

10/21/15 DRAFT

OPERATING AGREEMENT

OF

WIREDWEST MUNICIPAL LIGHT PLANT COOPERATIVE LLC

Dated as of January __, 2016

TABLE OF CONTENTS

Section 1 – Definitions, Name, Purposes, Principal Office, Seal and Fiscal Year ...	1
1.1 Definitions.....	1
1.2 Name	4
1.3 Purposes	4
1.4 Statement of Principles	5
1.5 Principal Office	6
1.6 Seal.....	6
1.7 Fiscal Year	6
1.8 Duration	6
1.9 Title to Cooperative Property.....	6
1.10 No Partnership Relationship	7
Section 2 – Members	7
2.1 Qualification.....	7
2.2 Admission of new Members	7
2.3 Powers and Rights.....	8
2.4 Withdrawal.....	8
2.5 Expulsion of a Member.....	10
2.6 Removal of a Representative	11
2.7 Restrictions on Transfer.....	12
2.8 Action by Members.....	12
2.9 Meetings of Members	14
Section 3 – Board of Directors; Executive Committee.....	14
3.1 Appointment, Election, Number and Classes	14
3.2 Tenure	15
3.3 Powers.....	15
3.4 Regular Meetings	16
3.5 Special Meetings	16
3.6 Notice.....	16
3.7 Quorum	16
3.8 Chairman of the Board.....	16
3.9 Action by Vote.....	16
3.10 Compensation	16
3.11 Executive Committee.....	17
3.12 Executive Committee Terms.....	17
3.13 Other Committees	17

Section 4 – Officers and Agents	17
4.1 Enumeration and Qualification	17
4.2 Powers.....	18
4.3 Election	18
4.4 Tenure	18
4.5 General Manager.....	18
4.6 Management.....	18
4.7 Treasurer and Vice Treasurer.....	18
4.8 Secretary.....	19
Section 5 – Resignations and Removals	19
5.1 Resignations.....	19
5.2 Directors.....	19
5.3 Executive Committee Members.....	20
5.4 Officers	20
5.5 Notice and Hearing	20
5.6 No Compensation.....	20
5.7 Conflicts with Employment Agreements.....	21
Section 6 – Limited Liability	21
6.1 Limited Liability of Members.....	21
Section 7 – Capital	21
7.1 Capital Contributions	21
7.2 Additional Capital Contributions.....	22
7.3 Form of Capital Contributions.....	23
7.4 Capital Accounts.....	23
Section 8 -- Percentage Interests	24
8.1 Allocation of Percentage Interests	24
8.2 Certificate of Percentage Interests	24
8.3 Replacement of Certificates of Percentage Interests.....	24
Section 9 – Insurance and Indemnification of Directors and Officers	25
9.1 Insurance	25

9.2 Indemnification	25
9.3 Rights to Indemnification.....	26
Section 10 – Conflicts and Confidentiality	26
10.1 Interested Transactions	26
10.2 Confidentiality	27
10.3 Director and Officer Agreements.....	27
Section 11 – Distribution of Funds	27
11.1 Periodic Distributions of Available Funds.....	27
11.2 On Dissolution	28
Section 12 – Record Keeping and Accounting Matters	29
12.1 Records	29
12.2 Other Records	29
12.3 Delivery and Inspection	29
12.4 Reports	30
12.5 Accounting.....	30
Section 13 – Execution of Papers	30
13.1 Execution of Papers	30
Section 14 – Miscellaneous Provisions.....	30
14.1 Evidence of Authority.....	30
14.2 Severability	30
14.3 Headings and Counterparts	31
14.4 Notices	31
14.5 Survival	31
14.6 Governing Law	31
14.7 Dispute Resolution.....	31
14.8 Entire Understanding and Agreement.....	32
Schedule A	34
Schedule B	35
Schedule C	36

OPERATING AGREEMENT

OF

WIREDWEST MUNICIPAL LIGHT PLANT COOPERATIVE LLC

THIS OPERATING AGREEMENT (“Agreement”) of WiredWest Municipal Light Plant Cooperative LLC, a Massachusetts limited liability company (the “Cooperative”), is entered into effective as of January __, 2016, (the “Effective Date”), by and among the members listed on Schedule A attached hereto (“Members”).

WHEREAS, the Articles of Organization of the WiredWest Communication Cooperative Corporation (the “WiredWest Corporation”) were filed with the office of the Massachusetts Secretary of State (the “Secretary of State”) on December 14, 2011;

WHEREAS, on January __, 2016, a Certificate of Conversion of the WiredWest Corporation and a Certificate of Organization of the WiredWest Municipal Light Plant Cooperative LLC (the “Certificate”) was filed with the Secretary of State pursuant to the Massachusetts Limited Liability Company Act (the “Act”) and Section 47C of the Massachusetts General Laws, Chapter 164 (“Chapter 164”) which converted the WiredWest Corporation into the Cooperative;

WHEREAS, the Cooperative was formed for the purposes set forth under Section 1.3 of this Agreement; and

WHEREAS, the Members desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Cooperative will be managed;

NOW, THEREFORE, the Members hereby agree that the terms and conditions under which they will own and operate the Cooperative under the Act and Section 47C of Chapter 164 are as follows.

SECTION 1

DEFINITIONS, NAME, PURPOSES, PRINCIPAL OFFICE, SEAL AND FISCAL YEAR

1.1 Definitions. In this Agreement, the following terms shall have the following meanings:

- (a) “Act” means the Massachusetts Limited Liability Company Act, as amended from time to time.

- (b) “Additional Capital Contributions” as set out in Section 7.2 means any contributions of capital to the Cooperative by the Members after the Effective Date other than as set forth on Schedule B.
- (c) “Agreement” means this Operating Agreement of WiredWest Municipal Light Plant Cooperative LLC entered into by and among the Members.
- (d) “Alternate” means the alternate Director nominated by each Member and elected by the Members in accordance with Section 3.1.
- (e) “Board of Directors” means the then serving Directors as described in Section 3.1(a) and the General Manager and Chairman of the Board.
- (f) "Broadband Assets" means (i) all of the funds allocated or granted by the Massachusetts Broadband Institute to a Member for the purpose of financing the design and construction of the WiredWest Regional Network, (ii) all of the proceeds of borrowings of a Member under M.G.L. Chapter 44, Section 8(8) for the purpose of financing and establishing the WiredWest Regional Network and (iii) all documentation, including without limitation all engineering drawings and designs, and all equipment and facilities acquired or constructed by a Member using the funds or proceeds set forth in the foregoing clauses (i) and (ii) or otherwise acquired under M.G.L. Chapter 44, Section 8(8).
- (g) “Capital Account” shall have the meaning ascribed to it by Section 7.4.
- (h) “Capital Contributions” means contributions of capital or the in-kind equivalent thereof in the form of design documentation, equipment or facilities, or the commitment to make such contributions in accordance with Schedule B, whether Capital Contributions or Additional Capital Contributions made by any one or more Members pursuant to Section 7 or upon admission to Membership in the Cooperative, as set out in Schedule B.
- (i) “General Manager” means the chief executive officer of the Cooperative as described in Section 4.5.
- (j) “Certificate” means the Certificate of Organization of the Cooperative filed with the Secretary of State of the Commonwealth of Massachusetts.
- (k) “Certificate of Percentage Interests” means the certificate issued by the Cooperative to a member to represent that Member’s share of Percentage Interests.

