

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)

)

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September 5, 2007 * 9:30 a.m.

Location: Public Service Commission

160 East 300 South, Hearing Room

Salt Lake City, Utah

Steve Goodwill

Administrative Law Judge

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

2

3 JUDGE GOODWILL: Mr. Meredith, why don't
4 you come on up and we'll remind you you're under oath
5 and we'll go ahead and get started.

6 Let's go back on the record. We are here
7 in Docket Number 07-2476-01. Douglas Meredith
8 continues to be on the stand and we're in the middle
9 of Mr. Nelson's Cross-Examination. I was informed
10 before we went on the record that Mr. Meredith has
11 one correction to his Direct Testimony that he would
12 like to make.

13 DOUGLAS MEREDITH,

14

15 recalled as a witness, being previously duly sworn,
16 was examined and testified as follows:

17

18 MR. MEREDITH: Yes, thank you.

19 On line 144, reviewing the material last
20 night in preparation for this morning, I came across
21 a number that needs to be changed. It's a
22 confidential number and so I will be obscure in how I
23 make the correction. On line 144 the first number
24 reported on 144 should be doubled. And that's the
25 only correction.

26

1 JUDGE GOODWILL: So right after line 144
2 there's three asterisks and then the number there
3 should be doubled?

4 MR. MEREDITH: Correct.

5 JUDGE GOODWILL: Does that also -- there's
6 an "or" later on in that line with a number --

7 MR. MEREDITH: No, no correction to that
8 number.

9 JUDGE GOODWILL: Okay. Does everyone
10 understand that change?

11 MR. NELSON: Yes.

12 JUDGE GOODWILL: Can you go ahead and make
13 that change to your copy of your testimony that the
14 court reporter has?

15 MR. NELSON: Exhibit 1.

16 JUDGE GOODWILL: Make the change and
17 initial it. Just show it to counsel so that they see
18 it.

19 MR. MEREDITH: (Witness complied.)

20 JUDGE GOODWILL: Anything else, Mr.
21 Meredith?

22 MR. MEREDITH: No.

23 JUDGE GOODWILL: Mr. Nelson?

24 CROSS-EXAMINATION

25 BY MR. NELSON:

26

1 Q. Good morning, Mr. Meredith.

2 A. Good morning.

3 Q. I would like to start on -- so do you have
4 your testimony in front of you, sir?

5 A. Yes, I do.

6 Q. I call your attention to your Direct
7 Testimony and in particular starting on page 9, line
8 192 of that testimony there's a question that begins
9 that then continues over on to line 207 of page 10.
10 Do you see that, sir?

11 A. Yes, I do.

12 Q. Am I correct that a Certificate of Public
13 Convenience and Necessity is the authority,
14 represents the authority to offer service? Is that
15 correct? Is that your understanding?

16 MR. MECHAM: Are you asking for a legal
17 conclusion, Mr. Nelson?

18 Q. (BY MR. NELSON) I'm asking, when you used
19 the word "CPCN" in your testimony here, for example,
20 on lines 193 and then again on your recommendation at
21 line 197, what do you have in mind when you use that
22 word?

23 A. To me a CPCN is a certificate granted by a
24 regulatory authority given to a carrier to provide
25 service in a particular area.

26

1 Q. Okay. In the context of a competitive new
2 entrant as distinguished from somebody who is an
3 incumbent who might have carrier of last resort kind
4 of obligations, does a certificate convey the --
5 necessarily convey the obligation to serve all
6 customers in an exchange?

7 A. Without -- I think a certificate, a
8 certificate is a stamp of approval given by the
9 regulating authority for a carrier to offer service.
10 I'm not certain, without looking at the code, as to
11 whether it's geographic in the nature that you've
12 described it, you've asked the question. It does
13 give a promise or it's essentially a promise to the
14 public that this carrier is in good standing and is
15 able to function and perform properly in its capacity
16 as it's described.

17 Q. Okay. Now, in your testimony on page 10,
18 am I understanding you correctly that you believe
19 that Bresnan is asking for a certificate only in the
20 Vernal City area and not in the entire Vernal
21 Exchange?

22 A. As I understand, this particular question,
23 by the way is an alternative. My recommendation is
24 not to grant a certificate at all.

25 Q. I understand.

26

1 A. In the alternative, we're in this space.

2 Q. And I'm trying to get your understanding
3 not of what the Commission should or shouldn't do,
4 but what you think Bresnan is asking for.

5 A. My understanding is in reading the
6 Application and also being in a Technical Hearing
7 regarding this matter, is that Bresnan has offered
8 and has essentially promised in its Application, in
9 its presentation of its case, that it will provide
10 service in the entire Vernal Exchange.

11 Q. So your understanding is that Bresnan is
12 requesting the authority to serve in the entire
13 Vernal Exchange, correct?

14 A. Well, I believe the Application is an
15 alternative Application. I think it says, Give me
16 authority in the Vernal City or the area we serve in
17 Vernal. In the alternative, we will serve the entire
18 exchange if you deem it necessary. But that's my
19 understanding of the Application and the Technical
20 Conference discussion.

21 Q. Okay. Would it alleviate the concern you
22 have on page 10 if it were the case that Bresnan was,
23 in fact, under any scenario asking for the authority
24 to serve the entire exchange? Would that alleviate
25 the concern you articulate on page 10 if that were

26

1 the case?

2 A. That would direct a change, if that was
3 the scenario, that would change lines 203 through 207
4 of the testimony.

5 Q. Okay. Thank you.

6 Let me now turn to your Rebuttal
7 Testimony, sir. I'm sorry, the Reply Testimony. Do
8 you have that in front of you?

9 A. Yes, I do.

10 Q. I believe this is what has been admitted
11 as URTA Exhibit 2 and 2.1 through 2.11. Let me
12 start, if I could, with Exhibit I. I apologize I'm
13 not conversant with what Exhibit I is, I can't tell,
14 but it's 2.9 probably. Maybe, counting backwards
15 from K. In any event, Exhibit I is its label. Do
16 you see that, sir?

17 A. Just one minute. Yes. Exhibit I is 2.9.

18 Q. Great. Now, let me just remind you as
19 well as your counsel that Exhibit I is confidential.
20 And I don't think I will need to refer to any
21 confidential numbers in this, but to the extent you
22 feel the need to refer to confidential information in
23 your response, please feel free to do so. But before
24 you do so let me know so that we can take the
25 appropriate precautions with respect to this

26

1 information, okay?

2 A. Yes.

3 Q. Okay. Now, I would also like to place in
4 front of you another exhibit.

5 Permission to approach the witness, your
6 Honor?

7 JUDGE GOODWILL: Yes.

8 Q. (BY MR. NELSON) Mr. Meredith, I have also
9 placed in front of you what has been admitted as
10 Bresnan 5, a series of Supplemental Data Responses.
11 Do you see that, sir?

12 A. Yes.

13 Q. Okay. Now, starting on Bresnan 5, on the
14 second page of that in the response to Data Request
15 1.9.4; do you see that, sir?

16 A. Yes.

17 Q. Now, there's a number that has been
18 handwritten there at the bottom. We'll just use that
19 as a starting point, that represents the weighted
20 average of the numbers reflected on the table that
21 you've requested Ms. Kirchner identify?

22 A. (Indicating affirmatively.)

23 Q. Do you see that number, sir?

24 A. Yes.

25 Q. Okay. That represents the percent of
26

1 homes passed in the exchanges listed on Exhibit 5 in
2 that table, the percent of homes passed by Bresnan's
3 digital -- by Bresnan's cable facilities who are also
4 Digital Voice subscribers. Is that your
5 understanding, sir?

6 A. This table represents -- or that
7 percentage represents the percentage of digital
8 subscribers to homes passed, yes, for areas listed.
9 Those areas are limited in a certain way.

10 Q. Right. And the areas that are limited
11 reflect the question. The question asked for this
12 information for the independent exchanges where
13 Bresnan offers service, correct?

14 A. Correct.

15 Q. Okay.

16 A. So it doesn't deal with the Qwest areas in
17 the states that you operate.

18 Q. Right. Okay. If you look at Exhibit I, I
19 just want to make sure I understand. If you were to
20 use that number as an assumption for the percentage
21 of homes passed in the Vernal Exchange who would
22 subscribe to Digital Voice service, would I be
23 correct that to determine how you would calculate the
24 revenue impact of that I could look on Exhibit I to
25 the section labeled Scenario 2 and look at the first
26

1 line of that table which has a number very similar to
2 the number that Ms. Kirchner wrote in the bottom of
3 Exhibit 5 and carry that over to the number that you
4 calculate as what the impact would be to UBTA-UBET if
5 that number were the number that became reality in
6 Vernal; is that correct?

7 A. Yes. But that analysis would be flawed
8 and it would be flawed in the following respect.
9 Scenario 2 is attempting to assess the impact of
10 competition or on the State Fund for a 2 to 4-year
11 time horizon. And the information that you have on
12 1.9.4 is representing information at a 2-year time
13 frame because the testimony that I heard yesterday
14 was that Bresnan was only been in -- has only been in
15 those markets for at most two years if they started
16 in 2005.

17 And so the number on 1.9.4 is, in my view,
18 on track to reach the number that I eventually
19 analyze and show that the number of lines lost would
20 be on the approximately a little bit less than the
21 second line on Scenario 2. It's just a matter of
22 dynamics.

23 I mean, we can't just take a snapshot of a
24 2-year scenario and apply that to a 2 to 4-year
25 scenario when we're trying to assess the impact of
26

1 applying the certificate.

2 Q. Okay. So let me make sure I understand
3 that. The Scenario 2 analyzes the revenues lost over
4 a 4-year time frame?

5 A. The Footnote Number 2, it's a near term
6 analysis, it's a 2 to 4-year time frame in the
7 future. The problem that I had with this whole thing
8 is, Bresnan, in filing a certificate or filing its
9 Application for a Certificate of Public Convenience
10 and Necessity is responsible to file five-year
11 pro formas. Going into the future five years, that's
12 in the code, it says they shall file a five-year
13 pro forma.

14 If that information were available I would
15 be able to use those pro formas and actually do a
16 better, a more complete analysis. This is the best
17 information that I had given the lack of information
18 that was in the Application or the supplemental
19 information that we asked for. We even asked for
20 that information again and it was objected to on the
21 grounds that it wasn't available. And so I used a 2
22 to 4-year time frame in this analysis.

23 Q. Okay. So let me just make sure I'm
24 tracking this. So as you understand it, and I think
25 I agree with you, that the number on 1.9.4 represents

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1 a snapshot in time approximately two years after
2 market entry?

3 A. At most two years, yeah, because 2005.
4 And actually, I have a little bit of a -- you know,
5 we have two years in testimony that you started
6 service in these two states, but we don't have any
7 testimony exactly when you started service in these
8 exchanges. It would seem to me that Bresnan would
9 want to have a first push into Qwest area, and we
10 don't have Qwest information. And so it's at most,
11 I'm giving a very generous two-year start to these
12 numbers we have on 1.9.4.

13 Q. Okay. But regardless, this represents, on
14 1.9.4, a snapshot at a point in time?

15 A. Yes.

16 Q. If four years hence it happens to be that
17 the number in 1.9.4 is the penetration in Vernal, if
18 that happened, would I be correct that you would look
19 at the first line of your Scenario 2, approximately,
20 to determine the revenue impact?

21 A. I think that's correct if you say two
22 years in the future, not four.

23 Q. Even if it's four years in the future.
24 That's what I'm trying to understand. Let's say four
25 years out Bresnan has only achieved the market share

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1 reflected in 1.9.4. Do you have that in mind?

2 A. Yes.

3 Q. Would I be correct that your estimate of
4 the annual revenues lost would be approximately the
5 number reflected on line 1 of your Scenario 2?

6 A. Yes. It's very close to that. And
7 Scenario 2 has various lines depending upon whatever
8 assumption you make on subscribership penetration,
9 you can apply that on Scenario 2.

10 Q. Okay. And then what you're saying, just
11 to make sure I'm understanding your point is, if this
12 Bresnan number represents a 2-year trend, and if you
13 further assume a similar level of growth for the next
14 two years such that the number on 1.9.4, for example,
15 were twice as large in a 4-year time frame, what
16 you're suggesting is then you would look to the
17 number on line 2, give or take, of Scenario 2 to
18 estimate what the annual revenue lost to UBTA-UBET
19 would look like; is that what you're telling me?

20 A. There is obviously ramp-up for a new
21 service offering and it's consistent with how certs
22 offering will occur. You know, you're going to have
23 some ramp-ups to get to that percentage.

24 Q. Okay. Thank you.

25 Let me ask now, on page 10 of your
26

1 Rebuttal Testimony --

2 A. Shall I set Bresnan 5 aside?

3 Q. Yes. We're done with that. Thank you,
4 sir.

5 On page 10 of your Rebuttal Testimony,
6 lines 205 to 206, you state that "the Division fails
7 to provide support for any public benefits for
8 customers in the UBTA-UBET service territory." Do
9 you see that, sir?

10 A. Yes.

11 Q. Okay. My question is this. I'm curious
12 about your opinion. In your opinion, are there any
13 benefits to customers that you could imagine if
14 Bresnan were provided the authority it seeks in this
15 case to offer service in the Vernal Exchange?

16 A. I can modify that just a little bit. I
17 can say if Bresnan just provides the service it seeks
18 to provide depending on whether it needs a
19 certificate or not.

20 Q. Fair enough.

21 A. And in the aggregate, no. There will be a
22 small select set of customers, high user long
23 distance customers that will be attracted to a long
24 distance offering, nationwide long distance offering
25 that will see some benefit. But in the aggregate

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1 public benefit it's not because we have a major
2 inherency problem here. We have evidence on the
3 record showing that there are lots of services in
4 Vernal similar to what Bresnan is trying to offer
5 and, as a result, there can't be any claim that
6 another competitor provides additional benefit in
7 that particular exchange.

8 Q. Okay. So your opinion is the Bresnan
9 proposal, in aggregate, perhaps excepting a small
10 number of customers here, the Bresnan proposal in
11 aggregate, in your perspective, offers zero benefits;
12 is that fair?

13 A. I can't see of any yet.

14 Q. Okay. Let me ask you this question. The
15 wireless competition that you reference and that's
16 available in Vernal, is that generally available in
17 all the rural areas of Utah?

18 A. Oh, I can't speak to that. I don't know.

19 Q. Okay. The satellite competition that
20 people have talked about, is that generally available
21 throughout the state?

22 A. My understanding is that it would be. But
23 again, you would have to have a dealer, you would
24 have to have licenses or whatnot. I have satellite
25 myself here on the Wasatch Front for television

26

1 because I brought it back from -- when we moved,
2 lived in a different place. And so I don't know. I
3 think it's pretty easy, actually, to get it that way.

4 Q. Okay. Is there a form of a wire line
5 competitor, someone other than Bresnan, let's say
6 there's some different company wanted to provide wire
7 line service in the Vernal Exchange. Is there any
8 such company you could imagine that would provide
9 public benefits, in your mind?

10 And what I'm trying to ask, what I'm
11 trying to figure out here, is it something unique to
12 Bresnan that leads you to the conclusion that there
13 are no public benefits or would you reach the same
14 conclusion for any wire line competitor seeking to
15 offer telecommunication service in the Vernal
16 Exchange?

17 A. I haven't examined it in that way. It
18 sounds to me like -- I can give you a business card
19 if you want. And, no, I don't do service for cable.
20 But it sounds to me like you want me to prove the
21 public interest test for the Application. And my
22 particular analysis here is to look at what people
23 have said and to examine, you know, whether that --
24 what they're saying and whether they have inherency
25 and if they actually do produce what they're claiming

26

1 to produce.

2 Q. And let me not mislead you. There's been
3 a lot of testimony in this case, a lot of questions
4 from your counsel and counsel for UBTA-UBET, about
5 the possible detrimental effects from a precedential
6 perspective of the Commission granting Bresnan's
7 order in this case, for example, the suggestion made
8 that that will then open the gates to other
9 competitors, other cable companies coming in in other
10 areas and possibly having multiplicative -- I can't
11 pronounce that word -- additive effects?

12 A. Multiplicative.

13 Q. Thanks. That's the word I'm looking
14 for -- on the Universal Service Fund. Do you recall
15 the discussions on that line?

16 A. Oh, I'm very interested. I have that in
17 my testimony as well, that there is essentially a
18 ricochet, but not necessarily for the CPCN, but for
19 the initial burden. Because if you do not have a
20 robust public interest test in this case developed,
21 then the flood gates will be opened for other
22 opportunities in other areas of the state.

23 Q. Right.

24 A. And that's one very big concern that I
25 have.

26

1 Q. And what I'm trying to do is not to get
2 you to prove our case. That's my job, that's our
3 job. What I'm trying to get you to do is I'm trying
4 to explore your sense of the possible precedential
5 effects of a decision going the other direction.

6 Let's say Bresnan's Application is denied.
7 Let's say the Commission accepts your analysis and
8 says, no public benefits because we already have
9 wireless competition there so we don't need another
10 competitor, this one adds no value to that system,
11 okay? We know they have a detrimental effect from
12 your analysis on the Universal Service Fund. We have
13 a disagreement about how big that detrimental effect
14 is, but we have some evidence that suggests there's
15 some dollar effect that will flow from that.

16 What I'm trying to understand is, it
17 sounds to me like what that means is that there will
18 never be a competitor anywhere in rural Utah if the
19 analysis that you're proposing is adopted. And the
20 reason I say that is because I assume, let me ask you
21 this question again, I assume that there is nothing
22 unique about Bresnan that gets you to believe that
23 there are no public benefits, but rather you would
24 conclude there are no public benefits from any wire
25 line competitor in any part of the State entering

26

1 into an independent service territory for the exact
2 same reasons why you concluded in this case there are
3 no such benefits in Bresnan's case, correct?

4 A. That's a lot. Let me parse through that.
5 The public interest has to have a balance between
6 competition and preservative ancillary Universal
7 Service. My view is that if we're going to err, and
8 err, we're fallible humans, and so if we're going to
9 err, and if there needs to be a public policy it
10 should secure the preservation and advancement of
11 Universal Service and trump the development of
12 competition. Even if your statement is correct that
13 in fact it does forestall certificated wire line
14 service in rural areas of the state, that could be
15 the right way to go because of the uncertainties of
16 what could happen.

17 The benefits of competition or the
18 benefits of another competitor is hard to pin down
19 because we don't have a full picture of what the
20 applicant is going to be doing and we don't have a
21 full picture of what responses will occur in the
22 marketplace. That said, I would conclude -- or
23 concur with your statement, that is correct.

24 Q. Okay. If the legislature had intended to
25 -- had intended the result to be no competition

26

1 allowed in rural Utah, could they have written the
2 statute in Utah to say that?

3 A. Well, the legislature can do whatever it
4 wants to do and it doesn't ask me for advice in that
5 regard.

6 Q. Does the statute in Utah in fact bar
7 competition in rural Utah?

8 A. I'm not familiar enough with the code,
9 with the statute to play one section against the
10 other section and actually make that determination.

11 Q. Let me ask you this way, then. Are you
12 aware of any part of Utah law that bars competition
13 in the independent territories of rural Utah?

14 A. I am aware of sections of the regulations
15 and law that require application of certain tests and
16 certain measures so that the -- before competition
17 is, quote, entered into.

18 Q. Okay. Thank you, Mr. Meredith.

19 MR. NELSON: I have no further questions
20 of this witness.

21 JUDGE GOODWILL: Mr. Ginsberg? Am I going
22 out of order here? Who did we start with yesterday?

23 MR. NELSON: You started with me.

24 JUDGE GOODWILL: Let me just ask, Mr.
25 Stoll and Ms. Slawson, do you have any questions?

26

1 MS. SLAWSON: No, your Honor.

2 JUDGE GOODWILL: Mr. Ginsberg.

3 CROSS-EXAMINATION

4 BY MR. GINSBERG:

5 Q. Good morning. I would like to follow up a
6 little more on what you were just being asked. Can
7 you can up with an example of a wire line competitor
8 such as Bresnan or another CLEC that would compete in
9 a local, rural local exchange who would take the
10 customers because of competition away from a local
11 exchange company who is rate of return regulated that
12 there potentially would not be an impact on the State
13 USF?

14 A. I don't -- if a customer is -- no, under
15 that scenario you just gave it's tautological that
16 there will be an impact. The impact that I have
17 shown and in giving some material I think is going to
18 be forthcoming in the Division's Surreply Exhibit 1
19 shows that this potential impact is about 10 percent
20 of all disbursements of State Fund, which to me is a
21 significant amount, a significant increase or a
22 significant increase in the disbursements of the
23 State Fund.

24 Q. Well, Vernal is the largest rural exchange
25 in the State?

26

1 A. I don't know how it compares to Price and
2 so I don't know. I can accept it as a point of fact
3 if you want me to stipulate to it and attest that it
4 is.

5 Q. But following up on the questions he was
6 asking, you couldn't envision that any wire line
7 competition in the rural exchanges without some
8 impact, and obviously some exchanges are smaller than
9 others, on the State USF?

10 A. Right. And as I mentioned in my testimony
11 as well, the impact can vary. Because with the data
12 that I looked at that was given by the Division, the
13 per line disbursement for UBET is actually less than
14 the State average per line disbursement from the
15 State Fund. So if you had a situation in another
16 area, the per line magnitude can actually be higher
17 than what we see here. On a per line basis, not on
18 an aggregate basis.

19 Q. I think you also answered his question,
20 and maybe a little -- you talked about the Western
21 Wireless decision. Western Wireless, though, is a
22 competitor of Uinta Basin today?

23 A. If memory serves me, Alltel is providing
24 service in that area.

25 Q. Alltel, not Western Wireless?

26

1 A. Yes. Alltel purchased Western Wireless
2 and so it's now Alltel. But I could be incorrect on
3 that, I don't know.

4 Q. Do you know whether they're providing
5 service in any of the other rural areas?

6 A. My understanding is that they are
7 providing service in other rural areas.

8 Q. So the denial of ETC status did not deny
9 them the ability to compete?

10 A. Yes, that's correct. And the denial of a
11 CPCN for cable telephony at present, given the
12 uncertainty of the Federal directive on what this
13 really is, would not deny Bresnan to compete either.
14 This is really a case where Bresnan wants to get a
15 stamp of approval from this Commission in doing
16 something and --

17 Q. That would only happen if there were some
18 clear statement from the FCC that states are
19 preempted in regulating cable service; is that right?

20 A. Well, the service that we're dealing with
21 right now, the cable telephony, is currently in a,
22 for lack of a better term, a state of limbo. It is
23 not a telecommunication service as defined by the
24 FCC. And so until the FCC makes an affirmative
25 statement that it is, then the current scenario of

26

1 the status quo would hold indefinitely.

2 Q. Maybe you don't have an opinion, but it is
3 telecommunication service under State statute.

4 A. The -- wow. The FCC would probably argue
5 that they have jurisdiction over this, it's
6 interstate, since they've claimed that certain
7 portions of VoIP service are interstate in nature.
8 So I don't want to get into that fight as to whether
9 who has jurisdiction, but I think the FCC would
10 preempt the State in that.

11 Q. Now, you indicated that Alltel is
12 competing today in the Uinta Basin and other --

13 A. Subject to check. I don't know. I'm not
14 certain if Alltel is in the Uinta Basin itself. I
15 recall seeing some material from the Division
16 testimony and possibly some exhibits that I'm
17 referring to, but I don't have them here so I can't
18 verify.

19 Q. Would you agree that the current
20 unregulated competition is affecting the State and
21 Federal USF today?

22 A. Yes, it is.

23 Q. And if I used the term "also Federal USF,"
24 that would come into play for other rural areas in
25 the State?

26

1 A. For other -- yes, I was going to clarify.
2 The Vernal Exchange, if we're dealing with that
3 specifically, does not get Federal Universal
4 Services. So generally, to the extent that you
5 actually lose a customer, somebody essentially, in
6 colloquial terms, "cuts the cord" and does not have a
7 wire line service and goes wireless, then that effect
8 would occur.

9 Q. The effect would occur that it would
10 affect the amount of -- eventually the amount of, all
11 else being equal, the amount of Federal and State USF
12 that a company would get?

13 A. Yes.

14 Q. Now, Vernal doesn't get any Federal USF;
15 is that right?

16 A. No, it does not. It's subject to certain
17 provisions in the Federal Code that prohibits it from
18 getting it based upon the acquisition.

19 Q. Do you know of any other exchanges in Utah
20 that fall under that order?

21 A. Any exchange, unless they received a
22 waiver, any exchange that was purchased by a
23 rate-of-return company from a price cap company would
24 fall under that provision. It's 54-300 is the
25 Federal Code of Regulations part that deals with
26

1 that.

2 Q. For rate-of-return regulated companies in
3 the rural areas, though, any competition that would
4 occur today from Alltel, the effect would be
5 addressed both by the Federal and State Fund?

6 A. Eventually through a process. At the
7 Federal Fund it's a little bit more streamlined than
8 at the State side as far as affecting the fund
9 because, if I'm not mistaken, there has to be a
10 reauthorization of the State Fund draw and on the
11 Federal side that process is a little more
12 streamlined, but there would be an effect. That's
13 not to say, you know, what we're here today for is
14 whether the Commission should place a stamp of
15 approval on that process. Essentially should the
16 State Commission engage in piling on the competition
17 in the Vernal Exchange. It's a stipulated element.
18 We cannot find it, a fact, that competition in
19 various forms does already exist in the Vernal
20 Exchange. The question is should the Commission
21 actually stamp its approval on yet another carrier
22 going into the Vernal Exchange.

23 Q. But it's clear, though, that your main
24 area of economic concern is the impact that this will
25 have on the State Fund; is that right?

26

1 A. Yes, that is correct. My testimony from
2 URTA directs to the policy and also to the analysis
3 of what the impact on the State Fund would be.

4 Q. Do you find it somewhat contradictory that
5 a State Fund that's supposed to be competitively
6 neutral, technologically neutral and portable would
7 be the basis for denying competition?

8 A. No. The public interest would -- the
9 public interest should overarch all of those
10 considerations.

11 Q. The public interest being that this
12 minimum amount of customers that you refer to are
13 going to be benefited and that's basically the only
14 benefit you see from Bresnan?

15 A. From what I have seen on the table in this
16 proceeding, that's the -- and that's actually
17 extracting out what people I believe have been saying
18 as far as the price benefit. There will be a small
19 group of people that would benefit from a low paying,
20 all you can eat, quote-unquote, long distance
21 offering.

22 Q. Do you have -- if we could go to your
23 Exhibit I then for a moment.

24 A. Yes. Exhibit I, that's Exhibit 2.9?

25 Q. Yes. And also, do you still have the
26

1 Bresnan Exhibit 5 up there?

2 A. Yes, I do.

3 Q. These percentages that are shown in
4 Bresnan Exhibit 5 which you were actually critical of
5 saying that there are only two years and your
6 anticipation would be that they would be
7 significantly greater than this or potentially
8 greater; is that right?

9 A. No. My observation was that these
10 percentages since the ramp-up is longer than two
11 years to get a product into the market. These
12 percentages, these snapshot percentages, don't
13 reflect the kind of the long-term steady-state
14 impact. And you'll see this percentage go up over
15 time given that Bresnan is performing in these areas.
16 I also would like to reiterate that we are not
17 certain actually when they entered these markets.
18 This could be actually less than two years.

19 We have statements yesterday that said
20 that Bresnan entered Montana and Colorado in 2005 or
21 at least started service in 2005 under its own name
22 but using a different carrier, and an underlying
23 carrier of some sort, IDT is the underlying carrier
24 or providing service somehow. But exactly when they
25 entered these particular areas, which is a subset of
26

1 all the areas they entered into, I don't have any
2 information as to exactly when they entered those
3 markets.

4 So to shorten this answer, this is a
5 ramp-up percentage. You'll see that percentage, I
6 would expect that to go up over time.

7 Q. Would you expect each one of these
8 customers who are shown on Bresnan Exhibit 5 and also
9 on your percentages that you represent on your
10 Exhibit I to have made a decision that they're
11 benefiting from making the choice to go to Bresnan?

12 A. Yes. Individually they would make a --
13 for a variety of reasons, and we talked about this a
14 little bit yesterday in cross-examination, on there's
15 a multitude of facets for the choice of a consumer in
16 purchasing services. The bundled package, its price
17 to quality of service, all of those facets, even ego
18 attitude, ego effect on other people get it, the
19 Joneses get it, I get it, that type of thing.
20 There's a lot of different variables in dealing with
21 how a particular customer chooses a particular
22 service.

23 Q. So when you said that only a small group
24 of customers who have high long distance bills will
25 make this choice, you're not assuming that each one

26

1 of these customers that you've shown on Exhibit I
2 made that choice for that reason?

3 A. No. That reason -- my explanation of that
4 CLEC group is only on the price dimension. Because
5 if somebody is paying -- if somebody is using long
6 distance a lot and they're paying a lot of long
7 distance charges, they would be in that price
8 dimension and only in that price dimension. They
9 would say, if I can get an all-you-can-eat long
10 distance offering, I will take that. But that's a
11 very few customers, set of customers as opposed to
12 the aggregate set of customers.

13 Q. But each one of these customers who
14 switched are someone who couldn't do it absent
15 Bresnan being available to them?

