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Tax or fee? Cities face key decisions on future of UTOPIA

By Benjamin Wood , Deseret News

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Network Operations Center Technicians Brian Merell, front, and Donald Seher, back, work in the NOC, Network Operations Center at Utopia, a fiber optic company Thursday, Oct. 20, 2011. (Scott G Winterton, Deseret News Archives)

WEST VALLEY CITY — Officials in 11 Utah cities will decide this month whether to explore handing over the embattled fiber-optic network UTOPIA to an Australian investment group.

The proposal by Sydney-based Macquarie Capital Group would see construction completed on the 12-year-old network, realizing the initial promise of ubiquitous access to high-speed data, voice and video, by turning UTOPIA into a utility that homeowners support with a monthly

fee, whether they use it or not.

"This is a really important decision to the future of West Valley," West Valley City Manager and UTOPIA board Chairman Wayne Pyle said. "I hope the residents do take notice of it and dig deep into the possibilities and the advantages the fiber network can bring them."

The city councils of West Valley City, Layton and Midvale have already voted to move forward to "Milestone 2" of the Macquarie plan by allowing the investment group to conduct a study of UTOPIA

and begin drafting a formal 30-year agreement.

The remaining eight cities — Brigham City, Centerville, Lindon, Murray, Orem, Payson, Perry and Tremonton — have until June 27 to decide whether to reject or explore the potential deal.

A vote in favor would not yet bind the cities to the 30-year deal but would allow Macquarie to take steps toward assuming control of UTOPIA.

Tax or fee?

The Utah Telecommunications Open Infrastructure Agency began 12 years ago as a means to bring high-speed Internet, phone and television services to individuals and businesses along the Wasatch Front. But low signups and stalled construction have left the network incomplete, serving a small base of customers and languishing in debt.

Macquarie would partner with UTOPIA cities to complete construction and manage services for 30 years, in exchange for payment in the form of a monthly \$18 to \$20 utility fee from residents.

Murray officials have launched an online survey, encouraging residents to weigh in on the proposal, and votes are scheduled for the remaining city councils over the next two weeks.

One group vocally opposed to the partnership with Macquarie is the Utah Taxpayers Association, which launched a petition and website at uNOpia.org that describes the mandatory utility fee as a \$1.5 billion bailout of Utopia and "one of the worst boondoggles in Utah history."

Royce Van Tassell, vice president of the Utah Taxpayers Association, said his organization is concerned with taxpayers being asked to shoulder an ongoing cost for a service they may or may not use. He also said the proposed deal potentially violates both state and federal law.

"What we want to help do is bring some of these legal questions into the conversation, because there are real risks," Van Tassell said.

Raymond Gifford, an attorney working with the association, said the \$20 homeowners would pay each month to support UTOPIA "looks a lot like a tax, not a fee." He said a fee is a charge for real services that residents receive, like electricity or water, whereas a tax is a generally imposed obligation.

The distinction is important, Gifford said, because Utah law maintains regulations on levying taxes that profit a public-private partnership.

"If it's a tax, (the cities) don't have the authority," Gifford said. "It's a compulsory tax being called a fee."

Gifford also questioned whether turning broadband Internet access into a city utility is wise, saying that it limits competition in a service that continues to evolve.

"I love what electric utilities do, but hotbeds of innovation they are not," he said.

Completing the project

Pyle with West Valley City said many residents have waited 10 years for the capabilities of a fiber-optic network and that the Macquarie deal will make that service possible.

"I think this is the best proposal that I've seen so far, and the reason for that is just the depth of Macquarie's abilities to bring financial resources to bear and construction resources to bear," he said.

He said the monthly fee paid by residents would allow Macquarie to finalize construction of the network, linking tens of thousands of homes and businesses to UTOPIA, and secure basic internet service during the 30-year partnership.

West Valley City also added another incentive for residents [this week](#), securing a partnership with Ooma, a California-based telecommunications company, to provide free home telephone service upon completion of the fiber-optic network.

"Between the Internet service, the telephone service and the utility fee, you literally will save hundreds of dollars per year if you were to pick that particular bundle of services," Pyle said.

Residents would continue to have the option of buying Internet and phone services from another provider, Pyle said, but would pay the monthly utility fee to their city whether or not they take part in UTOPIA.

"We want to provide open access to all private service providers and therefore all the competition," Pyle said.

