Minutes of the Centerville **City Council** meeting held Tuesday, June 17, 2014 at 7:00 p.m. in the Centerville City Hall Council Chambers, 250 North Main Street, Centerville, Utah.

MEMBERS PRESENT

Mayor	Paul A. Cutler
Council Members	Ken S. Averett Tamilyn Fillmore John T. Higginson Stephanie Ivie Lawrence Wright
STAFF PRESENT	Steve Thacker, City Manager Blaine Lutz, Finance Director/Assistant City Manager Lisa Romney, City Attorney Neal Worsley, Centerville Police Chief Marsha L. Morrow, City Recorder Jacob Smith, Management Assistant Katie Rust, Recording Secretary
VISITORS	Interested citizens (see attached sign-in sheet)
PLEDGE OF ALLEGIANCE	
PRAYER OR THOUGHT	Councilman John Higginson

Mayor Cutler explained that Marsha Morrow, City Recorder, and Jacob Smith, Management Assistant, were distributing comment cards that could be filled out with a name and comment regarding UTOPIA/Macquarie, and could specify a desire to speak during the public hearing. The Mayor stated that during the public hearing he would call the names in the order in which the cards were received.

PRESENTATION BY POLICE CHIEF

Neal Worsley, Centerville Police Chief, introduced two police officers recently hired by the City, Kael Jackson and Doug Fackrell. Chief Worsley also recognized Councilman Ken Averett for graduating from the Davis County Citizens Police Academy, and invited interested citizens to participate in the Academy in the future.

OPEN SESSION

No one wished to comment.

BID AWARD – WOODS PARK PDO WATERLINE

Councilman Higginson made a **motion** to award bid to HD Supply in the amount of $58,633.95 (includes tax) for materials and to Kapp Construction in the amount of $77,739.75 for construction of the Woods Park PDO waterline. Councilwoman Fillmore seconded the motion, which passed by unanimous vote (5-0).

FY 2014 BUDGET (CURRENT FISCAL YEAR)

Blaine Lutz, Finance Director, presented the Interim Financial Report for May 2014, and explained proposed amendments to the FY 2014 Budget. Mayor Cutler opened a public hearing regarding the proposed amendments at 7:22 p.m., and closed the public hearing seeing that no one wished to comment.

Councilwoman Fillmore made a **motion** to accept Resolution No. 2014-14 amending the Fiscal Year 2013-2014 Budget of Funds and Accounts for Centerville City. Councilwoman Ivie seconded the motion, which passed by unanimous vote (5-0).

ORDINANCE ADOPTING RESTRICTED AREA FOR DISCHARGE OF FIREWORKS

Steve Thacker, City Manager, explained the Fire Chief's recommendation that the same areas as last year be designated restricted areas for the discharge of fireworks: east of Main Street north of Chase Lane, and east of 400 East south of Chase Lane. Mr. Thacker added that the Council could choose to either make the restrictions temporary for this year or permanent. Mayor Cutler recommended making the restrictions temporary. Councilman Wright pointed out that the suggested language seemed to prohibit use of residential backyard grills and fire pits. Councilwoman Ivie added she spoke with the Fire Chief and was told that language exempting residential backyard cooking from the restriction was inadvertently left out.

Councilwoman Ivie made a **motion** to adopt Ordinance No. 2014-12 designating a restricted area within Centerville City for the discharge of fireworks due to hazardous environmental conditions, with the addition of language to allow residential backyard cooking within the area. Councilman Higginson seconded the motion, which passed by unanimous vote (5-0).

UTOPIA/MACQUARIE PROPOSAL

Mayor Cutler assured those in attendance that the City Council understands the gravity of the decision regarding UTOPIA and the Macquarie proposal. The Council will be deciding whether to agree to commit additional funds to participate in negotiations and obtain further information in Milestone Two.

Presentation from Macquarie

Duncan Rammage, Senior Vice President with Macquarie, expressed appreciation for the community members in attendance. He stated that from Macquarie's point of view broadband and fiber look more and more like an essential service. In looking at UTOPIA, Macquarie saw an opportunity to introduce more competition to the market; something that Mr. Rammage said has made the incumbents nervous. Mr. Rammage admitted that the Macquarie proposal is not perfect, but tries to solve two problems: (1) not enough investment and competition; and (2) UTOPIA's history. Macquarie proposes to re-brand UTOPIA with a new name, managed completely by the private sector. Macquarie would finance a complete build-out to every address across all member cities, assume all operating costs, all refresh costs, and risks of performing as contracted for 30 years, creating a platform for competition in an open-access network, and then return the asset to the cities at the end of the contract period. The cost of build-out, refresh of the existing network, and operating would be funded by the utility fee equal to approximately $20 per month per household. Mr. Rammage continued that a basic service would be included in the utility fee. For many citizens the basic service would not be enough, and the option to upgrade would be available through the service providers. Mr.

Rammage stated that at least half of the amount collected from the service providers by Macquarie for use of the network would be returned to the cities. He showed examples of Comcast bills from Provo residents showing that prices went down when Google brought more competition. Mr. Rammage expressed confidence that residents would get a lot of savings for the $20 per month. He stated that Macquarie is an easy target, and he hopes citizens will look past negative headlines and see good value for the money. Partnership with Macquarie would improve the community's competitiveness, close the digital divide, and help pay down the debt while building for the future.

Report from Citizen Advisory Committee

Dan Ditto, representing the Citizen Advisory Committee, introduced the other members of the Committee. He explained that the Committee has spent many hours determining the facts of the issue, with four subcommittees to analyze the financial, technological, legal, and community aspects. Mr. Ditto stated that the Committee is not unanimous in its recommendations, but is unanimous regarding the facts they will present. A copy of the Committee's presentation is attached.

Mark Oligschlaeger, representing the financial subcommittee, listed six options available to UTOPIA moving forward. He explained that the UTOPIA bond debt averaged over the next 25 years represents $9.44 per household per month. Sale of the network would result in an additional early termination fee. The UIA bond debt represents $1.71 per household per month, plus early termination fees if the network were sold. Mr. Oligschlaeger pointed out that the UIA debt is currently funded by revenues of the network and is not paid by the cities. The UTOPIA operating deficit is equal to approximately $2.50 per household per month, and the expense to refresh the existing network would equal another $2.50 per household per month. He stated that continuing UTOPIA as it is now is not a viable option.

Mr. Oligschlaeger stated the second option, to restructure UTOPIA management and engage in new business ideas, would require a vote of confidence in the new management and additional bonding, which would be difficult in the current environment and may require a third party. The option to sell the network would not eliminate the bond obligations, and would include early-termination fees. Mr. Oligschlaeger continued that the fourth option, to go dark, may seem tempting, but would eliminate revenues that are currently helping to pay down debt, and would likely involve litigation. UTOPIA cannot go bankrupt, since sales tax revenues of the cities are pledged for the next 25 years.

The fifth option, a Public Private Partnership (PPP) with Macquarie, transfers the cost risk to Macquarie and includes the possibility of debt repayment through revenue sharing. The sharing formula would be a key component of Milestone Two. Mr. Oligschlaeger stated the Committee is curious to know what the sharing formula would be. The last option, to invite other proposals, would not be discouraged by the Committee. However, Mr. Oligschlaeger emphasized that it would be a lengthy process and would require further agreement between the cities to continue funding the operating deficit and refresh of the network. He pointed out that Centerville is a significant revenue contributor, but has less than a 4% vote in UTOPIA and does not have the ability to operate the assets independently.

