling information
19 necessary to determine who to bill for access
20 charges, do you?

21 A. I don't have any personal knowledge at
22 present.

23 Q. Would you agree with me that if and to the
24 extent that Bresnan is allowed into the market, and
25 if and to the extent that Bresnan and UBTA-UBET enter
26

1 into an interconnection agreement, that should issues
2 come up in the future with respect to how Bresnan is
3 sending its traffic to UBTA-UBET, that you would have
4 the ability to work with Bresnan and/or, if
5 necessary, come to this Commission to resolve those
6 concerns?

7 A. Yes.

8 Q. Okay. On the next page, whatever page it
9 is, line 140, do you see that, sir?

10 A. Yes, sir.

11 Q. We've talked at some length -- you've
12 articulated that you did some analysis and took a
13 look at the fact that Bresnan is proposing to offer
14 customers unlimited long distance; is that correct?

15 A. Yes, sir.

16 Q. And your experience is, and this is
17 reflected in our testimony on line 141, that the
18 offering of unlimited long distance service would
19 tend to stimulate a customer's usage of long distance
20 service. Do you see that, sir?

21 A. Yes, sir.

22 Q. Now, if it were the case -- let me back
23 up. Would you expect that the people who are most
24 likely to benefit switching to Bresnan would be
25 customers in the Vernal Exchange who make a lot of

26

1 long distance calls?

2 A. Based on your advertising there will be a
3 group of customers that would switch to Bresnan for
4 that purpose in and of itself.

5 Q. Okay. And just out of curiosity on a
6 slightly unrelated note, would it be fair to say that
7 people who make long distance calls, a lot of long
8 distance calls are not necessarily the customers who
9 are purely in the city center, who could just as
10 likely be a customer in a rural area?

11 A. And there's a group of them who have the
12 same perception about wires.

13 Q. Okay. Now, if Bresnan were to win over
14 some of these customers who previously were making a
15 certain amount of long distance calling and after
16 they switched to Bresnan that long distance calling
17 is stimulated, so now they make more long distance
18 calling, do you have that in mind, sir?

19 A. Okay.

20 Q. Wouldn't it be correct that UBTA-UBET's
21 access revenues would increase as a result of that
22 assuming Bresnan pays its access charges as it's
23 promised to do?

24 A. Well, that assumption only works if it's
25 in the basin. And the difficulty there is, if we're

26

1 going to have EAS, an interconnection agreement for
2 EAS, then in turn no. The access charges that you're
3 talking about stimulated from long distance would
4 benefit somewhere else across the nation and in the
5 world.

6 Q. Okay. You lost me there. Let me try to
7 unpack this. The customer switches to Bresnan. Are
8 you with me so far?

9 A. Okay.

10 Q. The customer makes more long distance
11 calls, okay?

12 A. Okay, yes.

13 Q. Long distance calls incur access charges,
14 correct?

15 A. Yes.

16 Q. So if you make more long distance calls
17 doesn't that mean more access charges?

18 A. For somebody else besides UBTA because
19 long distance calls would be outside of the basin.
20 And you've said your switch is going to be maybe in
21 Colorado somewhere, it hasn't been determined, and
22 your traffic is going to be down there. So it's
23 going to be outside of the basin and the basin is
24 local calling, so that it would not stimulate
25 anything for them.

26

1 Q. Okay. I see what you're saying. Okay.

2 Thank you.

3 MR. NELSON: I have no further questions
4 for this witness.

5 JUDGE GOODWILL: Mr. Ginsberg?

6 MR. GINSBERG: Thank you.

7 CROSS-EXAMINATION

8 BY MR. GINSBERG:

9 Q. Mr. Hendershot, let me first ask you about
10 that, your estimate of 450 to \$550,000 that you refer
11 to in --

12 A. In my testimony? Rough estimate, 450 to
13 550,000? Okay.

14 Q. Yes. I think you indicated that you used
15 essentially the resident rate to make that
16 calculation?

17 A. Yes.

18 Q. And when you say that it includes a loss
19 of access, local access revenues and State access
20 revenues, are you referring to access charges that
21 you would lose because of the unlimited long
22 distance?

23 A. Okay. No, I'm not referring to his piece
24 there. That group of customers with him today, with
25 UBTA-UBET that may make long distance calls out of

26

1 the basin into, let's say they call Salt Lake City,
2 Provo, anywhere else in the State of Utah, there
3 would be access charges that they would collect. If
4 that customer transferred to Bresnan they, in turn,
5 are transporting that call down to Colorado or
6 somewhere else where their switch is and passing it
7 off to Qwest, they would not get anything and would
8 lose all that access revenue.

9 Q. And that's included in your \$450,000?

10 A. That's included in that, yes.

11 Q. And you said that was about 11 percent of
12 the market?

13 A. That was estimated at about 11 percent of
14 the market.

15 Q. And you've calculated --

16 A. And that does not take into consideration
17 any internal cross subsidy that Vernal contributes to
18 the rest of the basin, to the rest of the customers.

19 Q. Now, I think the problem of Bresnan paying
20 access revenues is solved in your mind? In other
21 words, you have accepted that they will pay those?

22 A. Well, I'm having to go by the statements
23 that they've made that it's going to occur. I have
24 nothing to -- no otherwise. I know that there are
25 some people -- in the industry we are very concerned

26

1 about phantom traffic. One of the big contributors
2 to phantom traffic is VoIP traffic.

3 Q. Well, I think you also indicated that you
4 weren't aware of -- you couldn't imagine a company
5 being able to offer a business plan with unlimited
6 long distance; is that right?

7 A. With unlimited long distance, and that's
8 unlimited long distance across the United States and
9 Canada, I believe that's what they said in their
10 plan. And when you have to transport it all the way
11 out of state to where the switch is, that's
12 additional cost that you're going to add to it. And
13 then you've got the local traffic that's going to
14 terminate and there will be some kind of a connection
15 there on the EAS or the local calling area there
16 within the basin. The numbers don't work out for me
17 based on the average calling minutes that a normal
18 customer makes. And the customer that's going to
19 sign up for a unlimited plan is going to be a high
20 peak group, the group that will be. So I can't make
21 the economics work. Maybe you and some of your staff
22 do.

23 Q. Well, are you aware that Qwest and Comcast
24 have both offered unlimited long distance?

25 A. I'm aware that Qwest has a plan that they
26

1 offer, yeah.

2 Q. And you are also aware that Comcast does?

3 A. I'm not aware of Comcast. Well, let me
4 stand corrected. I got a flier this last week and I
5 brought it with me that Comcast offers a plan in
6 Colorado Springs similar to what Bresnan is going to
7 offer.

8 Q. So at least those two companies have come
9 up with viable business plans to offer unlimited long
10 distance?

11 A. Well, you know, I don't know how Qwest
12 terminates their traffic. I know that there have
13 been issues before this Commission, and you have been
14 involved with them, where there's a question about
15 when it gets to take tandem switch that information
16 passes on so the independents can bill the access.
17 And somehow it just can't seem to get through the
18 switch. Now, I'm not a technical person, but I know
19 that you have had people on your staff look at this
20 and I don't know how it works.

21 Q. I'm not sure I follow you. Are you making
22 a complaint that Qwest is not paying whatever they're
23 supposed to pay?

24 A. Well, I think that the independents have
25 expressed concern that they have phantom traffic

26

1 being dumped to them with a tandem switch that they
2 can't identify to bill access on. Now, are you
3 saying that you don't know anything about that? If
4 that's the case, I will talk to URTA's counsel and
5 bring something up.

6 Q. In your Rebuttal Testimony you basically
7 disagree with the premise that it would be unfair to
8 Bresnan, assuming that they qualify for a
9 certificate, and whatever impacts on the USF that you
10 have outlined, and others, as addressed by the
11 Commission, that it would be unfair to deny them a
12 certificate because we haven't done a study to look
13 at the rest of the state; is that right?

14 A. Well, it's my understanding that the
15 Division has a responsibility to do their due
16 diligence. And when this Texas study came out, I
17 think it's something that only Utah needs to look at
18 to see the impact in the State of Utah. Because
19 we're talking -- I don't believe we ought to go down
20 the same road without any evaluation and know the
21 impacts. If we do, we're pretty ignorant.

22 Q. Who did that study?

23 A. Who did that study?

24 Q. That was for the joint board?

25 A. No. It was for the Texas legislature and

26

1 the Texas Public Service Commission. And there's a
2 lot of financial data they had to gather and that's
3 why the four companies there, they in turn provided
4 that data and it takes time. It's not something you
5 can do in 10, 15 minutes, or overnight or a week.

6 Q. How many exchanges are there in the
7 independent areas that are above 5,000 access lines?

8 A. In Utah?

9 Q. And for the independent companies, do you
10 know?

11 A. When the legislation passed there was
12 none. There is one today that I'm aware of, and I
13 can stand corrected from my counselor or from the
14 attorney for URTA, and that was due to the
15 acquisition of some Qwest properties.

16 Q. So it's Vernal?

17 A. Vernal, as far as I know.

18 Q. Do you know if Price is above?

19 A. I don't know. Price is above? I've been
20 advised by my counsel, yes, Price is.

21 Q. So you would want, then, Bresnan to have
22 an application, even though they would qualify, to
23 not be able to offer service until you look at the
24 rest of the market in the independent areas?

