CITIES OF OREM, LINDON, AND PAYSON
SPECIAL JOINT MEETING
56 North State Street, Orem, Utah
April 29, 2014

This meeting was for discussion purposes only. No action was taken.

CONDUCTING	Mayor Richard F. Brunst, Jr.
OREM ELECTED OFFICIALS	Mayor Richard F. Brunst, Jr. and Councilmembers Hans Andersen, Margaret Black, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner
LINDON ELECTED OFFICIALS	Mayor Jeff Acerson and Lindon Councilmembers Matt Bean, Van Broderick, Jake Hoyt, Carolyn Lundberg, and Randi Powell
PAYSON ELECTED OFFICIALS	Mayor Rick Moore and Councilmembers Jolynn Ford, Kim Hancock, Mike Hardy, and Scott Philips
OREM STAFF	Jamie Davidson, City Manager; Brenn Bybee, Assistant City Manager; Richard Manning, Administrative Services Director, Greg Stephens, City Attorney; Karl Hirst, Recreation Director; Bill Bell, Development Services Director; Chris Tschirki, Public Works Director; Scott Gurney, Interim Public Safety Director; Charlene Crozier, Library Director; Steven Downs, Assistant to the City Manager; and Taraleigh Gray, Deputy City Recorder
LINDON STAFF	Adam Cowie, City Administrator
EXCUSED	Payson Councilmember Larry Skinner

Call to Order

Mayor Brunst called the meeting to order at 7:40 p.m.

Welcome and Introductions

Mayor Brunst reminded the citizens in attendance that the meeting was a public meeting, but not a public hearing.

Time was allowed for Council introductions.

Presentation of the Proposed UTOPIA / Macquarie Network PPP – Milestone One Report

Duncan Ramage, Senior Vice President – Infrastructure – Macquarie Capital, Ed Crowston, First Solutions – Fiber Infrastructure Expert, and Mike Lee, First Solutions – Technology and Service Provider Executive, presented to the City Councils Macquarie's Milestone One Report.

Mr. Ramage said over the course of the previous several months, a lot of work had been completed in preparation to bring forth the Milestone One report.

Mr. Ramage said Macquarie built infrastructure as a core competency. Macquarie owned and operated over 100 assets, which were globally worth over 100 billion dollars in the infrastructure space. Macquarie serviced over 100 million people daily in essential services, including water, airports, ferries, schools, hospitals, and telecom assets.

Macquarie was focused on the opportunity because it saw a great asset that was missing a few key components, one of which was capital. UTOPIA always had a good idea, but the network did not achieve its potential. Macquarie saw fiber as a utility and as an essential service. Macquarie saw fit to affect an efficient capital and transaction structure that would provide ubiquity and a strong value-for-money proposition for the Cities.

Macquarie's proposal sought to address several several key objectives that the Cities had:
- Reduction in the Agencies' Operating Deficit
- Defray Service Obligations on Existing Debt
- Parity of the Network Build
- Certainty of Execution
- Expanding the Existing Subscribing Base
- Increasing Service Offerings to Users by Providing a Platform for Innovation
- Provision of Civic Benefits
- Increase Price Competition and Choice in the Market

Macquarie's proposal was fairly simple: the plan was to complete the build-out of the network to every address over the eleven cities. Macquarie would connect each home with a network interface device on the outside of the dwelling equipped with a connection to a telecom cabinet inside the dwelling. The responsibility of final connection to the dwelling would rest with the Internet Service Providers (ISPs).

Macquarie believed the network was incomplete and required a material investment to complete it. The current funding pressures required a new model for development. To address this, Macquarie's proposal had been structured to achieve the Agencies' objectives by creating a Public Private Partnership (PPP) which could be tailored to the Cities' requirements.

Mr. Ramage explained the Project Structure:
- Utility fee-based PPP with thirty-year term
- PPP would build the network on a fixed-price, date certain basis within approximately 30 months of financial close

- PPP would operate, maintain, and refresh the network for thirty years on a fixed price basis subject to strict performance standards
- Wholesaler would manage ISP relations and help market the network
- ISPs would service end-users directly with little involvement from the PPP or Wholesaler
- PPP and Wholesaler would assume UTOPIA operating deficit from close

Mr. Ramage said Macquarie would finance this by instilling a utility fee which would be levied on each address. This fee was a direct reflection of the expected cost of building, operating, maintaining, and financing the network. Mr. Ramage said this was the least expensive way for Macquarie to build out the network.

