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& MARTIN
-PLLC
ATTORNEYS AT LAW

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March 3, 2008

ELECTRONICALLY FILED

Honorable Richard Collier, General Counsel
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

filed electronically in docket office on 03/04/08

Re: Docket No. 07-00183

Dear Mr. Collier:

The MLGW management team has continued to work on supplemental responses to the second Staff data requests to MLGW. We continue to work with the MLGW management team on a response to Question 5.3 and should have that response finalized shortly.

Based upon our additional work with MLGW, this letter will supplement our prior responses dated February 1, 2008:

Question 1: MLGW has further investigated the possibility of discussions concerning alternative interest rates for the inter-division loan. MLGW established a rate of interest calculation to comply with state law requirements that reflected, at a minimum, the highest rate of interest that MLGW earned on invested Electric Division funds. MLGW believes that its discussions concerning interest rates focused on compliance with state law requirements, and MLGW has not located information suggesting that alternative approaches to interest rates were considered.

Question 4.4: The scope of requested information is very broad. MLGW has collected and is submitting a compilation of invoices in its files that relate to pole plant work performed by MLGW at the request of Memphis Networkx.

Question 14: We have enclosed a supplemental response to item number 14. This response includes minutes from the June 21, 2007 meeting of the MLGW along with MLGW management presentation materials for that meeting. Minutes from the July 5, 2007 meeting of the MLGW Board have been previously produced. MLGW's minutes are typically succinct and primarily reflect official actions taken at the particular meeting. In order to provide a more complete overview of the MLGW analysis of this issue, MLGW has submitted a compilation of materials furnished to the City Council of the City of Memphis, Tennessee in connection with inquiries regarding the decision of MLGW to sell its interest in Memphis Networkx, LLC. While these materials necessarily include information that

March 3, 2008

Page 2

goes beyond the specific information requested in second data request number 14, MLGW believes that this document provides a good compilation of materials relating to MLGW's participation in Memphis Networx. Please note in particular the June 27, 2007 letter from MLGW Commissioner Nick Clark, which provides a detailed analysis of the facts and circumstances surrounding MLGW's interest in Memphis Networx.

We will further supplement MLGW's response to second data request number 5.3 shortly. If you have questions or need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark W. Smith', with a stylized flourish at the end.

Mark W. Smith

cc: Ms. Darlene Standley (w/enc.)

Enclosure



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 71637

ATTN MR DAVID ORI
MEMPHIS NETWORK
755 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 06/27/2000

Amount: \$ 1,633.41

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 530222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER N7C78345

FOR ALL COST INCURRED WITH
TESTING FIBER OPTIC CABLE.

\$ 1,633.41
=====

Please pay this amount --> \$ 1,633.41

) Copy 2-Management Accounting
)

**MEMPHIS LIGHT, GAS AND WATER DIVISION**

P.O. Box 388

Memphis, Tennessee 38145

Invoice: 72221

ATTN MR DAVID ORI
MEMPHIS NETWORK
755 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 11/08/2000

Amount: \$ 9,138.93

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER N7D09672

FOR ALL COSTS INCURRED IN CONNECTION
WITH TESTING FIBER OPTIC CABLE.

\$ 9,138.93
=====

Please pay this amount --> \$ 9,138.93

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 72415

ATTN MR DAVID ORI
MEMPHIS NETWORK
755 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 12/18/2000

Amount: \$ 8,951.65

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER N7D09672

FOR ALL COSTS INCURRED WITH THE
TESTING OF FIBER OPTIC CABLE.

\$ 8,951.65
=====

THIS INVOICE REPLACES #72221
DATED 11/08/2000 WHICH HAS
BEEN VOIDED.

Please pay this amount --> \$ 8,951.65

Duplicate Invoice



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 73073

ATTN MR DAVID ORI
MEMPHIS NETWORK
755 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 03/27/2001

Amount: \$ 12,742.58

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER N7D37806

FOR ALL COSTS INCURRED IN CONNECTION
WITH TESTING FIBER OPTIC CABLE.

\$ 12,742.58
=====

Please pay this amount --> \$ 12,742.58

Copy 2-Management Accounting
)



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 76660

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 07/19/2002

Amount: \$ 1,660.02

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 510360

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

FOR JOINT USE BILLING FOR THE YEAR 2002
THESE COSTS ARE FOR THE PERIOD OF
MARCH 1, 2002 THROUGH MAY 31, 2002.

TOTAL COSTS FOR ATTACHMENTS
(MEMPHIS NETWORK ON MLGW): \$ 1,660.02
=====

PAYMENT DUE UPON RECEIPT OF INVOICE

PLEASE SEE ATTACHED SHEET FOR DETAILS OR
FOR MORE INFORMATION CONTACT CATHY MILAM
AT 528-4217

Please pay this amount --> \$ 1,660.02

Copy 2-Management Account;



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 76845

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 08/20/2002

Amount: \$ 8,878.00

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 510360

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

FOR JOINT USE BILLING FOR THE PERIOD
JANUARY 1, 2002 THRU MARCH 31, 2002

TOTAL COST FOR ATTACHMENTS
(MEMPHIS NETWORK ON MLGW) = \$ 8,878.00
=====

PAYMENT DUE UPON RECEIPT OF INVOICE

THIS INVOICE REPLACES INVOICE #76660
DATED 07/19/2002 WHICH HAS BEEN VOIDED

PLEASE SEE ATTACHED FOR DETAILS
FOR MORE INFORMATION CONTACT
CATHY MILAM AT 528-4217

Please pay this amount --> \$ 8,878.00

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77633

Date: 12/31/2002

Amount: \$ 49.87

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E55597

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE ALONG OLD GETWELL ACROSS
WINCHESTER; NEW GETWELL WEST ON HOLMES,
NORTH ON AIRWAYS, WEST ON SHELBY DRIVE
TO FORONIA

\$ 49.87
=====

Please pay this amount --> \$

49.87

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77634

Date: 12/31/2002

Amount: \$ 2,968.22

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E41206

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM 4230 FARONIA TO
WEAVER ROAD

\$ 2968.22
=====

Please pay this amount --> \$ 2,968.22

(Copy 2-Management Accounting)



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77635

Date: 12/31/2002

Amount: \$ 10,206.54

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7D99561

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM SUBSTATION 23 TO
GERMANTOWN POLE #12195

\$ 10,206.54
=====

Please pay this amount --> \$ 10,206.54

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77636

Date: 12/31/2002

Amount: \$ 1,399.70

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E46492

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM WINCHESTER AND I-55 TO
4230 FARONIA

\$ 1399.70
=====

Please pay this amount --> \$ 1,399.70

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77637

Date: 12/31/2002

Amount: \$ 7,427.78

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDERS J7E01220

FOR ALL COSTS INCURRED IN MAKING
CABLE ADJUSTMENTS WHERE NECESSARY
TO ACCOMMODATE FIBER OPTIC CABLE
INSTALLATION

\$ 7427.78
=====

Please pay this amount --> \$ 7,427.78

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77638

Date: 12/31/2002

Amount: \$ 594.99

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E24592

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM SUBSTATION 23 TO
4960 BLACK ROAD

\$ 594.99
=====

Please pay this amount --> \$ 594.99

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77639

Date: 12/31/2002

Amount: \$ 11,317.85

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7D91498

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM SOUTH PERKINS TO TOWERS
NONCONNAH LEVEE

\$ 11,317.85
=====

Please pay this amount --> \$ 11,317.85

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77640

Date: 12/31/2002

Amount: \$ 1,605.09

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E31279

FOR ALL COSTS INCURRED @ 2101 S
GERMANTOWN TO S WINCHESTER TO
HICKORY HILL @ OAKVILLE - 3705
OUTLAND ROAD

\$ 1605.09
=====

Please pay this amount --> \$ 1,605.09

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Invoice: 77641

Date: 12/31/2002

Amount: \$ 7,388.20

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E00540

FOR ALL COSTS INCURRED IN ADJUSTING
ELECT DIST SYS WHERE NECESSARY TO
ACCOMODATE FIBER OPTIC INSTALLATION.

\$ 7388.20
=====

Please pay this amount --> \$ 7,388.20

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77642

Date: 12/31/2002

Amount: \$ 23,590.88

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7D92946

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM 201 COURT TO 3106 BARRON

\$ 23,590.88
=====

please pay this amount --> \$ 23,590.88

(Copy 2-Management Accounting)



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77643

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 12/31/2002

Amount: \$ 6,058.88

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E02705

FOR ALL COSTS INCURRED IN ESTABLISHING
FIBER ROUTE FROM 3106 BARRON AVE TO
105 S HOLMES

\$ 6058.88
=====

Please pay this amount --> \$ 6,058.88

(Copy 2-Management Accounting)



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 77644

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 12/31/2002

Amount: \$ 15,238.33

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER W7D85995

FOR ALL COSTS INCURRED IN INSTALLING
INNERDUCT AND FIBER OPTIC CABLE IN
DOWNTOWN DUCT SYSTEM FOR MEMPHIS
NETWORK

\$ 15,238.33
=====

Please pay this amount --> \$ 15,238.33

Copy 2-Management Accounting

**MEMPHIS LIGHT, GAS AND WATER DIVISION**

P.O. Box 388

Memphis, Tennessee 38145

Invoice: 78048

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 03/19/2003

Amount: \$ 10,667.15

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDED N7D91498.

FOR ALL COSTS INCURRED IN CONNECTION
WITH ESTABLISHING FIBER ROUTE FROM
SOUTH PERKINS TO TOWERS NONCONNAH
LEVEE

\$ 10,667.15
=====

FOR MORE INFORMATION CONTACT THE
PROPERTY ACCOUNTING DEPARTMENT AT
528-4283

Please pay this amount --> \$ 10,667.15

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 78049

ATTN RANDY MCDANIEL
MEMPHIS NETWORK
7555 APPLING CENTER DRIVE
MEMPHIS TN 38133-

Date: 03/19/2003

Amount: \$ 1,576.64

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310222

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER J7E25951

FOR ALL COSTS INCURRED IN CONNECTION
WITH MAKING ADJUSTMENTS WHERE NECESSARY
TO ACCOMMODATE FIBER OPTIC CABLE
INSTALLATION

\$ 1576.64
=====

FOR MORE INFORMATION CONTACT THE
PROPERTY ACCOUNTING DEPARTMENT AT
528-4283

Please pay this amount --> \$ 1,576.64

Copy 2-Management Accounting

**MEMPHIS LIGHT, GAS AND WATER DIVISION**

P.O. Box 388

Memphis, Tennessee 38145

MEMPHIS NETWORK
7620 APPLING CENTER DRIVE
MEMPHIS TN 38133-5074

Invoice: 78744

Date: 06/30/2003

Amount: \$ 367.41

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 310120

Account: 1143.1000
Claims:

Description of Charges - Terms Net 30

JOB ORDER N7F20841

FOR COSTS INCURRED TO REPLACE FIBER
IN THE SAME LOCATIONS THAT POLES ARE
BEING REPLACED AS PART OF REGULAR
MAINTENANCE.

BILLING FOR FEB ~ JUNE 2003

\$ 330.97	LABOR
24.36	TRANSPORTATION
12.08	3.4% OVERHEAD

\$ 367.41	TOTAL

Please pay this amount --> \$ 367.41

Copy 2-Management Accounting



MEMPHIS LIGHT, GAS AND WATER DIVISION
P.O. Box 388
Memphis, Tennessee 38145

Invoice: 80440

Date: 05/20/2004

MEMPHIS NETWORK
7620 APPLING CENTER DRIVE
MEMPHIS TN 38133-5074

Amount: \$ 1,563.90

To insure prompt credit, please return a copy of this invoice with payment

Customer No.: 8281
Area: 200110

Account: 1143.1000
Claims: GC2 0040 1 6606

Description of Charges - Terms Net 30

FOR DAMAGE TO STREELIGHT WIRE AT
POPLAR & KIRBY PARKWAY ON 01/15/2003

\$ 1563.90

Please pay this amount --> \$ 1,563.90

Copy 2-Management Accounting

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MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
June 21, 2007

A regular meeting of the Board of Light, Gas and Water Commissioners, City of Memphis, was held at Memphis Light, Gas & Water Division, 220 S. Main, Thursday, June 21, 2007 at 1:30 p.m. The following were in attendance: Rick Masson, Chairman and Acting President & CEO; V. Lynn Evans, Vice Chairman; Nick Clark, Commissioner; William L. Taylor, Commissioner; Jerry R. Collins, Jr., Interim Chief Utility Officer; John McCullough, Vice President, CFO and Secretary-Treasurer; Charlotte Knight Griffin, Interim Vice President and General Counsel; Diana Veazey, Vice President, Construction and Maintenance; Christopher Bieber, Vice President, Customer Care; Alonzo Weaver, Vice President, Engineering and Operations; Armstead Ward, Vice President, Human Resources; Linda Peppers, Vice President and Chief Technology Officer; and Council Member Madeleine Cooper Taylor. Commissioner Bowden was not in attendance.

Commissioner Clark moved that after personally reading and reviewing the typed minutes of the Memphis Light, Gas and Water Board meeting held June 7, 2007, that they be recorded as the official record, seconded by Vice Chairman Evans and unanimously carried.

The Secretary-Treasurer acknowledged receipt of certified copies of City Council Resolutions dated June 5, 2007, Items 4 through 20, approving items approved by the MLGW Board at its meeting held May 17, 2007 (see Minute File No. 1293); and Item 22, approving MLGW in-lieu-of tax payments to the City of Memphis for fiscal year 2008, the amount to be calculated by MLGW under the formula for the Electric Division and the Gas Division (see Minute File No. 1294).

Alonzo Weaver and Frank Benkalowycz made a presentation to the Board regarding Crisis Management (see Minute File No. 1294).

John McCullough made a presentation to the Board regarding Memphis Network (see Minute File No. 1294).

119 MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

Vice Chairman Evans moved that MLGW provide former MLGW president, Joseph Lee, III, with medical insurance comparable to the retiree rate, as recommended by Human Resources, contingent upon former MLGW president, Joseph Lee, III, signing a Separation and Release Agreement, seconded by Commissioner Taylor and carried. Commissioner Clark abstained.

1. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing one lot consisting of 27 miscellaneous substation fittings, all made in accordance with MLGW specifications. The miscellaneous substation fittings are to be used at Collierville Gate Substation No. 86.

Bids were opened on May 9, 2007, with the only bid received being from Designed Metal Connections, in the amount of \$72,775.25.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to Designed Metal Connections is approved for furnishing:

27 - miscellaneous substation fittings, made in accordance with MLGW specifications

totaling \$72,775.25, f.o.b. Memphis, Tennessee, our dock, transportation prepaid; said price being firm; delivery in 8-10 weeks, ARO.

2. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing one lot of galvanized structural steel to be used in construction of Collierville Gate Substation No. 86.

Bids were opened on May 9, 2007, with the lowest and best complying bidder of six bidders being V & S Schuler Engineering, Inc., in the approximate total amount of \$263,505.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to V & S Schuler Engineering, Inc., is approved for furnishing:

MINUTES OF MEETING OF JUNE 21, 2007 (Continued) 120

1 - lot (approximately 190,846 lbs.) of galvanized structural steel in accordance with MLGW specifications dated March 7, 2007, and MLGW drawings 86-550 sheets 1 through 7

totaling approximately \$263,505, f.o.b. Memphis, Tennessee, transportation prepaid; said prices being firm, net 30 days; delivery 9-10 weeks after receipt of order.

3. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of contract for furnishing cable/fault locators. The locators are needed by the Instrument Shop to use as replacements for the Dynatel Model 573 A/P. The Dynatel 573 A/P has been discontinued and repair parts are no longer available. The Dynatel Model 2273-U3P3 locators are used by Electric Distribution and Distribution Support to locate buried cable and faults.

Bids were received on June 8, 2007. The lowest and best complying bidder of three bidders was Graybar Electric Company, Inc., in the amount of \$44,548.50.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of contract to Graybar Electric Company, Inc., is approved for furnishing:

17 - cable/fault locators, 3M Dynatel Model 2273-U3P3, at \$2,620.50 each

totaling \$44,548.50, f.o.b. Memphis, TN, transportation prepaid and allowed; said prices being firm; delivery in four weeks.

4. It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried that Item No. 4, sale of MLGW's membership interest in Memphis Networkx, be deleted.

5. The Interim Vice President and General Counsel advised the Board that the Tennessee General Assembly passed, and the Governor signed into law, the Comprehensive Governmental Ethics Reform Act of 2006, codified at Tennessee Code Annotated § 8-17-101 et seq. That law requires all municipalities in Tennessee to adopt an ethics policy for all municipal elected officials and employees, as well as any boards, commissions, authorities, corporations, or other instrumentalities appointed or created by the municipality, by June 30, 2007. The Memphis City Council adopted a Code of Ethics on June 5, 2007.

121 MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

The Interim Vice President and General Counsel submitted for Board approval an Ethics Policy for officers, employees and members of the Board of Commissioners of Memphis Light, Gas and Water Division (see Minute File No. 1294).

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, The Ethics Policy submitted by the Interim Vice President and General Counsel is hereby approved.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried that the minutes of Item No. 5 are approved as outlined above.

6. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners ratification of Expedited Procurement Request for Change No. 4 to Contract No. 10563, Legal Services, with Memphis Legal Personnel Services, Inc., to change the scope to include a temporary employee until the permanent position of Legal Clerk II is filled, in an estimated funded amount of \$9,000.

The project scope is to provide various legal staff personnel to MLGW on an as-needed basis. The new total contract amount is \$123,999.99.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Expedited Procurement Request for Change No. 4 to Contract No. 10563, Legal Services, with Memphis Legal Personnel Services, Inc., in an estimated funded amount of \$9,000, as outlined in the foregoing preamble, is ratified; and further,

THAT, The President or his designated representative is authorized to execute the change.

7. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 4 to Contract No. 10741, Digital Document Storage, with Datatrade, Inc., with no change in contract amount.

The project scope has changed to assign Contract No. 10741 to Goldleaf Financial Solutions to continue to process data. Goldleaf Financial Solutions, Inc. completed the acquisition of Datatrade, Inc. on April 30, 2007, and all terms and conditions of the contract will remain valid. The contract amount will remain unchanged.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

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THAT, Change No. 4 to Contract No. 10741 with Goldleaf Financial Solutions, Inc., with no change in contract amount, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

8. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 17 to Contract No. 10780, Electric Construction and Maintenance, with Allied Electrical Contractors, Inc., with no increase in contract amount.

The project scope has changed to extend the contract on a month-to-month basis, effective August 1, 2007, and not to extend beyond December 31, 2007. This change is necessary to allow time to prepare and solicit bids. There will be no change in current contract rates, and the contract amount will remain unchanged.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Change No. 17 to Contract No. 10780 with Allied Electrical Contractors, Inc., with no increase in contract amount, as outlined in the foregoing preamble, is approved as amended; and further,

THAT, The President or his designated representative is authorized to execute the change.

9. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners ratification of Expedited Procurement Request for Change No. 2 to Contract No. 11015, Certified Laboratory for Drug Testing, with Advanced Toxicology Network, in an estimated funded amount of \$24,999.99.

The project scope is to provide services as required to perform laboratory analysis of urine specimens and to provide any retesting, associated storage and record-keeping functions in Memphis and Shelby County, Tennessee, and to renew the contract for the second term of four renewal terms, June 24, 2007 to June 23, 2008, with no increase in rates. This work is necessary to be in compliance with the Department of Transportation and pipeline regulations. The new contract amount is \$62,815.98.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Change No. 2 to Contract No. 11015 with Advanced Toxicology Network, in an estimated funded amount of \$24,999.99, as outlined in the foregoing preamble, is approved; and further,

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MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

THAT, The President or his designated representative is authorized to execute the change.

10. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners ratification of Expedited Procurement Request for Change No. 2 to Contract No. 11042, MLGW Gas/Water Facilities Location Services, with Heath Consultants, Inc., in an estimated funded amount of \$283,744.66.

The project scope is to locate electric, gas and water facilities in the MLGW's systems in subdivisions, streets and other areas as prescribed by the MLGW representative in Memphis and Shelby County, Tennessee, and to renew the contract through the period ending December 31, 2007, with a 4% increase retroactive to March 15, 2007. A change in MLGW's strategic and operational position has led to a decision to hire facilities locators to perform the work previously contracted and, therefore, this contract will terminate December 31, 2007. The new contract amount is \$1,057,294.66.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to ratification by the Council of the City of Memphis, Change No. 2 to Contract No. 11042 with Heath Consultants, Inc., in an estimated funded amount of \$283,744.66, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

11. The Manager, Procurement and Contracts submitted for consideration of the Board of Light, Gas and Water Commissioners an amendment to Contract No. 11208, Water Production Wells, with Layne-Central, a division of Layne Christensen.

On June 7, 2007, a resolution in the incorrect amount of \$1,835,000 was submitted to and approved by the Board. The correct bid amount was \$1,862,725. Therefore, the award to Layne-Central should be increased in the amount of \$27,725.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, amendment to Contract No. 11208 with Layne-Central, a division of Layne Christensen, in an estimated funded amount of \$27,725, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the amendment.

MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

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12. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11148, Professional Engineering Services, to SSR Eller Consulting Engineers, in an estimated funded amount of \$50,000.

The project scope is to provide professional engineering services primarily consisting of mechanical, electrical, structural and civil engineering which may include plumbing and architectural design in Memphis and Shelby County, Tennessee.

Nine proposals were received on October 23, 2006 for said contract, with one of four proposals being selected and submitted by SSR Eller Consulting Engineers.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11148 to SSR Eller Consulting Engineers in an estimated funded amount of \$50,000, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

13. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11229, Professional Engineering Services, to Allen & Hoshall, in an estimated funded amount of \$50,000.

The project scope is to provide professional engineering services primarily consisting of mechanical, electrical, structural and civil engineering which may include plumbing and architectural design in Memphis and Shelby County, Tennessee.

Nine proposals were received on October 23, 2006 for said contract, with one of four proposals being selected and submitted by Allen & Hoshall.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, award of Contract No. 11229 with Allen & Hoshall in an estimated funded amount of \$50,000, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

14. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11230, Professional

125 MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

Engineering Services, to Thompson Engineers, Inc., in an estimated funded amount of \$25,000.

The project scope is to provide professional engineering services primarily consisting of mechanical, electrical, structural and civil engineering which may include plumbing and architectural design in Memphis and Shelby County, Tennessee.

Nine proposals were received on October 23, 2006 for said contract, with one of four proposals being selected and submitted by Thompson Engineers, Inc.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Award of Contract No. 11230 to Thompson Engineers, Inc., in an estimated funded amount of \$25,000, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

15. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners award of Contract No. 11231, Professional Engineering Services, to Branham & Lloyd, LLC, in an estimated funded amount of \$25,000.

The project scope is to provide professional engineering services primarily consisting of mechanical, electrical, structural and civil engineering which may include plumbing and architectural design in Memphis and Shelby County, Tennessee.

Nine proposals were received on October 23, 2006 for said contract, with one of four proposals being selected and submitted by Branham & Lloyd, LLC.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Award of Contract No. 11231 to Branham & Lloyd, LLC, in an estimated funded amount of \$25,000, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the contract.

16. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners ratification of Expedited Procurement Request for Change No. 11 to Contract No. 10569, Interactive Voice Response (IVR) System, with

MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

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Nortel Networks, Inc., to install new automated features to MLGW's interactive voice response system, in an estimated funded amount not to exceed \$15,000.

The project scope is changed to allow Nortel Network sufficient time to develop, test and implement new automated features into production by July 9, 2007, whereby it modifies the services to be delivered under previously ordered IVR system upgrade requested under Change No. 10.

It is further recommended that the annual maintenance and support cost continue after the first year's warranty provided the prevailing annual support fee does not increase more than 10%. The new contract amount is \$1,030,014.20.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Expedited Procurement Request for Change No. 11 to Contract No. 10569 with Nortel Networks, Inc., in an estimated funded amount not to exceed \$15,000, as outlined in the foregoing preamble, is ratified; and further,

THAT, The President or his designated representative is authorized to execute the change.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried that the minutes of Item No. 16 are approved as outlined above.

17. The Manager, Procurement and Contracts recommended to the Board of Light, Gas and Water Commissioners approval of Change No. 2 to Contract No. 10908, Supply Contract, with Mobile Data Solutions, with no change in cost.

This change is necessary to allow a company name change from Mobile Data Solutions to Ventyx, Inc., whereby the Federal Employee Identification number, location, contact information and other corporate matters will remain the same. The contract amount will remain unchanged.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Change No. 2 to Contract No. 10908 with Ventyx, Inc., with no change in contract amount, as outlined in the foregoing preamble, is approved; and further,

THAT, The President or his designated representative is authorized to execute the change.

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MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

18. The Manager, Procurement and Contracts requested permission of the Board of Light, Gas and Water Commissioners to amend Purchase Order No. 121272 with The Okonite Company for URD cable in the amount of \$3,576,853.82. All existing terms and conditions will remain the same.

On January 8, 2004, the Board approved the award of a 60-month contract for URD cable. The original award amount was approximately \$4,265,600 with firm prices except for metals adjustments for the first 36 months of the contract with base price increases not to exceed 2.5% for months 36 through 48, estimated usage based on past records. The Okonite Company has honored the pricing agreement for the first 36-month period of the contract and did implement the 2.5% base price increase provided in the 36 through 48-month period. MLGW is currently in month 42 of the 60-month agreement. Since the original award, material costs have increased significantly (total average material cost increase of 21% and copper index increase of over 300%). Therefore, after thorough evaluation of the current market conditions, MLGW and The Okonite Company have mutually agreed upon an additional 4.5% base cost increase pending Board approval. Total expenditures to date on this contract are \$3,185,273.82. An additional approval in the amount of \$3,576,853.82 is requested to allow MLGW to maintain this contract for the balance of the 60-month period and to compensate for the unforeseen escalation in the metals adjustments as provided in the original contract. The additional approval of \$3,576,853.82 will bring the total approved amount to \$7,842,453.82.

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, Subject to the consent and approval of the Council of the City of Memphis, Purchase Order No. 121272 with The Okonite Company is amended as outlined in the foregoing preamble.

19. The President & CEO submitted for approval of the Board the following position numbers, per the attached documents (see Minute File No. 1294):

Position No. 00720, Computer Specialist I
Position No. 04961, Substation Electrician Apprentice
Position No. 04975, Computer Software Specialist I
Position No. 06135, Associate Engineer

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

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THAT, Position numbers 00720, 04961, 04975 and 06135, as outlined in the foregoing preamble, are approved.

20. Pursuant to Resolution approved by the Board of Light, Gas and Water Commissioners on June 7, 2007, the Secretary-Treasurer reported to the Board that, after considerable discussion and negotiation, it is recommended that the Board adopt the Resolutions listed below and authorize, direct and ratify and recommend to the Council of the City of Memphis the execution and distribution of, the documents listed below in connection with the issuance, sale and delivery of not to exceed \$40,000,000 of Twelve Month Gas System Revenue Anticipation Notes (the "Notes"), pursuant to Section 686 of the Charter of the City and § 7-34-111, Tenn. Code Ann. (1996) for the purpose of providing funds, in anticipation of the collection of revenues from the City's Gas System, to purchase natural gas, including storage costs and pipeline capacity costs as permitted by § 7-34-111(d) of Tennessee Code Annotated. The Secretary-Treasurer further requests that the Board authorize the President and the Secretary-Treasurer to negotiate the rates and terms of such financing with any lender, purchaser or investor of the Notes.

1. A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF NOT TO EXCEED \$40,000,000 GAS SYSTEM REVENUE ANTICIPATION NOTES OF THE CITY OF MEMPHIS FOR THE BENEFIT OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION TO PROVIDE FUNDS, IN ANTICIPATION OF THE COLLECTION OF REVENUES FROM THE CITY'S GAS SYSTEM, TO PURCHASE NATURAL GAS, INCLUDING STORAGE COSTS AND PIPELINE CAPACITY COSTS AS PERMITTED BY § 7-34-111(d) OF TENNESSEE CODE ANNOTATED; FIXING THE TERMS OF SAID NOTES; AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF THE NOTES AND OTHER DOCUMENTS TO EFFECTUATE THE FINANCING; AUTHORIZING THE SALE OF THE NOTES TO THE PURCHASERS; DESIGNATING THE PAYING AGENT AND REGISTRATION AGENT AND AUTHORIZING CERTAIN OTHER ACTS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF SAID NOTES.
2. As provided in the Resolution described in paragraph 1 above, the President and the Secretary-Treasurer of the Division are authorized to determine the details of the Notes, including the interest rate or rates, maturities of the Notes, payment provisions and redemption provisions. The President and Secretary-Treasurer are hereby authorized to make such appropriate changes, insertions and deletions in the Resolutions described above as they determine to be in the best interests of the Division.
3. That the President and the Secretary-Treasurer are authorized to prepare disclosure documents, if any, required, to be delivered to any lender, purchaser or investor of the Notes.

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MINUTES OF MEETING OF JUNE 21, 2007 (Continued)

It was moved by Vice Chairman Evans, seconded by Commissioner Taylor and unanimously carried:

THAT, the Board of Light, Gas and Water Commissioners hereby adopts the Resolutions and to the extent required by the City's Charter and applicable law, recommends and requests the Council of the City of Memphis to adopt the Resolutions and issue on behalf of the Light, Gas and Water Division of the City of Memphis Gas System Revenue Anticipation Notes in a principal amount not exceeding \$40,000,000, in one or more series, in accordance with the terms and conditions set forth in the Resolution described in paragraph 1 above; and

THAT, the resolution described in paragraph 1 above is hereby approved in substantially the form presented to this meeting, together with such changes, insertions, omissions and deletions as may be approved by President and Secretary-Treasurer of the Division, and that this Board does hereby request and recommend the Council of the City of Memphis to adopt such resolution on behalf of the Light, Gas and Water Division; and

THAT, to the extent required by the City's Charter and applicable law, this Board does hereby request the Council for the City of Memphis to authorize and direct the execution of each of the documents mentioned in the Resolutions; each such document shall be executed on behalf of this Board by the President and Secretary-Treasurer in the manner therein set forth; and

THAT, the President and the Secretary-Treasurer are authorized and directed to take all other and further necessary steps for the proper issuance of said Notes, including, but not limited to, obtaining all necessary approvals required by Tennessee law and making all necessary declarations, tax elections and certifications as required by the Internal Revenue Code and pertinent regulations. The Board does hereby approve, ratify and affirm all actions of President and the Secretary-Treasurer taken prior to the adoption hereof in preparation of the Board's action on this resolution.

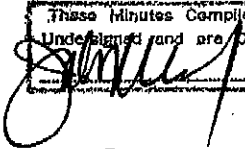
21. Commissioner Clark moved that the memo dated February 12, 2003, *Insurance Benefits for Appointed Officials* (see Minute File No. 1294), is no longer in effect as of this date going forward, seconded by Vice Chairman Evans and unanimously carried.

22. Bill Hawkins, Assistant Business Manager, IBEW Local 1288, 4000 Clearpool Circle, appeared before the Board to discuss various issues.

There being no further business presented, the meeting was adjourned.

SEE MINUTE FILE NO. 1294.

APPROVED WITHOUT INTERLINEATION
 CHAIRMAN

These Minutes Compiled by
Undersigned and are Correct.


Secretary-Treasurer

**SUMMARY OF MEMBERSHIP
INTEREST PURCHASE AGREEMENT**

➤ Provides for the sale of all MLGW's and Broadband's membership interests in Networkx to purchaser CII Holdco, Inc.

➤ **Purchase Price:** The purchase price is \$11.5 million. Cash payment to sellers is calculated by deducting Networkx' debt and by adjusting (positively or negatively) for the net working capital of Networkx. Cash available at closing for the interests of sellers is estimated to be approximately \$2 million, and of this amount, \$750,000 is to be held in escrow for 18 months and is available for funding any purchaser claims that may arise under the agreement. Claims that arise outside of the agreement are not capped by this agreement. Cash is to be divided among the sellers in accordance with their respective ownership interests (approximately 49.5% MLGW and approximately 50.5% Broadband).

➤ **Treatment of Company Obligations to MLGW:** The agreement requires Networkx and purchaser to resolve outstanding obligations relating to MLGW's pole attachment arrangements at closing and a transfer of optical fibers from Networkx to MLGW.

➤ **Representations and Warranties:** Sellers warrant the financial, operational and regulatory condition of Networkx with indemnity rights for purchaser.

➤ **Pre-closing Covenants:** Sellers' covenant not to continue negotiations with other parties that are interested in acquiring Networkx while closing this transaction. Sellers' covenant that MLGW will determine whether City Council approval is required and, if so required, a \$1 million reduction in purchase price will occur.

➤ **Conditions to Closing:** Purchaser has several "outs" in the event of an adverse change in the financial, operational or regulatory condition of Networkx including seller's receipt of approval of the MLGW Board and other regulatory approvals (such as the Tennessee Regulatory Authority).

➤ **Post-closing Covenants:** Prohibits sellers from soliciting employees of Networkx and from competing with Networkx for two years with the exception of the fiber optic facilities transferred from Networkx to MLGW. Networkx is required to pay undisputed trade debt within 60 days of closing.

➤ **Claims for Indemnification:** Each seller's obligation for a claim is limited to each seller's portion of the cash received or placed into escrow.

➤ **Termination:** The agreement includes several early termination options, including (i) if the parties fail to close the transaction by August 31, 2007; (ii) if MLGW is unable to obtain approvals necessary to consummate the transaction; and (iii) if the purchase price falls below a designated minimum amount. If the sellers terminate the agreement because of the inability of MLGW to obtain necessary approvals, Networkx must pay a topping fee of five percent of the aggregate proceeds of any seller sale within 12 months of termination plus the purchasers' out of pocket costs incurred in connection with the agreement (not to exceed \$200,000).

➤ **Additional Provisions:** The agreement contains additional provisions including confidentiality requirements (subject to applicable law).

Note: This is a high level summary of an agreement and schedules that are more than 150 pages long and is intended for informational purposes only.