25 A. Well, I think it's part of the obligation
26

1 on the Division to do its due diligence to do an
2 evaluation. If we're just going to say, "Let's have
3 competition," and we say, "Okay, that's all that's
4 necessary, then I disagree with that approach.

5 Q. Well, isn't that the only approach that's
6 pending before the Commission?

7 A. Today, yes.

8 Q. So have there ever been any other
9 requests?

10 A. I'm not aware of any others for a
11 certificate. I'm aware of that there was a request
12 for ETC status a few years ago, and that's where the
13 public interest came out. And that's why in the '96
14 Telecommunications Act it talks about higher
15 standards for the rural companies.

16 Q. So would you agree that, and I think the
17 reference in the Texas study is that whatever may
18 happen in these rural areas will be with cable
19 television?

20 A. I don't understand your question.

21 Q. Who would their competitors be?

22 A. In the rural areas?

23 Q. Yes.

24 A. I think a provider of web services
25 probably, of high probability, a competitor in all

26

1 areas.

2 Q. Services like Vonage?

3 A. Well, whoever has high speed Internet that
4 can offer and Voice Over Internet Protocol as their
5 technology.

6 Q. Would that be other cable providers?

7 A. It could be.

8 Q. Did you look and see who the cable
9 providers are in the rural companies?

10 A. I didn't have that information so I didn't
11 look at it.

12 MR. GINSBERG: Could we have this marked
13 maybe as Cross-Examination Exhibit 1?

14 JUDGE GOODWILL: DPU Cross-Exhibit 1?

15 MR. GINSBERG: That would be fine.

16 JUDGE GOODWILL: It will be so marked.

17 Q. (BY MR. GINSBERG) Mr. Hendershot, if you
18 look at Cross-Examination Exhibit 1, I pulled off the
19 website who the cable TV providers are for many of
20 the independent telephone companies.

21 A. Okay.

22 Q. We could go through each one of them.

23 A. Can I ask you a question?

24 Q. Go ahead.

25 A. On the front here where you have the
26

1 exhibit summary, is that what you're implying, that
2 they all provide cable service?

3 Q. They all provide cable or satellite
4 services.

5 A. Okay. Because UBTA is just an agent for
6 selling it.

7 Q. Well, they sell satellite television,
8 though, in the Uinta Basin?

9 A. But they don't bundle with it.

10 Q. Well, is there any reason they couldn't?

11 A. I don't know. But I know Mr. Todd
12 testified that they don't have a bundling with it,
13 they're just an agent for selling it.

14 Q. If we could look at -- is the first
15 company Albion, do you know?

16 A. Yes. And that's an analog system.

17 Q. They do provide cable television, though?

18 A. They provide it in Albion itself and it's
19 an analog system.

20 Q. So they haven't upgraded it?

21 A. They bought it I'd say a hundred years
22 ago, but not really, it's many, many years ago, and
23 it's a service to the community.

24 Q. Is there another cable TV company there?

25 A. Albion is a real small community.

26

1 Q. Would it be unlikely that anybody would
2 compete in such a small community?

3 A. There's probably less than 100 people live
4 in the town.

5 Q. Are you familiar with Allwest?

6 A. I'm not familiar with Allwest's service.

7 Q. Does their website indicate that they do
8 provide cable television services?

9 A. I couldn't tell you.

10 Q. Well, could you look at the exhibit under
11 Allwest?

12 A. Okay.

13 Q. You don't know whether they do or not?

14 A. I don't know.

15 Q. CentraCom, they own other companies, do
16 they not?

17 A. I have heard that, but that would be
18 hearsay.

19 Q. You used to be the consultant for most of
20 these companies, did you not?

21 A. Well, you know, things change when they
22 make changes. So, you know, I can't keep up with
23 everything that they've done.

24 Q. If you could look at page 2 of the central
25 exhibit it shows the areas they offer cable

26

1 television in.

2 A. I --

3 Q. Do you know if they offer digital cable?

4 A. Well, I don't have a page 2. If you're
5 talking about the one at the bottom that says the
6 website www.cut.net, I only have a page 1.

7 Q. CentraCom Cable TV, the second page of the
8 exhibit.

9 A. Okay, that's the second one. Okay.

10 Q. Do you know if another company offers
11 cable TV in these communities?

12 A. I don't see where they -- you said it
13 shows where they have it? I don't see on my page 2
14 of 3, I'm assuming that's what you have reference to,
15 page 2 of 3?

16 Q. Yes.

17 JUDGE GOODWILL: It's on page 1 of 3 to
18 the left? Mr. Ginsberg, just so we're clear, I'm
19 looking at page 1 of 3 where it says Area Channel
20 Guide and it lists some communities there. Is that
21 what you're referring to?

22 MR. GINSBERG: Yes.

23 Q. (BY MR. GINSBERG) Do they provide cable
24 TV?

25 A. I've heard that they provide cable TV.

26

1 I don't know exactly where.

2 Q. Do you know of another company who does?

3 A. In these communities?

4 Q. Yes.

5 A. I don't know, no.

6 Q. Emery has, Emery and Carbon/Emery?

7 A. I'm aware that they have cable, but I
8 couldn't tell you exactly where.

9 Q. Do you know of anyone else who provides
10 cable in that area?

11 A. In their total service area?

12 Q. Well, where they offer cable.

13 A. I don't know. I'm not an expert on cable.
14 Frontier, I don't know theirs either.

15 Q. It looks like Frontier offers actually a
16 package of services?

17 A. Okay.

18 Q. What about Manti, do they also provide
19 cable TV in their service area?

20 A. They provide it in their two communities
21 that they serve, the two exchanges that they serve.

22 Q. Do you know of anyone else who provides?

23 A. I'm not aware of anybody else unless --
24 well, I think maybe CentraCom does. I don't know.

25 Q. And the final one is South Central.

26

1 That's another one of the independents?

2 A. They have in some exchanges, but not all
3 of them.

4 Q. And do you know of another cable company
5 who provides service in any of the other exchanges or
6 is it satellite television?

7 A. I don't know. I know that they may have
8 sold satellite TV, as a lot of these did years ago
9 and then they sold their licenses.

10 Q. So the final one is Uinta Basin, which we
11 already talked about,

12 A. Okay.

13 Q. So is it fair to say that at least in many
14 of the rural communities the cable TV provider is
15 currently the ILEC?

16 A. And I think that's out of the service that
17 they had to provide. Otherwise some of those
18 communities may not even have cable telephone --
19 television, cable service. Those were done as a
20 public service.

21 Q. Do you know who provides cable television
22 in Price?

23 A. I don't.

24 Q. Is it Emery?

25 A. It's not Emery.

26

1 Q. Do you know who provides cable television
2 in Moab?

3 A. I don't know.

4 Q. In your Rebuttal on line 226 and 227 you
5 indicate that Uinta Basin should be able to provide
6 VoIP service for an unregulated affiliate; is that
7 right?

8 A. Well, I think it's only fair that if the
9 Commission grants a certificate here to Bresnan and
10 the way they've talked about competition that they
11 should be able to compete on the same basis. And so
12 it would be appear to me that UBTA should, in all
13 honesty, would need to look at, be and provide the
14 same type of service. And the VoIP service, the same
15 thing, on a state basis and have the same freedom
16 that they do. You can't tie the hands of one and let
17 the other one free.

18 Q. Would Uinta Basin go to a price regulated
19 service?

20 A. Well, now are you talking about price
21 regulated service for a VoIP service for a
22 subsidiary? See, if you're talking about the model
23 that Qwest went on, price caps regulation, that
24 doesn't apply in the rural areas.

25 Q. You would agree that the request for Uinta
26

1 Basin to offer VoIP service through a subsidiary is
2 not pending here?

3 A. I realize that. It would be a
4 hypothetical.

5 Q. You also indicate that Bresnan or Uinta
6 Basin is not able to charge their true cost for
7 resale of unbundled network elements that they might
8 sell to Bresnan; is that right?

9 A. Well, based on the tradition of the
10 regulatory environment they're limited in that
11 respect. And so I would think it would only be fair
12 that they're charged -- are able to charge the true
13 cost of the service. So if a customer inside the
14 city costs less than a customer outside, an extension
15 is required or it's outside the city limits, that
16 that cost would be higher because there's more cost
17 in the facilities. You can't average the costs if
18 you're going to be in a competitive environment.
19 You've got to remove the internal cross subsidies.

20 Q. And those cost rates would be either
21 agreed to with Bresnan or set by this Commission in
22 an arbitration, those rates?

23 A. That would be one way to do it if it went
24 that way.

25 Q. So when you say Uinta Basin is not able to
26

1 charge their true cost, I don't actually know what
2 rates they will be able to charge.