Nannette Smith, representing the community issues subcommittee, expressed appreciation for comments from the community. She stated the Committee has spent more than 100 hours researching and discussing the issue. The overriding message she has received in talking to members of the community is how much the citizens love Centerville. She added that the Committee feels the same way. Everyone is looking for the best solution for

Centerville. If the Council chooses to opt in the Committee feels community education will be very important. If the Council votes to opt out the City will need to resolve how to pay Centerville's portion of the debt, resolve existing problems with UTOPIA, and consider legal risks and the impact on businesses.

Randy Burgoyne, representing the technology subcommittee, listed the pros and cons of copper cable, wireless and wireless mobile, and fiber optics (included in the attached presentation). Jennifer Decker, representing the legal subcommittee, reviewed the legal issues and Committee legal recommendations for the different options moving forward (attached), including the recommendation that Centerville hire its own legal counsel to assist in the negotiations if the Council chooses to move on to Milestone Two. Ms. Decker expressed the opinion that having a seat at the negotiation table during the information gathering stage is in Centerville's best interest. It is unclear if the information negotiated by other cities during Milestone Two would be available to Centerville if the City opts out.

Mr. Ditto reviewed some of the pros and cons of proceeding and not proceeding to Milestone Two with Macquarie. Negotiations between Centerville and the other cities will continue whether the City moves to Milestone Two or not. Mr. Ditto suggested opting in would create the goodwill to negotiate the best outcome for Centerville. The Committee feels being an active participant during negotiations of the key issues would be to Centerville's benefit.

Mr. Ditto stated that the majority of the Committee believes that it is beneficial to go to Milestone Two with Macquarie. However, proceeding to Milestone Two should not be construed as an endorsement of the Macquarie proposal, but as a means to secure the best outcome for Centerville. He stated that, given the complexity of the legal issues, financial commitments and the amount of UTOPIA/UIA debt at stake, the additional information and options Centerville may obtain by proceeding to Milestone Two, and having a seat at the table, likely outweighs the approximate cost ($31,000) of opting out before Milestone Three.

At 9:01 p.m. Mayor Cutler opened a public hearing.

Clark Johnson – Mr. Johnson worked in the telecommunications industry for 25 years, building fiber networks for many years. He stated that technological changes over that period of time were astounding, increasing exponentially every month. Mr. Johnson said he is very skeptical of the chances for long-term viability and success of the UTOPIA network. Certainly the connection may last for years and years, but it is possible that another option will be available in the future making a connection to each home unnecessary. He also expressed concern with the anticipated take-rate. He suggested the City should look at the most cost-effective way to correct the problem and get out of the situation in the most economical manner.

JP Damron – Mr. Damron stated that twelve years ago he worked for Comcast and stood before the Council questioning the UTOPIA business model and finances. He said he feels he was given smoke screens. Mr. Damron stated he feels the City is essentially being held hostage. He said that by calling the charge a utility fee, other providers would be able to charge the same fee. He asked what other fees would be associated with or added to the utility fee. He asked what the future costs will be and what other portions of the business model are. Mr. Damron continued that at this point, as sad as he is to say it, to not go through with Milestone Two is to subject the City to further costs.

Rick Bingham – Mr. Bingham, speaking for a friend who was unable to attend, encouraged the Council not to accept and continue with the Macquarie proposal. He stated the opinion that the Advisory Committee is considering the wrong issue and will make the wrong

recommendation. Mr. Bingham continued, saying that the City should consider if it should be in the internet business at all. He stated the issue is whether or not the internet is a utility and should be provided by the City. He stated he does not think it is an appropriate role of government. For himself, Mr. Bingham stated he does not understand how a city-made monopoly will bring competition and reduce prices.

Patricia Hedrick – Ms. Hedrick expressed appreciation for the work of the Advisory Committee. She expressed the opinion that the biggest problem is mandate, which should not be part of government. Ms. Hedrick stated business should not be connected with a utility. She said she feels community education will be important, and that the City should find a different way, possibly a tax. Ms. Hedrick stated that a 30-year mandated monthly utility fee charged to each household and business is not okay.

Paul Capinski – Mr. Capinski stated he is strongly opposed to the way the City is going because he feels it is a forced solution on citizens that smacks of dictatorship. He said he feels citizens would be forced to pay for something they don't need, don't want, or can't afford. Mr. Capinski continued that if the Macquarie proposal was unsolicited, UTOPIA should solicit other proposals. He asked what has happened to the cities that have stopped paying UTOPIA operating assessments, and what would happen to Centerville if the City stopped paying. He said he does not believe the City should accept the plan as it is proposed.

Lad Marshall – Mr. Marshall thanked the elected officials for their service. He expressed that he feels obligated to voice his opinion given his experience selling UTOPIA for the last five years. As he worked selling UTOPIA in Centerville he became sold on Centerville as a community and purchased a home here. He said he has learned that: (1) fiber to the home is better - superior in capacity, performance, and value; (2) competition is better, and UTOPIA facilitates competition; and (3) the opportunity to keep money local is important. Mr. Marshall said he feels $31,000 is a small price to pay for more due diligence and to have a robust understanding of the issues.

Amy Hancey – Ms. Hancey thanked the elected officials and the Advisory Committee for all the time they have given. She stated she was originally against UTOPIA, but she now has UTOPIA and has changed her opinion. She feels the City needs more information and the only way to get it is to go to the next step. Ms. Hancey reported that in the three years she has had UTOPIA she has saved $2,880, including the $2,700 connection fee. If she had originally signed up with the proposed utility fee model rather than the connection fee, she would have saved an additional $600. She said she feels fiber to the home raises the value of the homes in the community. Ms. Hancey suggested it would be worth setting up a booth-type situation where citizens could bring their various telecommunications bills and see how much money they could save with UTOPIA.

Robert Rosier – Mr. Rosier stated he is upset about the whole thing. Referring to the Pledge of Allegiance that was repeated at the beginning of the meeting, Mr. Rosier stated he wonders what "liberty and justice for all" means if the City can put the citizens of Centerville in financial bondage to something they shouldn't have been involved in to begin with. UTOPIA was originally presented as an option available if citizens want it. Now it is being presented as required. Mr. Rosier stated he feels citizens should have a choice. He asked how charging citizens $20 per month is funding with "private money". He also asked why, if the network is such a valuable asset, Macquarie would want to give it back to the cities at the end of the 30 years. Mr. Rosier continued by asking why it needs to be refreshed if fiber has no obsolescence. He said he is opposed to moving forward to Milestone Two.

Dale McIntyre – Mr. McIntyre stated he is a UTOPIA customer with service from XMission. He expressed his objection to a letter sent by the previous Mayor and Council during the previous election. He also expressed objection to the exclusivity agreement between UTOPIA and Macquarie.

Mark Coon – Mr. Coon stated he has experience with fiber optic technology, which has changed over the years. He stated his predictions for where the technology will go. Mr. Coon said he expressed to the Council five or six years ago that he did not feel the City should go forward with UTOPIA. He emphasized that the City has a debt responsibility that must be paid. He said that in his professional experience prices are lower for businesses that have UTOPIA. Mr. Coon stated he feels UTOPIA should be going after businesses rather than residences. He believes revenue sharing should be a must. Mr. Coons stated the City should spend the $31,000 to continue looking into it. He continued that options may change in the future, but right now this is the best we have.

Rob Oakes – Mr. Oakes quoted from the Preamble of the Constitution and stated that government is supposed to provide and promote the general welfare. He quoted statistics that show Centerville is an affluent community with high internet use. He feels internet use is important for the education of children. Mr. Oakes added that the current incumbent providers are among the least liked companies in the Country, and the situation is ready for government to come in and protect the general welfare. He believes that competition will bring down prices. Mr. Oakes stated the fact that he is able to compete in a global marketplace is a significant benefit. He and his employees live, work, and pay taxes in Centerville, and he strongly encouraged the Council to continue with due diligence and move to Milestone Two.