The preliminary range for this utility fee was reported between $18-20. This fee would escalate annually at a mutually agreeable index. Addresses in multi-dwelling units would receive a 50 percent discount on the fee. Businesses would be charged double the fee, between $36-$40 per month.

Mr. Ramage said there would be a grace period of up to 6 months from construction to allow time for ISPs to connect users. Symmetrical basic service of up to 3 Mbps with a 20GB data cap would be made available for free to all addresses. ISPs would compete to provide premium data, voice, and video offerings to network users and would be charged transport fees related to premium services. Revenues would then be split between the Agencies, the Wholesaler and the PPP, with the significant majority going to the Agencies.

Duncan Ramage reviewed the Macquarie's Proposal Business Model Roles and Responsibilities.

Mr. Ramage explored possible options and said shutting down the network would not be an attractive option. Another option would be to sell the asset. Macquarie's understanding was that Google may or may not be interested in the asset. Other options for selling would likely not increase competition in the market, nor would other options address ubiquity. Macquarie's model would address all of the key objectives. It would clearly reduce the operating deficit from day one. It would build out to everyone in every city. Macquarie would provide a firm, fixed price for the delivery of the build out, and the risk transfer would be complete.

Mr. Ramage said this was an achievable solution. The proposal was a product of a lot of work and analysis.

Mr. Ramage outlined the following Proposal Benefits:

- Achievable Solution
  - Independent review of the proposed business model supports its feasibility
  - Positive feedback from lenders suggests appetite for funding
- Risk Transfer
  - Cities would not be required to contribute funding to the project's development
  - All design-build, integration, and ongoing operating and maintenance risks would be transferred to the PPP
  - The PPP would be required to operate the network to well-defined specifications
  - A proposed upside sharing mechanism would ensure alignment of interests between all parties
- Financial Upside for Cities

  - Premium service revenues, assuming long-term upgrade rates of 30-50% expected to total 1.0-1.5 billion over the term
  - Equivalent to approximately 2-3 times the existing debt service obligations
  - Cities would retain ownership of network assets and upon hand-back at the end of the term, would receive an asset with expected annual free cash flows
- Value for Money
  - Significant majority of residents currently paid well in excess of the utility fee for their internet connectivity
  - Symmetrical basic service of up to 3Mbps is comparable to competing products in the market area
- Greater Competition
  - Separation of network infrastructure and services significantly reduced market entry and exit barriers
  - Proposed step change in network scale had generated interest from regional and national ISPs
  - Whether residents used the network or not, residents would likely see pricing reductions from incumbent providers serving to offset the utility fee
- Ubiquity
  - Scale of project allowed for efficiencies in financing, development, and operating costs, and ability attract world class design-build contractors, systems integrators, and hardware providers
  - Standardized demarcation point would drive operating cost efficiencies
  - Universal access would help shrink the digital divide
  - Connectivity amongst the cities would lay a foundation for collaboration platform amounts community services
- ISP Involvement
  - Clear distinction of responsibilities and handoff points between network and IPSs would ensure timely remedy of user issues and improved customer engagement
  - Requirement to provide basic service for free would incentivize ISPs to invest in marketing premium services
  - Large number of potential customers would incentivize ISPs to deploy significant resources to develop a robust service and maintenance operation
- Alignment of Interests
  - Sharing amongst all parties in upside revenues
  - Private funding model would not require the Agencies or Member Cities to contribute additional funding to realize the network's potential
  - Speed of basic service would be competitive, if not superior, to incumbent offerings that have higher costs than the proposed utility fee
  - All-in costs (utility fee plus ISP charge) of premium services would be competitive to incumbent offerings of inferior speed and quality
  - Users would not be billed the utility fee until they have had the opportunity to connect to the network

Mr. Ramage highlighted the value-for-money idea by comparing the proposed utility fee of $18-$20 per month to standard service prices for Comcast and CenturyLink for both internet services and bundled internet/phone services. Mr. Ramage said DSL and Cable internet services were lastgeneration technologies. Fiber services were faster and provided more consistent service than DSL and Cable.