16 A. They could do it with a Vonage service now
17 and they could also do it with wireless services. I
18 use my wireless exclusively for long distance. Well,
19 not exclusively, but I should say I use my -- all my
20 long distance calls are on my wireless phone. I
21 don't even have a pick on my home phone. You can't
22 dial 1 plus on my home phone, you get an intercept.
23 So I have made that decision because I'm attracted to
24 an all-you-can-eat service, and since my headquarters
25 is in Maryland, I have a tremendous amount of calls
26

1 back to Maryland.

2 Q. Let me ask you another area if we could.
3 If we could go to your page 7 of 10 of your Direct,
4 on line 142.

5 A. Yes, I'm there. This is confidential
6 information.

7 Q. Yes. The revenue figure used there?

8 A. Yes.

9 Q. Did you just calculate that by taking the
10 revenues for Uinta Basin and dividing it by the
11 number of customers?

12 A. No. The analysis for deriving that number
13 that's reported on line 142 can be found in Exhibit
14 2.4. And I used the year-end 2006 trial balance and
15 examined by account the various local service
16 accounts that would be lost to UBET in the event of a
17 lost customer.

18 Q. That's part of -- you took the not total
19 revenues, but the revenues that you assumed would be
20 lost?

21 A. Yes.

22 Q. And divided them by the number --

23 A. Yes, by account. I looked at each account
24 on Exhibit 2.4 and said, would this be lost or would
25 it not be lost if the customer left.

26

1 Q. Now, it's fair to say, though, that you
2 didn't separate that between revenues for business
3 versus residential?

4 A. No. That information, the trial balance
5 information is not set up under a Bis Rez break and
6 so I did not have any information to make that
7 determination.

8 Q. Would you believe that the revenues from a
9 business customer would be greater than revenues for
10 a residential customer generally?

11 A. It depends on the customer. If you have a
12 gas station with a pay phone, you know, it's not
13 likely they're going to have much business
14 additional revenues. A residential customer might
15 have more depending on the type of calls that they
16 make and the features that they order. So it's a
17 little -- I can't think -- you can't in rural areas
18 say definitively business revenues are going to be
19 greater on a per line basis than residential.

20 Q. But whatever it is, you didn't try and
21 make that determination?

22 A. No. I did not analyze the data in a
23 residential versus business framework because to do
24 so with trial balance numbers would be somewhat -- it
25 would be entirely based upon the assumptions that I

26

1 would make as to how to break up the percent, the
2 numbers.

3 Q. A little later on that page, line 152.

4 A. Yes.

5 Q. You say, "There will be other cable
6 providers seeking similar certificates in other areas
7 served by rural rate of return carriers."

8 A. Yes, that's very likely.

9 Q. Who are they?

10 A. The other carriers, other cable providers?

11 Q. Yes.

12 A. They are independent cable providers, they
13 are cable providers that are affiliates even of the
14 local telephone companies in that regard. I mean,
15 there's a whole panoply of cable providers that
16 provide service in the state.

17 Q. So you understand, then, do you not, that
18 most of the -- many of the cable providers in the
19 other rural areas of the state are the independent
20 telephone companies?

21 A. They are companies that are affiliated to
22 the independent telephone company. I don't -- my
23 understanding is not that they are actually the
24 telephone company itself, they are a separate legal
25 entity that's affiliated with them. Those do exist.

26

1 Q. What are the non-affiliated companies in
2 the rural areas?

3 A. Well, I think there's -- one that comes to
4 mind directly, and the name escapes me, but the one
5 in Price, for example, is not -- there's a cable
6 company in Price that's not affiliated with Carbon
7 Emery. And I'm sure there are others if I were to
8 have done a search of the state.

9 Q. Who are the -- the calculation that you
10 made down on line 157.

11 A. Yes. That is -- go ahead.

12 Q. What were the assumptions you used in
13 making that calculation?

14 A. That calculation uses the same type of
15 line count loss that's estimated in the Vernal
16 Exchange and applies it to the rural exchanges across
17 the state.

18 Q. The same type of line loss that you show
19 in your Exhibit I?

20 A. Yes. The same type of line loss in
21 Exhibit I, Scenario 4. And that's based on a
22 percentage, percentage of lines loss and that type of
23 thing.

24 Q. And then you came up with a revenue
25 figure?

26

1 A. Yes. Using the information from the
2 Division I was able to identify the amount of total
3 revenue disbursed from the State Fund and then
4 applied that percentage to get essentially a -- this
5 particular number that we're talking about on line
6 157.

7 Q. So you took the calculated revenue loss
8 like you have shown for Uinta Basin on Exhibit I and
9 applied that to the state as a whole?

10 A. To the State Fund disbursement for the
11 rural carriers, yes.

12 Q. Dollar for dollar?

13 A. The percentages applied to the total. And
14 so I believe, yes, if I understand what dollar for
15 dollar means.

16 Q. Well, you took the dollars, you didn't
17 adjust them somehow for other sources of support?

18 A. No. No. That's right, the loss --
19 correct. The loss of -- for the carrier will be
20 matched dollar for dollar for the State Fund
21 disbursement. That's what this particular number
22 represents.

23 Q. So you didn't attempt to take into account
24 that other rate-of-return carriers also receive
25 Federal support?

26

1 A. No. I did not analyze the Federal support
2 impact because I don't believe there will be any
3 Federal support impact under the current Federal
4 Rules. And so -- and furthermore, my analysis was
5 limited only to the State Fund impact and not to
6 issues related to the Federal.

7 Q. I thought you indicated earlier that when
8 a rate-of-return regulated company loses customers
9 today, which they may be, that it will affect their
10 Federal and State USF support?

11 A. Yeah, let me clarify. It's a little
12 complicated, but I think I can do it quickly. The
13 Federal program is a program that's based upon the
14 costs of the actual company sent to the, it's called
15 USAC, U-S-A-C, Universal Services Administrative
16 Company. It's a subsidiary or affiliate of NECA, the
17 National Exchange Carrier Association.

18 Anyway, the incumbent information is sent
19 to that agency and Federal Universal Service is
20 disbursed based upon those costs. If an competitive
21 ETC receives designation for an area then they are
22 able to draw on a per line basis that same amount of
23 money.

24 However, if a company loses a line for
25 whatever reason, somebody moves out of the area or
26

1 due to competition, the costs that are reported to
2 these agencies, these Federal agencies are going to
3 be essentially the same. They're not going to change
4 all that much with a line loss, with line loss.

5 And so the Federal effect is, if there is
6 any, it's very transitional because the company would
7 receive funding based upon the costs that they
8 report, not just the line counts that they report.

9 So if I -- and I believe I do need to
10 clarify that. I think before I did say that there
11 would be a Federal effect, but that effect is, in the
12 full analysis, is not there under current rules.
13 They would lose -- let me just put an asterisk there.
14 They would lose potentially some money in the very
15 short term during the filing processes, but that's
16 not material to the overall impact.

17 Q. The filing processes, you mean of --

18 A. There's windows for filing and all that
19 stuff. That's just administrative.

20 Q. That's true for the State Fund too, that
21 you have to file for an increase?

22 A. Yeah.

23 Q. Until that filing occurs your funds aren't
24 being made up?

25 A. That's right. But I think, as I

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1 mentioned, I feel the State process is not as
2 streamlined as the Federal process because there has
3 to be essentially a reauthorization of State Funds at
4 a new level.

5 And until, I should add, until that
6 process is gone through, then we have even, probably
7 even a situation that's not necessarily related to my
8 testimony because my testimony is related to the
9 State Fund. But if I can add, if the reauthorization
10 of additional State Funds does not occur then we will
11 see a decline in bottom line revenues for UBET and
12 that will reduce the incentive, as you know, reduce
13 the incentive to invest in the infrastructure in
14 rural areas and it will dampen the investment in the
15 rural areas because it provides a signal that the
16 rate of return is not as robust as -- or is not as
17 available as it otherwise would be.

18 Q. I think that's all. Thank you.

19 A. Thank you.

20 JUDGE GOODWILL: Mr. Proctor?

21 MR. PROCTOR: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. PROCTOR:

24 Q. Good morning, Mr. Meredith.

25 A. Good morning.

26

1 Q. Are you familiar -- well, let me start
2 over. Is there any area within UBTA's territory that
3 is presently unserved by basic telephone service as
4 basic telephone service is defined in the Utah Code?

5 A. I do not know. That's not my -- I'm not
6 the witness to be asked that. I think Mr. Todd would
7 be the witness to answer that. I do not know. I
8 have not studied it.

9 Q. You're appearing here on behalf of the
10 URTA, correct?

11 A. Yes.

12 Q. And who exactly is the URTA?

13 A. On page -- in Exhibit 1, my Direct
14 Testimony, there are 14 companies starting on line 61
15 that are listed. All West Communications, Beehive
16 Telephone Company --

17 Q. You needn't read them. I appreciate that,
18 but you needn't read the names of them all.

19 A. Okay.

20 Q. Who are the members, are they independent,
21 rural telephone companies?

22 A. Yes.

23 Q. Do you know if they all receive State USF
24 Fund disbursements?

25 A. They do not, not all of them do, as I
26

1 understand.

2 Q. How many do of the total number?

3 A. That varies. The Division testimony, if I
4 recall, has indicated that there's at least two, if
5 I'm not mistaken, that are now not receiving support,
6 but I do not know the total tally.

7 Q. Do you know of any areas within the URTA
8 members that are not served by basic telephone
9 service?

10 A. I have not studied that. I do not know.

11 Q. Have you ever made that inquiry in
12 connection with this or any other proceeding in which
13 you've testified on behalf of the URTA?

14 A. No.

15 Q. Do you think that would be important to
16 know if, for example, there are no unserved areas
17 within either UBTA or any other rural telephone
18 company's service area?

19 A. In other proceedings or in this
20 proceeding?

21 Q. In this proceeding.

22 A. I don't know exactly how it would tie in
23 to the limited scope of my testimony, but I'm sure
24 you'll help me.

25 Q. I surely will. You stated that in the
26

1 event there is a lost USF contribution to UBTA, for
2 example, that they will have less of an incentive,
3 perhaps no incentive, to invest in rural areas to
4 provide Universal Service. If there are no unserved
5 areas within UBTA, then they have no incentive either
6 way as far as basic telephone service; isn't that
7 correct?

8 A. No, no. First of all, the statement was
9 we were talking about or I was discussing the delay
10 in getting another reauthorization of State Fund, and
11 that would be -- and it is correct that there would
12 be a signal sent to them to invest in less. But the
13 basis of the question and why I disagree with your
14 statement is there's more to Universal Service than
15 just putting infrastructure in the ground and leaving
16 it there. There's operations, there's maintenance,
17 there's replacement because the equipment does,
18 indeed, deteriorate and needs to be replaced. So all
19 of those factors come into play, it's not put in and
20 it stays forever.

21 Q. Well, let's assume there are no unserved
22 areas within UBTA service territory, and in fact
23 UBTA, with the assistance of the State USF, is
24 maintaining, operating the system and making
25 necessary upgrades for basic telephone service so

26

1 that it is reliable quality service.

2 Now, has that not met the purpose or the
3 goal of the Universal Service statutes?

4 A. Well, the purpose of Universal Service is
5 to preserve and advance Universal Service. So to the
6 extent that there's directive to advance it either in
7 providing better facility or improving facility,
8 changing out old switches, as has been done in the
9 past to newer generation switches, improving the
10 distribution plant, improving the transmission
11 equipment, all of those things are involved in the
12 Universal Service equation.

13 Q. Would that not also apply, then, to
14 advancing cable, fiberoptic, wireless, other forms of
15 telecommunications within those rural areas, in
16 addition to the basic telephone service?

17 A. To the extent that they're covered by the
18 State Fund, yes.

19 Q. Well, even to the extent that it's not
20 covered by State Funds, UBTA has an incentive to
21 expand other services into those rural areas because
22 that, in fact, generates revenues for them, correct?

23 A. Yes. It generates revenues, customers who
24 seek those services. And UBET and all other carriers
25 are seeking to provide what customers are wanting.

26

1 Q. Well, for example, the company has a
2 certain limited revenue from a basic telephone
3 service customer, whereas, if you begin to add those
4 additional features, even additional features to your
5 basic telephone service, the revenues increase for
6 UBTA, do they not?

7 A. Yes.

8 Q. But the USF amount or contribution remains
9 the same; is that correct?

10 A. The USF amount is set during a -- I don't
11 know if it's called a proceeding, but it's set during
12 a procedure where all of those factors are taken into
13 account.

14 Q. In your Direct Testimony on page -- or
15 excuse me, on line 142 and 143 you use the
16 confidential numbers of the UBTA's average monthly
17 revenue per line and then the amount of monthly State
18 Funds it receives per line; is that right?

19 A. Yes.

20 Q. And the average monthly revenue per line
21 is a function of the service provided and the number
22 of different services and so forth that are provided
23 by UBTA to a customer, correct?

24 A. Yes. I need to note that that number is a
25 number that's derived from Exhibit 2.4 and it's only

26

1 referring to revenues that potentially would be lost
2 if a customer left.

3 Q. Left in its entirety?

4 A. Cut the cord.

5 Q. Completely divorced itself from UBTA's
6 system?

7 A. Yes. And has no customer relationship
8 with UBET.

9 Q. Now, you also on line 147 have again a
10 confidential number, is the loss per month in the
11 event that so many customers leave UBTA in the Vernal
12 exchange and move to Bresnan?

13 A. Yes.

14 Q. Is that confidential number the USF loss
15 or the total revenue loss including USF?

16 A. That is the -- that's the State Fund.

17 Q. The State Fund?

18 A. That's the amount of additional State
19 Funds that would be necessary to cover the loss in
20 revenues if the customer were to leave UBET's
21 relationship.

22 Q. What revenues are you talking about? Are
23 you talking about the service revenues or the USF
24 revenues or a combination of the two when you
25 calculate --

26

1 A. The number on 142, the revenues, service
2 revenues lost.

3 Q. And that is a function of the monthly
4 revenue per line plus the monthly State Fund per
5 line?

6 A. No. The State Fund is not included in the
7 first number.

8 Q. All right. So the number on line 147 is,
9 in essence, the lost revenues due to one company
10 competing with another for certain services and the
11 other company won and they took the customer; is that
12 right?

13 A. Yes.

14 Q. Would the loss of that customer diminish,
15 then, UBTA's State Fund revenue?

16 A. The loss of a particular customer -- I
17 believe the answer is no, until there's a
18 reauthorization or reprocedure of the State Fund.
19 There would be no effect until there's a
20 reauthorization. But I'm not sure if the State Fund
21 is on a per line basis and then distributed on a per
22 line or if it's based upon an aggregate authorization
23 amount.

24 Q. And if you're correct, and I believe you
25 are, that the answer is no, the State Fund revenue

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1 paid to UBTA remains the same unless changed through
2 another proceeding. It wouldn't matter whether it's
3 per line, there's going to be so much money sent to
4 UBTA now and there will be so much money sent to
5 them, same amount, in the event Bresnan is operating
6 in the Vernal Exchange?

7 A. Yeah. That's how I've done the analysis
8 because I excluded the number on 143 from my
9 aggregate lost revenue amount.

10 Q. So the loss that you've calculated per
11 month on line 147, that total amount, that is a
12 competitive loss because instead of somebody buying a
13 Ford they bought a Chevrolet? That's the loss from
14 that consequence, correct?

15 A. That is the loss of a customer severing
16 its relation with UBTA where UBTA is a rate-of-return
17 regulated company. It's not a Ford dealership or a
18 Chevrolet. Those analogies are not appropriate
19 because of the regulatory construct.

20 Q. All right. I apologize for that. But
21 from the customer's standpoint, instead of paying
22 UBTA customer, our constituents, the Committee's
23 constituents, they're paying Bresnan, correct?

24 A. Yes.

25 Q. Now, you've identified revenue loss in
26

1 several instances here. And are there ways, in your
2 judgment and in your experience, that any of the URTA
3 members or UBTA could in this case act in a manner to
4 retain or recapture customers that have gone to
5 Bresnan and have severed their relationship with that
6 rural telephone company?

7 A. Yes.

8 Q. What are those ways?

9 A. There are ways, and we have experience in
10 other states, I have observations in other states
11 where there are packages, service packages that are
12 offered trying to increase marketing. These are not
13 rocket science ways. I mean, you could probably come
14 up with a list just like myself on how companies
15 could possibly do that. They have to be, however,
16 constrained with several constraints that aren't
17 apparent in other type of applications. One is
18 rate-of-return regulation and two is carrier of last
19 resort regulation and responsibilities. And so their
20 actions are somewhat muted than the free-for-all we
21 had in the free market.

22 Q. But they are nevertheless, in your
23 experience, ways in which the company can seek to
24 regain that customer that may have severed its tie
25 with UBTA?

26

1 A. I believe the carriers that would be
2 affected, rural carriers, my experience in other
3 states is that they do as much as they can in order
4 to retain the customer.

5 Q. Now, is it not in UBTA's interest to
6 engage in those marketing practices and packaging and
7 so forth in any event in order to enhance the
8 financial results of its company as a whole?

9 A. Yes. And companies do that independently
10 of this too, as well. I mean, there's a lot of media
11 splash on one-bill services and that kind of thing
12 that people apparently like to pay one big bill
13 instead of several little bills. That's an
14 interesting economic scenario to analyze as well, as
15 to why that is. But they have that appeal that it's
16 made possibly simpler, that kind of thing.

17 Q. You understand that UBTA is a co-op,
18 correct?

19 A. That's my understanding.

20 Q. And to your knowledge, are there any other
21 URTA members who are also telephone co-ops?

22 A. Yes.

23 Q. And which ones are they?

24 A. There are -- let me go back to the list.

25 I know Emery Telecom, if memory serves me, is a

26

1 cooperative. And South Central I believe is a
2 cooperative. There's several. I can get that list
3 for you if you need it.

4 Q. In your experience also do the URTA
5 members and UBTA rely upon State USF payments to
6 their bottom line, I believe "bottom line" was the
7 phrase that you used, insofar as their financial
8 results and the success of the company?

9 A. Do they rely on --

10 Q. The State Fund?

11 A. -- the State Fund?

12 Q. Yes.

13 A. The State Fund is a revenue stream that
14 helps them have ongoing operations, yes.

15 Q. Are you also aware that a co-op, in
16 particular UBTA, does pay patronage payments to its
17 members?

18 A. I'm not aware, but subject to check, yes,
19 I can accept that.

20 Q. Do you believe that the patronage comes
21 from the overall financial results from the company?

22 A. I would think so, yes.

23 Q. And that would be regardless of the
24 source?

25 A. That would be --

26

1 Q. Regardless of the source of the revenue?

2 A. Regardless of the source, yes. There's
3 no -- as far as revenues go, we don't mark dollars
4 with USF and, you know, it goes into a fund, it goes
5 into the general accounting and it goes there, you
6 can't identify it out. Those patronage dividends are
7 returns on equity, essentially, for viable commercial
8 operations. You know, the investors do get return on
9 their investment.

10 Q. You would categorize, then, a patronage
11 member, a member of a co-op, as being a shareholder?

12 A. Very loosely, you could think of them that
13 way.

14 Q. You stated that in your judgment there was
15 a small select high-volume user that would be
16 attracted, a small group that would be attracted to
17 Bresnan in the Vernal Exchange. Am I stating that
18 correctly?

19 A. I believe my statement was there's
20 obviously a select group of high-volume long distance
21 users that would be attracted to an all-you-can-eat
22 long distance offering.

23 Q. What would be the size of that small
24 select group?

25 A. It depends upon the demographics and the
26

1 characteristics of the area.

2 Q. Did you do any study or evaluation of the
3 Vernal Exchange to try to identify the size of the
4 small group?

5 A. No, I did not.

6 Q. Using just the term "small" for whatever
7 that might mean now, would that mean also that the
8 balance of the customers in the Vernal Exchange who
9 would look at Bresnan are really comparing Bresnan's
10 commercial service, competitive service, with UBTA's
11 commercial competitive service?

12 A. Yes.

13 Q. And they're going to be making the
14 decision whether to switch to Bresnan based upon all
15 that multitude of factors that you described as
16 explaining why a customer does one thing versus
17 another?

18 A. Yes. The customer behavior in all its
19 variety.

20 Q. That multitude of factors why a customer
21 may choose Bresnan over UBTA, would those also
22 explain or tend to define the public benefit that is
23 present when Bresnan is operating in the Vernal
24 Exchange and competing with UBTA?

25 A. Those factors help define the individual
26

1 benefit.

2 Q. But not the public benefit?

3 A. I don't believe you can aggregate
4 individual benefit to public benefit. I believe
5 there's some non-linearities there. I don't think
6 it's a linear function.

7 Q. So when the Commission speaks in terms of
8 the public interest, that is something that is
9 divorced from or isolated from the interest of the
10 residential consumer?

11 A. No. It's integrated with, but not
12 one-to-one directly. It's not additive. I believe
13 there's some additive factors on the aggregate public
14 benefit that are taken into account by the Commission
15 that are not just individual aggregated benefits.

16 Q. Do you believe that you must monetize the
17 public benefit in order to compare it with the State
18 Fund impact in making the decision that the
19 Commission is asked to make here?

20 A. No. It's more of a judgment call, there's
21 more nuance than that. It would be very difficult to
22 monetize those benefits in that way. You're looking
23 at are the benefits that are on one side, are they
24 not significant -- sufficient ways to offset known,
25 intangible financial, you know, burdens that are

26

1 going to be imposed on the State Fund and other
2 issues of public interest. My testimony is only for
3 the State Fund. But you have to weigh that and judge
4 that. It's not a simple equation. Otherwise we
5 would just have a computer sitting here. No offense,
6 but that's what would happen if you were to advocate
7 monetizing the benefit.

8 Q. Would some of those intangible -- or
9 non-tangible, I should say, factors be found in the
10 legislation that encourages competition for telephone
11 service in the State of Utah?

12 A. The legislation balances the development
13 of competition with the preservation and advancement
14 of Universal Service. I think if we were to parse
15 through the legislation you would see that. At least
16 that's the impression I get, a non-lawyer speaking
17 here. But that's the balance. I mean, there's a
18 balance there that has to occur.

19 Q. So that balance or preserving that
20 balance, what we're looking for in this particular
21 case as well, is the impact on State USF Fund
22 acceptable in light of the public benefits determined
23 in the good judgment of the Commission; is that the
24 question?

25 A. That is the question.

26

1 Q. Now, would the consumers' interests in
2 having choice also be one of those factors that the
3 Commission should consider?

4 A. Yes.

5 Q. I have one more question, and I may not be
6 any more helpful or learn any more than I did
7 yesterday, but I'm going to try. Do you have Bresnan
8 Exhibit 6?

9 And, Mr. Nelson, if you could help, I
10 would appreciate it very much.

11 This was the Data Request that used the
12 term "pass" that created a lot of confusion
13 yesterday, at least I was confused, maybe no one else
14 was. And this was a Data Request crafted or
15 submitted on behalf of Utah Rural Telecom
16 Association. Did you initiate or even draft this
17 question yourself?

18 A. Yes. I assisted in drafting and writing
19 this question.

20 Q. Okay. You used the term "pass"?

21 A. Yes.

22 Q. And then you described that as being where
23 the cable plant, or excuse me, "pass today with its
24 cable plant where Bresnan could provide cable data
25 and voice services."

26

1 Were you thinking in terms of passing an
2 individual residence or home?

3 A. Yes.

4 Q. And when you used the term "pass" where
5 you could provide service to the home, was your
6 question assuming that it would be a household that
7 would require only a service drop, for example, to
8 bring the cable service from the pole to the four
9 walls of the home?

10 A. Yes. The -- yes. The answer is yes.

11 Q. So it would be a rather simple matter,
12 then, for Bresnan to connect up to that particular
13 customer? Is that your --

14 A. Well, if I had to do it it wouldn't be
15 simple, but I imagine if you had technical expertise
16 in hooking up cable that it would be relatively
17 straightforward.

18 Q. I agree. All right. So when you saw this
19 response in which Bresnan described how many
20 residential households its cable plant passes, did
21 you understand then that essentially Bresnan has its
22 cable plant in virtually all of the Vernal Exchange?

23 A. No, I did not understand the scope of what
24 the -- I'm sorry, of what the one, two, three --

25 Q. Actually, I think it's non-confidential.

26

1 Let's just keep it out if you wouldn't mind.

2 A. What the number on the sixth line
3 represents, I did not correlate that with the size of
4 the Vernal Exchange, whatnot. What I needed this
5 number for was in cable literature and cable
6 pro forma forecasting, passed homes is the preferred
7 way of estimating subscriber penetration. So I
8 needed to get something from Bresnan as to how many
9 passed homes they had so I could apply the industry
10 average of 20 to 25 percent that Comcast used, not
11 the industry average, but the number that Comcast
12 uses for their cable plant to get how many homes
13 would possibly leave the network.

14 Q. So when you used the term "pass" you were
15 really looking for how many customers could tomorrow,
16 for example, sign up with Bresnan and not require
17 Bresnan to either hang more infrastructure or dig
18 more trenches; is that fair?

19 A. In Bresnan's ideal world you would see
20 that number tomorrow, yes, going, it would be 100
21 percent penetration.

22 Q. Now, you were present yesterday, of
23 course, and I'm certain that you heard the testimony
24 concerning the number of households that UBTA served
25 within the Vernal Exchange. Having heard that

26

1 testimony, do you conclude now, today, that in fact
2 Bresnan's cable plant is available in virtually all
3 of the Vernal Exchange and will reach virtually all
4 of UBTA's customers?

5 A. I don't. Because I know in preliminary
6 information that we had today before we went on the
7 record that Mr. Todd was going to come back and
8 explain that. So I don't know what he's going to
9 say.

10 Q. All right. That's fair. Thank you very
11 much, Mr. Meredith.

12 MR. NELSON: Your Honor?

13 JUDGE GOODWILL: Yes?

14 MR. NELSON: Could I ask an additional
15 area of cross that came up in response to the
16 questions that Mr. Ginsberg and Mr. Proctor raised?

17 JUDGE GOODWILL: Any objections to that?

18 MR. MECHAM: No.

19 JUDGE GOODWILL: Go ahead.

20 FURTHER RECROSS-EXAMINATION

21 BY MR. NELSON:

22 Q. I wanted to ask a question with relation
23 to page 7 of your testimony, the Direct Testimony
24 that you filed. Do you still have that, sir?

25 A. Yes.

26

1 Q. Okay. And this came up in the discussion
2 that you were having as to how you were doing this
3 calculation. And I think, am I right that the
4 percentage on line 156 -- I'm sorry, 146, I can't
5 read numbers, the percentage on 146, that's not
6 confidential; is that correct?

7 A. That's not confidential.

8 Q. Okay. So you described what you state as
9 a very conservative upsell rate of 60 percent as your
10 ultimate mark that you think Bresnan may achieve? Is
11 that a fair interpretation of what you're saying
12 there?

13 A. On line 136 I mention that I'm not pleased
14 with the level of precision I was able to capture in
15 my first Direct Testimony. I later looked at better
16 evaluation on Exhibit 2.9. So the upsell rate of 60
17 percent for Bresnan produces a number, you know,
18 whatever that number is of customers leaving the
19 network. But based on better information, far better
20 information using the passed homes analysis, we're
21 able to get much better information. Those numbers
22 are slightly different, but the order of magnitude of
23 the overall impact is still within the same ballpark.

24 Q. Okay. So when you used the words "very
25 conservative," do I take that that you believe it

26

1 likely that Bresnan's take rate will exceed 60
2 percent? Is that what you mean by "very
3 conservative"?

4 A. No. This is an upsell rate, so these are
5 customers who are already customers of Bresnan for
6 cable and data.

7 Q. Oh, I see.

8 A. So then you're just adding the voice
9 component to it, and that's what that number is.
10 That's one analysis that I did because I didn't have
11 any information on pro formas. Then when we get to
12 2.9, I'm able to refine it much better because I had
13 passed home data.

14 Q. So when we get to 2.9, then, am I correct
15 that the number you would say as the conservative
16 estimate of what the impact of Bresnan's entry would
17 be, would that be the numbers, generally speaking, in
18 the Scenario 3 where you used the Comcast estimates
19 as a market share as a percentage of homes passed?
20 Is that really what, as you sit here today, is your
21 best estimate of what the impact of the USF will be?

22 A. Yes. Scenario 3 on 2.9 refers to the
23 Comcast percentages and then Scenario 4 is
24 essentially drawing from my Direct Testimony with the
25 partial information as to what the impact was there.

26

1 So that's how those scenarios work out. Scenario 3
2 is using essentially the Comcast, which is the late
3 -- you know, which is a good proxy for cable
4 operations. They're certainly into the cable
5 telephony market and are doing essentially the same
6 type of business offering as Bresnan. And so absent
7 Bresnan's pro formas, which I might add should have
8 been there, I used Comcast.

9 Q. Okay. Lastly, the percentages of the
10 Comcast, the 20 and 25 percent, in your experience,
11 have any rural independents in Utah experienced a 20
12 or 25 percent loss of lines due to wireless
13 competition?

14 A. I don't believe so.

15 Q. Wouldn't, in fact, it be the case that the
16 numbers of lines lost to wireless competition would
17 be much lower than 20 to 25 percent? Would that be
18 fair, sir?