- (l) “Chairman of the Board” means a Director elected by the Board of Directors to preside over meetings as described in Section 3.8.
- (m) “Cooperative” means WiredWest Municipal Light Plant Cooperative LLC.
- (n) “Directors” means those Directors nominated by each Member and elected by the Members in accordance with Sections 3.1.
- (o) “Effective Date” shall have the meaning set forth in the preamble to this Agreement.
- (p) “Effective Withdrawal Date” means the date on which a Member’s withdrawal from Membership becomes effective pursuant to Section 2.4(a).
- (q) “Majority of Percentage Interests” means more than fifty percent (50%) of the total Percentage Interests.
- (r) “M.G.L.” means Massachusetts General Laws.
- (s) “Members” are the MLPs set out in Schedule A plus any other MLPs admitted to Membership pursuant to Section 2.1 and represented at meetings of the Cooperative by an individual appointed by such Member; each Member must be allocated some Percentage Interest or Percentage Interests, but shall not include any Withdrawn Members.
- (t) “Membership” means being a Member of the Cooperative.
- (u) MLP means a municipal lighting plant established in accordance with M.G.L. Ch. 164, §34.
- (v) “Outstanding Balance” with respect to any Withdrawn Member shall mean the sum of (i) the Redemption Price applicable to such Withdrawn Member, plus (ii) all interest then accrued thereon, if any, less (iii) all amounts previously paid by the Cooperative to such Withdrawn Member pursuant to Section 2.4 or pursuant to any promissory note delivered pursuant to Section 2.4(c)(ii), less (iv) all amounts previously distributed by the Cooperative to such Withdrawn Member pursuant to Section 11.1 after the Effective Withdrawal Date applicable to such Withdrawn Member.
- (w) “Percentage Interests” are the ownership rights in and of the Cooperative allocated on a percentage basis amongst the Members in accordance with their Capital Contributions so that the aggregate Percentage Interests of all Members always equals one hundred percent.

- (x) "PILOT" shall have the meaning ascribed to it by Section 1.4(i).
- (y) "Principal Office" means the principal place of business of the Cooperative pursuant to Section 1.4.
- (z) "Redemption Price" shall have the meaning ascribed to it by Section 2.4(c).
- (aa) "Representative" means the person appointed by a Member to represent the Member at meetings of the Members.
- (bb) "Restricted Membership Period" has the meaning set forth in Section 2.4(a).
- (cc) "Secretary" means the officer of the Cooperative who has clerk functions as described in Section 4.10.
- (dd) "Super Majority of Percentage Interest" means at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the total Percentage Interests.
- (ee) "Treasurer" means the officer of the Cooperative who has treasurer functions as more fully described in Section 4.9.
- (ff) "Vote" means a vote by Members and Directors then present and voting at a meeting.
- (gg) "WiredWest Regional Network" has the meaning set forth in Section 1.3(a) of this Agreement.
- (hh) "Withdrawn Member" means any former Member who has delivered a notice of withdrawal pursuant to Section 2.4.

All definitions in Section 1.1 are provided for ease of reference. Any conflict in a definition contained in Section 1.1 and any other Section or Sections shall be resolved by reliance on that other Section or Sections and not on Section 1.1.

1.2 Name. The name of the Cooperative is "WiredWest Municipal Light Plant Cooperative LLC". The Cooperative has been organized as a Massachusetts limited liability company by the filing of the Certificate pursuant to the Act with the Massachusetts Secretary of State.

1.3 Purposes. The purposes of the Cooperative are to:

- (a) transact any lawful business associated with planning, building and operating a

regional fiber-optic network that enables the provision of comprehensive, affordable, reliable and high-quality internet, telephone, and television services as well as any new and enhanced services to all the residents, businesses and institutions of the towns in which the Members are located, or in any other towns or cities in which the Cooperative is authorized to conduct business (the “WiredWest Regional Network”);

- (b) exercise all of the powers set out in section 47C of Chapter 164;
- (c) engage in all other business activities and purposes as may be allowed by law; and
- (d) engage in all activities incidental to or necessary to effect the foregoing purposes, all on a cooperative basis as an instrumentality of the Commonwealth of Massachusetts in accordance with Sections 34 and 47C of Chapter 164 and as a Cooperative among Massachusetts municipal light plants, each being an instrumentality of the Commonwealth of Massachusetts; and
- (e) carry on any other activity which the Board of Directors determines in their discretion is related to or which is in furtherance of such purposes that may be lawfully carried on by a limited liability company organized under the Act.

1.4 Statement of Principles. The Cooperative will adhere to the following principles:

- (a) Universal Access: Every home, business, nonprofit organization and municipal facility in its service area should have access to broadband and other contemporary telecommunications services.
- (b) Affordable Services: To achieve that goal, the Cooperative will provide high-quality services at affordable rates competitive with the marketplace and consistent with financial conditions.
- (c) Regional Solution: To deliver those services, the Cooperative will own and operate a regional fiber-to-the-premises network designed and built to be cost-effective, reliable and sustainable.
- (d) Future-proof: The network will have the capacity, capabilities, upgradability and scalability to serve the needs of its customers and Members for the usable life of the network.
- (e) Community Owned: The Cooperative will be owned by its Member MLPs in shares proportional to their financial commitment to the Cooperative, and they likewise will be responsible to meet their commitments to the Cooperative fully

and in a timely manner.

- (f) Community Operated: It will be operated for the benefit of its Members, who will conduct the governance and oversight of the Cooperative so as to ensure that its policies, practices and operations serve the interests of their towns and their people.
- (g) Financially Responsible: Its business model will be based on realistic and justifiable assumptions so as to enable it to operate sustainably over the long term.
- (h) Responsibility to Members: WiredWest will oversee the design and construction of the network, and Members' expenditures therefor, on behalf of and to protect the interests of its Members.
- (i) Repayment of Member Contributions: Once its revenues are sufficient to cover its operating costs, required payments to towns in lieu of taxes ("PILOT") and reserve requirements, it will repay to the fullest extent feasible the financial contributions made by its Members.

1.5 Principal Office. The principal office ("Principal Office") of the Cooperative in the Commonwealth of Massachusetts shall be located at Old Courthouse, 99 Main Street, Northampton Massachusetts 01060 unless the Board of Directors chooses a different location and the Members are notified of the change. Any change of the Principal Office shall be effective upon filing of an appropriate certificate with the Secretary of State of the Commonwealth of Massachusetts.

1.6 Seal. The seal of the Cooperative shall, subject to alteration by the Board of Directors, consist of a flat-faced circular die with the word "Massachusetts", together with the name of the Cooperative and the year of its organization, cut or engraved thereon.

1.7 Fiscal Year. Except as from time to time otherwise provided by the Board of Directors, the fiscal year of the Cooperative shall end on the last day of June.

1.8 Duration of the Cooperative. The Cooperative shall continue in existence until terminated in accordance with Section 11.2 hereof.

1.9 Title to Cooperative Property. All property owned by the Cooperative, whether real or personal, tangible or intangible, shall be deemed to be owned by the Cooperative as an entity, and no Member, individually, shall have any ownership of such property. The Cooperative may hold any of its assets in its own name or in the name of its nominee, which nominee may be one or more individuals, partnerships, trusts or other entities. No Member has the right to partition any property owned by the Cooperative.

1.10 No Partnership Relationship. Notwithstanding, but not in limitation of, any other provision of this Agreement, the parties understand and agree that the creation, management and operation of the Cooperative shall not create or imply a general partnership or joint venture between or among the Members and shall not make any Member the agent or partner of any other Member for any purpose.

SECTION 2

MEMBERS

2.1 Qualification.

- (a) All Members must qualify as municipal lighting plants established in accordance with M.G.L. Ch. 164, §34.
- (b) The Members of the Cooperative are set out in Schedule A attached hereto and such other MLPs that may be admitted as Members in accordance with the terms of this Agreement. Each Member shall have the percentage interests as set out on Schedule A under the heading "Percentage Interests" or as changed pursuant to this Agreement.
- (c) Notwithstanding the foregoing or any other provision in this Agreement, no MLP shall be a Member unless that MLP holds a Percentage Interest.
- (d) All Members must appoint a Representative.

2.2 Admission of New Members.

- (a) New members may be admitted to the Cooperative upon a Vote of Members holding a Super Majority of the Percentage Interests.
- (b) The Members shall have the authority to determine the class, if any, and rights of the new members, and the contribution to be made by such new member. Each additional Member admitted to the Cooperative in accordance with this provision shall, as a precondition to such admission, execute this Agreement or another document acknowledging its acceptance and agreement to be bound by the terms hereof.
- (c) In connection with any such admission of additional members, the Percentage Interests of the existing Members shall be diluted proportionately, based on their respective Percentage Interests immediately prior to any such dilution. Without limiting the generality of the foregoing, the interest of any new member admitted

to the Cooperative in the net profits, net losses and distributions of cash or property of any nature, may have such priority or priorities in relationship to the interests therein of the Members, as the Members may determine, provided that the relative priorities of the existing Members in the net profits, net losses and cash distributions of any nature of the Cooperative may not be altered as a result of the admission of any such new Member.