Mr. Ramage covered the financing with regard to project implementation. Lenders were highly confident that the proposal was financeable, but as such it needed to be structured tightly. The nature of the PPP financing world was that financing needed to face the cities rather than the ultimate user. This was why the fee was structured as a utility fee to be paid by all addresses.

Mr. Ramage presented the following information with regard to financing:

- PPP Financing
    - Proposed model was likely to be financeable
        - New application of the model to sector
        - Utility fee limited lenders' exposure to market risk but required Cities to be strong counterparts
    - Indicative pricing ranges suggested minor premium to typical availability PPP terms to reflect the project risk
- Payment Mechanism
    - Indirect payment mechanism was an unconventional structure with a critical risk factor for lenders
        - Limited knowledge of Cities' credit profiles
        - Detailed information on Cities' was being collated to progress discussions
    - Indirect structure increased importance of strong enforcement mechanisms to ensure coverage of non-payment of utility fees or payment shortfall
        - Protections such as rate covenants, step-in rights for collection and priority over all network cash flows was likely required
- Operational Risk
    - Extremely reluctant to assume any revenue risk from premium service take rates
    - Lenders indicated preference for outsourced operations

Mr. Ramage indicated Mr. Crowston ran a robust process to select partners on the design build aspect of the build out. A request for qualifications (RFQ) process was carried out which solicited expressions of interest from fourteen world-class infrastructure developers. From the solicited fourteen, six expressions of interest were received, which were down-selected to two final proponents: Black & Veatch and Corning, both of which were world class infrastructure developers. Mr. Ramage added that Corning had laid more fiber than anyone else in the world.

The two selected contractors would continue through the rest of the process, should the cities decide to continue, to develop fixed-price date-certain design-build proposals in competition to ensure the best value solution for the network.

A similar process was involved in the selection of an equipment vendor (Alcatel-Lucent) and systems integrator (Fujitsu). Both partners provided detailed cost estimates and design proposals.

Mr. Ramage said Macquarie solicited proposals for ongoing network operations, maintenance, and refresh services from a number of world class providers. Macquarie investigated cost structures of current business operations, maintenance, and refresh programs, and identified a number of areas that could be improved to lift the network's overall performance and efficiency. Estimates of operating costs were developed under a variety of scenarios, including self-perform and partially outsourced (with Fujitsu) options.

Mr. Ramage provided the following information that was gathered from the market analysis completed by Macquarie:

- Macquarie commissioned a market feasibility report to assess competitive landscape, marketing considerations, take rate forecasts and transport fee levels.
- Macquarie commissioned a UTIOPIA brand study with 700 respondents across the Cities to assess current market behaviors and attitudes to UTIOPIA and other telecommunications providers.
- Macquarie conducted focus groups to obtain a more detailed assessment of attitudes toward telecommunications providers and the Macquarie PPP proposal with 24 registered voters in Murray, Centerville, and Orem.
- Macquarie met with ISPs not currently operating on the UTOPIA network, including national players, to discuss participation on the completed network.

Mr. Ramage indicated the Cities had sixty days to respond to Macquarie's Milestone One report. Macquarie was keen to proceed and was willing to answer any questions the Cities had.

Mayor Brunst asked about the sixty day deadline. His understanding was that there was a thirty day soft-response period, followed by a sixty-day period for a hard response. Mr. Ramage said his understanding was it was sixty days from date of proposal, giving the Cities until Friday, June 27, 2014 to decide. Mayor Brunst asked Mr. Ramage to verify the response period.

Mayor Brunst asked who the wholesaler was that Mr. Ramage mentioned in the presentation. Mr. Ramage said there was no wholesaler currently in existence. Most existing businesses which were good at the wholesaling role were also retailers. Macquarie was trying to maintain segregation of roles by proposing that a group led by Frist Solutions would lead the development of that entity, which would be capitalized by Macquarie and First Solutions.

Mayor Brunst asked if any local companies would be involved as part of the wholesale group. Mr. Ramage said Macquarie was open to utilize local groups; however, there was no existing entity suitable to fill the role that did not have interest as an ISP. In an attempt to maintain the separation of roles, Macquarie would effectively create the entity from a pool of experienced individuals.