Janet Duncan – Ms. Duncan asked the Macquarie representative what portion will be distributed to First Solutions. She also asked what will keep the ISPs from charging outrageous fees and raising prices. Ms. Duncan said she was told outside of the meeting that Macquarie would be borrowing a lot of its financing. She asked what would happen if Macquarie pulls out. She is happy for people who already have UTOPIA and like it, but she does not want it. Ms. Duncan pointed out she feels the number of households that have not signed up for UTOPIA sends a message of what public sentiment is. She also stated she has a problem with those who already have UTOPIA not having to pay the utility fee and share the load.

Mark Allred – Mr. Allred stated that with UTOPIA he has speeds that allow him to work from home. He appreciates that he is not locked contractually to any provider, and agreed with Ms. Hancey that it enhances the value of his home. Mr. Allred expressed the opinion that some of the anti-UTOPIA material he has received in the mail is offensive. He said he thinks that: (1) if it is treated as a utility it should be of value to every citizen; and (2) there should be open, respectful dialog looking for the solution that best serves the citizens going forward.

Greg Call – Mr. Call stated he feels spending the additional amount to continue with the evaluation makes sense to make the best decision. He asked what would happen to Centerville if Macquarie fails, and what kind of incentives will be offered to those not currently connected with UTOPIA to use the system. Mr. Call asked what will ensure that promises made will be kept, and stated the opinion that the utility fee may actually reduce property values. He added that technology is changing fast, and the system may not be needed in 15-20 years.

Al Phelps – Mr. Phelps stated he does not agree with paying $30,000 for an evaluation that will make Macquarie a lot of money. He said he is connected to UTOPIA to save money, and he feels he will continue to save money whether the City goes with Macquarie or not. He is not convinced there would be more competition with a Macquarie partnership. Mr. Phelps said

he is against another tax and is concerned about what it would mean for other people. He asked if the City is aware of all the ramifications of adding another tax.

Debbie Putnam – Ms. Putnam stated she has worked in telecommunications for 37 years. She sees UTOPIA as the gift that keeps on costing. She expressed the opinion that the tax would never be removed, but would continue and be used for something else after the 30 years. Ms. Putnam stated that living in America means she should have the right to choose the services she has. Those who want it can pay for it and those who don't want it should not have to pay for it. She said she is against the tax in any form.

Gary Landsaw – Mr. Landsaw stated that a city either grows or dies. He said he thinks the fiber optic system is the way of the future and is a good idea. He doesn't know if Macquarie has the best proposal, but he feels that if the City passes it up and waits for something better, the same arguments against will be heard then that are heard now. He believes the fiber optic system is a good thing for Centerville. It may not have been set up right to begin with, but he does not want the City to be behind the curve. He expressed the need to have faith in the elected officials and vision of what can be in the future. Regardless of how it works out, he feels the community needs to work together.

Robin Mecham – Ms. Mecham expressed disappointment that, with all the effort to keep money in the U.S., taxes would be collected and sent to Australia for this. She said she did not think it would work from the beginning and still does not think it will work. Ms. Mecham asked if there would be a cap on the $20 utility fee. She disagreed that it would make homes worth more. Ms. Mecham said the City should cut its losses and move on, and asked why Macquarie would charge the cities for Milestone Two.

Kevin Rawlins – Mr. Rawlins asked why Macquarie's unsolicited proposal is the only proposal being considered. He said he believes there must be other companies willing to submit proposals.

Ronald Freeman – Mr. Freeman asked how many members of the Council are UTOPIA customers. He asked if the Macquarie proposal could possibly create a monopoly, and commented that Comcast already has fiber optics in the area. Mr. Freeman quoted a Tribune article that argued charging a fee with anything like a municipal subsidy for telecommunications is illegal in Utah. He suggested the City call the Utah Attorney General's office before taking the vote.

Lee Skabelund – Mr. Skabelund expressed the concern that community members no longer have the ability to make the leap from Sunday principles to weekday practice. He expressed disapproval that the matter will not be put to a public vote. Mr. Skabelund stated the community is not homogenous. He added that the government has the responsibility to promote the general welfare, not provide it. The Constitution has a provision to protect minorities, and the community needs to be respectful of different circumstances. Mr. Skabelund expressed the City needs to get back to the proper role of government to maintain financial flexibility for the future. He stated he does not see a big problem with paying a small amount of money for additional, objective study.

Royce VanTassell – Mr. VanTassell, Vice President of the Utah Taxpayer's Association, stated there is no basis in State Code or the Interlocal Agreement to charge a parity fee of cities that choose not to participate.

William Ince – Mr. Ince is a member of the Planning Commission. He encouraged Council members to vote against proceeding to Milestone Two. He gave three reasons: (1) the complexity of the contractual obligations is almost unimaginable; (2) he does not feel moving forward would represent limited government; (3) he believes that freedom of choice is more important than general welfare.

Earl Stanbridge – Mr. Stanbridge stated he does not feel this could be called a utility since the fee would be charged whether used or not. He said he feels it should be put to a vote and added legally as a tax.

Kim Samuelson – Mr. Samuelson stated he would like to see other proposals, but he feels the City should spend the $31,000 for further information if no other proposals are available. He asked which cities have decided not to pay the operating assessments, and what the fallout will be. Mr. Samuelson suggested there should be a greater effort to acquaint people with the benefits of UTOPIA rather than relying on Macquarie.

Greg Larson – Mr. Larson stated that all those who are saving money with UTOPIA are able to save money because the City is subsidizing. He said he feels there will be a lot of change in technology in the future and the City should not be obligated to one option for the next 30 years.

Pete Ashdown – Mr. Ashdown is a representative of XMission, one of the service providers with UTOPIA. He stated that competition is a large group of companies competing against each other, and on UTOPIA he is competing against more than a dozen other companies. Customers can easily switch between the different competitors. He believes UTOPIA represents infrastructure and competition. Mr. Ashdown pointed out that citizens do not always get to choose what mandatory tax dollars are used for. He said he wishes a better offer were available, but he does not think one is coming.

Reva Johnson – Ms. Johnson stated she believes the City should pay its financial obligations, but not put any more money into the Macquarie proposal. She believes participation should be a choice, not mandatory. Ms. Johnson said she does not view fiber optics as a basic utility.

Steve Allen – Mr. Allen stated he has been in the telecommunications business for 50 years. He said that since 1968 the Federal Government has been trying to make sure there are no monopolies. He feels this particular deal would undo all of that effort by creating a true monopoly where everyone has to pay. He added that the competition would have to go on top of the mandatory fee. Mr. Allen said he feels it is wrong and goes against everything the country has been trying to accomplish in telecommunications for a long time.

Richard Johnson - Mr. Johnson expressed appreciation for the efforts of the Advisory Committee to make the presentation. He commented on the great expansion of technology over the years, and encouraged the Council members to vote in favor of moving to the next step. Mr. Johnson said he feels the $31,000 would be worth the effort.

Frank Mulder – Mr. Mulder commented there are many options available for connectivity. He said the proposed situation scares him in terms of contractual matters. He recommended Centerville have legal counsel involved and hire a professional negotiator to be at the table. Mr. Mulder said he is moving away from Centerville, but he loves the City and the community members.

George McEwan – Mr. McEwan announced that Lindon City unanimously voted no.

