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FILED
U.S. DISTRICT COURT
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DISTRICT OF UTAH
BY:  DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

QWEST CORPORATION,

Plaintiff,

v.

UTAH TELECOMMUNICATION OPEN
INFRASTRUCTURE AGENCY, an interlocal
cooperative governmental agency; and the
CITY OF RIVERTON, a Utah municipal
corporation, TETRA TECH
CONSTRUCTION SERVICES, INC., a
Colorado Corporation,

Defendants.

DEFENDANT UTAH
TELECOMMUNICATION OPEN
INFRASTRUCTURE AGENCY'S
(UTOPIA) ANSWER TO
AMENDED SECOND
AMENDED COMPLAINT
AND
COUNTERCLAIM

Case No. 2:05-cv-00471 PGC
Magistrate Judge David Nuffer

Defendant Utah Telecommunication Open Infrastructure Agency ("UTOPIA") answers
Plaintiff's Amended Second Amended Complaint and alleges as follows:

FIRST DEFENSE

The Complaint and particular causes of action therein, fail to state claims against
UTOPIA upon which relief can be granted.

SECOND DEFENSE

Answering the specific allegations of the Complaint, UTOPIA admits, denies and alleges as follows:

1. Admits Plaintiff has provided telecommunications services for a period of time; denies all other allegations of ¶ 1; and affirmatively alleges Qwest has provided services in Utah only since its acquisition of U.S. West.

2. Admits.

3. Admits certain state statutes and constitutional provisions allow UTOPIA certain tax exemptions; denies all other allegations of ¶ 3; and affirmatively alleges any advantages provided by limited tax exemptions are offset by legislatively imposed restrictions on UTOPIA's abilities to obtain financing, restrictions on accounting, open meetings and records requirements, accountability to elected officials, and other restrictions not imposed on private-sector companies like Plaintiff, and which, in fact, give Plaintiff significant competitive advantages over UTOPIA.

4. Admits entering into agreements with telecommunications service providers which allow such companies to utilize UTOPIA's wholesale network to serve retail customers; denies all other allegations of ¶ 4; and affirmatively alleges: (i) UTOPIA has invited Plaintiff to enter into such an agreement, but Plaintiff has refused; (ii) UTOPIA has adopted and published a Policy for Service Provider Opportunities on the UTOPIA Network which provides both for fair and equitable treatment of all providers seeking to obtain access to UTOPIA's network, and an appeal process to providers aggrieved by UTOPIA's selection criteria; and (iii) Plaintiff has never requested any agreement with UTOPIA nor utilized the process available to allow it to be considered for such an agreement.

5. Denies; affirmatively alleges UTOPIA is a legal entity separate from member cities without power to require "in-kind" or other contributions; and further affirmatively alleges on information and belief that to the extent Riverton City requires developers to place underground conduit, such conduit is available to all telecommunication service providers who request access to the conduit, including Plaintiff, and that Plaintiff has not requested such access.

6. This paragraph describes Plaintiff's own allegations and does not appear to be directed at nor require an answer from UTOPIA; to the extent it is construed to require an answer, UTOPIA admits Plaintiff seeks certain declarations or other relief, but denies Plaintiff is entitled to any judgment whatsoever.

7 - 8. Admits jurisdiction under 28 U.S.C. § 1331 insofar as Plaintiff alleges a violation of 42 U.S.C. § 1983 but denies all other allegations of ¶¶ 7 and 8.

9. Denies.

10. Admits this Court has authority to issue declaratory judgments and grant other relief in the appropriate case; denies all other allegations and that Plaintiff is entitled to any judgment whatsoever; and affirmatively alleges legislatively imposed restrictions and requirements imposed on UTOPIA which are not imposed on Plaintiff and other competitors more than offset advantages created by UTOPIA's status as an Interlocal Cooperative Agency.

11. Admits.

12. Admits generally that Plaintiff provides telecommunications services and is subject to regulation by the Utah Public Services Commission ("PSC"); denies all other allegations for lack of sufficient knowledge or information.

13 - 14. Admits.

15. UTOPIA admits the allegations of paragraph 15.

16. Admits generally the existence of development and evolution in the telecommunications industry; denies Plaintiff's characterizations and all other allegations of ¶ 16.