- (d) Each MLP who is hereinafter admitted to the Cooperative as a Member hereby (i) consents to the admission of any such new Member on such terms the Members may determine and to any amendment to this Agreement that may be necessary or appropriate to reflect the admission of any new member and the terms on which it invests in the Cooperative; and (ii) acknowledges that, in connection with admission of any such MLP, such member's interest in allocations of net profits and net losses, and distributions of cash and property of the Cooperative, and net proceeds upon liquidation of the Cooperative, may be diluted or otherwise altered.

2.3 Powers and Rights. The Members shall have such powers and rights as are vested in them by law, the Certificate, and this Agreement. The right of Directors nominated by a Member to Vote and all of the Member's right, title, and interest in or to the Cooperative shall cease on the termination of its Membership.

2.4 Withdrawal.

- (a) A Member may not withdraw from Membership in the Cooperative until ten calendar years after the date of execution of this Agreement by such Member (the "Restricted Membership Period"). After the Restricted Membership Period ends, a Member may withdraw from Membership in the Cooperative by delivering a written notice of withdrawal to the Cooperative at its Principal Office. Such notice of withdrawal shall be effective sixty (60) days after the day it is received by the Cooperative unless a later date is specified in the notice (the "Effective Withdrawal Date"); provided that the Cooperative has not entered into financial obligations (bonds, loans or other financial vehicles) based on or requiring the participation of said Member. Liabilities under contracts in force at the time of any such termination shall not be affected, except to the extent provided in such contracts. If a member withdraws from the Cooperative, any membership or annual fees which have been paid are not refundable. Acceptance of the notice of withdrawal shall not be necessary to make it effective unless it so states. A Member shall be deemed to be a "Withdrawn Member" effective on the applicable Effective Withdrawal Date.
- (b) Effective as of the Effective Withdrawal Date applicable to a Withdrawn Member, (i) such Withdrawn Member's Capital Account and Percentage Interests

shall each be reduced to zero (0), (ii) the Percentage Interests previously held by such Withdrawn Member shall be allocated to the Members in proportion to their respective holdings of Percentage Interests, (iii) such Withdrawn Member shall no longer be entitled to any Vote on any matter, (iv) such Withdrawn Member shall no longer be entitled to appoint a Director, and (v) Schedules A, B and C shall be amended by the General Manager of the Cooperative acting alone and without the necessity of first obtaining any Vote or consent of the Members or Directors to reflect the changes described in this Section 2.4(b) and Section 7.4. Any Director appointed by a Withdrawn Member shall be deemed to have resigned effective as of the Effective Withdrawal Date applicable to that Withdrawn Member.

- (c) The Cooperative shall pay to redeem the Percentage Interests of a Withdrawn Member on or within three years of the Effective Withdrawal Date applicable to that Withdrawn Member. The redemption price on such Effective Withdrawal Date shall be equal to the amount of any positive number obtained from the following calculation (“Redemption Price”):

$A \times B$

Where:

A = the aggregate amount of the Capital Accounts (as that term is defined in Section 7.4) of all Members, including the Withdrawn Member, as reflected in the Cooperative’s accounts immediately prior to such Effective Withdrawal Date;

and

B = that Withdrawn Member’s Percentage Interests as reflected in the Cooperative’s records immediately prior to such Effective Withdrawal Date.

- (d) If the Redemption Price is equal to zero or a negative number, the Cooperative shall have no obligation to the Withdrawn Member. If the Redemption Price is a positive number and the Cooperative does not pay the Redemption Price in full to the Withdrawn Member on such Effective Withdrawal Date, the Cooperative shall do the following:

(i) within three (3) years of such Effective Withdrawal Date pay to the Withdrawn Member the unpaid Redemption Price plus interest thereon from such Effective Withdrawal Date calculated each calendar month at the “prime rate” as published in the “Money Rates” section of the Wall Street Journal published on each monthly anniversary of such Effective Withdrawal Date or, if not published

that day, on the next publication date and compounded annually on the anniversary date of such Effective Withdrawal Date; and

(ii) deliver to the Withdrawn Member on such Effective Withdrawal Date a promissory note in the principal amount of the unpaid Redemption Price and which reflects the terms required by Section 2.4(d)(i).

(e) Upon the full payment of the Outstanding Balance to a Withdrawn Member the Cooperative shall have no further obligation to the Withdrawn Member.

2.5 Expulsion of A Member.

(a) A Member in default of any of its obligations (i) to the Cooperative or (ii) under any bonds, loans or other financial instruments used to finance its Membership in the Cooperative shall be expelled as Member of the Cooperative, provided that liabilities under contracts in effect at the time of such termination shall not be affected except to the extent provided in such contracts.

(b) A Member may be expelled from the Cooperative “For Cause” upon the affirmative Vote of the Members holding a Super Majority of the Percentage Interests at any annual or special meeting of the Members at which a quorum is present. For the purposes of this Agreement, “For Cause” means that a Member or its Representative:

(i) has engaged in a business activity, taken any action, or failed to take action, the effect of which would jeopardize or threaten the Cooperative's status or cause the Cooperative to lose its status as an instrumentality of the Commonwealth of Massachusetts or as a cooperative of municipal light plants, each being an instrumentality of the Commonwealth;

(ii) has taken any action or failed to take any action the effect of which would jeopardize or threaten the status of such Member as an instrumentality of the Commonwealth of Massachusetts or other state government, or cause such Member to lose its status as an instrumentality of the Commonwealth of Massachusetts;

(iii) has taken any action or failed to take any action the effect of which would jeopardize or threaten the status of any other Member as an instrumentality of the Commonwealth of Massachusetts or other state government, or cause any other Member to lose its status as an instrumentality of the Commonwealth of Massachusetts;

(iv) has (a) applied for or consent to the appointment of a receiver, trustee or

liquidator of all or a substantial part of any of its assets; (b) be unable, or admit in writing its inability, to pay its debts as they mature; (c) file or permit the filing of any petition, case arrangement, reorganization, or the like under any insolvency or bankruptcy law, or the adjudication of it as a bankrupt, or the making of an assignment for the benefit of creditors or the consenting to any form or arrangement for the satisfaction, settlement or delay of debt or the appointment of a receiver for all or any part of its properties; or (d) any action shall be taken by the Member for the purpose of effecting any of the foregoing;

- (v) has an order, judgment or decree shall be entered against it, or a case shall be commenced, against the Member, without its application, approval or consent by any court of competent jurisdiction, approving a petition or permitting the commencement of a case seeking reorganization or liquidation of the Member or appointing a receiver, trustee or liquidator of the Member, or of all or a substantial part of the assets of the Member and the Member, by any act, indicate its approval thereof, consent thereto, or acquiescence therein, or such order, judgment, decree or case shall continue unstayed and in effect for any period of thirty (30) consecutive days, or an order for relief in connection therewith shall be entered;
 - (vi) fails to pay any other indebtedness or obligation, or if any such other indebtedness or obligation shall be accelerated, or if there exists any event of default under any instrument, document or agreement governing, evidencing or securing such other indebtedness or obligation; or
 - (vii) has engaged in any other action that has a material adverse effect on the financial condition of the Cooperative or any other Member.
- (c) Before deciding whether to expel a Member as set forth in subparagraphs 2.5(a) and (b) above, the Chairman of the Board shall provide the subject Member at least a sixty (60) day notice of the meeting at which the Members' intend to Vote on the matter and the reason for the Vote. If the Member cures the matter prior to the meeting, the Members shall forbear any actions with respect to the subject Member's expulsion. The cure shall be affected by a demonstration to the Members that the matter has been resolved.
- (d) An expelled Member's Membership shall be redeemed in accordance with the redemption procedures for a Withdrawn Member set forth in Section 2.4 of this Agreement.