INDEX**MEMPHIS NETWORK**

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2. Time Line
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8. Imputed Interest between Electric Division and Telecom Division
9. MLGW Internal Common Costs Allocated to Telecom Division

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
June 21, 2007

WHEREAS, Memphis Networkx requires additional funding to support growth requirements; and

WHEREAS, Memphis Light, Gas and Water (MLGW) does not desire to provide additional funding or loan guarantees; and

WHEREAS, Memphis Broadband does not desire to provide additional funding or loan guarantees; and

WHEREAS, funding is available through the sale of the members' ownership interest in Memphis Networkx; and

WHEREAS, the sale would avoid future risk of funding, losses or membership interest by MLGW.

NOW, THEREFORE, BE IT RESOLVED by the Board of Light, Gas and Water Commissioners, **THAT**:

The sale of MLGW's membership interest in Memphis Networkx is hereby approved; and

The Chairman of the Board of Light, Gas and Water Commissioners or his designated representative is authorized to finalize the sale and execute any necessary documents in accordance with the terms of the Membership Interest Purchase Agreement dated June 7, 2007.

It was moved by _____, seconded by _____ and unanimously carried;

THAT, the sale of Memphis Networkx as outlined above is approved.

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TIME LINE

1999	\$20 million funding approved
1999	Memphis Networkx, LLC formed
2001	TRA certificate
2002	Operations began
2002	Additional \$12 million funding
2004	Joint bridge loan retired in 2005
2005	90-day bridge loan
2005	Broadband guarantees \$4.9 million Dilution from 84% to 56% for MLGW
2006	Broadband guarantees \$2.1 million Dilution from 56% to 49% for MLGW

3

MEMPHIS NETWORKX
Historical Narrative from the MLGW Perspective

From a historical view, the Networkx investment conceived in the late 90s was entered into along with the broader markets' enthusiasm for broadband technology and with public benefit in mind. It soon gained support from the private sector with investment funds and management expertise in start-up ventures.

Before the company could begin operations in 2002, it had endured a lengthy and costly battle at the Tennessee Regulatory Commission for almost two years. During this time, the technology sector began a significant retraction which quelled the lofty expectations in broadband investments for the near term. Over the last four to five years, Networkx has improved its business as the market slowly recovered, but has grown at a much slower pace than was originally projected. This required Networkx to seek additional rounds of funding to support the growth. The additional funding has come in the way of \$12 million in additional approved equity investment from MLGW and an additional \$7 million in loan guarantees from the private partner.

At this point, Networkx needs an additional \$4 million to support its continued expansion. Both MLGW and the private partner are unwilling to provide additional support for funding and seek funding from the market in the form of a sale. MLGW losses have been recognized each year for the past seven years and amount to a cumulative total of \$28,675,000 through fiscal year 2006. The sale would not result in further significant detriment to the current or future financial statements or rates and would eliminate the risk of additional funding needs.

While the relative size of losses have been manageable and more than offset in the Electric Division by favorable results from other arrangements such as the TVA transmission credit and TVA prepay financing, the risk/return issues for Networkx investment are different in regard to collateralization, market exposure, open records, public/private partnership, retail competition and funding.

4.

Memphis Networx
Revenues Per Audited
Financial Statements

1999-2001	\$	-
2002	\$	122,464
2003	\$	675,477
2004	\$	3,569,094
2005	\$	4,045,611
2006	\$	5,512,873

Memphis Networx
Audited Year End Book Value
Per MLGW Balance Sheet

1999	\$	-
2000	\$	1,388,000
2001	\$	2,889,000
2002	\$	10,093,000
2003	\$	11,320,000
2004	\$	9,415,000
2005	\$	3,211,000
2006	\$	1,372,000

6.

Memphis Networkx
Audited Year End Loss
Per MLGW Income Statement

1999	\$ (2,068,000)
2000	\$ (2,083,000)
2001	\$ (2,032,000)
2002	\$ (4,153,000)
2003	\$ (4,625,000)
2004	\$ (5,541,000)
2005	\$ (6,248,000)
2006	<u>\$ (1,925,000)</u>
Total	\$ (28,675,000)

7.

Memphis Network
Schedule of Investments
Per MLGW Audited Financial Statements

	Amount Approved for Investment	Amount Invested	Total Investment to Date
*1999	\$20,000,000	\$ 1,473,871	\$ 1,473,871
2000	\$ -	\$ 3,321,500	\$ 4,795,371
2001	\$ -	\$ 3,269,273	\$ 8,064,644
**2002	\$12,000,000	\$ 11,200,000	\$ 19,264,644
2003	\$ -	\$ 5,740,000	\$ 25,004,644
***2004	\$ -	\$ 3,532,000	\$ 28,536,644
2005	\$ -	\$ -	\$ -
2006	\$ -	\$ -	\$ -
Total	\$32,000,000	\$ 28,536,644	\$ 28,536,644

* Approval received August 19, 1999 for the Electric Division to loan up to \$20 million to the Telecommunications Division

** Approval received June 6, 2002 to increase amount of the loan from \$20 million up to \$26 million
Approval received July 11, 2002 to increase amount of the loan from \$26 million up to \$32 million

*** Last Investment made April 2004

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Memphis Networkx
Imputed Interest Between
Electric Division and
Telecom Subdivision

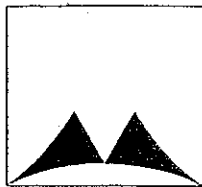
1999	\$ -
2000	\$ -
2001	\$ -
2002	\$ 259,436
2003	\$ 304,718
2004	\$ 404,036
2005	\$ 995,396
2006	<u>\$ 1,608,785</u>
Total	\$ 3,572,371

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Memphis Networkx
MLGW Internal Common
Costs Allocated to the
Telecom Subdivision

1999	\$	132,535
2000	\$	610,698
2001	\$	263,681
2002	\$	157,252
2003	\$	112,043
2004	\$	104,234
2005	\$	66,909
2006	\$	<u>85,448</u>
Total	\$	1,532,800

MEMPHIS CITY COUNCIL
REQUEST FOR INFORMATION
MEMPHIS NETWORKX, LLC



MEMPHIS LIGHT, GAS AND WATER DIVISION

October 23, 2007

HAND-DELIVERED

Mr. Jeffrey A. Kitterman
Rhea & Ivy, P.L.C.
Suite 250
6000 Poplar Ave.
Memphis, TN 38119-3971

Re: Memphis City Council Request for Information Regarding Memphis Light, Gas
and Water Division and Memphis Networx, LLC

Dear Jeff:

Enclosed is a binder of exhibits to Memphis Light, Gas and Water Division's responses to the Memphis City Council Request for Information which was sent to Mr. Jerry R. Collins, Interim Chief Utility Officer of MLGW with your letter dated October 8, 2007.

A copy of the responses, which were emailed to you yesterday, has also been included in the binder.

As noted in my earlier email, please don't hesitate to contact me if you have any questions regarding the responses or the enclosed exhibits once you have had an opportunity for review.

Sincerely,


Charlotte Knight Griffin
General Counsel

Enclosures

c: Mr. Jerry Collins
Mr. John McCullough

Memphis City Council
Request for Information

1. What was the interest income loss for the \$29 million MLGW invested in Memphis Networkx? Provide a schedule detailing the calculation.

RESPONSE: Funding for investment in Memphis Networkx by MLGW ended in April 2004. Prior to that, the interest foregone on funds invested by MLGW in Memphis Networkx is estimated to equal the imputed interest charged by the Electric Division to the Telecommunications Division in regard to the loan. Per the Revolving Line of Credit Note of August 19, 2002 (copy attached as **exhibit 1**), the interest rate of each calendar month shall be the monthly average of the prime lending rate posted by a majority of the nation's largest banks that appear daily in the Wall Street Journal less three percentage points but in no event shall the interest rate for any calendar month be less than the highest interest rate earned by MLGW on its invested electric plant funds. MLGW has calculated and accrued this interest since the origination of the revolving line of credit note. As of December 30, 2006, this amount was \$3,572,371 (copy of the calculation attached as **exhibit 2**).

2. What was the source of the \$29 million that MLGW contributed/invested in Memphis Networkx?

RESPONSE: Total investment as of July 30, 2007 was \$28,536,644. Funding was provided from MLGW Electric Division working capital. The Electric Division made an interdivisional loan to the Telecommunications Division, and the Telecommunications Division made the investment by providing capital contributions to Memphis Networkx in exchange for membership interest in the company.

3. What is the history of the interdivision loan that MLGW made from its Electric Division to invest in Memphis Networkx?

RESPONSE: As outlined on the schedule attached as **exhibit 3**, an interdivisional loan was approved from the Electric Division to the Telecommunications Division in an amount not to exceed \$20 million on August 19, 1999 (copy attached as **exhibit 4**). On June 6, 2002, an increase from \$20 million up to \$26 million was approved (copy attached as **exhibit 5**). On July 11, 2002, an increase in the amount of the loan from \$26 million to \$32 million was approved (copy attached as **exhibit 6**).

- 3.1 When did Memphis Networkx/MLGW start paying off debt (interdivision loan from the MLGW Electric Division)?

RESPONSE: There were no dividends declared or paid by Memphis Networkx to equity holders, therefore, no funds were available to the Telecommunications Division for repayment of the interdivisional loan from the Electric Division to the

Telecommunications Division. Net sale proceeds will be applied toward repayment of the interdivisional loan between the Electric Division and the Telecommunications Division of the Electric Division.

- 3.2 How much of the loan was spent?

RESPONSE: As outlined on the schedule attached as **exhibit 3**, funding for equity investment in Memphis Networkx was provided over a period of approximately four years. Investments were spread over this period on a monthly basis as opposed to a lump sum investment. A total of \$28,536,644 was invested.

- 3.3 What is the payoff schedule for the loan (debt service requirements)?

RESPONSE: The interdivisional revolving line of credit note agreements between the Electric Division and the Telecommunications Division are attached as **exhibits 1 and 7**. The principal is due on the maturity date of February 1, 2011, with interest payable in semi-annual installments on advances.

4. What expenses were paid out of the MLGW Budget for Memphis Networkx over and beyond the \$29 million that was contributed/invested?

RESPONSE: No expenses were paid by MLGW on behalf of Memphis Networkx. MLGW was audited on an annual basis as required by the TRA for cross-subsidy between MLGW and Memphis Networkx. Copies of these audits are attached as **exhibits 8, 9 and 10**.

- 4.1 Were any salaries paid to Memphis Networkx employees out of the MLGW Budget?

RESPONSE: No salaries to Memphis Networkx employees were paid by MLGW.

- 4.2 Were any MLGW employees assigned to work at or on loan to Memphis Networkx?

RESPONSE: No MLGW employees were assigned to work at or on loan to Memphis Networkx. However, MLGW employees have performed oversight and monitoring roles of Memphis Networkx on behalf of MLGW (e.g., MLGW Board members of Memphis Networkx). Also, MLGW employees, in the course of their regular work with MLGW, occasionally performed pole preparation and other outside plant work for Memphis Networkx jobs pursuant to the fiber optics agreement between MLGW and Networkx and billed in accordance with the standard rates charged to any other carrier.

5. Who were initial private investors in Memphis Networkx?

RESPONSE: A&L Networks-Tennessee, LLC, a Kansas limited liability company.

- 5.1 Who are the current private investors in Memphis Networkx?

RESPONSE: Immediately prior to the sale of both members' membership interest in Memphis Networkx, the private investor was Memphis Broadband, LLC. MLGW believes the current private investor is CII Holdco, Inc. now known as Zayo Bandwidth, Inc.

5.2 How much money did the private investors contribute to Memphis Networkx?

RESPONSE: Memphis Broadband invested approximately \$6.4 million from 2000 to 2002. It then provided an unconditional guaranty in the amount of \$6.9 million in 2005 to allow Networkx to access that amount of additional capital.

5.3 Who are the silent partners, if any, in Memphis Broadband, Memphis Telecom, A&L and any other private investor? Provide entity names and investors in those entities, with any party related to Memphis Networkx, MLGW or the City of Memphis so identified.

RESPONSE: MLGW has no knowledge of the investment entity or any silent partners in A&L Networks-Tennessee, LLC. According to the responses provided by Memphis Broadband, LLC, to the TRA, the members of Memphis Broadband, LLC, are as follows:

- Memphis Angels, LLC, a Delaware limited liability company
- Memphis Broadband II, LLC, a Delaware limited liability company
- Belz Broadband Associates, a Tennessee general partnership
- M-Net 2000, a Tennessee general partnership
- Memphis Telecom, LLC

The structure of Memphis Broadband was previously disclosed in the December 21, 2000 filing of the Amendment to the Application of Memphis Networkx, LLC and the prefiled testimony of several of the involved parties.

5.4 Is there any relationship between any past or current investor and companies submitting a bid to purchase Memphis Networkx?

RESPONSE: MLGW has no knowledge of any relationship between any past or current investors and the companies submitting bids to purchase Memphis Networkx. In addition, to MLGW's knowledge, there are no investors in CII, the winning bidder, that are residents of Shelby County or that were involved in any way with Memphis Networkx.

6. How many customers does Memphis Networkx have?

RESPONSE: MLGW does not have a current customer count of Memphis Networkx customers, and MLGW does not have a precise customer count of Memphis Networkx as of July 31, 2007 the date of closing. MLGW has requested

that Memphis Networkx supply information responsive to this inquiry. (Copy of Letter attached as **exhibit 27**.)

Additionally, MLGW notes that the terms of the Membership Interest Purchase Agreement between MLGW, Memphis Broadband, LLC and the purchaser of Memphis Networkx includes a confidentiality provision, which provides in relevant part:

“Sellers agree that for a period commencing on the Closing Date and terminating three years after the Closing Date, Sellers will keep confidential and will use its reasonable commercial efforts to cause Sellers’ Affiliates and representatives to keep confidential (except as may be disclosed to their attorneys, accountants, financial advisors or other representatives, or as required by Law) all Confidential Information relating directly to the Business or the Assets that remains in the possession of Sellers or Sellers’ Affiliates after the Closing.”

6.1 Who are they (customers)?

RESPONSE: In response to a similar question from the Tennessee Regulatory Authority, Memphis Networkx responded, in relevant part, as follows:

“Networkx objects to this question on the grounds that the question requests confidential, competitively sensitive information about the identity of Networkx’s customers.”

See Response No. 6 at <http://www.state.tn.us/tra/orders/2007/0700183d.pdf>.

Please also see the response to Question 6.

MLGW has requested that Memphis Networkx supply information responsive to this inquiry. (Copy of Letter attached as **exhibit 27**.)

6.2 What percentage of customers does the City of Memphis represent?

RESPONSE: In responses to data requests from the Tennessee Regulatory Authority, the parties estimated that approximately 80% of the customers of Memphis Networkx reside or operate businesses within the City of Memphis.

See Response No. 6.1 at <http://www.state.tn.us/tra/orders/2007/0700183d.pdf>.

6.3 What fees are charged to each customer?

RESPONSE: See responses to Questions 6 and 6.1.

MLGW has requested that Memphis Networkx supply information responsive to this inquiry. (Copy of Letter attached as **exhibit 27**.)

7. What is the layout ("as is" drawing) of the fiber optic network, (i.e., map of entire fiber network)?

RESPONSE: A copy of the map provided by Memphis Networkx to the TRA showing existing and planned network routes is attached as **exhibit 11**.

8. Who are the creditors of Memphis Networkx?

RESPONSE: In response to a similar question from the Tennessee Regulatory Authority, Memphis Networkx responded, in relevant part, as follows:

"Networkx objects to this question on the grounds that the question requests confidential financial information, the public disclosure of which could harm the company."

See Response No. 8 at <http://www.state.tn.us/tra/orders/2007/0700183d.pdf>

MLGW has requested that Memphis Networkx supply information responsive to this inquiry. (Copy of Letter attached as **exhibit 27**.)

Please also see the response to Question 6, relating to the terms of the Membership Interest Purchase Agreement.

- 8.1 How much is owed to each creditor?

RESPONSE: Please see response to Question 8.

- 8.2 How long has the debt been outstanding for each creditor?

RESPONSE: Please see response to Question 8.

9. What are the monthly expenses of Memphis Networkx?

RESPONSE: While MLGW does not maintain monthly financial ledgers for Memphis Networkx, MLGW does have annual audited financial statements from the company which lists annual expenses for Memphis Networkx. According to those documents, the annual expenses for Memphis Networkx were:

\$5,918,947 for 2006
\$5,511,554 for 2005
\$5,103,783 for 2004
\$4,993,607 for 2003
\$4,495,164 for 2002
\$3,536,973 for 2001

Copies of the audited financial statements of Memphis Networkx for the years 1999 through 2006 are attached as **exhibits 12 through 16**, and a copy of 2007 unaudited financials is attached as **exhibit 17**.

10. How did the new division of MLGW transform into a membership/investment in a private concern?

RESPONSE: The Telecommunications Division did not “transform into a membership/investment in a private concern.” Instead, as discussed in more detail below, MLGW utilized an inter-division loan under T.C.A. § 7-52-402 to loan funds from the Electric Division to MLGW’s Telecommunications Division. The Telecommunications Division, in turn, used these funds to make a capital contribution to Memphis Networkx, LLC in exchange for a membership interest in Memphis Networkx. Participation in Memphis Networkx is authorized under T.C.A. § 7-52-103(d).

