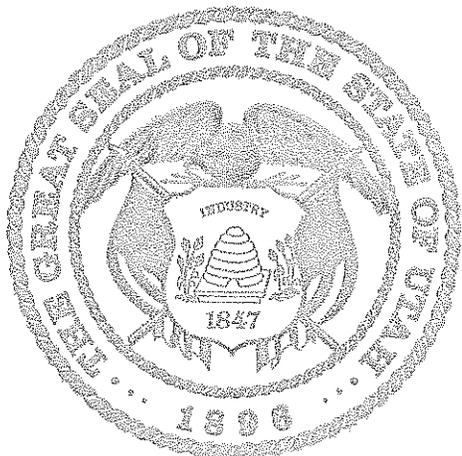




OFFICE OF THE LIEUTENANT GOVERNOR
CERTIFICATE OF CREATION

I, GARY R. HERBERT, LIEUTENANT GOVERNOR OF THE STATE OF UTAH, HEREBY CERTIFY THAT there has been filed in my office an Interlocal Cooperative Agreement for UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY (UTOPIA) dated March 5th, 2002, complying with Section 11-13-204, Utah Code Annotated, 1953, as amended.

NOW, THEREFORE, notice is hereby given to all whom it may concern that the attached is a true and correct copy of the Interlocal Cooperative Agreement, referred to above, on file with the Office of the Lieutenant Governor pertaining to UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY (UTOPIA), located in the State of Utah.



IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Great Seal of the State of Utah this 27th day of May, 2008 at Salt Lake City, Utah.

GARY R. HERBERT
Lieutenant Governor

INTERLOCAL COOPERATIVE AGREEMENT
OF THE
UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY
(UTOPIA)

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APPENDIX A

APPENDIX B

**INTERLOCAL COOPERATIVE AGREEMENT
OF THE
UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY
(UTOPIA)**

THIS INTERLOCAL COOPERATIVE AGREEMENT ("Agreement") dated as of March 5, 2002, is made and entered into by and among the municipalities organized and existing under the laws of the State of Utah that are parties signatory to this Agreement, which Agreement may be amended from time to time, as provided herein. The municipalities are hereinafter referred to collectively as "Members" or "parties" and individually as "Member" or "party."

RECITALS

WHEREAS, the Utah Interlocal Cooperation Act, Sections 11-13-1, *et seq.*, Utah Code Annotated 1953, as amended ("UCA") ("Interlocal Cooperation Act") provides that two or more public agencies may, by agreement, jointly exercise any power common to the contracting parties; and

WHEREAS, Section 10-8-14, UCA, provides that a municipality "may construct, maintain, and operate . . . telecommunications lines [or] cable television lines" subject to the Municipal Cable Television and Public Telecommunications Services Act ("Cable and Telecommunications Act"); and

WHEREAS, Section 10-18-105(2), UCA, exempts, from the requirements of the Cable and Telecommunications Act, municipalities that purchase, lease, construct, or equip facilities "that are designed to provide services within the municipality; and that the municipality uses for internal municipal government purposes; or by written contract, leases, sells capacity in, or grants other similar rights to a private provider to use the facilities in connection with a private provider offering cable television services or public telecommunications services"; and

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purposes of creating the Utah Telecommunication Open Infrastructure Agency ("UTOPIA") as a separate legal entity, as allowed in the Interlocal Cooperation Act; studying the feasibility of constructing and operating a telecommunications system that would provide high-speed broadband voice, video, and data access for internal use and to every home and business within the Members' boundaries on a wholesale basis, as described in Section 10-18-105(2), UCA; and, if feasible and

approved by the Members, as provided herein, constructing, owning, and operating the Network; and

WHEREAS, this joint effort in creating a wholesale telecommunications utility makes the most efficient use of the Members' powers in a mutually advantageous way, including the benefit of economy of scale, which will facilitate superior services to residences and businesses; enhance government administration; provide more functional buildings and grounds; support better educational opportunities, health care, and police and fire protection; and spur economic development.

COVENANTS

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants, and agreements contained herein, the parties hereto mutually agree as follows:

ARTICLE 1

Definitions

The following definitions shall apply to the provisions of this Agreement:

- 1.1. "Advisory Committee" shall mean the Technical Advisory Committee, consisting of one Information Technology representative from each Member.
- 1.2. "Board of Directors" or "Board" shall mean the governing body of UTOPIA.
- 1.3. "Bonds" shall mean bonds, notes, or other evidences of indebtedness of UTOPIA, as set forth in Section 11-31-2(1), UCA.
- 1.4. "Feasibility Study" shall mean the complete design of the Network; the estimated costs of construction, operation, maintenance, and planned upgrades; a proposed construction schedule; and the estimated revenue generated from service providers. The Feasibility Study shall contain sufficient detail so that it can be used in the preliminary official statement, if UTOPIA chooses to issue Bonds. As new Members are added, a Feasibility Study may be completed for them as provided herein.
- 1.5. "Fiscal Year" shall mean the twelve-month period of July 1 through June 30.
- 1.6. "Initial Advisory Committee Officers" shall mean the initial Chair and Vice Chair of the Advisory Committee, who are hereby appointed and shall serve, without remuneration from UTOPIA. The initial Chair and Vice Chair are as follows: Jonathan Wesley from Layton

City, Chair; Ernesto Lazalde from Orem City, Vice Chair. The Initial Advisory Committee Officers will assume their positions when their respective municipality has joined UTOPIA, as provided in Section 4.3. In the event their municipality has not joined UTOPIA by May 10, 2002, the Executive Director shall appoint a replacement from one of the municipalities that has joined UTOPIA. When these Officers are acting on behalf of UTOPIA, they shall be considered to be acting on behalf of their respective municipal employer within the meaning of Sections 63-30-1, *et seq.*, and Sections 63-30a-1, *et seq.*; UCA, and thus, shall be entitled to indemnification and representation so long as they meet the requirements of Section 63-30-36(3), UCA.