3 A. Yeah. You've got to remove the internal
4 cross subsidy. You can't do like Qwest did. They
5 got rid of all the rural areas which were high cost
6 and that internal cross subsidy didn't go away, it
7 just transferred. They had room for flexibility in
8 their pricing mechanism so --

9 MR. GINSBERG: That's it.

10 JUDGE GOODWILL: Mr. Hendershot, I want to
11 make sure the record is clear. Regarding Mr.
12 Ginsberg's question dealing with the price exchange,
13 whether or not it's got more than 5,000 lines, I
14 think your testimony was that your attorney advised
15 you that it does have more than 5,000. I just want
16 to make sure, is that your testimony that it has more
17 than 5,000, or can you not say?

18 MR. HENDERSHOT: Vernal has more than
19 5,000. And I can't say for sure that Price does, but
20 I've been advised otherwise.

21 JUDGE GOODWILL: Okay. Mr. Proctor.

22 MR. PROCTOR: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. PROCTOR:

25 Q. Mr. Hendershot, you've referenced the
26

1 Balhoff & Rowe study --

2 A. Yes, sir.

3 Q. -- on several occasions? Was that study
4 commissioned by the Texas legislature or the Utility
5 Regulatory Commission?

6 A. That, I don't know.

7 Q. In fact, it was actually the product of
8 retaining Balhoff & Rowe by an independent Texas
9 telecommunications company, wasn't it?

10 A. They paid for it, they provided -- they
11 extensively had to provide a lot of data, accounting
12 information. Because you had to take each circuit
13 for where the customer is located and the length and
14 distance and so forth, and in turn they provided it
15 to the legislature and the Commission.

16 Q. And it was provided to the legislature as
17 part of the legislature's process of reviewing USF
18 payments in Texas and the whole system; was it not?

19 A. It was part of that review of the whole
20 process.

21 Q. And it was a document that advocated the
22 interests of the independent telecommunications
23 companies that paid for it, didn't it?

24 A. Well, what it did is it brought forth the
25 real information that we know about what competition

26

1 occurs in the rural area and what the true cost is.

2 Q. "Real" and "true" are interesting words.

3 A. Every study that has been done --

4 JUDGE GOODWILL: One at a time, please.

5 Q. (BY MR. PROCTOR) "Real" and "true" are
6 interesting, but it's a document that advocates a
7 particular position on behalf of the independent
8 telecommunication companies, isn't it?

9 A. It's a document that has numbers who
10 support it and data information supports it.

11 Q. Yes or no, sir?

12 A. Well, I just --

13 Q. Does it advocate a position in favor of
14 the independent telecommunications companies?

15 A. That was the results of the study and it
16 supports the position of the independents in the USF.

17 Q. Thank you.

18 MR. PROCTOR: No more questions.

19 JUDGE GOODWILL: Mr. Stoll, redirect?

20 MR. STOLL: I have no redirect.

21 JUDGE GOODWILL: No redirect?

22 MR. STOLL: Excuse me, no redirect.

23 JUDGE GOODWILL: Thanks, Mr. Hendershot.

24 MR. HENDERSHOT: Thank you.

25 JUDGE GOODWILL: Before I forget to advise

26

1 everyone, I've been told that we do have this room
2 tomorrow. So when we reconvene we'll be in here.

3 Anything further, Mr. Stoll?

4 MR. STOLL: No, your Honor.

5 MR. NELSON: Your Honor, if it would
6 please yourself and the parties, Bresnan is prepared
7 to recall Ms. Kirchner for the limited purpose of
8 responding to the question that Mr. Mecham posed.
9 Earlier today we performed that calculation and we
10 would be happy to put the results of that on the
11 record, if this would be a convenient time for that.

12 JUDGE GOODWILL: And what question was
13 that?

14 MR. NELSON: It had to do with the
15 weighted average of the numbers that were reflected
16 in Bresnan's Data Response 1.9.3 and 1.9.4.

17 JUDGE GOODWILL: All right. Good. Yeah,
18 why don't we go ahead and do that.

19 MR. HENDERSHOT: I'm going to transfer all
20 of these over here.

21 JUDGE GOODWILL: Ms. Kirchner, if you
22 would come on back up. And I'll just remind you
23 you're still under oath.

24 /

25 /

26

1 /

2 KATHERINE KIRCHNER,

3

4 recalled as a witness, being previously duly sworn,

5 was examined and testified further as follows:

6

7 FURTHER DIRECT EXAMINATION

8 BY MR. NELSON:

9 Q. Now, the numbers we are about to give are
10 confidential in nature. So before we do this I would
11 ask that we clear the room as appropriate and move to
12 a confidential portion of the record.

13 JUDGE GOODWILL: Okay. And I'll just ask
14 the question again just to make sure, there's no way
15 we can do this without going into confidential
16 session?

17 MR. MECHAM: We're looking for actual
18 numbers and I haven't seen some numbers so --

19 MR. NELSON: They requested the actual
20 numbers. And so I'm not -- I don't know how to do
21 that other than to actually start with the numbers.

22 MR. GINSBERG: Are they on a piece of
23 paper that could be admitted?

24 MR. NELSON: We could create it. We
25 didn't do that over lunch, obviously.

26

1 MR. MECHAM: Are there people present who
2 haven't signed it?

3 MR. NELSON: I don't know. There are a
4 couple.

5 JUDGE GOODWILL: I'm not sure where we're
6 going with the numbers. I mean, if it's something
7 that can be put in an exhibit and offered tomorrow as
8 a confidential exhibit we could do that. Mr. Mecham.
9 I'm not sure how much questioning you would have with
10 respect to the actual numbers.

11 MR. NELSON: Right. Just for logistical
12 procedure, if you would like, I could literally take
13 two minutes, walk around to the counsel and they
14 could write the number on Bresnan Exhibit 5 and I
15 could ask the witness to write the number on the
16 confidential exhibit Bresnan Exhibit 5 and then we
17 could just resubmit that exhibit, if that would
18 facilitate doing this. Because it will just take a
19 second to give folks the actual number and they could
20 put it on a piece of paper.

21 JUDGE GOODWILL: And, Mr. Mecham, would
22 that satisfy you? Do you have questioning in which
23 you would need to --

24 MR. MECHAM: I want to understand how she
25 did the calculation, but I don't think that's going

26

1 to be proprietary. So yes, the number itself, I
2 suppose, but not the method.

3 JUDGE GOODWILL: So the number would be
4 written on the confidential pages of Bresnan Exhibit
5 5 and shared with the parties. I would rather do
6 that just to the extent we can keep the entire
7 transcript open, I think we're better off doing that.

8 (Mr. Nelson shared the number
9 confidentially with all parties.)

10 JUDGE GOODWILL: We're back on the record.
11 We've got Ms. Kirchner on the stand and she has added
12 pages 2 and 3 of Exhibit Bresnan 5 the weighted
13 average she has calculated for each of the tables on
14 those respective pages. And, Mr. Nelson, did you
15 have anything as far as questioning goes with Ms.
16 Kirchner before we turn it over to Mr. Mecham?

17 MR. NELSON: I don't. I just wanted to
18 verify that that was a calculation that Ms. Kirchner
19 performed while we were on break in response to Mr.
20 Mecham's questions. Is that correct?

21 MS. KIRCHNER: Yes.

22 MR. NELSON: I have no further questions
23 and, if necessary, reoffer the amended Exhibit 5 if
24 that's appropriate or however logistically you want
25 to handle that.

26

1 JUDGE GOODWILL: Sure. We'll just turn to
2 Mr. Mecham first. But thank you, Mr. Nelson, for
3 your efforts in keeping us on the record, as it were.

4 MR. NELSON: No problem.

5 JUDGE GOODWILL: Mr. Mecham?

6 MR. MECHAM: Thank you, your Honor.

7 FURTHER CROSS-EXAMINATION

8 BY MR. MECHAM:

9 Q. Ms. Kirchner, each of these pages, one
10 deals with the estimated percent of cable subscribers
11 who are also Digital Voice subscribers and the other
12 one deals with percent of homes passed who are
13 Digital Voice subscribers.

14 Can you tell me with respect to each
15 calculation what your method was in arriving at the
16 number we were given?

17 A. Yes. My method was I took on the first
18 set of data, which was the estimated percentage of
19 cable subscribers, I took the total number of all the
20 cable subscribers and all of the independent markets,
21 which are all of the markets that are listed there,
22 and I also totaled the Digital Voice subscribers
23 across all of those markets. I took the total
24 Digital Voice subscribers and divided it by the total
25 cable subscribers to come up with that average

26

1 percentage.

2 Q. Does that constitute a weighted average or
3 is it -- go ahead.

4 A. I don't know if it constitutes a weighted
5 average. It's the average across all the markets.

6 MR. NELSON: If I might, Mr. Mecham, I
7 believe you calculate a weighted average by taking
8 each of those percentages times the two totals
9 divided by each other, but mathematically it works
10 out exactly the same if you simply take the two
11 totals and divide them by each other. I had the same
12 question when we went through this over lunch.

13 Mathematically it works out that that is
14 the weighted average of all of these numbers, as well
15 as the average of all of them all put together
16 because that's what accomplishes the weight. It's
17 weighted by the number of cable subscribers. It is
18 not an arithmetic average of the percentages
19 reflected on the page, which would be a different
20 number.