At its March 4, 1999 meeting, the Board of Commissioners of MLGW voted to “initiate and establish a telecommunications entity.” (Copy attached as **exhibit 18**) On August 19, 1999, the Board voted to establish a Telecommunications Division as a subdivision of the MLGW Electric Division, and this resolution included the authorization for the Telecommunications Division to “organize, create, manage, operate, either wholly or jointly, with others an entity to provide or perform those services authorized for the Telecommunications Division.” (Copy attached as **exhibit 19**.) At the same meeting on August 19, 1999, the MLGW Board of Commissioners approved a loan in an amount not to exceed \$20 million from the electric system to the Telecommunications Division. (Copy attached as **exhibit 4**.)

Together, these resolutions authorized the formation of a discrete Telecommunications Division underneath the MLGW Electric Division, an inter-division loan of up to \$20 million and the participation of MLGW’s Telecommunications Division in a separate entity to provide telecommunications services. The Telecommunications Division used the loan proceeds from the initial inter-division loan and subsequent increases of the loan to make capital contributions from time to time to Memphis Networkx, LLC, and the Telecommunications Division held membership interests in Memphis Networkx, LLC evidencing these capital contributions.

- 10.1 Is there supporting documentation for the initial investment, i.e., board minutes? Provide a copy of the Members’ Operating Agreement.

RESPONSE: Copies of the MLGW Board resolutions are attached as **exhibits 4, 5 and 6**. In its Order in Docket No. 99-00909 dated August 9, 2001 (copy attached as **exhibit 20**) at page 31, the Tennessee Regulatory Authority found these actions to be sufficient to authorize MLGW’s participation in Memphis Networkx pursuant to T.C.A. § 7-52-103(d).

Copies of the initial Operating Agreement, the Amended and Restated Operating Agreement and the subsequent amendments to the Amended and Restated Operating Agreement are attached as **exhibits 21, 22 and 23** respectively.

- 10.2 Is there any documentation from the State Comptroller's office approving the investment in a private concern?

RESPONSE: No, the Comptroller's approval was not required.. Pursuant to T.C.A. § 7-52-103(d), the Tennessee Regulatory Authority's approval of MLGW's participation in Memphis Networkx was required, and this approval was obtained in the August 9, 2001 Order of the Tennessee Regulatory Authority in Docket No. 99-00909 (copy attached as **exhibit 20**).

The inter-division loans did require the approval of the Comptroller's office pursuant to T.C.A. § 7-52-402. Those approvals were obtained by letters dated November 24, 1999 (\$20 million loan), January 22, 2002 (\$26 million loan), and August 28, 2002 (\$32 million loan). Copies of the approval letters are attached as **exhibits 24, 25 and 26** respectively.

11. Who are the Memphis Networkx employees since inception of company?

RESPONSE: While MLGW does not have the employee records of Memphis Networkx, it does believe that the following people were employed at various times by Memphis Networkx during the period that MLGW held a membership interest in Memphis Networkx: Ward Huddleston, Jr., James R. McDaniel, Mark A. Ivie, Charles Elliot, Jeffrey A. Rice, Ross Bopp, Dan Kennedy, Beth Washington, Dabney Wellford, Beverly Francis, Mike Mora, David Plant, Derrick Fisher, David Ori, Carlotta Burnett and Andy Forsyth.

- 11.1 What were/are the salaries?

RESPONSE: Although MLGW does not have employment or salary records for employees of Memphis Networkx, it has requested that Memphis Networkx disclose employee salary information in response to this inquiry. (Copy of letter attached as **exhibit 27**.)

- 11.2 Who are the employees that have been paid bonuses?

RESPONSE: Although MLGW does not have compensation information for employees of Memphis Networkx, it has requested that Memphis Networkx disclose employee information in response to this inquiry. (Copy of letter attached as **exhibit 27**.)

12. What were the total construction costs for building the fiber optic network?

RESPONSE: According to responses provided by Memphis Networkx to the TRA, these costs were \$14,292,100 (outside plant: \$8,644,471, Broadband equipment: \$5,647,639).

12.1 What were the costs of computer equipment?

RESPONSE: Attached as **exhibits 12 through 16** are copies of the audited financial statements for Memphis Networkx since inception (November 8, 1999 through December 31, 2006). Although computer equipment is not listed as a separate item, it is included within the property and equipment portion of the balance sheet. MLGW has requested that Memphis Networkx provide additional information responsive to this inquiry.

12.2 What were the costs of computer software?

RESPONSE: Attached as **exhibits 12 through 16** are copies of the audited financial statements for Memphis Networkx since inception (November 8, 1999 through December 31, 2006). The amount for computer software in accordance with the audited balance sheets is \$70,000 as of December 31, 2000; \$72,352 as of December 31, 2001; \$2,292,827 as of December 31, 2002; \$2,443,285 as of December 31, 2003; \$2,452,017 as of December 31, 2004; \$2,457,848 as of December 31, 2005; and \$2,491,141 as of December 31, 2006.

13. Provide the 2006 audited and 2007 unaudited financial statements.

RESPONSE: A copy of the 2006 audited financial statement is attached as **exhibit 16**. Unaudited financials for 2007 through July 31 are attached as **exhibit 17**.

13.1 Provide a schedule of accounts receivable (list to support the value of accounts receivables) as of each December 31 date.

RESPONSE: According to the audited financial statements of Memphis Networkx (copies attached as **exhibits 12 through 16**) accounts receivable are as follows:

\$345,493 for 2006
\$283,997 for 2005
\$758,966 for 2004
\$ 97,192 for 2003
\$ 49,441 for 2002
--- for 2001
--- for 2000

13.2 Provide a schedule of all assets as of each December 31 date.

RESPONSE: According to the audited financial statements of Memphis Networkx (copies attached as **exhibits 12 through 16**) all assets are as follows:

\$11,954,814 for 2006
\$13,061,242 for 2005
\$11,393,074 for 2004
\$10,662,248 for 2003
\$10,067,831 for 2002

\$ 3,922,520 for 2001
\$ 2,208,829 for 2000

- 13.3 Provide a schedule of fixed asset (property, plant, and equipment) as of each December 31 date.

RESPONSE: According to the audited financial statements of Memphis Networkx (copies attached as **exhibits 12 through 16**) fixed assets (property, plant and equipment) are as follows:

\$10,752,083 for 2006
\$11,290,129 for 2005
\$ 9,961,961 for 2004
\$ 9,796,749 for 2003
\$ 9,115,055 for 2002
\$ 3,083,082 for 2001
\$ 2,174,583 for 2000

- 13.4 Provide a schedule of intangible assets (software licenses, intellectual property, copyright, trademark, etc.) as of each December 31 date.

RESPONSE: MLGW has requested that Memphis Networkx supply information responsive to this inquiry. (Copy of letter attached as **exhibit 27**.)

14. What documentation is available documenting that the company was in financial trouble and needed to be sold immediately?

RESPONSE: A letter dated June 27, 2007 from MLGW Board member Nick Clark to City Council Chairman Tom Marshall detailing this information is attached as **exhibit 28**.

15. Was there an MLGW office and/or employee assigned to monitor Memphis Networkx?

RESPONSE: At the time of the sale, MLGW had three of six Board seats at Memphis Networkx. These seats were filled by John McCullough, an officer of MLGW; Nick Clark, a Board member of MLGW; and Derek Renfroe. All three were very active in the oversight of Memphis Networkx. At various other times since inception of Memphis Networkx, other MLGW employees or Board members including Herman Morris, Larry Thompson, L. R. Jalenak, J. Maxwell Williams and Joseph Lee, III have also filled Board seats. Other employees of MLGW including Mike Whitten and Dana Jeanes have been involved in MLGW's internal management of the investment.

16. What are the terms and conditions of the consultant contract with the private investors on the sale of Memphis Networkx?

RESPONSE: MLGW does not have a consultant contract with the private investors on the sale of Memphis Networkx; however, Memphis Networkx did hire a consultant to provide investment banking services and advice in soliciting and evaluating bids. The investment banking consultant's fee arrangement was approximately 5% of the sale price.

17. INTENTIONALLY LEFT BLANK

18. What is the breakdown of the sales proceeds? Provide a closing statement detailing gross sale price less disbursements.

RESPONSE: A copy of the closing statement is attached as **exhibit 29**. The closing statement utilized an estimated working capital adjustment in calculating the sales proceeds. The Membership Interest Purchase Agreement provides for an adjustment for variations between the working capital estimate utilized in the closing statement and the actual working capital of Memphis Networkx. The buyer and the sellers are currently discussing the appropriate adjustment based upon Memphis Networkx actual working capital as of the date of closing.

19. Are there provisions to allow other current owners to purchase the company at the same price before the sale to the outside party goes through?

RESPONSE: No. There are provisions in Article 11 of the Amended and Restated Operating Agreement, as amended, that would have applied if one member (i.e., MLGW's Telecommunications Division or Memphis Broadband, LLC) sought to dispose of its membership interest in Memphis Networkx. Those provisions do not apply to a mutually agreed upon sale of all of the membership interests in Memphis Networkx, LLC.

20. What bank handles Memphis Networkx financials?

RESPONSE: Prior to the sale to CII Holdco, Inc., Memphis Networkx did their banking with Renasant Bank.

21. What kind of tax write-offs did investors receive from losses on the venture?

RESPONSE: The company generated approximately \$14 million in losses from 2002 to 2006 which were passed on to investors due to the structure of the company as a limited liability company. The impact of the losses allocated to each investor depends on the specific tax situation of the investor. Passive tax losses may have resulted in an offset to taxable gains up to the amount of basis an investor had in the company for some or all investors.

21.1 Are they currently able to continue to receive these tax write-offs?

RESPONSE: MLGW is a tax exempt entity and this question involves the tax treatment of private investors. Subject to that, MLGW believes that the same

principles noted in the response to question 21 should apply to the final accounting period prior to the sale of Memphis Networkx.

22. INTENTIONALLY LEFT BLANK

23. Are there any related companies to Memphis Networkx.

RESPONSE: No. Memphis Networkx has no parent company or subsidiary companies and did not hold any ownership interests in any other company.

23.1 What is V02 Networkx?

RESPONSE: V02 Networkx, Inc. is a competitive local exchange carrier that holds a certificate of convenience and necessity from the Tennessee Regulatory Authority. See Initial Order Granting a Certificate of Public Convenience and Necessity, Docket No. 06-00055 (May 5, 2006) attached as **exhibit 30** and also available at <http://www2.state.tn.us/tra/dockets/0600055.htm>.

23.2 How is V02 Networkx related to Memphis Networkx?

RESPONSE: Although Memphis Networkx, LLC and V02 Networkx, Inc. share the use of the word "Networkx", MLGW does not believe that there is any common ownership or affiliated ownership between Memphis Networkx, LLC and V02 Networkx, Inc. Information concerning the ownership structure of V02 Networkx, Inc. is available under the TRA Docket No. 06-00055 (<http://www2.state.tn.us/tra/dockets/0600055.htm>) and under a prior docket, Docket No. 03-00641 (<http://www2.state.tn.us/tra/dockets/0300641.htm>). MLGW does not have any further information concerning the ownership structure of V02 Networkx, Inc. or the customers of this company. MLGW believes that V02 Networkx is a former or current customer of Memphis Networkx and MLGW will ask Memphis Networkx to provide additional information concerning any customer or other relationship between Memphis Networkx and V02 Networkx.

23.3 Who are the owners of V02 Networkx?

RESPONSE: See response to Question 23.2.

23.4 What services does V02 Networkx provide?

RESPONSE: See responses to Questions 23.1 and 23.2.

23.5 Does MLGW have any ownership interest in V02 Networkx?

RESPONSE: No.

23.6 Does MLGW have any ownership interest in any other private ventures?

RESPONSE: No. MLGW does not have any ownership in any other telecommunications ventures.

23.7 How long has V02 Networx been in operation?

RESPONSE: See response to Question 23.2

23.8 Who are V02 Networx customers?

RESPONSE: See response to Question 23.2

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JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

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Tab 1

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

REVOLVING LINE OF CREDIT NOTE

\$32,000,000.00

Memphis, Tennessee
August 19, 2002

FOR VALUE RECEIVED, the undersigned TELECOMMUNICATIONS DIVISION OF THE ELECTRIC DIVISION OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION, OF THE CITY OF MEMPHIS (hereinafter referred to as "Maker"), promises to pay to the order of THE ELECTRIC DIVISION OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION, OF THE CITY OF MEMPHIS (hereinafter referred to as "Payee"), the sum of Thirty-two Million and No/100 Dollars (\$32,000,000.00), or so much thereof as shall be advanced from time to time by the Payee to the Maker, together with interest as follows: The interest rate of each calendar month shall be the monthly average of the prime lending rate posted by a majority of the nation's largest banks that appear daily in The Wall Street Journal less three (3) percentage points (the "Index Rate"), but in no event shall the interest rate for any calendar month be less than the highest rate of interest then earned by the Payee on its invested electric plant funds, in accordance with the requirements of Tennessee Code Annotated Section 7-52-402(2) (the "Minimum Rate"). In the event the Index Rate in any calendar month is less than the Minimum Rate, the interest rate for that month shall be the Minimum Rate.

Interest on all advances outstanding shall be paid semi-annually with such payments being due and payable on January 1 and July 1 each year.

On the Maturity Date, February 1, 2011 the entire outstanding principal balance, together with all accrued and unpaid interest, shall be immediately due and payable in full.

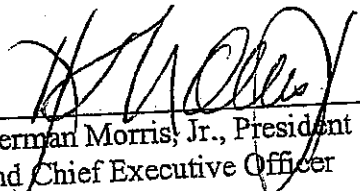
Prior to the Maturity Date, Maker may borrow up to the principal amount of this Note and repay (without premium or penalty) and re-borrow funds so long as the principal amount of the funds disbursed hereunder at no time exceeds Thirty-two Million and No/100 Dollars (\$32,000,000.00).

Time is of the essence of this Note. It is hereby expressly agreed that in the event that any default be made in the payment of any part of interest or principal in accordance with the terms hereof, or upon failure of Maker to keep and perform all the covenants, promises, agreements, conditions and provisions of this Note, or any other instrument or document now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced hereby; then, in any such case, the entire unpaid principal sum evidenced by this Note, together with all accrued interest, shall, at the option of the Payee, without notice, become due and payable forthwith, regardless of the stipulated Maturity Date. Upon the occurrence of any default as set forth herein, at the option of Payee and without notice to Maker, all accrued and unpaid interest, if any, shall be added to the outstanding principal balance hereof, and the entire outstanding principal balance, as so adjusted, shall bear interest thereafter until paid, regardless of whether or not there has been an acceleration of the payment of principal as set forth herein. All such interest shall be paid at the time of and as a condition precedent to the curing of any such default. Failure of Payee to exercise this right of accelerating the maturity of the debt, or indulgence granted from time to time, shall in no event be considered as a waiver of said right of acceleration or stop Payee from exercising said right.

IN WITNESS WHEREOF, this Note has been duly executed by Maker the day and year
first abovewritten.

