**UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY (UTOPIA)**

BOARD MEETING MINUTES
DECEMBER 14, 2020
10:00 AM

UTOPIA FIBER OFFICES
5858 SOUTH 900 EAST
MURRAY, UTAH 84121

**Board Members Present:** Meeting conducted electronically

**Board Members Joining Electronically:**
Wayne Pyle – Chair, West Valley City
Councilmember Debby Lauret – First Vice Chair, Orem City
Adam Cowie – Second Vice Chair, Lindon City
Kane Loader – Third Vice Chair, Midvale City
Shawn Warnke – Fourth Vice Chair, Tremonton City
Councilmember Thomas Peterson, Brigham City
Mayor Blair Camp – Murray City
Councilmember Robyn Mecham – Centerville City
Councilmember Clint Morris – Layton City
Todd Christensen – Perry City

**Officers Joining Electronically:**
Roger Timmerman – UTOPIA Executive Director
Laurie Harvey – UTOPIA Chief Financial Officer
Joshua Chandler – UTOPIA General Counsel
Aaron Leach – UTOPIA Chief Operations Officer
Kim McKinley – UTOPIA Chief Marketing Officer
Christa Evans – UTOPIA Secretary

**Others Joining Electronically:**
Jason Roberts – Alternate, Brigham City
Brad Patterson – Bond Counsel, Gilmore & Bell

## 1. WELCOME AND INTRODUCTIONS

The UTOPIA Board of Directors held an electronic board meeting on December 14, 2020. The meeting was live streamed to allow public viewing. UTOPIA Chair, Wayne Pyle (West Valley City) called the meeting to order at 10:00 AM.

UTOPIA Votes Present: 433
UTOPIA Majority Vote: 279
UTOPIA 2/3 Vote: 371

## 2. APPROVAL OF MINUTES – OCTOBER 19, 2020

There was no discussion on the minutes.



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**ACTION: Kane Loader (Midvale City) MOVED to approve the minutes from the UTOPIA board meeting held October 19, 2020. Councilmember Debby Lauret (Brigham City) SECONDED the motion. A voice vote was taken - vote was unanimous.**

**3. APPROVAL OF RESOLUTION UT 20-04: ESTABLISHING AN AUDIT COMMITTEE FOR UTOPIA.**

Ms. Laurie Harvey, UTOPIA Chief Financial Officer, stated this resolution was discussed at the October board meeting. The board suggested staggered terms so members rotate off the committee. The current resolution establishes four-year terms with two members currently appointed ending their terms in two years. Every two years there will be an option for new Audit Committee members to be added. That is the only change to the October resolution.

Ms. Debby Lauret, Orem City, asked if there is a maximum number of terms members can serve.

Ms. Harvey stated the number of terms allowed was not specified. It's often difficult to get people to serve on the committee and limiting the number of terms might be problematic down the road.

**ACTION: Councilmember Debby Lauret (Orem City) MOVED to approve Resolution UT 20-04 establishing an Audit Committee for UTOPIA. Councilmember Thomas Peterson (Brigham City) SECONDED the motion. A roll call vote was taken - vote was unanimous.**

**4. DISCUSSION OF APPROVAL TO RELEASE FUNDS IN BUDGET REGARDING EMPLOYEE COMPENSATION**

Mr. Roger Timmerman, UTOPIA Executive Director, stated when the budget was presented earlier in the year an employee pay increase was included in it. The increase was a 3% COLA/merit increase for employees. The budget was approved although the employee increase was withheld and could be reconsidered later. There was fear at the time regarding sales tax revenues and other economic problems and many cities deferred employee increases as well to see how things played out. From UTOPIA's perspective, revenues have been fantastic with no negative financial impact. Most cities have decided to allow employee increases that had been withheld; some have done it retroactively and others from a certain date moving forward. As Executive Director, he has seen the burden COVID has brought to UTOPIA and it has increased installations significantly. There was a target goal of 7,000 new sign ups for the year and UTOPIA is on track to exceed 10,000. Each installation takes an extensive amount of work. Employees have done a phenomenal job and are more than deserving of an increase. Buildout has stayed ahead of schedule and the capacity for installations has increased. His hope would be for the board to approve the release of funds already budgeted either from today moving forward or on a retroactive basis back to July 1.

Ms. Lauret was originally concerned about sales tax revenue in her own city. In Orem the merit bonuses were released in November. They did a 1% COLA raise in July and sales tax revenue was strong and so they just released the other 3%. She is comfortable releasing the budgeted employee compensation at this point.



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Ms. Robyn Mecham, Centerville City, stated she was originally against releasing the funds but at this point she is okay with it as well. They have released the funds in her city for employee compensation.

Mr. Clint Morris, Layton City, stated Layton was in a similar spot and held off on releasing raises. Since then they have released them retroactively.

Mr. Kane Loader, Midvale City, stated his city is in the same situation and they are requesting the city council approve Midvale employee raises retroactively. He would be fine with UTOPIA releasing the funds retroactively.

