

From: Steve Nelson <steve@stevenelson.us>  
To: delegates <delegates@wiredwest.net>  
Sent: Wed, Oct 21, 2015 4:24 pm  
Subject: [WWC Delegates] Latest draft of WW Operating Agreement

*Attached is the latest draft of the Operating Agreement, which will be sent to Select Boards with the information below. Please reach out to them as well. This is now a public document which you can circulate to other key people in your town such as Finance Committee and Broadband Committee members.*

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The Board of Directors of WiredWest is pleased to provide you the attached draft of the proposed Operating Agreement to govern WiredWest after its conversion to a Limited Liability Company to be known as "WiredWest Municipal Light Plant Cooperative LLC". We believe that it is the most appropriate and effective framework to enable towns to own and operate a regional fiber network together through WiredWest.

With your review and input, we hope to have a final Agreement for signing by early January. An overview of the purpose of the conversion and some provisions of the Agreement follows below.

*Please note that WiredWest will hold workshops for town officials and town counsels to discuss the Agreement on Friday, November 6 at 12-2 pm, Old Courthouse, 99 Main Street, Northampton, and at 4-6 pm, Becket Town Hall. Our outside counsel Walter Foskett and representatives of WiredWest will address your questions and concerns. Please RSVP to [wiredwesttownliaison@gmail.com](mailto:wiredwesttownliaison@gmail.com).*

What is the purpose of converting WiredWest to an LLC? There has been much discussion over the past few months about how WiredWest should be organized and operate now that many towns have passed warrant articles at town meetings to borrow their share of funds to bring broadband to the people in their communities. To date 24 towns have done so, for a total of \$38 million, which will be matched with \$22 million from the Massachusetts Broadband Institute. Town borrowings were authorized under Massachusetts General Laws Chapter 44, Section 8(8), for "establishing a telecommunications system operated by a municipal lighting plant," which MLPs can do by joining together as members of an MLP Cooperative.

As an MLP Cooperative, WiredWest is "a body politic and corporate" performing "an essential public function." MGL Ch. 164, Sec. 47C(b). As "a body politic" it is governed by its member towns to "conduct its business primarily for the mutual benefit of its members." MGL Ch. 164, Sec. 47C(d). At the same time it is a corporation, formed under Articles of Organization filed with the Secretary of the Commonwealth in 2011, called WiredWest Communications Cooperative Corporation.

When it was formed the corporation did not issue capital stock, which it was not required to do. MGL Ch. 164, Sec. 47C(c). While they control WiredWest through representatives on its Board of Directors, our member towns do not at present own the corporation. Moreover, the current corporate form is more suitable for one having thousands of shareholders. On the other hand,

a Limited Liability Company is more appropriate for a smaller number of owners who, as its Members, have specific ownership shares in proportion to the amounts each invests in it.

We anticipate that the WiredWest corporation will be converted to an LLC early in January through a filing with the Secretary. At that time towns wishing to participate in the WiredWest regional broadband network will, through their Municipal Light Plants, sign the Operating Agreement to become Members of the LLC, and in so doing commit their share of the funds for the regional network to WiredWest. Those and only those Member MLPs will own WiredWest, which will own the network.

What is the governance structure of the LLC? There is a key distinction in the Agreement between two bodies which will govern the WiredWest LLC.

1. The governing body of each Member MLP, typically the town Select Board, will appoint a Representative to act on its behalf and to vote on the corporate matters which are the purview of the Members, as specified in Section 2.8 of the Agreement. These votes will be on a proportional basis in relation to Member shares, called "Percentage Interests" in the Agreement (Section 8). This is the basic structure of any LLC.

2. The governing body of each Member MLP will also nominate a Director and Alternate Director to the Board of Directors. MGL Ch. 164, Sec. 47C(e) requires that they be nominated and elected, not appointed. Under the Agreement, the Members' Representatives will elect the Board nominees, who will be responsible for overseeing the business of the Cooperative (Section 3.3) and will vote on a one town, one vote basis. The Agreement stipulates that "All other action not specifically reserved to the Members...shall be taken by the Board of Directors" (last paragraph of Section 3.3).

While it is up to the governing body of each Member MLP to appoint its representative and to nominate a Director to the Board, we expect that in most cases it will be one and the same person. In fact, we encourage that it be the same person, who will then be fully informed about and involved with the affairs of WiredWest. Think of that person as wearing two hats: as a Member voting on corporate matters on a proportional basis, and as a Director voting on business and operational matters on a one town, one vote basis.

How are town funds contributed to and managed by the LLC? When an MLP signs the Operating Agreement, it commits to provide the funding which is the town's share of the broadband project as determined by MBI. These funds will constitute each Member MLP's Capital Account (Section 7). An anticipated schedule for then making the requisite capital contributions is attached to the Agreement as Schedule B. WiredWest will be responsible for providing its Members sufficient notice when town contributions are due, and will then pass those funds on to MBI. WiredWest will act on behalf of its Members to oversee network design and construction, and the use of town funds.

How will WiredWest earnings be distributed to cover town's debt service? In the Statement of Principles in the Operating Agreement, Section 1.4, WiredWest commits to paying the town's debt service once its earnings are sufficient to cover Operating Costs and certain legal requirements (PILOT

payments to towns and reserve requirements). Moreover, the Members themselves have the power to determine the distribution of retained earnings.

Can a Member withdraw from WiredWest? Yes it can, but to assure the stability of WiredWest as it begins operations, a Member may not do so until ten years after it joined. A withdrawing Member will be bought out by the remaining Members and compensated for its percentage share remaining in the Capital Accounts and not yet reimbursed for debt service. But ownership of the network and its components must remain with WiredWest to assure its ongoing operability, and customers will continue to be served by WiredWest.

There are no doubt many more provisions to be clarified and issues to be addressed, so we encourage you and your town counsel to attend the workshops on November 6. We look forward to working with you to implement a new organizational structure for WiredWest which will best serve the needs and interests of our towns and their citizens.

Steve Nelson  
Legal/Governance Chair  
WiredWest