TELECOMMUNICATIONS DIVISION OF THE
ELECTRIC DIVISION OF THE MEMPHIS
LIGHT, GAS AND WATER DIVISION, OF THE
CITY OF MEMPHIS

By:


Herman Morris, Jr., President
and Chief Executive Officer

MLGW/TEL-88

Tab 2

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

Calendar Date	Transaction Date	Balance	Days of Interest	Interest Rate	Accrued Interest	Check
12/31/1999		\$ 1,473,871.45				1473871
12/31/2000		\$ 4,795,371.45				4795371
12/31/2001		\$ 8,093,871.45				8093871
1/31/2002		\$ 8,763,871.45				8763871
2/1/2002		\$ 8,763,871.45	5	1.82%	\$ 2,184.97	8763871
2/28/2002		\$ 10,163,871.45	23	1.82%	\$ 11,656.43	10163871
3/1/2002		\$ 10,163,871.45	6	1.77%	\$ 2,957.27	10163871
3/31/2002		\$ 13,763,871.45	25	1.77%	\$ 16,686.34	13763871
4/1/2002		\$ 13,763,871.45	9	1.83%	\$ 6,210.71	13763871
4/30/2002		\$ 15,128,871.45	21	1.83%	\$ 15,928.84	15128871
5/1/2002		\$ 15,128,871.45	16	1.82%	\$ 12,059.94	15128871
5/31/2002		\$ 15,928,871.45	15	1.82%	\$ 11,913.92	15928871
6/1/2002		\$ 15,928,871.45	20	1.79%	\$ 15,623.39	15928871
6/30/2002		\$ 16,233,871.45	10	1.79%	\$ 7,961.27	16233871
					\$ 103,193.06	Interest Accrual
7/1/2002		\$ 16,337,064.51	17	1.80%	\$ 13,696.28	16337065
7/31/2002		\$ 16,771,064.51	14	1.80%	\$ 11,578.93	16771065
8/1/2002		\$ 16,771,064.51	7	1.80%	\$ 5,789.46	16771065
8/31/2002		\$ 17,546,064.51	24	1.80%	\$ 20,766.85	17546065
9/1/2002		\$ 17,546,064.51	16	1.79%	\$ 13,767.65	17546065
9/30/2002		\$ 17,786,064.51	14	1.79%	\$ 12,211.47	17786065
10/1/2002		\$ 17,786,064.51	17	1.80%	\$ 14,911.06	17786065
10/31/2002		\$ 18,181,064.51	14	1.80%	\$ 12,552.41	18181065
11/1/2002		\$ 18,181,064.51	6	1.76%	\$ 5,260.06	18181065
11/30/2002		\$ 18,881,064.51	24	1.76%	\$ 21,850.31	18881065
12/1/2002		\$ 18,881,064.51	11	1.76%	\$ 10,014.72	18881065
12/31/2002		\$ 19,397,064.51	20	1.76%	\$ 18,706.21	19397065
					\$ 161,105.40	Interest Accrual
1/1/2003		\$ 19,558,169.92	21	1.41%	\$ 15,866.23	19558170
	1/21/2003	\$ 19,827,169.92	6	1.41%	\$ 4,585.56	19827170
1/31/2003		\$ 20,027,169.92	4	1.41%	\$ 3,094.61	20027170
2/1/2003		\$ 20,027,169.92	6	1.27%	\$ 4,181.01	20027170
	2/6/2003	\$ 20,385,169.92	12	1.27%	\$ 8,511.51	20385170
2/28/2003		\$ 20,585,169.92	10	1.25%	\$ 7,049.72	20585170
3/1/2003		\$ 20,585,169.92	13	1.26%	\$ 9,237.95	20585170
	3/13/2003	\$ 20,885,169.92	13	1.26%	\$ 9,372.58	20885170
3/31/2003		\$ 21,185,169.92	5	1.26%	\$ 3,656.62	21185170
4/1/2003		\$ 21,185,169.92	3	1.25%	\$ 2,176.56	21185170
	4/3/2003	\$ 21,485,169.92	22	1.25%	\$ 16,187.46	21485170
4/30/2003		\$ 21,665,169.92	5	1.25%	\$ 3,709.79	21665170
5/1/2003		\$ 21,665,169.92	7	1.25%	\$ 5,193.71	21665170
	5/7/2003	\$ 22,135,169.92	14	1.25%	\$ 10,612.75	22135170
5/31/2003		\$ 22,535,169.92	10	1.25%	\$ 7,717.52	22535170
6/1/2003		\$ 22,535,169.92	3	1.26%	\$ 2,333.78	22535170
	6/3/2003	\$ 22,805,169.92	21	1.26%	\$ 16,532.19	22805170
6/30/2003		\$ 22,955,169.92	6	1.26%	\$ 4,754.55	22855170
					\$ 134,784.08	Interest Accrual
7/1/2003		\$ 23,089,954.00	8	1.25%	\$ 6,326.01	23089954
	7/8/2003	\$ 23,443,954.00	21	1.25%	\$ 16,860.38	23443954
7/31/2003		\$ 23,543,954.00	2	1.25%	\$ 1,612.60	23543954
8/1/2003		\$ 23,543,954.00	12	1.05%	\$ 8,127.50	23543954
8/31/2003		\$ 23,943,954.00	19	1.05%	\$ 13,087.17	23943954
9/1/2003		\$ 23,943,954.00	8	1.05%	\$ 5,510.39	23943954
9/30/2003		\$ 24,247,954.00	22	1.05%	\$ 15,345.97	24247954
10/1/2003		\$ 24,247,954.00	6	1.05%	\$ 4,185.26	24247954
10/31/2003		\$ 24,722,954.00	25	1.05%	\$ 17,780.21	24722954
11/1/2003		\$ 24,722,954.00	18	1.05%	\$ 12,801.75	24722954
11/30/2003		\$ 25,102,954.00	12	1.05%	\$ 8,665.68	25102954
12/1/2003		\$ 25,102,954.00	11	1.05%	\$ 7,943.54	25102954
12/31/2003		\$ 25,432,954.00	20	1.05%	\$ 14,632.66	25432954
					\$ 132,879.12	Interest Accrual

Calendar Date	Transaction Date	Balance	Days of Interest	Interest Rate	Accrued Interest	Check			
1/1/2004		\$ 25,565,833.11	7	1.07%	\$ 5,246.25	25565833			
1/31/2004		\$ 26,055,833.11	24	1.07%	\$ 18,331.88	26055833			
2/1/2004		\$ 26,055,833.11	9	1.03%	\$ 6,617.47	26055833			
2/29/2004		\$ 26,715,833.11	20	1.03%	\$ 15,077.98	26715833			
3/1/2004		\$ 26,715,833.11	5	1.02%	\$ 3,732.90	26715833			
3/31/2004		\$ 27,490,833.11	26	1.02%	\$ 19,974.16	27490833			
4/1/2004		\$ 27,490,833.11	8	1.03%	\$ 6,206.15	27490833			
4/30/2004		\$ 29,097,833.11	22	1.03%	\$ 18,064.57	29097833			
5/31/2004		\$ 29,097,833.11	31	1.02%	\$ 25,207.49	29097833			
6/30/2004		\$ 29,097,833.11	30	1.04%	\$ 24,872.67	29097833			
					\$ 143,331.52		Interest Accrual		
7/31/2004		\$ 29,241,164.63	31	1.23%	\$ 30,547.00	29241165			
8/31/2004		\$ 29,241,164.63	31	1.34%	\$ 33,278.85	29241165			
9/30/2004		\$ 29,241,164.63	30	1.52%	\$ 36,531.43	29241165			
10/31/2004		\$ 29,241,164.63	31	1.77%	\$ 43,957.88	29241165			
11/30/2004		\$ 29,241,164.63	30	1.90%	\$ 45,664.28	29241165			
12/31/2004		\$ 29,241,164.63	31	2.11%	\$ 52,401.77	29241165			
					\$ 242,381.22		Interest Accrual	Prime	Prime - 3% MLGW ROI
1/1/2005		\$ 29,483,545.85	7	2.31%	\$ 13,061.61	29483546		5.25%	2.25% 2.31%
1/31/2005		\$ 29,858,545.85	24	2.31%	\$ 45,352.27	29858546		5.25%	2.25% 2.31%
2/28/2005		\$ 29,858,545.85	28	2.43%	\$ 55,659.60	29858546		5.25%	2.25% 2.43%
3/31/2005		\$ 29,858,545.85	31	2.54%	\$ 64,412.65	29858546		5.50%	2.50% 2.54%
4/1/2005		\$ 29,858,545.85	25	2.78%	\$ 56,853.94	29858546		5.75%	2.75% 2.78%
4/30/2005		\$ 30,358,545.85	5	2.78%	\$ 11,561.20	30358546		5.75%	2.75% 2.78%
5/1/2005		\$ 30,358,545.85	18	2.95%	\$ 44,165.45	30358546		5.75%	2.75% 2.95%
5/31/2005		\$ 30,508,545.85	13	2.95%	\$ 32,054.87	30508546		5.75%	2.75% 2.95%
6/1/2005		\$ 30,508,545.85	27	3.01%	\$ 67,929.58	30508546		6.00%	3.00% 3.01%
6/30/2005		\$ 29,438,548.59	3	3.01%	\$ 7,283.02	29461047			
					\$ 398,334.18		Interest Accrual		
7/31/2005		\$ 29,836,882.78	31	3.25%	\$ 82,357.97	29836883		6.25%	3.25% 3.16%
8/31/2005		\$ 29,836,882.78	31	3.37%	\$ 85,398.88	29836883		6.25%	3.25% 3.37%
9/30/2005		\$ 29,836,882.78	30	3.50%	\$ 85,832.13	29836883		6.50%	3.50% 3.49%
10/31/2005		\$ 29,836,882.78	31	3.75%	\$ 95,028.43	29836883		6.75%	3.75% 3.75%
11/30/2005		\$ 29,836,882.78	30	4.00%	\$ 99,093.86	29836883		7.00%	4.00% 3.96%
12/31/2005		\$ 29,836,882.78	31	4.10%	\$ 103,897.75	29836883		7.00%	4.00% 4.10%
					\$ 550,608.02				
1/31/2006		\$ 30,387,491.79	31	4.28%	\$ 110,460.61	30387492		7.25%	4.25% 4.28%
2/28/2006		\$ 30,387,491.79	28	4.50%	\$ 104,899.29	30387492		7.50%	4.50% 4.47%
3/31/2006		\$ 30,387,491.79	31	4.50%	\$ 116,138.50	30387492		7.50%	4.50% 4.50%
4/30/2006		\$ 30,387,491.79	30	4.75%	\$ 118,636.10	30387492		7.75%	4.75% 4.74%
5/31/2006		\$ 30,387,491.79	31	4.86%	\$ 125,429.58	30387492		7.75%	4.75% 4.86%
6/30/2006		\$ 30,387,491.79	30	5.04%	\$ 125,879.14	30387492		8.00%	5.00% 5.04%
					\$ 701,443.21				
7/31/2006		\$ 31,088,935.01	31	5.25%	\$ 138,622.58	31088935		Prime	Prime - 3% MLGW ROI
8/31/2006		\$ 31,088,935.01	31	5.30%	\$ 139,942.80	31088935		8.25%	5.25% 5.20%
9/30/2006		\$ 31,088,935.01	30	5.35%	\$ 136,706.14	31088935		8.25%	5.25% 5.35%
10/31/2006		\$ 31,088,935.01	31	5.34%	\$ 140,998.97	31088935		8.25%	5.25% 5.34%
11/30/2006		\$ 31,088,935.01	30	5.26%	\$ 134,406.41	31088935		8.25%	5.25% 5.26%
12/31/2006		\$ 31,088,935.01	31	5.27%	\$ 139,150.67	31088935		8.25%	5.25% 5.27%
					\$ 829,827.56				
Subtotal Interest on Funds Transferred to Memphis Network					\$ 3,397,888.38				

Interest on Internal Expenses(5490):

Accrued Interest

Month	Balance				
12/31/1999	\$ 132,535.42				
12/31/2000	\$ 743,233.20				
12/31/2001	\$ 1,006,914.34				
1/31/2002	\$ 1,016,246.55				
	\$ 1,021,452.01	0.083333333	1.82%	\$ 1,549.20	
2/28/2002	\$ 1,026,657.47				
	\$ 1,033,386.03	0.083333333	1.77%	\$ 1,524.24	
3/31/2002	\$ 1,040,114.58				
	\$ 1,045,435.39	0.083333333	1.83%	\$ 1,594.29	
4/30/2002	\$ 1,050,756.19				
	\$ 1,055,445.47	0.083333333	1.82%	\$ 1,600.76	
5/31/2002	\$ 1,060,134.75				
	\$ 1,064,842.48	0.083333333	1.79%	\$ 1,588.39	
6/30/2002	\$ 1,069,550.21			\$ 7,856.88	Interest Accrual
7/1/2002	\$ 1,077,407.09				
	\$ 1,082,729.52	0.083333333	1.80%	\$ 1,624.09	
7/31/2002	\$ 1,088,051.94				
	\$ 1,093,203.83	0.083333333	1.80%	\$ 1,639.81	
8/31/2002	\$ 1,098,355.72				
	\$ 1,103,717.93	0.083333333	1.79%	\$ 1,646.38	
9/30/2002	\$ 1,109,080.14				
	\$ 1,114,857.88	0.083333333	1.80%	\$ 1,672.29	
10/31/2002	\$ 1,120,635.61				
	\$ 1,125,486.67	0.083333333	1.76%	\$ 1,650.71	
11/30/2002	\$ 1,130,337.73				
	\$ 1,151,180.66	0.083333333	1.76%	\$ 1,688.40	
12/31/2002	\$ 1,172,023.59			\$ 9,921.68	Interest Accrual
1/1/2003	\$ 1,181,945.27				
	\$ 1,178,203.83	0.083333333	1.41%	\$ 1,384.39	
1/31/2003	\$ 1,174,462.39				
	\$ 1,178,053.72	0.083333333	1.27%	\$ 1,246.77	
2/28/2003	\$ 1,181,645.05				
	\$ 1,185,123.30	0.083333333	1.26%	\$ 1,244.38	
3/31/2003	\$ 1,188,601.55				
	\$ 1,197,075.49	0.083333333	1.25%	\$ 1,246.95	
4/30/2003	\$ 1,205,549.42				
	\$ 1,206,505.58	0.083333333	1.25%	\$ 1,256.78	
5/31/2003	\$ 1,207,461.73				
	\$ 1,212,855.70	0.083333333	1.26%	\$ 1,273.50	
6/30/2003	\$ 1,218,249.67			\$ 7,652.77	Interest Accrual
7/1/2003	\$ 1,225,902.44				
	\$ 1,228,879.84	0.083333333	1.25%	\$ 1,280.08	
7/31/2003	\$ 1,231,857.24				
	\$ 1,234,837.45	0.083333333	1.05%	\$ 1,080.48	
8/31/2003	\$ 1,237,817.65				
	\$ 1,240,846.46	0.083333333	1.05%	\$ 1,085.74	
9/30/2003	\$ 1,243,875.27				
	\$ 1,247,470.78	0.083333333	1.05%	\$ 1,091.54	
10/31/2003	\$ 1,251,066.28				
	\$ 1,260,923.88	0.083333333	1.05%	\$ 1,103.31	

11/30/2003	\$ 1,270,781.47				
	\$ 1,279,324.27	0.083333333	1.05%	\$ 1,119.41	
12/31/2003	\$ 1,287,867.07			\$ 6,760.56	Interest Accrual
1/1/2004	\$ 1,294,627.63				
	\$ 1,297,025.48	0.083333333	1.07%	\$ 1,156.51	
1/31/2004	\$ 1,299,423.33				
	\$ 1,314,507.64	0.083333333	1.03%	\$ 1,128.29	
2/29/2004	\$ 1,329,591.95				
	\$ 1,339,246.19	0.083333333	1.02%	\$ 1,138.36	
3/31/2004	\$ 1,348,900.43				
	\$ 1,351,636.29	0.083333333	1.03%	\$ 1,160.15	
4/30/2004	\$ 1,354,372.14				
	\$ 1,357,706.30	0.083333333	1.02%	\$ 1,154.05	
5/31/2004	\$ 1,361,040.46				
	\$ 1,364,136.09	0.083333333	1.04%	\$ 1,182.25	
6/30/2004	\$ 1,367,231.72			\$ 6,919.62	Interest Accrual
7/1/2004	\$ 1,374,151.34				
	\$ 1,376,846.78	0.083333333	1.23%	\$ 1,411.27	
7/31/2004	\$ 1,379,542.22				
	\$ 1,382,334.09	0.083333333	1.34%	\$ 1,543.61	
8/31/2004	\$ 1,385,125.95				
	\$ 1,387,843.96	0.083333333	1.52%	\$ 1,757.94	
9/30/2004	\$ 1,390,561.97				
	\$ 1,390,828.44	0.083333333	1.77%	\$ 2,051.47	
10/31/2004	\$ 1,391,094.91				
	\$ 1,391,292.17	0.083333333	1.90%	\$ 2,202.88	
11/30/2004	\$ 1,391,489.42				
	\$ 1,398,605.37	0.083333333	2.11%	\$ 2,459.21	
12/31/2004	\$ 1,405,721.31			\$ 11,426.38	Interest Accrual
1/1/2005	\$ 1,417,147.69				
	\$ 1,417,360.60	0.083333333	2.31%	\$ 2,728.42	
1/31/2005	\$ 1,417,573.51				
	\$ 1,418,036.95	0.083333333	2.43%	\$ 2,871.52	
2/28/2005	\$ 1,418,500.39				
	\$ 1,420,181.34	0.083333333	2.54%	\$ 3,006.05	
3/31/2005	\$ 1,421,862.29				
	\$ 1,422,282.48	0.083333333	2.78%	\$ 3,294.95	
4/30/2005	\$ 1,422,702.68				
	\$ 1,423,074.57	0.083333333	2.95%	\$ 3,498.39	
5/31/2005	\$ 1,423,446.46				
	\$ 1,423,853.68	0.083333333	3.01%	\$ 3,571.50	
6/30/2005	\$ 1,424,260.90			\$ 18,970.84	Interest Accrual
7/1/2005	\$ 1,443,231.74				
	\$ 1,443,568.26	0.083333333	3.25%	\$ 3,909.66	
7/31/2005	\$ 1,443,904.79				
	\$ 1,451,492.38	0.083333333	3.37%	\$ 4,076.27	
8/31/2005	\$ 1,459,079.98				
	\$ 1,465,415.12	0.083333333	3.50%	\$ 4,274.13	
9/30/2005	\$ 1,471,750.26				
	\$ 1,472,131.39	0.083333333	3.75%	\$ 4,600.41	
10/31/2005	\$ 1,472,512.53				
	\$ 1,485,130.43	0.083333333	4.10%	\$ 5,074.20	