21 Q. (BY MR. MECHAM) And how about on page 3,
22 what was the method there?

23 A. I did a similar calculation. I took the
24 total of all of the Digital Voice subscribers in all
25 of those areas and I totaled that up. I totaled up

26

1 the total number of homes passed across all those
2 areas, I took the Digital Voice total, divided that
3 by the total number of homes passed.

4 MR. MECHAM: Mr. Nelson, not that you're
5 on the stand, but as you ran through this at lunch,
6 did you run the calculation both ways so that I can
7 represent that this is a weighted average?

8 MR. NELSON: Yes. With, of course, the
9 caveat as reflected on the information here is that
10 we don't have data on one of those exchanges. And
11 just so the record is clear, that exchange is not
12 included in this calculation of the weighted average.

13 MR. MECHAM: Okay. Now, as this sinks in
14 a little bit it would be okay, if at least in your
15 presence Mr. Meredith visited with Ms. Kirchner if he
16 has any questions offline?

17 MR. NELSON: Absolutely. Feel free to do
18 it outside of my presence.

19 MR. MECHAM: Thank you.

20 JUDGE GOODWILL: Okay. Then what we've
21 got is Bresnan Exhibit 5 which has been hand-marked
22 now with these weighted average numbers by Ms.
23 Kirchner, I believe all the parties have seen that,
24 and that is what is currently in evidence. Is there
25 any objection to that as updated remaining in
26

1 evidence?

2 MR. NELSON: No objection.

3 MR. PROCTOR: No objection.

4 MR. GINSBERG: No.

5 JUDGE GOODWILL: Anything further for Ms.
6 Kirchner while we have her on the stand with respect
7 to this issue?

8 MR. NELSON: I believe that was the only
9 question pending, but --

10 JUDGE GOODWILL: With respect to this
11 issue?

12 MR. MECHAM: With respect to this issue.

13 JUDGE GOODWILL: Thank you.

14 Mr. Stoll, I believe you had nothing
15 further at this time; is that right?

16 MR. STOLL: That's correct.

17 JUDGE GOODWILL: Do we want to have the
18 Committee's witness go now? I'm not sure what kind
19 of time --

20 MR. PROCTOR: Well, if that is acceptable
21 to Mr. Orton. Yeah, that's acceptable with the
22 Committee.

23 MR. MECHAM: How long are you planning on
24 going, until 5:00 today?

25 JUDGE GOODWILL: I was thinking until
26

1 5:00. And I thought we might --

2 MR. PROCTOR: Because I assumed that Mr.
3 Meredith was on the bag speaking first and we would
4 of course only get --

5 MR. MECHAM: All right. Let's go.

6 MR. PROCTOR: -- a short ways in between.

7 MR. MECHAM: We're ready.

8 JUDGE GOODWILL: Go ahead, Mr. Proctor.

9 MR. PROCTOR: The Committee would call
10 Eric Orton.

11

12 ERIC ORTON,

13

14 called as a witness, being first duly sworn, was
15 examined and testified as follows:

16

17 MR. PROCTOR: Thank you, your Honor.

18

DIRECT EXAMINATION

19 BY MR. PROCTOR:

20 Q. Mr. Orton, if you could state your name
21 and by whom you are employed.

22 A. My name is Eric Orton and I'm a employee
23 of the Committee of Consumer Services.

24 Q. And you have submitted testimony, Direct
25 Testimony, written Direct Testimony on August 13,

26

1 2007; is that correct?

2 A. That's right.

3 Q. And that testimony consists of five pages
4 and no exhibits?

5 A. That's it.

6 Q. And it has been marked as CCS-1, correct?

7 A. If that's happened.

8 Q. Mr. Orton, if I were to ask you the same
9 questions today as are contained in the written
10 testimony, would your answers remain the same?

11 A. They would.

12 Q. Do you have any corrections or additions
13 that you wish to make to the testimony?

14 A. No, I don't.

15 MR. PROCTOR: With that, I would offer
16 into evidence Exhibit CCS-1, the Direct Testimony of
17 Eric Orton.

18 JUDGE GOODWILL: Any objections?

19 MR. NELSON: No objection.

20 MR. STOLL: No.

21 JUDGE GOODWILL: Okay. We'll admit it.

22 Q. (BY MR. PROCTOR) Mr. Orton, do you have
23 any summary that you wish to make of your testimony?

24 A. I didn't write one down. The only thing I
25 would like to say is that statutorily we're obligated

26

1 to look at each filing representing the residential
2 and small business consumers, and that's the voice
3 that we wanted to make sure was heard in this
4 hearing. So that's why we filed testimony.

5 MR. PROCTOR: Mr. Orton is available for
6 cross, your Honor. Thank you.

7 JUDGE GOODWILL: Mr. Nelson?

8 MR. NELSON: No questions of this witness.
9 Thank you.

10 JUDGE GOODWILL: Mr. Stoll?

11 MS. SLAWSON: Your Honor, I'm Kira
12 Slawson. I'll be doing the cross-examination.

13 JUDGE GOODWILL: Thank you.

14 MS. SLAWSON: But I just have a couple of
15 questions.

16 CROSS-EXAMINATION

17 BY MS. SLAWSON:

18 Q. Mr. Orton, you indicated the Committee
19 believes that the Commission, I believe you said that
20 the ratepayer impact is one of the primary issues in
21 this case; is that correct?

22 A. That's right.

23 Q. And can you tell me which ratepayer should
24 the Commission look at, the ratepayer in the Bresnan
25 territory or ratepayers throughout the state as a

26

1 whole?

2 A. I wasn't excluding anything.

3 Q. So throughout the state then?

4 A. (Indicating affirmatively.)

5 Q. You indicate that there are three relevant
6 points to consider in granting or rejecting Bresnan's
7 Application, and I'm talking about lines 33 through
8 39 of your Direct Testimony. You indicated those
9 three points are whether there's 5,000 access lines
10 in the ILEC territory, that's number one. Number 2
11 is whether the CLEC is capable of providing the
12 service, and then number 3, is the public interest
13 best served by granting or rejecting the Application;
14 is that correct?

15 A. That's right.

16 Q. You indicated also in your testimony that
17 those first two points are uncontested. My question
18 to you is, did the Committee take any steps to
19 independently determine if Bresnan is capable of
20 providing the service that it purports to provide?

21 A. You're talking independent steps meaning
22 something other than the testimony and the exhibits
23 filed?

24 Q. Yes.

25 A. I did not.

26

1 Q. And the last issue there is in the public
2 interest. As I read your testimony, is it the
3 Committee's position that the public interest test is
4 going to come regardless of the impact on the USF
5 because the larger the impact on the USF the more
6 competition was needed in the area?

7 A. I'm not sure I understand you.

8 Q. Well, as I read your testimony from 77
9 through 83 it seemed to say that you have to say that
10 you have to look at whether the USF is -- what the
11 impact on the USF is going to be, but then you
12 indicated that it doesn't necessarily matter how much
13 business Bresnan takes away from UBTA-UBET regardless
14 of what the impact on USF is going to be because that
15 is just more evidence that more competition was
16 needed in that area?

17 MR. PROCTOR: Objection, your Honor, it's
18 mischaracterizing the testimony, which is obvious,
19 and it certainly doesn't say it doesn't matter how
20 much anywhere. It simply mischaracterizes the
21 testimony and I ask counsel to restate it.

22 Q. (BY MS. SLAWSON) Well, let's look at your
23 testimony there. It looks like your testimony at
24 line 77 -- do you have your testimony?

25 A. I have it, yes.

26

1 Q. Would you mind reading 77 to 83 into the
2 record?

3 A. "If more customers choose to switch
4 providers, the impact from competition on the USF
5 increases. However, a higher switch rate is likely
6 an indication of greater perceived benefits from the
7 new competition. Therefore, in this case, it appears
8 that as benefits from competition rise, the impact to
9 USF will also be greater. Therefore, these two
10 aspects of public interest will remain somewhat in
11 balance. Nonetheless, it is important to be assured
12 that the USF impact is acceptable."

13 And that's what, if I understood your
14 question right, you were asking if any USF makes it
15 unacceptable. That's what I was trying to say with
16 that last sentence was. The acceptability is up to
17 the Commission as to what level that is.

18 Q. Okay. So you weren't opining or offering
19 any testimony as to what level would be acceptable?

20 A. No.

21 Q. And do you have any evidence or do you --
22 what do you believe the public interest test is that
23 the Commission needs to look at?

24 A. I think I talk about that, don't I, in
25 lines 71? The reasonable evaluation of these

26

1 interests, and I was referring to the interests in
2 the statute, in Chapter 8 of telecommunications law,
3 Chapter B. That's what I was referring to was those
4 interests.

5 Q. But specifically as you're sitting here
6 today, what is your opinion as to what factors need
7 to be looked at in the public interest? We've looked
8 at competition is obviously one of those factors.
9 The impact on the state USF is the other. Are there
10 any other factors that need to be looked at for the
11 public interest test?

12 A. I didn't look to any other factors other
13 than those. What my basis of reference was was the
14 statute.

15 Q. All right. And as you sit here today,
16 what is your opinion as to what would be an
17 unacceptable increase in the burden on the USF?