17 - 18. Admits, and affirmatively alleges it is Plaintiff's conduct in attempting to prevent UTOPIA from entering the market and competing through potentially lower prices and otherwise that is contrary to the purpose and intent of the Federal Telecommunications Act ("FTA"), not UTOPIA's existence as an Interlocal Cooperative Agency.

19 - 22. Admits the existence of 47 U.S.C.A. § 253 and case law interpreting that section, which statutory provisions and legal opinions speak for themselves and are the best

evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶¶ 19 through 22; and affirmatively alleges that if Plaintiff's characterizations are correct, the Court should strip Plaintiff of the competitive advantages derived from its status as a private provider and remove the restrictions and competitive disadvantages imposed on UTOPIA as an Interlocal Cooperative Agency.

23 - 25. Admits the existence of the Municipal Cable Television and Public Telecommunications Services Act (the "Utah Act"), and specifically Utah Code Annotated §§ 10-18-101, et seq., and 10-18-303, which statutory provisions speak for themselves and are the best evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶¶ 23 through 25.

26. Admits UTOPIA was formed pursuant to the Interlocal Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency and the First Amended and Restated Interlocal Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency, which agreements are public documents that speak for themselves and are the best evidence of both their terms and the purposes for which UTOPIA was formed; denies Plaintiff's characterizations, specifically Plaintiff's implication that UTOPIA provides services directly to retail customers, and all other allegations of ¶ 26.

27. Admits the existence and terms of the feasibility studies, which studies are public records that speak for themselves and are the best evidence of their terms; denies Plaintiff's characterizations based only on selected portions of the studies and all other allegations of ¶ 27.

28. Admits the existence and terms of the Non-Exclusive Network Access and Use Agreement Between UTOPIA and AT&T, which agreement is a public document that speaks for itself and is the best evidence of the terms and provisions thereof; further admits that UTOPIA has duly classified certain pricing information related to the agreement as "protected" pursuant to provisions of the Utah Governmental Records Access and Management Act ("GRAMA"); denies Plaintiff's characterizations and all other allegations of ¶ 28; and affirmatively alleges Plaintiff has never requested the protected information pursuant to GRAMA, UTOPIA has never refused

the request, and Plaintiff has never utilized the procedures provided by GRAMA to appeal any such refusal.

29. Admits UTOPIA has entered into agreements with other service providers; denies Plaintiff's characterizations concerning "tier-one" and "national and international recognition," and all other allegations of ¶ 29.

30. Admits UTOPIA has adopted and published a Policy for Service Provider Opportunities on the UTOPIA Network which provides both for fair and equitable treatment of all providers seeking to obtain access to UTOPIA's network, and an appeal process to providers aggrieved by UTOPIA's selection criteria; denies Plaintiff's characterizations and all other allegations of ¶ 30; and affirmatively alleges Plaintiff has never applied for access to UTOPIA's network, and no other service provider has complained of UTOPIA's selection criteria.

31 - 33. Admits certain state statutes and constitutional provisions allow UTOPIA certain tax exemptions; denies all other allegations of ¶¶ 31 through 33; and affirmatively alleges any advantages provided by limited tax exemptions are offset by legislatively imposed restrictions on UTOPIA's abilities to obtain financing, restrictions on accounting and auditing, open meetings and records requirements, accountability to elected officials, and other restrictions not imposed on private-sector competitors like Plaintiff which, in fact, give Plaintiff significant competitive advantages over UTOPIA.

34. Denies; and affirmatively alleges, by way of example, that UTOPIA's pole agreements with its member cities are the same as Plaintiff's pole agreements with those same cities, and that UTOPIA utilizes many of the same subcontractors as Plaintiff.

35 - 37. Denies, and affirmatively alleges that even if UTOPIA's status as an Interlocal Cooperative Agency conferred any financial advantage, which it does not, such advantages would be as available to Plaintiff as they are to other qualified retail service providers through UTOPIA's Network if Plaintiff availed itself of UTOPIA's Policy for Service Provider Opportunities on the UTOPIA Network.

38. Denies UTOPIA enjoys “unique financial advantages;” denies all other allegations of ¶ 38 for lack of sufficient knowledge or information.

39. Denies.

40. Denies; and affirmatively alleges on information and belief that to the extent Riverton City requires developers to place underground conduit, such conduit is available to all telecommunication service providers who request access to the conduit, including Plaintiff, and that Plaintiff has not requested such access.