Mayor Cutler closed the public hearing at 10:24 p.m. The Council took a short recess and returned at 10:36 p.m.

The Mayor recommended the Council continue to receive written comments until Monday, June 23rd, and vote next Tuesday, June 24th. Comments can be sent to: citycouncil@centervilleut.com. Councilman Wright recommended staff compile all comments together in one file. Councilman Averett asked the City Attorney if emails sent by citizens are necessarily considered public comment. Lisa Romney responded that emails sent to a "centervilleut.com" address are public record, and it is good practice to create and retain a record of comments. Mayor Cutler invited Lee Skabelund to lead everyone in attendance in a show of appreciation for the members of the Citizen Advisory Committee.

Mayor Cutler asked the City Attorney to respond to the questions regarding a public vote of the matter. Ms. Romney stated that State law restricts what can be put on a ballot during an election, and in her opinion this type of issue does not qualify to be put on the ballot. The City could distribute an informal poll or survey. The Mayor asked if there is a way the issue could be put on a ballot. Ms. Romney responded that under the Utah Telecommunications Act, if the City wanted to provide telecommunications retail services to the public it could be put to a vote of the people.

Mr. Rammage responded to the last public comment stating that every city other than Lindon that has voted, has voted in favor of proceeding to Milestone Two. He emphasized that the PPP would not be a monopoly. Mr. Rammage said the current situation is a government-sponsored monopoly, but the proposed open network would not be a monopoly. He continued that a nondisclosure agreement was in place for a short time for initial discussions of the deal, but Macquarie has been completely open with information since December of 2013. Macquarie chose to relax the exclusivity agreement to allow discussions with First Digital and others. Mr. Rammage stated that the UTOPIA Board and other committees have been looking for other options for a long time. Mayor Cutler said that First Digital has exercised a GRAMMA right to keep information private. Nothing can be acted on until information is made public.

Mr. Rammage responded to the questions regarding a guarantee of pay-down of the debt stating that Macquarie's proposal involves revenue sharing from day-one. The details of the sharing arrangement will be worked out during Milestone Two. He stated that the utility fee would be escalated by an agreed upon inflation index, and Macquarie would take the risk of operating within that amount. There would not be a connection fee for receiving the basic service. Councilman Wright asked if refresh or upgrade of the network would find its way into the utility fee. Mr. Rammage responded that no, the utility fee already includes a refresh of the network to provide one gigabit of service. If over time it makes commercial sense to upgrade, the cities would be receiving the bulk of the revenue and could share in the upgrade costs out of revenues. Councilman Wright commented he knows the cities will have some latitude to modify the utility fee as it is collected. Mr. Rammage agreed that Macquarie proposes to collect an availability payment from the cities. How it is collected from citizens is left up to each city.

Councilwoman Ivie asked what is specifically involved in the refresh. Mr. Rammage responded that refresh involves replacement of equipment and electronics as needed. In response to the questions regarding soliciting other proposals, Mayor Cutler responded that Centerville asked the UTOPIA Board to initiate a formal RSP, but the Board did not choose to act on the request. A number of proposals have been informally solicited, and individual cities have been researching other options on their own. Mayor Cutler explained that the need to look

at other options was felt when a couple of the larger cities chose not to pay the operating assessments. All of the mayors committed to ask their councils to pay the operating assessments, and most have resumed paying. If all cities stop paying the operating assessments, UTOPIA would go dark. Ms. Romney emphasized that all of the cities are obligated to pay the debt pledge, which is separate from the operating assessment.

Mr. Rammage responded to the question of why Macquarie would want to return the asset to the cities at the end of the agreement period, by stating that the arrangement would be a partnership in which Macquarie would manage the network for the cities. Macquarie is in the business of delivering assets, not owning them. Councilman Wright pointed out that Centerville does not actually own any of the network. The network is owned by UTOPIA, in which Centerville has a 3.3% share. Mr. Rammage responded that if the asset were sold in the future, Centerville could expect to receive a share of the profit.

Mr. Rammage explained that First Solutions is a partner of Macquarie with expertise in delivering these types of networks. He stated it is anticipated that First Solutions would have an ongoing role moving forward. In response to the question of what will ensure that Macquarie follows through with commitments, Mr. Rammage stated Macquarie would not structure the deal to fail. If Macquarie does not deliver as contracted the availability payment would be discounted or withheld. UTOPIA cities would never be responsible for any of Macquarie's debt. Individual UTOPIA cities would not be responsible for the availability payments of any of the other cities.

In response to the comment about those who have already paid a connection fee not paying the utility fee, Mr. Rammage explained that the UIA customers were set up differently. The details need to be worked out with the lenders, but the goal would be to put everyone on the same program and compensate the UIA customers somehow for having already paid.

Mr. Rammage explained that the fee that would be charged for opting out at the end of Milestone Two would cover the cost of consultants and lawyers during Milestone Two, with approximately 20% compensation for Macquarie to recover internal costs. Councilwoman Fillmore commented that the PPP is more like a merger than an acquisition, and she feels it makes sense for both parties to share in the cost of going forward. Councilman Averett asked what would prevent Macquarie from selling the service contract with UTOPIA. Mr. Rammage responded that the contract negotiated during Milestones Two and Three between UTOPIA and Macquarie would dictate the limitations and parameters of sale. Mr. Rammage added that if the service contract were sold, it would most likely be to a different Macquarie entity or Macquarie co-investors.

Mayor Cutler stated it is his understanding that the cities would be directly responsible to Macquarie for the availability payments. The availability payments would not go through UTOPIA. A new interlocal agreement would be worked out as part of Milestone Two.

The presentation prepared and given by the Citizen Advisory Committee will be posted on the website. Councilwoman Fillmore made a **motion** to table the decision regarding Resolution No. 2014-18 to the Council meeting scheduled for June 24, 2014, keeping the public hearing open until Monday, June 23rd, to receive electronic comment through official City email addresses and website. Councilman Averett seconded the motion, which passed by unanimous vote (5-0).

FY 2015 BUDGET

Blaine Lutz explained that the Certified Tax Rate has not yet been provided by the State. The State Auditor has recommended the City adopt the Budget with an estimated amount that can be amended if necessary when the Rate is provided.

Councilwoman Ivie made a **motion** to adopt Ordinance No. 2014-10 approving the compensation plan for employees, including appointed employees. Councilman Averett seconded the motion, which passed by unanimous vote (5-0).

Councilwoman Ivie made a **motion** to approve Ordinance No. 2014-11 adjusting compensation of elected officials. Councilman Averett seconded the motion. Mayor Cutler stated his recommendation that the Council postpone implementation for one year. Councilman Wright stated he feels it should be effective immediately. The motion passed by unanimous vote (5-0).

Councilwoman Ivie made a **motion** to adopt Resolution No. 2014-16 approving compensation for the Centerville Justice Court Judge. Councilwoman Fillmore seconded the motion, which passed by unanimous vote (5-0).

Funds for a new full-time police officer were included in the Tentative Budget. After brief discussion by the Council, Councilwoman Fillmore made a **motion** to approve Resolution No. 2014-17 approving the Centerville City FY 2015 Budget of Funds, including adjustments recommended by staff, with the change that the $68,000 allocated for a new police officer be moved to a special contingency fund until further information is presented and a decision made. The Council will wait for further information before making a decision. Councilman Wright seconded the motion, which passed by unanimous vote (5-0).

MINUTES REVIEW AND ACCEPTANCE

Councilman Wright made a **motion** to table approval of the minutes of the June 5, 2014 Council meeting and work session until Tuesday, June 24, 2014. Councilwoman Fillmore seconded the motion, which passed by unanimous vote (5-0).