Mayor Brunst asked Mr. Ramage to clarify the party that would have the responsibility for the construction debt. Mr. Ramage said the entity responsible for the debt was the PPP, with no recourse to the Cities. The Cities would enter into a long term service contract, referred to as an availability contract, to provide payments in relation to the number of users and the utility fee, and provide means to pay down the debt.

Mayor Brunst said if there was a $20 utility fee per household, and if there was 155,000 thousand households within the system, times 12 months, times the 30 year partnership, it would come to about $1.1 billion and the Cities would be responsible for that debt through the availability payment. Mayor Brunst asked Mr. Ramage if this was correct.

Mr. Ramage said the cities would be indirectly responsible. The Cities were a counter party to the contract. Legally, the contract would be with Agencies, which would be supported by the Cities. The final details for the legal analysis were still being worked through.

Mayor Brunst asked what was the estimate of money which was expended to the ISP, and how much was left for the Cities to pay down existing debt. Mr. Ramage said the $1-$1.5 billion was only transport fees charged to ISPs. The amount did not reflect the top-line premium service revenues.

Mr. Seastrand asked if the revenues the Cities would get back would be sufficient to cover existing UTOPIA debt. Mr. Ramage said the total size of the pie was estimated at $1-$1.5 billion over the course of thirty years. Macquarie estimated the debt services obligations over the same time frame were approximately $590 million, which is 2-3 times the existing debt service. Macquarie had not negotiated how to divide the pie.

Mayor Brunst said it would be very important to have the details of how Macquarie decided to split up the pie.

Mr. Seastrand gathered that there was expectation that a large portion of the existing debt coverage could be picked up as a result of the Macquarie transaction.

Mr. Seastrand asked (1) what would happen with the heritage customers, those who initially signed up for UTOPIA and were connected for free, and (2) what changes would happen to this customer as the conversion was made from the heritage plan to the new Macquarie proposal. Mr. Ramage said those customers would be subject to the same utility fee as everyone else. The concept was to treat all users the same, and if there needed to be a concept of recovery to be determined then that could happen. For purposes of structure, Macquarie wanted everyone on the exact same model. Macquarie could possibly credit back the money spent for the initial install over a period of time so the people could recover that fee.

Mr. Seastrand asked who would handle the collections, distribution, and billing of the utility fee. Mr. Ramage said that would be handled by the Cities. The Cities would then be responsible for an availability payment to Macquarie, which was effectively the sum total of the utility fees being collected.

Mr. Seastrand asked who would deal with service questions and communication with the customers. Mr. Ramage said the intention would be to have the ISPs face the customer for all things beyond the demarcation point. If it was a network issue, the ISP would escalate to the PPP.

Mrs. Black asked how certain the proposed fee was and if there was a “not-to-exceed” amount for the fee. Mr. Ramage said the proposed $18-$20 fee was the “not-to-exceed” amount. There were assumptions that drove the fee which were contained in the body of the report. The utility fee was purely a product of cost: as Macquarie refined the design-build estimates, the operating expense estimates, and learned what the financing costs were going to be, the utility fee would move. Macquarie was fairly confident that this fee would move down, but would not exceed the proposed $20.

Mrs. Black asked with regard to construction and the amount of effort Macquarie was putting into it, did the proposal cover (1) the fiber-laying in the road to the home, (2) the electronics, (3) and the network operating center. Mr. Ramage said all costs related to operating would be completely covered by Macquarie's investment.

Mr. Sumner asked if there was a mechanism to identify what cities would be built out first. Mr. Ramage said Macquarie had not yet decided on the best way to go about assigning priority, but that Macquarie wanted to do so in the most efficient way.

Mr. Andersen said UTOPIA had been running for the past ten to twelve years. There already were ISPs attempting to promote systems on the internet. Mr. Andersen said he understood Macquarie was acting as a lender and what Macquarie planned to do differently from what UTOPIA had already seen. Mr. Ramage said Macquarie was not a lender, but rather an equity investor and developer. Building the system to scale had a lot to do with why Macquarie would be successful. Previous ISPs were using an inefficient marketing approach in that services being sold to one street could not always be sold to another. There was no ubiquity on the network which impeded

Mr. Lee said ubiquity was critical to the success of the ISPs. Ultimately the ISPs would be more incentivized to brand and market their basic service on the network through Macquarie's model

Mr. Andersen asked Mr. Lee to compare the Macquarie's proposal to Google's operation. Mr. Lee said one of the big differentiators between the two operations was that Google was operating on a closed network. Macquarie planned using an open network model where the ISPs would have to step-up the marketing to try and acquire customers. This type of open network model captivated the audience users based on the ISPs efforts in branding and brand awareness.