- 1.7. "Initial Officers" shall mean the Executive Director, Deputy Director, and Treasurer of UTOPIA, who are hereby appointed and shall serve without remuneration from UTOPIA, until such time as the Board of Directors appoints a paid, full time Executive Director, Deputy Director, and Treasurer, after bonded indebtedness is issued, as provided herein. The Initial Officers are as follows: Paul Morris from West Valley City, Executive Director; David Shaw from Murray City, Deputy Director, and Arthur Hunter from Sandy City, Treasurer. The Initial Officers will assume their positions when their respective municipality has joined UTOPIA, as provided in Section 4.3. In the event their municipality has not joined UTOPIA by May 10, 2002, the Executive Director shall appoint a replacement from one of the municipalities that has joined UTOPIA. When these Officers are acting on behalf of UTOPIA, they shall be considered to be acting on behalf of their respective municipality employer within the meaning of Sections 63-30-1, *et seq.*, and Sections 63-30a-1, *et seq.*, UCA, and thus, shall be entitled to indemnification and representation so long as they meet the requirements of Section 63-30-36(3), UCA.
- 1.8. "Member" shall mean each municipality listed in Appendix A, who is a founding Member as set forth in Section 4.3, "Member" also means any subsequent municipality that joins UTOPIA, as provided in Section 4.4.
- 1.9. "Network" shall mean and include all physical facilities, wires, and equipment either owned or controlled by UTOPIA that is part of an open, carrier class, and scalable telecommunications system that would provide transparent high-speed broadband voice, video, and data access for internal use by the Members and to every home and business

within the Members' boundaries on a wholesale basis, and on which voice, video, and/or data is stored, accessed, and/or transmitted.

- 1.10. "Preliminary Assessment" shall mean the initial study individualized for each Member, which provides preliminary information regarding the estimated costs and revenues from construction of the Network within that Member's boundaries. As Members are added, a Preliminary Assessment shall be completed for them as provided herein.
- 1.11. "UTOPIA" shall mean the Utah Telecommunication Open Infrastructure Agency. As used in Article 8, UTOPIA means its officers and Board of Directors, as appropriate.

ARTICLE 2

Purposes

- 2.1. General Statement. This Agreement is entered into by the Members in order to:
 - 2.1.1. Create the Utah Telecommunication Open Infrastructure Agency ("UTOPIA") as a separate legal entity, as provided in the Interlocal Cooperation Act.
 - 2.1.2. Authorize UTOPIA to perform a Preliminary Assessment on behalf of each Member to provide preliminary information regarding the estimated costs and revenues from construction of the Network within that Member's boundaries.
 - 2.1.3. Authorize UTOPIA to perform a Feasibility Study to determine the feasibility of Bonding for the construction (including leasing and/or purchasing) of an open, carrier class, and scalable telecommunications system that would provide transparent high-speed broadband voice, video, and data access for internal use by the Members and to every home and business within the Members' boundaries on a wholesale basis
 - 2.1.4. If approved by the Members, as provided herein, issue Bonds; construct, own, and operate the Network; and enter into contracts with suppliers, contractors, providers, and others to facilitate the accomplishment of these purposes. Bonding and construction may be done in series or phases, as determined by the Board of Directors.
 - 2.1.5. Assist the Members in upgrading and facilitating the expansion of the Network as new development occurs and in complying with legal requirements, including the

Federal Telecommunications Act of 1996 and the Utah Cable and Telecommunications Act.

- 2.2. Additional Members. It is also the purpose of this Agreement to provide, to the extent permitted by law, for the inclusion at a subsequent date of such additional Members as may desire to become parties to this Agreement, as provided in Section 4.4.

ARTICLE 3

Liabilities and Obligations of Members

- 3.1. Immunity. It is the express intent of the Members in entering into this Agreement that they do not waive, and are not waiving, any immunity provided to the Members or their officials, employees, or agents by the Utah Governmental Immunity Act, Sections 63-30-1, *et seq.*, UCA, or by other law.
- 3.2. Obligation Imposed by Law. This Agreement shall not relieve any Member of any obligation or responsibility imposed upon it by law. However, to the extent of actual and timely performance thereof by UTOPIA, such performance may be offered in satisfaction of such obligation or responsibility.
- 3.3. Limited Obligation. The obligations entered into by each Member by this Agreement are special limited obligations of each such Member, and nothing herein shall be construed or give rise to a general obligation or liability of any Member or a charge against its general credit or taxing powers.
- 3.4. Not Debt of Members. Any Bonds issued or incurred by UTOPIA shall not constitute any debt, liability, or obligation of any individual Member, but shall be secured only in the manner set forth therein.
- 3.5. Indemnification of Members. UTOPIA shall defend, indemnify, save harmless, and exempt the Members, their officers, agents, and employees from and against all claims, suits, legal proceedings, demands, damages, costs, expenses, and attorneys' fees incident to any willful or negligent acts or omissions by UTOPIA, its officers, agents, or employees. The Board of Directors shall, prior to the commencement of construction of the Network or sooner, provide for risk and liability coverage in such amounts as it deems necessary to insure against risks which the operation of the Network may involve.

ARTICLE 4

Parties to Agreement

- 4.1. Current and Future Members. Each party to this Agreement contracts with all other Members who are signatories of this Agreement to accomplish the purposes set forth in Article 2 herein, and, in addition, with such other Members as may later be added to and become signatories of this Agreement pursuant to Section 4.4.
- 4.2. Deletion of Members. Each party to this Agreement acknowledges and agrees that the deletion of any Member from this Agreement pursuant to Sections 4.5, 4.6, or 4.7 shall not adversely affect this Agreement nor such party's contractual relationship with the other Members to this Agreement then remaining.
- 4.3. Founding Members. The founding Members are those Members ultimately listed in Appendix A, who by May 10, 2002, have (i) adopted a resolution approving this Agreement; (ii) provided the Executive Director with a duly executed signatory page in a form similar to that shown in Appendix B; and (iii) delivered to the Treasurer of UTOPIA the amount shown in Appendix A. After May 10, 2002, Appendix A shall be updated to list any municipality that has met the criteria listed in this Section 4.3.
- 4.4. New Members. New Members are those who join after May 10, 2002. They may become signatories to this Agreement upon approval of, and pursuant to the conditions established by, the Board of Directors.
- 4.5. Withdrawal After Preliminary Assessment. Each Member shall receive a Preliminary Assessment. After the Preliminary Assessment, one of the following shall occur:
 - 4.5.1. Prior to the beginning of a Feasibility Study for that Member, the Member's governing body may send a written notice of its withdrawal from UTOPIA.
 - 4.5.2. Based on the Preliminary Assessment, if it is determined by the Board of Directors that construction of the Network within a Member's boundaries is not economically feasible, then that Member's membership in UTOPIA may be terminated. Whether it is economically feasible shall be judged by the costs and revenues that would occur within the Member's boundaries.
 - 4.5.3. If the Board of Directors determines that a Feasibility Study should be done, then each Member shall be given written notice. The written notice shall include the cost of each Member's share of the Feasibility Study and a date by which the Member