MAYOR'S REPORT

Mayor Cutler reported that the Executive Committee of the UTOPIA and UIA Boards has continued to meet sporadically to review the First Digital proposal. The details have not yet been made public.

CITY MANAGER'S REPORT

- Mr. Thacker reported that the Parrish/Main Intersection Project will not be completed in time for the July 4th parade, and explained the level of completion expected for the holiday. He expressed confidence that Main Street will be serviceable for the parade. Mr. Thacker also reported that Rocky Mountain Power will not be able to provide a permanent power source to the new signals for eight weeks. Temporary power will be drawn from the same power source as the street lights along Parrish, causing the street lights along Parrish to be on 24 hours per day for that period of time.
- City Manager Thacker explained the community education process planned by the Community Development Department and Planning Commission regarding

accessory dwelling units. He expressed their desire to provide a small incentive for citizens to attend a public forum with panel discussion. The Council seemed to indicate approval for use of less than $100 of the Community Development Budget. Councilman Averett expressed a hope that citizens would be able to fill out a questionnaire online.

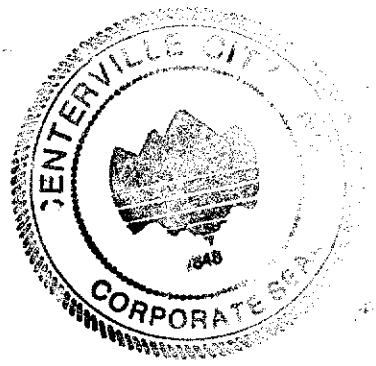
ADJOURNMENT

At 11:58 p.m. Councilman Wright made a **motion** to adjourn. Councilman Higginson seconded the motion, which passed by unanimous vote (5-0).

Marsha L. Morrow, City Recorder

6-24-2014
Date Approved

Katie Rust, Recording Secretary



CENTERVILLE CITY COUNCIL MEETING

Tuesday, June 17, 2014
7:00 p.m.

NAME (PLEASE PRINT)	ADDRESS**
Dale McIntyre	258 E. 200 S. Centerville
Gary & Nancy Scott	1237 N. 575 W. "
Jim Hasleth	322 E 1200 N "
Douglas J Coster	88 N 400 E, Centerville
Jeff Bryson	59 W 550 S. "
Matthew Callison	1333 Oakridge Dr. " "
Kent/Marnell Davis	722 W 1875 N "
Robert Rosier	335 W 1500 N Centerville
Gary S Lund	385 Balsam Dr.
Bill Crowthorne	773 W 1875 N Centerville
Ralph & Ella Mitchell	262 Park Lane
Patricia Hedrick	253 West 1375 N Centerville
Rick Bingham	290 E Casa Loma Dr.
Mark Allred	1371 N 400 E
Steve & Tena Allen	133 E Rock Manor Dr
Boyd Abercrombie	391 East 100 North
Lee Skabelund	466 E 200 S.
George M Herrmann	1441 N Main
Paul Woodbury	464 E 500 N Centerville
George McEwan	618 Willow Bend
Mark Austin	1607 N 400 E
Tom & Beverly Tomlinson	187 E 1825 N

** Your address will be used only in the event the City staff needs to contact you pertaining to an issue discussed in the City Council meeting.

CENTERVILLE CITY COUNCIL MEETING

Tuesday, June 17, 2014
7:00 p.m.

NAME (PLEASE PRINT)	ADDRESS**
Charles R Petersen	836 S 150 W
David M Liechty	643 E 540 N
Michelle Liechty	643 East 540 N.
Carl Woldberg	242 Peachtree
Robert Woldberg	917 Daniels Drive
Doug Howell	187 E 2100 N
[illegible] & Regina [illegible]	318 E 1825 N
CHRIS SAMUELSON	~~[illegible]~~ 919 S. 800 E.
[illegible] H. [illegible]	133 E CASA LOMA DR.
Bill Shanks	1102 No. 300 East
Steve Hollberg	292 E 1100 No
Rick & Laurie Dalton	1034 N 250 E
Ferris Derbidge	70 E. Adams Circle
Paul Mortensen	1051 Hughes St
NEIL LISH	428 E. 1200 N.
Steven S Nelson	1254 No Main St.
Royce Van Tassell	656 E 11400 S, Draper
Ray Gifford	" " "
Rina Johnson	393 E. Linda Loma Dr.
Kent Johnson	" " " "
Gary Allen	
Judy Robertson	267 East 1250 NO

** Your address will be used only in the event the City staff needs to contact you pertaining to an issue discussed in the City Council meeting.

CENTERVILLE CITY COUNCIL MEETING

Tuesday, June 17, 2014
7:00 p.m.

NAME (PLEASE PRINT)	ADDRESS**
Elvin Robertson	267 E 1250 N Centerville
Gary & Gaye Banks	696 No. 165 W. Centerville
Chris Burningham	39 E Bonita Wy Centerville
Janet Duncan	528 Pheasant Way
Richard Pearson	717 E 100 S
Brent Schick	
Ken Jones	62 Jersey Circle
Kadin Mercer	333 E. Center St.
John Urry	216 Canyon Breeze Dr.
Richard Backer	1099 N. Hughes St
Donna Backer	1099 N Hughes St
Alan Arbuckle	470 E Pages Lane
Cal Bowen	168 Peachtree Dr
Natalie Bowen	
Spencer Summerhays	427 S. 75 W.
Greg Call	9425 So Ridgeline Circle,
Barry Lundgren	2118 N. Rolling Hills Dr.
Matt Henderson	177 E Rolling Hills Dr.
Jon Burbidge	596 N. Main St.
Rebecca Suzuki	68 W 200 N Centerville
Dawna Ydalt	230 170 W
Ron Buckmiller	270 E 300 N.

** Your address will be used only in the event the City staff needs to contact you pertaining to an issue discussed in the City Council meeting.

(4)

CENTERVILLE CITY COUNCIL MEETING

Tuesday, June 17, 2014
7:00 p.m.

NAME (PLEASE PRINT)	ADDRESS**
Sandra Smith	219 E. Casa Loma DR
Terry Smith	" " " " "
Stacy Shelton	77 W. 1650 N.
Scott Shelton	" " "
Luanne Bowler	1756 No. Main
BRUCE LARSEN	482 DEER HOLLOW CIR.
Blane Roskelley	93 N 100 E
Lisa Sommer	2212 No. Main, Ct.
Susan Dixon	900 Courtyard Lane
CLARK JOHNSON	355 W 1950 NORTH.
Donna Hansen	256 N 100 W.
Lavann Brockbank	238 No 100 W
Richard Casper	1891 N. 50 E.
Denise Jones + Kenneth Jones	526 Creek View
Celeste Skabelund	89 W Pheasantbrook
Karl & Debbie Hiller	108 ROCK MANOR DR.
Debbie Putnam	882 Poplar Circle
Sally Dickerson	242 N. 170 W.
Peter Sommer	2212 N. Main
Elaine McReynolds	35 Courtyard Ln
[illegible] Lalli	18 Courtyard Ln
Rita Anderson	74 Courtyard Lane

** Your address will be used only in the event the City staff needs to contact you pertaining to an issue discussed in the City Council meeting.

(5)

CENTERVILLE CITY COUNCIL MEETING

Tuesday, June 17, 2014
7:00 p.m.

