

MINUTES OF UTOPIA REGULAR BOARD MEETING - MAY 12, 2003

THE UTOPIA BOARD OF DIRECTORS HELD A REGULAR MEETING ON MONDAY, MAY 12, 2003, AT *THE NAGANO ROOM, E CENTER OF WEST VALLEY CITY, 3200 DECKER LAKE DRIVE*. THE MEETING WAS CALLED TO ORDER BY CHAIR DAN SNARR.

MEMBERS PRESENT: Paul Larsen, Brigham City (*substitute*)
Joe Melling, Cedar City
David Gill, Centerville
Alex Jensen, Layton
Lee King - Midvale
Dan Snarr - Murray
Todd Wilson, Payson (*late arrival*)
Ed Skrobiszewski, Perry
Mark Cram, Riverton
Christopher Davis, Roy (*late arrival*)
Ken Cowley, Salt Lake City (*substitute*)
Matt Shipp, South Jordan
Richard Woodworth, Tremonton
Paul Isaac, West Valley City

MEMBERS ABSENT: Brad Sears, Cedar Hills
Ott Dameron, Lindon
Jim Reams - Orem
Janice Auger, Taylorsville

OFFICERS PRESENT: Paul Morris, Executive Director
David Shaw, Deputy Director
Roger Black, Chief Operating Officer; Treasurer

1. Approval of April 21, 2003, Board Meeting Minutes. Executive Director Paul Morris presented draft minutes of the April 21, 2003 board meeting. Board Member Alex Jensen motioned to approve the minutes as written. Board Member Matt Shipp seconded the motion. A vote was taken; it was unanimous.
2. Consideration of Resolution 03 - 15: A resolution proposing an amendment to Dean & Company's contract with UTOPIA to pay a discounted contingency fee. Paul Morris reminded the Board that he had addressed this issue at the last Board Meeting. This is the official resolution to make the change in the payment part of the contract with Dean & Company. It saves UTOPIA \$30,000 and removes any appearance of a conflict of interest

with them preparing the verification study with a portion of their fee contingent upon bonding. Paul was asked where the \$70,000 would come from. He explained that it would come from Salt Lake City's membership fees. Board Member Joe Melling made a motion to approve Resolution 03 - 15. Board Member Mark Cram seconded the motion. A vote was taken. It was unanimous.

3. Consideration of Resolution 03 - 16: A resolution adopting Paychex Employee Benefit Plan: Chief Operating Officer, Roger Black, explained that the cost for Paychex to set up a 125 account will be approximately \$40. This resolution was their language. They require a resolution from the governing body. Board Member Paul Isaac asked if employees have insurance through PEHP. The answer was affirmative, through the Local Government Trust. Board Member Ed Skrobiszewski made a motion to approve Resolution 03 - 16. Board Member Matt Shipp seconded the motion. A vote was taken; it was unanimous.
4. Fiscal Year 03 - 04 Budget Presentation: Roger Black handed out Fiscal Year 2003 Results. He stated that in order to continue on the same course for the next fiscal year, UTOPIA has to adopt a budget. He said that in order to continue in budget preparation, several policy questions need to be addressed, discussed and answered. He directed the Board to the preliminary assumptions that UTOPIA must synchronize its budget with DynamicCity business model; that UTOPIA will start staffing discussion with straw man proposal; and that UTOPIA will adopt the total budget on the assumption that financing will materialize. He turned to staffing issues. In order to answer these and other questions, he said UTOPIA needs an identity. What is the nature of UTOPIA, a building authority or an entrepreneurial telecommunications company? The Board's direction is needed.

Roger continued asking questions to consider. How many people will staff UTOPIA? What salary do they receive? How does UTOPIA deal with the wireless issue? Will it be a stand-alone issue, or included in the UTOPIA business model? He distributed a handout, "Budget Preview" that showed proposals for the next year and projected for the next four years after that. How robust an organization is UTOPIA to be? Stout enough to replace DynamicCity if necessary? Jim Matsumori, from George K. Baum, raised the issue that financing is based on certain presumptions, that UTOPIA is defined as a stand-alone organization and anything different will re-define the structure of the financing. The finance team needs to know immediately.

Board Members spoke out. David Gill stated the we must run our own system. Rich Woodworth stated there would be a loss of vision, and the mission would be lost if UTOPIA was not an entrepreneurial organization and that UTOPIA needs to be separate from DynamicCity. Lee King stated that the formal structure is needed.

Roger Black said the Board must engage in a policy debate, and include such issues as whether or not UTOPIA will compete with the public sector or the private sector. He stated that, as an example, in the technology field, a chief technology officer could make \$220,000. Board Member Paul Isaac explained that the market values are based on competition. Chair

Dan Snarr stated that there needs to be a face to the product, that UTOPIA needs to be in charge and be accountable. Board Member Joe Melling asked at what point will UTOPIA be big enough to support itself and whether certain services should be contracted out until then? Paul Morris responded that it was our current philosophy to contract out as much as possible and have a core set of employees. Board Member Lee King stated that serving on the executive committee has helped him realize that the issues are complicated and full time devoted staff is needed. Paul Morris agreed, stating that there is a high volume of work to be done, and the next agenda item would give authority to the Executive Committee to be the compensation committee. He continued that things cannot be settled now for once and for all, that the budget will probably be amended more than once during the coming year.