11/30/2005	\$ 1,497,748.33				
	\$ 1,500,388.10	0.083333333	4.10%	\$ 5,126.33	
12/31/2005	\$ 1,503,027.88			\$ 27,061.00	Interest Accrual
1/1/2006	\$ 1,530,088.87				
	\$ 1,530,443.53	0.083333333	4.28%	\$ 5,458.58	
1/31/2006	\$ 1,530,798.19				
	\$ 1,531,136.59	0.083333333	4.50%	\$ 5,741.76	
2/28/2006	\$ 1,531,474.99				
	\$ 1,531,835.73	0.083333333	4.50%	\$ 5,744.38	
3/31/2006	\$ 1,532,196.47				
	\$ 1,532,525.45	0.083333333	4.75%	\$ 6,066.25	
4/30/2006	\$ 1,532,854.43				
	\$ 1,533,203.46	0.083333333	4.86%	\$ 6,209.47	
5/31/2006	\$ 1,533,552.49				
	\$ 1,533,879.79	0.083333333	5.04%	\$ 6,442.30	
6/30/2006	\$ 1,534,207.09			\$ 35,662.74	
7/1/2006	\$ 1,569,869.84				
	\$ 1,571,715.96	0.083333333	5.25%	\$ 6,876.26	
7/31/2006	\$ 1,573,562.09				
	\$ 1,573,947.67	0.083333333	5.30%	\$ 6,951.60	
8/31/2006	\$ 1,574,333.25				
	\$ 1,574,595.83	0.083333333	5.35%	\$ 7,020.07	
9/30/2006	\$ 1,574,858.41				
	\$ 1,575,175.63	0.083333333	5.34%	\$ 7,009.53	
10/31/2006	\$ 1,575,492.85				
	\$ 1,575,827.21	0.083333333	5.26%	\$ 6,907.38	
11/30/2006	\$ 1,576,161.57				
	\$ 1,613,680.39	0.083333333	5.27%	\$ 7,086.75	
12/31/2006	\$ 1,651,199.21			\$ 41,851.59	Interest Accrual

Subtotal Interest on Internal Expenses

\$ 174,084.05

Total Interest**\$ 3,571,972.43**

	As calculated	As booked	Difference	Cumulative Difference
June-02	\$ 111,049.95	\$ 105,448.68	\$ 5,601.27	\$ 5,601.27
December-02	\$ 171,027.08	\$ 153,987.09	\$ 17,039.99	\$ 22,641.26
June-03	\$ 142,436.85	\$ 137,857.37	\$ 4,579.48	\$ 27,220.74
December-03	\$ 139,639.68	\$ 166,860.42	\$ (27,220.74)	\$ (0.00)
June-04	\$ 150,251.14	\$ 150,228.40	\$ 22.74	\$ 22.73
December-04	\$ 253,807.59	\$ 253,807.59	\$ 0.00	\$ 22.73
June-05	\$ 417,305.03	\$ 417,310.60	\$ (5.57)	\$ 17.16
December-05	\$ 577,670.02	\$ 578,085.31	\$ (415.29)	\$ (398.13)
June-06	\$ 737,105.96	\$ 737,105.96	\$ (0.00)	\$ (398.13)
December-06	\$ 871,679.14	\$ 871,679.14	\$ 0.00	\$ (398.13)
Total	\$ 3,571,972.43	\$ 3,572,370.56	\$ (398.13)	\$ (398.13)

Notes:

1. Adjusting entries were made in 2003 to correct interest calculations for 2002, such that the total interest as calculated and as booked for the combined period 2002 and 2003 is correct.
2. Interest rate of 1.02% used for 6/30/04 interest calculation for internal as booked. The correct rate is 1.04%. Impact to interest is \$22.74.
3. Interest as booked for the period 1/1/05 - 6/30/05 differs from that calculated by \$5.57. Interest as booked for the period 7/1/05 - 12/31/05 differs from that calculated by \$415.29, a total of \$420.86. These differences are associated with the bridge loans to Memphis Network made in the first half of 2005. These loans totaled \$1,025,000 and were repaid with interest of \$22,498.63 on 6/27/05. When the loans were repaid, the amount of the total principal outstanding from the Telecom Division to the Electric Division was reduced by \$1,047,498.63 (\$1,025,000 + \$22,504.20). The interest calculations above apply the interest payment of \$22,504.20 as a reduction in the total principal owed from the Telecom Division to the Electric Division, and therefore further reduce the calculated interest for the period 6/30/05 - 12/31/05. The amount as booked is too high by \$420.86. The two different calculations are summarized below.

As calculated:

6/30/2005	\$ 29,438,548.59	3	3.01%	\$ 7,283.02
7/31/2005	\$ 29,836,882.78	31	3.25%	\$ 82,357.97
8/31/2005	\$ 29,836,882.78	31	3.37%	\$ 85,398.88
9/30/2005	\$ 29,836,882.78	30	3.50%	\$ 85,832.13
10/31/2005	\$ 29,836,882.78	31	3.75%	\$ 95,028.43
11/30/2005	\$ 29,836,882.78	30	4.00%	\$ 98,093.86
12/31/2005	\$ 29,836,882.78	31	4.10%	\$ 103,897.75
				\$ 557,892.03

As booked:

6/30/2005	\$ 29,461,047.21	3	3.01%	\$ 7,288.58
7/31/2005	\$ 29,859,386.98	31	3.25%	\$ 82,420.09
8/31/2005	\$ 29,859,386.98	31	3.37%	\$ 85,463.29
9/30/2005	\$ 29,859,386.98	30	3.50%	\$ 85,896.87
10/31/2005	\$ 29,859,386.98	31	3.75%	\$ 95,100.10
11/30/2005	\$ 29,859,386.98	30	4.00%	\$ 98,167.85
12/31/2005	\$ 29,859,386.98	31	4.10%	\$ 103,976.11
				\$ 558,312.89

\$ 420.86

4. MLGW will make an adjusting entry in 2007 for \$398.13.

Tab 3

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

Memphis Networkx
Schedule of Investments
Per MLGW Audited Financial Statements

	Amount Approved for Investment	Amount Invested	Total Investment to Date
*1999	\$20,000,000	\$ 1,473,871	\$ 1,473,871
2000	\$ -	\$ 3,321,500	\$ 4,795,371
2001	\$ -	\$ 3,269,273	\$ 8,064,644
**2002	\$12,000,000	\$ 11,200,000	\$ 19,264,644
2003	\$ -	\$ 5,740,000	\$ 25,004,644
***2004	\$ -	\$ 3,532,000	\$ 28,536,644
2005	\$ -	\$ -	\$ -
2006	\$ -	\$ -	\$ -
Total	\$32,000,000	\$ 28,536,644	\$ 28,536,644

* Approval received August 19, 1999 for the Electric Division to loan up to \$20 million to the Telecommunications Division

** Approval received June 6, 2002 to increase amount of the loan from \$20 million up to \$26 million
Approval received July 11, 2002 to increase amount of the loan from \$26 million up to \$32 million

*** Last Investment made April 2004

Tab 4

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
AUGUST 19, 1999

The President submitted for approval of the Board authorization for a loan in an amount not to exceed \$20 million from the electric system to the Telecommunications Division, a subdivision of the Electric Division.

WHEREAS, the Memphis Light, Gas and Water Division of the City of Memphis (MLGW) has completed its preliminary investigations into the feasibility of developing a telecommunications network through a telecommunications division of the electric division of MLGW (the "Telecommunications Division") as authorized by the Board on March 4, 1999; and

WHEREAS, certain capital investments and certain expenditures will be required by the Telecommunications Division; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Light, Gas and Water Commissioners, THAT:

1. The President and Chief Executive Officer is authorized, but not required, to execute such documents and to take such further action as may be necessary to consummate a loan in an amount not to exceed \$20 million from the Division's electric system funds to the Telecommunications Division for the initial development, construction and operation of a telecommunications system and to provide the working capital necessary to provide such services, upon receipt of all regulatory approval.
2. The inter-division loan authorized under Section 1 of this resolution shall be made in accordance with the requirements of T.C.A. § 7-52-402 and the requirements of the TVA Wholesale Power Contract, and this authorization shall not create any further obligations or liabilities of the Division in favor of the Telecommunications Division.

3. Any increase in the monetary authorization above the amount specified in Section 1 hereof is reserved to the Board.

4. Pending the receipt of all regulatory approvals, the President and Chief Executive Officer shall be authorized, but not required, to make such expenditures as are prudent and necessary in furtherance of the powers granted in Section 3 of this resolution. Upon the receipt of all necessary regulatory approvals, such expenses shall be reimbursed from the inter-division loan authorized under Section 1 of this resolution.

It was moved by Vice Chairman Guinn, seconded by
Commissioner Graves and unanimously carried:

THAT, Authority to loan an amount not to exceed \$20 million from the electric system to the Telecommunications Division, a subdivision of the Electric Division is granted.

I hereby certify that the foregoing is a true copy of
a resolution adopted by the Board of Light, Gas and
Water Commissioners at a regular ~~meeting~~ meeting
held on 14th day of August, 19 44, at
which a quorum was present. This 19th day
of August, 19 44

J. M. Kelly
Secretary—Treasurer

Tab 5

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS & WATER COMMISSIONERS
CITY OF MEMPHIS
held
June 6, 2002

The President submitted for approval of the Board authorization for an increase in the amount of the loan from \$20 million up to \$26 million from the Electric Division to its subdivision, the Telecommunications Division.

WHEREAS, this Board approved a resolution on August 19, 1999 authorizing a loan in an amount not to exceed \$20 million for the development, construction and operation of a telecommunications system; and

WHEREAS that resolution of August 19, 1999 specifically reserved to the Board any increase in the monetary authorization above the \$20 million; and

WHEREAS, certain additional capital investments and expenditures will be required by the Telecommunications Division; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Light, Gas and Water Commissioners, THAT:

1. The President and Chief Executive Officer is authorized, but not required, to execute such documents and to take such further action as may be necessary to increase the amount of the loan from \$20 million up to \$26 million from the Division's electric system funds to the Telecommunications Division for development, construction, operation and working capital of the telecommunications system.
2. The increase in the amount of the inter-division loan authorized under Section 1 of this resolution shall be made in accordance with the requirements of T.C.A. § 7-52-402 and the requirements of the TVA Wholesale Power Contract, and this authorization shall not create any further obligations or liabilities of the Division in favor of the Telecommunications Division

It was moved by Commissioner Guinn, seconded by
Commissioner Jalenak and unanimously carried:

THAT, Authority to increase the amount of the loan from \$20 million up to \$26 million from the Electric Division to its subdivision, the Telecommunications Division is granted.

I hereby certify that the foregoing is a true copy of
a resolution adopted by the Board of Light, Gas, and
Water Commissioners at a regular-special meeting
held on 16th day of June, 2002, at
which a quorum was present. This 16th day
of June, 2002.

Jim Seave
Acting-Secretary

Tab 6

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS & WATER COMMISSIONERS
CITY OF MEMPHIS
held
July 11, 2002

The President submitted for approval of the Board authorization for an increase in the amount of the loan from \$26 million up to \$32 million from the Electric Division to its subdivision, the Telecommunications Division.

WHEREAS, this Board approved a resolution on August 19, 1999 authorizing a loan in an amount not to exceed \$20 million for the development, construction and operation of a telecommunications system; and

WHEREAS, this Board approved a resolution on June 6, 2002 increasing the amount of that loan from \$20 million up to \$26 million; and

WHEREAS, certain additional capital investments and expenditures will be required by the Telecommunications Division; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Light, Gas and Water Commissioners, THAT:

1. The President and Chief Executive Officer is authorized, but not required, to execute such documents and to take such further action as may be necessary to increase the amount of the loan from \$26 million up to \$32 million from the Division's electric system funds to the Telecommunications Division for development, construction, operation and working capital of the telecommunications system.
2. The increase in the amount of the inter-division loan authorized under Section 1 of this resolution shall be made in accordance with the requirements of T.C.A. § 7-52-402 and the requirements of the TVA Wholesale Power Contract and this authorization shall not create any further obligations or liabilities of the Division in favor of the Telecommunications Division.

3. Any increase in the monetary authorization above the amount specified in Section 1 hereof is reserved to the Board.

It was moved by Commissioner Jalenak, seconded by Commissioner Guinn

and unanimously carried:

THAT, Authority to increase the amount of the loan from \$26 million up to \$32 million from the Electric Division to its subdivision, the Telecommunications Division is granted.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular ~~meeting~~ meeting held on 11th day of July 1900 at which a quorum was present. This 11th day of July 1900

[Signature]
Secretary-Treasurer

Tab 7

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

REVOLVING LINE OF CREDIT NOTE

\$20,000,000.00

Memphis, Tennessee
September 30, 1999

FOR VALUE RECEIVED, the undersigned, TELECOMMUNICATIONS DIVISION OF THE ELECTRIC DIVISION OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION, OF THE CITY OF MEMPHIS (hereinafter referred to as "Maker"), promises to pay to the order of THE ELECTRIC DIVISION OF THE MEMPHIS LIGHT, GAS AND WATER DIVISION, OF THE CITY OF MEMPHIS (hereinafter referred to as "Payee"), the sum of Twenty Million and No/100 Dollars (\$20,000,000.00), or so much thereof as shall be advanced from time to time by the Payee to the Maker, together with interest as follows: The interest rate for each calendar month shall be the monthly average of the prime lending rate posted by a majority of the nation's largest banks that appear daily in The Wall Street Journal less three (3) percentage points (the "Index Rate"), but in no event shall the interest rate for any calendar month be less than the highest rate of interest then earned by the Payee on its invested electric plant funds, in accordance with the requirements of Tennessee Code Annotated Section 7-52-402(2) (the "Minimum Rate"). In the event the Index Rate in any calendar month is less than the Minimum Rate, the interest rate for that month shall be the Minimum Rate.

Interest on all advances outstanding shall be paid semi-annually with such payments being due and payable on January 1 and July 1 each year.

On the maturity date, January 1, 2010 (the "Maturity Date") the entire outstanding principal balance, together with all accrued and unpaid interest, shall be immediately due and payable in full.

Prior to the Maturity Date, Maker may borrow up to the principal amount of this Note and repay (without premium or penalty) and re-borrow funds so long as the principal amount of the funds disbursed hereunder at no time exceeds Twenty Million and No/100 Dollars (\$20,000,000.00).

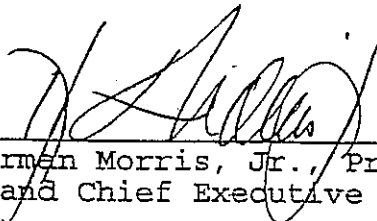
Time is of the essence of this Note. It is hereby expressly agreed that in the event that any default be made in the payment of any part of interest or principal in accordance with the terms hereof, or upon failure of Maker to keep and perform all the covenants, promises, agreements, conditions and provisions of this Note, or any other instrument or document now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced hereby; then, in any such case, the entire unpaid principal sum evidenced by this Note, together with all accrued interest, shall, at the option of the Payee, without notice, become due and payable forthwith, regardless of the stipulated Maturity Date. Upon the occurrence of any default as set forth herein, at the option of Payee and without notice to Maker, all accrued and

unpaid interest, if any, shall be added to the outstanding principal balance hereof, and the entire outstanding principal balance, as so adjusted, shall bear interest thereafter until paid, regardless of whether or not there has been an acceleration of the payment of principal as set forth herein. All such interest shall be paid at the time of and as a condition precedent to the curing of any such default. Failure of Payee to exercise this right of accelerating the maturity of the debt, or indulgence granted from time to time, shall in no event be considered as a waiver of said right of acceleration or stop Payee from exercising said right.

IN WITNESS WHEREOF, this Note has been duly executed by Maker the day and year first above written.

TELECOMMUNICATIONS DIVISION OF THE
ELECTRIC DIVISION OF THE MEMPHIS LIGHT,
GAS AND WATER DIVISION, OF THE CITY OF
MEMPHIS

By:


Herman Morris, Jr., President
and Chief Executive Officer

102621.03

Tab 8

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

January 23, 2004

Board of Directors
Memphis Gas, Light & Water Division
Memphis, TN 38130-3917

We have performed the procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW) and Memphis Networkx, LLC and the Board of Directors of Memphis Light, Gas & Water Division, solely to assist you with respect to the accounting records of Memphis Light, Gas & Water Division and Memphis Networkx, LLC for the time period of August 9, 2001 through December 31, 2002. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified parties of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

Agreed-Upon Procedure

1. Determine whether MLGW has charged an amount for pole attachments and underground installations to Memphis Networkx equal to the highest rate charged by MLGW to any other person or entity for comparable attachments.

Findings

Of the five sample contracts for pole fees that we reviewed, we were able to recalculate the pole fee based on wording in the contract and agree to the pole fee that is currently being charged. The wording in the fifth contract merely states "rental rate shall be reviewed and adjusted every three years." The contract does not specify a method of review or an adjustment amount. For this reason, we were unable to recalculate the pole fee. However, the current pole fee being charged appears reasonable based on the other four sample contracts that we reviewed.

The highest annual pole fee being charged is \$18.71 and the highest rate per foot for an annual conduit fee is \$3.66. Memphis Networkx is currently being charged \$18.01 as an annual pole fee and \$2.75 as an annual conduit fee per foot. While Memphis Networkx

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(205) 221-6109
fax (205) 384-9215

amounts are not equal to the highest rate, the contract renewal periods are not identical. Therefore, the variance could be caused by a timing difference.

Agreed-Upon Procedure

2. Determine whether the interest costs for funds lent to the Telecommunications Division by MLGW to acquire, construct, and provide working capital for the system, plant and equipment are allocated at a rate not less than the highest rate earned by MLGW on invested electric plant funds.