must deliver to the Treasurer of UTOPIA moneys to pay such cost. If the Member does not appropriate the funds, through a resolution of its governing body, and remit the funds to the Treasurer by the date specified in the written notice, the Member shall automatically be deemed to have withdrawn from membership in UTOPIA.

- 4.6. Cancellation of Membership. If, after the Feasibility Study is completed, it is determined by a two-thirds (2/3) vote of the Board that the construction of the Network within a Member's boundaries is not economically feasible, then that Member's membership in UTOPIA may be terminated. Whether it is economically feasible shall be judged by the costs and revenues that would occur within that Member's boundaries.
- 4.7. Withdrawal Prior to Bonding. After the Feasibility Study is completed, and if the Board of Directors, by a two-thirds (2/3) vote, determines that it is in the best interests of the Members and UTOPIA to proceed with issuing Bonds to construct and install the Network or any portion of the Network, written notice shall be given to each Member. The written notice shall include the Feasibility Study and specify the plans for issuing the Bonds and a date by which the Member may withdraw. In order to withdraw, the Member's governing body must give written notice of its withdrawal by the date specified in the notice.
- 4.8. No Further Obligation. A Member who withdraws or is cancelled pursuant to Sections 4.5, 4.6, or 4.7 shall not have any further obligations to UTOPIA, and UTOPIA shall not have any further obligations to the withdrawn Member.
- 4.9. Rejoining. The fact that a municipality has previously withdrawn or been cancelled shall not constitute a bar from rejoining as a new Member, as provided in Section 4.4.

ARTICLE 5

Term of Agreement

- 5.1. Effective Date. This Agreement shall become effective when any two of the founding Members have met the conditions set forth in Section 4.3.
- 5.2. Commencement of Operations. UTOPIA shall commence operations on the effective date. The Executive Director is authorized to call a meeting of the Board of Directors as soon as practical after the effective date, but no later than May 20, 2002.
- 5.3. Term. This Agreement shall run for fifty (50) years from the effective date, unless sooner terminated, as provided in Article 18.

ARTICLE 6

Creation of UTOPIA

- 6.1. Creation. The Utah Telecommunication Open Infrastructure Agency, a separate and independent governmental organization, is hereby formed pursuant to the provisions of the Interlocal Cooperation Act on the effective date established in Section 5.1.
- 6.2. Location of Headquarters. The initial location of UTOPIA's headquarters shall be West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah 84119. The Board of Directors may change the location from time to time.

ARTICLE 7

Powers of UTOPIA

- 7.1. Common Powers. UTOPIA shall have all powers common to municipalities and is hereby authorized to do all acts necessary to accomplish its stated purposes, including, but not limited to, any or all of the following:
 - 7.1.1. To make and enter into contracts.
 - 7.1.2. To incur debts, liabilities, or obligations.
 - 7.1.3. To acquire, hold, or dispose of property, contributions, grants, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and governmental entities.
 - 7.1.4. To sue and be sued in its own name.
 - 7.1.5. To exercise the power of eminent domain in its own name.
 - 7.1.6. To exercise all powers necessary and proper to carry out the terms and provisions of this Agreement or otherwise authorized by law.
 - 7.1.7. To borrow money or incur indebtedness; to issue Bonds for the purposes for which it was created; to assign, pledge, or otherwise convey as security for the payment of any such Bonds the revenues and receipts from or for the Network, which assignment, pledge, or other conveyance may rank prior in right to any other obligation except taxes or payments in lieu thereof payable to the State of Utah or its political subdivisions.
- 7.2. Exercise of Powers. All powers of UTOPIA shall be exercised pursuant to the terms of this Agreement, its bylaws to be adopted, and any governing laws.

ARTICLE 8

Responsibilities of UTOPIA

- 8.1. Parameters Resolution. At the first meeting of the Board of Directors, UTOPIA shall adopt a parameters resolution that will allow the Members to be reimbursed, from any bond proceeds, for any appropriations paid to UTOPIA prior to the issuance of the Bonds or any other expenses incurred by UTOPIA or its Members, as approved by the Board of Directors.
- 8.2. Preliminary Assessment. UTOPIA shall contract for completion of a Preliminary Assessment for each Member and for necessary consulting services.
- 8.3. Feasibility Study. If approved by the Board of Directors, UTOPIA shall establish the cost for a Feasibility Study and notify each Member, as required by Section 4.5.3.
- 8.4. Discussions and Negotiations. Simultaneously with the conducting of the Preliminary Assessment and thereafter, UTOPIA, through the Executive Director, shall enter into discussions and negotiations with potential suppliers, manufacturers, service providers, governmental entities, public officials, and others to gather information helpful to the fulfillment of the purposes of UTOPIA.
- 8.5. Network Operation. If constructed, UTOPIA shall operate the Network in a manner that will benefit, as determined by the Board of Directors, the residents and businesses located in each Member and the Members themselves in their internal operations.
- 8.6. Revenues. UTOPIA shall ensure that all covenants and obligations required in any Bond documents are fulfilled, including the proper funding of debt service, reserves, capital improvement accounts, and operations and maintenance. If, as determined by the Board of Directors, there are any revenues generated in excess of those needed to properly administer UTOPIA, then such funds shall be equitably remitted to the Members according to a formula approved by a two-thirds (2/3) vote of the Board. The formula shall attempt to approximate the *pro rata* share of revenues minus costs generated from each Member's jurisdiction.
- 8.7. Develop Standards for New Construction. UTOPIA shall develop standards that the Members can adopt for construction of subdivisions, dwelling units, and commercial buildings that will facilitate the expansion of the Network.
- 8.8. Competitive Neutrality. UTOPIA shall develop recommendations regarding amendments to existing franchise and right-of-way ordinances to ensure that all service providers,

whether or not they use the Network to provide services, are treated in a competitively neutral manner, as required by the Federal Telecommunications Act of 1996.