Mr. Adam Cowie, Lindon City, asked if there was a COLA raise in July and a separate merit increase in January.

Mr. Timmerman stated it is a merit increase only but is sized roughly to a COLA. Employee reviews are done and it's not automatic that everyone gets a raise. Based on a positive outcome of the review an employee would be eligible for 3%.

Mr. Cowie asked if that takes place in July or January in a typical year.

Mr. Timmerman stated it takes place in July.

Mr. Cowie is comfortable with a retroactive implementation of raises given the financials of UTOPIA. Lindon City experienced a great fiscal year; better than ever expected six months ago.

**ACTION: Councilmember Thomas Peterson (Brigham City) MOVED to Release Funds in the UTOPIA Budget to be administered retroactively for Employee Compensation. Kane Loader (Midvale City) SECONDED the motion. A roll call vote was taken - vote was unanimous.**

## 5. 2021 BOARD MEETING SCHEDULE

Mr. Pyle stated the 2021 UIA/UTOPIA board meeting schedule is set for the second Monday of the month, every other month, unless there is a holiday (i.e. October). UIA meetings will begin at 8:30 am; UTOPIA meetings will begin at 10:00 am. It has been emailed to the board and posted according to state law.

**ACTION: Councilmember Thomas Peterson (Brigham City) MOVED to approve the 2021 board meeting schedule. Councilmember Debby Lauret (Orem City) SECONDED the motion. A voice vote was taken - vote was unanimous.**

## 6. OPEN AND PUBLIC MEETINGS ACTS TRAINING

Mr. Josh Chandler, UIA General Counsel, stated the legislature requires an annual training to keep up to speed on things happening with the Open Meetings Act. There have been some changes but none of them directly affect UTOPIA. The changes relate to holding meetings



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electronically without identifying an anchor location. UTOPIA has been able to hold meetings in a consistent fashion with more electronic participation while maintaining an anchor location. There are three sets of responsibilities the act imposes. The first is actions that take place before the meeting, i.e. proper notice, second, the conduct of the meeting itself and, third, things that happen after the meeting, i.e. publication of minutes and how they are made available. At UTOPIA, the Board Secretary, Christa Evans, takes care of two of the three categories. Legislative intent is that public agencies take action and conduct deliberations openly. It is good to err on the side of keeping information publicly available. Meetings are required to be held openly. A meeting is defined as "The convening of a public body, or specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter of which the public body or specified body has jurisdiction or advisory power." The default position is the meeting will be open unless the meeting in its entirety or a portion of the meeting qualifies under the provisions for a closed meeting. To hold a closed meeting there must be a quorum present and, in most circumstances, a two-thirds vote to close a meeting. The common circumstances to close a meeting are as follows:

- discussion of the character, professional competence, or physical or mental health of an individual
- strategy sessions to discuss pending or reasonably imminent litigation
- strategy sessions to discuss the purchase, exchange, or lease of real property
- discussion regarding deployment of security personnel, devices, or systems
- investigative proceedings regarding allegations of criminal misconduct.

The issue he has seen the most problems with is the tendency to have a side meeting while the actual meeting is happening. The Open Meetings Act is clear in stating that communication between members of a body are permitted when the meeting is not happening. The safest reading of the statute would be it is not the intent to have those communications taking place during an open meeting. During a meeting, anything said should be said openly. There are two potential penalties for violating the open and public meetings act. One is that the final action taken by the body may be voided by the courts. The second possible outcome for violation of the act is the possibility of criminal charges.

## 7. UTOPIA FINANCIAL UPDATE

Ms. Harvey stated this morning in the UIA meeting there was a public hearing held for the issuance of the UIA bond. The plan is to move ahead with the ratings presentation in January and the closing of the bond in February. The par value of the bond is about $50 million and the intent is to use it to build out the remaining UTOPIA & UIA footprints. Brad Patterson, Bond Counsel with Gilmore & Bell, was available to answer any questions.

Ms. Lauret stated her city is looking at bonds for utilities and they are getting spectacular rates. She is wondering if the change in presidency will factor into the rates.

Mr. Patterson stated the expectation he has heard is that rates are going to stay where they are.

Ms. Lauret asked if there is any urgency to get it done sooner rather than later.



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Mr. Patterson believes the schedule laid out will be fine.

