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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

QWEST CORPORATION,  
  
Plaintiff,

v.

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

Defendants.

Case No. 2:05CV00471 PGC  
The Honorable Paul G. Cassell

**AGREED ORDER DISMISSING WITH  
PREJUDICE QWEST'S CLAIMS NO. 4, 5,  
6, 7, AND 8 AND ALL OF UTOPIA'S  
COUNTERCLAIMS**

**AGREED ORDER**

Pursuant to the terms of the SETTLEMENT AGREEMENT BY AND BETWEEN THE UTAH  
TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY, TETRA TECH CONSTRUCTION SERVICES  
INC., AND QWEST CORPORATION, dated August 9, 2006, and attached hereto as Exhibit A:

1. Qwest Corporation's Fourth (Violation of State and Local Laws – Industry and

Safety Standards), Fifth (Trespass and Conversion), Sixth (Trespass to Chattels), Seventh (Negligence), and Eighth (42 U.S.C. § 1983) claims for relief, as stated in Qwest's Amended Second Amended Complaint (Docket No. 44) are dismissed *with prejudice*.

2. All of UTOPIA's counterclaims, including the First, Second, Third, Fourth, Sixth, and Seventh Counterclaims for Relief, as stated in UTOPIA's Answer to Amended Second Amended Complaint and Counterclaim (Docket No. 47) and its supplemental discovery responses, are dismissed *with prejudice*.

3. The above claims being dismissed *with prejudice* include claims that were previously dismissed *without prejudice* by the Court in its Order Granting Motion to Dismiss UTOPIA's Counterclaims and Denying Motion for Partial Summary Judgment dated July 18, 2006. Those claims previously dismissed *without prejudice* by the Court in its July 18, 2006 Order are hereby now dismissed *with prejudice*.

4. Prior to the filing of Qwest's Amended Second Amended Complaint (Docket No. 44), Qwest and UTOPIA had entered into a stipulation, approved by the Court (Docket No. 43), whereby Qwest dismissed *without prejudice* that portion of Qwest's original negligence claim stated in its original complaint (Docket No. 1) against UTOPIA arising out of the alleged cutting of Qwest's telecommunications cables and service wires during the construction and/or operation of UTOPIA telecommunications network. That portion of Qwest's negligence claim covered by the stipulation (Docket No. 43) remains dismissed *without prejudice*.

5. The above dismissals will be without an award of attorneys' fees or costs to any party.

6. This Court shall retain jurisdiction to enforce the Settlement Agreement and Release between Qwest and Defendants incorporated within this Order of Dismissal.

Dated this 28th day of August, 2006.

  
\_\_\_\_\_  
THE HONORABLE PAUL G. CASSELL

Presented by:

/s/ Loren G. Armstrong  
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/s/ L. Armstrong per email auth. of 8/25/06  
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**SETTLEMENT AGREEMENT BY AND BETWEEN  
THE UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY, TETRA  
TECH CONSTRUCTION SERVICES INC., AND QWEST CORPORATION**

THIS SETTLEMENT AGREEMENT ("Agreement") is effective as of August 8, 2006<sup>a</sup> (the "Effective Date") between the Utah Telecommunication Open Infrastructure Agency ("UTOPIA"), Tetra Tech Construction Services, Inc., ("Tetra Tech"), and Qwest Corporation ("Qwest"), together the "Parties."

**I. RECITALS**

A. There is presently pending in the U.S. District Court for the District of Utah a lawsuit entitled *Qwest Corporation v. the Utah Telecommunication Open Infrastructure Agency; the City of Riverton; and Tetra Tech Construction Services Inc.* (No. 2:05CV00471 PGC) (the "Lawsuit").

B. The Parties desire to settle all disputes between, among, or involving them arising out of or related to the tort claims that have been asserted in the Lawsuit, including specifically Qwest's claims for relief Nos. 5, 6, and 7 and UTOPIA's counterclaim No. 6 (collectively, the "Tort Claims Subject to Mediation").