Findings

We found no findings or exceptions as the result of the above procedure. The monthly interest percentage being charged on funds lent to the Telecommunications Division is exactly the same as the corresponding interest rates on invested funds.

Agreed-Upon Procedure

3. Determine whether MLGW and Memphis Network have separate employees.

Findings

We found no findings or exceptions as the result of the above procedure. No employees were noted to have been employed concurrently by both MLGW and Memphis Network.

Agreed-Upon Procedure

4. Determine whether costs of MLGW have been properly allocated to its Telecommunications Division.

Findings

Our procedures revealed that the amounts on the annual report filed with the Tennessee Regulatory Authority (TRA) and the costs allocated to the Telecommunications Division by MLGW did not agree. Upon further inspection, it was determined these variances stemmed from timing differences. The following chart outlines the difference between the amounts allocated by MLGW to the Telecommunications Department and the amounts displayed on the TRA report for each period.

	August – December 2001		January – December 2002	
	MLGW	TRA	MLGW	TRA
Labor	\$49,265.43	\$32,268.99	\$82,473.99	\$66,518.89
Legal	66,712.33	67,432.43	3,800.57	3,800.57
Travel	1,244.79	524.69	2,077.92	2,057.93
Horrell Communications	23,000.00	23,000.00	55,200.00	55,200.00
Interdepartmental Rents	0.00	3,996.00	8,279.00	6,773.00
Transfer Charges	0.00	0.00	(19.99)	0.00
A & G Allocation (3.4%)	<u>4,767.57</u>	<u>4,325.55</u>	<u>5,161.59</u>	<u>4,567.91</u>
Total	\$144,990.12	\$131,547.66	\$156,973.08	\$138,918.30

The largest variance relates to labor cost allocated to the Telecommunications Division. At quarter end, each employee is required to determine the percentage of time he or she spent on telecommunications work for that quarter. Since the allocation percentage for a quarter is not determined until after the quarter has ended, time is initially allocated based on the prior quarter's percentage. If the percentage changes from one quarter to the next, an adjustment is made in the subsequent quarter to adjust the time allocated to the Telecommunications Division. This procedure can cause allocated labor expense to be incorrect for up to four months before the adjusting entry is recorded. All time entries should be adjusted to the correct rate for the corresponding quarter so the errors are merely timing differences. However, since the TRA report was prepared using the actual quarterly percentages, there is a large discrepancy between the two reports. Even though this difference could be explained as a timing difference, we found the discrepancy to be too large. We feel that reporting would be more correct if all adjusting entries were made before year end closing.

The difference in legal and travel expenses in the 2001 period is due to an error in reporting on the TRA statement. Expenses totaling \$720.10 were inadvertently moved from the travel segment to the legal segment when the report was filed. This mistake did not cause a difference in the total expenses reported, and therefore we did not find an exception with it.

The other timing variance we discovered related to labor costs as discussed above. Since employee benefit costs (included in the labor category), interdepartmental rents, and administrative costs are allocated as a percentage of total costs, the calculations resulted

in different amounts. By correcting the above timing issue, this variance would also be corrected.

Agreed-Upon Procedure

5. Determine whether any other expenses of MLGW have been charged to its Telecommunications Division and, if so, determine whether such charges are in compliance with the cost allocation manual.

Findings

We found no findings or exceptions as the result of the above procedure. Expenses being allocated to the Telecommunications Division include administrative and general costs, labor, legal, travel, and consulting. All the expenses were allocated as defined in the cost allocation manual.

Agreed-Upon Procedure

6. Determine whether MLGW has billed Memphis Networkx the appropriate tariff rates for electric, gas and water services provided to Memphis Networkx.

Findings

In December of 2001, Memphis Networkx moved from 7555 Appling Center Drive to 7620 Appling Center Drive. We found no findings or exceptions as the result of the above procedure at the initial location of 7555 Appling Center Drive. At the second location of 7620 Appling Center Drive, we found no findings or exceptions in relation to the water or electric rates applied. However, a clerical error occurred in establishing the gas tariff rates at the new location. The gas service was inadvertently established at the residential rate instead of the business rate. This error was discovered by MLGW staff on April 1, 2003 and was corrected at that time. Accordingly, the amounts shown on the financial reports for the period in question have not been corrected. The following is a chart showing the difference between the amount billed and the amount that should have been billed.

	<u>Amount per gas bill</u>	<u>Corrected Amount</u>	<u>Difference</u>
December 2001	\$ 150.02	\$ 168.95	\$ 18.93
January 2002	465.44	496.72	31.28
February 2002	1,022.55	1,072.32	49.77
March 2002	1,277.89	1,336.13	58.24
April 2002	1,347.53	1,408.08	60.55
May 2002	1,479.07	1,543.98	64.91
June 2002	1,920.11	1,999.67	79.56
July 2002	1,889.16	1,967.69	78.53
August 2002	1,920.11	1,999.67	79.56
September 2002	1,951.06	2,031.64	80.58
October 2002	1,618.35	1,687.88	69.53
November 2002	1,432.64	1,496.02	63.38
December 2002	1,927.85	2,007.66	79.81
Additional amount due to MLGW			\$ 814.63

Agreed-Upon Procedure

- Determine whether the amounts billed by MLGW to Memphis Network for non-tariffed services, specifically make ready work and engineering, are appropriate.

Findings

We found no findings or exceptions as the result of the above procedure. All amounts on the summary of non-tariffed services agree appropriately to underlying documentation and all calculations were correct. The amounts on the summary sheet agreed to the invoices, the TRA annual report, and the MLGW general ledger.

Agreed-Upon Procedure

- Determine whether any revenues of MLGW have been allocated to its Telecommunications Division and, if so, determine the reasonableness of the allocation.

Findings

We found no findings or exceptions as the result of the above procedure. No revenue has been allocated to the Telecommunication Division.

Board of Directors
Memphis Light, Gas & Water Division
January 27, 2004
Page 6

We were not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified parties and is not intended to be and should not be used by anyone other than these specified parties.

Warren, Averett, Kimbrough + Marino, LLC

WARREN, AVERETT, &
KIMBROUGH MARINO, LLC

MEMPHIS LIGHT, GAS & WATER DIVISION
INDEPENDENT ACCOUNTANTS' REPORT ON
APPLYING AGREED-UPON PROCEDURES
DECEMBER 31, 2003

**WARREN, AVERETT, &
KIMBROUGH & MARINO, LLC**

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

September 21, 2006

Board of Commissioners
Memphis Light, Gas & Water Division
220 South Main
Memphis, TN 38130-3917

We have performed the procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW), Memphis Networkx, LLC (Memphis Networkx) and the Board of Commissioners of MLGW, solely to assist you with respect to the accounting records of MLGW and Memphis Networkx, LLC for the time period of January 1, 2003 through December 31, 2003. The management of MLGW and Memphis Networkx, LLC is responsible for their respective accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

Agreed-Upon Procedure I

Determine whether MLGW has charged an amount for pole attachments and underground installations to Memphis Networkx equal to the highest rate charged by MLGW to any other person or entity for comparable attachments.

We obtained a listing of all pole attachment and underground installation (conduits) contracts that MLGW had in place with customers for the period January 1, 2003 through December 31, 2003. We read copies of the contracts and determined the rates in use for pole attachments and conduits for the period January 1, 2003 through December 31, 2003. We determined that the highest annual pole fee being charged for the period was \$19.44, and the highest annual rate per foot of conduit was \$4.18 (for the first 10 months of the period) and \$4.55 (for the last two months of the period). We determined through observation of the MLGW general ledger that Memphis Networkx was charged \$18.01 for

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fax (256) 739-1896

pole attachments and \$2.75 per foot of conduit for the period January 1, 2003 through December 31, 2003. We agreed the amount charged to Memphis Network by MLGW to the MLGW general ledger but were unable to agree this amount to that stated in the annual report filed with the Tennessee Regulatory Authority (TRA) because no annual report was filed for the period.

Agreed-Upon Procedure II

Determine whether the interest costs for funds lent to the Telecommunications Division by MLGW to acquire, construct, and provide working capital for the system, plant, and equipment are allocated at a rate not less than the highest rate earned by MLGW on invested electric plant funds.

We obtained copies of all loan agreements between MLGW and the Telecommunications Division in effect from January 1, 2003 through December 31, 2003. We compared the loan, interest expense, interest income, and accrued interest amounts recorded in the Electric Division general ledger to the Telecommunications Division general ledger. We obtained the calculation of the effective interest rate on each loan made by MLGW to the Telecommunications Division and recalculated the effective interest rate for each loan. We obtained from MLGW a calculation of the rate MLGW earned on invested Electric Division plant funds during the period January 1, 2003 through December 31, 2003. We compared the rates of interest for loans to the Telecommunications Division to rates earned by MLGW on its invested Electric Division plant funds. We found that funds lent to the Telecommunications Division were charged interest at a rate not less than the highest rate earned by MLGW on invested electric plant funds for the period January 1, 2003 through December 31, 2003.

Agreed-Upon Procedure III

Determine whether MLGW and Memphis Network have separate employees.

We obtained listings of all persons employed by MLGW and Memphis Network for the period January 1, 2003 through December 31, 2003. We cross-referenced the two listings to determine whether separate employees were maintained between MLGW and Memphis Network, finding no common employees between the entities. Management has represented to us that there were no individuals simultaneously employed by MLGW and Memphis Network for the period January 1, 2003 through December 31, 2003. MLGW did not provide payroll ledgers to us.

Agreed-Upon Procedure IV

Determine whether costs of MLGW have been properly allocated to its Telecommunications Division.

We obtained a summary list of MLGW costs allocated to the Telecommunication Division for the period January 1, 2003 through December 31, 2003, totaling \$98,269, and agreed the allocated amounts to the general ledger balance of \$112,043 for the Telecommunications Division, noting a difference of \$13,774. This difference was discovered to be the result of an invoice for accounting services that was not included on the summary list of allocated costs. We were unable to agree the allocated amount to the annual report submitted to the TRA because no annual report was filed for the period. For each identified cost allocated to the Telecommunications Division, we obtained the calculations used by MLGW to allocate these costs and recomputed the calculations. The calculation for allocating the costs to the Telecommunications Division appeared to be in accordance with the cost allocation manual.

Agreed-Upon Procedure V

Determine whether any other expenses of MLGW have been charged to its Telecommunications Division and, if so, determine whether such charges are in compliance with the cost allocation manual.

We obtained a listing of expenses charged directly to the Telecommunications Division general ledger for the period January 1, 2003 through December 31, 2003. Expenses being allocated to the Telecommunications Division include administrative and general costs, labor, legal, travel, and consulting. For the months of March, July and November, we selected all nonlabor charges. Selected charges were traced to vendor invoice or other documentation of the charge. From the documentation provided, we were unable to determine whether the charges were appropriately charged to the Telecommunications Division. Management has represented to us that all charges were appropriately charged to the Telecommunications Division.

Agreed-Upon Procedure VI

Determine whether MLGW has billed Memphis Networkx the appropriate tariff rates for electric, gas and water services provided to Memphis Networkx.

We obtained copies of monthly bills rendered to Memphis Networkx by MLGW for electric and gas services from January 2003 through December 2003. We obtained from MLGW the MLGW tariff rate schedule applicable to Memphis Networkx for electric and

gas service. We recalculated the invoiced amounts using the applicable tariff rate schedule. We discovered that electricity was charged at the residential rate instead of the commercial rate for the first three months of 2003, resulting in overcharging Memphis Networkx for \$1,277 (see the following chart showing the difference between the amount billed and the correct amount). We agreed the monthly amounts billed from MLGW for electric and gas service to the general ledger accounts of Memphis Networkx, noting no discrepancies.

	Amount Per Bill	Correct Amount	Difference
January 2003	\$ 1,866	\$ 1,463	\$ 403
February 2003	1,974	1,518	456
March 2003	1,897	1,479	418
Amount Overbilled to Memphis Networkx			\$ 1,277

Management has represented to us that no amounts for water services were billed to Memphis Networkx during the period January 1, 2003 through December 31, 2003.

Agreed-Upon Procedure VII

Determine whether the amounts billed by MLGW to Memphis Networkx for non-tariff services, specifically make-ready work and engineering, are appropriate.

We obtained a summary of all nontariff services performed for Memphis Networkx by MLGW for the period January 1, 2003 through December 31, 2003. We obtained from MLGW all invoices, including underlying calculations, for all nontariff services billed by MLGW to Memphis Networkx for the period January 1, 2003 through December 31, 2003. We agreed invoiced amounts to calculations prepared by MLGW and recalculated the amounts provided by MLGW. All amounts on the summary of nontariffed services appear appropriately charged to Memphis Networkx. We were unable to agree amounts for nontariff services per the general ledger to the amounts stated in the annual report by MLGW with TRA because no annual report was filed for the period.

Agreed-Upon Procedure VIII

Determine whether any revenues of MLGW have been allocated to its Telecommunications Division and, if so, determine the reasonableness of the allocation.

Board of Commissioners
Memphis Light, Gas & Water Division
September 21, 2006
Page 5

Management has represented to us that no revenue has been allocated to the Telecommunications Division for the period January 1, 2003 through December 31, 2003.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of MLGW, Memphis Network and the Board of Commissioners of MLGW and is not intended to be and should not be used by anyone other than those parties.

Warren, Averett, Kimbrough + Marino, LLC

WARREN, AVERETT, &
KIMBROUGH & MARINO, LLC

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

REPORT OF INDEPENDENT ACCOUNTANTS ADDENDUM TO REPORT DATED SEPTEMBER 21, 2006

January 11, 2007

Board of Commissioners
Memphis Light, Gas & Water Division
220 South Main
Memphis, TN 38130-3917

At your request, subsequent to our September 21, 2006 report referred to above, we have performed the additional procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW), Memphis Networkx, LLC (Memphis Networkx) and the Board of Commissioners of MLGW, solely to assist you with respect to the accounting records of MLGW and Memphis Networkx, LLC for the time period of January 1, 2003 through December 31, 2003. The management of MLGW and Memphis Networkx, LLC is responsible for their respective accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

Agreed-Upon Procedure I

Obtain a copy of the annual report filed with the TRA by MLGW and Memphis Networkx for the period January 2003 through December 2003. Agree amount charged to the Memphis Networkx by MLGW for pole attachments and underground installations "joint use billing" to the MLGW general ledger and to the amount stated in the annual report filed with the TRA.

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Cullman, Alabama 35056
(256) 739-0312
fax (256) 739-1896

We obtained the annual report submitted by MLGW to TRA. We also obtained copies of the quarterly invoices for "joint use billings" submitted by MLGW to Memphis Networkx for the year ended December 31, 2003. We agreed the amounts per the quarterly invoices to the "Miscellaneous Accounts Receivable Account History" report provided by MLGW management without exception.

Agreed-Upon Procedure II

Obtain a copy of the annual report filed with the TRA by MLGW for the period January 2003 through December 2003 and compare allocated cost per MLGW general ledger with that submitted by MLGW to TRA on the annual report. Allocated cost could include administrative and general, labor, travel, consulting, and/or other.

We obtained a general ledger report with the total for all costs allocated to Memphis Networkx for the year ended December 31, 2003. We then obtained a data warehouse report that pulls information directly from the general ledger and agreed the individual costs per the annual report to costs per the general ledger. We then totaled the data warehouse report and agreed it to the general ledger report to ensure the data warehouse report included all items in the general ledger report. We noted no exceptions.

Agreed-Upon Procedure III

Agree amounts for all non-tariffed services, specifically make ready work and engineering per the general ledger to the amounts stated in the annual report by MLGW with the TRA.

We obtained the annual report submitted by MLGW to TRA. We also obtained copies of the invoices for "make ready and engineering work" submitted by MLGW to Memphis Networkx for the year ended December 31, 2003. We agreed the amounts per the invoices to the "Miscellaneous Accounts Receivable Account History" report provided by MLGW management without exception.

Board of Commissioners
Memphis Light, Gas & Water Division
January 11, 2007
Page 3

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of MLGW, Memphis Network and the Board of Commissioners of MLGW and is not intended to be and should not be used by anyone other than those parties.

Warren, Averett, Kimbrough + Marino, LLC

Tab 9

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

MEMPHIS LIGHT, GAS & WATER DIVISION
INDEPENDENT ACCOUNTANTS' REPORT ON
APPLYING AGREED-UPON PROCEDURES
DECEMBER 31, 2004

WARREN, AVERETT, & KIMBROUGH MARINO, LLC

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

September 21, 2006

Board of Commissioners
Memphis Light, Gas & Water Division
220 South Main
Memphis, TN 38130-3917

We have performed the procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW), Memphis Networkx, LLC (Memphis Networkx) and the Board of Commissioners of MLGW, solely to assist you with respect to the accounting records of MLGW and Memphis Networkx, LLC for the time period of January 1, 2004 through December 31, 2004. The management of MLGW and Memphis Networkx, LLC is responsible for their respective accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

Agreed-Upon Procedure I

Determine whether MLGW has charged an amount for pole attachments and underground installations to Memphis Networkx equal to the highest rate charged by MLGW to any other person or entity for comparable attachments.