Ms. Harvey stated the Billing Supervisor, Kellie Somerville, resigned at the end of November. She was with UTOPIA for 11 years and felt it was time to move on. She left on good terms and is helping with the transition. The finance staff has stepped up to fill her shoes. With Kellie leaving and continuing growth with UIA and UTOPIA it has become apparent that more focus is needed on the organization's accounting processes and financial reporting. The current Controller is assuming the role of Treasurer. Staff is currently interviewing for a Controller with a lot of governmental experience and/or knowledge of the accounting software, Dynamics GP. The audit is still underway. They have been very thorough this year and a clean opinion is expected. There are no changes from the estimated revenues and expenditures presented in October; UTOPIA is expected to cover its operating costs and additional expenses are interest expense. She showed the UTOPIA Budget for 2021 and YTD figures for the period ending November 30, 2020. That is five months into the year which is equivalent to 42% of the budget year completed. Revenues are at 39% of budget. Access Fees are coming in strongly, recurring revenue is 43% and interest is a little down which may be due to some entries missing. There is no reason to be concerned that revenue numbers will not be reached. Expenditures are currently at 35% of budget. Salaries, wages, and benefits is at 36% so there is room for the retroactive increases and the increases going forward. The insurance increase was budgeted at 10% and the actual increase was only 4%. All other categories are doing fine.

Mr. Pyle asked if it is normal that the IRU payment has not been recorded yet.

Ms. Harvey stated that is normal. The IRU has been paid in full by UIA so there is not additional cash that comes in, it is basically a book entry at the end of the year.

Mr. Tom Peterson, Brigham City, expressed how grateful the board is to Kellie and her time at UTOPIA. She has been an awesome employee. He would like to know if the retroactive raise will be extended to her as well.

Mr. Timmerman stated as this is pay for work performed previously it would make sense to provide that for her. She is also staying on as a contractor to help with the transition. Unless the board objects he will approve that for her.

Ms. Lauret stated it sounded reasonable to her.

Ms. Harvey presented a graph showing recurring revenue for UTOPIA and UIA. UTOPIA revenue is about $600,000 per month and UIA revenue is $1.75 million per month for a total close to $2.5 million in recurring revenue. The dips along the way are no reason to be concerned. There were some credits on a few business accounts but business has done really well.

Mr. Timmerman stated sign ups have been increasing, it is just the timing of when payments are recorded that cause the line to go up and down. There have been strong months in both residential and business.



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Ms. Harvey presented a graph showing the Combined UIA/UTOPIA recurring revenue increase. In 2015 the increase in recurring revenue was about $10,000 per month and is now comfortably above $35,000. She presented a graph with UIA Revenue vs. Bond Obligations. UIA Revenue is almost $1.8 million. It showed the full debt service once the series 2021 debt is issued at $1.4 million per year. Dotted lines represented those still in the Cap I period. She drew attention to the consistent gap between revenue and debt service.

Mr. Timmerman stated this has been expedited because the organization has had the revenue capacity. Originally, there were three bonds planned for UIA. That has been bumped into two larger bonds to stay ahead of schedule because performance has been good from a revenue perspective. This is the last big bond to finish the remaining areas in UTOPIA cities. There will be some incremental bonds to handle growth in cities. There may be some city partnerships but that comes with the city's own backstop. After this, the debt obligations will trail off and flatten and things will get very interesting with the ability to take on significant portions of the debt obligations. Things are looking very good. The buildout will be finished in a year and half, two years to be safe. Buildout is ahead of schedule.

**8. <u>UTOPIA NETWORK UPDATE</u>**

Mr. Timmerman showed the residential take rates in member cities. There continues to be an uptick in each city except for areas where construction is happening. A 35% take rate is usually considered successful for the project to break even. All cities completed for a few years are well above that threshold. The ones below that threshold are those with new areas - Midvale, Murray, Orem, West Point and West Valley City. The address availability represents the construction of the network. There will be a large increase in this number next report because there were a couple thousand addresses just released. Subscribers continue to grow, and more people are benefiting from this investment. There was a goal of 7,000 new subscribers this year and that number will exceed 10,000. Total customers are approaching 35,000 which will be reached this month. It took many years to reach 10,000 customers in the beginning and now that number will be added just this year. There are several cities talking with staff about expansion into their city.

Mr. Loader asked if there is a combined take rate for the whole network.

Mr. Timmerman stated across the board the residential take rate is 31.35%. Business revenue is a little different and is tracked differently; it is based on revenue. He will be sending out these reports to board members to share with their cities.

Mayor Blair Camp, Murray City, stated his neighborhood was installed this last summer and there was a lot of buzz. He has a commitment to his current provider for a few months before he can sign up. He wondered it that is a common occurrence in new areas.

Mr. Timmerman stated that is why there is a two-year marketing and sales period before an area is considered completed. It is a common occurrence that people in new areas must finish out a contract with their current provider before they can sign up. That is one reason why people like UTOPIA; there are no contracts. The low churn rate of 3% has made that a benefit rather than a risk to UTOPIA.



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**7. ADJOURN**

Mr. Pyle congratulated UTOPIA staff on a banner year and thanked the cities for their support and participation.

There being no further business of the UTOPIA Board of Directors, the meeting on Monday, December 14, 2020, was adjourned at 10:51 AM.

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I hereby certify the foregoing to be a true and accurate record of the proceedings of this meeting of the UTOPIA Board of Directors.

Christa Evans

**Christa Evans, UTOPIA Secretary**

**Approved this 8th day of February, 2021**



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