NAME (PLEASE PRINT)	ADDRESS**
LISAFTEDD MEYERS	212 W 925 N
Danielle & Randy Burgoyne	377 Willow Vale Circle
PAUL GAPINSKI	724 E. 600 So.
DOROTHY B. CALL	296 N. 300 E
Hancey	1375 N 200 W.
Marty Christensen	942 So Ridgeline Circle
Lester Goforth	17 West 850 South Centerville
Lori Henderson	177 Rolling Hills Dr. Centerville
DENNIS JACOBS	63 WEST BAUMBERGER WAY
Steven Green	97 Adams Cir., Centerville
Travis Millward	1378 N 400 E
Jaclyn Millward	1378 N 400 E
JP DAMRON	594 W 925 N
Kristy Browning	285 E. 100 N.
Marion Clayton	282 N 100 W
Afton Clayville	204 N 170 W
Frank Mulder	806 E. 650. S.
DANIEL TANNER	1354 NOLA Dr.
Lenore Robbins	362 E 100 N.
Paul Stokes	1009 N 250 E
Stanford Andrews	833 S. 650 E.
Charlie Johnson	731 S. 650 E.

** Your address will be used only in the event the City staff needs to contact you pertaining to an issue discussed in the City Council meeting.

CENTERVILLE CITY COUNCIL MEETING

Tuesday, June 17, 2014
7:00 p.m.

NAME (PLEASE PRINT)	ADDRESS**
Gordon + Tamara Burkham	1198 No 450 W. Centerville
Daniel + Anna Young	1632 N. 400 E. Centerville
Doug HANCEY	112 E. JENNINGS CENTERVILLE
Ben Zeeman	543 E. 650 North Centerville
Jennifer Turnblom	249 S. Main Centerville
Don Wood	633 No 275 EAST
William Ince	1148 No 300 East Ctrvl
Ruth Ann Fisher	498 No Main Centerville
Bret Millburn	283 East 300 South Ctrvl.
Greg Jonsson	210 W 1950 No
Barbara Gilbert	759 Cherrywood Cir. Centerville
Jennifer Decker	560 E. 475 S "
Ann Judd	120 So 200 E Centerville
Holly Ince	1148 N 300 East Ctrvl

** Your address will be used only in the event the City staff needs to contact you pertaining to an issue discussed in the City Council meeting.

Centerville UTOPIA / Macquarie Fiber Utility Advisory Committee

Comments and Recommendations

Introduction of Committee Members

Mark Austin	801-295-6288	austinmc61@hotmail.com	Engineer/Resident
Randy Burgoyne	801-448-7263	randburgoyne@gmail.com	IT/Resident
Kevin Daly	801-554-1252	kevindaly78@gmail.com	Finance/Resident
Jenny Decker	801-864-1629	jdecker@fabianlaw.com	Atty/ Resident
Dan Ditto	801-554-4847	Daniel.Ditto@imail.org	Utility Atty/Resident
Ann Fadel	801-621-4258	afadel@farmersagent.com	Business Owner/Resident
Dax Kelson		dax@gurulabs.com	IT/Business Owner
Mark Oligschlaeger	801-201-5871	oligmark@gmail.com	Finance/Resident
Nannette Smith	801-960-2040	nsmith@bigbitebreads.com	Business Owner/Resident
John Urry	801-556-4434	jjurry@gmail.com	Engineer/Resident
Blake Wade	801-292-5063	wadeb@ballardspahr.com	Atty/ Resident

Advisory Committee

Areas of Expertise:

- Engineering, Technology
- Business, Utilities
- Community Involvement, Legal

Advisory Committee

Focus has been to Determine the Facts.

Process:

- Met Numerous times
- Divided into four subcommittees
  - Financial
  - Community
  - Technology
  - Legal
    - Study and analyze issues
    - Present to group for Education & Discussion

Advisory Committee

Tonight we are going to present FACTS, as we see them after intense study;

The Committee is not unanimous in its recommendations;
BUT, we are unanimous in the FACTS presented tonight.

- **Financial Issues** – Mark Oligschlaeger
- **Community Issues** – Nannette Smith
- **Technology Issues** – Randy Burgoyne
- **Legal Issues** – Jenny Decker
- **Pros & Cons of Milestone 2**
- **Recommendations**

Financial Issues

Financial Issues

1. Current Overview
2. UTOPIA Options
   - Maintenance mode (no growth)
   - New UTOPIA management, new business plan
   - Sell the network
   - "Go dark" (shutdown)
   - Macquarie PPP model or alternative
3. Centerville Options

Financial Issues

Utopia and UIA Bond Totals ($ Millions)

	All Cities	Centerville	
Utopia Bonds			
Principal	$ 184.97	$ 6.26	
Interest	$ 257.64	$ 8.72	
Total Remaining Payments (FY 2015-2040)	**$ 442.61**	**$ 14.98**	*3.39%*
Avg. per address per month		**$ 9.44**	
Swap early termination fee (today)	$ 69.00	$ 2.30	
UIA Bonds			
Principal	$ 39.36	$ 1.43	
Interest	$ 28.47	$ 1.03	
Total Remaining Payments (FY 2015-2039)	**$ 67.83**	**$ 2.46**	*3.63%*
Avg. per address per month		**$ 1.71**	
Estimated early termination escrow cost	$ 8.55	$ 0.31	
Total Utopia/UIA			
Principal	$ 224.33	$ 7.69	
Interest	$ 286.11	$ 9.75	
Total Remaining Payments	**$ 510.43**	**$ 17.44**	*3.42%*
Avg. per address per month		**$ 11.16**	
Total estimated early termination costs	$ 77.55	$ 2.61	

Note: Utopia bond payments are currently paid by Cities. UIA bond payments are currently covered by UIA revenues.
"Per address per month" calculation assumes 5086 addresses in Centerville (single family, MDU, and businesses)

Financial Issues

- **Centerville bond obligations are $17.4 million**
  - 25 years remaining (through 2040)
  - $15.0M UTOPIA, $2.4M UIA including interest
  - In the event of network sale, early termination provisions apply (prepayment penalty)

- **Avg. monthly debt cost per household = $11.16**
  - $9.44 UTOPIA currently paid from general fund
  - $1.71 UIA currently covered by network revenues
  - Operating deficit is an additional $2.50 per address

Financial Issues

UTOPIA Options – Financial Considerations

1. **Maintenance mode (no growth)**
   - Requires capital to fund continued operating deficit and equipment refreshes ($2.50 +$ 2.50 = $5.00 per address per mo.)
   - Insufficient revenue to contribute to UTOPIA bonds ($9.44)
   - Other cities never "get built"
   - No path to financial viability

2. **Replace UTOPIA management, implement new growth plan**
   - May result in innovative thinking and new approaches
   - Would require vote of confidence in new management
   - Would require additional bonding (must assess political will)

Financial Issues

UTOPIA Options – Financial Considerations

3. **Sell the network**
   - iProvo sold to Google Fiber for $1, taxpayer debt remains
   - UTOPIA and UIA bond obligations would likely remain
   - In any sale scenario, UTOPIA would be left without any assets and significant debt, including swap termination fee and UIA bond defeasance costs (effectively a $77.5M prepayment penalty)

4. **"Go dark" (network shutdown)**
   - $8.6M of annual revenues go away (currently covering UIA bonds)
   - Bond obligations remain ($224M principal, $510M with interest)
   - Other obligations to repay (leases, stimulus grant, prepaid connections)
   - Monthly obligations estimated a $1.425M when "dark," higher than current subsidy of $1.325M. (Note: UTOPIA won't go bankrupt)
   - Add the likelihood of litigation, and this becomes the worst option

Financial Issues

UTOPIA Options – Financial Considerations

5. **Macquarie PPP Model**
   - $18-20 monthly commitment per household, 30-year concession
   - Fixed fee, can't increase beyond inflation index (estimated 2.5%/year)
   - The PPP will operate, maintain and refresh the network for 30 years. These costs and risks are transferred to Macquarie. $300M up front.
   - Possibility of debt repayment from premium service revenues, but no guarantees. "Sharing formula" yet to be determined – Milestone 2.
   - Cities own the asset, will be "handed back" to cities at end of term.