2.6 Removal of a Representative. Except as expressly provided for herein, a Representative may be removed only by the Member which appointed him or her. Notwithstanding the

foregoing, the Members may remove a Representative for the following reasons:

- (a) gross negligence or willful misconduct in the performance of his or her duties as a Representative;
- (b) malfeasance as a Representative;
- (c) conviction of a felony offense;
- (d) failure to attend at least three (3) consecutive regular and/or special meetings of the Members; or
- (e) the arising of a conflict of interest between the Cooperative and the Representative, the Representative's immediate family, or any entity in which the Representative or a member of the Representative's immediate family has an interest as an agent, consultant, independent contractor, employee, officer, director, or owner, including as a stockholder, partner, or member other than a conflict of interest which arises as a result of a Representative having been appointed by Member or a Representative having an interest of any kind, including as an employee, in the appointing Member.

The Chairman of the Board shall provide the Representative with at least a thirty (30) day notice of the meeting at which the Members' intend to Vote on the matter and the reason for the Vote. If the Representative cures the matter prior to the meeting, the Members shall forbear any actions with respect to the subject removal of the Representative. The cure shall be affected by a demonstration to the Members that the matter has been resolved.

2.7 Restrictions on Transfer. No Member of the Cooperative may transfer its membership interest.

2.8 Action by Members. All Votes by the Members shall be based upon the Percentage Interests held by each Member. Notwithstanding any other provision of this Agreement, unless otherwise specified below the following actions shall only be taken with the affirmative Vote of Members holding a Super Majority of the Percentage Interests at any annual or special meeting of the Members at which a quorum is present:

- (a) the admission of new members and the number of percentage interests issuable to each new member;
- (b) the sale, assignment, transfer, pledge, lease, or exchange of all or substantially all of the Cooperative's property and assets, including by merger or consolidation with another entity;

- (c) the acquisition by purchase, lease or otherwise, of any real or personal property for amounts of \$100,000 or more;
- (d) the borrowing of money for the Cooperative from banks, other lending institutions, Members, or affiliates of the Members in amounts of \$100,000 or more, and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Cooperative to secure repayment of the borrowed sums;
- (e) prepayment in whole or in part, refinancing, recasting, increasing, modifying or extending any deed of trust, mortgage or other indebtedness of the Cooperative, and, in connection therewith, to execute any extensions, renewals or modifications of such deeds of trust or mortgages;
- (f) any amendment of the Certificate;
- (g) any decision to terminate or dissolve the Cooperative;
- (h) the amendment of this Agreement or any schedules attached hereto, except for administrative amendments not materially affecting any Member;
- (i) the expulsion of a Member or removal of its Representative;
- (j) the election of Directors and Alternates which shall require an affirmative Vote of Members holding a Majority of the Percentage Interests;
- (k) the removal of any Director or Alternate which shall require an affirmative Vote of Members holding a Majority of the Percentage Interests;
- (l) distribution of retained earnings;
- (m) calls by the Cooperative upon the Members for Additional Capital Contributions and the manner, value, and schedule by which those Additional Capital Contributions shall be made;
- (n) calls for a special meetings of the Members which shall require an affirmative Vote of Members holding a Majority of the Percentage Interests;
- (o) any Vote to override a decision taken by the Board of Directors; and
- (p) any Vote to call for an Additional Capital Contribution by the Members.

2.9 Meetings of Members.

- (a) Place of Meetings. Meetings of the Members shall be held in the Commonwealth of Massachusetts.
- (b) Regular Meetings. Regular meetings of the Members shall be held at least annually in August at such places and at such times as the Members may from time to time determine; provided, that any Member who is absent when such determination is made shall be given written notice of the determination. Notice for regular meetings shall be given by the Chairman of the Board.
- (c) Special Meetings. Notice of the time and place of all special meetings shall be given by the Member calling the meeting. Notice must be given orally, by telephone, by facsimile, or in writing, and such notice shall be sufficient if given in time to enable the Member to attend, provided, that such notice must, in any event, be received at least 24 hours before the meeting. No notice of any meeting of the Members need be given to any Member if such Member, by a writing filed with the records of the meeting (and whether executed before or after such meeting), waives such notice, or if such Member attends the meeting without protesting prior thereto or at its commencement the lack of notice to him.
- (d) Quorum of Members; Required Vote. At any meeting of the Members, Members holding a Majority of the Percentage Interests shall constitute a quorum, but a lesser number may adjourn any meeting from time to time without further notice. Unless otherwise provided by law or by this Agreement, business may be transacted only by a Vote the Members holding a Majority of the Percentage Interests then present at any meeting at which there is a quorum.

SECTION 3

BOARD OF DIRECTORS; EXECUTIVE COMMITTEE

3.1 Appointment, Election, Number and Classes.

- (a) The Board of Directors shall consist of one Director nominated by each Member and an Alternate nominated by each Member. Alternates shall have all of the rights and responsibilities of that Member's primary Director in the absence of the primary Director. The Directors are listed on Schedule C attached to this Agreement.

- (b) All Directors must be individuals.
- (c) Directors and Alternates elected by the Members have authority to act on behalf of their nominating Member on all matters at meetings of the Board of Directors.
- (d) Any vacancy created by the expiration of a term, or by the resignation, removal, death, or disability of a Director or Alternate shall be filled by a Director or Alternate nominated by the Member who nominated the former Director or Alternate.

3.2 Tenure.

- (a) All Directors shall have serve a three (3) year term unless earlier removed under Section 5, unless a position becomes vacant under Section 3.1(d), or unless a Director is deemed to have resigned pursuant to Section 2.4(b).
- (b) Any Director or Alternate may serve any number of terms whether consecutive or not.

3.3 Powers. The Board of Directors shall be directly responsible for:

- (a) setting policy for the Cooperative;
- (b) approving the annual budget to be presented to the Members;
- (c) electing officers;
- (d) approving material contracts;
- (e) establishing an Executive Committee;
- (f) the acquisition by purchase, lease or otherwise, of any real or personal property for amounts less than \$100,000 which will require an affirmative Vote of a majority of the Board of Directors present at the meeting; and
- (g) the borrowing of money for the Cooperative from banks, other lending institutions, Members, or affiliates of the Members in an aggregate amount of less than \$100,000 which shall require an affirmative Vote of two-thirds of the Board of Directors present at the meeting and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Cooperative to secure repayment of the borrowed sums which shall also require an affirmative Vote of two-thirds of the Board of Directors present at the meeting.

All other action not specifically reserved to the Members under this Agreement or the Act shall be taken by the Board of Directors. Each Director shall report on the business and finances of the Cooperative directly to the Member who nominated such Director.

3.4 Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly at such times and places within Massachusetts that shall from time to time be fixed by the Board of Directors; provided that the first quarterly meeting of each year shall be held on the date of the annual meeting of the Members immediately after such annual meeting. All meetings of the Board of Directors, whether regular or special, shall comply with the requirements of the Massachusetts Open Meeting Law and Public Records Law, as applicable

3.5 Special Meetings. Special meetings of the Board of Directors may be called by and at the discretion of the Chairman of the Board of Directors. Special meetings of the Board of Directors may also be called by at least ten (10) Directors who notify the Chairman of the desire to hold such meeting.

3.6 Notice. It shall be sufficient notice to a Director to send notice by personal delivery, overnight courier, mail, facsimile transmission, or electronic mail at least four days before the meeting addressed to the Director's usual or last known business or residence address or to give notice in person or by telephone at least twenty-four hours before the meeting. Notice of a meeting need not be given to any Director if a written waiver of notice, executed by the Director before or after the meeting, is filed with the records of the meeting, or to any Director who attends the meeting without protesting prior thereto or at its commencement the lack of notice. Neither notice of a meeting nor a waiver of notice need specify the purposes of the meeting.

3.7 Quorum. At any meeting of the Directors, Directors then in office representing at least a majority of the Board of Directors shall constitute a quorum. Any meeting may be adjourned from time to time by a Vote of a majority the Board of Directors then present cast upon the question, whether or not a quorum is present and the meeting may be held as adjourned without further notice.