19 A. Yes, it would. Based upon my experience
20 in a wireless scenario, up until recently, until we
21 get to Generation "X", we have the situation where
22 the wireless is a compliment to the wire line, not a
23 perfect substitute. So it would be lower.

24 Q. Okay. Thank you.

25 MR. NELSON: No further questions.

26

1 JUDGE GOODWILL: Mr. Meredith, just to
2 make sure I understand, as we sit here today, then,
3 what is your estimate of the USF impact if the
4 Commission were to grant the certificate?

5 MR. MEREDITH: Approximately \$500,000. I
6 mean, we can't -- let's not get to a level of
7 precision that obscures the assumptions that we have.
8 I mean, these are estimates that are used. So
9 there's no reason to take it down to the dollar or
10 the penny. So approximately \$500,000 is the
11 estimated amount.

12 JUDGE GOODWILL: Thanks.

13 Do you have redirect, Mr. Mecham?

14 MR. MECHAM: If we took a short recess I
15 may not.

16 JUDGE GOODWILL: Okay. We'll go ahead and
17 take ten minutes. It's a good way to get a break.

18 (Recess taken from 10:57 to 11:07 a.m.)

19 JUDGE GOODWILL: All right. Let's go back
20 on the record. Mr. Mecham, I believe the ball is in
21 your court.

22 MR. MECHAM: Thank you. I do have a
23 couple of questions, your Honor. So the recess had a
24 worse effect. I apologize.

25 /

26

1 REDIRECT EXAMINATION

2 BY MR. MECHAM:

3 Q. You have been asked, Mr. Meredith, several
4 times about your revenue per line number on I believe
5 it's line 142 of your initial testimony in this case?

6 A. Yes.

7 Q. And that is an average number?

8 A. Yes, that is an average number.

9 Q. What happens to the revenue per line in a
10 cherry picking situation?

11 A. Well, the number on line 142 is an average
12 for the whole system. And if you could identify the
13 cherries, the high revenue customers, that average,
14 that number would be higher than what was reported.
15 And so, again, because the lack of information you
16 can't really go into that analysis, you can just
17 state and qualify that this is an average across the
18 entire -- all of the exchanges that UBTA-UBET serves.

19 And to the extent that Vernal Exchange and
20 Vernal City represents a higher -- a higher -- not a
21 higher value customer, but a customer who actually
22 spends more on telecommunication services for one
23 reason or another, then that number could be higher.

24 Q. Okay. Thank you.

25 And then you indicated that one of the
26

1 only benefits that may be available will be to a
2 small number who use a lot of long distance service
3 and they'll use that all-you-can-eat service?

4 A. Yes. My -- I stated that a set of
5 customers that use a lot of long distance, high
6 volumes of long distance, will be attracted to an
7 all-you-can-eat offering.

8 Q. And if a provider like a Vonage who is
9 already providing bundled service like that has made
10 it available, what public benefit is there if someone
11 else comes in and does it? Are those customers
12 already not getting the choice that they're out
13 there?

14 A. Yes. If Vonage or a cable -- if Vonage or
15 a wireless carrier were offering all-you-can-eat long
16 distance offerings then the benefit is muted here
17 because the customers already have their -- that is
18 to say, for example, I put myself in that situation.
19 If I were living in the Vernal Exchange and had high
20 long distance, it would likely be I would have
21 already moved off of using UBET's long distance and
22 using like a Vonage service because of the price
23 differential.

24 Q. Thank you.

25 MR. MECHAM: That's all I have, your

26

1 Honor.

2 JUDGE GOODWILL: Mr. Nelson, any recross?

3 MR. NELSON: No thank you.

4 JUDGE GOODWILL: Mr. Ginsberg?

5 MR. GINSBERG: No.

6 JUDGE GOODWILL: Mr. Proctor?

7 MR. PROCTOR: Can I have a second?

8 JUDGE GOODWILL: Certainly.

9 MR. PROCTOR: No questions. Thank you
10 very much.

11 JUDGE GOODWILL: Mr. Stoll?

12 MR. STOLL: No questions.

13 JUDGE GOODWILL: Mr. Meredith, in your
14 opinion, if customers already had a choice, say,
15 through a Vonage service in the Vernal Exchange and
16 likely would have moved off already because of that
17 choice, does that have any impact on the numbers that
18 you are using as your estimates for line loss and so
19 forth were Bresnan to enter the market?

20 MR. MEREDITH: No. On the average, the
21 average revenue there, I'm safe because I used an
22 average revenue, I didn't go into the analysis of
23 trying to say, okay, let's look at high volume
24 customers and that type of thing. And no, I don't
25 believe it does because the take rates for cable

26

1 service, like Comcast uses, the 20 to 25 percent,
2 they use that in similar situations across the
3 country. And so that's kind of the standard target
4 that they're looking to get is the 20 to 25 homes
5 passed on to Digital Voice. So it would not affect
6 my analysis.

7 JUDGE GOODWILL: So it's fair to say,
8 then, that despite the choice that currently exists,
9 if Bresnan comes in, you would expect the line losses
10 used into there?

11 MR. MEREDITH: Yes. Given the information
12 that we have that's the best we can do using the
13 Comcast number on homes passed. I use actually a
14 homes passed percentage that's less than the 20
15 percent to get to that overall number that I talked
16 about before. So, you know, again, this is kind of
17 in a sense a generalization or kind of we're trying
18 to get the first approximation of a number.

19 JUDGE GOODWILL: Thanks.

20 Now, with respect to the number that was
21 referred to on line 142 of your Direct Testimony, the
22 average revenue per line?

23 MR. MEREDITH: Yes.

24 JUDGE GOODWILL: You indicated in redirect
25 just a minute ago that it may well be that in the

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1 cherry picking, and if I rephrase this improperly let
2 me know, that in a cherry picking situation you may
3 encounter for those particular lines in that monthly
4 average revenue that's higher than this number of
5 142?

6 MR. MEREDITH: Yes. Because when a
7 customer leaves, this number is an average, but when
8 a customer leaves that customer leaves with his or
9 her package or his or her -- you know, the demand
10 that that customer was using. And so that could be
11 higher, in the sense that we were talking about, just
12 because on the price dimension they would only be
13 looking at moving because of price, then it's likely
14 they would have already moved. But if you were to
15 look at the analysis, the cherry would be those high
16 revenue customers that use a lot of telecommunication
17 service, particularly long distance services.

18 I also need to emphasis that, remember the
19 discussion Mr. Hendershot had about this internal
20 cross subsidy? Rates for the UBET areas are
21 established on an average basis for the entire study
22 area. The cost of providing service in Vernal is
23 lower than the cost of providing service in the
24 hinterland just because of the density, the
25 compactness of the city. And so there's also not
26

1 only this revenue issue that we're dealing with, but
2 we also need to bring in what Mr. Hendershot was
3 saying, and I agree with him, that there's this
4 internal factor that you're using low-cost customers,
5 high-revenue customers. Those are the same person,
6 low cost and high revenue customers, when they leave
7 the network, leaving the hinterland in a perplexing
8 situation where you have high cost and low revenue
9 customers.

10 JUDGE GOODWILL: And I guess I just want
11 to make sure that I understand what you're basing
12 your assumption on, or your testimony on regarding
13 high cost -- low cost, high revenue as the people
14 that would be cherry picked. I take it that those
15 are the people, it seems the assumption is those are
16 the people that live in Vernal City?

17 MR. MEREDITH: Yes. I mean, in low cost
18 areas to serve. Those are the cherries.

19 JUDGE GOODWILL: But are those also the
20 people, necessarily, who are high revenue?

21 MR. MEREDITH: Not necessarily. They
22 can -- the high revenue, I have no idea where the
23 high-revenue customers reside. So we don't know, I
24 don't know that.

25 JUDGE GOODWILL: So for cherry picking --

26

1 MR. MEREDITH: There's probably a
2 possibility of an overlap there for both of those
3 things.

4 JUDGE GOODWILL: Right. But from a cherry
5 picking point of view you're speaking mostly of the
6 low-cost customers?

7 MR. MEREDITH: Low cost.

8 JUDGE GOODWILL: Any questioning based on
9 my questions?

10 Okay. Thank you, Mr. Meredith.

11 MR. MEREDITH: Thank you.

12 JUDGE GOODWILL: Anything further, Mr.
13 Mecham?

14 MR. MECHAM: No thank you.

15 JUDGE GOODWILL: Mr. Ginsberg, I guess
16 we'll turn to the Division.

17 MS. SLAWSON: Your Honor, did you want to
18 put Mr. Todd on?

19 JUDGE GOODWILL: Yes. Thanks, Ms.
20 Slawson, I appreciate that. As we discussed before
21 going on the record this morning, we will ask Mr.
22 Todd to return to the stand and go over some of his
23 testimony from yesterday regarding some of the
24 numbers that were challenged in the confidential
25 exhibits.

26

1 Mr. Todd, go ahead. I will just remind
2 you you're under oath. Go ahead.

3 BRUCE TODD,

4
5 called as a witness, being previously duly sworn, was
6 examined and testified as follows:

7

8 MR. SLAWSON: Your Honor, if I may
9 approach the witness?

10 JUDGE GOODWILL: You may.

11

12 DIRECT EXAMINATION

13 BY MS. SLAWSON:

14 Q. I would like to get Bresnan Exhibit 7.
15 Mr. Todd, you recall yesterday during your
16 examination, cross-examination, you were asked a
17 variety of questions regarding Bresnan Exhibit 7
18 which I have placed before you.

19 Do you have any testimony that you would
20 like to change or add to regarding your testimony on
21 Exhibit 7?

22 A. Just state that the numbers and the
23 information provided in Bresnan 7 are the numbers
24 that were provided by us and those are the numbers
25 that we at this time understand to be correct.

26

1 Q. Okay. And yesterday there was a little
2 bit of confusion, yesterday afternoon, as to whether
3 those numbers represented the Vernal Exchange or
4 Vernal City only. And have you made the
5 determination whether those numbers represent Vernal
6 Exchange in its totality?

7 A. Vernal Exchange in its totality is
8 correct.

9 Q. Okay. And additionally there were some
10 additional questions or inquiry made regarding
11 numbers involved or used in this litigation. Those
12 numbers were contained in confidential exhibits to
13 Mr. Coleman's testimony and confidential testimony to
14 Mr. Meredith's testimony.

15 However, have you had a chance to review a
16 copy Mr. Meredith's exhibit that was redacted of any
17 confidential information that pertained to Bresnan or
18 anyone else?

19 A. I haven't seen any confidential
20 information.

21 Q. Okay. Did you see an exhibit that was
22 prepared by Mr. Coleman that was redacted and only
23 contained information regarding UBTA-UBET?

24 A. I have not seen any information.

25 Q. And do you have any determination as to
26

1 whether the numbers that were used by Mr. Coleman or
2 Mr. Meredith as they relate to UBET, UBTA-UBET, if
3 those numbers were correct?

4 A. Those numbers are correct.

5 Q. Okay. And those numbers were a little bit
6 different than the numbers in your Exhibit 7. Can
7 you explain those differences?

8 A. I think they're based on timing as to when
9 those numbers were either taken for the report or
10 when the -- in a Data Request that would be maybe six
11 months difference as far as the numbers.

12 Q. Okay. And was there anything else that
13 you needed to correct?

14 A. No.

15 MS. SLAWSON: Okay. I have no more
16 questions.

17 JUDGE GOODWILL: Okay. Just to be clear,
18 Bresnan 7, as admitted yesterday prior to Mr. Todd's
19 testimony, is in fact the -- is Vernal Exchange, as
20 stated, and those numbers are as stated?

21 MR. TODD: Yes.

22 JUDGE GOODWILL: Thank you, Mr. Todd.

23 Mr. Nelson, any questions based on that
24 clarification of the Bresnan 7 and the numbers given?

25 MR. NELSON: I think just one, if I might.

26

1 REXCROSS-EXAMINATION

2 BY MR. NELSON:

3 Q. Mr. Todd, I appreciate very much you
4 researching this issue. That's very helpful.

5 You indicated that there may be a timing
6 difference between the numbers reflected in Mr.
7 Coleman and Mr. Meredith's exhibits as compared to
8 the numbers reflected in Response 1.1 and perhaps
9 UBET 1.2 as well in Bresnan Exhibit 7. I'm curious,
10 do you know what the difference is in terms of which
11 data is from what time period?

12 A. Well, my understanding is that the
13 information by Mr. Coleman and Mr. Meredith are
14 year-end information and Bresnan Number 7 are
15 databased on the Data Request.

16 Q. When you say that, that would be year-end
17 2006?

18 A. Yes.

19 MR. NELSON: Okay. Thank you, Mr. Todd.
20 No other questions.

21 JUDGE GOODWILL: Any other questioning?

22 MR. PROCTOR: Yes, your Honor, unless
23 somebody else wants to go ahead.

24 JUDGE GOODWILL: Go ahead, Mr. Proctor.

25 MR. PROCTOR: Thank you.

26

1

REXCROSS-EXAMINATION

2

BY MR. PROCTOR:

3

Q. Mr. Todd, you described that there are a difference in the numbers between Mr. Meredith and Mr. Coleman and the numbers that are contained on Bresnan 7. Do you know the difference?

4

5

6

7

A. I don't have the numbers in front of me from the year-end, but they're marginal.

8

9

Q. An insignificant difference?

10

A. Twenty 20, 30, 60, in that range.

11

Q. Thank you very much, Mr. Todd.

12

JUDGE GOODWILL: Thank you, Mr. Todd.

13

Mr. Ginsberg?

14

15

LAURA SCHOLL,

16

17

called as a witness, being first duly sworn, was

18

examined and testified as follows:

19

20

DIRECT EXAMINATION

21

BY MR. GINSBERG:

22

Q. All set?

23

A. All set.

24

Q. Would you state your name for the record?

25

A. Laura Scholl, S-C-H-O-L-L.

26

1 Q. And you have prepared testimony for the
2 Division that's been marked as DPU Exhibit 1; is that
3 correct?

4 A. Yes.

5 Q. And you had attached to that Exhibit 1.1.
6 Do you have any corrections that you wish to make to
7 that exhibit?

8 A. I have one small correction that I would
9 like to make on line 58. The second sentence that
10 begins there, "However, the DPU." I would strike
11 "has made" and insert "is prepared to make a
12 recommendation to the Public Service Commission."

13 Q. Okay. Now, you also have prepared a
14 Surrebuttal Exhibit which has been marked as DPU
15 1.1SR; is that right? Do you have that in front of
16 you?

17 A. I do.

18 Q. Does everyone have that? I think I handed
19 it out yesterday. And you'll be talking about that
20 exhibit in your summary and Rebuttal Testimony?

21 A. Yes, I will.

22 Q. And that exhibit was prepared by the
23 Division from USF records?

24 A. That's correct.

25 Q. And if those questions were asked of you
26

1 today in the Direct Testimony that you have given,
2 those would be the answers that you would give?

3 A. They are.

4 MR. GINSBERG: With that I would ask to
5 have Exhibit 1 and 1.1 and 1.1SR admitted.

6 JUDGE GOODWILL: Any objection to their
7 admission?

8 MR. STOLL: No objection.

9 MR. NELSON: No objection.

10 MR. MECHAM: No objection.

11 MR. PROCTOR: No.

12 JUDGE GOODWILL: They're admitted.

13 Q. (BY MR. GINSBERG) You also have prepared
14 a summary and additional comments you want to make,
15 including an explanation of this Exhibit 1.1; is that
16 right?

17 A. That's correct.

18 Q. Go ahead, then.

19 A. My testimony identifies the policy
20 considerations raised in this proceeding and their
21 unique nature. This is the first petition filed by a
22 competitive local exchange carrier seeking to serve
23 in a territory historically operated by a rural ILEC.
24 As a result, many policy issues and considerations
25 not previously brought before the Commission are

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1 raised in this docket.

2 After a great deal of analysis and
3 consideration, the DPU recommends that the PSC grant
4 Bresnan a Certificate of Public Convenience and
5 Necessity and that the PSC require Bresnan to serve
6 the entire Vernal Exchange.

7 Additionally, our analysis leads us to
8 conclude that any potential impacts on the USF over
9 time are within reason and can be addressed as
10 necessary in the ongoing management of the fund.

11 In support of our findings, we find that
12 the statute requires the Commission to make a finding
13 that granting any certificate is in the public
14 interest. To date, the PSC has granted CPCNs to
15 dozens of CLECs, and there are roughly 90
16 certificated CLECs in Utah at the present. The only
17 difference in this docket is that the CPCNs
18 previously granted are the entry into a service area
19 of a price-regulated company as opposed to a
20 rate-of-return company. Nonetheless, the public
21 interest test in this docket is likely still a
22 balancing test between consumer choice and potential
23 USF impacts.

24 As for the Supreme Court determination in
25 the Western Wireless case, the finding did not say
26

1 the PSC would never allow competition into rural
2 areas, but that increased burdens on the State USF
3 was not in the public interest in the absence of
4 offsetting public benefits. The Court further
5 concludes that the PSC order does not preclude
6 competition in rural areas.

7 In response to the rebuttal testimonies
8 provided, I think that it would be easy to be
9 distracted from what is really at issue here. All
10 that is before this Commission is whether to grant a
11 CPCN to Bresnan. Most of the objections being raised
12 are based on future unknowns. Given the statutory
13 guidelines favoring competition within which the DPU
14 must work and our review of potential USF impacts,
15 the Division would be hard-pressed to present a
16 viable argument as to why Bresnan should not be
17 granted a CPCN.

18 As to the state of the USF, although the
19 PSC receives monthly reports on the state of the
20 Universal Service Fund, I believe it might be useful
21 to review some of the summary data. Exhibit DPU
22 1.1SR consisting of three pages shows the history of
23 the USF surcharge, the summary of the State USF for
24 fiscal years 2003 through 2007, and a summary of the
25 State USF for the past 12 months.

26

1 The USF surcharge was changed in 1997 from
2 1/2 cent per minute on interstate toll to a
3 percentage of intrastate billed retail rates. The
4 percentage surcharge was initially set at 1 percent
5 in 1998 and has been adjusted four times in the
6 intervening years. It's presently set at a .005
7 surcharge. The year-end summary for fiscal years
8 2003 through 2007 shows that the USF has maintained a
9 surplus over all those years. At the end of fiscal
10 year 2007, the surplus was \$7.7 million. The
11 Receipts and Disbursements Summary for the past 12
12 months shows the decreases in monthly USF
13 disbursements which are referenced in my Direct
14 Testimony and the impact on the USF balance.

15 Based on a review of these documents it's
16 clear that the potential additional disbursements to
17 UBTA-UBET anticipated by Mr. Meredith's worst case
18 scenario could be absorbed by the fund at its present
19 surcharge.

20 I have a few comments in response to Mr.
21 Meredith's testimony. Mr. Meredith contends that my
22 testimony presented no public interest arguments and
23 that the information that I provided on the current
24 draws on the USF are an unrelated factor. However,
25 the DPU considered the value of competitive choice

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1 for consumers whose interests we also represent and
2 concluded that the benefits of Digital Voice service
3 and the very existence of consumer choice served the
4 public interest. Our position was fortified by the
5 fact that our projections do not indicate that
6 current contributors to the State USF or the USF
7 itself will be damaged. Since both national and
8 state policy supports competitive entry while
9 preserving Universal Service, and we conclude that
10 both are possible in this instance, we support
11 Bresnan's petition.

12 As to the impact on the State USF, I
13 detailed why I believe there will be certainly no
14 immediate effect on the USF Fund or the consumers
15 statewide which contribute to the fund. So consumers
16 would be no worse off.

17 I would like to call Mr. Meredith's
18 attention to the Stipulation reached between the
19 rural ILEC coalition and US West in Docket Number
20 99-04965, which was accepted and approved by this
21 Commission, which presented the argument that
22 consumers would be no worse off as part of their
23 argument that the sell was in the public interest. I
24 did refer to this standard in my Direct Testimony.

25 Mr. Meredith would have the DPU
26

1 extrapolate possible impacts on other rural
2 providers. There are only two other exchanges served
3 by rural ILECs which have more than 5,000 lines. If,
4 indeed, more entrants are intent on cream skimming
5 the most lucrative areas, one might reason they would
6 focus on those two exchanges, Price and Moab. I
7 would note that Moab is served by Frontier which
8 presently receives no State USF.

9 In response to Mr. Hendershot, Mr.
10 Hendershot called the DPU's review simplistic and I
11 would call his speculative. However, I would agree
12 that the DPU's approach was straightforward. There
13 needn't be a convoluted analysis when simple facts
14 speak for themselves. I believe the facts do speak
15 for themselves in this case. The Legislative Policy
16 Pronouncements in Utah Code Annotated 54-8b clearly
17 favor and support competition. The operation of the
18 Universal Service Fund is required by statute to be
19 nondiscriminatory and competitively and
20 technologically neutral. Using the USF as a defense
21 against competition is inconsistent with the
22 statutory requirement.

23 The statutes envisioned the certification
24 of providers with the managerial, financial and
25 technological ability to provide service, even in
26

1 exchanges operated by rural ILECs. Bresnan meets
2 those standards and provides service in neighboring
3 states.

4 The DPU has presented evidence that the
5 USF will not be negatively impacted and it's unlikely
6 that the surcharge would have to be increased due to
7 declining USF support being made to other rural ILECs
8 and the fact that the USF presently carries a
9 significant surplus. The very parties to this
10 proceeding have previously supported the position
11 that consumers will be no worse off as a public
12 interest argument and the Commission accepted this
13 argument.

14 In summary, the Division believes its
15 review was appropriately focused on the relevant
16 facts in this proceeding and recommends the PSC grant
17 Bresnan a CPCN to serve the entire exchange with the
18 caveat that it serve the entire exchange.

19 Q. Does that complete your additional
20 comments you wish to make?

21 A. It does.

22 Q. Thank you.

23 MR. GINSBERG: That's all that we have.
24 She's available for questions.

25 JUDGE GOODWILL: Mr. Nelson, do you have
26

1 any questions?

2 MR. NELSON: I might. Well, I do have one
3 question, at least, and then I'll see whether we have
4 other ones.

5 CROSS-EXAMINATION

6 BY MR. NELSON:

7 Q. Good morning.

8 A. Good morning.

9 Q. I'm curious. I have just a few questions
10 about the Division's analysis of Bresnan's financial
11 abilities to provide service, and I was wondering,
12 because it wasn't clear from the testimony, whether
13 you would prefer that I direct those to you or to Mr.
14 Coleman?

15 A. That would depend on how detailed they
16 are.

17 Q. Not very.

18 A. I can probably answer them.

19 Q. Okay. We'll give it a shot, but if I get
20 too detailed, then feel free to refer me to Mr.
21 Coleman, please.

22 MR. NELSON: Permission to approach the
23 witness, your Honor?

24 JUDGE GOODWILL: Certainly.

25 MR. NELSON: Can I have Bresnan 2 and 3,
26

1 please? I'm showing her Bresnan 2 and 3.

2 MR. GINSBERG: Fine.

3 Q. (BY MR. NELSON) Ms. Scholl, am I correct
4 that the Division did an analysis of whether or not
5 Bresnan had adequate financial ability to meet the
6 obligations set forth in Utah law and provide the
7 services for which it is requesting authority in this
8 docket?

9 A. Yes.

10 Q. Okay. I just have a few questions about
11 that. And if I could ask, first, I placed in front
12 of you what was admitted as Bresnan Exhibit 2, which
13 is the Verified Application in this case. Do you see
14 that, ma'am?

15 A. I do.

16 Q. Let me ask you to turn to page 7 of that
17 Application.

18 A. I'm there.

19 Q. And in particular let me call your
20 attention to paragraph 12 (a).

21 A. I see that.

22 Q. It's your understanding, is it not, that
23 Bresnan requested in the Application a waiver of the
24 requirement to provide a projection of its pro forma
25 income or cash flow statement for the next five

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1 years; is that correct?

2 A. That's correct.

3 Q. Okay. Regardless, Bresnan then asserted
4 that its belief that the financial information that
5 was provided was adequate to demonstrate that Bresnan
6 had the necessary financial resources and that
7 customers would be protected. Do you see that,
8 ma'am?

9 A. I do.

10 Q. Okay. And I take it, since you obviously
11 didn't see the pro forma projection, the Division
12 didn't feel that that information was essential in
13 reaching the conclusion you apparently did that
14 Bresnan did have adequate financial ability in this
15 case; would that be fair?

16 A. That's fair.

17 Q. Okay. Lastly, let me ask you to take a
18 look at Bresnan Exhibit 3. Do you see that, ma'am?

19 A. I do.

20 Q. Okay. Is it your understanding that this
21 documentation was provided to the Division based on
22 an informal request, but the data, the providing of
23 this happened after the filing of your testimony; is
24 that correct?

25 A. That's correct.

26

1 Q. Okay. So I just wanted to make sure that
2 there's nothing that you learned in Exhibit 3 that
3 causes you to change your opinion about whether or
4 not Bresnan has the necessary financial ability to
5 provide service that it's requesting and to protect
6 the customers that it serves?

7 A. There's nothing that would cause us any
8 concern. Our recommendation would still be that
9 Bresnan should still be granted a CPCN.

10 Q. Okay. Thank you, ma'am.

11 MR. NELSON: I have no further questions,
12 your Honor.

13 JUDGE GOODWILL: Mr. Stoll or Ms. Slawson?

14 MS. SLAWSON: Your Honor, it will be me.

15 CROSS-EXAMINATION

16 BY MS. SLAWSON:

17 Q. Good morning, Ms. Scholl.

18 A. Good morning, Ms. Slawson.

19 Q. You indicated just now in response to Mr.
20 Nelson's cross-examination that the Division didn't
21 need to see a five-year pro forma from Bresnan; is
22 that correct?

23 A. I would say that as a general rule when we
24 do receive them, they're largely fiction.

25 Q. Okay. And I suppose that's why you didn't
26

1 need to see one in this case?

2 A. Well, they asked that it be waived and we
3 didn't see any reason that that shouldn't be granted.
4 Although, it is up to the Commission to grant that
5 waiver.

6 Q. And no waiver has yet been granted; is
7 that right?

8 A. That's right.

9 Q. Okay. In your Summary and in your Direct
10 Testimony, you stated that it's the DPU's
11 recommendation that the Commission require Bresnan to
12 serve the entire Vernal area and under that scenario
13 then the Division would recommend the issuance of the
14 CPCN; is that correct?

15 A. That's correct.

16 Q. Do you know, or tell me, what's your
17 understanding of how Bresnan is going to provide its
18 voice services in areas that are not currently served
19 by its cable facility?

20 A. Either through resell or unlimited network
21 elements.

22 Q. And those would be resell of services
23 obtained through UBTA-UBET?

24 A. Yes.

25 Q. And do you know if Bresnan is still going
26

1 to be able to offer, then, its Digital Voice service
2 in the area, in the non-served areas, the areas not
3 served by its cable facilities?

4 A. They would be able to offer the same thing
5 that whatever Uinta Basin is offering if they were
6 reselling. If they were buying UNEs they might have
7 some flexibility in terms of what service they
8 provide.

9 Q. Okay. And I believe you testified that
10 what we need to look at here is the public interest
11 test. And correct me if I'm wrong, but I understood
12 from the summary of your testimony and also from
13 reviewing your Direct Testimony, that it's your
14 position that the public interest test is the
15 consumer choice on the one hand weighed against the
16 impact of Universal Service; is that correct?

17 A. Yes. Public interest versus impact on the
18 Universal Service Fund, yes.

19 Q. Okay. And so explain to me what goes into
20 the public interest analysis.

21 A. Well, I think consumer choice in and of
22 itself is what we have largely relied on here. You
23 know, I do know from my experience in this industry
24 that when given a choice consumers are usually -- you
25 know, I mean, the mere presence of choice is

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1 sometimes a reason for consumers to choose to change
2 providers. I can tell you as a consumer there are
3 many circumstances in my life where I wish I had a
4 competitive choice, like on the people that service
5 my car that's still under warranty. So I think
6 consumer choice, given the fact that there is no
7 projected impact on the USF surcharge, and that
8 present fund is more than capable of absorbing even
9 the worst case scenario impacts, that the standard
10 is -- consumer choice is an adequate response to that
11 standard.

12 Q. So is that the only factor that you relied
13 on, the consumer choice?

14 A. In terms of overt decision making, I would
15 say yes.

16 Q. Now, one of the other things that you
17 indicated was I believe you indicated that
18 competitive choice and the benefit of the Digital
19 Voice operating; is that correct?

20 A. Yes, I said that.

21 Q. But the customers to whom Bresnan's
22 facilities do not reach would not have the
23 competitive choice of Digital Voice, they would just
24 get the telephone service that's offered currently by
25 UBTA-UBET; is that correct?

26

1 A. Yes. And assuming that Bresnan is granted
2 a CPCN and serves the entire area, that would set
3 UBTA-UBET up to be eligible to apply to be a flexibly
4 priced company, which means they would have the
5 ability to respond to competitive offers in five
6 days, they have more flexibility in what they can do
7 and, you know, in sum, I think that would benefit the
8 rest of those consumers as well.

9 Q. Can you tell me what independent
10 investigation the DPU did to satisfy -- we talked
11 about the financial information. Did you do any
12 independent investigation to satisfy the financial
13 requirement that they be financially able to meet the
14 needs of the customers and protect the customers?