Other discussion continued with David Gill stating this business will be the same as any other business and will get help when it is needed. Lee King offered his insight and said the speed at which it is all happening is overwhelming and wondered if the current organizational structure is adequate, but everyone needed to leave the meeting today with a better understanding, comforted that UTOPIA is going in the right direction. Paul Morris mentioned the Gant chart handout was an outline of where UTOPIA is headed, starting with the financing, going through the RFP's and on to contracting and building. The handout was distributed. Board Member Mark Cram stated his confidence in the executive committee about the salary discussions, but he wanted all to keep in mind that this is a quasi-governmental agency and salaries should be reflective of that. Industry standards should be considered and the fact that this is a start-up and caution needs to be exercised as we look at the big picture. Roger concurred, saying that is the basis for using the compensation committee.

Board Member Alex Jensen then inquired if there was a consensus from the board, that UTOPIA is to stand on its own, and if so, there ought to be some kind of official statement reflecting that decision. Board Member Lee King then made a motion that the Board adopt a policy that allows direction for a stand-alone organization; with the ability to provide technical expertise and oversight of the projects forthcoming. Board Member David Gill seconded the motion. A vote was taken. It was unanimous.

Board Member Paul Isaac asked how UTOPIA would answer if the state wanted to take it over. Paul Morris stated that it is similar to UAMPS and other interlocal entities. UTOPIA would stay along the same course as the other interlocal entities but with a different purpose. UTOPIA is new in the telecommunication area, but not new in its organizational setup.

Board Member Rich Woodward stated that the wireless project should be part of UTOPIA, that excess capacity could be sold and revenue and expenses could be separate. Paul Morris said that also reflected management's philosophy.

Board Member Lee King posed the question whether or not the wireless project was a sub-project or a sub-entity. In the discussion that followed, David Shaw summarized by saying it was up for debate and that he was working on an interlocal agreement. Paul Morris stated

that the details were being worked on, but that it would not be a new organization, but the specifics are yet to be determined.

5. Consideration of Resolution 03 - 17: A resolution authorizing UTOPIA's Executive Committee as UTOPIA's Compensation Committee to review, study and recommend to UTOPIA's Board of Directors a salary structure for inclusion in budget and finance documents. Paul Morris stated that after the preceding discussion, it makes perfect sense for the executive committee to serve as the compensation committee, to study the salary issues and then return to the Board for review. Board Member Alex Jensen said the issues would be staffing levels, salary, and the timing for hiring each position. Board Member Paul Isaac offered his willingness to assist that committee and his offer was accepted. The committee was to meet for a moment at the conclusion of Board Meeting to calendar upcoming meetings. Board Member Alex Jensen made a motion to adopt Resolution 03 - 17. Board Member Paul Isaac seconded the motion. A vote was taken; it was unanimous.
6. Paul Morris stated that Keith Wilson was attending a funeral and would arrive soon, so his agenda item would be postponed.
7. UTOPIA Status Report: Paul Morris stated that he emailed everyone three documents last week. They are:
 - Financial Management and Controls
The RFP for outsourced CPA services has gone out and is due next Wednesday, May 14. The Financial Management Procedures have been drafted and will be amended as changes are made. These controls require changes in the way we do business. For example, four signatures on checks are too many. UTOPIA needs to be more vigorous in mail handling, to minimize risk. There needs to be a systematic way to pay the bills and the one who opens the mail should not pay the bills.
 - Draft Ordinance for Conduit
In order to issue bonds, those holding the security interest need to know that we can build the network, including using the conduit. Yet the dedication on the conduit is to the city. Gary Crane suggested we incorporate a \$1/year lease between UTOPIA and each city for UTOPIA's use of the conduit. In addition to adopting the ordinance, we need to allow UTOPIA use of the conduit.
 - Draft Reimbursement Agreement
This is the agreement to arrange for reimbursing cities who install conduit or fiber at their own cost while installing other infrastructure like street lighting, or upgrading roads. The reimbursement has to be approved ahead of time, and is only for actual work done. The city's risk is that the reimbursement is subject to UTOPIA's acquisition of financing. When UTOPIA gets funding, it will reimburse the cities. The first city will probably be Riverton. Any comments on the agreement should be directed to David Shaw.