18 A. I don't know what that would be.

19 MS. SLAWSON: I don't have any other
20 questions.

21 JUDGE GOODWILL: Mr. Mecham?

22 MR. MECHAM: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. MECHAM:

25 Q. Mr. Orton, did I understand correctly, the
26

1 Committee didn't do any independent analysis?

2 A. That's true, we didn't.

3 Q. You relied on the Division's analysis?

4 A. For USF or --

5 Q. Well, insofar as the technical, financial
6 and managerial abilities of Bresnan, did you do any
7 independent analysis of that?

8 A. No. We just noticed that no one seemed to
9 be challenging Bresnan's competence in those areas.
10 I didn't see any testimony.

11 Q. Did you look at their financials?

12 A. Of Bresnan's?

13 Q. Yes.

14 A. (Indicating negatively.)

15 Q. Ms. Slawson asked you if you had an idea
16 of, and if I'm mischaracterizing this go ahead and
17 correct me, but what level of impact was acceptable
18 to the Committee on the USF? You don't know?

19 A. We don't know.

20 Q. Is it cumulative? In other words, we have
21 an application now, and let's say we have three more
22 applications this year and two next year and so on,
23 and there's an erosion of the USF. Is it cumulative
24 and at what point do we go out of line?

25 A. Sure, it could be cumulative, but I don't

26

1 know what that will be.

2 Q. How will the Commission, based on the
3 Committee's testimony?

4 A. How will they know?

5 Q. Yes, how will they know?

6 A. I don't think we addressed what point that
7 would be.

8 Q. Does the Committee take a different
9 position with respect to changes, or excuse me,
10 exchanges with fewer than 5,000 access lines?

11 A. We referred again to the statute.

12 Q. But let's suppose this was an exchange of
13 fewer than 5,000 access lines, would the Committee
14 take a different position?

15 A. I don't know what position they would
16 take, but I think that it would be an entirely
17 different story, an entirely different game here if
18 we were looking at somebody going into Park Valley or
19 some small place like that. We were referring to the
20 5,000 lines in the statute as the breakdown.
21 Apparently the legislature, who is supposed to
22 represent the interests of Utah as a whole, that's
23 where they thought the number was. So we don't
24 challenge that. We haven't looked at a smaller
25 number.

26

1 Q. So if the Commission were to take the
2 Committee's position and grant the certificate, how
3 would we use the Commission's order based on the
4 Committee's position in the future when we face this
5 again?

6 A. Presuming that Price has 5,000 lines or
7 more, it would be about the same position if somebody
8 went into Price. But if they went into some area
9 with fewer than 5,000, I think that's a whole new
10 ball game and we would have to look at it again.

11 Q. But even in Price where there is
12 ostensibly more than 5,000 lines it's going to have
13 an impact on the USF one way or the other, will it
14 not?

15 A. I presume.

16 Q. And that effect will be cumulative?

17 A. (Indicating affirmatively.)

18 Q. So by the Committee's position we'll have
19 Bresnan in place and then we'll have someone new in
20 place in Price, maybe Bresnan, maybe someone else and
21 so you've got this cumulative effect on USF. Won't
22 that concern the impact on the ratepayers in Vernal?

23 A. I'm sure it will concern the Committee and
24 I'm sure it will be an issue that they discuss and we
25 discuss as staff. But again, to me that cutoff is

26

1 5,000. And if there are no other exchanges in the
2 state that don't have competition now that are over
3 5,000, I think I said that -- I don't remember how I
4 said that. Anyway, to me the 5,000 --

5 Q. You're on the record so the court reporter
6 knows.

7 A. She'll know what it was. Anyway, the
8 5,000 lines is the break point. Again, it's a whole
9 new scenario if we go into that. So to imply that
10 we're looking ahead at communities with less than
11 5,000 lines, I don't think that's accurate. We
12 haven't looked yet at that.

13 Q. And you also haven't looked at the
14 cumulative effect of exchanges over 5,000 lines?

15 A. No. Nor do I know what that would be.
16 Because presumably the other exchanges, Price might
17 be the only one left, I don't know, but if that is
18 the case, then that cumulative effect would be a
19 breaking point there and the smaller communities, in
20 my mind, would be a different story to look at.

21 MR. MECHAM: Thank you.

22 JUDGE GOODWILL: Mr. Ginsberg?

23 MR. GINSBERG: No questions.

24 JUDGE GOODWILL: Any redirect, Mr.

25 Proctor?

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1 MR. PROCTOR: Yes, just a few.

2 REDIRECT EXAMINATION

3 BY MR. PROCTOR:

4 Q. Mr. Orton, on line 82 and 83 you made the
5 statement in response to the Committee's view of
6 public interest, "It is important to be assured that
7 USF impact is acceptable."

8 Now, would that not also be the
9 Committee's position in a second or third or
10 subsequent applications for CLEC certification in a
11 particular rural territory?

12 A. I can only presume that it would be, but I
13 don't know how they make up their minds. So yeah, I
14 think it would be.

15 Q. In this particular case, what was the
16 Committee's conclusion with respect to the impact as
17 the Division had defined it on USF of granting this
18 particular application?

19 A. They seemed to rely on the Division's
20 numbers and there would be a minimal impact.

21 Q. Would the same type of analysis be
22 conducted, then, with the next application should
23 there be one?

24 A. I don't see any reason why it wouldn't be.

25 Q. Is it possible, in your judgment, that the
26

1 impact would remain minimal in subsequent
2 applications?

3 A. It would seem reasonable.

4 Q. And is impact upon USF the only element or
5 consideration that the Commission must apply?

6 A. Certainly not. I hope I made that point
7 because, once again, referring to the statute, it
8 listed several benefits of competition. And I think
9 those are things that should be looked at by the
10 Commission that were decided by our lawmakers.

11 Q. Is that your testimony on lines 44 through
12 52?

13 A. Yeah, I think that's accurate.

14 Q. Does the Committee believe that the
15 Commission should rely solely on the Committee's
16 assessment in judging whether or not to grant Bresnan
17 a certificate?

18 A. No one else relies only on my opinion.

19 Q. Thank you, Mr. Orton. I have nothing
20 further.

21 JUDGE GOODWILL: Mr. Nelson, any recross?

22 MR. NELSON: No thank you.

23 JUDGE GOODWILL: Ms. Slawson?

24 MS. SLAWSON: No thank you.

25 JUDGE GOODWILL: Mr. Mecham?

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1 MR. MECHAM: No questions.

2 JUDGE GOODWILL: Mr. Ginsberg?

3 MR. GINSBERG: No questions.

4 JUDGE GOODWILL: Thank you, Mr. Orton.

5 MR. PROCTOR: And thank you, your Honor,
6 for letting us to go forward.

7 JUDGE GOODWILL: My thought is to go ahead
8 and continue on with the next witness unless the
9 parties have a different suggestion.

10 MR. MECHAM: That's fine by us.

11 JUDGE GOODWILL: Then we turn to you, Mr.
12 Mecham.

13 MR. MECHAM: The URTA would call Mr.
14 Douglas Meredith.

15

16 DOUGLAS MEREDITH,
17 called as a witness, being first duly sworn, was
18 examined and testified as follows:

19

20 JUDGE GOODWILL: Mr. Mecham?

21 MR. MECHAM: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. MECHAM:

24 Q. Mr. Meredith, would you state your name
25 and business address for the record, please?

26

1 A. Me? My name is Douglas Meredith. My
2 business address is 547 Oakview Lane, Bountiful,
3 Utah, 84010.

4 Q. By whom are you employed and for whom are
5 you appearing?

6 A. I'm employed by John Staurulakis,
7 Incorporated, that's spelled S-T-A-U-R-U-L-A-K-I-S,
8 headquartered in Maryland. And I am testifying on
9 behalf of URTA.

10 Q. Thank you.

11 And did you prepare and have filed
12 testimony of Douglas Meredith on behalf of Utah Rural
13 Telecom Association consisting of 10 pages and four
14 attachments thereto and also reply testimony
15 consisting of 20 pages with 11 exhibits attached
16 thereto?

17 A. Yes.

18 Q. And if I were to ask you the questions
19 that are posed in these two pieces of testimony,
20 would your answers be the same today under oath?

21 A. Yes, they would.

22 Q. Do you have any corrections that you would
23 like to make?

24 A. No.

25 MR. MECHAM: Your Honor, we would like to
26

1 move the admission, I have not numbered them. We
2 could number his Direct Testimony as URTA 1 with 1.1
3 through 1.4. I would note that the four attachments
4 are marked as Exhibit A through D, but using
5 traditional conventions it would be URTA 1, 1.1
6 through 1.4. I'm not sure how you would like to mark
7 his reply testimony. Everyone else has been doing it
8 in sequence. I was prepared to have it be URTA 1R,
9 with 1.1R through 1.11R. However, if you would like
10 to have this be URTA 2, that's fine.