3.8 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Members and Directors; provided that if he is unable to attend a meeting of the Members or Directors, the Vice Chairman of the Board, who shall also be a Director, or other designee of the Chairman, who shall be either a Representative or a Director, shall act in his place at such meeting.

3.9 Action by Vote. When a quorum is present at any meeting, a majority of the Directors of the Board of Directors present may take any action, except when a larger Vote is required by law or by this Agreement. Each Director shall have one Vote.

3.10 Compensation. The Directors, including members of the Executive Committee, may be entitled to compensation for their services as a Director and may be reimbursed for actual

expenses necessarily incurred in the performance of their duties. A Director who provides services to the Cooperative outside of the role of a Director, such as, without limitation, an employee or officer of, or consultant to, the Cooperative, may be compensated for such services as the Board of Directors shall determine.

3.11 Executive Committee. The Directors shall form an Executive Committee composed of at least five but no more than seven Directors selected from among the membership of the Board of Directors by a Vote of at least two-thirds of the Directors at a meeting at which a quorum is present. Officers of the Cooperative that shall be members of the Executive Committee shall include: Chairman of the Board, Vice-Chairman of the Board, Secretary and Treasurer. The Executive Committee will be responsible for managing the day-to-day affairs of the Cooperative, for approval of the management positions under Section 4.7 of this Agreement, and for calling and recording meetings of the Board of Directors and Executive Committee, including setting the agendas therefor. To assist it in the performance of its duties, the Executive Committee may establish working groups which are advisory in nature only and participation in which is not limited to Directors or Alternates. The Executive Committee may make recommendations to the Board with respect to matters of policy.

3.12 Executive Committee Terms. Members of the Executive Committee shall be elected annually by the Board of Directors at the meeting of the Board of Directors held on the date of the annual meeting of the Members. Nothing shall prohibit a member of the Executive Committee from serving consecutive terms.

3.13 Other Committees. The Board of Directors may establish such other committees of the Board of Directors, appoint to such committees the Directors or Alternates, and delegate to such committees the powers, except those which by law, the Certificate, or this Agreement are otherwise reserved, as the Board of Directors considers appropriate.

SECTION 4

OFFICERS AND AGENTS

4.1 Enumeration and Qualification. The officers of the Cooperative shall be a General Manager and a Chairman of the Board both elected by the Board of Directors and such other officers, including a Vice Chairman, Treasurer, a Vice Treasurer and a Secretary, as the Directors from time to time may in their discretion elect. The Cooperative may also have such agents, if any, as the Directors from time to time may in their discretion appoint. Any two or more offices may be held by the same person.

4.2 Powers. Subject to law, to the Certificate, and to the other provisions of this Agreement,

each officer shall have, in addition to the duties and powers set forth herein, such duties and powers as are commonly incident to his office unless otherwise designated by the Directors.

4.3 Election. The officers shall be elected annually by the Directors at their first meeting following the annual meeting of the Members. The Executive Committee may make recommendations to the Board of Directors as to the names of appropriate candidates for office.

4.4 Tenure. Except as otherwise provided by law or by the Certificate or by this Agreement, the officers shall each hold office until the first meeting of the Directors following the annual meeting of the Members and until their respective successors are chosen and qualified, unless a shorter period shall have been specified by the terms of the election, or in each case until he or she sooner dies, resigns, is removed or becomes disqualified.

4.5 General Manager. Subject to the guidance and direction of the Board of Directors, the General Manager shall have all chief executive functions, shall supervise and control all employees and shall supervise and control the day-to-day business of the Cooperative. The General Manager shall be an ex officio non-voting member of the Board of Directors if the General Manager has not been appointed to the Board of Directors by a Member. At least once each calendar quarter or more often as required by the Board of Directors, the General Manager shall provide a written report to the Board of Directors describing the business of the Cooperative in the preceding quarter and describing the current financial status of the Cooperative.

4.6 Management. The Directors, upon the recommendation of the General Manager, may from time to time designate, elect, and fix the duties and powers of a Finance Director, Technology Director and Sales & Marketing Director and, in their discretion, may from time to time change or revoke any such designation.

4.7 Treasurer and Vice Treasurer.

- (a) Unless otherwise prescribed by the Directors, the Treasurer shall be the chief financial and accounting officer of the Cooperative and shall be in charge of its funds, books of account, accounting records and valuable papers; shall calculate and maintain records of Members' Capital Accounts and Percentage Interests; and shall have such other duties and powers as may be prescribed from time to time by the Directors. The Treasurer shall be responsible to and shall report to the Directors, but the ordinary conduct of the Cooperative's business shall be under the supervision of the General Manager or such other officer as the Directors from time to time determine.
- (b) At least once each calendar year, or more often as required by the Directors, the Treasurer shall provide a written report to the Directors describing the current finances of the Cooperative, how the Cooperative performed financially in the preceding year, the profits available for potential distribution or reinvestment in

the business of the Cooperative, and how the Cooperative financially met the objectives of the Cooperative.

- (c) Any Vice Treasurers shall have such duties and powers as shall be prescribed from time to time by the Directors, the General Manager or the Treasurer, and shall be responsible to and shall report to the Treasurer.
- (d) The Treasure and any Vice Treasurers shall be properly bonded prior to assuming office.

4.8 Secretary. Unless otherwise prescribed by the Directors, the Secretary shall record all the proceedings of the Members and Directors in a book or series of books to be kept therefor, which book or books shall be kept at the Principal Office of the Cooperative or of its Secretary and shall be open at all reasonable times for inspection. The Secretary shall keep or cause to be kept the records of the Cooperative, which shall contain the names and record addresses of all Members of the Cooperative.

SECTION 5

RESIGNATIONS AND REMOVALS

5.1 Resignations. Any Director, Alternate, member of the Executive Committee or officer may resign at any time by delivering a resignation in writing to the General Manager or Secretary, or to a meeting of the Directors. Such resignation shall be effective upon receipt unless specified to be effective at some other time.

5.2 Directors. Except as expressly provided for herein, a Director or Alternate may be removed only by the Member which appointed him or her. Notwithstanding the foregoing, the Board of Directors may remove a Director or Alternate for the following:

- (a) Gross negligence or willful misconduct in the performance of his or her duties as a member of the Board of Directors;
- (b) Malfeasance as a member of the Board of Directors;
- (c) Conviction of a felony offense;
- (d) Failure to attend at least three (3) consecutive regular and/or special meetings of the Board without an Alternate being present, or in the case of an Alternate the Director being present; or
- (e) the arising of a conflict of interest between the Cooperative and the Director or

Alternate, the Director's or Alternate's immediate family, or any entity in which the Director or Alternate's or a member of the Director's or Alternate's immediate family has an interest as an agent, consultant, independent contractor, employee, officer, director, or owner, including as a stockholder, partner, or member other than a conflict of interest which arises as a result of a Director or Alternate having been nominated or elected by a Member, or a Representative having an interest of any kind, including as an employee, in the appointing Member.

Before deciding whether to remove a Director or Alternate, the Board shall provide that Director and the Member the Director represents at least a four week notice in writing of its intention to Vote on the matter and the opportunity for the subject Director to be heard by the Board prior to such Vote. In the event the Board determines by a two-thirds Vote to remove a Director or Alternate as provided for herein, the Board shall provide written notice of such determination and the reasons for the same to the Member represented by the Director. If the Director cures the matter prior to the next Board meeting but no longer than thirty (30) days following such notice, the Board shall forbear any actions with respect to the Director's removal determination. The cure shall be effected by a demonstration to the Board that the matter has been resolved, or by the Member's appointment of a Director or Alternate who is unaffected by the matter giving rise to the determination to remove.

5.3 Executive Committee Members. The Directors may, by a majority Vote, remove any members of the Executive Committee for any reason whatsoever. Intention to conduct such a Vote and notice thereof must be provided at the meeting of the Board prior to such Vote, or four weeks prior to such Vote, whichever is sooner.

5.4 Officers. The Directors may, by a majority Vote, remove any officer from office with or without cause.

5.5 Notice and Hearing. An Executive Committee member or an officer may be removed only after reasonable notice and opportunity to be heard before the Board of Directors.