Mr. Sumner asked if the marketing was up to the ISP. Mr. Lee said there were two different types of marketing that Macquarie and First Solutions envisioned

1. *Wholesaler Marketing* – Provide market guidance in ensuring the ISPs were not positioning or marketing the PPP service as something it was not. This method of marketing would ensure compliance through all ISPs.
2. *Acquisition-based Marketing* – Marketing responsibility was based solely on the shoulder of the ISPs.

Mr. Ramage said there would be a substantial expenditure from the Wholesaler for the overall branding and awareness of the network.

Mr. Lee said a part of the reason why ISPs were not marketing was due to the lack of ubiquity. The proven most effective means of marketing had been door-to-door approach. In order to be front-of-mind for the customer, the customer would have to be reached in three to four different ways.

Mr. Ramage said the project itself brought forth that kind of top-of-mind impression. Everyone getting a connection on the side of their house was the ultimate marketing strategy.

Mrs. Lundberg, Lindon City Councilmember, said a lot of people were going to feel the need to have better bandwidth than what the basic service would provide. She asked what the Cities would be looking at for the first tier of upgradable service for the residents. Mr. Ramage said Macquarie was not getting in to the end-user game. Macquarie was not planning to dictate exactly what the ISPs would sell. Macquarie was thinking of ways to compel ISPs to provide a more standardized service offering.

Mrs. Lundberg said the ISPs would be encouraged to offer the proposed free service, and that the ISPs would pay the bandwidth to the free users. To the homes that were not paying for the service other than the utility fee, Mrs. Lundberg asked what the ISPs would pay. Mr. Ramage said the ISPs would pay the internet bandwidth but not the transport fee.

Mrs. Lundberg asked if the ISPs focus would be to potentially cherry-pick the demographics that were more likely to upgrade services, then how would Macquarie manage it. Mr. Ramage said the rules of engagement for operating as an ISP on the network would be that the ISPs would not be allowed to cherry-pick. Macquarie would have mechanisms for monitoring that.

Mr. Lee added that the end-customer had the power to self-select the ISPs.

Mrs. Lundberg asked if the operating expense deficit would be eliminated or if they would only be minimized upon closing. Mr. Ramage said the operating expenses would be eliminated upon closing, when the documents were signed and the dollars flowed. The Agencies would still need to have some function to monitor the PPP, in terms of compliance with the concession agreement.

Mrs. Lundberg said Macquarie was going to create an interlocal group which would be the governing agency and asked what the structure would be for the Cities to have effective oversight on the Wholesaler and the operations. Mr. Ramage said the structure of the interlocal agency still was being determined but that it would be structured akin to the UTOPIA agency. The primary mechanism for monitoring the PPP and the Wholesaler was the concession agreement. Within that agreement there were very clear roles, responsibilities, protocols, and service level commitments in that document.

Mrs. Lundberg said past ISPs had not been consistent in customer service; there had been ISPs who did not pay UTOPIA its cut of the subscriber revenue. Mrs. Lundberg asked what mechanism was in place to provision the customers if there was poor-service or non-payment from the ISP.

Mr. Lee said the Wholesaler would structure the relationship between the Wholesaler and the service providers with strict SLAs in place. Previously, shutting down the ISP was avoided due to the potential impact it could have on the end customer. Given the capability of self-provisioning, it would be a simple matter of shutting down the ISP, due to non-payment or poor-service, and transitioning the end-users to another ISP.

Mr. Bean, Lindon City Councilmember, asked if the basic service parameters were determined based on network capacity or if it was based on competitiveness. Mr. Ramage said it was not capacity related but rather was based on the confederate environment: the balance between giving customers value for the utility fee and yet incenting customers to upgrade so there were revenues for Cities.

Mr. Bean said he presumed the utility fee and range indicated was a hard number based on the number of businesses and homes in the eleven cities and that it would not change regardless of the numbers who decided to participate. Mr. Ramage clarified that the proposed utility fee and the accompanying range were quoted under the assumption that all the Cities would participate. The costs would change if less than the eleven cities chose to participate. There was a point where if too little Cities elected to participate then it would not work at all. Macquarie would need to reassess costs if less than the eleven cities chose to participate.