11 JUDGE GOODWILL: I think just for
12 consistency sake within this docket we'll go ahead
13 and mark it as URTA 2.

14 MR. MECHAM: All right. With 2.1 through
15 2.11 attached.

16 JUDGE GOODWILL: Any objection to the
17 admission of these documents?

18 MR. NELSON: No objection.

19 MR. PROCTOR: No objection.

20 JUDGE GOODWILL: Okay. They will be
21 admitted.

22 MR. MECHAM: Thank you.

23 Q. (BY MR. MECHAM) Mr. Meredith, do you have
24 a summary of your testimony?

25 A. Yes, I do.

26

1 Good afternoon. Bresnan seeks a CPCN in
2 the Vernal exchange, as we all know. And my
3 testimony addresses that the State of Utah has
4 attempted to balance the development of competition
5 and the preservation and advancement of Universal
6 Service Fund. And my view is, after looking at the
7 data, is that this particular application, if granted
8 would upset that balance.

9 And I have provided a discussion on the
10 balance and I have also estimated the increased
11 amounts of state US -- on the state fund to the
12 extent possible. To estimate the state fund two
13 numbers are necessary. First of all, we have to get
14 an average revenue per line of customers in
15 UBTA-UBET's area and then we also have to get an
16 estimate of the number of potential customers that
17 might migrate from UBTA-UBET to Bresnan. And I
18 provided my estimate of the average revenue per line
19 in my testimony, and this revenue is revenue which
20 would be lost if the average customer migrates to
21 Bresnan's cable, cable telephony voice service.

22 And I disagree with the Division's
23 estimate, and I explained why I disagree with the
24 Division in my reply. And I have also provided an
25 estimate of the number of customers possibly

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1 migrating to Bresnan in the foreseeable future. I
2 have used two methods here. The first was based upon
3 the number of Bresnan customers and the second is
4 based upon more recent information received by
5 Bresnan. This second method uses the more
6 conventional measure of households passed as defined
7 in the Data Response.

8 Bresnan declined to provide an estimate of
9 future subscribers. There were questions about
10 "What's your plans for the Vernal Exchange," and they
11 did not provide that information. However, Comcast,
12 for example, the cable company providing cable
13 telephony, has a projection of how many households
14 passed they will capture in the foreseeable future
15 for them, and it's 20 to 25 percent.

16 My method in estimating the increased
17 State Fund here in this proceeding is actually less
18 than what Comcast projects, it's less than the 20
19 percent number. Based upon my analysis, I estimate
20 that in the future, 2 to 4 years, if we can use that
21 as a horizon, the impact on the State Fund from
22 Bresnan will be about \$500,000, although my method of
23 calculating that differs from that of Mr. Hendershot.

24 And my testimony also examines the
25 Division's attempt to provide an analysis to making a

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1 public interest policy judgment which would be made
2 in this proceeding. And I recommend that the
3 Commission not deem the Division's analysis
4 incomplete and flawed in several respects, and I
5 outline that in my reply testimony. I also suggest
6 that this proceeding has an impact far larger than
7 the UBTA-UBET's proceeding. It will establish a
8 standard that will extend to other areas of the state
9 served by rural telephone carriers.

10 That's the summary of my testimony.

11 Q. Thank you.

12 Do you have any response to anything
13 you've heard otherwise today?

14 A. I have lots of responses. Yes, I do.

15 Q. Anything you would like to share with us?

16 A. Just some observations. Yes, I do have a
17 couple of observations with regards to the ability of
18 Bresnan to provide service in the entire Vernal
19 Exchange. And that affirmation by Bresnan suggests
20 they're going to provide the service using their own
21 facilities or using UNEs, unbundled network elements,
22 or resale with UBTA's services.

23 I fail to -- I don't think it came out
24 quite clearly here that UBTA is a rural telephone
25 company in the eyes of the Federal law and, as such,

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1 is exempt from providing UNEs, unbundled network
2 elements, in any capacity. They're not required to
3 do that at present. That's covered under Section
4 251(f)(1) of the Telecommunications Act and they have
5 an exemption of that duty and obligation.

6 So I don't know exactly how Bresnan is
7 able to address that particular matter. I mean,
8 essentially, if you grant a CPCN in this proceeding,
9 to me it prejudices grossly another proceeding dealing
10 with whether removal of the exemption is necessary.

11 I do note as well that there is a specific
12 public interest standard. There's three provisions
13 of that standard to remove an exemption in the
14 Federal. It's Federal to me.

15 Also with regard to interconnection
16 agreements there's discussion about being able to get
17 interconnection agreements and so forth. However,
18 the service that we're dealing with here now is cable
19 telephony. Cable telephony is not a
20 telecommunications service in the eyes of the FCC or
21 the Federal regulations. And as a result the
22 obligation to interconnect, for purposes of
23 interconnecting digital telephony, non-communication
24 services, would fall under a certain provision of the
25 FCC's regulation, 51-100B. And in that code of

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1 Federal regulation it says that you have to provide
2 telecommunication services in order to use those
3 interconnection facilities arrangements for other
4 types of data or other types of exchange, meaning you
5 have to have telephone service first and foremost
6 before you can have anything else going through the
7 interconnection.

8 So it's going to be very difficult -- it's
9 very difficult for me to perceive that a rural
10 carrier will actually interconnect for purposes of
11 exchanging digital telephony, cable telephony, when
12 they don't have a Federal obligation to do so.

13 That's brought out somewhat by Bresnan's declaration
14 that all of the interconnection agreements that they
15 have so far are negotiated agreements, they're not
16 arbitrated agreements. And an arbitration has to
17 apply those standards that would bear on discussing.

18 Those are things I think are some of the
19 main points.

20 Q. Thank you.

21 MR. MECHAM: Mr. Meredith is available for
22 cross-examination.

23 JUDGE GOODWILL: Mr. Mecham, I neglected
24 to bring a copy in of the confidential version of Mr.
25 Meredith's Direct Testimony. Do you happen to have a

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1 copy?

2 MR. MECHAM: The only other copies I gave
3 to the court reporter, although Mr. Stoll has one.

4 MR. STOLL: Let me make sure I don't have
5 any of my notes in there.

6 MR. MECHAM: It looks clean.

7 JUDGE GOODWILL: Thank you.

8 Mr. Nelson?

9 MR. NELSON: Yes, thank you.

10 CROSS-EXAMINATION

11 BY MR. NELSON:

12 Q. Let me start with your response you just
13 provided, Mr. Meredith. You indicate it's your
14 opinion that UBTA-UBET -- did I say that right?

15 A. Yes, you did.

16 Q. Sorry. There's too many four-letter
17 acronyms starting with "U" in this case.

18 That UBTA-UBET has no obligation to
19 interconnect with Bresnan. Is that your testimony
20 today?

21 A. No. When I described it just recently I
22 said they have no obligation to provide UNEs.

23 Q. Okay. That's what I thought you meant to
24 say and maybe what you actually did say, but not what
25 I heard.

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1 And then you would agree with me that
2 UBTA-UBET has an obligation under Federal law to
3 interconnect with every provider out there, correct?

4 A. Every provider, I'm sorry, what?

5 Q. With every provider of telecommunication
6 service, UBTA-UBET has an obligation to interconnect
7 if requested, correct?

8 A. That is a question that is not settled in
9 State proceedings. Texas, for example, requires a
10 251 C2 interconnection responsibility for all
11 carriers, and in that framework the answer would be
12 no. In other states the duty to interconnect for the
13 delivery of telecommunication services falls under
14 251A, and under that interpretation it would.
15 However, for digital telephony, since it's not
16 telecommunications, it wouldn't fall under either one
17 of those.

18 Q. Now, one question I have about that, you
19 say it's not telecommunications, and I think we can
20 all agree that the FCC has yet to illuminate us with
21 guidance on what exactly it is. Does it affect your
22 analysis at all that Bresnan has voluntarily elected
23 to submit themselves to the regulatory scheme in Utah
24 for telecommunication services? Does that suggest to
25 you at all that at least from Bresnan's perspective

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1 as it relates to Utah and the provision of Digital
2 Voice in the Vernal Exchange that this is enough of a
3 telecommunication service in Bresnan's eyes that
4 would suggest that the other obligations ought to
5 attach to that?

6 A. There are cases where -- in other states
7 where this comes up and there are cases where in the
8 interconnection agreement the parties agree to leave
9 that ambiguous or cloudy, but it is not the
10 responsibility of the rural carrier to make that
11 assumption. Until the FCC illuminates us we're left
12 in this limbo, but there's not a responsibility for a
13 cable telephony interconnection responsibility.

14 Q. Okay. Now, does URTA endorse the
15 requirement that Bresnan -- endorse the Commission
16 Order -- let me start that over again.

17 Does URTA recommend that the Commission
18 order Bresnan to serve all customers in the Vernal
19 Exchange who request service?

20 A. I believe the URTA would say yes to that.
21 That recommendation, however, is from the Division,
22 not from URTA.

23 Q. I know, but I'm asking for your opinion.
24 Do you think it's in the public interest that Bresnan
25 be required to serve all customers?

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1 A. If the certificate were granted and
2 Bresnan were able to pass through the public interest
3 standard, I think it is prudent to require Bresnan to
4 provide service to all the Vernal Exchange.

5 Q. Okay. Now, there's a lot of debate, and
6 we'll get into this in just a second, about how
7 extensive Bresnan's facilities are or are not. Do
8 you recall Bresnan's testimony being that the only
9 instance in which Bresnan would seek unbundled
10 elements is if it happens that there is one or more
11 customers who request service who are not passed by
12 Bresnan's facilities. Do you recall that, sir?