5.6 No Compensation. No Director or officer resigning and (except where a right to receive compensation shall be expressly provided in a duly authorized written agreement with the Cooperative) no Director or officer removed, shall have any right to any compensation as such Director or officer for any period following his resignation or removal, or any right to damages on account of such removal, whether his compensation be by the month or by the year or otherwise, except by court order; unless in the case of a resignation, the Directors, or in the case of a removal, the body acting on the removal, shall in their or its discretion provide for compensation.

5.7 Conflicts with Employment Agreements. In the event of a conflict between this Agreement or any other agreement of the Members and an employment contract between the Cooperative and any officer setting out the terms of employment and notice of termination of that

officer, the provisions in the employment contract shall govern.

SECTION 6

LIMITED LIABILITY

6.1 Limited Liability of Members. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Cooperative, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Cooperative, and the Members shall not be obligated for any such debt, obligation or liability of the Cooperative solely by reason of being a member of the Cooperative. The Members shall not, except as required by the express provisions of the Act regarding repayment of sums wrongfully distributed to Members, be required to make any contributions to repay any debts, obligations or liabilities of the Cooperative. No Member in its capacity as such shall have the authority to act for or bind the Cooperative.

SECTION 7

CAPITAL CONTRIBUTIONS AND ANNUAL FEES

7.1 Capital Contributions.

- (a) Each Member acknowledges that such Member has reviewed the Schedule of Capital Contributions set forth on Schedule B to this Agreement (the "Schedule of Capital Contributions") and that by executing this Agreement such Member has committed to making the Capital Contributions set forth therein in accordance with this Section 7.1 and the Schedule of Capital Contributions, as the same may be amended from time to time in accordance with this Agreement.
- (b) Each Member hereby agrees that its Capital Contribution may be used without limitation for the construction, installation and start-up of the Cooperative's regional network.
- (c) Each Member hereby agrees to support the Purposes of the Cooperative enumerated in Section 1.3, and to adhere to its Statement of Principles in Section 1.4.
- (d) Each Member hereby agrees to contribute all of its right, title and interest in any Broadband Assets, whether now owned or hereafter acquired by such Member, to the Cooperative in accordance with the Schedule of Capital Contributions , as the

same may be amended from time to time in accordance with this Agreement.

- (e) The Capital Contributions to be made by each Member shall be equal to the amount of the Aggregate Capital Contributions set forth on Schedule B for each specified date multiplied by each Member's Percentage Interest.
- (f) Each Member shall receive a confirmation notice of the amount the Member's scheduled Capital Contribution sixty (60) days prior to the Scheduled Date of Capital Contribution set forth on Schedule B.
- (g) As of the Effective Date, each Member has made a Capital Contribution to the Cooperative in an amount equal to the Aggregate Capital Contribution across from the line item "Contribution on Effective Date on Schedule B multiplied by such Member's Percentage Interest.

7.2 Additional Capital Contributions.

- (a) Except as otherwise set forth in this Section 7.2, no Member shall be required to make an Additional Capital Contribution.
- (b) In the event the Cooperative, at any time after the Effective Date, requires capital ("Additional Capital Contributions") from the Members in excess of the amounts committed to be contributed pursuant to Schedule B, the following procedure shall be followed:
 - (i) the proposed Additional Capital Contribution must approved by Members holding at least a Super Majority of the Percentage Interests;
 - (ii) each Member shall have thirty (30) days from the date of the Vote under paragraph (i) to advise the General Manager or Treasurer in writing of its intention to make an additional capital contribution and the maximum amount it is willing to contribute, subject to obtaining approval at an annual or special town meeting to be held in the town where such member is located;
 - (iii) upon the earlier of receiving written notices from all Members or the expiration of the thirty (30) day period, the Treasurer shall calculate the Capital Contribution intended to be made by each Member by dividing equally the total amount of additional capital required by the number of participating Members, subject to any maximum contribution limits specified by Members in their written notices;
 - (iv) the Treasurer shall immediately notify each Member by facsimile,

telephone, or electronic mail and by mail of the amount each Member is to contribute;

- (v) each participating Member will thereafter have a period of three (3) calendar months to obtain approval at its respective town meeting;
- (vi) subject to obtaining approval at its respective town meeting, each Member shall make the Capital Contribution in accordance with any schedule approved by the Members, but in any event, no later than the end of the thirty (30) day period following the date of the notice given pursuant to Section 7.2(a)(iv); and
- (vii) in the event the full amount determined under paragraph 7.2(a)(i) is not contributed by the Members, the Members shall meet to determine what actions are necessary to deal with the deficiency.

In accordance with Section 8.1(c), the Members' respective Percentage Interests shall be recalculated by the Cooperative immediately after any Capital Contribution or any Additional Capital Contribution.

7.3 Form of Capital Contributions. All Additional Capital Contributions shall be made by the Members in cash, unless the Members, by a unanimous Vote, permit any Additional Capital Contributions to be made in a form other than cash in which case the Members, when they Vote, shall specify how such non-cash Additional Capital Contributions are to be valued and how they are to be contributed.

7.4 Capital Accounts. The Treasurer shall maintain records for a capital account ("Capital Account") in respect of each Member. Each Member's Capital Account shall be equal to the sum of all Capital Contributions and Additional Capital Contributions made by that Member to the Cooperative pursuant to Section 7 and as set forth on Schedule A, plus that Member's pro rata share (based on the Members' relative Percentage Interests) of the redistribution of the Capital Account (after adjustment for the amount of the Redemption Price) of any Withdrawn Member (effective as of the applicable Effective Withdrawal Date) and any Withdrawn Member, less the sum of all amounts distributed to the Member pursuant to Section 11. If a Member's Capital Account is a negative number, it will be deemed to be equal to zero.

SECTION 8

PERCENTAGE INTERESTS

8.1 Allocation of Percentage Interests.

- (a) The total Percentage Interests allocated amongst the Members shall always be equal to one hundred.
- (b) Subject to Section 8.1(c), the Percentage Interests shall be allocated to the Members as set out in Schedule A.
- (c) Any time after the Effective Date, whenever capital is contributed to the Cooperative by one or more Members, a Member withdraws as a Member pursuant to Section 2.4, or a new Member is admitted pursuant to Section 2.2, the Percentage Interests of each Member shall be recalculated by the Treasurer by dividing each Member's aggregate Capital Contributions by the aggregate of the Capital Contributions made by all Members. The Secretary will thereafter prepare and issue new Certificates of Percentage Interests to the Members in exchange for any Certificates of Percentage Interests issued prior to the contribution of capital. Any such previously issued Certificates of Percentage Interests shall be cancelled by the Secretary on the Cooperative's records.
- (d) Notwithstanding Section 8.1(c), Percentage Interests may be allocated to new Members on whatever basis the Members may select and the remaining Percentage Interests shall be reallocated among the Members who had been previously admitted to the Cooperative pro rata based on their Percentage Interests prior to the admission of the new Members.

8.2 Certificate of Percentage Interests. Every Certificate of Percentage Interests shall have conspicuously noted on its face or back either the full text of the restrictions set out in Section 8.3(a) or a statement of the existence of such restrictions and a statement that the Cooperative will furnish a copy of the restrictions to the holder of such Certificate of Percentage Interests upon written request and without charge. Every Certificate of Percentage Interests issued by the Cooperative shall set forth the Percentage Interests attaching thereto on its face or back either the full text of the preferences, voting powers, qualifications and special and relative rights of the Percentage Interests authorized to be issued or a statement of the existence of such preferences, powers, qualifications and rights and a statement that the Cooperative will furnish a copy thereof to the holder of such Certificate of Percentage Interests upon written request and without charge.

8.3 Replacement of Certificates of Percentage Interests. In case of the alleged loss, destruction, or mutilation of a Certificate of Percentage Interests, a duplicate Certificate of Percentage Interests may be issued in place of the lost, destroyed, or mutilated Certificate of Percentage Interest, upon such terms as the Directors may prescribe, including the presentation of reasonable evidence of such loss, destruction, or mutilation and the giving of such indemnity as the Directors may require for the protection of the Cooperative or any transfer agent or registrar.