15 A. Well, we reviewed their financial
16 statements, which they certify as being correct,
17 which is all we do with anyone. And as a follow-up,
18 from time to time with various companies we do do
19 audits.

20 Q. And did you do an audit in this case?

21 A. No. Because there are no Utah -- there's
22 not a history of Utah operations.

23 Q. Okay. What about their managerial
24 qualifications? What independent investigation did
25 the DPU take into investigating that?

26

1 A. Well, I don't know that there would be an
2 independent investigation. We, you know, reviewed
3 their qualifications. We're aware that they're
4 successfully providing service in other states.

5 Q. Well, let's talk about that for a minute.
6 You said they're successfully providing
7 communications in other states. Did you investigate
8 whether there had been any complaints of their
9 service in those other states?

10 A. I didn't, but Mr. Coleman may have.

11 Q. Okay. And with regard to the technical
12 requirement that they be technically able to provide
13 the services, did the DPU conduct any independent
14 investigation into that arena?

15 A. Well, we did co-sponsor a Technical
16 Conference. And I was convinced, based on the
17 presentations made at the Technical Conference, that
18 they did indeed know what they were doing. That is a
19 step that we wouldn't necessarily take in granting a
20 CPCN to a CLEC not going into a rural ILEC area.

21 Q. You testified in your Direct Testimony,
22 and I believe you also just stated here in summary,
23 that the public interest consideration in Vernal is
24 not unique. However, you do acknowledge that there
25 are differences in this docket; is that correct?

26

1 A. Yes.

2 Q. And can you tell me what those differences
3 are, as you see them?

4 A. Well, I think I already detailed that.
5 The differences in this case is there is a
6 competitive local exchange carrier seeking entry into
7 a territory which has previously been served by a
8 rural independent local exchange carrier.

9 Q. And, in fact, Bresnan is not seeking
10 certification in the entire territory served by UBET,
11 it's just the one Vernal Exchange; is that correct?

12 A. That's right. And that's also not
13 unusual.

14 Q. Have there been other instances where a
15 CLEC has applied for CPCN status or authority in one
16 rural exchange?

17 A. In one rural exchange, no. But it's --
18 you know, historically as CLECs came into the market
19 in Utah, they would pick wire centers or exchanges
20 where they wanted to serve first and seek
21 certification. Or actually they would seek statewide
22 certification, but they would place their investment
23 in certain wire centers first.

24 Q. Okay. But one unique thing about this
25 Application that strikes me is that this, I believe,

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1 and you correct me if I'm wrong, I believe this is
2 the first time that a CLEC has applied for CPCN in a
3 rural exchange, one exchange only, not statewide, not
4 the entire area served by a rural carrier, but this
5 is just the one exchange; is that correct?

6 A. Well, they're also seeking certification
7 in Cedar City, but that is a Qwest Exchange.

8 Q. Okay. But that's been bifurcated, that's
9 not present in this hearing; is that correct?

10 A. Yes.

11 Q. Okay. In your opinion, does an exchange
12 specific application impact the public interest test?

13 A. No.

14 Q. Why not?

15 A. I believe that the benefit of competition
16 is there for consumers whether it's in one exchange
17 or in many exchanges.

18 Q. So it's your opinion that if the public
19 interest standard is met or that this Application
20 would be in the public interest even when only a few
21 of the residents in the State of Utah are going to
22 benefit from the competitive entry; is that correct?

23 A. Well, I think the competition comes in and
24 grows from a central point regardless of who the
25 entrant is and who the underlying ILEC is. So at any

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1 given point in time there may be a growing number of
2 customers benefiting from that. I guess I just don't
3 see why this would be any different.

4 Q. Well, I'm just wondering, is there any
5 indication that Bresnan intends to serve elsewhere in
6 the State?

7 A. There's nothing current -- well, yes, they
8 intend to serve in Cedar City.

9 Q. Okay. Besides Cedar City?

10 A. Not at present.

11 Q. Then walk me through that. How is their
12 entry into the UBTA-UBET, not the entire exchange
13 area, service area, but just the Vernal Exchange, how
14 is that going to benefit or be in the public interest
15 of the State as a whole?

16 A. Well, let me -- well, the State as a
17 whole, I don't know that immediately it necessarily
18 would be. But here's what the Division took into
19 account. We know there's competition in all the
20 rural exchanges. There's wireless competition,
21 there's VoIP competition, there's satellite
22 competition, and none of those are regulated by the
23 State Commission.

24 In this instance we have a company coming
25 in asking to be certificated and submit itself to
26

1 State regulation. In my mind, competition and
2 regulation don't co-exist easily. This is an
3 opportunity for a rural ILEC to say, "If they choose,
4 there's competition which meets the standard under
5 the statute in my territory. I would likely have
6 less regulation."

7 I think that's a -- you know, I can't
8 imagine that UBTA doesn't think that's a public
9 benefit, a benefit to them. It reduces their costs.
10 Yeah, I think it's very consistent with public
11 benefit overall and potentially all of UBTA's
12 consumers.

13 Q. Let's talk a little bit about, you quote
14 from the Commission's Order -- and I'm talking about
15 the Western Wireless case. Do you need a copy of
16 that in front of you?

17 A. Do you want the whole case or just what I
18 quote?

19 Q. Well, I'm going to ask you about what you
20 quote, but we might get a little bit more into the
21 decision. I assume if you quote from it you probably
22 read it.

23 A. Now, are you talking about the
24 Commission's Order or the Supreme Court Order?

25 Q. Let's look at your testimony, but I
26

1 believe I'm talking about the Supreme Court Order.

2 A. I do have that.

3 Q. You may not need it, but let me know if
4 you don't have it. And initially I'm talking about
5 the Commission's Order in the Western Wireless case.
6 You quote from their Order denying the EPC status to
7 Western Wireless in rural ILEC exchanges, this is on
8 line 108 to 116 in your testimony.

9 I'm just wondering how, why the
10 Commission's rationale in the Western Wireless case
11 isn't equally as applicable in this case? As I read
12 the Western Wireless decision, it says, "If, by
13 designating an additional ETC provider...the effect
14 is to reduce the companies' revenues, without an
15 equal reduction in costs, the State Fund would be
16 called upon to make up the difference. Such a
17 situation would cause a significant increase in the
18 burdens placed on the State Fund without
19 corresponding public benefits."

20 And again, my question is, how come that's
21 not that case, that rationale isn't applicable in
22 this case?

23 A. Well, Bresnan is not seeking an ETC and I
24 do not believe there will be additional burden on the
25 USF.

26

1 Q. And you say that Bresnan is not seeking an
2 ETC status. I'm not exactly sure why that is such a
3 significant difference. They're seeking competitive
4 entry --

5 A. Well, if they were seeking ETC status they
6 would also be eligible to receive USF Funds which
7 would put a double burden on the Fund.

8 Q. Okay. So that the burden would be
9 increased if they were seeking ETC status?

10 A. Potentially.

11 Q. So is it your testimony that there is no
12 burden on the USF by Bresnan's entry?

13 A. My testimony is that there would need to
14 be no need to increase the current payments to the
15 USF, the current surcharge rate. And as a matter of
16 fact, over the last six months, given USF Funds that
17 have been foregone by other rurals, there's actually
18 -- I mean, even given Mr. Meredith's -- let me put it
19 this way. Even given Mr. Meredith's worst case
20 scenario, there's been three times that amount of
21 money foregone by other rural carriers in the last
22 six months. So it's not going to change the
23 surcharge, it's not going to change the current
24 surplus in the USF.

25 Q. But if the Commission grants the CPCN in
26

1 this case, in one exchange, the Application for one
2 specific exchange, and there is -- I think you will
3 admit that there will be an increased burden on the
4 USF. Now, it might not increase the surcharge, but
5 there would be a burden; do you see that?

6 A. Well, I don't agree with Mr. Meredith's
7 calculations. I think --

8 Q. Are you saying you don't agree with the
9 amount or you don't agree that there will be a burden
10 at all?

11 A. I think any burden is well within reason.
12 If, indeed, if there is an increased draw, which is
13 not a foregone conclusion and it would not happen
14 immediately, they would have to come in and seek
15 that.

16 Q. Well, I guess what I'm trying to get at
17 is, what is -- I mean, you've got here before us an
18 issue of first impression. I mean, everybody, you've
19 testified that this is -- this has not been before
20 the Commission before. We need -- I think we're
21 breaking ground here on what kind of order we need to
22 write, what kind of standards we need to set.

23 But my question to you is this: Isn't
24 there going to be a cumulative effect? I mean, if
25 not this Application, what about the next

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1 Application, and isn't this the opportunity now to
2 set a clear public standard?

3 A. Well, I think any cumulative effect is
4 very speculative given what I know about the size of
5 the exchanges in the State of Utah and the other two
6 that would be over that 5,000 threshold. Even, as I
7 said, if I accepted Mr. Meredith's numbers, I think
8 that impact is reasonable and I'm sure you could --
9 let me put this way. I'm sure you could compose a
10 hypothetical that would alarm me, but nothing that's
11 been presented so far has.

12 Q. Okay. Moving on, can you tell me, does a
13 carrier of last resort have a obligation to build out
14 to a greenfield subdivision even where a developer
15 has entered into an exclusive contract with a
16 competitor to provide voice service to that
17 greenfield area?

18 A. Well, that's an interesting question, and
19 it's one that's been before the Commission and
20 resolved very narrowly. Basically, the obligation of
21 a carrier of last resort is to provide service
22 consistent with the terms of its tariff. So if the
23 terms of its construction tariffs were not met, I
24 don't believe they would have to have -- that they
25 would have that obligation to serve. But that's
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1 never been resolved by this Commission.

2 Q. Okay. Just a moment ago you indicated
3 that there would be a lag between possibly
4 UBTA-UBET's need for additional USF Funds and the
5 process that they would have to go through before
6 getting those funds. I think you pointed out that in
7 your Direct Testimony, however, that UBTA-UBET would
8 have the opportunity to request USF for competitive
9 losses.

10 What about the cost of prosecuting rate
11 cases and the regulatory lag that you determine --
12 that you've discussed here? Has the Division taken
13 that into account in determining the public interest
14 test?

15 A. Well, regulatory lag cuts both ways. You
16 know, there may be a long period of time where a
17 company is receiving USF Funds before they're audited
18 or perceiving is initiated that would reduce that
19 draw. And I think that probably, at least within the
20 last decade or so, has been the case with the Uinta
21 Basin. You know, the cost of, you know, litigating a
22 rate increase or anything else is a cost that's
23 allowed into their expenses and it gets recouped.

24 Q. You indicate in your Direct Testimony that
25 certification of a provider such as Bresnan does not

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1 in and of itself threaten the availability of
2 affordable service, and that's on line 204 to 206 of
3 your testimony. How do you know that?

4 A. Would you ask that question again?

5 Q. On line 204 to 206 of your Direct
6 Testimony you indicate that "The certification of a
7 provider such as Bresnan does not, in and of itself,
8 threaten the availability of quality, affordable
9 service." And I'm just wondering how you know that.

10 A. Well, based on the projections that the
11 Division made about the potential impacts. When I
12 talked about the quality, affordable service, that's
13 service that would be supported by the USF.

14 Q. And has the Division conducted any studies
15 on the impact of competition in the rural areas?

16 A. Any studies? Well, we certainly review
17 information as it becomes available, but we have not
18 had the benefit of the Balhoff & Rowe study.

19 Q. Have you reviewed the Balhoff & Rowe
20 study?

21 A. I have.

22 Q. And its conclusion as to the impact of
23 competition in rural areas?

24 A. Well, I think that's exactly the kind of
25 issue that we're concerned about more broadly, which

26

1 is, there's competition that's not regulated that's
2 having probably a much bigger impact than the
3 competition that would be regulated.

4 Q. You testified that the petition, that
5 Bresnan's petition, if granted, may result in
6 impacts, and I believe you called Mr. Hendershot's
7 testimony speculative. But isn't that exactly the
8 issue here? We don't know what the impacts are going
9 to be on USF as a result of Vernal, of competition in
10 the Vernal Exchange, do we?

11 A. Well, no. But even if we accept URITA's
12 witness worst case scenario, it's my position that
13 those impacts are reasonable.

14 Q. And we don't know, I think you've
15 testified here today that we don't know the impacts
16 on the State USF in other rural markets which may
17 result as we introduce competition into those areas
18 either, do we?

19 A. No. And those would be addressed at the
20 point in time those issues came up.

21 Q. And has the Division looked at the overall
22 impact that competition in the rural areas might have
23 on the rural ILECs or the State USF, I mean
24 competition in all of those rural areas? Have they
25 done a study or commissioned any sort of study on

26

1 that?

2 A. Has the Commission done a study? I don't
3 know.

4 Q. Has the Division?

5 A. The Division? Not during the time that
6 I've been here.

7 MS. SLAWSON: I don't have any other
8 questions.

9 JUDGE GOODWILL: Mr. Mecham?

10 MR. MECHAM: Thank you.

11 CROSS-EXAMINATION

12 BY MR. MECHAM:

13 Q. Good morning, Ms. Scholl.

14 A. Good morning, Mr. Mecham.

15 Q. Do I understand you correctly to say that
16 the Division's position in this case only applies to
17 exchanges with more than 5,000 access lines?

18 A. I'm not sure I understand that question.

19 Q. Is your position, we'll get to what your
20 position is, but does the Division's position only
21 apply in cases where a competitor is trying to enter
22 an area where there are more than 5,000 access lines?

23 A. The Division's position in this docket
24 relates to the facts in this docket.

25 Q. So if we were six months from now
26

1 addressing a situation where a CLEC wanted to enter
2 an exchange with fewer than 5,000 access lines or an
3 exchange with fewer than 5,000 access lines owned by
4 a carrier with fewer than 30,000 access lines it
5 would be a whole new ball game?

6 A. I think we would look at the facts. But
7 the statute allows entry into exchanges with fewer
8 than 5,000 access lines with the additional
9 responsibility that they serve the entire exchange.

10 Q. Well, I'm just trying to assess what the
11 precedence is that we're setting here. So are you
12 saying that you would take the Division's position
13 here and apply it to an exchange with fewer than
14 5,000 access lines because the statute allows it as
15 long as they go throughout the entire exchange?

16 A. I don't think I said that at all. I think
17 I said that we would look at the facts in any future
18 docket and make a determination based on that
19 information.

20 Q. How would you expect, similar to what I
21 asked Mr. Orton yesterday, assuming the Commission
22 agrees with the Division's position, how would you
23 expect the Commission to use this case going forward?
24 Would they use it as precedent? Would they simply
25 say, we did it here, we're going to do it there?

26

1 How would they use it?

2 A. I suspect that that's something you would
3 know better than I. I don't know how they would use
4 it.

5 Q. Let me ask you this. Would you expect
6 them to use your analysis in a follow-up case where
7 there was an exchange of fewer than 5,000 access
8 lines?

9 MR. GINSBERG: I'm going to object to the
10 question. I think he's speculating on what the
11 Commission may or may not do.

12 MR. MECHAM: Well, actually --

13 MR. GINSBERG: Also asking for a legal
14 conclusion as to really what precedent a case like
15 this has absent rulemaking or some other type of
16 mechanism. I think she's answered the question that
17 she would apply these principles to the facts in this
18 case and the facts of any other future case would be
19 addressed at that time.

20 MR. MECHAM: That may be the best I'm
21 going to get out of her, Mr. Ginsberg, I agree with
22 you on that. However, I am concerned on how it will
23 be applied.

24 Q. (BY MR. MECHAM) Let me shift for just a
25 moment, and I'm sure I'll come back to that because
26

1 I --

2 A. I can't imagine that you wouldn't.

3 Q. Let me ask for just a minute about DPU
4 Exhibit -- Cross-Examination Exhibit 1 that was
5 introduced yesterday. Do you have that in front of
6 you?

7 A. I do not.

8 MR. MECHAM: Mr. Ginsberg, do you have
9 your copy because I only have one? Well, let me see
10 if we can do without it.

11 Q. (BY MR. MECHAM) Did you help prepare it?

12 MR. NELSON: Here.

13 Q. (BY MR. MECHAM) This is the --

14 A. No, I did not prepare this exhibit. It's
15 similar to some of the things that I did pull in
16 support of my own testimony, but I did not do this
17 one.

18 Q. Are you familiar with it?

19 A. This is the first I've seen it.

20 Q. Is Mr. Coleman familiar with it?

21 A. I don't know.

22 Q. Well, I mean, it's sponsored by the
23 Division?

24 A. Right.

25 Q. So I hope somebody is --

26

1 MR. GINSBERG: It wasn't sponsored by
2 anybody, it was an exhibit used --

3 MR. MECHAM: Well, it's the DPU exhibit.

4 MR. GINSBERG: It was used as an exhibit
5 to ask questions of Mr. Hendershot.

6 Q. (BY MR. MECHAM) All right. Well, let me
7 ask Ms. Scholl a couple of questions, and if I don't
8 get very far, I'll try Mr. Coleman.

9 A. I'll do my best.

10 Q. It refers to rural Utah telecommunications
11 bundled service providers. Is it your understanding
12 that bundled service providers in every instance
13 includes a video or cable TV product?

14 A. No. There are double plays, there are
15 triple plays, there are quadruple plays. A bundled
16 could apply to any of those.

17 Q. Okay. So any one of these bundled service
18 providers could be providing something less than the
19 triple play, they might be providing the double play
20 and not providing cable TV service?

21 A. Yes. I don't know that since I didn't
22 prepare the exhibit.

23 Q. Do you know if the exhibit reflects, say,
24 Comcast's service area?

25 A. I don't know because I haven't really
26

1 looked at it.

2 Q. Are you aware that Comcast serves in
3 Tremonton, as an example?

4 A. I've heard that.

5 Q. Do you know if the exhibit addresses the
6 company called Precis that provides service in Price
7 and Kanab and Moab?

8 A. I don't know that.

9 Q. I'll ask Mr. Coleman.

10 MR. MECHAM: Thank you, Mr. Nelson.

11 MR. NELSON: I'll keep it handy.

12 MR. MECHAM: Thank you.

13 Q. (BY MR. MECHAM) And then with respect to
14 DPU 1.1SR?

15 A. Yes.

16 Q. Your second number, the June 1, 1998
17 number, it says 1.00 and intrastate retail revenue.
18 Is it .01? Is that actually what that is?

19 A. I see what you're saying. It's 1 percent.

20 Q. Which should be .01?

21 A. It should be.

22 Q. Okay. I just want to make sure I
23 understand the exhibit.

24 JUDGE GOODWILL: So just to be clear,
25 then, on the second line there of what's been

26

1 admitted as 1.1SR, instead of 1.00 we've got .01?

2 MS. SCHOLL: .01, yes.

3 Q. (BY MR. MECHAM) Now, in the Division's
4 review of Bresnan's Application, I just want to be
5 clear in my own mind. Did the Division solely rely
6 on the Application itself?

7 A. No.

8 Q. What else did it rely on?

9 A. The Division sponsored a Technical
10 Conference and also asked a variety of Data Requests.

11 Q. And with respect to the requirement that
12 there be a submission of a five-year pro forma?

13 A. Yes.

14 Q. You know, Rule 746-349-3 establishes the
15 requirements. Are you familiar with that?

16 A. I am familiar with that.

17 Q. For each application for each CLEC?

18 A. Right.

19 Q. And it says, "At a minimum, the
20 applicant's statements must show a positive net worth
21 for the applicant CLEC, sufficient projected and
22 verifiable cash flow to meet cash needs as shown in a
23 five-year projection of expected operations, proof of
24 bond as specified in 349-3(a)(2) above."

25 So is that something that can be waived or

26

1 do you know? And I'm really not asking for a legal
2 conclusion, I'm asking you, in your experience, is
3 that typically waived?

4 A. The financials that would show a net
5 present -- or a positive net worth we would not
6 waive. It's my understanding that their financials
7 do show a positive net worth. What was the next part
8 of that?

9 Q. That's the five-year projection of
10 expected --

11 A. The pro forma?

12 Q. Yes.

13 A. It's my understanding, Mr. Mecham, that
14 applicants can ask for virtually anything to be
15 waived and it's for the Commission to decide whether
16 or not they want to do that.

17 Q. And so in determining that they had the
18 financial wherewithal to provide the services they
19 were proposing to provide, did the Division simply
20 rely on the financials or anything more than that?

21 A. Well, we relied on the financials.

22 Q. Okay. Ms. Slawson asked you about the
23 cumulative effect of applications for CLEC
24 certificates. Do you remember that?

25 A. I do.

26

1 Q. And I know Mr. Ginsberg doesn't want me to
2 speculate, but I think because the FCC didn't
3 speculate we've got a problem at the Federal USF
4 level.

5 MR. GINSBERG: Is that a question?

6 MR. MECHAM: No, it's the foundation.

7 MR. PROCTOR: I would have to object as
8 well, it's not a foundation, it's an argument.

9 MR. GINSBERG: It's a statement. Maybe
10 she'll agree with you. You can ask the question.

11 Q. (BY MR. MECHAM) Okay. Let's ask this.
12 Are you aware or do you agree that the Federal USF
13 has -- that it's in trouble?

14 MR. PROCTOR: Well, objection. What does
15 "in trouble" mean, financially or --

16 MR. MECHAM: Mr. Proctor, I just can't
17 satisfy you, can I?

18 MR. PROCTOR: Right now you're having a
19 real hard time satisfying me.

20 MS. SCHOLL: I can make a broader
21 statement. I think that subsidies and competition
22 don't comfortably coexist. And where you have
23 second -- for instance, with the Federal USF, where
24 you have second ETCs coming into the area and
25 becoming eligible to receive the same funds, I don't

26

1 think that's a scheme that has a long-term future.

2 Q. (BY MR. MECHAM) So you're aware that is
3 all sorts of discussion -- let me rephrase that. Are
4 you aware that there's been discussion about capping
5 the USF, among other things?

6 A. I'm generally aware, yes.

7 Q. And do you know what the cause of that is?

8 A. As to what?

9 Q. The discussion on capping? Does it go to
10 what you said before, the granting of competitive
11 ETCs?

12 A. I suspect that's probably at least one
13 factor.

14 Q. And is this not similar to that?

15 A. Well, there's not another -- Bresnan is
16 not seeking ETC status.

17 Q. I understand that. But isn't the effect
18 exactly the same or at least part of it?

19 A. I don't see that.

20 Q. So in your mind, the fact that Bresnan is
21 seeking to come into an area supported by the USF,
22 it's so totally different that ETC status -- from the
23 ETC status question that you just see no parallel; is
24 that your testimony?

25 A. I didn't say I saw no parallel, but I

26

1 don't think it's similar, per se. I think that the
2 facts between those two sets of circumstances that
3 you're laying out are different.

4 Q. Well, isn't the only difference that
5 Bresnan won't be taking a draw?

6 A. Well, no. Because the State USF functions
7 differently than the Federal USF does.

8 Q. But on the other side it will -- it could
9 easily, and in fact there is testimony, both from Mr.
10 Meredith as well as from your own witness, that it
11 does have negative impact on the USF?

12 A. Well, I'm not going to agree with your
13 characterization. I think it may have some impact.
14 Whether or not that's a negative impact, I wouldn't
15 put that value judgment on it.

16 Q. Well, your testimony, as I understand it,
17 is that the surplus of the USF won't be affected,
18 correct?

19 A. Yes.

20 Q. But if there weren't the impact that there
21 will be, whether it's \$200,000 or \$300,000 or
22 \$400,000, wouldn't the surcharge go down?

23 A. Maybe. But I'm not going to agree with
24 the premise of that either, the impact that there
25 will be. I don't think that we know that.

26

1 Q. So you're running a surplus now in the
2 USF?

3 A. You're talking about the impact from Uinta
4 Basin increasing its draw?

5 Q. Yes.

6 A. I don't think that we know that it will
7 necessarily increase its draw. I think all we know
8 right now is -- well, we don't know anything. We're
9 speculating, we're guessing.

10 Q. Do you believe that Bresnan will be able
11 to take customers from UBTA in Vernal?

12 A. Yes.

13 Q. Will that result -- what impact would that
14 have on UBTA?

15 A. It depends on how UBTA responds to that.
16 I mean, if they take -- if they don't make -- if they
17 don't take a competitive response posture, if they
18 don't, you know, try to build more efficiencies into
19 their systems, if their costs remain where they
20 presently are instead of reducing, as most companies
21 have as they have lost customers, then yeah, it will
22 probably increase the USF draw.

23 Q. And if that didn't happen, would the
24 surpluses continue to increase in the USF?

25 A. Based on who is currently drawing and the
26

1 rates they're current drawing, yes, that would
2 increase until such time that the Division make a
3 recommendation that the USF be reduced. And it's
4 gone up and down over the last several years. Its
5 last adjustment was made about a year ago.

6 Q. And if it could go down and didn't,
7 wouldn't there be a harm to the customers that are
8 paying into the USF?

9 A. I think any impact on customers would be
10 so minimal they wouldn't notice it.

11 Q. Is that the standard? Is that the
12 standard that you're proposing in this proceeding?

13 A. Well, I think the fact that they would be
14 no worse off and that there's the benefit of
15 additional competition in the State. And again, this
16 petitions UBTA-UBET to seek a lighter regulatory
17 status which would save its costs. You know, I think
18 there are a lot of potential factors that are
19 interrelated here.

20 Q. Well, don't carriers with fewer than
21 30,000 access lines already have lighter regulation
22 in the statute?

23 A. Well, yes. And if they're a co-op they
24 can change their rates quickly. If they're not a
25 co-op they still have to file tariffs which is a

26

1 30-day approval. I mean, the benefits are probably,
2 you know, incremental, but they're benefits,
3 nonetheless.

4 Q. And the benefits are to whom?

5 A. Well, I think that they start by being to
6 the carrier, to the ILEC. They would have reduced
7 regulatory costs, you know, simpler processes.
8 Hopefully those cost savings would flow to their
9 customers in some form, either through price
10 reductions or avoiding future price increases.

11 Q. Take a look at your testimony for just a
12 minute. In response to the question from Ms. Slawson
13 you basically said that consumer choice really is
14 your number one factor, and maybe your only factor in
15 determining whether or not an application meets the
16 public interest test. Did I misunderstand you?

17 A. I think that that's how I responded to Ms.
18 Slawson in the way that she had framed the question.
19 And it goes back to is there a customer -- that she
20 led me through on the discussion about the Western
21 Wireless docket. That any impact on the USF should
22 be balanced with any consumer benefit. I see that
23 the potential impact on the USF is very minimal and I
24 think that the existence of competitive choice more
25 than balances that.

26

1 Q. So that's it, really, you're balancing
2 consumer choice against the impact on the USF?
3 That's the public interest test, that's the standard
4 that the Commission will use forever more?

5 MR. GINSBERG: Well --

6 MR. MECHAM: Mr. Ginsberg, I'm trying to
7 get her to elaborate on what the standard is we can
8 rely on.

9 MS. SCHOLL: I think, based on the facts
10 in this case, that would be one of the standards,
11 yes. But I can't project what issues might come up
12 in future dockets that might also inform what that
13 standard would be.

14 Q. (BY MR. MECHAM) Are there other standards
15 in this case?

16 A. Not that I testified to.

17 Q. What if entry increases prices and
18 stranded the costs of the incumbent, does that factor
19 in?

20 A. I think that is as likely to happen based
21 on unregulated competition as it is with regulated
22 competition.

23 Q. On line 79 and 80, this is really a
24 question of curiosity about your testimony. You said
25 there, if I understood correctly, that other carriers
26

1 had received ETC status. Is that so?

2 A. Yes. But not independent telephone
3 company -- or not in independent telephone company
4 territory.

5 Q. All right. Thank you. That's a good
6 clarification. I appreciate that.

7 Let's go to the Western Wireless case for
8 just a minute. On line 113 you quote from the
9 Commission Western Wireless Order where it states
10 that by granting an additional ETC petition, "the
11 effect is to reduce the companies' revenues, without
12 an equal reduction in costs, the State Fund would be
13 called upon to make up the difference. Such a
14 situation would cause a significant increase in the
15 burdens placed upon the State Fund without
16 corresponding public benefits."

17 A. Well, you left out the "if."

18 Q. I may have.

19 A. Well, if that's the case, that's what the
20 Commission said. I don't think that's the case.

21 Q. In this case?

22 A. In this docket.

23 Q. So in this case, we don't have to carry
24 this case forward? The next case we just look at the
25 facts and make a determination of what the standard

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1 should be in that case based on new facts of the new
2 application?

3 A. Mr. Mecham, I'm sure that you could
4 construct a hypothetical, as I responded to Ms.
5 Slawson, that would concern me. The facts in this
6 docket don't. And so that's all that's before us,
7 you know. Under the statute, and the legislature
8 favors competition. The USF says that USF support
9 should be competitively neutral. We believe Bresnan
10 has met the criteria. I don't have a basis as a
11 representative of the Division to make a
12 recommendation for anything other than the granting
13 of the CPCN.

14 Q. So do you believe that the statute
15 requires that every application be granted?

16 A. No.

17 Q. What would make the Division take the
18 position against the granting of an application?

19 A. If in our investigation we found that they
20 didn't have the managerial, financial and
21 technological capability to provide service would be
22 one thing. I don't know what else we might find.