41. Denies, and affirmatively alleges that the subcontractors UTOPIA utilizes for its construction work are in many or most cases the same as those utilized by Plaintiff. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors.

42. Admits that UTOPIA placed attachments on three (3) utility poles it later learned were owned by Plaintiff; denies all other allegations and characterizations in ¶ 42; and affirmatively alleges the three poles constituted a negligible percentage of the 3,900 total poles UTOPIA evaluated for its footprint, that UTOPIA’s attachment to those three poles was caused by Plaintiff’s failure to adequately and reasonably identify its poles, and that UTOPIA has remedied such attachments. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors.

43. Admits generally that most utility pole owners require pole attachment agreements specifying standards and terms of agreement; denies allegations concerning “all” utility pole owners for Plaintiff’s lack of specificity and sufficient knowledge or information.

44. Denies for lack of sufficient knowledge or information.

45. Admits.

46 - 47. Admits attaching to poles also occupied by Qwest; denies Plaintiff’s characterizations and all other allegations of ¶¶ 46 and 47; and affirmatively alleges that UTOPIA utilizes many or most of the same subcontractors utilized by Plaintiff, that such damage

or interference claims are subject to standard claim processes, and that UTOPIA has either corrected such instances of damage or interference or Plaintiff has failed to utilize standard claim processes or notify UTOPIA or its contractors of particular instances of damage or interference. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors.

48 - 50. Admits the single cable cut occurring in Murray City; denies Plaintiff's characterizations and all other allegations of ¶¶ 48 - 50; and affirmatively alleges that the cable cut was caused by Plaintiff's failure to adequately mark and locate its facilities or describe what or how many of the facilities were present, and that Plaintiff has wholly failed to comply with notice provisions governing claims for any such cable cut. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors. UTOPIA further affirmatively alleges that claims resulting from such allegations have been dismissed, without prejudice.

51. Denies. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors. UTOPIA further affirmatively alleges that claims resulting from such allegations have been dismissed, without prejudice.

52. Denies. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors.

53. Denies. UTOPIA further alleges that it is without information and belief regarding the conduct of the Doe Contractors and accordingly denies any allegations as to such Contractors.

54. Denies; and affirmatively alleges that UTOPIA utilizes many or most of the same subcontractors utilized by Plaintiff, that such damage or interference claims are subject to standard claims processes, and that UTOPIA or its contractors have either corrected such

instances of damage or interference or Plaintiff has failed to utilize standard claim processes or notify UTOPIA or its contractors of particular instances of damage or interference.

55. Admits.

56. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 55, above.

57 - 58. Admits the existence and terms of the constitutional and statutory provisions described which speak for themselves and are the best evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶¶ 57 and 58.

59. Admits certain state statutes and constitutional provisions allow UTOPIA certain tax exemptions; denies all other allegations of ¶ 59; and affirmatively alleges any advantages provided by limited tax exemptions are offset by legislatively imposed restrictions on UTOPIA's abilities to obtain financing, restrictions on accounting and auditing, open meetings and records requirements, accountability to elected officials, and other restrictions not imposed on competitors like Plaintiff which, in fact, give Plaintiff and private-sector companies significant competitive advantages over UTOPIA.

60. Denies, and affirmatively alleges that even if UTOPIA's status as an Interlocal Cooperative Agency conferred any financial advantage, which it does not, such advantages would be as available to Plaintiff as they are to other qualified retail service providers through UTOPIA's network if Plaintiff availed itself of UTOPIA's public procurement process.

61. Denies; and affirmatively alleges on information and belief that to the extent Riverton City requires developers to place underground conduit, such conduit is available to all telecommunication service providers who request access to the conduit, including Plaintiff, and that Plaintiff has not requested such access.

62. Admits the existence and terms of the FTA, which speaks for itself and is the best evidence of what it does or does not allow; denies Plaintiff's characterizations and all other allegations of ¶ 62.

63. Denies, and affirmatively alleges that Plaintiff requests this Court to legislate tax policy in favor of its own, competitively-advantaged business model.

64. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 63, above.