NOW, THEREFORE, in consideration of the mutual promises, obligations and releases set forth below, the Parties agree as follows:

**II. TERMS AND CONDITIONS OF SETTLEMENT**

1. Record Verification Process. UTOPIA and Qwest will jointly conduct a review of all UTOPIA facility records and Qwest's pole ownership records within 45 business days of the signing of this Agreement. Each party will bear its own costs for this portion of the process.
2. Records Reconciliation Process. If during the Record Verification process, UTOPIA and Qwest are unable to resolve ownership disputes as between Qwest and any other entity claiming pole ownership, Qwest will bear the costs of a Records Reconciliation Process with the other alleged owner to make a final, good faith determination of pole ownership, to be completed within 45 business days of the finalization of the Record Verification Process.
3. Pole Application. For poles determined to be owned by Qwest (either through the Records Verification Process or Records Reconciliation Process) to which UTOPIA has attached without permission from Qwest, UTOPIA will then submit a Pole Application for such poles, in accordance with the terms of the Pole Attachment Agreement of March 28, 2006, including the payment of the standard application fee of \$668.86 / route. A route will be defined as the number of poles in a linear mile or 25 poles, whichever is greater.

a. Identification of Make Ready Work on Qwest Poles. Based on these Pole Applications, Qwest will identify any make ready work necessary on poles owned by Qwest related to UTOPIA's facilities, pursuant to Utah PSC rules and the Pole Attachment Agreement between UTOPIA and Qwest, limited to mid-span interference, separation, cross drilling of poles, down guys, lowest attachment and protruding bolts. The Parties agree that any lowest attachment issues shall be considered make ready work under this Agreement.

b. Identification of Remedial Work on Qwest Poles. Based on these Pole Applications, Qwest will identify any remedial work necessary on poles owned by Qwest related to UTOPIA's facilities, pursuant to the NESC, limited to mid-span interference, separation, cross drilling of poles, down guys, and protruding bolts.

c. Performance of Make Ready or Remedial Work. Any make ready work or remedial work identified above, other than Qwest cable splicing and other work that Qwest must do under applicable standards, necessary on Qwest-owned poles will be performed by UTOPIA/Tetra Tech, at UTOPIA/Tetra Tech's expense or, if UTOPIA/Tetra Tech prefer, by Qwest or a Qwest-approved contractor, at UTOPIA/Tetra Tech's expense, with such expenses to be billed to UTOPIA/Tetra Tech on a monthly basis. Within 10 days after the signing of this Agreement Qwest will provide to UTOPIA/Tetra Tech a list of Qwest-approved contractors.

d. If UTOPIA/Tetra Tech elects to perform the Make Ready Work or Remedial Work UTOPIA/Tetra Tech will pay \$29.29 / half hour for Qwest to conduct a post-inspection to ensure the necessary work was adequately performed consistent with this Agreement.

4. Interference with Qwest Facilities on Poles not Owned By Qwest. On poles not owned by Qwest to which UTOPIA has attached its facilities, Qwest will within 12 months after the completion of the Records Reconciliation Process, identify any and all alleged trespasses and damages to its facilities by physical address and Qwest pole number, along with a description of the damage and the correction that needs to be made, limited to mid-span interference, separation, cross drilling of poles, down guys, and protruding bolts in violation of NESC and pole owner standards. Tetra Tech agrees to repair any such violations within 60 days of such identification. Such repairs may be made by Tetra Tech, at Tetra Tech's expense, subject to a post-inspection or, if Tetra Tech prefer, by Qwest or a Qwest-approved contractor, at Tetra Tech's expense, with such expenses to be billed to Tetra Tech on a monthly basis, for that remedial work not otherwise inspected by a pole owner.

5. Repair of Alleged Improper Attachments with Qwest Facilities. Tetra Tech agrees to repair the improper attachments on the poles identified on the list attached as Exhibit A within 60 days according to the NESC. Tetra Tech will pay \$29.29 / half hour for Qwest to conduct a post-inspection to ensure the necessary work was adequately performed.

6. Designees. The Parties agree to cooperate in good faith to resolve all disputes that may arise under this Settlement Agreement. Qwest designates Don Green as its representative. UTOPIA

designates Scott Carlile as its representative. Tetra Tech designates Joe Santoso as its representative. Any party may designate an equivalent representative upon notice to the other parties.