Brian McBride said he switched to UTOPIA service immediately after moving to Murray a little over a year ago, and the fiber-optic network was one of the reasons he chose to live where he does.

He said the Internet service from UTOPIA has been "remarkable," free from the sporadic network

crashes he experienced under a different provider and offering a greater value at a lower price.

"I'm actually paying less today than I was previously for my Internet service, and the speed is much, much faster than what I've experienced before," McBride said.

McBride said he supports moving forward with the Macquarie proposal, particularly so that city leaders and residents have all the information necessary to make a final decision on the 30-year agreement.

He said the potential for a monthly utility fee doesn't bother him, because he sees Internet connectivity as an increasingly essential service and the infrastructure of the future.

"I'm of the personal belief that the internet is becoming more utility-like each day and for me it's essential," he said.

Lindon resident Doug McKay, who has been a customer of UTOPIA "since the day it was available" roughly seven years ago, said he likes the idea of Internet being part of a city infrastructure. But he said he's undecided on the issue of requiring residents to pay for a service they don't use.

"I'm a little torn on that," he said. "Having a requirement to pay a fee for everybody seems a little interesting."

Other options

The 11 cities affiliated with UTOPIA have a number of options beyond the Macquarie proposal, including remaining with the current limited service of UTOPIA or to abandon the network entirely.

But Pyle said there are a number of challenges associated with scrapping the embattled fiber-optic network, including the loss of revenue from UTOPIA that offsets the debt cities are under obligation to repay.

"If we closed this down and walked away, all that revenue would go away and all that additional costs would be put on the shoulders of the city and, of course, the taxpayer," he said.

At the end of the 30-year agreement with Macquarie, Pyle said ownership of the then-improved network would return to the cities and the ongoing utility fee would likely be reduced to no longer account for the construction costs of linking homes and businesses to the system.

Murray City Mayor Ted Eyre said the city has received close to 700 responses on its UTOPIA survey,

which will remain open until June 23, the day before the Murray City Council is scheduled to vote on the issue of moving forward with Macquarie. He declined to comment on the responses until the city council has had a chance to review the results.

He also said that he has received more emails on the subject of UTOPIA – from all sides – than any other issue during his time as mayor and has heard similar comments from members of the city council.

"People are very aware of it and people are very opinionated one way or the other on it," Eyre said.

But Van Tassell said the longer cities explore a partnership with Macquarie, the more incentive they have to move forward. He said at each milestone, or stage, of the partnership, cities incur an obligation to repay Macquarie for their services if they choose to withdraw.

"The further you go, the steeper that fee gets," he said.

Also at issue is that the estimated \$18 to \$20 monthly utility fee for residents is based on the expectation that all 11 municipalities will join in the public-private partnership with Macquarie.

The three cities that have already given their blessing account for roughly 50 percent of total UTOPIA homeowners, Pyle said, but it is not known how many cities can be lost before the deal has to be restructured.

The utility fee would also be tied to the Consumer Price Index, which Van Tassell said could result in residents paying as much as \$35 each month at the end of the 30-year term.

"If those (cities) come out, all the sudden your math doesn't add up," Van Tassell said.

McBride described the option of shutting down the network as "financial suicide." He said residents are already committed to the debt associated with UTOPIA and he worries about how cities would repay that debt if the network was abandoned.

"We have to pay the bonds that we put our good name and faith into paying," he said. "Paying for UTOPIA is one thing but basically defaulting is another and I don't want to see that situation."

Lindon resident and UTOPIA customer Phil Windley, who also served in the cabinet of Gov. Mike Leavitt during early UTOPIA talks, said that an Internet infrastructure is the 21st century equivalent of public roads.

He said he not only favors a utility fee model, but also thinks UTOPIA should have operated as a utility since its creation.

"Moving to that model is probably the thing that will make it actually work and work well for people," he said.

In a prepared statement, Nick Hann, senior managing director for Macquarie Capital, said investors were happy with the progress that had been made on the proposal and were optimistic about moving forward.

"We are working hard to educate and inform through the Milestone process," Hann said. "It gives the public an opportunity to absorb the information and facts in this complex issue. We are gratified at the positive responses we have received and remain confident in our proposal and vision for UTOPIA."

Email: benwood@deseretnews.com, Twitter: [bjaminwood](#)

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