65 - 66. These paragraphs describe Plaintiffs' own allegations and do not appear to be directed at nor require an answer from UTOPIA; to the extent they are construed to require an answer, UTOPIA admits Plaintiff seeks certain declarations or other relief, but denies Plaintiff is entitled to any judgment whatsoever.

67. Admits this Court has authority to issue declaratory judgments and grant other relief in the appropriate case; denies all other allegations and that Plaintiff is entitled to any judgment whatsoever.

68. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 67, above.

69 - 71. Admits.

72. Admits the existence of the Utah Act, and specifically Utah Code Annotated §§ 10-18-101, et seq., and 10-18-303, which statutory provisions speak for themselves and are the best evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶ 72.

73. Denies.

74. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 74, above.

75. Denies.

76. Admits generally with respect to the National Electric Safety Code; denies all other allegations for Plaintiff's lack of specificity and sufficient knowledge or information.

77 - 80. Denies.

81. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 80, above.

82. Admits that UTOPIA placed attachments on three (3) utility poles it later learned were owned by Plaintiff; denies all other allegations and characterizations in ¶ 82 for Plaintiff's lack of specificity and sufficient information; and affirmatively alleges the three poles constituted a negligible percentage of the 3,900 total poles UTOPIA evaluated for its footprint, that UTOPIA's attachment to those three poles was caused by Plaintiff's failure to adequately and reasonably identify its poles, and that UTOPIA or its contractors have remedied such attachments.

83. Admits requirements imposed on Plaintiff by the FTA and the Utah Act; denies all other allegations of ¶ 83.

84 - 85. Denies.

86. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 85, above.

87 - 89. Denies.

90. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 89, above.

91 - 93. Denies.

94. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 93, above.

95 - 98. Admits the existence of 42 U.S.C.A. § 1983 and the Constitutional provisions described, which speak for themselves and are the best evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶¶ 95 - 98.

99. Denies.

100 - 102. Admits the existence of the Constitutional provisions described which speak for themselves and is the best evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶¶ 100 - 102.

103 - 105. Admits the obligations imposed by the laws described which speak for themselves and are the best evidence of their terms; denies Plaintiff's characterizations and all other allegations of ¶¶ 103 through 105.

106 - 107. Denies.

108. UTOPIA incorporates by reference its answers to the allegations in ¶¶ 1 - 107, above.

109 - 113. The allegations of these paragraphs do not appear to be directed at nor require an answer of UTOPIA; to the extent the allegations are construed to require an answer, UTOPIA denies the allegations, and affirmatively alleges on information and belief that to the extent Riverton City requires developers to place underground conduit, such conduit is available to all telecommunication service providers who request access to the conduit, including Plaintiff, and that Plaintiff has not requested such access.

114. UTOPIA denies all allegations of Plaintiff's Complaint not expressly admitted herein.

By way of other affirmative and avoidance defenses, UTOPIA alleges as follows:

THIRD DEFENSE

One or more of Plaintiff's claims fail for Plaintiff's inability to plead or prove standing.

FOURTH DEFENSE

Plaintiff's claims pursuant to 42 U.S.C.A. § 1983 fail because the FTA confers no private right of action.

FIFTH DEFENSE

One or more of Plaintiff's claims fail pursuant to § 601(c)(2) of the Telecommunications Act of 1996, which provides that nothing in the Act "shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or suppression of, any state or local law pertaining to taxation" except in circumstances not relevant here.

SIXTH DEFENSE

Plaintiff's claims that 47 U.S.C.A. § 253 preempts state statutes, constitutional provisions and local ordinances creating UTOPIA and providing tax exemptions to UTOPIA fail because Plaintiff cannot prove such state statutes, constitutional provisions, and local ordinances are prohibitive in substance or effect.

SEVENTH DEFENSE

Plaintiff's claims pursuant to the Utah Act, Utah Code Annotated § 10-18-101, et seq., are barred by Plaintiff's failure to follow the enforcement and appeal provisions of Utah Code Annotated § 10-18-306.

EIGHTH DEFENSE

One or more of Plaintiff's claims, including but not limited to Plaintiff's claims pursuant to the 5th and 14th Amendments to the United States Constitution and Plaintiff's discriminatory procurement claims, are unripe and barred by Plaintiff's failure to follow established state and administrative procedures to redress alleged violations of Plaintiff's rights, which violations are expressly denied.