23 Q. And what would that take? Of those three
24 things, you talked about the managerial, technical
25 and financial abilities. You have the circumstances

26

1 in this case, some of which, the important parts of
2 which are proprietary and I won't refer to them,
3 well, I'll refer to them, but not specifically or not
4 in violation of the Protective Order. But that was
5 adequate, in the Division's judgment, to recommend
6 that the Application be granted?

7 A. All of our efforts in this docket which
8 included, you know, the Technical Conference and
9 additional discovery were adequate, yes.

10 Q. Okay. On line 190 of your testimony you
11 state that the benefits of the new VoIP based --
12 excuse me. "The new benefits of new VoIP based
13 services and the very existence of choice serve the
14 public interest."

15 Now, in lines 146 and 147 you assert that
16 Bresnan doesn't need a certificate to provide VoIP.
17 Did I characterize that correctly?

18 A. Well, I think what I meant to say, and
19 maybe that's not clear, is that Bresnan asserted that
20 it didn't necessarily need a certificate to provide
21 VoIP.

22 Q. So it's not the Division's position that a
23 VoIP provider doesn't need a certificate?

24 A. Well, I know there are a lot of providers
25 who are out there providing service that don't have

26

1 certificates. I think that area legally is pretty
2 gray.

3 Q. So what's the Division's position, do they
4 or don't they?

5 MR. GINSBERG: I think you're asking for a
6 legal conclusion.

7 MR. MECHAM: Well, it's based on her
8 testimony, however.

9 MS. SCHOLL: I don't know.

10 Q. (BY MR. MECHAM) Okay. If Vonage is out
11 there providing service or if Bresnan were already
12 out there providing the type of service that they
13 propose to provide, wouldn't the customers already
14 have the choice that you say is, on balance, the
15 reason the Division is advocating for this
16 certificate or that this certificate be granted?

17 A. Well, partly. But by Bresnan coming in
18 and seeking a CPCN, they're also subjecting
19 themselves to the regulation of this Commission,
20 which means issues like service quality, Commission
21 jurisdiction over customer complaints, and the
22 general investigatory powers of the Division. So I
23 think that the consumers, you know, are perhaps
24 better protected by having a competitor come in as a
25 CPCN or with a CPCN than with a Vonage type or a

26

1 wireless.

2 Q. Well, aren't they seeking waiver of some
3 of the requirements of the filing for an application?

4 A. The only one that's on the front of my
5 brain is the one around the five-year pro forma,
6 which I must say, in my experience, are generally of
7 limited value.

8 Q. Well, they're also seeking a waiver of the
9 bond that's required?

10 A. Yes. They're asking to provide a letter
11 of credit instead.

12 Q. So if it's true that a Vonage, let's say,
13 doesn't need a certificate and they're providing
14 similar services and Bresnan is going to come in and
15 provide the same services, what are the customers
16 getting that's new?

17 A. Yeah, I don't think that what Bresnan
18 provides is the same thing as what Vonage provides.
19 First of all, in order to have Vonage you have to
20 have a high-speed internet connection. It's a --
21 truly it's an internet protocol, a Voice over
22 Internet Protocol. What Bresnan is doing is using IP
23 type technology, but in more of a switched
24 environment. So it is different. And it doesn't
25 require the high-speed Internet connection in order

26

1 for that to work. It's a digital service that does
2 not necessarily ride on a DSL type service.

3 Q. Do you know if you can get voice alone
4 from Bresnan? That's probably a better question of
5 Bresnan, but without putting Ms. Kirchner back on
6 I'll ask you.

7 A. I don't know.

8 Q. Would it change your point of view if they
9 didn't provide voice alone and they had to have the
10 high-speed Internet?

11 A. I think the package of services being
12 provided by Bresnan at the price point it's being
13 offered is a good value for a telecommunication
14 service. And no, it probably wouldn't change my
15 position.

16 Q. You indicate in your testimony that there
17 are already a number of wireless and VoIP providers
18 in the area?

19 A. That's what our research indicated.

20 Q. So the customers have the choice that is
21 so important to the Division's analysis in this case?

22 A. Well, they have a choice on the wireless
23 side of an unregulated provider with no service
24 quality guarantee, and it's not wireless, it's not
25 wire line. There's still dropped calls and weather
26

1 interference and many other things. In terms of
2 VoIP, I don't know if you have ever received a VoIP
3 call. But, again, I don't know that the quality is
4 the same as a land line service being provisioned the
5 way that Bresnan purports to do their service.

6 Q. Have you received a Bresnan call?

7 A. No.

8 Q. Do you know if it's any different than a
9 VoIP call?

10 A. I suspect that it would be.

11 Q. But you don't know that?

12 A. I don't know that.

13 Q. And insofar as the impact on the USF is
14 concerned, help me understand the point at which the
15 impact is too great. It's not too great in this
16 case, that is your very firm testimony in this case.
17 At what level do we take it before it is too hard?
18 What's the value?

19 A. Mr. Mecham, you're asking me to speculate.
20 You know, as I've said before, I'm sure you could
21 create scenarios where I would think twice about the
22 recommendation. But, you know, again, it would be
23 speculative, you know, it would be hypothetical, and
24 I just don't have an answer for you on that.

25 Q. But isn't the Division leaving us with a
26

1 standard of "You'll know when it you see it"?

2 A. Well, no. I think the standard here is
3 we've reviewed the facts in this docket and find that
4 the balancing can be done appropriately.

5 Q. So you knew it when you saw it?

6 A. No. We did analysis, we looked at the
7 numbers and we considered the potential impacts.

8 Q. And the numbers weren't too great. But
9 I'm asking at what point do they become too great
10 because we're going to face that, I believe.

11 MR. GINSBERG: I think that question was
12 already asked and she gave the best answer she could.
13 So I'm not sure he's going to get an answer of what
14 he wants.

15 JUDGE GOODWILL: You can try, Ms. Scholl,
16 if you have any additional response.

17 THE WITNESS: Yeah, I don't have anything
18 to add to that.

19 Q. (BY MR. MECHAM) Okay. On line 286 of
20 your testimony you indicated that Mr. Meredith
21 somehow claims or implies that the USF is an
22 entitlement. Can you show me where that is? I mean,
23 where does he say in his testimony that it's an
24 entitlement?

25 A. Well, I think I said that his testimony
26

1 implied that. And without going completely through
2 his testimony, I think it was the assumption that the
3 impact on the USF of competitive losses was
4 inevitable.

5 Q. Say that one more time, please.

6 A. Well, let me see if I can say it more
7 clearly. My testimony deals with my impression of
8 Mr. Meredith's testimony, that he was implying that
9 any competitive loss would automatically be made up
10 -- or any impact would automatically be made up by
11 increased USF draws.

12 Q. And are you saying that that wouldn't
13 happen?

14 A. Well, you know, I'm saying that I think
15 there are other reasonable actions a well-managed
16 company like Uinta Basin might make or might take.
17 You know, when Mr. Todd was on the stand yesterday he
18 was talking about some of the things he might do. I
19 did notice he did not mention he might try to cut
20 costs, which surprised me. But I think there are
21 other potential responses to competition other than
22 immediate USF draw.

23 Q. Well, as you've indicated, I think Mr.
24 Meredith did as well, it wouldn't be needed, but
25 wouldn't it just come through the normal rate case

26

1 process?

2 A. Yes.

3 Q. Now, also on page 15 you quote from FCC
4 Chair Kevin Martin. And it seems to me, anyway, that
5 you are suggesting that the philosophy of USF that he
6 states in that quote is somehow different. Am I
7 missing something?

8 A. Is somehow different from what?

9 Q. Is it at all different from the policy
10 established in 54-8b-11?

11 A. No. I think I included that in support of
12 my conclusion that both State and Federal policy
13 support competition and the preservation of the USF.
14 And in my case, in this instance, my analysis
15 indicates that both are possible. You can both
16 promote competition and preserve the well-being of
17 the USF.

18 Q. So this is a policy that's been pursued in
19 Utah for some years now?

20 A. Well, the statute was passed some years
21 ago, yes.

22 Q. You're not suggesting anything different
23 or new, or are you?

24 A. I'm not sure I understand the question. I
25 think it was just a statement that both Federal and
26

1 State policy support competition.

2 Q. So you're not suggesting anything new or
3 different?

4 A. Anything is a really broad word. I think
5 what I'm saying is both Federal and State policy
6 support competition.

7 Q. Okay. Let me go back to the cumulative
8 effect for just a moment. No. Well, you're really
9 only concerned about the here and now in this case
10 and these facts, correct?

11 A. Well, that's all that's before us.

12 Q. Is it possible -- well, okay. Let's go to
13 a hypothetical. Six months from now we have three
14 new CLEC certificates, the Division is recommending
15 that they be granted the certificate. No, let me go
16 back. Let me go to one.

17 Now you've got one effect, you only have
18 one effect from one application. And will the
19 Division -- would it be the Division's -- would the
20 Division look at that case and the effect of that
21 case with the effect of this case now before you?

22 In other words, would there be a
23 cumulative effect? Would you want to look at that?

24 MR. PROCTOR: Well, I'm going to have to
25 object, your Honor.

26

1 MR. MECHAM: She's not your witness, Mr.
2 Proctor.

3 MR. PROCTOR: It doesn't matter. It's an
4 objectionable question because he's asking the
5 witness to answer a hypothetical with no factual
6 assumptions upon which she's supposed to be basing
7 the ultimate question of recommending the second CLEC
8 Application be granted and it's calling on her to
9 speculate on what the facts might have been in his
10 mind in comparison to this particular case which is
11 the only one before us. It is not a proper
12 hypothetical question and it calls for speculation by
13 the witness which is impossible in that case because
14 of the nature of the question. So it's
15 objectionable.

16 JUDGE GOODWILL: Mr. Ginsberg, were you
17 going to say something?

18 MR. GINSBERG: I am going to go along. I
19 think I'm just not fast enough.

20 MR. MECHAM: I could not disagree more
21 with that because that is exactly what we're going to
22 face, that is exactly what we're facing now and will
23 face in the future. This cases establishes the
24 policy.

25 JUDGE GOODWILL: Can you put a little bit
26

1 more meat on her hypothetical and try to give her a
2 little more something to work with?

3 Q. (BY MR. MECHAM) Okay. Let's suppose in
4 this case the effect on the USF is, indeed, a
5 negative impact of \$500,000, or so, as Mr. Meredith
6 suggests. The Commission grants the Application.
7 Six months from now we have a second CLEC coming
8 forward. The impact suggested is \$500,000. I've
9 changed my hypothetical, actually.

10 Would the Division have to look at the
11 second Application with the \$500,000 negative impact
12 in the context of this case that has already had a
13 \$500,000 negative impact?

14 A. Well, I think we would be more likely to
15 look at whether or not the projections were valid,
16 you know, what kind of take rates were actually
17 happening. I think we would refer back to the facts
18 in this case to see if what was being projected were
19 actually the kind of results we were seeing.

20 Q. And so assume that that happens. Assume
21 that, in fact, there has been a loss of \$500,000.
22 Now what?

23 A. Well, I assume that UBTA would come in and
24 seek an increase in its USF draw.

25 Q. Correct. And that's the negative impact.

26

1 But now you're looking at a subsequent or a second
2 Application and you have -- under my hypothetical
3 there's been a \$500,000 impact in this case. What do
4 you do in the second case where there's a projected
5 \$500,000 impact?

6 A. I think you apply the same analysis that
7 we applied here. Although I do have to object a
8 little bit to the hypothetical because I would be
9 stunned -- but I would be stunned if you, Uinta
10 Basin, failed to respond to a competitive entry and
11 they actually suffered that kind of net result loss
12 to their revenues?

13 Q. Hypotheticals as you know from a long time
14 before this Commission don't always come to fruition,
15 but nonetheless witnesses are presented with them and
16 they have to face the facts.

17 A. Well, and I guess my response to that is
18 that's a hypothetical that -- you know, there are so
19 many unknowns in that hypothetical that I don't think
20 that I can give you a reasonable response.

21 Q. Okay. On line 333 of your testimony you
22 quote the Utah Code 54-8b-2.3(10) that allows
23 incumbent rural telephone companies to petition for
24 price regulation as part of your argument that
25 perhaps rate regulation should change. Did I

26

1 characterize that correctly?

2 A. I think I presented that UBTA-UBET has
3 other options.

4 Q. And that option is price regulation?

5 A. That would be one.

6 Q. What are the others?

7 A. Well, they could look at cutting costs.

8 Q. You don't think they look at that now?

9 A. I don't know. But Mr. Todd didn't mention
10 it in his testimony.

11 Q. Did you participate in UBTA's most recent
12 rate case?

13 A. No.

14 JUDGE GOODWILL: Mr. Mecham, we're about
15 at lunch break time. Do you have much longer to go
16 or do you want to continue for a few more minutes?

17 MR. MECHAM: Let's break. I don't really
18 have that much more, but I don't have any objection
19 to breaking and coming back.

20 JUDGE GOODWILL: It's a little bit past
21 12:30. Is 1:30 good enough to reconvene? Mr.
22 Nelson?

23 MR. NELSON: Before we go on break, I'll
24 make the offer and Mr. Mecham can let me know whether
25 you like it or not. But if he would like, I would be
26

1 happy to recall Ms. Kirchner to answer the question
2 that I think Ms. Scholl is unable to answer about
3 whether or not Bresnan, in fact, offers a stand-alone
4 voice only product or intends to offer a stand-alone
5 voice product in Vernal. I'm not sure whether you
6 actually wanted that information or maybe you just
7 wanted to ask the question. But if you want the
8 information, I'd be happy to have that provided by
9 the witness.

10 MR. MECHAM: I wouldn't mind that, but
11 could I ask another one or two?

12 JUDGE GOODWILL: We'll see how it goes.

13 MR. NELSON: We'll see how it goes. But I
14 don't want the record to be unclear so I would be
15 happy to recall her at whatever timing makes sense.

16 MR. GINSBERG: That's when we're done with
17 Ms. Scholl.

18 JUDGE GOODWILL: Okay, good. We'll break
19 until 1:30.

20 MR. PROCTOR: Your Honor?

21 JUDGE GOODWILL: Oh, sorry. Mr. Proctor?

22 MR. PROCTOR: Under the circumstances, I
23 will not be able to return at 1:30 and so I would
24 have to ask your permission and other counsel to be
25 excused.

26

1 JUDGE GOODWILL: Certainly.

2 MR. PROCTOR: Thank you.

3 MR. GINSBERG: Do you have questions you
4 want to ask now?

5 MR. PROCTOR: I'm not going to have any
6 questions of either Ms. Scholl or Mr. Coleman.

7 JUDGE GOODWILL: Okay, great.

8 MR. STOLL: Your Honor, Mr. Hendershot
9 needs to catch a plane at three o'clock, I believe,
10 and we would ask that he be excused. Any further
11 need for questioning Mr. Hendershot? Excuse me,
12 guys.

13 JUDGE GOODWILL: Mr. Nelson, Mr.
14 Hendershot is asking to be excused. Does anybody
15 have an overriding need to not have that happen?

16 MR. NELSON: That's fine.

17 JUDGE GOODWILL: Okay. Thanks.

18 MR. STOLL: Thank you.

19 (Noon recess taken from 12:40 to 1:30
20 p.m.)

21 --ooOoo--

22 JUDGE GOODWILL: Let's go back on the
23 record. Mr. Mecham.

24 MR. MECHAM: Thank you, your Honor.

25 Q. (BY MR. MECHAM) Ms. Scholl, before lunch

26

1 you indicated that one of UBTA's options was to seek
2 price regulation; do you recall that?

3 A. Yes.

4 Q. And if they were to seek it and receive
5 it, would they be able to -- would they be able to
6 take draws from the USF?

7 A. I think so. Under the rule there are two
8 ways to determine what your draw is. One is based on
9 rate of return and one is based on the proxy cost
10 model.

11 Q. And then insofar as residence packaged or
12 bundled service, the price, as I recall, is \$39.99?

13 A. That's what I recall as well.

14 Q. Has the Division done any analysis as to
15 whether or not that covers the residence cost of
16 providing the service?

17 A. No.

18 Q. If it didn't, would that concern the
19 Division?

20 A. Well, the Division -- you know, price
21 lists of companies don't have the requirement to do
22 the cost floor analysis or anything else. You know,
23 we don't ever look at that. So I don't know that it
24 would concern me to know it one way or the other.

25 Q. But do you know if they could make money

26

1 at that level, at that price level?

2 A. I don't know that.

3 Q. And again, hypothetically, if it didn't
4 cover, if that price didn't cover its residence costs
5 and they were to sustain financial difficulty and go
6 upside-down, would that be of concern and should that
7 be addressed as a public interest consideration?

8 A. Well, there are rules that address market
9 exit and I suspect they would follow those rules if
10 that were ever to be the case.

11 Q. But that doesn't answer my question.
12 Would the Division be concerned about that and should
13 that be part of the public interest consideration?

14 A. I think the public interest would be
15 served by making sure anybody that exits the market
16 follows the market exit rule.

17 Q. Okay. When I asked you before what
18 factors you considered you basically gave me, in
19 analyzing an application, you basically gave me the
20 three criteria, financial, technical and managerial
21 fitness of an applicant, that's what the Division
22 looks at?

23 A. I mean, we used the statute and the rule,
24 yes. Those are the ones off the top of my head that
25 I could remember.

26

1 Q. So if any applicant came in and met those
2 three criteria, the Division's position would be to
3 grant the petition?

4 A. The criteria for rules?

5 Q. The three rules, the financial, the
6 managerial and the technical.

7 A. Well, they would need to meet the criteria
8 spelled out in the rule in order for the Division to
9 make a positive rule. The Commission actually grants
10 the certificate.

11 Q. No, I understand that. You propose or
12 recommend that they grant or deny the application, do
13 you not?

14 A. Right.

15 Q. That's your role?

16 A. That's correct.

17 Q. I wanted to go back for just a moment to
18 your testimony on line 333. I can't remember if I
19 asked you this or not. You indicate on that line and
20 thereafter that it was URITA who advocated the
21 position that they be given the right to seek price
22 regulation. Is that essentially what that testimony
23 says on line 333?

24 A. Line 333 is a quotation of the statute.

25 Q. That's where it begins.

26

1 A. Okay.

2 Q. And then at the end of that quotation on
3 the next page, line 340, you say, "If memory serves,"
4 this particular section says, it was "at the behest
5 of the rural telephone companies."

6 A. Yes. Well, that and the thresholds, the
7 access line thresholds.

8 Q. At what point, when did the URTA recommend
9 that that be part of the statute?

10 A. I don't know that it was URTA. My
11 recollection is that there were rural telephone
12 company interests that sought as part of a
13 negotiation. And quite frankly, my memory is -- I
14 can't tell you when exactly, but I have a
15 recollection that there was some negotiation and
16 discussion in the development of that statute or that
17 proposed statutory language that included the rural
18 telephone companies.

19 Q. You mean at the very outset in 1995?

20 A. It may have been '95 or it may have been
21 one of the later amendments, I don't recall.

22 Q. Would you agree that that language was in
23 from nearly the beginning, if not the beginning?
24 And by that I mean 1995,

25 A. I would think that it probably was.

26

1 Q. Okay. Now, I know earlier in our
2 discussion, and again, you can correct me if I
3 mischaracterize anything you've said because I don't
4 intend to, that you don't see this case as setting
5 precedent, am I correct?

6 A. Well, I don't ever think I -- I don't
7 think I answered that question that way. I think I
8 said, based on the facts in this docket, I'm
9 comfortable with our recommendation.

10 Q. Well, on line 403 of your testimony you
11 state that "The division weighed the precedent
12 setting nature of its recommendation carefully and
13 concluded that it was in the public interest to grant
14 a CPCN to Bresnan in the Vernal Exchange."

15 A. Okay.

16 Q. So --

17 A. I mean, and I said in my summary on the
18 stand, this is the first time a CLEC has sought entry
19 into a rural ILEC territory.

20 Q. Right.

21 A. And I do think that that is, I mean, first
22 time precedent. Same thing.

23 Q. Well, except precedent in the law is used
24 the next time a situation arises, but I don't want a
25 legal conclusion.

26

1 A. Since I'm not an attorney I guess I can't
2 answer that.

3 Q. So could you succinctly tell me the
4 Division's standard that it's proposing the
5 Commission follow in this case?

6 A. In this case the Division has reviewed the
7 benefits of competition in balance with potential
8 impacts on the USF and concluded that advising -- or
9 that recommending a CPCN be granted is the correct
10 decision. I don't know that we've set a standard,
11 per se.

12 Q. Did you engage in balancing between
13 competition and Universal Service?

14 A. Yes.

15 Q. And on the competition side, choice,
16 customer choice trumped all?

17 A. Well, customer choice, an additional, you
18 know, new technology, yeah, and the fact that --
19 well, okay. New technology, customer choice. Those
20 are captured, I think. It's consistent with the
21 statute and with the USF guidelines.

22 Q. And so you have basically customer choice
23 and new technology over here and over here you do
24 have an impact on the USF. I mean, you're going to
25 have some impact, whether it's a dollar or \$500,000;

26

1 do you agree with that or not?

2 A. I don't think that we know for sure, but
3 if you say a dollar, yeah, I think a dollar, I could
4 agree there will probably be at least a dollar impact
5 one way or the other, negative or positive.

6 Q. And if there were \$500,000 worth of
7 impact, let's say, you like a dollar, I like the
8 \$500,000. If there were \$500,000 impact and UBTA did
9 all that it could, because as I recall Mr. Todd's
10 testimony, I believe he said that they're relatively
11 efficient and don't have many costs to cut. But
12 nevertheless, they've done all they could and they
13 come in for a rate case and say, "We're out
14 \$500,000."

15 A. And we would proceed the same that we
16 always do at the Division in reviewing all the
17 expenses and the appropriateness of the investments
18 and see if we agree with that. And assuming that we
19 did, then under current statute and rule, UBTA-UBET
20 would be entitled to additional USF payment.

21 Q. Okay. Thank you.

22 MR. MECHAM: That's all I have.

23 JUDGE GOODWILL: Mr. Ginsberg, any
24 redirect?

25 MR. GINSBERG: I do have a few questions.

26

1 REDIRECT EXAMINATION

2 BY MR. GINSBERG:

3 Q. You were asked a number of questions about
4 Western Wireless and the decision by the Commission
5 and the Supreme Court. And in the Western Wireless
6 decision, the request was for ETC status, was it not?

7 A. That's correct.

8 Q. Western Wireless or Alltel, as they're
9 called today, is providing service, are they not, in
10 Uinta Basin and other areas of the state?

11 A. That's my understanding.

12 Q. And taking customers from the rural
13 carriers?

14 A. I would imagine.

15 Q. And that may or may not have an effect on
16 the draw on the State USF?

17 A. Yeah, I don't know if it would or not.

18 Q. But the issue in the Western Wireless case
19 wasn't whether competition should be denied, was it?

20 A. No. It was whether or not ETC status
21 could be granted.

22 Q. And the effect here would be actually
23 denying the ability to provide service?

24 A. That's right.

25 Q. Now, you were also asked some questions
26

1 about Bresnan not serving everywhere in the Uinta
2 Basin and that other certificated carriers get
3 statewide authority. Do you recall that line of
4 questioning?

5 A. I do.

6 Q. Now, other certificated carriers, probably
7 all that have been granted so far, do they pick and
8 choose where they want to serve?

9 A. Oh, absolutely. They have their own
10 business plans, they determine based on their suite
11 of services where they would be most likely to be
12 successful and they start there and grow.

13 Q. So even though their certificate may have
14 been for the whole state they may never --

15 A. Oh, they may never serve the entire state,
16 they may serve pockets of the state.

17 Q. Is this the first certificate that any
18 CLEC has made the commitment to serve everywhere they
19 offer to serve?

20 A. To my knowledge, yes.

21 Q. I think that's all. Thank you.

22 JUDGE GOODWILL: Mr. Nelson, recross?

23 MR. NELSON: Nothing further. Thank you.

24 JUDGE GOODWILL: Ms. Slawson?

25 MS. SLAWSON: No thanks.

26

1 JUDGE GOODWILL: Mr. Mecham?

2 MR. MECHAM: I would love to, but no thank
3 you.

4 JUDGE GOODWILL: I have a question or two.
5 I just want to make sure I understand the Division's
6 recommendation in this matter, Ms. Scholl.

7 And let me look to your testimony. I
8 guess it's page 3 starting at line 44 or line 45. It
9 says, "The Division is recommending that the PSC
10 grant Bresnan a CPCN and that the PSC require Bresnan
11 to serve the entire Vernal Exchange."

12 The recommendation that Bresnan be
13 required to serve the entire Vernal Exchange, is that
14 -- what would be the Division's position if the
15 Commission -- how do I want to ask it?

16 Absent that requirement that Bresnan serve
17 the entire Vernal Exchange, would the Division's
18 recommendation be different with respect to granting
19 the certificate?

20 MS. SCHOLL: No.

21 JUDGE GOODWILL: So the Division would be
22 satisfied if the Commission were to simply grant the
23 certificate but did not require Bresnan to serve the
24 entire exchange?

25 MS. SCHOLL: Yes. The statute doesn't

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1 require it in exchanges over 5,000 lines. Bresnan
2 offered to. Probably more than anything, that was an
3 olive branch to the independent.

4 JUDGE GOODWILL: So was it simply the fact
5 that Bresnan offered that that entered into the
6 Division's thinking or did the Division see some
7 benefit generally or to the consumers in Vernal, or
8 whatever, to requiring Bresnan to serve the entire
9 exchange?

10 MS. SCHOLL: Well, because we think that
11 the existence of competition does serve the public
12 interest, I think we concluded that having every
13 customer in Vernal enjoy that benefit, you know, was
14 probably desirable. But we understand that the
15 statute doesn't require it.

16 JUDGE GOODWILL: And I guess just so we
17 have it explicitly on the record, I take it the
18 Division's recommendation, part and parcel of that,
19 is that a recommendation that the Commission waive
20 the five-year pro forma requirement and waive the
21 bond requirement in lieu of the letter of credit?

22 MS. SCHOLL: Accept the letter of
23 credit in lieu of the bond and waive the five-year
24 pro forma, yes.

25 JUDGE GOODWILL: And then finally, and
26

1 I'll open this question to any witnesses that might
2 have the information, but specifically to you, we've
3 got the Texas report that's been referred to
4 throughout this proceeding and we have information
5 indicating that Bresnan is currently serving in rural
6 areas of Wyoming, Montana, and I believe Colorado.

7 Is there any information, either specific
8 to Bresnan's experience in those states or other
9 states in general, that have dealt with the issue of
10 introducing wire line competition in the rural areas
11 that would help inform the Commission's decision or
12 is there just not that experience out there?

13 MS. SCHOLL: Well, I'm not aware of any
14 formal studies. I know there are instances where it
15 has happened. And I had a thought, but I lost it.
16 Maybe you can ask me the question again and it will
17 come back.

18 JUDGE GOODWILL: I'm just curious if any
19 other states have had similar experience to what's
20 being asked of the Commission here in Utah in having
21 opened up their -- you know, granted a certificate to
22 a CLEC in a rural area, what has been the impact.

23 MS. SCHOLL: Well, the regulatory schemes
24 are different in various states.

25 JUDGE GOODWILL: Right.

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1 MS. SCHOLL: And there are states that
2 don't even have a State USF. So the sets of concerns
3 would probably be different. But I don't have a
4 formal study to point you to.

5 JUDGE GOODWILL: Thanks.

6 Any other questioning based on my
7 questions?

8 Thanks, Ms. Scholl.

9 Now, was there something that we wanted to
10 turn to prior to the next Division witness? I forget
11 if there was another issue we wanted to address.

12 MR. NELSON: Your Honor, the offer on the
13 table was to put Ms. Kirchner up for the limited
14 purpose of answering the question of whether or not
15 Bresnan had a stand-alone voice offering. Subsequent
16 to making that offer I've also been advised that Mr.
17 Coleman has knowledge of the answer to that question.
18 And I defer to Mr. Mecham as to whether he would like
19 Ms. Kirchner to answer that or if he would be
20 satisfied with Mr. Coleman's information on that
21 subject. I'm happy to proceed however he would
22 prefer to.

23 MR. MECHAM: I would be happy to go to Mr.
24 Coleman and see what he produces.

25 JUDGE GOODWILL: Sounds good. Mr.

26

1 Ginsberg, do you want Mr. Coleman next?

2 MR. GINSBERG: Yes.

3 CASEY J. COLEMAN,

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5 called as a witness, being first duly sworn, was
6 examined and testified as follows:

7

8 JUDGE GOODWILL: Mr. Ginsberg?

9

10 DIRECT EXAMINATION

11 BY MR. GINSBERG:

12 Q. Mr. Coleman, state your name for the
13 record.

14 A. Casey J. Coleman, C-0-L-E-M-A-N.

15 Q. And you have prepared Direct Testimony,
16 have you not, that's been marked as DPU Exhibit 2; is
17 that correct?

18 A. Yes.

19 Q. And you had had attached to that Exhibit
20 2.1, which I frankly can't find, but I know you had
21 one attached; is that right?