ARTICLE 9

Voting Rights of Members

- 9.1. Weighted Voting. Each Member shall be entitled to one vote for each one thousand (1,000) residents, rounded to the nearest one thousand, as determined by the most recent decennial census conducted by the United States Census Bureau.
- 9.2. Control Within Municipality. Notwithstanding the voting powers of the Board of Directors, there are certain circumstances in which a Member shall have some rights over the portion of the Network within its boundaries. These rights shall be limited to the following:
 - 9.2.1. After the initial construction of the entire Network is complete, as determined by the Board of Directors, if additional Bonds are proposed to be issued to upgrade the Network within its boundaries, a Member may elect to not have the upgrade within its boundaries.
 - 9.2.2. If the Network is built in phases within a Member's boundaries, the Member may select the order in which areas or neighborhoods are built out, so long as the area chosen is economically feasible according to the Feasibility Study.
 - 9.2.3. A Member may elect to use its own employees to maintain the physical aspects of the Network within its boundaries so long as:
 - 9.2.3.1. They are paid at the same amount as the Board of Directors has agreed to pay the other contractors hired to maintain the Network.
 - 9.2.3.2. The workers in that municipality provide the maintenance work at the same quality and timeliness that is required of the contractors.
 - 9.2.4. Each Member may use the Network within its boundaries, at no cost, to connect the facilities owned by the Member. Any expansion of the Network solely for the Member's internal use may be done only with the Board's approval and at the expense of the Member.
 - 9.2.5. Each Member may use the Network within its boundaries, at no cost, to read its own utility meters. However, for Bonding purposes, each Member that uses the Network to read its own utility meters may be asked to pledge the amount of annual cost

savings from switching to using the Network to read its meters. Actual payment of the amount pledged shall be necessary only in the event revenues are insufficient to meet debt service requirements.

9.3. Bond Security Prevails. Notwithstanding the limited rights granted to each Member in Section 9.2, it shall not be construed to allow any Member to take any action which would jeopardize the security or tax status of any outstanding Bonds nor diminish the capacity of the Network located within another Member's boundaries.

9.3.1. Whether any action would jeopardize the security or tax status of any outstanding Bonds shall be determined by a nationally recognized bond counsel chosen by the Board of Directors.

9.3.2. Whether any action would diminish the capacity of the Network for a Member shall be determined by an expert chosen by the Board of Directors.

ARTICLE 10

Responsibilities of Members

10.1. Development of Standards. Each Member shall cooperate in the development and implementation of subdivision, dwelling unit, and commercial building standards to facilitate the installation of the Network in new construction.

10.2. Franchise Approval Granted. Each Member hereby grants franchise approval to any service provider contracted by UTOPIA to provide services using the Network within that Member's jurisdiction. By contract, the Board of Directors shall require each provider to pay a Member any tax, franchise fee, or other charge that would be applicable to the provider if the provider had obtained a separate franchise from that Member.

10.3. Approval to Build Network. Each Member shall allow UTOPIA to build the Network in its jurisdiction, including the granting of any necessary excavation permits. However, UTOPIA agrees to require any contractor hired to install the Network to comply with each Member's ordinances, except that the fees normally charged by the Member shall be waived.

ARTICLE 11

Board of Directors

- 11.1. Composition of Board. UTOPIA shall be governed by a Board of Directors, which is hereby established and which shall be composed of a representative from each Member. By adopting this Agreement, the governing body of each Member hereby appoints its chief executive officer or the chief executive officer's designee to be on the Board. The representative shall serve at the pleasure of the governing body and may be replaced with another public official or employee of the Member if so designated in writing by the governing body. The manner of filling vacancies on the Board of Directors by the governing bodies, as well as the powers and responsibilities of the Chair of the Board, shall be established in the bylaws.
- 11.2. Executive Committee. The Board of Directors may establish an Executive Committee of not more than thirteen (13) members of the Board and may delegate to the Executive Committee such powers and responsibilities as the Board deems appropriate, as provided in Section 12.14. The composition of, the manner of selection of, and the powers and responsibilities of the Executive Committee shall be as established in the bylaws.
- 11.3. Voting. In all matters voted upon by the Board of Directors, each member of the Board shall have and may cast the same number of votes as the Member he or she represents is entitled to cast under Article 9.
- 11.4. Meetings. The Board shall hold at least one regular meeting annually. Meetings may be conducted by telephonic or other technological means of communication.
- 11.5. Minutes. The Executive Director shall cause to be kept minutes of all meetings of the Board and shall, as soon as possible after each meeting, cause a draft copy of the minutes to be forwarded to each member of the Board.
- 11.6. Quorum. The presence of the Board members entitled to cast a majority of the votes of the entire Board shall constitute a quorum for the transaction of business. A majority vote of the total votes entitled to be cast by Board members shall constitute action by the Board.
- 11.7. Notice. Notice to Board members shall be sufficient if delivered in writing, by fax, or by e-mail to the designated representative of the respective Member, at the address, fax number, or e-mail address provided.

- 11.8. Duty to Inform. The Board, through the Executive Director, shall have an ongoing duty to inform the Members of UTOPIA business and, accordingly, shall cause a copy of all materials (unless they are not public records; in which case, notice of their existence shall be given) delivered to Board members for meetings of the Board, including minutes of past meetings, to be delivered to the Chair of each Member's governing body and to each Member's legal counsel. The Executive Director shall promptly respond to all requests for information made by any Member.