NINTH DEFENSE

No act or omission by UTOPIA has affected any constitutionally cognizable property or liberty interest enjoyed by Plaintiff, and Plaintiffs' constitutional claims fail as a matter of law.

TENTH DEFENSE

Plaintiff's claims for injunctive relief fail for lack of reasonable specificity in the injunction requested.

ELEVENTH DEFENSE

One or more of the Plaintiff's claims, including, but not limited to Plaintiff's tort claims, are barred by Plaintiff's to comply with provisions of the Utah Governmental Immunity Act, including, but not limited to, Utah Code Annotated §§ 63-30-3; 63-30-10; 63-30-13; 63-30-19; and 63-30-22; or the replacement sections of those provisions, §§ 63-30d-101, *et seq.*

TWELFTH DEFENSE

Plaintiffs' claims are barred by the doctrines of laches, estoppel and/or waiver, and Plaintiff's failures to give meaningful and adequate notice of claims pursuant to insurance standards or industry standards.

THIRTEENTH DEFENSE

Pursuant to Utah Code Annotated § 78-27-38, UTOPIA is responsible only for its own proportionate share of causative fault, if any; and in the event Plaintiff suffered any construction or other damages, as alleged, such damages were caused wholly by third-parties whom UTOPIA did not direct or control. Upon information and belief, UTOPIA alleges that such third-parties include but may not be limited to the following:

1. TETRATECH, Inc.
3475 East Foothill Boulevard
Pasadena, CA 91107
(General contractor for construction of UTOPIA's network)
2. Sorensen Construction Company
4185 West 8370 South
West Jordan, Utah 84088
(Subcontractor for TETRA TECH)
3. Wasatch Electric
1574 South West Temple
Salt Lake City, Utah
(Subcontractor for TETRA TECH)
4. B. Jackson Construction
Address currently unknown
(Subcontractor for TETRA TECH)
5. Stake Center Locating, Inc.
2020 Director's Row
Salt Lake City, Utah
(Underground locating company who marked/mismarked certain Qwest facilities)

FOURTEENTH DEFENSE

In the alternative, and in the event UTOPIA is or can be liable for any part or portion of the construction or other damages alleged, third-parties owe UTOPIA contractual duties to indemnify and hold UTOPIA harmless for such damages and UTOPIA is not liable to Plaintiff.

FIFTEENTH DEFENSE

Plaintiff's damage claims are barred, or must be reduced in proportion to Plaintiff's own proportionate fault, for Plaintiff's own breaches of legal duties, failures to exercise reasonable care, and *failure to mitigate its damages*.

SIXTEENTH DEFENSE

Plaintiff's negligence claims arising out of the cutting of its telecommunications cables and service wires during construction and/or operation of UTOPIA telecommunications network have been dismissed without prejudice.

SEVENTEENTH DEFENSE

One or more of Plaintiff's claims is without merit and is brought or asserted in bad faith, and UTOPIA is entitled to attorneys' fees pursuant to Utah Code Annotated § 78-27-56 or Rule 11, Federal Rules of Civil Procedure.

WHEREFORE, having fully answered, UTOPIA demands Plaintiff's Complaint be dismissed with prejudice and on the merits, and that it be awarded judgment in its favor and against Plaintiff, no cause of action, together with fees and costs incurred herein.

COUNTERCLAIM

Utah Telecommunication Open Infrastructure Agency ("UTOPIA"), by and through its attorneys, counterclaim against Plaintiff as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 inasmuch as a federal question is raised pursuant to Federal Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, as amended ("FTA").

2. This Court has supplemental jurisdiction over UTOPIA's state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

PARTIES

4. Qwest is a telecommunications corporation organized and existing under the laws of the state of Colorado, with its principal place of business in Denver, Colorado.

5. UTOPIA is an interlocal cooperative governmental agency and political subdivision of the State of Utah whose members are various municipalities organized and existing under the laws of the State of Utah. UTOPIA was formed for the purpose of constructing, owning, and operating a telecommunications network to provide high-speed broadband voice, video, and data access on a wholesale basis within the boundaries of its members. UTOPIA's members are governed by an Interlocal Cooperative Agreement.

BACKGROUND

6. The modern telecommunications industry has rapidly developed from a monopoly environment to an increasingly competitive market. In the past 20 years, the industry has experienced substantial deregulation and technological change. Customers can now choose from a variety of service, including wireless services, services through existing telephone and cable lines, and services through high-speed fiber-optic cables.