SECTION 9

INSURANCE AND INDEMNIFICATION OF DIRECTORS AND OFFICERS

9.1 Insurance. The Cooperative shall, to the extent legally permissible, obtain fully paid directors and officers insurance in the minimum benefit amount of \$5 million in respect of each member of the Executive Committee and all other officers of the Cooperative for the period during which each such member of the Executive Committee and officer holds office and for a period of three (3) years thereafter. The Cooperative's purchase of such Directors' and Officers' insurance shall be valid whether or not the Cooperative would have the power to indemnify any Director or officer against such liability pursuant to the provisions of Section 9.2.

9.2 Indemnification.

- (a) The Cooperative shall indemnify to the fullest extent permitted by law each of its present or former Members, Directors, Alternates and officers and any person who may be then serving (or who may have previously served at its request as a Member, Director, Alternate or officer of any other organization in which it has an interest). The Cooperative may, to the extent authorized by the Directors, indemnify present or former employees and other agents or any person who may be then serving or who may have previously served at its request as an employee or agent of any other organization in which it directly or indirectly owns or owned shares or of which it is or was a creditor.
- (b) Any person entitled to indemnification pursuant to Section 9.2(a) shall be indemnified against all losses, claims, damages, liabilities, expenses, judgements, and attorney's fees including amounts incurred or paid by him or her in respect of the following:
 - (i) in connection with the defense or disposition of any action, suit or proceeding, civil or criminal, and any appeal therein, in which he or she is made a party or involved by reason of being or having been a Member, Director, Alternate, officer, employee, or other agent;
 - (ii) in satisfaction of judgments or as fines and penalties; or
 - (iii) in connection with any compromise or settlement first approved by a Vote of two thirds ($\frac{2}{3}$) of the disinterested Directors then in office.

An "Interested Director" is one against whom in such capacity the proceedings in question or another proceeding on the same or similar grounds is then pending or threatened.

- (c) Any indemnification pursuant to this Section 9.2 shall include payment by the Cooperative of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person indemnified to repay such payment if he shall be adjudicated to be not entitled to indemnification pursuant to Section 9.2(d).
- (d) Notwithstanding the foregoing, no person shall be indemnified pursuant to this Section 9.2 with respect to any matter as to which he, she, or it shall have been adjudicated in any proceeding that (i) such person has acted illegally or (ii) not to have acted in good faith in the reasonable belief that his, her, or its actions were in the best interests of the Cooperative.

9.3 Rights to Indemnification. Any right to indemnification arising hereunder shall inure to the benefit of the heirs, executors or administrators of any such Member, officer, Director, Alternate, employee, or other agent and shall be in addition to all other rights to which such Member, officer, Director, Alternate, employee, or other agent may be entitled as a matter of law.

SECTION 10

CONFLICTS AND CONFIDENTIALITY

10.1 Interested Transactions. No contract or other transaction between the Cooperative and any one or more of its Members, Directors, Alternates or any entity in which a Member, Director, Alternate or his or her Immediate Family has an interest whether as an agent, consultant, independent contractor, employee, officer, director, or owner, including as a stockholder, partner, or member, shall be void or voidable if such contract shall be (i) made in good faith by such Member, Director or Alternate and be otherwise fair and reasonable with respect to the Cooperative, and (ii) the terms of which shall be fully disclosed and approved or ratified at a meeting of the Directors, by an affirmative Vote of a majority of the Directors then present who have no interest in such contract or other transaction. No Member or Director shall be liable to account to the Cooperative for any profit realized from or through any such contract or transaction set forth in the preceding sentence so long as the requirements of (i) and (ii) above have been satisfied.

10.2 Confidentiality. Each Member recognizes that in its capacity as a Member it will receive information about the Cooperative and its business, which is confidential and proprietary to the Cooperative. Each Member agrees to keep all such information confidential and to not disclose that information to any other person other than on a “need to know” basis or as specifically authorized by the Members or as required by law. The Members agree that the obligation imposed by this provision shall continue after any divestiture of any Member’s Percentage Interests.

10.3 Director and Officer Agreements. Each Director and Officer of the Cooperative shall, upon admission to the Directorship or office, execute an agreement containing such confidentiality and non-competition provisions as may be required by the Board of Directors.

SECTION 11

DISTRIBUTION OF FUNDS

11.1 Periodic Distributions of Available Funds.

- (a) Upon the Vote of a majority of the Directors, provided that the Cooperative has achieved at least break even operating status as indicated by the Cooperative's audited financial statements for the previous fiscal year, all cash that is available for distribution by the Cooperative after paying all operating expenses, including without limitation, the Cooperative's annual PILOT payment and establishing such reserves required by law or as the Directors shall determine by majority Vote, shall be distributed to the Members proportionately in accordance with their respective holdings of the Cooperative's Percentage Interests up to an amount approximating each Member's debt service obligations relating to the cost of the Broadband Assets contributed by such Member. Any retained earnings available after payment of the Members debt service obligations may be distributed proportionately to the Members by an affirmative Vote of a majority of the Board of Directors.
- (b) All Members, other than a Withdrawn Member or an expelled Member, shall maintain the same Percentage Interest after any distribution as such Member held prior to such distribution.
- (c) Notwithstanding the provisions of Section 11.1(a), only while an Outstanding Balance remains unpaid to any Withdrawn Member, such Withdrawn Member shall participate in the distributions described in Section 11.1(a) on a pro rata basis in accordance with that Withdrawn Member's Percentage Interests immediately before the Effective Withdrawal Date up to a maximum aggregate amount not to exceed such Member's Outstanding Balance.

11.2 On Dissolution.

- (a) If the Cooperative is dissolved, then an accounting of the Cooperative's assets, liabilities, and operations through the last day of the month in which the dissolution occurs shall be made, and the affairs of the Cooperative shall thereafter be promptly wound up and terminated. The Members, by majority Vote,

shall appoint one or more persons to serve as the liquidating trustee of the Cooperative. The liquidating trustee will be responsible for winding up and terminating the affairs of the Cooperative and will determine all matters in connection therewith (including, without limitation, the arrangements to be made with creditors, to what extent and under what terms the assets of the Cooperative are to be sold, and the amount or necessity of cash reserves to cover contingent liabilities) as the liquidating trustee deems advisable and proper; provided, however, that all decisions of the liquidating trustee will be made in accordance with the fiduciary duty owed by the liquidating trustee to the Cooperative and each of the Members. The liquidating trustee will thereafter liquidate the assets of the Cooperative as promptly as is consistent with obtaining the fair market value thereof, and the proceeds therefrom, to the extent sufficient therefor, will be applied and distributed in the following order:

- (i) to the payment and discharge of all of the Cooperative's debts and liabilities to creditors (including Withdrawn Members);
 - (ii) the balance, if any, proportionately to the repayment of each Member's Capital Account; and
 - (iii) the balance, if any, in proportion to the Members' respective Percentage Interests.
- (b) After all of the assets of the Cooperative have been distributed, the Cooperative shall terminate. The officers shall immediately thereafter file a certificate of dissolution with the Secretary of State for Massachusetts. Immediately after a certificate of dissolution has been so filed, this Agreement shall terminate and the parties shall have no further rights or obligations under the Agreement.
- (c) The Cooperative shall be dissolved and terminated upon the occurrence of any of the following events:
- (i) the Vote of Members holding a Super Majority of the Percentage Interests to dissolve the Cooperative; or
 - (ii) the order of a court that the Cooperative be terminated.
- (d) In the event any Member withdraws from Membership in the Cooperative for any reason, the Cooperative shall continue to exist, unless the remaining Members by the Vote of such Members holding at least a Super Majority of the Percentage Interests agree to dissolve and terminate the Cooperative pursuant to Section 11.2(c)(i).