ARTICLE 12

Powers and Duties of Board of Directors

The Board of Directors shall have the following powers and duties:

- 12.1. Appointments. The Board of Directors shall appoint, except for the Initial Officers, an Executive Director; and the Executive Director shall appoint a Deputy Director and a Treasurer, subject to confirmation by the Board.
- 12.2. Approval of Contracts. The Board of Directors shall have authority to approve contracts and delegate to the Executive Director the authority to approve contracts, subject to limitations, if any, set forth in the bylaws.
- 12.3. Budget. The Board of Directors shall cause to be prepared the operating budget of UTOPIA for each Fiscal Year.
- 12.4. Committees. The Board of Directors shall have the authority to appoint committees.
- 12.5. Reporting. The Board of Directors shall receive and act upon reports of the Executive Committee and of the Executive Director.
- 12.6. Hiring Employees. The Board of Directors shall have the power to authorize the Executive Director to hire such persons as the Board deems necessary for the administration of UTOPIA. This includes the temporary "borrowing" of employees from one or more of the Members, subject to the approval of the Member. Any Member whose employee is so "borrowed" according to this provision, except for the Initial Officers, shall be reimbursed by UTOPIA for that employee's time spent or services rendered on behalf of UTOPIA.
- 12.7. Supervision. The Board of Directors shall have the general supervisory and policy control over the day to day decisions and administrative activities of the Executive Director.

- 12.8. Funds. The Board of Directors shall provide for the investment and disbursement of funds and their periodic review.
- 12.9. Audit. The Board of Directors shall provide for a certified annual audit of the accounts and records of UTOPIA, which audit shall conform to generally accepted auditing standards. Such audit of the accounts and records made by (a) Certified Public Accountant(s) shall be open to any inspection at all reasonable times by Members' representatives.
- 12.10. Bylaws. The Board of Directors shall have the authority to adopt bylaws and thereafter amend the bylaws. The adoption and any amendments shall be by a two-thirds (2/3) vote of the Board. Each Member shall receive a copy of the bylaws.
- 12.11. Rules of Board. The Board of Directors shall have the authority to establish rules governing its own conduct and procedure not inconsistent with the bylaws.
- 12.12. New Members. The Board of Directors shall have the authority to admit new Members on such terms and conditions as it deems appropriate.
- 12.13. Other Powers. The Board of Directors shall have such other powers and duties as are necessary for the operation or dissolution and winding up of UTOPIA and for the implementation of the bylaws subject to the limits of this Agreement and the bylaws.
- 12.14. Delegation to Executive Committee. The Board of Directors may, through UTOPIA's bylaws, delegate all of its powers and duties outlined in this Agreement to the Executive Committee, except for the following:
- 12.14.1. The election of the Chair and Vice Chair of the Board.
 - 12.14.2. The election of the group representatives to the Executive Committee.
 - 12.14.3. The power to adopt, modify, and approve changes in the bylaws and recommend proposed changes to the Agreement that must be approved by the Members' governing bodies.
 - 12.14.4. The power to terminate or dissolve UTOPIA.
- 12.15. Records. The records of UTOPIA shall be governed by the "Government Records Access and Management Act," Sections 63-2-101, *et seq.*, UCA, except that the governing body and/or legal counsel of each Member shall have full access to inspect all records and copy public records of UTOPIA.

ARTICLE 13

Technical Advisory Committee

- 13.1. There is hereby created a technical advisory committee consisting of one Information Technology representative from each Member.
- 13.2. Except for the Initial Advisory Committee Officers, the Advisory Committee shall elect a Chair and Vice Chair according to the bylaws adopted by the Board of Directors.
- 13.3. The purpose of the Advisory Committee is to make recommendations to the Board of Directors regarding the technical and technological aspects of constructing, installing, operating, maintaining, and upgrading the Network.

ARTICLE 14

Powers and Duties of Technical Advisory Committee

- 14.1. The Advisory Committee shall meet as often as it deems necessary to conduct its business.
- 14.2. The Advisory Committee, on its own initiative or when requested by the Board or Executive Director, shall gather information, investigate the appropriate issues, and make recommendations to the Board.
- 14.3. The Advisory Committee may create subcommittees as it deems necessary to fulfill its purposes.

ARTICLE 15

Officers, Agents, and Personnel

- 15.1. Executive Director. Except for the Initial Officers, the Executive Director shall be appointed by the Board of Directors. The Executive Director shall be the chief executive officer of UTOPIA and shall, subject to the control of the Board of Directors, have general supervision, management, administration, direction, and control of the business and officers of UTOPIA and shall have such other and related duties as may be prescribed by the Board or the bylaws.
- 15.2. Deputy Director. Except for the Initial Officers, the Deputy Director shall be appointed by the Executive Director and confirmed by the Board of Directors. The Deputy Director shall have authority to act in the absence of the Executive Director; be responsible for all minutes,

notices, and records of UTOPIA; and perform such other duties as may be assigned by the Executive Director.

- 15.3. Treasurer. Except for the Initial Officers, the Treasurer shall be appointed by the Executive Director and confirmed by the Board. The duties of the Treasurer are set forth in Articles 16 and 17.
- 15.4. Legal Counsel. The Executive Director may select an attorney for UTOPIA, who may be a municipal employee, or the Executive Director may employ independent counsel as the attorney for UTOPIA. The attorney shall serve at the pleasure of the Executive Director.
- 15.5. Other Officers, Agents, and Personnel. The Executive Director shall have the power to appoint such other officers, agents, and personnel as are budgeted for by the Board of Directors and as may be necessary to carry out the purposes of this Agreement.
- 15.6. Terms of Office; Removals and Resignations; Filling of Vacancies; Etc. Terms of office, provisions for removal and resignation, and provisions for filling vacancies, etc., shall be as established by the bylaws.

ARTICLE 16

Accounts and Records

- 16.1. Annual Budget. The Board of Directors shall annually adopt an operating budget pursuant to Section 12.3.
- 16.2. Funds and Accounts. The Treasurer shall establish and maintain such funds and accounts as may be required by governmental accounting practices and the State's fiscal procedures act. Financial records of UTOPIA shall be open to inspection at all reasonable times by Members' representatives and shall be open public records if so required by Utah State law.
- 16.3. Treasurer's Report. Within ninety (90) days after the close of each Fiscal Year, the Treasurer shall give a complete written report of all financial activities for the immediate past Fiscal Year to the Board.
- 16.4. Annual Audit. The Board of Directors shall provide for a certified annual audit of the accounts and records of UTOPIA, as required by Section 12.9.