Mrs. Powell, Lindon City Councilmember, asked what would happen when the customers who used the minimum services had used up what they were allotted. Mr. Lee said the customer's service would be stopped until the following service period.

Mr. Ramage added Macquarie expected the ISPs to possibly innovate on this and provide a service for instances like that.

Mrs. Powell asked what would happen if a homeowner rejected service to their door and the house was then sold to a new owner that did want the service after the fact. Mr. Ramage said any after the fact curb-to-house installation would be on a cost basis, and every house would be different.

Mrs. Powell said not everyone would be happy with the construction crews and asked what mechanisms the PPP had in place to deal with this. Mr. Ramage said Macquarie recognized it would not always be comfortable for the resident to have people accessing the properties. There were a lot of initiatives planned for undertaking to ensure people would be comfortable and aware of what would happen. If a resident was still uncomfortable, then the resident could say no, and Macquarie would not build to their door; however, the residents who opted out would still be subject to the utility fee.

Mayor Acerson, Lindon City Mayor, said the process would be painful. He asked if Mr. Ramage could speak to any national ISPs who were interested. Mr. Ramage said it was too early in the process to discuss potential ISPs.

Mr. Macdonald asked the presenters to discuss wireless service as it compared to fiber and why fiber service was not a dead issue. Mr. Lee said there was no doubt that a lot had been achieved by wireless companies. Perhaps what was more overlooked was the fact that wireless service degraded with increased volume of users on the wireless service.

The second point Mr. Lee made was that wireless service had to be back-hauled somewhere, and in order for large capacities to be backhauled anywhere at useful speeds, it was typically backhauled over fiber. If a resident had a wireless gateway router in a dwelling, all the traffic for the numerous wireless devices within that household would have to be transported back to the internet over an infrastructure that was flexible and robust enough to support that type of bandwidth.

Mr. Lee said there was a reason why major carriers, i.e. Verizon, T-Mobile, and AT&T, were looking at fiber for back-haul services.

Mr. Macdonald said there were residents who felt that this large of a commitment should go to the citizens for a vote and asked if there was a future time that the Cities could take the decision to the voters. Mr. Ramage said the Cities could exit after Milestone Two if they chose not to proceed. They could do the same after Milestone Three as well. Macquarie's proposal would not close for a number of months and therefore there could be time for a referendum.

Mr. Macdonald asked if there was potential litigation against the Cities or against UTOPIA by incumbent service providers who were being effectively forced out of the market. Mr. Ramage said these providers were not being forced out but were being asked to compete.

Mr. Ramage said he expected prices would go down and that the incumbents would not be happy. Macquarie anticipated that battle.

Mr. Lee reiterated that what was being proposed was an open-architecture and that CenturyLink and Comcast were invited to participate.

Mr. Macdonald said the contract was for thirty years and speculated that at the end of the term, someone would want to buy the revenue stream.

Mr. Hancock, Payson City Councilmember, asked if there was a mechanism that would assess the heritage customer's hookup to ensure they would have equal service on the network. Mr. Lee said the current customers were being serviced by an active ethernet connection. The technology and the platform were not being changed. The network core would remain with the same vendor. The heritage customers would not be significantly impacted.

Mrs. Ford, Payson City Councilmember, shared thoughts on whether internet was a utility. To some people the internet may be more akin to a utility, but not every demographic shared that idea. Looking at residential households, Payson had approximately 5,500 households. At $20 for each household, this equated to $1.3 million per year that Payson would have to come up with in availability payments. This was basically a bill that the City would pay with funds collected from the utility bill. Mrs. Ford said she was not sure if the Cites had the money to always pay this if there were citizens that did not pay. Mrs. Ford expressed concern that this would be detrimental to Cities' bonding abilities.

Mr. Ramage said essentially there would be a contract for the Cities to collect the utility fee. Overall, the payment was the responsibility of the Cities. The Cities would have to make up the shortfall in the absence of collecting the utility fee. The Cities had discretion on how they went about making up any potential shortfall, whether it was adjusting the utility fee to make up for the deficit, finding the revenues from somewhere else, or finding the revenues from the network revenues in the up-sell situations with the portion that would go back to the Cities.