7. On February 8, 1996, Congress passed the Federal Telecommunications Act ("FTA"). The stated purpose of the FTA is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." FTA, Pub. L. No. 104-104, 110 Stat. 56 (1996). Congress sought to facilitate this reshaping of

the telecommunications industry landscape by introducing sweeping changes to remove barriers to entry, eliminate local monopolies, and stimulate fair and nondiscriminatory competition among telecommunications service providers.

8. The Federal Telecommunications Act of 1996, § 224(f)(1) requires every utility subject to the Act to “provide a cable television system or any telecommunication carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.”

9. Utah has enacted the Public Telecommunications Law, Title 54, Chapter 8b, Section 1, *et seq.* (“PTL”).

10. The PTL is a regulatory scheme that implements the state preemption provisions of the FTA.

11. Pursuant to its regulatory jurisdiction, the Utah Public Service Commission has adopted administrative rules in furtherance of the objectives of the PTL.

12. The PTL and its coordinate rules requires Qwest to fully comply with the provisions of 47 U.S.C. §§ 224, 251, 252, 256, and 271(c).

13. Pursuant to the PTL and its coordinate rules and 47 U.S.C. §§ 224, 251, 252, 256, and 271(c), Qwest is required to permit nondiscriminatory access to its essential facilities, including poles.

14. As part of the PTL, Utah has adopted a policy that encourages the development of competition as a means of providing wider public telecommunications services throughout the state.

15. As a further part of the PTL, Utah has adopted a policy that facilitates and promotes efficient development and deployment of an advanced telecommunications

infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection.

16. Qwest is a telecommunications carrier and utility as defined in the FTA. Qwest provides telecommunications services in the state of Utah as a local exchange carrier, and is therefore subject to the jurisdiction of the Public Service Commission of Utah (the "PSC").

17. Qwest is required to provide access to and interconnection with its essential facilities in a nondiscriminatory manner.

18. UTOPIA has entered into agreements, with telecommunication service providers, cable systems, and other communication service providers, that obligate UTOPIA to construct, own, and operate a wholesale telecommunications network to provide high-speed broadband voice, video, and data services that allow the providers to directly compete with Qwest by providing retail services in UTOPIA's territory.

19. In order for these telecommunication providers, and other communication service providers to provide competitive services in UTOPIA's territory, UTOPIA requires reasonable access to Qwest's essential facilities.

FIRST CLAIM FOR RELIEF

20. UTOPIA incorporates all preceding paragraphs herein.

21. In 2005, during the course and scope of UTOPIA's construction of its network, it requested access to certain of Qwest's essential facilities.

22. Contrary to the provisions of the FTA, Qwest failed and refused to permit UTOPIA to have reasonable access to its essential facilities.

23. Qwest's conduct was contrary to the competitively-neutral and non-discriminatory purpose of the FTA.

24. As a direct and proximate result of Qwest's conduct, UTOPIA has incurred additional construction costs in an amount to be proven at trial but estimated to be approximately \$755,000.

SECOND CLAIM FOR RELIEF

25. UTOPIA incorporates all preceding paragraphs herein.

26. In 2005, during the course and scope of UTOPIA's construction of its network, it requested access to certain of Qwest's essential facilities.

27. Contrary to the provisions of the PTL, Qwest failed and refused to permit UTOPIA to have reasonable access to its essential facilities.

28. Qwest's conduct was contrary to the competitively-neutral and non-discriminatory purpose of the PTL.

29. As a direct and proximate result of Qwest's conduct, UTOPIA has incurred additional construction costs in an amount to be proven at trial but estimated to be approximately \$755,000.

THIRD CLAIM FOR RELIEF

30. UTOPIA incorporates all preceding paragraphs herein.

31. In 2005, during the course and scope of UTOPIA's construction of its network, it requested access to certain of Qwest's essential facilities.

32. Contrary to the provisions of the FTA, Qwest failed and refused to permit UTOPIA to have reasonable access to its essential facilities.

33. Qwest's conduct was contrary to the competitively-neutral and non-discriminatory purpose of the FTA.

34. As a direct and proximate result of Qwest's conduct, UTOPIA has lost the opportunity to offer competitive services in certain geographic areas within its service area.