ARTICLE 17

Responsibility for Monies

- 17.1. Treasurer's Responsibilities. The Treasurer shall have custody of and shall disburse UTOPIA's funds. The Treasurer shall have the authority to delegate the signatory function of Treasurer to such persons as are authorized by the Board of Directors.
- 17.2. Bonds. A fidelity and treasurer's bond shall be required of all officers, agents, and personnel authorized to disburse funds of UTOPIA. The cost of such bond shall be paid by UTOPIA.
- 17.3. Financial Records. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct financial records, including accounts of its assets, liabilities, receipts, and disbursements, and shall have such other duties as are provided for in the bylaws.

ARTICLE 18

Dissolution of UTOPIA

- 18.1. Outstanding Indebtedness. So long as there are any outstanding Bonds of UTOPIA, UTOPIA shall remain a separate legal entity with all of the power and duties set forth in this Agreement and all of the responsibilities, covenants, and obligations required in the Bond documents.
- 18.2. Dissolution of UTOPIA. If there are no outstanding Bonds, UTOPIA may be dissolved with two-thirds (2/3) vote of the Members.
- 18.3. Power of Board. The Board of Directors is vested with all powers necessary for the purpose of winding up and dissolving the business affairs of UTOPIA.
- 18.4. Division of Assets. Upon dissolution and after payment of all outstanding obligations, the Board of Directors shall equitably disburse the assets of UTOPIA to the then current Members. The disbursement shall be done according to the following principles:
 - 18.4.1. Any outstanding agreements with service providers shall be honored.
 - 18.4.2. To the extent possible, each current Member shall receive ownership of the portion of the Network within its boundaries, at no additional cost to each current Member.
 - 18.4.3. After deducting costs, any cash or other assets jointly shared shall be disbursed, or interests deeded, *pro rata*, according to the revenue generated from each Member's jurisdiction.

ARTICLE 19

Other Provisions

- 19.1. Confidentiality. The Board of Directors and Advisory Committee shall take such steps as they deem necessary to protect and keep confidential appropriate information received or kept by UTOPIA in accordance with law. The Members shall protect and keep confidential information kept or received by UTOPIA during the term of this Agreement and after the termination of their membership in UTOPIA pursuant to the bylaws or other policies adopted by the Board and consistent with law. Nothing in this section shall be construed to allow the Board, the Advisory Committee, the Officers or employees from withholding information from any UTOPIA Member, so long as the Member agrees to maintain the confidentiality of such information.
- 19.2. Prohibition Against Assignment. No Member may assign any right, claim, or interest it may have under this Agreement; and no creditor, assignee, or third party beneficiary of any Member shall have any right, claim, or title to any part of the Network share, interest, fund, or other asset of UTOPIA.
- 19.3. Severability Clause. In the event that any article, provision, clause, or other part of this Agreement should be held valid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, clauses, applications, or occurrences, and this Agreement is expressly declared to be severable.
- 19.4. Complete Agreement. The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.
- 19.5. Amendment. This Agreement may be amended at any time by the written approval of all current Members signatory to it.
- 19.6. Governing Law. This Agreement shall be governed according to the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials thereof on the date indicated on the signatory pages in the form shown in Appendix B.

APPENDIX A

FOUNDING MEMBERS

Name	Initial Appropriation ¹
Brigham City ²	\$ 1,750.00
Cedar City	\$ 5,250.00
Cedar Hills	\$ 5,250.00
Centerville	\$ 5,250.00
Layton	\$ 8,771.00
Lindon	\$ 5,250.00
Midvale	\$ 5,250.00
Murray ²	\$ 1,750.00
Orem	\$12,649.00
Payson	\$ 5,250.00
Perry ²	\$ 4,250.00
Riverton	\$ 5,250.00
Roy	\$ 5,250.00
Sandy	\$13,263.00
South Jordan	\$ 5,250.00
Taylorsville	\$ 8,820.75
Tremonton ²	\$ 1,750.00
West Valley City	\$16,334.00

¹ The Initial Appropriation is calculated using the following formula: \$0.10 per citizen based on the 2000 United States Census, or \$3,500, whichever is higher, for the Preliminary Assessment, plus one half the cost of the Preliminary Assessment for other expenses, such as consulting fees, letterhead, business cards, an Internet site, etc.

² Brigham City, Murray, Perry, and Tremonton either have paid for work towards their Preliminary Assessments, or have had their Feasibility Studies completed. Consequently, their costs reflect the work already completed.

APPENDIX B

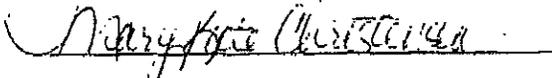
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Brigham City, by resolution of the City Council adopted on May 2
 , 2002, approved the execution of the Interlocal Cooperative Agreement of the Utah
Telecommunication Open Infrastructure Agency (UTOPIA) dated as of March 5, 2002, and
consisting of pages 1 through 18, plus Appendix A and Appendix B.