Mrs. Ford asked if this was legally allowable for the Cities to put forth a utility fee. Mr. Ramage said he was under the assumption that Cities could, but that it was up to the Cities to decide the legalities of the utility fee.

Mayor Brunst said that question could be one for the legislature and city attorneys to answer.

Dave Shaw, UTOPIA Legal Counsel, said there were questions on whether this was a utility or not. State legislature had determined since 2001 that telecommunications were indeed a utility for municipalities. The presumption along with this was that if the Cities had authority to have a utility, the municipality had the authority to fund the utility, which had historically been done by employing rates.

In the previously presented billing matrix as presented at the beginning of the meeting, Mrs. Ford said she would include billing and collection to be done on the part of the Agencies because the Cities would be doing all the billing and all the collecting. Mr. Ramage said the Cities would be doing the billing and collecting. To the extent that the Cities had existing bills collected from every household, the incremental cost of collection and billing would be minimal.

Mayor Brunst added that the premium services would be collected by the ISPs.

Mr. Hardy, Payson City Councilmember, asked what Milestones One and Two would bring as far as commitments to the Cities. Mr. Ramage replied the commitment was to cover some costs relating to the process to get to the reporting point. Milestone Two would allow Macquarie to engage in detailed legal structuring discussions. At the end of Milestone Two, there would be a well-developed concession agreement terms sheet, a detailed indicative financing arrangement, and various other legal and structural elements in place, as well as a more defined cost estimate beyond what had been previously defined.

Mr. Shaw added a point of clarification that Macquarie was funding the cost of the milestones unless the Cities decided to exit the transaction. Upon exiting the transaction the Cities would incur reimbursement costs. These details were defined in the predevelopment agreement.

Mr. Ramage reiterated that Macquarie did not have all the answers at that point in time. There were structural considerations that needed to be worked out.

Mr. Hardy asked what guarantees the Cities had that demonstrated Macquarie's ability to follow through with the transaction for the thirty year partnership. Mr. Ramage said the PPP model was pretty well established which was backed by decades of positive history. The following-through element was building out the network up front and ensuring the key players, namely Corning, Black & Veatch, Fujitsu, and Alcatel, did not flake out. There would be repercussions for those that did not hold up the contractual agreements.

Mr. Spencer said the preliminary range was $18-$20 per month, which would be escalated to a mutually agreeable index. Mr. Spencer was concerned why the next statement in Macquarie's report said it was free to all residents. As a citizen, Mr. Spencer said he would have appreciated the opportunity to vote on UTOPIA. Mr. Spencer asked if there was a way to guarantee that, with enough upgrades, the existing debt would be paid.

Mr. Ramage said there was no guarantee to pay off the debt. Mr. Ramage encouraged the Councils to remember that Macquarie was putting forth a substantial amount of equity, and that even Macquarie was not guaranteed back its money over the thirty year partnership. Macquarie was still facing risks of many kinds, including real cost risk, operating risk, development risk, and refresh risk. The proposed $20 utility fee may not cover all the cost required either.

Mr. Spencer said this transaction may be a hard pill for citizens to swallow.

Mrs. Black questioned about the percentage estimate for transport fees and asked if there were any estimations of who would get what. Mr. Ramage replied the framework had been put forth in the report, though it had not been negotiated with the Cities yet. Mrs. Black said she did not think

Macquarie could say the Cities would get a third. Mr. Ramage agreed but said the cities would get the biggest portion of the pie, followed by the Wholesalers, and then the PPP.

Mr. Ramage said the PPP amount would take Macquarie from a mediocre return to a decent return for a pension plan investor.

Mrs. Black said if for some reason Macquarie was unable to satisfy conditions set forth, then only Macquarie would take the fall and not the Cities. Mr. Ramage said yes, this was why a scheme of performance standards was developed with a schedule of damages. In the condition of extreme under-performance, the contract would be terminated and Macquarie's equity would be gone.

Mr. Davidson commented by saying the relationship and conversation began with Macquarie as it approached UTOPIA in April, 2013. What Macquarie was bringing forth was a solution and proposal. Macquarie was the first group to come forth with ubiquitous solutions to build out the entire network. Mr. Davidson said the Councils should give consideration to recognize that if there were other organizations that wanted to come forward, that they could do so as well.