13 A. Yes, I do.

14 Q. So it sort of creates a nice catch-22,
15 doesn't it, that URTA on the one hand says, "We think
16 you ought to be obligated to serve everyone, and
17 recognizing that if your facilities don't pass, we're
18 sorry, because we also believe that we have no
19 obligation to provide you with unbundled elements"?

20 A. Not quite a catch-22 in that sense because
21 there is a provision in the Federal regime to
22 evaluate whether that duty should be applied to rural
23 carriers.

24 Q. So your notion is is that Bresnan should
25 go through this proceeding, then go through a rural
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1 exemption proceeding, then go through an
2 interconnection negotiation, and then when URTA-UBET
3 doesn't agree, go through an interconnection
4 arbitration before they go in to offer service in
5 Vernal? Is that how you would see the future
6 unfolding?

7 A. Yes. That's one scenario up the road that
8 Bresnan has elected to take by making this
9 affirmation that it will provide service to the
10 entire exchange.

11 Q. Now, if the Commission decides under Utah
12 law not to require Bresnan to serve all customers in
13 the exchange, since Vernal is an exchange over 5,000
14 lines, that too would alleviate the problem, wouldn't
15 it, as to the rural exemption? So another path
16 forward which would be much shorter, thankfully,
17 would be that the Commission could decide Bresnan
18 serve wherever your facilities pass. If they don't
19 pass, no obligation to serve and, therefore, we don't
20 need to pass judgment on the issue of whether or not
21 the rural exemption should be waived in this
22 instance, correct?

23 A. No. The rural exemption might come up.
24 As I mentioned in the Texas scenario where you have a
25 251 C2 interconnection that is under the rule

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1 exemption provision. So you have to deal with that.

2 Q. But you recognize that there are many
3 states who say that interconnection purely for the
4 purpose of exchanging traffic does not invoke the
5 rural exemption, correct?

6 A. Yes, I mentioned that. I mentioned that
7 there are two -- it's not settled among the states.

8 Q. And UBTA-UBET has, in fact, as has been
9 testified today, interconnection agreements with
10 other competitive carriers, such as wireless
11 carriers, for facilitating the exchange of traffic,
12 do they not?

13 A. I believe they do. I don't have any
14 personal knowledge to that.

15 Q. Okay. Let me ask you some questions about
16 the testimony that was prefiled. I'll start at the
17 beginning, that seems like a logical start.

18 Permission to approach the witness, your
19 Honor.

20 Q. (BY MR. NELSON) Mr. Meredith, I have
21 placed in front of you what was marked for
22 identification as Bresnan Exhibit 8. Do you see
23 that, sir?

24 A. Yes, I do.

25 Q. Can you identify what this document is?

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1 A. This is a Supreme Court decision,
2 apparently, issued in March 5, 2002 with regards to
3 Western Wireless or WWC Holding Company, Petitioner,
4 v. Public Service Commission of Utah.

5 Q. And you discuss a decision, the Western
6 Wireless decision, and at some length in your
7 testimony, do you not?

8 A. Yes, I do.

9 Q. Am I correct that this is the decision of
10 the Supreme Court on the appeal of the Commission
11 docket that you talk about in your testimony?

12 A. Yes. This is the Supreme Court decision
13 that affirms the Public Service Commission's decision
14 in that proceeding.

15 MR. NELSON: Okay. I'd move the admission
16 of Bresnan Exhibit 8.

17 JUDGE GOODWILL: I think we can go ahead
18 and take administrative notice of this as the
19 judicial decision. Is there any problem with that?

20 MR. NELSON: No.

21 JUDGE GOODWILL: Okay. I'm willing to do
22 so.

23 Q. (BY MR. NELSON) All right. Now, Mr.
24 Meredith, let me start here. In doing your analysis
25 with respect to the impact of Bresnan's entry on the
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1 Universal Service Fund, am I correct that you make an
2 assumption that some numbers of customers will elect
3 to switch from UBTA-UBET to Bresnan?

4 A. Yes.

5 Q. Would you agree with me that you would
6 expect customers to switch only to the extent that
7 Bresnan offered a competitively priced product at a
8 competitive level of service?

9 A. There are other factors that consumers
10 will use to make decisions like that. So a rational
11 consumer might under the -- under basic economic
12 theory, you would say, let's just look at prices,
13 that dimension. However, there's a lot of other
14 factors that could come into play for a consumer to
15 switch.

16 Q. Okay. Well, let me start it this way.
17 All other things being equal, would you agree that
18 consumers won't switch from one telecommunication
19 system to another unless the provider has comparable
20 or competitive pricing from the consumer's
21 perspective?

22 A. All other things equal, yes.

23 Q. And would you agree with me that all other
24 things being equal, a customer wouldn't be expected
25 to rationally switch from the incumbent to a new
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1 entrant unless the new entrant had a competitive
2 level of service quality?

3 A. Well, that's not being equal to what we
4 were just talking about. That's a different
5 dimension.

6 Q. I understand that. I'm saying in the
7 first hypothetical, the price is different,
8 everything goes through exactly the same; the second
9 hypothetical, service quality is at issue, everything
10 else is identical.

11 A. Service quality defined, I'm not exactly
12 sure how you're defining that, but is that just the
13 quality of the service while they're using the
14 service or is it customer service, billing services?
15 How is that defined?

16 Q. Let me just state, I'm contemplating that
17 is all the things that affect a customer's
18 experience; the reliability of the service, the
19 friendliness of the customer contact staff, the user
20 friendliness of the billing, all of those things that
21 go into customer experience other than price.

22 My question is, if everything else as
23 between two competitive choices is equal, would you
24 expect the customers would not switch unless that
25 were comparable?

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1 A. There's a lot of inertia in customer
2 decisions. So that's one of the things being equal.
3 They may stay because they just have a choice
4 inertia. I do recognize that there are people, I
5 mean, there's actually, it's quite comical, but there
6 are people who still think that they get telephone
7 service from AT&T in the world. So there's, you
8 know, the old AT&T.

9 Q. Not the old Ma Bell.

10 A. Now they are. They still are now.

11 Q. That's right. You stick around long
12 enough and AT&T will be back everywhere. It's just a
13 question of time.

14 A. So there's a lot of consumer inertia on
15 that, on that issue.

16 Q. Okay. That's an excellent point. So to
17 the extent there's customer inertia, in order for
18 customers to switch, wouldn't it, all other things
19 being equal, be necessary for the competitor to offer
20 a better price than the incumbent to overcome that
21 inertia?

22 A. You mean better service?

23 Q. Well, I'm going to go back to price for a
24 second now that we've raised the inertia issue.

25 A. Well, the inertia issue can play, can play

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1 tricky things because you have consumer inertia to
2 move but also this consumer has two companies they're
3 embedded with or they have vested interests in both
4 the cable company and also the television company.
5 So that's kind of ambiguous, I can't speak to that.

6 Q. Okay. Well, let me ask you this. Did you
7 take a look, I think you did, take a look at the
8 prices that Bresnan was proposing to charge, for
9 example, in the Vernal Exchange; is that correct?

10 A. I think just briefly I have looked at
11 that. I think through testimony or through the
12 Application, and I believe it's approximately \$39.
13 That's the only price point that I can think of that
14 comes to mind.

15 Q. Well, let me ask it this way. Do you have
16 any reason to disagree with the testimony of the
17 prior witnesses who suggested that the price point
18 that Bresnan was proposing to offer is roughly
19 comparable to the price point that a customer would
20 have taking service from UBTA-UBET, including local
21 and long distance?

22 A. I have done that. To get my average
23 revenue per line, I have looked at essentially what
24 the average customer generates for revenue with UBTA,
25 and that number is confidential so I won't say it,

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1 but it has some comparability to what we're talking
2 about.

3 Q. Can we just say comparability to mean if
4 the UBTA-UBET average customer revenue is comparable
5 to what a Bresnan customer would pay to Bresnan for
6 the package of services that Bresnan is discussing?

7 A. Yes. But I do want to emphasize, and I
8 agree completely with Mr. Hendershot on talking about
9 how the people who will be going to a Bresnan service
10 are actually the high revenue users because of the
11 unlimited service. And so their average revenue per
12 line, if you take that as a subset, it's going to be
13 much higher than the average that I used.

14 Q. Okay. And if we're talking about the high
15 revenue customers as the ones who switch, isn't it
16 likely that those are also customers who could well
17 experience a price decrease by taking advantage of
18 Bresnan's unlimited long distance offering?

19 A. Depending on their calling patterns,
20 depending on things, yes, they could possibly reach
21 to that point where -- that I was talking about.

22 Q. They could possibly have a price decrease?

23 A. They could possibly, yes. It's ambiguous.
24 I can't speak to that.

25 Q. Okay. In the Utah Commission decision on
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1 Western Wireless and in the Supreme Court decision on
2 appeal, do you recall that the Utah Commission
3 basically engaged in a balancing test, where on the
4 one hand they considered the burdens on the State
5 Universal Fund and on the other hand they considered
6 whether there were offsetting public benefits in
7 making its decision as to whether or not to grant ETC
8 status to Western Wireless?