22 A. Yes.

23 Q. And that's just a calculation of the
24 average monthly rate that you used in your
25 calculation?

26

1 A. Yes.

2 Q. And you also have attached DPU Exhibit 2.2
3 which is confidential; is that correct?

4 A. Yes.

5 Q. Do you have any corrections or additions
6 you want to make here in your testimony?

7 A. Not at this time, no.

8 Q. So if those questions were asked to you at
9 the hearing, those would be the answers you would
10 give?

11 A. Yes.

12 MR. GINSBERG: With that I would ask for
13 admission of DPU Exhibit 2, 2.1 and 2.2, which is
14 confidential.

15 JUDGE GOODWILL: Any objection?

16 MR. NELSON: No.

17 MR. MECHAM: No objection, but I don't
18 know what 2.2 is.

19 MR. COLEMAN: Can I clarify?

20 MR. GINSBERG: Did I do something wrong?

21 MR. COLEMAN: No, you didn't. It was a --
22 we labeled both of them as 2.1 when they were mailed
23 out. And then I realized after the fact that the
24 second one that was confidential should be 2.2.

25 JUDGE GOODWILL: So the attached yellow
26

1 piece of paper is 2.2?

2 MR. COLEMAN: Correct. The way Mr.
3 Ginsberg has described it would be how it would be
4 put in there.

5 MR. MECHAM: Well, 2.1, it says
6 "Confidential" at the bottom of the page.

7 MR. COLEMAN: There's a different sheet
8 for 2.1. What's 2.1 was, was just showing how I came
9 up with the numbers, like 24, 80 and 34, which was a
10 non-confidential spreadsheet.

11 JUDGE GOODWILL: Why don't we get this
12 from the reporter and folks can take a look at it.
13 Mr. Ginsberg, can you get that from the reporter and
14 show counsel just what's 2.1 and 2.2?

15 MR. GINSBERG: Sure.

16 JUDGE GOODWILL: Are we clear and people
17 have the copies we need?

18 MR. MECHAM: I think so.

19 JUDGE GOODWILL: All right. Then that
20 being the case, any objections?

21 MR. NELSON: No objections.

22 JUDGE GOODWILL: Okay, they're admitted.

23 Q. (BY MR. GINSBERG) Now, do you have a
24 summary and additional comments you wish to make?

25 A. Yes, I do.

26

1 Q. Go ahead.

2 A. Basically, my testimony dealt with looking
3 at the public interest and if it's in the public
4 interest for the Commission to grant the CPCN
5 Application to Bresnan.

6 The way I looked at it, and the way it's
7 been brought out in this proceeding is there's a
8 balancing act that has to happen looking at the
9 positive impacts of allowing competition to go into
10 the rural wire center versus any of the perceived or
11 potential negative impacts along with that as well.

12 What I looked at was, of course,
13 54-8b-2.12. And the Utah Code basically gives the
14 requirements that are -- must be met by a company to
15 be granted a CPCN, which is that the applicant has
16 the sufficient technical, financial, managerial
17 resources and abilities to provide the public
18 telecommunications services applied for. And then
19 also that the issuance of the certificate is in the
20 public interest.

21 My testimony basically outlines our
22 Division's analysis with that and how we felt that
23 Bresnan had met the technical, financial and
24 managerial resources. We also looked at, and I think
25 Ms. Scholl brought this out in her testimony, but we

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1 also looked at how the Commission had the statutory
2 requirement as a policy declaration from the
3 legislature in 54-8b-1.1(3), which is to encourage
4 competition as a means of providing wire customer
5 choices for the public telecommunications services
6 through the state. And so using those legislative
7 declarations we tried to look at this as a balancing
8 act to understand what happened with that as well.

9 I believe that the Commission should look
10 at our analysis done by the Division because of all
11 the different opinions provided, the Division was the
12 only party that tried to balance the positive
13 benefits of competition against the potential
14 negative impacts of allowing another competitive
15 entrant. I've sat in this proceeding the only time
16 and I haven't heard anyone else other than the
17 Division talk about the potential benefits there.
18 And so I think for that reason ours would be the one
19 that should be at least looked at and considered
20 because we are the only one that was providing both
21 sides of the public interest test of that as well.

22 In my testimony I outline some of the
23 reasons that I believe there will be benefits to
24 competition. Briefly, those were increased choices,
25 reduced costs, increased service quality, and an

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1 increase in technological innovation. My analysis
2 also showed that there would be a negative impact to
3 the USF or a potential negative impact to the USF
4 which could be somewhere in the range between
5 \$125,000 and \$250,000 annually.

6 Another way that I try to quantify that to
7 put it into numbers that maybe I can understand is
8 that, and this is an if. You know, Ms. Scholl
9 obviously in her testimony talks about how the fund
10 may not even need to be impacted as far as what a
11 consumer would need to pay if we're talking about the
12 whole state. But as an individual consumer in the
13 state, for the impact of this case, an individual
14 would have to pay roughly one cent a year more on
15 their phone bill annually for this \$125,000 to
16 \$250,000 increase to happen.

17 Looking at that, that to me doesn't seem
18 like it's a huge amount that would cause most
19 consumers in the State of Utah to show concern.

20 Basically, I conclude that Bresnan has
21 gone through the process and to the Division's
22 opinion has shown managerial, financial and technical
23 ability to manage a telecommunications company and
24 the public interest has been satisfied because of the
25 positive benefits which outweigh the negligible

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1 disadvantages in the worst case scenario.

2 Then there were just a few points that I
3 wanted to kind of discuss as points of reference or
4 rebuttal as far as why I believe that our analysis
5 potentially is one that could be accurate or one that
6 could be used versus one of the other ones. And one
7 of the points that I wanted to bring out is that in
8 Mr. Meredith's testimony he is using an average, an
9 average revenue per line that comes up with a
10 calculation and use for the average revenue.

11 I believe that using an average would
12 actually overstate what the impact would be with
13 that. And the reason that I believe that is if you
14 look at my confidential attachment in my testimony,
15 what --

16 JUDGE GOODWILL: This is 2.2?

17 MR. COLEMAN: Yes, 2.2. What it shows
18 there is it shows the customer distribution for
19 UBTA-UBET and then also information that was received
20 by Bresnan as far as what their distribution has
21 been.

22 Now, obviously there was some changes to
23 that according to better information that Mr.
24 Meredith had. But the reason why I think this is
25 valid is, if you look at the numbers there's a huge
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1 disparity between the number of business customers
2 and residential customers that is served by UBTA-UBET
3 and also Bresnan. And if you look at an average,
4 what is happening here is Mr. Meredith didn't try to
5 separate out business and residential customers. And
6 just if you look at the amount that an individual
7 consumer in Vernal will pay just for basic
8 residential phone service, that cost would either be
9 \$16.50 for a residential consumer or it could be \$26.
10 And I'm just talking the basic affordable base rate
11 here.

12 Already we see there's a pretty
13 significant spread between business and residential.
14 It's a pretty well accepted fact, it may not be true
15 substantially in all the rural areas, but I think if
16 you talk to most people in the telecommunications
17 industry your high-revenue producing consumers
18 typically tend to be business customers.

19 Once again, Bresnan has not potentially
20 tapped into that market yet. So if you're looking at
21 this just as an average, I believe you would grossly
22 overstate what those revenues could be because
23 Bresnan may be taking the residential customers which
24 could end up being not the high revenue, but maybe
25 the middle or low revenue customers.

26

1 And so I believe that's one serious flaw
2 that Mr. Meredith has in his analysis that would
3 state, overstate the numbers.

4 Also a difference between my analysis and
5 Mr. Meredith's analysis that I believe is worthwhile
6 is he indicates in footnotes that he's looking at a
7 near-term analysis, which is two to four years. In
8 my analysis I tried to look instead at more of a
9 12-month time frame. I believe that a 12-month time
10 frame is more applicable in this scenario because
11 generally when a company, UBTA-UBET, or any other
12 small rural company will come in for a rate case, we
13 generally will look at that over a 12-month period
14 seeing what their revenues are versus their expenses
15 and then we'll just give them a draw according to
16 what their needs would be for a 12-month period.

17 Once you start to expand and extrapolate
18 that number out two years, four years or more, what
19 happens is there's a lot of factors that could create
20 ambiguity with that number. For example, it's
21 already been talked about, what is the competitive
22 response that UBTA-UBET would have to someone coming
23 into that? Well, would that affect what that number
24 would be for four years? I believe it would.

25 So my analysis was one where I was looking

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1 at a much more constrained time period of 12 months,
2 which again I think will help give the Commission a
3 more accurate impact as far as what will be for a USF
4 Fund for a company with that as well.

5 And then another reason why I believe a
6 12-month versus a four-month time frame, I actually
7 don't have as much experience as many people sitting
8 here as far as the telecommunications industry, but
9 I've been doing this for five or six years. And just
10 in the short time period that I've been involved with
11 that the telecommunications industry has changed
12 vastly, dramatically, and in ways I don't think
13 anybody could have foreseen.

14 So trying to do a four, five or six-year
15 analysis or anything like that could be very
16 difficult because we don't know what the future is
17 going to bring and what those changes would be. And
18 so again, I would say a near-term analysis would be a
19 little bit speculative because you're trying to say
20 what is going to be happening in an ever changing and
21 evolving telecommunications environment.

22 Also, in some of the Rebuttal Testimonies
23 provided by Mr. Hendershot and Mr. Meredith, they
24 talk about how it appeared that I was implying that
25 UBTA-UBET never had provided a high-quality

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1 technologically advanced telecommunication system.
2 And if you look at the testimony and what I've talked
3 about, I never once indicated my opinion as far as
4 what UBTA-UBET's system was. In fact, what my
5 premise was is that if consumers were choosing to
6 move from one company to another, in their perception
7 or in their mind there must be a reason, and one of
8 those reasons could be the service quality or the
9 service that is being provided wasn't as advanced as
10 they want. And so I never once in my testimony
11 stated that UBTA-UBET was not providing a service
12 that was quality and able to meet the needs of
13 consumers.

14 I also believe, to a certain extent,
15 cherry picking has been discussed quite extensively
16 by a variety of consumers. And I think to a certain
17 extent, although I don't try to minimize the concern
18 with that, I think that it is to a certain extent
19 maybe overblown. And again, the reason why it is, if
20 you look at the type of consumer that Bresnan is
21 right now serving, they're serving primarily
22 residential customers with some business customers
23 thrown into the mix.

24 Generally in a cream skimming or cherry
25 picking scenario you're going to go after the highest

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1 revenue type of consumers. Again, generally
2 speaking, not knowing exactly all the details in the
3 Vernal Exchange, your high revenue, high potential
4 profit consumers are going to be usually your
5 business customers who are going to be using more
6 advanced services, more technologically expensive
7 services, T1 lines, et cetera, which from the
8 offering that it looks like Bresnan has had isn't
9 necessarily the type of area they would be looking to
10 get into.

11 Again, I'm not speaking for Bresnan, I
12 don't know, but for myself as the Division, I think
13 the cherry picking argument is mitigated to the fact
14 that primarily it looks like they are going to be
15 serving a residential consumer with that as well.

16 And I think that's primarily the points
17 that I wanted to bring up.

18 MR. GINSBERG: He's available for
19 questions.

20 JUDGE GOODWILL: Mr. Nelson, questions?

21 MR. NELSON: No questions, thank you.

22 JUDGE GOODWILL: Ms. Slawson?

23 MS. SLAWSON: Thank you, your Honor.

24 CROSS-EXAMINATION

25 BY MS. SLAWSON:

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1 Q. My name is Kira Slawson.

2 A. Sorry. And it probably isn't procedurally
3 right, but I was supposed to bring up some points
4 that Mr. Mecham had discussed. Do I wait until then
5 or do I just bring that up now or does it matter?
6 Sorry.

7 JUDGE GOODWILL: I don't know what points
8 were --

9 MR. COLEMAN: Well, it was just the
10 service.

11 MR. GINSBERG: The stand-alone service?

12 MR. COLEMAN: The stand-alone service.

13 I'm sorry, I can bring that up now. I forgot that as
14 an additional talking point.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. GINSBERG:

17 Q. Are you aware whether Bresnan is going to
18 offer a stand-alone service?

19 A. Yeah. We did a Data Response to Bresnan
20 when they first did their CPCN Application. And in
21 that response they did indicate that they would
22 provide a stand-alone service that will be offered.
23 The price for that service is \$49.99 per month and
24 then any additional lines could be available for a
25 \$14.99 charge up to four lines.

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1 And then a follow-up question to that was
2 if there was any need for a broadband service to be
3 able to provide the stand-alone. And Bresnan
4 basically said, no, the customer is not required to
5 purchase a broadband connection. Bresnan digital
6 phone service is not an over the top voiceover IP
7 service. It does not transmit public internets so a
8 broadband connection is not required.

9 So I know those were some items of
10 discussion earlier on and I did have the answer, so I
11 wanted to get those out there. Sorry about that.

12 MS. SLAWSON: No problem. It's going to
13 be a little bit awkward because I don't think the
14 court reporter is going to be able to hear you.
15 There you go.

16 A. I can move this. It's okay.

17 FURTHER CROSS-EXAMINATION

18 BY MS. SLAWSON:

19 Q. Mr. Coleman, you indicated that the
20 Division and ultimately the Commission need to weigh
21 the potential benefits against any impact that the
22 competitive entry might have on the State USF; is
23 that correct?

24 A. Yes.

25 Q. And I believe you indicated some of those
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1 potential benefits being increased choices, decreased
2 costs. Basically, it's the Division's position that
3 competition is a good thing; is that correct?

4 A. Well, generally speaking, there's benefit
5 to the consumers received in a normal market
6 environment. And I believe if you look at most
7 economic textbooks they will say that there are a
8 variety of benefits that come to consumers through
9 competition.

10 And then also, our belief is that the
11 legislature must feel that way as well because of the
12 clear policy declarations that they gave as far as
13 the Commission needing to foster and promote
14 competition.

15 Q. And by "competition" do you mean -- are
16 you concerned with unfair competition? Did you look
17 at any unfair competition issues?

18 A. With this application or just in general?

19 Q. Well, with this application.

20 A. Well, obviously we always look and make
21 sure that there's not going to be any type of
22 discrimination that's happening there. But no, I
23 didn't say, okay, is this fair or unfair competition,
24 per se.

25 Q. Okay. Do you know if Bresnan's price of
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1 \$39.99 covers its costs?

2 A. I have no idea as far as if it covers
3 their costs or not. They provided financial
4 statements, but we didn't have a cost study that was
5 done.

6 Q. And how did the Division consider whether
7 this was fair or unfair competition if they don't
8 know if the price charged covers the costs?

9 MR. GINSBERG: I think you're
10 mischaracterizing whether he determined whether it
11 was fair or unfair competition.

12 Q. (BY MS. SLAWSON) Oh, I'm sorry. Did you
13 determine whether it was fair or unfair competition?

14 A. No. We basically said that they would be
15 a competitor.

16 Q. Okay. So you didn't look at whether it
17 was going to be fair competition or unfair
18 competition?

19 A. Fair or unfair for UBTA-UBET or fair or
20 unfair for Bresnan or fair or unfair for Qwest?

21 Q. Well, under the statute there's a --

22 MR. GINSBERG: Well, under what statute is
23 fair competition are you referring to?

24 MS. SLAWSON: Well, I don't have the cite
25 in front of me, but I believe there's a statute in

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1 Utah that prevents or prohibits unfair competition.
2 And I think one of the factors that they look at and
3 I think one of the factors that the Division is
4 concerned about is whether they're offering a product
5 at a cost --

6 MR. GINSBERG: Are you referring to the
7 antitrust laws of the State?

8 MS. SLAWSON: That's one of them.

9 MR. GINSBERG: I guess that I -- I think
10 the question is vague and unclear.

11 MS. SLAWSON: Well, we can work through
12 it.

13 JUDGE GOODWILL: I think he's answered
14 that he didn't consider fair or unfair and we can
15 just go from there.

16 Q. (BY MS. SLAWSON) Okay. Would the
17 Division -- let me ask you this. Would it be in the
18 public interest to promote or to permit unfair
19 competition?

20 MR. GINSBERG: Again, I don't know what
21 "unfair competition" is. I would object.

22 Q. (BY MS. SLAWSON) Okay. Would it be fair
23 or unfair -- would it be in the public interest for
24 the Division to recommend the issuance of a CPCN to a
25 company that is offering their product at a price

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1 that does not cover their costs?

2 A. And again, we didn't look at the cost
3 element to say if it was above or below the cost of a
4 company. And in a competitive environment, we don't
5 necessarily say that it's going to be fair that they
6 offer a service above or below cost because we don't
7 try to determine why a company is choosing to price
8 something at one point or the other.

9 Q. And it's just not something you looked at?

10 A. No.

11 Q. Other than indicating in your testimony,
12 you've suggested that there's -- that in order to
13 grant the CPCN the applicant must meet the technical,
14 financial, and managerial requirements of the
15 statute. That's one part of it, correct?

16 A. Correct.

17 Q. Now, did you conduct any independent
18 investigation as to each of those elements in
19 Bresnan's case?

20 A. You mean independent other than what we've
21 done in this proceeding?

22 Q. I mean independent other than what they
23 have provided in their Application.

24 A. Sure. We sent Data Responses to the
25 company trying to get a better feel for what services

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1 they were going to provide. We have looked at
2 service quality in a couple of the states that they
3 were providing in. So we did do and look at this
4 company to try to determine if we felt that they
5 would be able to be a CLEC.

6 Having said that, you know, as a Division
7 we review CPCN applications, numerous. I mean, we
8 get many that come out throughout the state -- or
9 sorry, throughout the year for a variety of different
10 areas. And it's a pretty well-established process as
11 far as what we go through. I mean, it's in the Code
12 as far as what we need to do and in the statutes
13 there as well.

14 And so we followed that same process with
15 Bresnan as we would with any other CPCN. And in
16 fact, in my determination, did more than what we
17 would have done with other competitors because of the
18 nature of this case and our understanding of that.

19 Q. Well, you indicated that it's in the
20 statute. And the first requirement in the statute is
21 that they have the technical, financial and
22 managerial sources. We talked about that a little
23 bit.

24 But the second part of the statute is the
25 public interest test. And I feel like we've spent a
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1 lot of time today trying to get the Division to
2 articulate what that public interest test is going to
3 be, so that not only do we know that for this
4 proceeding, but that we know it for the next
5 proceeding.

6 So can you tell us, what is the public
7 interest test that the Division is looking at?

8 A. The public interest test, as I looked at
9 it, and I think was similar for the Division, is we
10 tried to balance the positive benefits that could be
11 perceived out there by allowing a competitor to serve
12 in an area versus the negative impacts of that
13 competitor going into that area as well. And so that
14 was one of the public interest tests that we looked
15 at as well.

16 Ms. Scholl brought up in her testimony
17 another public interest test that was used in another
18 proceeding was the consumers were known -- were soft.
19 I also listed in my testimony some other areas that
20 the Commission could look at as far as the
21 Telecommunications Act of 1996, and I believe also
22 the legislative declaration dealing with competition.

23 Q. So it sounds to me like the Division -- is
24 that if there's a competitor then you're going to
25 have benefits from competition; is that correct?

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1 A. Not always. It will depend on the
2 application. For example, if you look at the Western
3 Wireless ETC Application which had a public interest
4 standard, it was denied. And the reason why it was
5 denied, and I'm not going to have a cite or a quote
6 here, but I think it was pretty strong language that
7 the Commission could not see any positive benefits
8 coming or accruing that would offset the negative
9 impacts.

10 And so that's -- you know, there are
11 situations, there are companies that may come before
12 the Commission, and us as a Division, we have to
13 review where there may be no positive benefits. So
14 it's not just competition is positive, and that's not
15 our blanket answer. But looking at the facts of the
16 case, like we did in this situation with Bresnan, we
17 looked at it and we said, "There is some positive
18 benefits," which I outline in my testimony, "there is
19 some negative impacts" that has been discussed at
20 length for the last couple of days.

21 As a Division, we feel that those
22 potential negative impacts do not tip the balance of,
23 say, in favor of not allowing the CPCN in versus
24 granting the CPCN Application.

25 Q. Okay. Well, let's talk about that a
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1 little bit. So, in fact, there was no -- the public
2 benefits in the Western Wireless case either didn't
3 exist or they weren't enough to outweigh the impact
4 on the State USF; is that correct?

5 A. According to my reading of the results and
6 also the testimony that was filed and that by the
7 Commission, yes.

8 Q. And maybe we need to walk through some of
9 those factors that the Commission looked at in
10 Western Wireless. The Western Wireless decision
11 looked at the potential impact on the State USF
12 compared with the public potential benefits and in
13 that case in fact determined that the public elements
14 did not outweigh the impacts; is that correct?

15 A. Partially. Because what the Commission
16 went on to say after that was the fact that the
17 Western Wireless case didn't provide any specific
18 location as far as where they were going to be
19 serving, they didn't provide any specific location as
20 far as the service that they would be providing, they
21 didn't provide any specific information as far as
22 which consumers were going to be served. And so
23 there was a whole list and I'm just going off of
24 three or four that I can remember off the top of my
25 head, to where the Commission said, "We don't see any

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1 positive benefits here that can offset this negative
2 impact."

3 And in fact, the Supreme Court even in
4 their affirmation, I don't know what the proper legal
5 term is, but you guys will get the gist of what I'm
6 saying, also said basically the same thing, is that
7 they weren't against competition per se. But with
8 the Western Wireless case they were against it
9 because there was nothing that was provided in the
10 record, provided by Western Wireless, provided by
11 anyone that could offset the negative impacts to make
12 the Commission or anyone say, "Yeah, this looks like
13 it's in the public interest."

14 Q. So is it the Division's position that if
15 you tell them where you're going to provide the
16 service, if you tell them what service you're going
17 to provide and you tell them what costs you're going
18 to provide that service at, well, the price you're
19 going to provide that service at, regardless of
20 whether it covers your costs or regardless of higher
21 or lower than the incumbent, if you meet those
22 standards then you're going to be granted CPCN? Am I
23 following you?

24 A. That's one element. There are other
25 elements, and I think my testimony outlined the other
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1 elements as well. You would look at the services
2 that were being provided to see if, in fact, they are
3 going to be comparable, if they're decent services or
4 not. And then I also listed what I thought were
5 other benefits besides that as well.

6 So it's not just a simple list of, okay,
7 they provided where they are going to serve. What
8 I'm saying is, with this Application and for this
9 case we had more information than what it appeared
10 they had in the Western Wireless case. So that
11 helped us to be able to say, okay, we can at least
12 get a sense of where Bresnan, as a competitor, is
13 going to want to serve. We can get a sense as far
14 as, okay, what product are they going to be
15 providing.

16 Having said that, though, that doesn't
17 necessarily mean that that's why they were, in our
18 opinion, why we suggested they should be granted a
19 CPCN. It was because we looked at other factors as
20 well. We looked at the impact on the USF, we looked
21 at the competitive environment, what benefits we
22 perceived or felt were going to be realized by
23 consumers and those type of elements with it as well.

24 And so it's not just a here's one thing
25 you can look at. And I believe it works on the same
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1 way as well. You can't just say, okay, there's a
2 \$1.00 increase. That's a negative impact to
3 consumers so we can't allow competition to happen. I
4 think Mr. Meredith brought that out in his testimony
5 or when he was on the stand, "If that's how
6 simplistic it is, let's all go home. We can just put
7 a computer up and we're done." If the USF increases
8 by a dollar, there's no competition. I think we all
9 realize that what we're dealing with is much more
10 involved than just it's A, B, C, D, it's a lot of
11 other factors. And that's ultimately the decision
12 the Commission is going to make is what is the
13 balance.

14 Q. Well, in your opinion, what is that
15 balance? Where would the impact on the State USF be
16 too high?

17 A. I think it's a facts-based decision. I
18 think with this case, what Ms. Scholl said and what I
19 agree with is we haven't seen any impact that's going
20 to happen with this competitor coming in that would
21 make a detrimental situation to the USF. What impact
22 is going to happen? I think each fact and each case
23 will be different and you have to look at, again, the
24 balancing that happens. What are the positive
25 benefits of this applicant versus the negative

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1 impacts to the USX? Is those negative impacts going
2 to be offset by any of the positive benefits of this
3 competitor coming in? If in the opinion of the
4 Division the answer is yes, there's more positive
5 than the negative impacts to the USF, then just like
6 we would with Bresnan or any other applicant we would
7 say, great, they should be granted a CPCN, which in
8 fact we do quite regularly. Because if you look at
9 the non-rural carriers, Qwest's area, it's almost a
10 matter of process that those EP standards happen as
11 long as they provide the information because there
12 isn't going to be an impact to the USF.

13 Q. Well, that's interest. You said it's
14 almost a matter of process. So in those uncontested
15 applications are you not ensuring that they've met
16 the requirements of the statute?

17 MR. GINSBERG: He didn't say that.

18 Q. (BY MS. SLAWSON) I'm asking that.

19 A. I'm more than happy to answer that. As a
20 Division, we have a checklist we go through whenever
21 we receive a CPCN Application, which is the same
22 checklist that we went through with Bresnan. I can
23 go through and I can read each individual element on
24 this checklist if you would like, I can provide it to
25 the Commission if they're concerned that we're not

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1 doing our due diligence as a Division. But this is
2 something that we do as part of the Division. It's
3 not something that's new or out there and we've never
4 had anyone question the due diligence which we have
5 done with any other CPCN Application.

6 Looking at this CPCN Application, we have
7 done not only what we normally would do as a matter
8 of process and what's required by statute or by law,
9 but we've done more because of the precedential
10 nature as has been discussed by other people here and
11 because we realize that they're going into a
12 rate-of-return regulated company which may have some
13 different policy implications. Would you like me to
14 go through the list?

15 JUDGE GOODWILL: Let Ms. Slawson ask the
16 questions.

17 MR. COLEMAN: I'll do that. All right.

18 MR. MECHAM: Please don't.

19 MR. COLEMAN: I just want to keep going,
20 you know.

21 Q. (BY MS. SLAWSON) I do want to go back in
22 line 88 and 89 of your testimony. You indicate, "To
23 date the Commission" --

24 MR. GINSBERG: Where did you say?

25 MS. SLAWSON: Lines 88 and 89.

26

1 Q. (BY MS. SLAWSON) "To date the Commission
2 has never made a determination regarding public
3 interest in a contested CPCN application." I just
4 want to clarify that testimony.

5 Do you mean to say that the Commission has
6 not previously made any determination as to the
7 public interest requirement in the prior cases or are
8 you saying that because the prior applications
9 weren't contested no such determination was required?

10 A. In each CPCN Application, the Commission
11 always makes a finding of public interest. What I
12 was trying to say there is that, to my recollection,
13 now, I wasn't around when the first CPCNs happened, I
14 was still probably in school trying to figure out
15 what I was doing with my life, so I don't have a
16 recollection of those. But my recollection of the
17 ones that have happened, you know, there has never
18 been a contested CPCN Application other than this one
19 here.

20 Q. And is the public interest test different
21 in a contested CPCN Application?

22 A. I think the Commission has to still
23 determine a public interest test. Obviously, because
24 this one was contested, I think it may have a little
25 bit more scrutiny. But ultimately that balancing act

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1 is what the Commission is going to have for look at.
2 I guess a way you could look at it is because the
3 Commission had done so many previous that weren't
4 contested, there's a fairly good understanding as far
5 as what the Commission is looking for and what
6 they're not looking for. This one, because it is a
7 little different because you are a rate-of-return
8 regulated area, we necessarily didn't have as much
9 direction on the Commission as far as what they're
10 looking for. I think that did cause us as a Division
11 and interested parties to look at this a little bit
12 more.

13 But I still think the public interest test
14 that the Commission has to look at, I don't think
15 they'd say, "We have a public interest test for a
16 contested CPCN Application," I don't see that
17 anywhere in the statute. I think it says, "This is
18 what is required for a public interest test."

19 Q. To your knowledge, has there ever been an
20 application for a CPCN filed by a competitive carrier
21 that sought authority for only one specific exchange?

22 A. Yes.

23 Q. And which one was that?

24 A. Approximately four to six months ago,
25 maybe a little bit longer than that, we did have an

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1 application from a Global -- I get these mixed up,
2 Global Connections, I believe is what it was, applied
3 to be able to serve within another rural
4 telecommunications area, I believe it was in the Moab
5 Exchange.

6 Q. Okay. And was that CPCN granted?

7 A. The company decided that they didn't want
8 to continue to go forward once they realized that
9 their application -- having some phone conversations
10 with them, they thought they were going to be getting
11 either like a much greater area of the entire state
12 or didn't realize the laws as they were in the State
13 of Utah as far as going into a rural area and so they
14 didn't go forward past that point.

15 Q. And to your knowledge, has the Division
16 ever recommended the CPCN in a rural area that
17 included only one exchange?

18 A. Not to my knowledge, no.

19 Q. On lines 307 to 314 of your test you say
20 that the Commission should not try to apply the facts
21 of this case to all rural carriers, and you indicate
22 that it seems unfair to deny a company the
23 opportunity to compete in a specific geographic
24 region because there may be companies wanting to
25 serve in other areas.

26

1 Has the Division conducted any studies on
2 the likelihood of competition in other rural areas?

3 A. No.

4 Q. Has the Division looked at the overall
5 impact that the competition in the rural areas might
6 have on rural ILECs or the State USF?