35. As a direct and proximate result of the Qwest-caused lost opportunity, UTOPIA has suffered damages in an amount to be proven at trial but estimated to be approximately \$300,000.

FOURTH CLAIM FOR RELIEF

36. UTOPIA incorporates all preceding paragraphs herein.

37. In 2005, during the course and scope of UTOPIA's construction of its network, it requested access to certain of Qwest's essential facilities.

38. Contrary to the provisions of the PTL, Qwest failed and refused to permit UTOPIA to have reasonable access to its essential facilities.

39. Qwest's conduct was contrary to the competitively-neutral and non-discriminatory purpose of the PTL.

40. As a direct and proximate result of Qwest's conduct, UTOPIA has lost the opportunity to offer competitive services to consumers in certain geographic areas within its service area.

41. As a direct and proximate result of the Qwest-caused lost opportunity, UTOPIA has suffered damages in an amount to be proven at trial but estimated to be approximately \$300,000.

SIXTH CLAIM FOR RELIEF

42. UTOPIA incorporates all preceding paragraphs herein.

43. In addition to acting contrary to the purposes of the PTL and FTA, Qwest has acted maliciously to interfere with UTOPIA's existing and potential economic interests for improper purposes and by improper means.

44. As a direct and proximate result of Qwest's conduct, UTOPIA has suffered an undetermined amount of damages which damages shall be proven at trial.

SEVENTH CLAIM FOR RELIEF

45. UTOPIA incorporates all preceding paragraphs herein.

46. Qwest is required to permit UTOPIA to have reasonable access to its essential facilities.

47. Such required access includes an implied covenant of good faith and fair dealing.

48. Contrary to the implied covenant of good faith and fair dealing, Qwest has not provided UTOPIA reasonable access to its essential facilities

49. As a direct and proximate result of Qwest's conduct, UTOPIA has suffered an undetermined amount of damages which damages shall be proven at trial.

WHEREFORE, UTOPIA prays for judgment against Qwest as follows:

1. Awarding UTOPIA damages against Qwest in an amount to be proven at trial;
2. Awarding UTOPIA punitive damages against Qwest in an amount to be determined at trial;

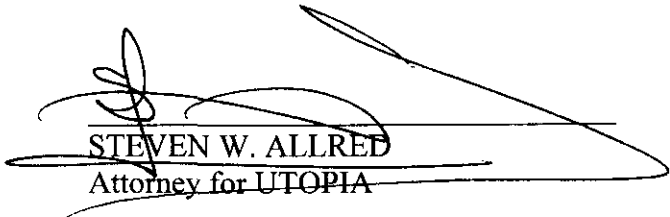
3. Enjoining Qwest from further interference with UTOPIA's construction, ownership or operation of its wholesale network and related activities;

4. Enjoining Qwest from further interference with UTOPIA's existing and potential economic and contractual interest;

5. Awarding UTOPIA its reasonable attorneys' fees, costs, and expenses; and

6. Such other and further relief as the Court deems proper.

DATED this 28th day of February, 2006.



STEVEN W. ALLRED
Attorney for UTOPIA

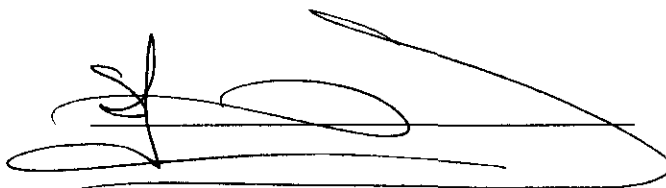
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 2006 I mailed a copy of the foregoing Answer to Amended Second Amended Complaint and Counterclaim, by depositing the same in the U.S. mail, postage prepaid, to the following:

David R. Goodnight
John H. Ridge
Maren R. Norton
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101

David L. Church
Blaisdell and Church
5995 South Redwood Road
Salt Lake City, UT 84123
Telephone: (801) 261-3407
Attorney for Defendant City of Riverton

David C. Richards
Christensen and Jensen
50 South Main #1500
Salt Lake City, Utah 84144
Attorney for Tetra Tech

A handwritten signature in black ink, appearing to be "David L. Church", written over a horizontal line.

Defendant's Address:

1385 West 2200 South, Suite 302
West Valley City, UT 84119