9 A. Yes. I emphasized that on line 121 of my
10 testimony.

11 Q. Right. And if you look at Exhibit 8,
12 which was admitted by administrative notice, that
13 Western Wireless decision, I call your attention to
14 page 6. On the very top of that page is a
15 continuation of paragraph 9. Am I correct that here
16 the Court is rearticulating the balancing test that
17 the Commission used in the Western Wireless decision?

18 A. Summarizing with some details missing.

19 Q. Sure. But this, just for point of
20 reference, this was a summary of the balancing.

21 A. Well, it talks about the balancing, but it
22 doesn't talk about the portion described -- the
23 Commission described in its finding that lends itself
24 to understanding about a rate-of-return carrier and
25 the implications of doing this for rate-of-return

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1 carriers.

2 Q. Okay. Now, let me ask you, as it relates
3 to this balancing test, what I'm going to try to
4 explore with you is whether there's any difference
5 between how this balancing test plays out in the
6 context of a request for ETC designation as compared
7 to what we have here, which is a request for a CPCN,
8 okay?

9 A. Yes.

10 Q. Let me first start with the first element
11 of that balancing test which relates to a concern
12 about whether the Commission action, whichever one it
13 is, will increase the burden on the State Universal
14 Service Fund. Are you with me so far?

15 A. Yes.

16 Q. Okay. Would I be correct that in the
17 context of an ETC application, as you have analyzed
18 this, would it be fair to assume that you would be
19 concerned that a new eligible telecommunications
20 carrier could well take customers from the incumbent,
21 reduce the incumbent's revenue, and thereby create
22 the same USF impact that you're concerned that
23 Bresnan might create in this instance? Would that be
24 fair?

25 A. Yes, that is accurate because there are
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1 two dimensions to an ETC. One is the actual draw
2 that an ETC would receive from the State Fund and
3 then the second is what I describe on my testimony at
4 page 6 where the Commission is talking specifically
5 about the independent company that's left over and
6 what happens there. And in that particular scenario
7 it's very similar to what we have now.

8 Q. Okay. Now, wouldn't it also be the case
9 that if we had an application for an ETC, that that
10 carrier, for example, Western Wireless, would also be
11 looking to draw Universal Service funding from the
12 State Universal Service Fund for those customers
13 which they were able to win from the incumbent?

14 A. Yes. That's the first tier that I just
15 described. However, if we go to page 6 of my
16 testimony, the discussion of this two-prong test only
17 talks about the second one, the residual effect on
18 the incumbent.

19 Q. Right. So what I want to make sure I
20 understand is, in the context of the ETC there are
21 really two effects on the Universal Service Fund.
22 One is the increase on the Universal Service Fund
23 that the incumbent experiences because customers are
24 lost, and the second is the increase on the Universal
25 Service Fund when the new ETC carrier requests

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1 funding for the customers that they've gained; would
2 that be fair?

3 A. Yes. That's what we've just been talking
4 about.

5 Q. Okay. Now, I would like to contrast that
6 with what happens in a CPCN case. And the CPCN case
7 will have the same effect, as you've explained it, on
8 the incumbent's draw from the USF, that is, if all
9 the customers leave, say in the exact same amount,
10 they'll have this cost problem, as you've testified,
11 and that has this speed backup effect that creates
12 this USF need, correct?

13 A. Yes.

14 Q. But in the CPCN case, I'm correct, aren't
15 I, that the new entrant in that case doesn't cause
16 the second effect to happen because the new entrant
17 does not ask to draw money from the State Universal
18 Service Fund; would that be fair?

19 A. That's fair. However, do remember in our
20 discussion that when we talk about the two-prong test
21 that the Supreme Court has affirmed, that paragraph
22 in its entirety is on page 6, and that deals with
23 this residual effect, or let's call it the incumbent
24 effect as opposed to the draw effect.

25 Q. So my point is this: To the extent that
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1 Commission is charged from its prior decision and
2 from your testimony to balance the detrimental effect
3 of USF with any offsetting benefits from competition,
4 wouldn't it be fair to assume that because of that
5 two layers of effect on the USF fund from an ETC
6 status, that all other things being equal, a provider
7 coming in and asking for ETC status should have a
8 greater detrimental effect, from your perspective, on
9 the USF than a provider coming in and simply asking
10 for a CPCN, correct?

11 A. Yes.

12 Q. Now, to the extent, then, the Commission's
13 obligation is to determine whether those detriments
14 are offset by competition benefits, wouldn't it be
15 fair to then conclude that a CPCN entrant would need
16 to prove a lower level of competition benefits as
17 compared to an ETC new entrant in order to offset the
18 lower level of USF detriment, right?

19 A. Yeah. The public interest standard that's
20 established in Western Wireless describes a
21 balancing. And it describes that balancing very
22 clearly on page 6 and it was very well written, I
23 might add. But the -- it says --

24 Q. I object to sucking up to counsel.

25 A. But it talks about this ILEC effect when
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1 it's talking about these two tiers. But you are
2 correct, the burden appears to be higher, even higher
3 still than what we would have here in an ETC
4 proceeding. This is not an ETC proceeding.

5 Q. Okay. Thank you.

6 Now, let me ask you about in the
7 Commission's decision in the appeal, affirmative
8 Commission's decision. Let's talk about how the
9 Commission in the Western Wireless case analyzed the
10 other side of this balancing test, that is, the
11 concern with offsetting competitive benefits, okay?

12 A. Okay.

13 Q. In the Western Wireless case, which it
14 sounds like you're very familiar with, would I be
15 correct that the Commission was concerned that
16 Western Wireless might in fact be charging prices
17 well higher than the incumbent was charging in that
18 service territory?

19 A. If we want to get into the details of
20 that, I'll need a copy of that.

21 Q. Okay. Well, I have given you something
22 that I think might help you. Look at Exhibit 8,
23 page 7.

24 A. Uh-huh (affirmative).

25 Q. Paragraph 18 on the left column, you'll
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1 see at the very last two lines of that there's a
2 quote the Supreme Court gave us from the Commission
3 decision. And with that refreshing your recollection
4 are you able to answer my question?

5 A. I'm just reading it. Thank you.

6 Yeah. This particular paragraph shows
7 that Western Wireless now is doing business as Alltel
8 failed to do what it should have done and provide the
9 information. They, Western Wireless did not provide
10 information that was necessary to make a finding and
11 essentially the Commission says the following: That
12 they don't know what the prices are going to be. It
13 could be higher, it could be lower, it could be well
14 higher, quote-unquote.

15 Q. Right. And unlike Western Wireless in
16 this case, Bresnan has indicated the prices it's
17 going to charge, hasn't it?

18 A. I believe it has, yes.

19 Q. And we've had a lot of discussion about
20 what the level of those prices are in comparison to
21 UBTA-UBET, haven't we?

22 A. We've had some discussion, yes.

23 Q. Okay. Let me ask about another issue that
24 the Commission raised with respect to the Western
25 Wireless case. Would it be fair to say that the

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1 Commission was concerned about Western Wireless's
2 service quality and concluded that there might be
3 gaps in the service that Western Wireless provided in
4 the area it was seeking ETC status?

5 A. Do you have a paragraph you can refer me
6 to?

7 Q. Sure. It's the next paragraph, paragraph
8 19.

9 A. Yes. Without reading the whole paragraph,
10 the first sentence talks about there is ambiguity as
11 to the precise geographic area of their service.

12 Q. Okay. And the Commission was concerned
13 about gaps, correct?

14 A. Again, Western Wireless didn't provide the
15 information necessary for the Commission to make a
16 judgment characteristic of how Western Wireless did
17 things and so they ruled against them, yes.

18 Q. Okay. Thank you, sir.

19 Your Honor, I'm about to move to a new
20 area of cross-examination. So if it's yours and the
21 parties' desire to break at 5:00, this would be a
22 logical breaking point if that is what's recommended.

23 JUDGE GOODWILL: Do we want to break at
24 5:00 or do parties want to go for a little while
25 longer? About how much longer do you have in your
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1 total cross, Mr. Nelson?

2 MR. NELSON: I will confess that I stink
3 at estimating cross. Maybe 20 minutes, maybe 25, in
4 that range.

5 MR. GINSBERG: It sounds like we'll get
6 through everything easily tomorrow so --

7 MR. NELSON: I don't expect there will be
8 much difficulty getting through tomorrow, but that's
9 subject to Mr. Stoll and Mr. Mecham and how much
10 cross they have for the Division witnesses.

11 JUDGE GOODWILL: Let's go ahead and break
12 now and pick up at 9:30.

13 MR. NELSON: Okay.

14 (The taking of the hearing was
15 concluded at 5:01 p.m.)

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C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, LANETTE SHINDURLING, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of Utah, residing at Salt Lake City, Utah hereby certify;

That the foregoing proceeding was taken before me at the time and place herein set forth, and was taken down by me in stenotype and thereafter transcribed into typewriting;

That pages 1 through 272, contain a full, true and correct transcription of my stenotype notes so taken.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 18th day of September, 2007.

LANETTE SHINDURLING, RPR, CRR
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