- RUS Loan- distribution of document “Title VI - Rural Broadband Access”

Paul said the RUS Loan issue has become complicated. The original problem was that the wholesalers couldn’t apply. Rob Wilkinson of CHR Solutions assisted us and that problem was overcome. Then the next problem involves the interpretation of the law, and what an eligible entity is. Rural committees can apply only if there are no other “eligible entities.” RUS’s interpretation is that the mere existence of broadband in that community will preempt it from even applying. We read the law as requiring the other entity to apply before we are preempted. So we have put Rob Wilkinson on hold until we resolve the issue. Board Member substitute Paul Larsen stated that it was a part-time casual broadband provider with 70 total customers that has kept UTOPIA from applying for these funds for the two cities of Brigham City, and Perry. Jim Matsumori suggested that UTOPIA apply anyway, and hope to make a change in the law’s interpretation. Paul Morris stated that the cost to pay CHR to complete the application was about \$25,000 more and that we did not want to spend it unnecessarily. Paul Larsen raised the issue of congressional intent in this law; that he felt Congress’ intentions were to get broadband into the rural communities, but this very limited language is what will prevent a reliable, reputable broadband company from getting into the rural communities. Paul Morris said that he has not given up and is working on getting RUS to change the interpretation.
- Paul Morris distributed a survey to each Board Member. He explained it was critical that each city get this to the right individual for answering the questions because computer programs will be written according to the answers provided. Using West Valley City as an example in computation of license tax fees and franchise fees, he illustrated the difference between voice and cable laws that apply. Voice and telephone are governed by Title II and cable is governed by Title VI of federal law and the rules differ. He explained further and then stated that the completed surveys need to come back to him with the city’s ordinance and cable franchise agreement attached. He said the survey should take no more than an hour to complete and he would like them in by next Friday, May 23rd.
- Paul Morris then distributed a new law, S.B. 141 which has to do with building construction projects. While it does not apply to UTOPIA specifically, he intends to comply. UTOPIA’s standards are already very close to meeting its specifications. He copied the three most meaningful pages, out of a 15 page bill. Cities are under obligation to comply as of the beginning of May. In the spirit of cooperation, UTOPIA will comply. It adds language like the lowest “responsive” responsible bid, etc.
- Paul Morris continued his report saying that UTOPIA has three RFP’s out right now, with the construction RFP soon to follow. The Electronics RFP was due May 2nd. A Gant chart was distributed, outlining the RFP’s and where we are with each. Roger Black continued the discussion on the four RFP’s:

- Electronics RFP
Of the 47 who acknowledged their intent to bid, we received 17. Some of the 17 were defective, so 12 were reviewed. Focus remains on 5. The selection committee will bring their recommendations to the June Board Meeting.
- Wireless RFP
Responses are due May 21st. It is anticipated that we will receive a similar number as we did on the electronics proposal.
- Communications RFP
The proposals for the marketing/communications plan are due Thursday, May 15. We have notified about a dozen firms of the RFP on our website.
- CPA - Outsourcing the CFO services
An RFP for financial services is also on the web and due this week. Invitations were sent to a dozen CPA firms to notify them of this opportunity.

A discussion regarding wireless then ensued. Paul Isaac asked if there would not be a wireless provider until June 2004. Roger responded that it could be in by the end of this year if a satisfactory solution was offered.

12:00 Paul called a lunch break, with Keith Wilson's discussion to follow.

Paul Morris reminded the Board that under the Interlocal Agreement it takes a 2/3 vote to expel a member from UTOPIA if the Board determines the member is not feasible. Thereafter, by a 2/3 vote the Board can move forward with bonding and give notice to the members.

12:20 Keith Wilson made a power point presentation titled, "Feasibility Study Report." He reported that the feasibility report findings were at a high level. He spoke of the average revenue per person at a wholesale price as being very competitive with the current services offered, but with a much better product and faster delivery. He said take rates will determine order of construction, along with the leverage from existing fiber in Murray. The idea is to maximize revenue. In a month, the construction order will be set.

In looking at UTOPIA's 10 year cash flow, the first five years are the toughest. By end of 2004, a majority of the construction will be underway. All cities will be built by 2006.

The risk factors were acknowledged. The next steps will be for Dean and Co. to verify the feasibility studies. Then there will be confirmation of major cost items. The service provider contract will be finalized and financing will be locked in. DynamicCity continues to make presentations at city council meetings.

8. Financial Status Report: Scott Robertson reported that they are spending a lot of time with DynamicCity working on the financing structures. The business model and the financing model must be meshed. The financing is structured with three levels. The first level is the senior debt. The second level is the mezzanine, which has a greater risk but a higher yield.

The third level is a subordinate piece for a party interested in the long-term viability of the network and is willing to take a lower interest rate. It was mentioned that when one thing changes, it affects the other factors. A lot of work is going on behind the scenes. Scott stated that the challenge of a year ago was to secure stand-alone financing. This next year's challenge will be to keep construction going (having the financing to do that).

9. Keith stated that he covered everything in his feasibility update.

Paul Morris stated that Ken Cowley, the CIO from Salt Lake City was in attendance today, taking Rocky Fluhart's place. He also added that this month was UTOPIA's one year birthday and we should have had birthday cake. Chair Snarr stated that Alex Jensen would be acting chair at June's meeting since he will be absent. The executive committee was reminded to meet to schedule time for the compensation discussion. The Chair called for a motion to adjourn. Board Member Lee King made the motion. Board Member David Gill seconded it. The meeting was adjourned.