SECTION 12

RECORD KEEPING AND ACCOUNTING MATTERS

12.1 Records. The Cooperative shall keep at its Principal Office the following information:

- (a) A current list of the full name and last known business, residence, or mailing address of each Member, Director and Alternate both past and present;
- (b) Copies of the Certificate, this Agreement, and all amendments thereto, copies of any writings permitted or required under any law, and copies of any financial statements of the Cooperative for the seven most recent fiscal years; and
- (c) Minutes and records of any meetings and resolutions of the Members or of the Board of Directors and any written consents obtained from the Members or from the Directors.

12.2 Other Records. In addition to the foregoing, the Cooperative shall keep at its Principal Office the following information:

- (a) true and full information regarding the status of the Cooperative's business and the financial condition of the Cooperative, including, but not limited to, annual audited financial statements; and
- (b) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each Member and of which each Member has agreed to contribute in the future, Percentage Interests, Capital Accounts, and the date on which each Member became a Member.

12.3 Delivery and Inspection. Any Cooperative records are subject to inspection and copying at the reasonable request, and at the expense of any Member during ordinary business hours but not for the purpose of selling any information contained therein or for any competitive purpose or purpose the effect of which would breach the obligation contained in Section 10.2. A Member's agent or attorney has the same inspection and copying rights as the Member. The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The Cooperative may impose a reasonable charge, not to exceed the estimated cost of labor and material for production or reproduction, for copies of any documentation provided to a Member.

12.4 Reports. No later than ninety (90) calendar days after the close of each fiscal year, the

Cooperative shall cause to be prepared and submitted to each Member audited financial statements as at the close of that fiscal year.

12.5 Accounting. Unless otherwise agreed by the Members, and subject to the immediately following sentence, all accounting matters shall, for all purposes, be determined in accordance with generally accepted accounting practices and principles, consistently applied. The revenues and expenses and the operations of the Cooperative may be reported either on the cash or accrual method, for accounting purposes, as the Board of Directors may from time to time determine.

SECTION 13

EXECUTION OF PAPERS

13.1 Execution of Papers. Subject to the limitations and reserved powers set forth in this Agreement, and except as the Directors may generally or in particular cases authorize the execution thereof in some other manner, all deeds, leases, transfers, contracts, bonds, notes, checks, drafts and other obligations made, accepted or endorsed by the Cooperative shall be signed by its General Manager, Treasurer, or Secretary or by two or more of such officers if the document requires two signatories.

SECTION 14

MISCELLANEOUS PROVISIONS

14.1 Evidence of Authority. A certificate by the Secretary, an Assistant Secretary, or a temporary Secretary, as to any action taken by the Members, Directors, any committee or any officer or representative of the Cooperative shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action.

14.2 Severability. Any determination that any provision of this Agreement is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of this Agreement.

14.3 Headings and Counterparts; Gender. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. This Agreement may be executed in separate counterparts all of which together shall constitute one instrument enforceable against all parties. Any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.

14.4 Notices. Unless otherwise set out herein, all notices, consents, requests, demands, or other communications to or upon the respective parties shall be in writing and shall be effective

for all purposes upon receipt on any business day before 5:00 PM local time and on the next business day if received after 5:00 PM or on other than a business day, including without limitation, in the case of (i) personal delivery, (ii) delivery by messenger, express or air courier or similar courier, (iii) delivery by United States first class certified or registered mail, postage prepaid, and (iv) transmittal by telecopier or facsimile, addressed to the addresses reflected in the Cooperative's records. In this Agreement "business days" means days other than Saturdays, Sundays, and federal and state legal holidays. Notices shall be sent to the Members at the addresses set out in Schedule A unless changed. Any Member may change its address by written notice to the Secretary at the Principal Office. Receipt of communications by United States first class or registered mail will be sufficiently evidenced by return receipt. In the case of illegible or otherwise unreadable facsimile transmissions, the receiving party shall promptly notify the transmitting party of any transmission problem and the transmitting party shall promptly resend any affected pages.

14.5 Survival. The provisions of Section 10.2 shall survive the termination of this Agreement or any Member's Interest in the Cooperative, but do not survive the termination of the Cooperative pursuant to Section 11.2(c).

14.6 Governing Law. This Agreement, the Cooperative, and the rights and obligations of the Members will be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Massachusetts.

14.7 Dispute Resolution.

(a) Mediation. Any controversy, dispute or claim arising out of or in connection with this Agreement, or the breach, termination or validity hereof (any of the foregoing, hereinafter, a "Dispute"), which cannot be resolved within thirty (30) days, shall be submitted to mediation in accordance with this provision. The parties understand and agree that mediation is a voluntary process and agree to cooperate fully and fairly with the mediator in any attempt to reach a mutually satisfactory resolution to a Dispute. The mediator shall be mutually agreed upon by the parties. If the parties come to a resolution through mediation, such resolution shall be in writing, signed by all parties and be binding on all parties. If the Parties cannot agree on a mediator within ten (10) days, or, subject to the provisions of this Subsection (a), a party believes that mediation is not working to resolve the Dispute and gives written notice of such belief to the other party and to the mediator, the Dispute shall be settled by binding arbitration in accordance with Subsection (b) below.

(b) Arbitration. Any Dispute that cannot be resolved in accordance with Subsections (a) above shall be settled by final and binding arbitration to be conducted by an arbitration tribunal in Boston Massachusetts pursuant to the rules of American Arbitration Association ("AAA") then in effect (or at any time or at any other

place or under any other form of arbitration mutually acceptable to the parties so involved). The party initiating arbitration will provide written notice of its intent to submit the matter for arbitration. Such notice will contain a statement identifying the claim for arbitration and specifying the initiating party's designated arbitrator. Within twenty (20) days following such notice of arbitration, the other party will appoint its designated arbitrator and provide notice to the initiating party. If such party fails to appoint an arbitrator within the applicable 10-day period and give timely notice of such appointment to the initiating party, then the arbitration service provider selected by the parties shall select an arbitrator and such selection shall be binding on all parties. The third arbitrator will be selected by the two arbitrators so chosen. Each party shall bear and pay the costs of the arbitrator appointed by (or for) it and the cost of the third arbitrator will be borne and paid equally by the parties. Notwithstanding the above, for disputes of less than \$150,000, one arbitrator will be used as agreed by both parties. If both parties fail to agree on one arbitrator, then AAA shall select an arbitrator and such selection shall be binding on all parties. Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. Each party shall pay for and bear the cost of its own experts, evidence, and counsel's fees. The expenses of the arbitration shall be borne equally by the parties to the arbitration, unless the arbitrator determines that another allocation of such expenses is equitable. Notwithstanding the agreement to arbitrate contained in this Subsection (b), any party may apply to any court having jurisdiction to enforce this Agreement to seek provisional injunctive relief so as to maintain the status quo until the arbitration award is rendered or the dispute is otherwise resolved.”

14.8 Entire Understanding and Agreement. This Agreement represents the entire understanding and agreement among the Members and supersedes and replaces all prior oral and written agreements among the Members including without limitation the WiredWest Cooperative Agreement dated August 13, 2011, all of which have no further force or effect.

EXECUTED under seal to be effective as of the Effective Date.

WIREDWEST MUNICIPAL LIGHT PLANT COOPERATIVE LLC

By: _____

[MEMBERS]

By: _____

Name:

Title:

DRAFT

**SCHEDULE A
SCHEDULE OF MEMBERS AND PERCENTAGE INTERESTS**

<u>MEMBER</u>	<u>PERCENTAGE INTERESTS</u>

END OF SCHEDULE A

**SCHEDULE B
SCHEDULE OF CAPITAL CONTRIBUTIONS**

<u>SCHEDULED DATE OF CAPITAL CONTRIBUTION</u>	<u>AGGREGATE CAPITAL CONTRIBUTION</u>
Effective Date	
[Date of Second Capital Contribution]	
[Date of Third Capital Contribution]	
[Date of Fourth Capital Contribution]	

END OF SCHEDULE B

**SCHEDULE C
DIRECTORS**

Director Nominated by:	Name of Directors as of the Effective Date: (see Note 1)

Note 1: The information in the right hand column of the table above is not intended to imply that the persons listed therein must continue to serve or be allowed to serve as directors for any particular period of time. The persons listed therein shall be entitled to resign and can be replaced as described in the Agreement.

END OF SCHEDULE C