7 A. Other than what we've provided in this
8 case, no.

9 Q. So not overall just, again, facts specific
10 to this case?

11 A. Correct.

12 Q. On lines 414 to 416 of your testimony you
13 recommend that "packaging of unlimited long distance
14 with local," or I'm sorry, "with unlimited local
15 calling would be a benefit."

16 And then you went on to review the EAS
17 proceedings for the Uinta Basin and conclude that if
18 it was viewed as a benefit for those Vernal customers
19 having this extended area service then it's logical
20 to conclude that other customers would like to have
21 the ability to call anywhere else in Canada or the
22 United States without paying toll charges.

23 Do you remember that testimony?

24 A. Yes.

25 Q. And if I've mischaracterized the testimony

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1 in any way, please clarify.

2 A. So far sounds good.

3 Q. Okay. I suspect you're right, that there
4 are some customers who would like to have unlimited
5 long distance.

6 However, my question is, has the Division
7 conducted any studies to determine whether a provider
8 can economically offer unlimited long distance if it
9 pays appropriate access charges?

10 A. Well, I guess to answer that question,
11 when this issue came up I did do, I don't know how
12 detailed of a study you want, but I did contact a
13 major cable provider in the State of Utah and I had
14 told him a little bit about the proceeding and what
15 was happening here and I asked him to be able to tell
16 me if they pay access charges and offer an unlimited
17 local and long distance phone service.

18 The information that I got back from the
19 large cable provider who provides service throughout
20 the Wasatch Front here is that, in fact, they do
21 offer an unlimited local and long distance service
22 and that they are paying access charges.

23 And so, again, I didn't go into minute
24 detail to figure out if that company is covering
25 their costs or not covering their costs, but my
26

1 premise is with a little bit of a business background
2 most companies aren't going to go in and try to do
3 something if they don't feel at some point in time
4 that it's going to be profitable or it's going to be
5 worthwhile for them to be able to make some type of
6 additional revenues or profits off of it. Most
7 people are in business to make money, not lose money.
8 And, you know, if they enter into a segment of the
9 market, that's because they feel they can, in fact,
10 capture something that's going to provide a financial
11 benefit for them instead of a detriment.

12 Q. Would you agree that a company that didn't
13 pay terminating access charges would probably make
14 more money than one who did?

15 A. I can't say in every scenario that would
16 be true.

17 Q. Tell me a scenario where it might not be
18 true.

19 A. If you had a profit margin of 100 percent
20 and you could get a consumer that would double your
21 revenues, and with access revenues you're only
22 getting a few pennies, and say the 100 percent profit
23 margin is \$100. That company could be making a lot
24 more by paying access revenues or not paying access
25 revenues.

26

1 Q. Now, my question was, if you have two
2 companies, all else being equal --

3 A. You didn't say "all else being equal."

4 Q. I'm rephrasing it. All else being equal,
5 one company pays access, terminating access charges
6 and one doesn't, the one that doesn't pay the access
7 charges is going to be making more money, correct?
8 They're not going to have the outlay, that cost?
9 They're not going to have to absorb that cost; is
10 that correct?

11 A. Again, no. Because, for example, you
12 could look at Qwest, who is making more money,
13 potentially than are rural companies, and they could
14 be paying access charges versus someone who isn't
15 paying access charges. So it would depend on the
16 facts of the case. I mean, you know, there are so
17 many different factors as far as what makes somebody
18 profitable. And access charges is one of those
19 things, I won't disagree with that, but maybe there's
20 another way that this person or this company has been
21 able to reduce their costs to a point where even if
22 they're not paying access charges they can still be
23 more profitable because of that.

24 Q. Okay. Let me just try this another way.
25 If you're paying terminating access charges, that's a
26

1 cost that comes off of your -- it comes out of your
2 revenues, right? Is that correct?

3 A. Yes.

4 Q. Okay. And if you're not paying
5 terminating access charges you don't have that cost,
6 do you?

7 A. That would be a true statement.

8 Q. Can you tell me what the Division's
9 position is on phantom traffic and its responsibility
10 to ensure that company that it regulates do not
11 contribute to the phantom traffic problem?

12 A. Our position is that companies should
13 provide the information that they need to so that
14 phantom traffic wouldn't necessarily be an issue.
15 Although I don't know, having said that, how phantom
16 traffic would necessarily play into a CPCN
17 Application. I mean, that sounds to me like a
18 different proceeding and a different element than
19 what would be important to determining a CPCN
20 Application for a company.

21 Q. Well, doesn't it go to the public
22 interest? If you're issuing a CPCN to a company and
23 they're going to contribute to the phantom traffic
24 problem, doesn't that go directly to the public
25 interest test?

26

1 A. For the facts of this case, unless I was
2 misunderstanding, I believe Bresnan said they were
3 going to pay access charges and they were going to
4 provide all the information to be able -- that is
5 needed to make sure or ensure that a company such as
6 UBTA-UBET would be able to get access charges. So
7 for this case I guess I'm missing how that's
8 relevant.

9 Q. Well, I think --

10 A. Having said that, I mean, I don't want to
11 sound unresponsive. I mean, the Division, obviously,
12 if a company is not able to recover their costs and
13 there's phantom traffic out there, we would want to
14 be responsive to it. I guess my position is, I don't
15 think this is the area or the arena where we need to
16 deal with the phantom traffic issue. We're more than
17 happy to deal with that any other time. I mean,
18 phantom traffic has been out there for a number of
19 years and we've never seen any of the rural companies
20 come forward and say -- we've had discussions about
21 it, but there's never been any formal proceeding or
22 anything brought with the Commission to ask us to do
23 more.

24 Q. Okay. So what I take from your testimony
25 prefiled and your testimony here today is that the
26

1 effect or the problem of phantom traffic should not
2 be part of the public interest test; is that correct?

3 A. I said that Bresnan has indicated that
4 they are not going to preclude providing that
5 information and that Bresnan has also said that they
6 would pay terminating access charges. I guess I must
7 have a more simplistic understanding as far as
8 phantom traffic. But if they said they've done that,
9 let's hypothetically say they're granted a CPCN, and
10 then after the fact they're not providing that
11 information. That would be something that I believe
12 the Division would definitively jump in with any of
13 the companies and say, hey, look, you know, our
14 understanding was and you had said in a hearing that
15 you were going to provide this, you're not. Let's
16 work through it.

17 So I'm not saying that we're not
18 responsive to phantom traffic, but I am acting in
19 good faith that someone who has indicated they're
20 going to provide those type things for this case is
21 going to do that. Does that mean that phantom
22 traffic, if someone else said, well, we're not going
23 to provide that information, XYZ Telecommunications
24 Company comes in and says, "We're not going to pay
25 terminating access, we're not going to pay any of

26

1 those revenues," et cetera, to me that would be a
2 criteria that we would probably look at as a Division
3 as a potential negative and put that on the negative
4 side as far as how are they balancing out this
5 positive or negative. But with this case, I haven't
6 heard that from Bresnan, you know, they haven't
7 indicated that. So I don't see, again, how that is
8 an issue for this specific case.

9 Q. Well, actually, I believe what Bresnan has
10 indicated is that they were going to hand their
11 traffic off to Qwest and Qwest provides that
12 information. I'm just curious, I wonder if anybody
13 would come before the Division or make an application
14 for CPCN and say, "We're not going to pay terminating
15 access charges."

16 I mean, there's no question there. I
17 don't have any additional questions.

18 JUDGE GOODWILL: Mr. Mecham?

19 MR. MECHAM: Thank you.

20 CROSS-EXAMINATION

21 BY MR. MECHAM:

22 Q. Good afternoon, Mr. Coleman.

23 A. Hello.

24 Q. I'm curious if the Division has given any
25 forethought as to what policy it will pursue if a
26

1 CLEC provider comes in seeking ETC status?

2 MR. GINSBERG: I think I would object to
3 the question as being speculative.

4 MR. MECHAM: I'm only asking if they've
5 given any forethought, any discussions. I'm not
6 asking what they were. I'm just asking if they've
7 given any forethought or had any discussion about it?

8 JUDGE GOODWILL: You can go ahead and
9 answer.

10 MR. COLEMAN: Over the course of many
11 different meetings with the Division and different
12 elements, of course an ETC application has been
13 discussed. I don't know that we've come up with a
14 firm policy as to what our feeling would be if a
15 second ETC provider came in or an additional ETC
16 provider came in requesting to be granted an ETC
17 application in rural areas, non-Qwest areas.

18 Q. (BY MR. MECHAM) Now, the Division makes a
19 big distinction between a CPCN case and an ETC case.
20 Are you aware of any other cases or authorities apart
21 from Western Wireless where the Commission truly took
22 it up in a contested setting, took up the issue of
23 the public interest?

24 A. No, I'm not.

25 Q. Now on I guess it's on line 33 of your
26

1 testimony, you indicate there that, you know, Western
2 Wireless was years ago and that instead, I'm quoting
3 directly, "Instead the public interest standard
4 should be defined broader in this proceeding."

5 Can you tell me, how did the Division, in
6 your testimony and in your mind, define public
7 interest more broadly than it was defined in the
8 Western Wireless case?

9 A. Well, again, if you look just a little bit
10 lower in my testimony, we said that there should be
11 other things that the Commission could potentially
12 look at. For example, any past CPCNs issued by the
13 Commission, the 1996 Telecommunications Act,
14 Commission rules on competitive entry, and equivalent
15 legislative direction given to the Commission in
16 UCA 54 -- sorry, in Utah Code 54-8b-1.12.

17 What I was trying to get at is, in my
18 opinion, it felt like there was a very narrow reading
19 of the ETC public interest, which was if there was an
20 increase to the USF Fund, that was all that needed to
21 happen or needed to be looked at to determine that it
22 wasn't in the public interest.

23 And my position, and I believe our
24 position as a Division is that's one element. That's
25 one thing to look at. It's an important element.

26

1 I'm not trying to minimize the importance, but that
2 isn't the sole thing to look at from a positive and
3 negative standpoint. There could be other potential
4 negatives, which I brought up in the cross with Ms.
5 Slawson, you know, if someone was not going to do
6 what they need to as far as access traffic, that
7 could be another potential negative impact to look
8 at.

9 And so we felt that -- sorry. I felt that
10 in my testimony what I was trying to bring out was
11 the point that just an impact to the USF, that may be
12 enough, but also if you look at the positives that
13 may not be enough. And you need to look at a broader
14 definition, get it from a variety of different
15 sources what that public interest standard should be.

16 Q. And were all of those items that you
17 decided were too low on that page in existence at the
18 time of the Western Wireless case?

19 A. Sure. I believe that they were, yes.

20 Q. So they could have been part of the
21 consideration?

22 A. It's highly probable, it's possible.

23 Q. In your summary you talked about the
24 benefits that the Bresnan Application brings to
25 customers in the Vernal Exchange?

26

1 A. Uh-huh (affirmative).

2 Q. What do they get that they don't already
3 have?

4 A. Do you have a specific customer that you
5 want to look at or are you just talking generally?

6 Q. Generally. Because you talked about what
7 the benefits overall would be there. Maybe you could
8 tell me what it is, what it is that is beneficial to
9 them and what do they get that they don't already
10 have. Can you identify any?

11 A. One that they get that they don't already
12 have is a second wire line provider who is able to
13 come in and offer service that they're not getting
14 presently right now. The competitors that are there,
15 there's a wireless and a voice over IP that is
16 required to have -- to receive from that individual,
17 a broadband connection. So that would be one benefit
18 that they are going to be receiving that they don't
19 have as an avenue or an option for them right now.

20 You know, for example, another benefit
21 that I believe is out there, which I could be
22 incorrect in this, but I don't believe that UBTA-UBET
23 or, for example -- and again, Vonage has similar that
24 you can get, all-you-can-eat long distance, but
25 that's also bundled with a DSL component. I don't

26

1 believe that there is a way for a consumer in Vernal
2 right now to get all-you-can-eat long distance and
3 all-you-can-eat local calling would be able to
4 purchase that product right now without having a
5 broadband component in there.

6 Bresnan has indicated that they would be
7 willing to provide that service as a bundled element
8 to their cable customers if they wanted to, but also
9 as a stand-alone service for about \$50. That is
10 another option that's out there for consumers that,
11 from my understanding, as far as the market in Vernal
12 they're not getting right now as an option. And
13 there could be more if I'm given time to think about
14 it, but those are just a couple of examples.

15 Q. Don't wireless providers provide bundled
16 service and all you can eat and those sorts of things
17 that are available in the Vernal Exchange today?

18 A. Generally, from my understanding of the
19 wireless service, again, the price that would be
20 offered by Bresnan for most wireless providers for
21 all-you-can-eat local and long distance is
22 considerably higher. Again, I haven't looked at the
23 price plans, just knowing what I have looked at for
24 myself, you could be looking at almost double the
25 costs that Bresnan would be out there.

26

1 So, again, are you saying that a wire line
2 and wireless service are exactly the same? I'm not
3 saying that -- you know, we have had some
4 discussions, there have been some hearings where that
5 issue may or may not be true. I mean, still wire
6 line is nice. I can pick up my phone and I can know
7 that someone is always going to be there. Wireless
8 cell phone, I may be off up in Vernal, for example,
9 at a location that I don't get service. I think
10 there are enough nuances between wire line and
11 wireless that would make it to where that service
12 would be a little bit different.

13 Q. Thank you.

14 Now, I'm not saying that I agree with
15 this, but in Ms. Scholl's testimony she indicates
16 that, and I'm reading precisely what she wrote,
17 "Bresnan can serve customers" -- this is on page 7 of
18 20 on line 146 and 147. "Bresnan can serve customers
19 in most of the Vernal Exchange without a certificate
20 as long as it doesn't desire State or Federal USF
21 support."

22 So though I don't necessarily agree with
23 that, it seems to me Bresnan could be out doing this
24 with or without this CPCN based on that statement.

25 MR. GINSBERG: I think she also clarified
26

1 that in her questioning by you as to what she
2 actually meant. So with that clarification that she
3 made, you can answer the question.

4 MR. MECHAM: And help me out. Was the
5 clarification that this was Bresnan's position and
6 not the Division's?

7 MR. GINSBERG: Well, I know she clarified.
8 I don't know what she said.

9 MR. MECHAM: I know that but, you know,
10 I'm getting older and I can't remember.

11 MR. GINSBERG: I'm probably older than you
12 so --

13 MR. MECHAM: Yes, you are.

14 Q. (BY MR. MECHAM) Well, I guess we'll have
15 to go back and look at the record. But you're
16 younger than we are, Mr. Coleman. Is it the
17 Division's position that Bresnan could do this
18 without a certificate, do you remember?

19 A. When you say "this," I mean, I think there
20 are still some elements that they may not be able to
21 do. Granted, they could probably go out and offer
22 voice service and they may be able to get customers.
23 But from my understanding of how the regulatory
24 environment is, for example, if they wanted to do
25 portability, without a CLEC Application, my

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1 understanding is is that would be very difficult, if
2 not impossible, to get numbers ported from the
3 incumbent to telephone company. I have had
4 conversations with other CLECs that said, I'm not a
5 phone company, I'm a voice over IP provider, I want
6 to get in this area, and my understanding is the
7 rural -- or, I'm sorry, the incumbent telephone
8 companies have said, I don't have to do anything,
9 you're not a phone service.

10 So, you know, are we talking can they do
11 everything that they've come into the Commission and
12 asked for? I don't know that they could. Could they
13 do some of that element? Sure. But the flip side of
14 that as well is it seems kind of interesting that if
15 they went out and chose to do this as an unregulated
16 entity that would have an impact negatively. Not the
17 negative impact we've talked about with Bresnan, but
18 less revenues would be coming into our State USF Fund
19 because now they're not a regulated entity and they
20 would not be paying those USF Funds into our State
21 Fund which Bresnan has indicated they're willing to
22 do.

23 Now, granted it's not the magnitude of
24 dollars we're talking about here, but if we choose
25 instead to say, well, this company came in, they
26

1 asked for a CPCN Application, and we decided that we
2 didn't want to impact the USF Fund so go along your
3 merry way and find some way to do this, we are
4 missing out as a state the potential revenues that
5 they would be paying for their consumers that they
6 capture if they're granted a CPCN Application.

7 Q. But if the service they provide is deemed
8 to not be a telecommunication service, would a
9 certificate have any effect on number portability?

10 MR. GINSBERG: I think you're asking him
11 for legal conclusions. The earlier question, also as
12 to whether a certificate is required or not
13 required --

14 MR. MECHAM: Well, except in his response
15 just a moment ago he said that one of the things that
16 a certificate would get, I think, unless I'm
17 misunderstanding, was that they would be able to get
18 numbers and so on.

19 Q. (BY MR. MECHAM) I mean, but would a
20 certificate change that?

21 A. My understanding at that point is they
22 obviously are a certificated telecommunications
23 service, at least by the State definition. I'm not
24 going to go into the Federal one. Mr. Meredith
25 talked about how that could still be discussed. You
26

1 know, that's obviously something that could be
2 argued. Now that you brought that up, for example, I
3 could give you a hypothetical where, for the sake of
4 example, let's say Gunnison Telephone decides they
5 want to use the same way to transmit phone traffic
6 from point A to point B as far as what Bresnan is
7 implying.

8 At that point would we as a Division say
9 that they're a voice over IP provider and they
10 wouldn't be subject to all those different things?
11 That sounds like a legal question that I'm not able
12 to answer here right now and I don't think that
13 there's any clear definition from the FCC or in the
14 State statutes. What would happen in my opinion, and
15 this is my opinion, if Bresnan was granted a CPCN
16 Application, UBTA-UBET would probably determine if
17 they wanted to interconnect and do those other type
18 of things. It could be a mutual kind of let's work
19 it out or they could drag their feet. But they would
20 probably feel because the Commission in their
21 determination said that they should be granted a
22 CPCN, that that gives them more than if they're an
23 unregulated entity.

24 Q. And aren't the benefits that you're
25 projecting a result from granting a certificate
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1 speculative?

2 A. No more speculative than the negative
3 impacts.

4 Q. I've been criticized for talking about
5 speculative stuff. I'm just asking, are the benefits
6 speculative?

7 A. I don't think they're as speculative. And
8 the reason why I say that is there's a pretty good
9 body of information that's out there. If you look at
10 any economic textbook, if you just talk to people
11 generally, there are benefits that are perceived by
12 consumers, there are benefits that are perceived by
13 the public as a whole as far as having competition.
14 I mean, a simple case in point, if there's an -- I'm
15 not saying that a hamburger joint is a regulated
16 entity and I'm not saying that it has the same
17 construct, but let's say, for example, I go to
18 Wendy's and the hamburger I have there is horrible.
19 If I only have Wendy's in town I don't have another
20 choice. But if I have a Wendy's and a McDonald's,
21 well, now I can choose to go to McDonald's now, they
22 may be offering pretty close to the same service,
23 pretty close to the same price, but as a consumer I
24 vowed I'm never going back to Wendy's because they
25 burned my hamburger and didn't put pickles on it.
26

1 That is a benefit that I think anybody would say is a
2 benefit of competition generally.

3 Now, obviously we're not a regulatory
4 environment that wouldn't allow some of those
5 benefits, but to say that some of those benefits are
6 going to be happening are speculative, I don't
7 necessarily agree with that.

8 Again, if you look at the reduced cost
9 element of it, in a normal market environment where
10 there's competition, a company will respond however
11 they have to to be able to compete. If that's
12 lowering costs, if that's finding a different market
13 niche to go into, if that's somehow rebranding or
14 repositioning so that they're considered the high
15 value product, a company will do something to be able
16 to respond to the competitive elements that are out
17 there.

18 There is numerous books discussing that,
19 talking about that as well. And so I don't think
20 that the impacts that I talked about, although we
21 don't know for sure that they're going to happen, I
22 would feel fairly confident in saying that if
23 competition happens, some of those things would
24 happen out there just as likely, if not more likely,
25 than the speculative nature of trying to determine

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1 what the number on the negative side is going to be.

2 Q. You don't believe telephone markets are
3 normal markets, do you?

4 A. The telecommunications industry is
5 obviously a little bit different than other potential
6 industries. But as a market in general, I mean, they
7 still have to advertise for customers, they still
8 have to try to get people to determine that their
9 services are better than a competitor's service. I
10 mean, there are certain elements of the market that
11 is appropriate to any company.

12 Now, are there some nuances that make
13 telecommunications different than, say, an ice
14 vendor? Sure. But that's true for any industry. I
15 mean, the airplane industry is vastly different than
16 the railroad industry, but they still have some
17 elements of competition that I think would be able to
18 go through all cross-sections of a business.

19 Q. Let me go back to the Western Wireless
20 case for just a minute. I know, again, that the
21 Division stringently distinguishes between an ETC and
22 a CPCN case, but nevertheless, excluding the draw or
23 the potential draw that an ETC would get from USF,
24 isn't the effect otherwise exactly the same? Aren't
25 you looking, really, at the effect on the Universal

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1 Service Fund?

2 A. With the ETC designation and also with the
3 Western Wireless, I think to a certain extent the
4 Commission did part of what we've done in this
5 proceeding, and that is to look at the negative
6 impacts compared to the positive impacts. And so
7 yes, there were two potential companies that were
8 going to be withdrawing from the USF. Yes, the
9 State, they were covering the whole state versus a
10 general geographic area, but the public interest,
11 that balance still had to happen. And from my
12 reading of the Western Wireless case there was
13 nothing provided on the positive side that could
14 outweigh the potential benefits -- sorry, the
15 potential negative benefits of the USF on the other
16 side. The scale tipped and it seemed pretty clearly
17 to tip towards the negative impacts of the USF Fund.
18 And in my opinion, not being an attorney, that's
19 probably why the ETC designation was not granted.

20 Q. But the USF that Ms. Scholl talked about,
21 the Universal Service Fund not needing to change and,
22 therefore, customers aren't harmed; is that correct?

23 A. That was Ms. Scholl's testimony. Mine was
24 also there probably wouldn't be a negative impact.
25 If there was, it appears to be significantly, or

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1 sorry, relatively minimal.

2 Q. Have you been involved at all, and I've
3 forgotten what they call it on the electric side, but
4 it's eight cents per customer imposed in order to
5 help someone at a certain income level to pay their
6 electric bill?

7 A. No.

8 Q. Have you observed your colleagues involved
9 in that issue involved in cases where people came
10 complaining that they had, I can't remember the exact
11 bill, but I think it's eight cents per month bill or
12 charge in order to pay the customer's bill who has
13 low income? Are you aware of that?

14 A. I mean, I've heard that there's been
15 discussions around that type of element. But to say
16 that I'm intimately knowledgeable as far as what
17 happened, no, I'm not.

18 Q. Well, I guess my only point in raising
19 that is you say that the impact is one cent or
20 whatever on thousands of customers isn't a big deal,
21 but there's a total effect, is there not, when you
22 add up that one cent across a million customers, or
23 whatever it is?

24 A. There might be. But my response to that
25 is, have you ever walked past a penny on the ground,
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1 Steve, or sorry, Mr. Mecham? I will admit I have
2 done that. I haven't bent down every time I have
3 seen a penny and I haven't picked it up. Now, there
4 may be other people out there who will do that. But
5 if you're looking at the State of Utah, and I walk
6 down Salt Lake quite frequently and I see many people
7 are walking past a cent.

8 So I'm not saying that it's not
9 significant, but I'm saying from a consumer
10 perspective they don't pick that penny up. So it is
11 a penny they pay on their phone bill once a year or
12 is it a penny that they walk past, well, okay, maybe
13 the next time they'll pick up that penny when they're
14 walking past it so they can say, I can pay my USF
15 charges for the Bresnan case. I'm being a little bit
16 facetious now.

17 Q. How about a quarter?

18 A. You know, how many people pay more than
19 they should for any type of service? Do people pay
20 40 cents a minute for cell phone when they could bump
21 up to five more dollars a month to have that extra
22 minutes? Sure. I mean, why does a consumer pay more
23 for something than the other? What is that magic
24 dollar amount? I don't know. I mean, that's
25 ultimately what the Commission will have to decide.

26

1 Q. You've gotten clipped by a cell phone
2 provider, haven't you?

3 A. Too many times, unfortunately, yes.

4 Q. On line 174 of your testimony you say
5 that, "If the Commission believes that the State Fund
6 will be impacted at a greater degree than the
7 perceived benefits of competition that will develop
8 as a result of granting the CPCN, then the
9 appropriate result is denying the CPCN."

10 The perceived benefits, what do you mean
11 by that?

12 A. Well, I think the perceived benefits is
13 what I discussed as far as in my testimony.

14 Q. Don't repeat it.

15 A. I won't.

16 Q. Use shorthand if you would like.

17 A. I believe, in essence, what I'm saying is
18 the Commission has to do that balancing impact,
19 negative impacts perceived or realized, I mean,
20 nobody knows what they're going to do so they're all
21 perceived benefits. Then the Commission at some
22 point will determine and say, we have positives on
23 this side, negatives on this side, do the positives
24 outweigh the benefits? I'm sorry, do the positives
25 outweigh the negatives? If the answer is yes they

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1 would grant a CPCN to Bresnan or anyone else. If
2 that answer is no, as was the case in Western
3 Wireless, they would deny the application and not
4 allow that to go forward. That's, in essence, what
5 I'm trying to get at there.

6 Q. So is perceived the same as speculative?

7 A. I don't think perceived and speculative
8 are, and we've kind of gone over this a little bit,
9 but I believe that the benefits that are there are
10 more than just speculative. I believe in competition
11 that those benefits will be there. I guess I used
12 the word "perceived" because I don't have the ability
13 to look in the future and tell you with certainty
14 what's going to happen. Maybe the commissioners will
15 have a better ability to do that. So negative
16 impacts or positive impacts are all our best
17 analysis, our best perception, they're all perceived.

18 Q. Okay, thank you.

19 In your analysis of the impact on the USF
20 of granting Bresnan a CPCN, do you include all the
21 revenues that are generated by the customers?

22 A. No.

23 Q. Why not?

24 A. I basically was trying to come up with a
25 way to put a number to something that's quite

26

1 ambiguous. I mean, we've spent a couple of days
2 trying to determine what the impact is going to be.
3 So I look at it from the perspective of what revenues
4 do I know that Bresnan gets, sorry, do I know that
5 UBTA-UBET gets from a customer. And so that's, if
6 you look at the Attachment 2.1 that I had, I looked
7 at it from a residential and business perspective. I
8 said, okay, I know the affordable base rate at \$16.50
9 for a residential, \$26 for business --

10 Q. It's really three elements, right?

11 A. That I listed there, yes.

12 Q. Affordable base rate, carrier common line
13 charges and the Vernal EAS rate?

14 A. Correct.

15 Q. What revenues are you missing?

16 A. I will admit, as Mr. Meredith pointed out,
17 that there probably should be some access revenues
18 put in there. So that potential number could change
19 a little bit. But having said that, I think what is
20 the most important overarching element of this is not
21 for sure what the number is. I mean, is it Mr.
22 Meredith's number or is it my number or is it
23 somewhere in between, but instead, what is that
24 impact going to be and is the USF Fund able to handle
25 that impact. I mean, if mine increased by a couple

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1 of dollars more, the magnitude that we're talking
2 about isn't going to be significant. Even if we went
3 with Mr. Meredith's number, we're still all
4 relatively close as far as what the impact is going
5 to be with that. And as Ms. Scholl testified in her
6 testimony, the reductions that have happened because
7 of other companies would be able to be offset
8 irregardless of that.

9 So I was trying to put numbers to
10 something that's very ambiguous. You know, I did
11 what I feel was something that gave the Commission
12 something to go off of. You know, there probably are
13 some access revenues and some other things that I
14 left out of there. But again, as I said in my
15 rebuttal, I believe also that if you look at what I
16 did trying to break out business versus residential
17 helps to provide a little bit more accurate
18 characterization because of the distribution of
19 Bresnan versus what UBTA-UBET's customer distribution
20 is.

21 Q. And as ambiguous as that number may be
22 today, two to four years from now we'll know, right?
23 There will be an impact. Either there will be or
24 there won't be, but we will know the impact?

25 A. You're already granting the CPCN

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1 Application?

2 Q. That's the assumption.

3 A. Then, yeah, the Commission would be able
4 in two years to look at -- well, let me step back.
5 UBTA-UBET would be impacted and we would be able to
6 see the impact in two to four years as a Division.
7 Would we be able to attribute each of that impact to
8 Bresnan going in as a competitor? You know, I don't
9 know that it's an exact one for one, you know,
10 they've lost revenues here. And the reason why I say
11 that is because as Ms. Scholl brought out in her
12 testimony, and as I think everyone will recognize in
13 a competitive market, there is already losses that
14 are happening to UBTA-UBET irregardless of Bresnan
15 being in there.

16 And so to be able to say, this is a direct
17 result of competition for a wire line provider who is
18 granted a CPCN, I think that would be difficult. But
19 if you wanted to know what the impact was to
20 UBTA-UBET looking back two years, yes, we could
21 probably come up with that number. Did that answer
22 your question?

23 Q. Sort of.

24 A. Okay.

25 Q. Now, tell me, with respect to if you've
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1 underestimated the revenues that will be lost when a
2 customer shifts from UBTA to Bresnan, assuming
3 they've got a CPCN, naturally you will have
4 underestimated the impact on the USF, correct?