6. **Other Alternatives**
   - Macquarie was unsolicited and is a "sole-source" bid proposal.
   - UTOPIA could invite competing proposals, understanding that a process could be lengthy and would require additional funding in the interim for the operating deficit.

Financial Issues

Centerville Options – Financial Considerations

- **Centerville contributes significant revenues to the network**
  - Centerville has 1,126 subscribers (10% of 11,126 total)
  - Centerville has $699K annual revenue (8.1% of the $8.6M total)

- **Centerville has less than 4% of UTOPIA vote and no assets**
  - Centerville has "voice" but not a large vote
  - Centerville does not own assets or customers; UTOPIA does
  - Centerville cannot simply carve out and operate "our" assets
  - *In the event* that other cities vote for the Macquarie PPP, Centerville has limited ability to stop UTOPIA from proceeding
  - However, Centerville does have its own options to consider

Financial Issues

Centerville Options – Continued

- ***In the event*** **that other cities vote in favor of the PPP…**
  - Centerville can choose to "opt in" to the PPP
  - Centerville can choose to "opt out" and negotiate a separate deal with the PPP

- **The implications if Centerville "opts out"**
  - The remaining UTOPIA cities will charge Centerville for ongoing operating services.
  - The size of these fees will be determined by UTOPIA cities on the basis of "parity" and not by Macquarie.
  - Thus, the operating fee that Centerville would pay is subject to negotiation and not yet determined. The Committee suggests that this should be a key focus of Milestone 2 if the Council elects to proceed.
  - Likewise, many other issues would need to be negotiated, including sharing or forgoing a portion of premium service revenues, local electronics refresh costs and installations, daily servicing responsibilities, etc.

Financial Issues

Summary

- **Under any scenario, Centerville is headed into a collaborative negotiation with the other UTOPIA cities**
  - Status quo not likely to continue, other cities demanding resolution
  - Centerville will be in business with the other cities regardless of the ultimate direction, whether that involves buying service from PPP or dividing assets.
- **If the Council votes to proceed to Milestone 2, *at a minimum* the Council should focus on determining two key items**
  - The operating fee and other details in the "opt out" scenario discussed
  - The "sharing formula" used to distribute premium service revenues back to the cities.

Community Issues

Advisory Committee

Committee Work:

- Began May 8
- 7-8 Meetings - Late
- Total of over 100 Hours Meetings
- Hundreds of Pages read, and
- Hours Dedicated focus and review

Community Issues

Community Group

- The Community group has been involved in reaching out to Centerville Citizens as well as contacting the other ten cities. The following are some of the things that have been done and are planned for the future:

Accomplished

- Other cities were called to determine if they had other solutions or if they were going forward with Milestone 2.
- City councils attended—both Centerville and other cities.
- Phone numbers and emails published in an effort to get feedback from Centerville Citizens.

Community Issues

- "Expert" guest speakers invited to better educate the committee.
- Hours spent as a committee sharing information learned.

Community Issues

Future Tasks IF we proceed to Milestone 2

Education / Community Feedback

- Educate community on current financial issues and obligations.
- Discuss options to resolve community issues – especially resolve Centerville obligations.
- Send out mailer to highlight pros & cons of available options re: internet / phone.
- Facilitate community forums re: options.

Community Issues

Set up Fiber Information Groups

- 30+ people with names published who could help people understand the issues and options.
- Along with letter communicating issues
- Community healing.

Community Issues

- **Future Tasks IF we DON'T proceed to Milestone 2**

- Resolve how to pay our 17m debt over 27+ years.
- Resolve UTOPIA Problems including:
  - Management Problems
  - Financial Operations Problems
  - legal risks:
    - Go Dark – purchased connections
    - Impact on businesses

Technology Issues

Technology Options

1) Copper Wire – DSL & Cable

2) Wireless Mobile – 3G/4G/LTE, WiMAX

3) Wireless – 802.11a/b/g/n/ac (WiFi)

4) Fiber Optics

Technology Options

DSL (Century Link) & Cable (Comcast)

Pros	Cons
Easy installation with current providers	Limited upload speeds
Existing wiring	Limited advancements in technology – DSL caps at 40mb
Widely available	Costs vary with provider and area Higher speeds only available with bundle
Easy to bundle with TV and home phone	Shared bandwidth (slower with more users)
	Speed limited by distance
	Throttled by providers

Technology Options

Wireless Mobile (Cell Phone Data)

Pros	Cons
Easy installation with current providers	Limited speeds offered by providers
Technology advancements	Have to replace equipment every 2-3 years
Widely available	Expensive - Costs vary from provider to provider, typically per device
Bundled with cell phone service	Shared bandwidth, Capped by providers
No wires to the home, device.	Distance limited
	Weather and topology limited

Technology Options

Wireless 802.11 (WiFi)

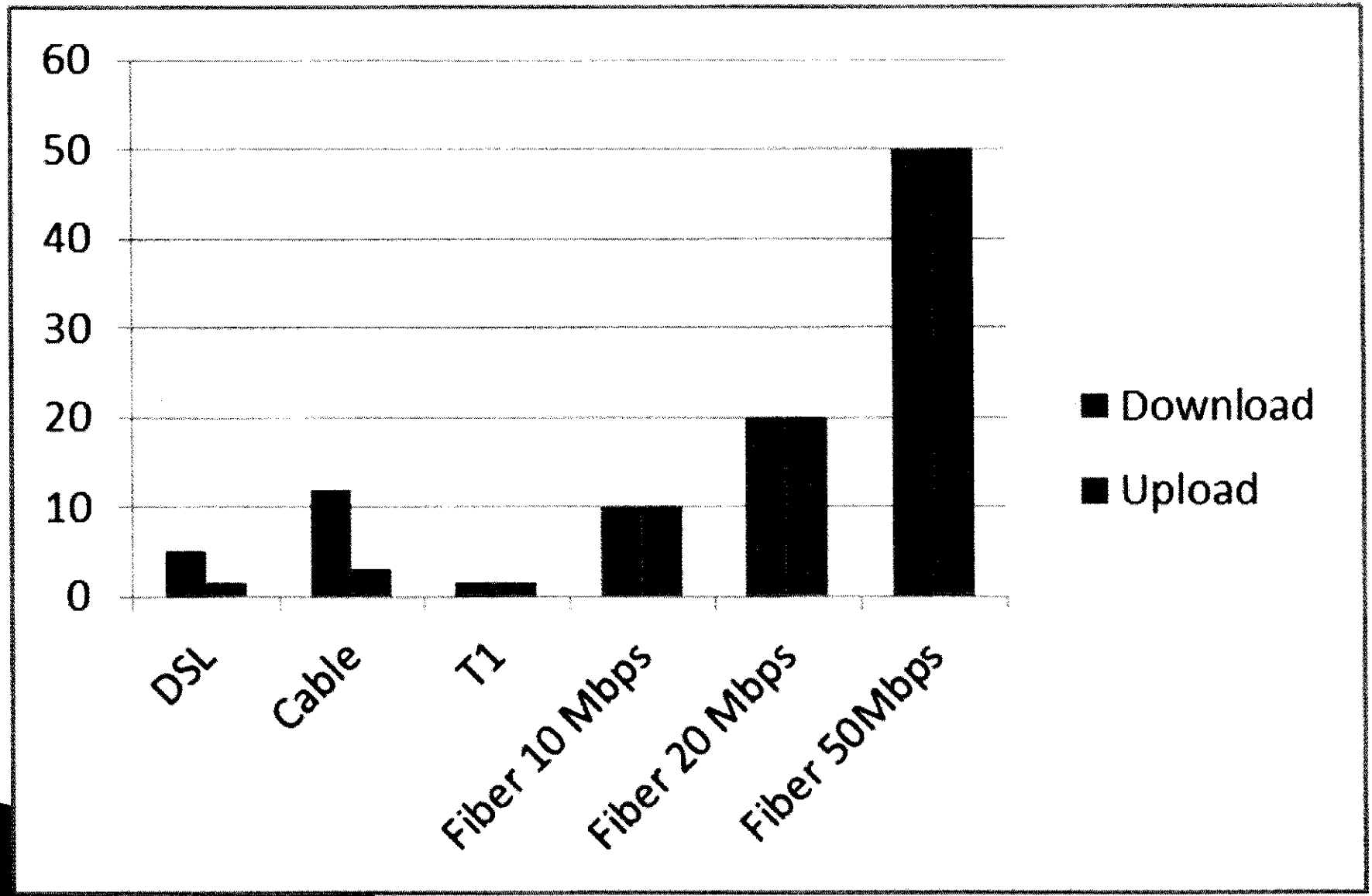
Pros	Cons
Easy installation with current providers	Limited providers – none currently
Technology advancements	Rapidly changing technologies
Built-in technology in most mobile devices.	Typically only available in private home or business
Fast speeds available	Shared bandwidth
No wires to the home, device.	Distance limited
	Weather and topology limited