Mayor Brunst asked about the soil conditions in northeast Orem where build out in the ground was infeasible. Mr. Crowston said build out in the ground was possible, but may be more costly. Orem was an expensive city to build out due to the rock content in the ground, but Macquarie clearly understood the risk. Macquarie was prepared to guarantee fiber to each address regardless of the difficulty in getting it there.

Mayor Brunst said UTOPIA had several strands of fiber running down multiple corridors. He asked if (1) the Cities would retain ownership of the existing fiber, and (2) would the Cities be able to lease the fiber infrastructure. Mr. Ramage said the network should operate as a whole, though leasing the network could be considered. It was easiest and most efficient to manage the fiber all together.

Mr. Lee added that the PPP was only responsible for only the fibers that were seeded to them.

Mayor Brunst asked if there would be any type of "race-to-the-bottom" with ISPs on the same system trying to out-do the other ISPs. Mr. Ramage said Macquarie would certainly look to ways of mitigating that type of activity. Macquarie would not want to get into the IPSs business, but would want to save ISPs from themselves.

Mr. Ramage said fundamentally, due to the utility fee, this model was cheaper than any other network, even cheaper than Google could build it.

Mr. Lee said it was important to keep in mind the root cause as to why some ISPs were racing to the bottom, that being operating expenses. Macquarie's model would mandate a certain level of customer service.

Mr. Spencer asked if there was a max of where the utility fee would go. Mr. Ramage said the fee would be inflation based only.

Mrs. Powell said the utility fee was a large detail in what the citizens could bare. Mr. Ramage said it would be nice if Macquarie could do this without a fee, but it was not possible to do so. People either had a land line or they utilize a high-speed internet, and with this service, people could get both a land line and basic internet for less than they were playing for only one of those services.

Mr. Ramage reminded the Councils that apartment-dwellers would only pay $9-$10 for service, which was half the cost, which was less than apartment dwellers paid for anything.

Mrs. Powell suggested the Councils consider some type of provision for those who opted-out or who were indigent and could not pay.

Mr. Seastrand asked if there was data that indicated how many households were connected to some type of internet. Mr. Ramage said a survey was conducted across the eleven cities with 700 participating residents. Mr. Lee said roughly 2/3 of the total surveyed residents were connected to the internet in some way, and the remaining 1/3 were utilizing cellular service for internet access.

Mr. Seastrand asked about ways to make available the details of the meeting for further review and any possible follow-up questions, and suggested making the information available on the Orem website. Mr. Davidson said from a municipal perspective, the City could make the meeting recordings available and would provide composed minutes of the meeting. Macquarie had the full report for public review, but there would be a conduit where people could access more information about the conversation. Ultimately, Mr. Davidson said this proposal was Macquarie's proposal, and the preponderance of responsibility to distribute information needed to rest with Macquarie.

Mr. Bean asked if voice, data, and video were contemplated by the telecommunication act. Mr. Shaw said they were contemplated and that the act provided two exemptions: internal governmental networks, and the leasing or granting of other similar rights in capacity of the network to private providers of public communications and cable television services. Encapsulated within those definitions was the information for voice, video, and data.

Mr. Bean asked Mr. Shaw if he thought Provo being charged $5.35 per month as a utility fee was legal under the statute. Mr. Shaw said he would refrain from giving opinion on Provo's issues as he did not represent Provo legally. That said, Mr. Shaw said the Utah Supreme Court had been very clear on the difference between the tax and the fee. A tax is something that was charged to the public for the general public services that the public may or may not benefit from individually, whereas a fee was something charged on an individual basis in exchange for something the public individually benefited from.

Mr. Bean asked if there were any concerns about the offering of preferential treatment to the Wholesale provider, or any anti-trust issues that could prove as road-blocks in moving forward. Mr. Shaw said the municipal cable act had a provision that said a municipality may not grant itself or any other provider undue preference or unreasonable advantage.

Adjournment

Mr. Macdonald **moved** to adjourn the meeting. Mr. Sumner **seconded** the motion. The vote to adjourn was unanimous.

The meeting adjourned at 10:08 p.m.

Donna R. Weaver, City Recorder

Approved: May 13, 2014