7. Reciprocal Repair Obligation. If at any time during the processes identified in 1 – 5 above, the Parties become aware of Qwest attachments that violate the standards in the Pole Attachment Agreement, Qwest shall repair its facilities at its own expense within 60 days of notice. Any disputes will be subject to the dispute procedures of this Agreement.

8. Dispute Resolution. Other than the issue of lowest attachment on Qwest owned poles, in the event that the parties are unable to resolve any dispute that arises under this Agreement, the Parties agree to submit such disputes to the above-listed designees or their equivalents. In the event that the dispute is not resolved by the designees or their equivalents, the parties agree to submit the dispute to Jim Thomas, Roger Black, and Ron Seitz or their equivalents. If no resolution is reached, a binding decision to be made by a special master, to be agreed upon by the parties, if necessary. All parties reserve the right to bring disputes over lowest attachment on Qwest owned poles to the Utah PSC. By agreeing to such, UTOPIA does not agree that the Utah PSC has jurisdiction over it for any other purpose. Pending a decision on the lowest attachment issue by the Utah PSC, Qwest agrees that it will not file trespass claims against UTOPIA or Tetra Tech based on lowest attachment issues.

9. Mutual Release. The Parties hereby release, acquit, and forever discharge each other and their respective past, present, and future principals, officers, directors, employees, and their respective successors in interest, insurers and attorneys from: any and all actions including but not limited to, causes of action, all tort claims or demands for damages, attorneys' fees, costs, loss of profit, expenses, compensation, consequential damages or any other thing whatsoever, known or unknown, based on, arising out of, resulting from, or in any way related to the Claims Subject to Mediation. Within ten (10) days from the date of this Agreement, the Parties shall submit a Stipulation and Agreed Order dismissing all Claims against Tetra Tech and the remaining tort Claims against UTOPIA with prejudice. The Parties agree that those claims dismissed by Judge Cassell in the Court's July 18, 2006 order, shall be considered dismissed with prejudice.

10. Dismissal of Malicious Interference Claim. UTOPIA shall dismiss, with prejudice, those parts of its Sixth Claim for relief insofar as such claim seeks relief from the facts alleged in UTOPIA's supplemental Response to Interrogatory No. 20 under the heading "Legislation and Municipal Interference." UTOPIA specifically reserves that part of the Sixth Claim under the heading "Pole Attachment" denial and "Pole Avoidance Work" provided, however, if Qwest (in writing) agrees to dismiss its remaining claims for attorneys' fees pursuant to Section 1983 and 1988 with prejudice prior to August 16, 2006 at 5:00 p.m. M.D.T., UTOPIA agrees to dismiss its malicious interference claim with prejudice, its Sixth Claim in its entirety. In that event, the parties shall include these claims in the Stipulation and Agreed Order.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Either Party may file this Agreement with the Utah PSC, without any Party's waiver of the right to challenge the PSC's jurisdiction.

12. Entire Agreement, Amendment. This Agreement contains the entire agreement between the parties with regard to the matters herein set forth and supersedes all prior and contemporaneous negotiations, commitments and agreements with respect to its subject matter. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as set forth in this Agreement.

13. Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees and costs.

14. This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the Parties.

15. This Agreement is entered into as a compromise of a disputed claim. Nothing contained herein shall be construed as an admission of liability by any Party, as any such alleged liability is specifically denied.

<p>The Utah Telecommunication Open Infrastructure Agency</p> <p>By: <u>[Signature]</u>  <u>DAVIA J. SHAW</u></p> <p>Its: <u>ACTING EXECUTIVE DIRECTOR AND GENERAL COUNSEL</u></p> <p>And Approved as to form:</p> <p>By: <u>[Signature]</u>  <u>STEVEN ALLRED</u></p> <p>Its: <u>OUTSIDE COUNSEL</u></p>	<p>Tetra Tech Construction Services Inc</p> <p>By: <u>[Signature]</u>  <u>RONALD L. SEITE</u></p> <p>Its: <u>VICE PRESIDENT - TTCSE</u></p>
<p>Qwest Corporation:</p> <p>By: <u>[Signature]</u>  <u>Thomas W. Snyder</u></p> <p>Its: <u>Corporate Counsel</u></p>	

Witnessed:

By:   
Magistrate Judge Nuffer