Technology Options

Fiber Optics (Technology used by UTOPIA)

Pros	Cons
Fastest speeds available - same upload and download speeds	Limited availability with current providers
Usually not throttled by providers More competing providers	Expensive to install – requires its own conduit
No shared bandwidth	
Not affected by distance, weather, water	
Long life – no known obsolescence	
Speed potential – virtually unlimited	

Technology Options



Legal Issues

Legal Issues

The Macquarie utility model poses several uncertain legal issues that need to be resolved namely:

- Legality of the utility fee model?
- Legal obligation to continue maintaining network for cities who 'opt out' of the Macquarie proposal and share of operating expenses?
- Legal right to connect fiber to individual homes?
- The interplay of the UTOPIA/UIA interlocal agreements and various other legal issues? Especially the outcome under these agreements for cities who opt out?

Legal Issues

Legality of the Utility Fee Model?

- **Legality of the utility fee model**
  - Comcast, CenturyLink and others may file suit.
- ***If Proceed to Milestone 2: Recommendations: Legal of Issues:***
  - Review the likelihood of success for such challenges and the risks involved.
  - Allocate the risks and legal costs should legal challenges arise.

Legal Issues

Legality of the Utility Fee Model?

- ***If Proceed to Milestone 2: Recommendations to City***

Indemnification

- If Centerville chooses to proceed with the Macquarie proposal, it will likely want to request an indemnification from Macquarie for any potential litigation.

Consider Legal Review by Own Legal Expert

- The legal analysis being provided in Milestone 2 is being hired by Macquarie.
- UTOPIA and/or the cities proceeding to Milestone 2 may want to consider hiring third-party analysts to review, interpret and conduct its own legal analysis of the Macquarie proposal and the potential threat of litigation, if proceeding with the PPP.

Legal Issues

Does UTOPIA have a legal obligation to continue operating the network?

- **UTOPIA is obligated under the interlocal agreement to maintain the network- Yes – BUT:** this is a simplified answer that begs the question – what if UTOPIA cannot maintain it or does not have sufficient funds to maintain it? UTOPIA does not have the funding to continue operating and is running approximately $175,000 to $225,000 monthly operating deficit; the voluntary funding commitment by cities ends September 30.
- **Under the Macquarie proposal**, all design-build, integration and ongoing operating and maintenance will be the responsibility of the PPP during the 30-year contract period.

Legal Issues

Does UTOPIA have a legal obligation to continue operating the network?

- **More clarity on ongoing operating expenses is needed** - If Centerville opts out of the Macquarie proposal, then its portion of the ongoing operation expenses will need to be negotiated (recommend that this happen if we go to Milestone 2) to prevent Centerville from going dark.

- **Why not just go dark and cut our losses?** – Legally that puts UTOPIA (and therefore the City) at much greater legal risk because of ongoing obligations to users, bondholders and others. The liabilities for that could well exceed current obligations.

Legal Issues

Legal Right to Connect Fiber to Individual Homes?

Legal right to connect fiber to individual homes?

- *Will easements be needed to connect the fiber network to the individual homes?*
  - Under the Macquarie proposal, these will have to be obtained from the homeowners if existing public utility easements (PUEs) are not available.
  - If a homeowner doesn't consent, then Macquarie will not connect the fiber to that particular resident's home.

Legal Issues

How Do all of the Agreements Work Together?

Legal Questions about Multiple Agreements

- What is the interplay of the UTOPIA/UIA interlocal agreements and various other legal issues?
- Especially the outcome under these agreements for cities who opt out?
- The "Exit" Outcome is Uncertain
- Many Other Legal Questions Need to be Resolved

Pros & Cons of Proceeding to Milestone 2 – or Not

Advantages of Proceeding to Milestone 2

Obtain more information regarding revenue sharing, legal risks and analysis and other remaining questions.

- Is Macquarie the answer? That is definitely not clear. Are there other or better solutions? That is not clear either. More information is needed to come to an intelligent solution.

- It is uncertain whether the information, reports and legal opinions generated during Milestone 2 constitute public or private information and whether Centerville would have access to all of the "due diligence" information if it does not proceed to Milestone 2.

- Centerville may be able to obtain some of the "due diligence" information and analysis, however, one cannot assume that Centerville would be privy to all of the pertinent information and discussions, especially since the cities that proceed to Milestone 2 are paying for such information.

Advantages of Proceeding to Milestone 2

(continued)

Retain good will and obtain a "seat at the table" to secure the best outcome for Centerville. The ability to be actively involved in the negotiations that will undoubtedly arise during Milestone 2 should not be undervalued.

- More clarity needed on sharing formula for transport fees & premium service uptake.
- More clarity needed on operating expenses should Centerville opt out after Milestone 2.
- Being an active participant in negotiation of these key issues is likely in Centerville's benefit.

Disadvantages of Proceeding to Milestone 2

- Proceeding to Milestone 2 costs Centerville approximately $31,000 if reject Macquarie proposal.
- The financial mismanagement of UTOPIA and other related issues is the source of much debate and strong feelings in the community. Many residents may view Centerville proceeding to Milestone 2 as an endorsement of the Macquarie proposal, and a failure of their local city leaders to represent their opinions and interests.

Recommendations

Recommendations

_The committee is split on moving to Milestone 2:

The majority of the committee believes that it is beneficial to go to Milestone 2. HOWEVER, Proceeding to Milestone 2 should not be construed as an endorsement of the Macquarie proposal, but as a means to secure the best outcome for Centerville.

In fact, other options, including opting out with appropriate negotiated operating charges, system updates, etc. may be better for Centerville than the Macquarie proposal.

Conclusions

Given the complexity of the legal issues, financial commitments and amount of UTOPIA/UIA debt at stake, the additional information and options Centerville may obtain by proceeding to Milestone 2 and having a "seat at the table" likely outweighs the approximate $30,600 cost.