Mayor

ATTEST:



City Recorder

Approved as to Form:



City Attorney

APPENDIX B

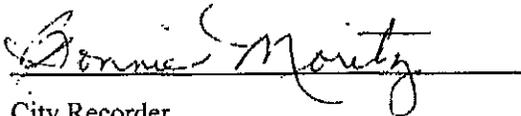
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Cedar City City, by resolution of the City Council adopted
on March 27, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



Mayor

ATTEST:



City Recorder

Approved as to Form:



City Attorney

APPENDIX B

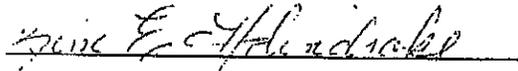
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Cedar Hills City, by resolution of the City Council adopted
on April 16, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



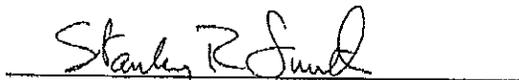
Brad Sears, Mayor

ATTEST:


Kim E. Holindrake, City Recorder



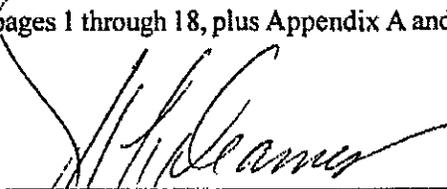
Approved as to Form:


City Attorney

APPENDIX B

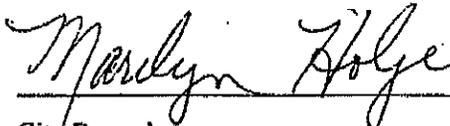
SIGNATORY PAGE FORM

Centerville City, by resolution of the City Council adopted
on May 7, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



Mayor

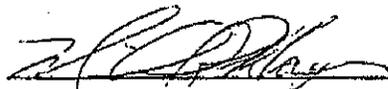
ATTEST:



City Recorder



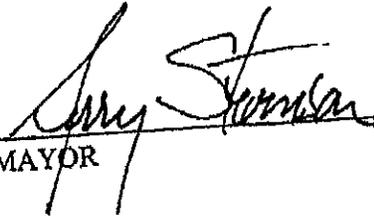
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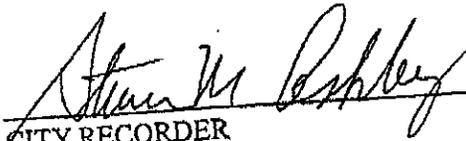
City Attorney

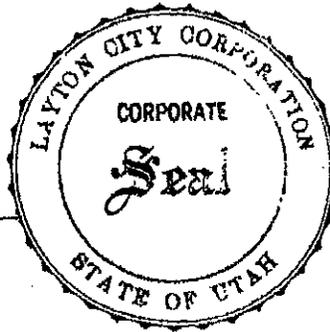
APPENDIX B
SIGNATORY PAGE FORM

Layton City, by resolution of the City Council adopted on March 21, 2002, approved the execution of the Interlocal Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA) dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.

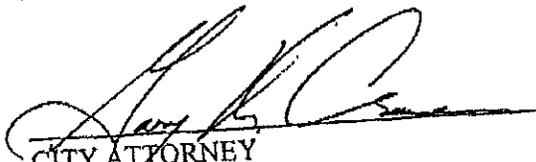

MAYOR

ATTEST:


CITY RECORDER



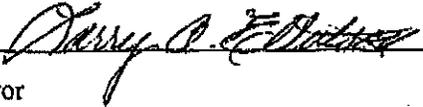
APPROVED AS TO FORM:


CITY ATTORNEY

APPENDIX B

SIGNATORY PAGE FORM

LINDON City, by resolution of the City Council adopted
on MAY 7th, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



Mayor

ATTEST:



City Recorder

Approved as to Form:

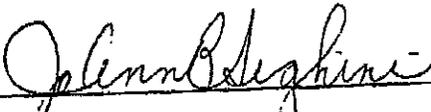


City Attorney

APPENDIX B

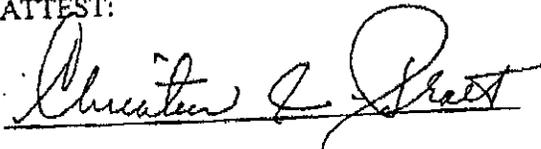
SIGNATORY PAGE FORM

Midvale City, by resolution of the City Council adopted on APRIL 2, 2002,
approved the execution of the Interlocal Cooperative Agreement of the Utah Telecommunication
Open Infrastructure Agency (UTOPIA) dated as of March 5, 2002, and consisting of pages 1 through
18, plus Appendix A and Appendix B.



JoAnn B. Seghini, Mayor

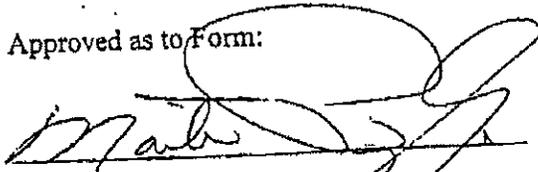
ATTEST:



Christine L. Pratt

City Recorder

Approved as to Form:



[Signature]

City Attorney

APPENDIX B

SIGNATORY PAGE FORM

Orem City, by resolution of the City Council adopted
on March 26, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.




Mayor

ATTEST:

Donna R. Weaver
City Recorder

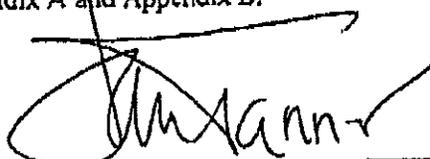
Approved as to Form:

Paul B. Johnson
City Attorney

APPENDIX B

SIGNATORY PAGE FORM

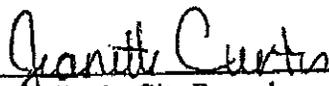
Payson City, by resolution of the City Council adopted on May 7
_____, 2002, approved the execution of the Interlocal Cooperative Agreement of the Utah
Telecommunication Open Infrastructure Agency (UTOPIA) dated as of March 5, 2002, and
consisting of pages 1 through 18, plus Appendix A and Appendix B.



~~Bernell C. Evans, Mayor~~

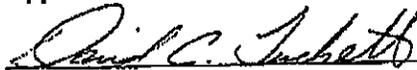
Jan Tanner, Mayor pro tempore

ATTEST:



Jeanette Curtis, City Recorder

Approved as to Form:

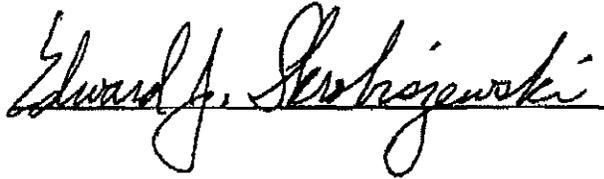


David C. Tuckett, City Attorney

APPENDIX B

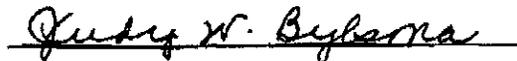
SIGNATORY PAGE FORM

Perry City, by resolution of the City Council adopted on 09 May 2002
 , 2002, approved the execution of the Inter-local Cooperative Agreement of the Utah
Telecommunication Open Infrastructure Agency (UTOPIA) dated as of March 5, 2002, and
consisting of pages 1 through 18, plus Appendix A and Appendix B.