5 A. Yeah. There's that potential, yes. But
6 again, the flip side of that is if we have
7 overestimated the impact as well, for example, let's
8 say in the competitive market in Vernal that we --
9 not we, I'm sorry, the Commission determines that
10 there's going to be a 60 percent take rate, 80
11 percent take rate, whatever, 10 percent, and there's
12 no consumers that decide that they want Bresnan's
13 service. They're like, you know what, I would rather
14 die before I get my phone service from a cable
15 provider, which I'm not saying that may happen or
16 not.

17 But let's just say that for whatever
18 reason there isn't one consumer out there that
19 chooses phone service, the impact to the USF is zero.
20 There will be no impact. I mean, the only time that
21 there's an impact to the USF is going to be is if
22 Bresnan, as a competitor, is successful in drawing
23 that customer away from UBTA-UBET.

24 Q. Well, and if they don't they'll leave
25 Vernal, will they not? I mean, there won't be any
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1 more choice, so there goes the principal reason for
2 the public interest test on the Division's side?

3 A. I'm sorry, I don't --

4 Q. Well, you just said that they're going to
5 choose Bresnan?

6 A. No, they don't choose Bresnan. They still
7 stay with UBTA-UBET, everything. So my premise was
8 is Bresnan is granted a CPCN Application. They have
9 the ability to compete and there isn't one individual
10 in Vernal that decides that they want to switch to
11 Bresnan, the impact to the USF in that scenario is
12 zero. Because if Bresnan, being granted a CPCN
13 Application they didn't get one consumer and so
14 UBTA-UBET didn't lose one revenue, so because of that
15 the impact to the USF is absolutely zero.

16 Q. So since they didn't exercise their choice
17 was granting the CPCN not in the public interest?

18 A. Well, obviously at that point you would
19 determine that for whatever reason, either Bresnan
20 didn't market properly, they didn't capture the
21 customers, they didn't have the understanding that
22 they wanted, but I don't see how the public interest
23 was hurt any more by allowing that CPCN Application
24 because we're still in the same status quo and
25 anything is not worse off for that happening. But

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1 the flip side is, let's say that consumers do choose
2 to go to Bresnan. There's obviously a reason. Is it
3 price, is it because they like the service? For
4 whatever that reason is, that's giving a pretty clear
5 indication to the Commission that at least in Vernal
6 people were appreciating having a competitive choice.
7 And Vernal Exchange, I'm not talking Vernal City when
8 I say "Vernal."

9 Q. Now, as I understand you criticized Mr.
10 Meredith for not breaking out the business customers
11 from the residential customers; is that correct?

12 A. I understand how he did the revenues and I
13 understand that he didn't have that information. My
14 point was just to show that there is a way that that
15 could inflate an average revenue per line. And if
16 you try to do that for all the consumers, as Mr.
17 Meredith talked about, we don't know for sure which
18 consumers, if Bresnan is granted a CPCN they're going
19 to take away. Are they the higher revenue ones or
20 they lower revenues? We don't know. So you're using
21 an average.

22 So I'm saying, looking at the distribution
23 that UBTA-UBET has where they have significantly more
24 business customers, that could skew an average to a
25 higher side than what would be a weighted average of

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1 business versus residential or something else.

2 Q. Do you know what kind of -- I mean, have
3 you been to Vernal to see what businesses there are
4 in Vernal?

5 A. I haven't physically been there, but I've
6 read the paper enough to get an understanding that
7 there's an oil boom or energy boom that's happening
8 in Vernal. And so I don't know exactly all the type
9 of customers that are in Vernal, but I believe that's
10 a good portion of the business. And like any rural
11 community in Utah, I'm sure they have their smaller
12 businesses that are out there as well as the
13 residential customers.

14 Q. But do you know if those businesses
15 generate a lot of revenue?

16 A. Which businesses, the oil companies or
17 the --

18 Q. Any businesses in Vernal?

19 A. Again, I haven't looked at it specifically
20 to know. But generally if you have a big consumer
21 who is using more access lines then that is going to
22 cause it to be higher. But again, the premise that I
23 went off, which I think is the distinction, is that
24 for each business customer they're already paying at
25 least \$10 more than what a residential customer would

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1 be. So if you're adding more business customers in
2 than what Bresnan has as far as their distribution,
3 that average revenue per line is going to be higher
4 because you're starting with a higher amount,
5 irregardless of any other of the services that
6 they're purchasing, that business customer is paying
7 more for phone service if it's a mom and pop shop on
8 the corner that that's selling, you know, 7-Up and
9 everything else or the oil field, they have to pay
10 more as a business customer than what they can for a
11 residential customer. That's just general
12 telecommunication, that's how it is from a long time
13 ago, that's what the affordable base rate shows.

14 That's part of my premise in saying that
15 that number is potentially going to be skewed towards
16 a higher amount because of the number of business
17 customers that are in there. You're already starting
18 with a higher dollar amount than what you would be --
19 you know, you're starting closer to what Mr.
20 Meredith's average was just looking at my numbers
21 than, say, like a \$24.80 for a residential customer,
22 you know, which is a pretty significant spread.

23 Q. But I guess the only non-test I know is to
24 see if you know that there are businesses like call
25 centers or anything like that that have many access
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1 lines which pay that high rate?

2 A. No. But I do know if you look at my
3 testimony, Bresnan has, I'm doing the math in my head
4 so you'll have to forgive me, but it looks like 1/3
5 of a percent of the business customers. It doesn't
6 matter in my mind if they're a huge call center
7 that's making huge revenue or whatever. The reality
8 of it is, and if you look at the impact of what I did
9 for, say, like existing Bresnan customers to
10 UBTA-UBET, Vernal Exchange, you can see how dramatic
11 that impact is where I broke out business versus
12 residential as far as the monthly loss. As the
13 percents go higher it's going to be significantly
14 more revenue lost on the residential side versus the
15 business side.

16 Q. But aren't those business customers that
17 Bresnan has all cable TV customers? Isn't that what
18 you've dealing with there?

19 A. My guess is probably. But again --

20 Q. Or data, data or cable TV?

21 A. It could be. I can't speak to what
22 Bresnan's customers are, but that's probably what
23 they are, yes.

24 Q. And my only point is is that if you don't
25 know what kind of businesses you're dealing with, not

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1 breaking them out may not have the kind of impact you
2 indicated; isn't that true?

3 A. No, it will have an impact. Because it
4 doesn't matter if it's a mom and pop shop or it's a
5 huge company, that company still has to pay \$26 for
6 their basic line. Okay, that's what the affordable
7 base rate is, plus they get compensated whatever the
8 high costs of portage from the USF. If I'm a
9 residential customer in Vernal I pay \$16.50. It
10 doesn't matter who I am or what the number of lines
11 are, I still have to pay that extra \$10. And there
12 are still more business customers if you look at the
13 distribution between UBTA-UBET. Almost 25 percent of
14 the UBTA-UBET's customers, from what I have here as
15 far as my information, are business customers.

16 If you look at the same percentages for
17 Bresnan, again, these are numbers in my head, I can
18 do them subject to check if anybody wants to get that
19 particular, it's looking like it's 1 percent, maybe 5
20 percent. Well, you're talking 25 percent
21 distribution for business customers versus 5 percent
22 for Bresnan, you've got 20 percent more customers
23 that are paying \$10 more per customer that's in your
24 average revenue per line. To me that's significant.

25 Q. One last time. Aren't you comparing cable
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1 TV markets to telephone markets with the numbers
2 you're using currently?

3 A. I don't believe so because the numbers
4 that I was using is from a Data Request which was
5 showing -- sorry, you're right. Okay. They are
6 cable customers. They're current Bresnan cable
7 customers that are in the Vernal Exchange, is my
8 understanding of that Data Response.

9 Q. So they're not comparable?

10 A. Do you want to define "comparable" for me?

11 Q. Well, they're two different markets,
12 correct?

13 A. And that's my premise. I mean, basically
14 if you're talking about how Bresnan is going to
15 market to their existing customers and that's where
16 you're going to get the 80 to 90 percent upsell or
17 take rate or whatever word you want to use, yes,
18 they're different. They're different because it's
19 business and residential.

20 And my point is, they're probably going to
21 be getting more residential customers which are
22 paying the \$16.50 than the lower amount than the
23 higher amount of the business customers. And so
24 because of that the average revenues per line should
25 be lower instead of higher because they are

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1 different. That distribution is totally different
2 and Bresnan, if they got 100 percent of all of their
3 customers that are out there right now, would not
4 have that higher amount of customers that are
5 business customers. They would have the residential
6 customers.

7 Now, could they be high users of long
8 distance service and high revenue? Probably. But I
9 think if you polled a group of 100,000
10 telecommunications customers and said, you can focus
11 on business customers or residential customers and
12 you had to tell me which one you thought was going to
13 be the higher revenue customers, going off the top of
14 my head, I would get 85 percent of those to say that
15 they would say business customers were going to be
16 the high revenue customers and residential may not
17 be, you know, the high revenue customers. There may
18 be a select portion which you guys have already
19 testified to that would be that, but across the whole
20 cross section of the customer distribution they're
21 not all going to be high users of long distance.

22 And that's exactly what my point is why I
23 was questioning Mr. Meredith's number a little bit,
24 is I feel that by doing an average, although he
25 didn't have it broken out with business and
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1 residential, I respect that, I'm saying that that
2 number probably is a little bit inflated because
3 Bresnan, from what I see, doesn't have very many
4 business customers and they would have to do a much
5 more extensive marketing to bring those customers in.
6 Could they do it? Probably. Would they do it? I'm
7 sure they probably would. But I'm just saying right
8 now, if you're looking at average revenue per line
9 that's going to take them some time probably to get
10 business customers because that's not the low hanging
11 fruit for their existing customer base already.

12 Q. And your number is a little deflated
13 without access revenues included?

14 A. And I agree with that. You could include
15 access revenues and so as a person that's worked for
16 the Division the whole time, probably you have to
17 find the middle ground somewhere and see what the
18 reality is going to be.

19 Q. On line 273 of your testimony you state,
20 "For UBTA-UBET to lose 25 percent of their customers,
21 Bresnan would have to get every existing residential
22 and business customer to sign up for phone service."

23 Now, I think that I know, but I'm just
24 checking to make sure, that you mean every one of
25 Bresnan's current cable customers in the Vernal
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1 Exchange?

2 A. Correct.

3 Q. And then on what do you base your 25 to 40
4 percent take rate estimate on line 281?

5 A. That was basically a discussion as far as
6 our Division. I looked at some elements, for
7 example, a quick rough estimate was I looked at the
8 number of total cable customers that Bresnan had
9 versus the number that they indicated were taking
10 phone service. When I did that calculation, I
11 believe I came up with about a 27 percent number. So
12 that was kind of like, okay, Bresnan has been doing
13 this for a number of years, here's what a take rate
14 is for that period of time, that sounds relatively
15 reasonable.

16 We also, as a Division, have a variety of
17 different individuals who have just some practical
18 experience as far as what a take rate is going to be.
19 We discussed back and forth what we thought that is
20 and felt comfortable with the 25 to 40 percent take
21 rate with it as well. And then the flip side is,
22 you know, we discussed, okay, do we feel it would be
23 higher. And again, our premise was is as that number
24 starts creeping up to 50, 60 or more, that seems a
25 little bit aggressive for a one-year, two-year time
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1 period. Maybe in five, ten years it could be more
2 plausible.

3 But again, if, and this is the if
4 statement, if in a year to two years you had 60
5 percent of Bresnan's customers or even UBTA-UBET's
6 customers that chose to transition from the incumbent
7 local exchange provider to a competitor, those are
8 take rates that we haven't seen generally anywhere
9 else. I mean, we've had CLECs who have been trying
10 to get into incumbent areas for years and they've
11 never been able to obtain 40 or 50 percent market
12 penetration rates. A cable provider, you know, those
13 are obviously different.

14 But those are some of the factors that we
15 looked at to come up with our 25 to 40 percent
16 estimate.

17 Q. Were you just looking at 33 markets where
18 Bresnan provides digital phone service?

19 A. To be honest with you, I can't remember.
20 I actually know. I mean, in the Technical Conference
21 they provided, I believe, 382,000 total cable
22 customers, or something like that, and about 82,000
23 phone customers is what they said. Again these are
24 numbers are off the top of my head, I don't have they
25 right in front of me. But that's how I did the math.

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1 And so that's what I was using.

2 Q. But from where? I mean --

3 A. They provided some slides to us when they
4 did the Technical Conference and that's where I got
5 the numbers from. I was just going off of what they
6 had provided. And to me, again, that was more of
7 just a check to say is my number sane. I mean, we
8 don't know what the practical number has been, but
9 Bresnan at least is doing this. I mean, if all of a
10 sudden I did that check and their number was 60 or
11 70, then I might come back and say, oh, you know,
12 maybe we need to look at this a little bit different.

13 But we used kind of just a practical
14 understanding as far as what we've seen with
15 competitive entrants in other markets and what we saw
16 with Bresnan and it's kind of what our, as I said in
17 my testimony, what our gut feel was.

18 Q. Speculation?

19 A. Well, that seems to be the key word for
20 today so --

21 JUDGE GOODWILL: Mr. Mecham, where are you
22 at now? I'm just curious. We're probably at a break
23 time. You're close?

24 MR. MECHAM: Yes. We can break and I'm
25 not going to extend much longer.

26

1 JUDGE GOODWILL: I'm don't want to break
2 up the flow if you'd rather keep going.

3 MR. MECHAM: No, I'm fine.

4 JUDGE GOODWILL: We'll take a ten-minute
5 break.

6 (Recess taken.)

7 JUDGE GOODWILL: Let's go back on the
8 record.

9 Mr. Mecham?

10 MR. MECHAM: Thank you.

11 Q. (BY MR. MECHAM) Mr. Coleman, in order to
12 establish a 27 percent take rate you've essentially,
13 if I understood you correctly, took all of Bresnan's
14 customers and then took the number of Bresnan
15 customers that had telephone service and divided, is
16 that it?

17 A. Yes. Well, that was a check that I used,
18 but yes.

19 Q. And that came out at 27 percent?

20 A. Approximately, yes. That's the number I
21 remember.

22 Q. Do we know in this proceeding how many of
23 Bresnan's customers have access to digital phone?

24 A. Honestly, I don't know.

25 Q. So wouldn't it be more accurate to
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1 determine how many of their customers had access to
2 the digital phone service and then take the number
3 who would take the service and do that division?

4 A. Yes.

5 Q. So really your 27 percent, if I'm correct
6 and that there are any of their customers that don't
7 have access to the digital phone service, the 27
8 percent can go nowhere but up?

9 A. Sure.

10 Q. And possibly considerably up?

11 A. Not knowing how many customers already
12 have access to digital, it could go up. The
13 magnitude I couldn't speak to.

14 Q. All right. So in any event, the 27
15 percent is low?

16 A. Again, that was just one element we looked
17 at. You know, I don't -- our range was 25 to 40
18 percent, was kind of what I was giving as our range.
19 I think the 27 was within our range and I think our,
20 you know, experience and other things said that that
21 was reasonable and that was a check that we used.

22 Q. Insofar as the impact on the USF is
23 concerned, as I understand your testimony, based on
24 your analysis, the impact is acceptable, correct?

25 The offsets, it's more than offset by the perceived
26

1 benefits?

2 A. That would better characterize my
3 testimony, yes.

4 Q. And I think you also said it was
5 acceptable, did you not?

6 MR. GINSBERG: Do you have a reference
7 that you want to --

8 MR. MECHAM: No.

9 MR. GINSBERG: Did you ask him what he
10 said?

11 Q. (BY MR. MECHAM) Well, doesn't it stand to
12 reason that it would be acceptable or you weren't be
13 proposing or advocating for the application to be
14 granted by the Commission?

15 A. I don't think I ever specifically say an
16 amount as far as here's a break point or a threshold.
17 But having said that, we believe that the positive
18 impacts that are going to be granted -- that could
19 potentially accrue from the CPCN being granted would
20 offset the negative amounts of that.

21 So in that balancing act, is there more
22 positives in my opinion than negatives? Yes. And
23 does that make that acceptable? Yes.

24 Q. And when will you know when it's not
25 acceptable? From this case can we tell when the

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1 Division finds the impact on the USF to not be
2 acceptable?

3 A. I think it would really depend on each
4 individual case and the facts of the case. I mean,
5 that's -- I mean, it's hard to say there's a hard
6 line because, again, we're dealing with so many
7 different factors and elements. Something that may
8 be acceptable in one case potentially may not be
9 acceptable if the same positive benefits are there,
10 you know.

11 Q. Are you familiar with what's happening at
12 the Federal level or to the Federal USF?

13 A. I've heard of discussions and I've been to
14 a few conferences where some of what is happening has
15 been discussed.

16 Q. And is it true that the Joint Universal
17 Service Board is advocating capping the fund to
18 ensure that it doesn't go bust?

19 A. My understanding of the capping of the
20 fund, it wasn't going to cap the fund to all
21 telecommunications providers, but it was going to cap
22 the fund for wireless providers who are ETCs, because
23 according to the Joint Board's understanding, that's
24 where they've seen the greatest growth in the Federal
25 USF Fund over a period of time.

26

1 Q. And do you know if that got started
2 incrementally by granting one ETC and then another
3 and then another without any forethought? Do you
4 know that?

5 A. I don't know what forethought was put into
6 that. So I couldn't really say because I wasn't in
7 those discussions nor am I on the Joint Board as far
8 the forethought that was put into it.

9 Q. Well, I mean, it's the FCC that grants --
10 well --

11 A. The Joint Board recommends and the FCC --
12 from my understanding. Again, I --

13 Q. Then on line 308 of your testimony you say
14 that "I think it is a precarious path to start down
15 to try and apply the facts of this case to all rural
16 carriers."

17 So once again you're limiting yourself to
18 exclusively the facts of this case?

19 A. For Bresnan's application, yes, we were
20 looking at the facts of this case. In Mr. -- and
21 this is in response to Mr. Meredith's testimony where
22 he's trying to discuss the total impact to the USF.
23 And what I was saying is because our rural telephone
24 companies in the State of Utah are vastly different
25 and also the next applicant that could come in could

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1 be vastly different, I don't know that you can apply
2 all the facts of this case and the decision dollar
3 for dollar, you know, decision for decision to the
4 next case. And to me, to try to extrapolate a total
5 impact for the State Fund from this proceeding, which
6 I think that the elements of this proceeding are
7 different than most of our rural companies, seems to
8 be a precarious act.

9 Q. So this case means nothing in the next
10 case?

11 A. I don't think that I said it means
12 nothing. I think that trying to extrapolate what the
13 impacts are going to be to the State Fund as a whole
14 is difficult. I think it would be short -- well, I
15 think it would be difficult to say that there won't
16 be some better understanding of a public interest
17 test going forward because of this case. But again,
18 I still think you would have to look at the public
19 interest test for each subsequent case after that and
20 make sure that it fits within whatever we understand
21 the confines, whatever we -- "we" being everybody
22 determines or when the Commission comes out with an
23 order, what we both understand that public interest
24 test to be.

25 Q. On lines 313 to 315 of your testimony it
26

1 says -- you say, "Second, the Vernal Exchange is
2 vastly different than many of the other rural
3 exchanges in Utah because it is above 5,000 access
4 lines"?

5 A. Uh-huh (affirmative).

6 Q. Does that mean that your testimony will be
7 vastly different when we face this question in a
8 5,000 access line exchange case?

9 MR. GINSBERG: I think you're asking him
10 to speculate.

11 MR. MECHAM: But he's good at it, Mr.
12 Ginsberg. He was very good at speculating on the
13 benefits. And actually this is the result of his own
14 testimony.

15 Q. (BY MR. MECHAM) I mean, I guess I'm just
16 trying to draw the distinction between 5,000 and more
17 than 5,000. And based on your testimony, I can only
18 infer from that that the Division's testimony will
19 be, whether it's vastly or not, it will be different
20 from we're talking about exchanges of fewer than
21 5,000 than it is in an exchange of more than 5,000?

22 JUDGE GOODWILL: If you can speak to that,
23 go ahead.

24 MR. COLEMAN: Sure. If you continue on
25 with my testimony, and I'll just read it. Do I need

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1 to quote the lines? I think it's about 313 through
2 317. It says, "Second, the Vernal Exchange is vastly
3 different than many of the other rural exchanges in
4 Utah because it is above 5,000 access lines. Because
5 of this more densely populated nature of the Vernal
6 Exchange, the likelihood of a competitor wanting to
7 serve this area of the state is greater than other
8 exchanges in Utah."

9 What I maybe didn't explicitly say in
10 there, but what I did implicitly understand about the
11 Vernal Exchange as well is there is a rapid amount of
12 growth that is happening in that exchange and in that
13 area because of the energy boom and because of what's
14 happening in the state. And so where I say it's
15 vastly different, it's vastly different because of
16 the number of access lines, but because of the market
17 and the exchange itself, that is different in Vernal
18 than many other parts of the state as well.

19 And so that growth tends to allow where
20 there's going to be more densely populated areas,
21 there's going to be a lot of other elements that
22 would be different from the Vernal Exchange than what
23 it would be in a Gunnison or a Mexican Hat or any
24 other exchanges because the growth that's happening
25 in Vernal, which was part of what Mr. Todd talked

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1 about, and you can go to their website and see that,
2 is different than I think what issues are being faced
3 by many of our other rural carriers.

4 Q. Well, I know that when EIL came in 1995 or
5 1996 you were still trying to figure out what to do
6 with your life. I was here and I was still trying to
7 figure out what to do with my life.

8 But in any event, have you been around
9 long enough to know that in Vernal, Vernal has boomed
10 and it's gone bust?

11 A. Yeah. I mean, in the energy industry you
12 recognize that those things happen and it's boom or
13 bust. I mean, that's -- I mean, generally people
14 understand that.

15 Q. It's done it before and it's likely to do
16 it again?

17 A. Probably likely, yes.

18 Q. Unfortunately?

19 A. Yes.

20 Q. So the exchange can become just like all
21 the other exchanges?

22 A. It could. But again, I'm looking at --
23 again, if you look at the reason that I used this,
24 it's for an impact to the entire fund and the entire
25 state. And so I'm looking at the scenario not what

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1 it's going to be in five years, not what it was five
2 years but right now. If you ask me if the Vernal
3 exchange is vastly different than most of our
4 exchanges in the State of Utah because of what's
5 happening right now and because of that boom, I would
6 have to say yes, it's quite a bit different than most
7 of the other exchanges.

8 Now five years from now could that change
9 and it could go back to a more rural community where
10 that growth isn't happening? Probably. But again,
11 you're trying to assess the impact to the State Fund
12 totally, take the number from this case and put that
13 onto the entire State Fund. And I was just trying to
14 draw the distinction as far as why I think that may
15 be a precarious path because Vernal is different
16 today, as we understand the facts of the case, than
17 most of our other companies that we're dealing with.

18 MR. MECHAM: Thank you. I'm done.

19 JUDGE GOODWILL: Redirect, Mr. Ginsberg?

20 REDIRECT EXAMINATION

21 BY MR. GINSBERG:

22 Q. I just have one question. Can you look at
23 your Exhibit 2.2?

24 A. Sure.

25 Q. You were asked a whole series of questions
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1 about the difference in business revenues versus
2 residential revenues?

3 A. Yes.

4 Q. If you look at your exhibit where you have
5 on here the number of customers and number of lines
6 for residence and then the number of customers and
7 the number of lines for businesses, can you reach any
8 conclusions about the revenues per line per customer
9 between business and residence?

10 A. What conclusions I could draw from that is
11 it appears that when you look at the number of
12 business customers versus the number of business
13 lines, it appears that there's approximately, give or
14 take rough number, about three businesses that are
15 taking lines where it looks like it's more of a
16 one-to-one ratio when you're looking at residential
17 customers versus lines and the number that are there.

18 Q. So that would mean that the business
19 revenues per customer would be greater, on average,
20 than the residential revenues per customer?

21 A. Yes. And again, that's what I talk about
22 with the distributions and what I tried to bring out
23 was the fact that there is a greater proportion of
24 business customers and so that would skew, as I
25 talked about those revenues, to where I think that

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1 the average revenue per line is probably higher than
2 what Mr. Meredith was doing because of the realities
3 and what we see from those data there.

4 MR. GINSBERG: Thank you.

5 JUDGE GOODWILL: Mr. Coleman, just to make
6 sure either you misspoke or I misheard, I want to
7 make sure it's clear on the record. Looking again at
8 that number of business lines and the customers
9 versus lines, I think what you meant to say and what
10 maybe I didn't hear was that there's approximately
11 three lines per business customer?

12 MR. COLEMAN: Correct, yes.

13 JUDGE GOODWILL: Okay. Thanks.

14 MR. MECHAM: I forgot one quick question.

15 FURTHER CROSS-EXAMINATION

16 BY MR. MECHAM:

17 Q. With respect to this DPU Cross-Examination
18 Exhibit developed by Mr. Ginsberg, I don't know,
19 maybe you did it, I don't know. This is the one that
20 indicates --

21 A. I have it in front of me.

22 Q. Did you develop this one?

23 A. I'll try to answer your questions the best
24 as I can, but I didn't physically print off every one
25 of the papers that are there.

26

1 Q. Okay. Well, do you know any more than Ms.
2 Scholl did about Precis providing service in other
3 areas like Price, Kanab, Moab?

4 A. I don't, no.

5 Q. And it's not reflected in this?

6 A. I don't believe so.

7 MR. MECHAM: Okay. That's it, your Honor.

8 JUDGE GOODWILL: Mr. Nelson, any recross?

9 MR. NELSON: No thank you.

10 JUDGE GOODWILL: Ms. Slawson?

11 MS. SLAWSON: No thank you.

12 JUDGE GOODWILL: Mr. Mecham?

13 MR. MECHAM: I'm done.

14 JUDGE GOODWILL: Thanks, Mr. Coleman.

15 Any other evidence from the Division?

16 I think that pretty much closes. Do we
17 have any issues we need to discuss?

18 MR. GINSBERG: I think we wanted to talk
19 about scheduling.

20 JUDGE GOODWILL: Right. But as far as
21 evidence goes, are we good? Is there any testimony
22 still hanging out there that we intended to get back
23 to or anything like that?

24 MR. GINSBERG: I think we're good.

25 JUDGE GOODWILL: We might as well just do
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1 it on the record, I guess. It should be a relatively
2 brief discussion. My understanding is briefs are due
3 the 19th of September and that the court reporter has
4 promised to get us the transcript by the 10th of
5 September. That's as much as I know about scheduling
6 right now, Mr. Ginsberg. Was there something else?

7 MR. GINSBERG: I think there was some --
8 could this be off the record?

9 JUDGE GOODWILL: We sure could. Is there
10 anything else we need to take up on the record then
11 before we go ahead and close?

12 Thanks. We'll adjourn.

13 (Off the record.)

14 JUDGE GOODWILL: Let's go back on the
15 record then. Off the record we just had a brief
16 discussion about scheduling this matter and the
17 Division requested that make maybe the current 19
18 September briefing date be pushed back a week. We
19 had some discussion of Bresnan waiving that. The 240
20 day deadline, which by my calculation of several
21 months ago, is about the 3rd of October. And Bresnan
22 indicated they would be willing to do so for about a
23 week's time and we're going to push take back.

24 Mr. Nelson, if you would go ahead and
25 state what your understanding is that Bresnan is

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1 agreeing to at this time.

2 MR. NELSON: Of course. Bresnan would be
3 very happy to accommodate the Division's request to
4 move the briefing schedule seven days to September
5 26th. And we would also be happy to accommodate an
6 extension of the 240-day clock by an additional seven
7 days, whether that's from October 3rd or whatever the
8 exact day is, seven days from whatever it would
9 otherwise be to not put a crimp in the Commission's
10 timeline for making its decision.

11 JUDGE GOODWILL: Okay. And that's
12 acceptable to all parties, changing the schedule?

13 MR. MECHAM: Yes.

14 MS. SLAWSON: Yes.

15 JUDGE GOODWILL: Okay. We'll go ahead and
16 do that. I won't issue a scheduling order, we've
17 just got it on the record and so everybody knows
18 what's happening. So we'll expect briefs by the 26th
19 of September.

20 Any other matter that we need to take up
21 in this docket?

22 Okay. Thanks. We're off the record.

23 (The taking of the deposition was
24 concluded at 3:48 p.m.)

25

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1 C E R T I F I C A T E

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3 STATE OF UTAH)

: ss.

4 COUNTY OF SALT LAKE)

5

6 I, LANETTE SHINDURLING, a Registered
7 Professional Reporter, Certified Realtime Reporter
8 and Notary Public in and for the State of Utah,
9 residing at Salt Lake City, Utah hereby certify;

10 That the foregoing proceeding was taken
11 before me at the time and place herein set forth, and
12 was taken down by me in stenotype and thereafter
13 transcribed into typewriting;

10

11 That pages 273 through 508, contain a
12 full, true and correct transcription of my stenotype
13 notes so taken.

12

13 I further certify that I am not of kin or
14 otherwise associated with any of the parties to said
15 cause of action, and that I am not interested in the
16 event thereof.

17 WITNESS MY HAND and official seal at Salt
18 Lake City, Utah, this 19th day of September, 2007.

16

17

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