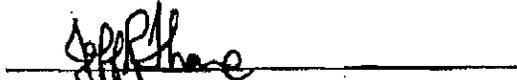


Mayor

ATTEST:


City Recorder

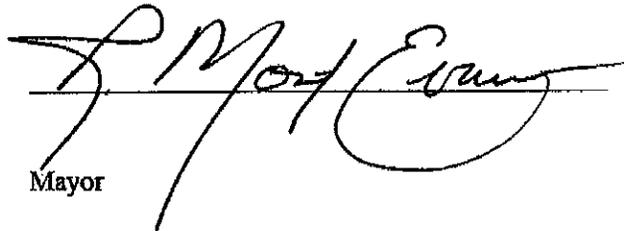
Approved as to Form:


City Attorney

APPENDIX B

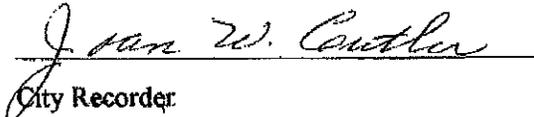
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Brewster City, by resolution of the City Council adopted
on April 16, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



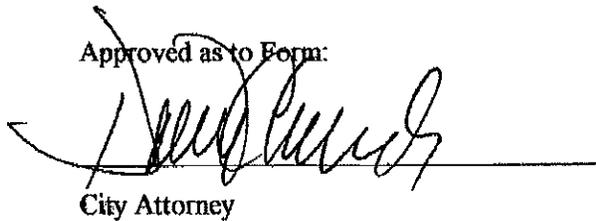
Mayor

ATTEST:



City Recorder

Approved as to Form:



City Attorney

APPENDIX B

SIGNATORY PAGE FORM

 Roy City, by resolution of the City Council adopted
on April 12 , 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.

 Roger Phil Burnett
Mayor

ATTEST:

 Christopher L Davis
City Recorder

Approved as to Form:

 Christopher L Davis
City Attorney

APPENDIX B

SIGNATORY PAGE FORM

Salt Lake City, by resolution of the City Council adopted on
March 20, 2003, approved the execution of the Interlocal Cooperative
Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA) dated as of
March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.

RECORDED

MAR 20 2003

CITY RECORDER

Mayor



ATTEST:

Deputy
City Recorder



Approved as to Form:



Assistant
City Attorney

APPENDIX B

SIGNATORY PAGE FORM

Sandy City, by resolution of the City Council adopted
on March 19, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



[Signature]
Mayor

ATTEST:

[Signature: Molly Bergan Spira]
City Recorder, Deputy

Approved as to Form:

City Attorney

SANDY CITY APPROVALS

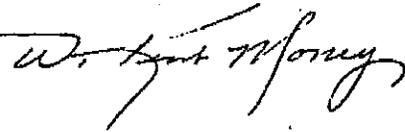
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Risk Mgt. [Signature]
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Purchasing [Signature]

APPENDIX B

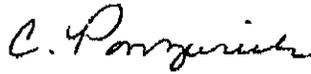
SIGNATORY PAGE FORM

South Jordan City, by resolution of the City Council adopted on
April 2, 2002, approved the execution of the Interlocal Cooperative
Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA) dated as of
March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.

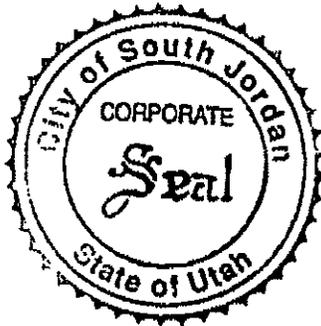
Mayor



ATTEST:



City Recorder



Approved as to Form:

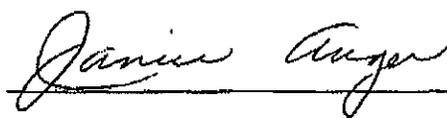


City Attorney

APPENDIX B

SIGNATORY PAGE FORM

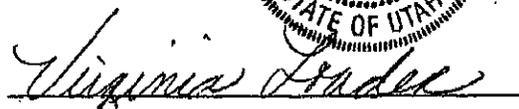
Taylorsville City, by resolution of the City Council adopted
on May 8, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPLA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



Mayor



ATTEST:



City Recorder

Approved as to Form:

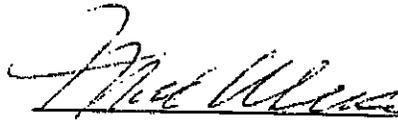


City Attorney

APPENDIX B

SIGNATORY PAGE FORM

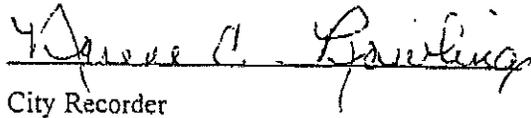
Tremonton City, by resolution of the City Council adopted
on April 30, 2002, approved the execution of the Interlocal
Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA)
dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



Mayor

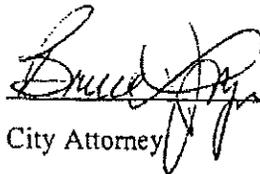


ATTEST:



City Recorder

Approved as to Form:

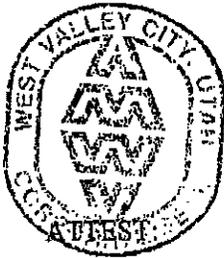


City Attorney

APPENDIX B

SIGNATORY PAGE FORM

West Valley City, by resolution of the City Council adopted on March 5, 2002, approved the execution of the Interlocal Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency (UTOPIA) dated as of March 5, 2002, and consisting of pages 1 through 18, plus Appendix A and Appendix B.



Gerald F. Wright
MAYOR

Ashli McKenzie
CITY RECORDER

APPROVED AS TO FORM:

R. M. ...
CITY ATTORNEY