We obtained a listing of all pole attachment and underground installation (conduits) contracts that MLGW had in place with customers for the period January 1, 2004 through December 31, 2004. We read copies of the contracts and determined the rates in use for pole attachments and conduits for the period January 1, 2004 through December 31, 2004. We determined that the highest annual pole fee being charged for the period was \$20.52, and the highest annual rate per foot of conduit was \$4.55 (for the first 10 months of the period) and \$4.37 (for the last two months of the period). We determined through observation of the MLGW general ledger that Memphis Networkx was charged \$18.01 for

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(256) 241-0560
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2500 Acton Road
Birmingham, Alabama 35243-4226
(205) 979-4100
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www.wakm.com

Post Office Box 1245
Cullman, Alabama 35056
(256) 739-0312
fax (256) 739-1896

pole attachments and \$2.75 per foot of conduit for the period January 1, 2004 through December 31, 2004. We agreed the amount charged to Memphis Network by MLGW to the MLGW general ledger but were unable to agree this amount to that stated in the annual report filed with the Tennessee Regulatory Authority (TRA) because no annual report was filed for the period.

Agreed-Upon Procedure II

Determine whether the interest costs for funds lent to the Telecommunications Division by MLGW to acquire, construct, and provide working capital for the system, plant, and equipment are allocated at a rate not less than the highest rate earned by MLGW on invested electric plant funds.

We obtained copies of all loan agreements between MLGW and the Telecommunications Division in effect from January 1, 2004 through December 31, 2004. We compared the loan, interest expense, interest income, and accrued interest amounts recorded in the Electric Division general ledger to the Telecommunications Division general ledger. We obtained the calculation of the effective interest rate on each loan made by MLGW to the Telecommunications Division and recalculated the effective interest rate for each loan. We obtained from MLGW a calculation of the rate MLGW earned on invested Electric Division plant funds during the period January 1, 2004 through December 31, 2004. We compared the rates of interest for loans to the Telecommunications Division to rates earned by MLGW on its invested Electric Division plant funds. We found that funds lent to the Telecommunications Division were charged interest at a rate not less than the highest rate earned by MLGW on invested electric plant funds for the period January 1, 2004 through December 31, 2004.

Agreed-Upon Procedure III

Determine whether MLGW and Memphis Network have separate employees.

We obtained listings of all persons employed by MLGW and Memphis Network for the period January 1, 2004 through December 31, 2004. We cross-referenced the two listings to determine whether separate employees were maintained between MLGW and Memphis Network, finding no common employees between the entities. Management has represented to us that there were no individuals simultaneously employed by MLGW and Memphis Network for the period January 1, 2004 through December 31, 2004. MLGW did not provide payroll ledgers to us.

Agreed-Upon Procedure IV

Determine whether costs of MLGW have been properly allocated to its Telecommunications Division.

We obtained a summary list of MLGW costs allocated to the Telecommunications Division for the period January 1, 2004 through December 31, 2004, totaling \$105,372, and agreed the allocated amounts to the general ledger balance of \$104,234 for the Telecommunications Division, noting a difference of \$1,138. We were unable to agree the allocated amount to the annual report submitted to the TRA because no annual report was filed for the period. For each identified cost allocated to the Telecommunications Division, we obtained the calculations used by MLGW to allocate these costs and recomputed the calculations. The calculation for allocating the costs to the Telecommunications Division appeared to be in accordance with the cost allocation manual.

Agreed-Upon Procedure V

Determine whether any other expenses of MLGW have been charged to its Telecommunications Division and, if so, determine whether such charges are in compliance with the cost allocation manual.

We obtained a listing of expenses charged directly to the Telecommunications Division general ledger for the period January 1, 2004 through December 31, 2004. Expenses being allocated to the Telecommunications Division include administrative and general costs, labor, legal, travel, and consulting. For the months of March, July and November, we selected nonlabor charges. Selected charges were traced to vendor invoice or other documentation of the charge. From the documentation provided, we were unable to determine whether the charges were appropriately charged to the Telecommunications Division. Management has represented to us that all charges were appropriately charged to the Telecommunications Division.

Agreed-Upon Procedure VI

Determine whether MLGW has billed Memphis Networkx the appropriate tariff rates for electric, gas and water services provided to Memphis Networkx.

We obtained copies of monthly bills rendered to Memphis Networkx by MLGW for electric and gas services from January 2004 through December 2004. We obtained from MLGW the MLGW tariff rate schedule applicable to Memphis Networkx for electric and gas service. We recalculated the invoiced amounts using the applicable tariff rate

schedule, noting no discrepancies. We agreed the monthly amounts billed from MLGW for electric and gas service totaling \$83,402 to the general ledger account balances of Memphis Networkx totaling \$84,145, noting a difference of \$743.

Management has represented to us that no amounts for water services were billed to Memphis Networkx during the period January 1, 2004 through December 31, 2004.

Agreed-Upon Procedure VII

Determine whether the amounts billed by MLGW to Memphis Networkx for non-tariff services, specifically make-ready work and engineering, are appropriate.

We obtained a summary of all nontariff services performed for Memphis Networkx by MLGW for the period January 1, 2004 through December 31, 2004. We obtained from MLGW all invoices, including underlying calculations, for all nontariff services billed by MLGW to Memphis Networkx for the period January 1, 2004 through December 31, 2004. We agreed invoiced amounts to calculations prepared by MLGW and recalculated the amounts provided by MLGW. All amounts on the summary of nontariffed services appear appropriately charged to Memphis Networkx. We were unable to agree amounts for nontariff services per the general ledger to the amounts stated in the annual report by MLGW with TRA because no annual report was filed for the period.

Agreed-Upon Procedure VIII

Determine whether any revenues of MLGW have been allocated to its Telecommunications Division and, if so, determine the reasonableness of the allocation.

Management has represented to us that no revenue has been allocated to the Telecommunications Division for the period January 1, 2004 through December 31, 2004.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of MLGW, Memphis Networkx and the Board of Commissioners of MLGW and is not intended to be and should not be used by anyone other than those parties.

Warren, Averett, Kimbrough + Marino, LLC

WARREN, AVERETT, &
KIMBROUGH & MARINO, LLC

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

REPORT OF INDEPENDENT ACCOUNTANTS ADDENDUM TO REPORT DATED SEPTEMBER 21, 2006

January 11, 2007

Board of Commissioners
Memphis Light, Gas & Water Division
220 South Main
Memphis, TN 38130-3917

At your request, subsequent to our September 21, 2006 report referred to above, we have performed the additional procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW), Memphis Networkx, LLC (Memphis Networkx) and the Board of Commissioners of MLGW, solely to assist you with respect to the accounting records of MLGW and Memphis Networkx, LLC for the time period of January 1, 2004 through December 31, 2004. The management of MLGW and Memphis Networkx, LLC is responsible for their respective accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

Agreed-Upon Procedure I .

Obtain a copy of the annual report filed with the TRA by MLGW and Memphis Networkx for the period January 2004 through December 2004. Agree amount charged to the Memphis Networkx by MLGW for pole attachments and underground installations "joint use billing" to the MLGW general ledger and to the amount stated in the annual report filed with the TRA.

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www.wakm.com

Post Office Box 1245
Cullman, Alabama 35056
(256) 739-0312
fax (256) 739-1896

We obtained the annual report submitted by MLGW to TRA. We also obtained copies of the quarterly invoices for "joint use billings" submitted by MLGW to Memphis Networkx for the year ended December 31, 2004. We agreed the amounts per the quarterly invoices to the "Miscellaneous Accounts Receivable Account History" report provided by MLGW management without exception.

Agreed-Upon Procedure II

Obtain a copy of the annual report filed with the TRA by MLGW for the period January 2004 through December 2004 and compare allocated cost per MLGW general ledger with that submitted by MLGW to TRA on the annual report. Allocated cost could include administrative and general, labor, travel, consulting, and/or other.

We obtained a general ledger report with the total for all costs allocated to Memphis Networkx for the year ended December 31, 2004. We then obtained a data warehouse report that pulls information directly from the general ledger and agreed the individual costs per the annual report to costs per the general ledger. We then totaled the data warehouse report and agreed it to the general ledger report to ensure the data warehouse report included all items in the general ledger report. We noted no exceptions.

Agreed-Upon Procedure III

Agree amounts for all non-tariffed services, specifically make ready work and engineering per the general ledger to the amounts stated in the annual report by MLGW with the TRA.

We obtained the annual report submitted by MLGW to TRA. We also obtained copies of the invoices for "make ready and engineering work" submitted by MLGW to Memphis Networkx for the year ended December 31, 2004. We agreed the amounts per the invoices to the "Miscellaneous Accounts Receivable Account History" report provided by MLGW management without exception.

Board of Commissioners
Memphis Light, Gas & Water Division
January 11, 2007
Page 3

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of MLGW, Memphis Network and the Board of Commissioners of MLGW and is not intended to be and should not be used by anyone other than those parties.

Warren, Averett, Kimbrough + Marino, LLC

Tab 10

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

MEMPHIS LIGHT, GAS & WATER DIVISION
INDEPENDENT ACCOUNTANTS' REPORT ON
APPLYING AGREED-UPON PROCEDURES
DECEMBER 31, 2005

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

September 21, 2006

Board of Commissioners
Memphis Light, Gas & Water Division
220 South Main
Memphis, TN 38130-3917

We have performed the procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW), Memphis Networkx, LLC (Memphis Networkx) and the Board of Commissioners of MLGW, solely to assist you with respect to the accounting records of MLGW and Memphis Networkx, LLC for the time period of January 1, 2005 through December 31, 2005. The management of MLGW and Memphis Networkx, LLC is responsible for their respective accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

Agreed-Upon Procedure I

Determine whether MLGW has charged an amount for pole attachments and underground installations to Memphis Networkx equal to the highest rate charged by MLGW to any other person or entity for comparable attachments.

We obtained a listing of all pole attachment and underground installation (conduits) contracts that MLGW had in place with customers for the period January 1, 2005 through December 31, 2005. We read copies of the contracts and determined the rates in use for pole attachments and conduits for the period January 1, 2005 through December 31, 2005. We determined that the highest annual pole fee being charged for the period was \$21.05, and the highest annual rate per foot of conduit was \$4.37 (for the first 10 months of the period) and \$4.77 (for the last two months of the period). We determined through observation of the MLGW general ledger that Memphis Networkx was charged \$18.94 for

pole attachments and \$2.89 per foot of conduit for the period January 1, 2005 through September 30, 2005; and \$19.54 and \$2.96 for pole attachments and conduits, respectively, for the period October 1, 2005 through December 31, 2005. We agreed the amount charged to Memphis Networkx by MLGW to the MLGW general ledger but were unable to agree this amount to that stated in the annual report filed with the Tennessee Regulatory Authority (TRA) because no annual report was filed for the period.

Agreed-Upon Procedure II

Determine whether the interest costs for funds lent to the Telecommunications Division by MLGW to acquire, construct, and provide working capital for the system, plant, and equipment are allocated at a rate not less than the highest rate earned by MLGW on invested electric plant funds.

We obtained copies of all loan agreements between MLGW and the Telecommunications Division in effect from January 1, 2005 through December 31, 2005. We compared the loan, interest expense, interest income, and accrued interest amounts recorded in the Electric Division general ledger to the Telecommunications Division general ledger. We obtained the calculation of the effective interest rate on each loan made by MLGW to the Telecommunications Division and recalculated the effective interest rate for each loan. We obtained from MLGW a calculation of the rate MLGW earned on invested Electric Division plant funds during the period January 1, 2005 through December 31, 2005. We compared the rates of interest for loans to the Telecommunications Division to rates earned by MLGW on its invested Electric Division plant funds. We found that funds lent to the Telecommunications Division were charged interest at a rate not less than the highest rate earned by MLGW on invested electric plant funds for the period January 1, 2005 through December 31, 2005.

Agreed-Upon Procedure III

Determine whether MLGW and Memphis Networkx have separate employees.

We obtained listings of all persons employed by MLGW and Memphis Networkx for the period January 1, 2005 through December 31, 2005. We cross-referenced the two listings to determine whether separate employees were maintained between MLGW and Memphis Networkx, finding no common employees between the entities. Management has represented to us that there were no individuals simultaneously employed by MLGW and Memphis Networkx for the period January 1, 2005 through December 31, 2005. MLGW did not provide payroll ledgers to us.

Agreed-Upon Procedure IV

Determine whether costs of MLGW have been properly allocated to its Telecommunications Division.

We obtained a summary list of MLGW costs allocated to the Telecommunications Division for the period January 1, 2005 through December 31, 2005, totaling \$66,909, and agreed the allocated amounts to the general ledger balance for the Telecommunications Division, noting no difference. We were unable to agree the allocated amount to the annual report submitted to the TRA because no annual report was filed for the period. For each identified cost allocated to the Telecommunications Division, we obtained the calculations used by MLGW to allocate these costs and recomputed the calculations. The calculation for allocating the costs to the Telecommunications Division appeared to be in accordance with the cost allocation manual.

Agreed-Upon Procedure V

Determine whether any other expenses of MLGW have been charged to its Telecommunications Division and, if so, determine whether such charges are in compliance with the cost allocation manual.

We obtained a listing of expenses charged directly to the Telecommunications Division general ledger for the period January 1, 2005 through December 31, 2005. Expenses being allocated to the Telecommunications Division include administrative and general costs, labor, legal, travel, and consulting. For the months of March, July and November, we selected all nonlabor charges. Selected charges were traced to vendor invoice or other documentation of the charge. From the documentation provided, we were unable to determine whether the charges were appropriately charged to the Telecommunications Division. Management has represented to us that all charges were appropriately charged to the Telecommunications Division.

Agreed-Upon Procedure VI

Determine whether MLGW has billed Memphis Networkx the appropriate tariff rates for electric, gas and water services provided to Memphis Networkx.

We obtained copies of monthly bills rendered to Memphis Networkx by MLGW for electric and gas services from January 2005 through December 2005. We obtained from MLGW the MLGW tariff rate schedule applicable to Memphis Networkx for electric and gas service. We recalculated the invoiced amounts using the applicable tariff rate

schedule, noting no discrepancies. We agreed the monthly amounts billed from MLGW for electric and gas service totaling \$144,528 to the general ledger account balances of Memphis Networkx totaling \$144,069, noting a difference of \$459.

Management has represented to us that no amounts for water services were billed to Memphis Networkx during the period January 1, 2005 through December 31, 2005.

Agreed-Upon Procedure VII

Determine whether the amounts billed by MLGW to Memphis Networkx for non-tariff services, specifically make-ready work and engineering, are appropriate.

We obtained a summary of all nontariff services performed for Memphis Networkx by MLGW for the period January 1, 2005 through December 31, 2005, and noted that no nontariff services were billed to Memphis Networkx by MLGW for the period January 1, 2005 through December 31, 2005.

Agreed-Upon Procedure VIII

Determine whether any revenues of MLGW have been allocated to its Telecommunications Division and, if so, determine the reasonableness of the allocation.

Management has represented to us that no revenue has been allocated to the Telecommunications Division for the period January 1, 2005 through December 31, 2005.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of MLGW, Memphis Networkx and the Board of Commissioners of MLGW and is not intended to be and should not be used by anyone other than those parties.

Warren, Averett, Kimbrough & Marino, LLC

WARREN, AVERETT, & KIMBROUGH & MARINO, LLC

Certified Public Accountants • Business & Financial Consultants

REPORT OF INDEPENDENT ACCOUNTANTS ADDENDUM TO REPORT DATED SEPTEMBER 21, 2006

January 11, 2007

Board of Commissioners
Memphis Light, Gas & Water Division
220 South Main
Memphis, TN 38130-3917

At your request, subsequent to our September 21, 2006 report referred to above, we have performed the additional procedures enumerated below, which were agreed to by Memphis Light, Gas & Water Division (MLGW), Memphis Networkx, LLC (Memphis Networkx) and the Board of Commissioners of MLGW, solely to assist you with respect to the accounting records of MLGW and Memphis Networkx, LLC for the time period of January 1, 2005 through December 31, 2005. The management of MLGW and Memphis Networkx, LLC is responsible for their respective accounting records. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. Our procedures and findings are as follows:

Agreed-Upon Procedure I

Obtain a copy of the annual report filed with the TRA by MLGW and Memphis Networkx for the period January 2005 through December 2005. Agree amount charged to the Memphis Networkx by MLGW for pole attachments and underground installations "joint use billing" to the MLGW general ledger and to the amount stated in the annual report filed with the TRA.

We obtained the annual report submitted by MLGW to TRA. We also obtained copies of the quarterly invoices for "joint use billings" submitted by MLGW to Memphis Networkx for the year ended December 31, 2005. We agreed the amounts per the quarterly invoices to the "Miscellaneous Accounts Receivable Account History" report provided by MLGW management without exception.

Agreed-Upon Procedure II

Obtain a copy of the annual report filed with the TRA by MLGW for the period January 2005 through December 2005 and compare allocated cost per MLGW general ledger with that submitted by MLGW to TRA on the annual report. Allocated cost could include administrative and general, labor, travel, consulting, and/or other.

We obtained a general ledger report with the total for all costs allocated to Memphis Networkx for the year ended December 31, 2005. We then obtained a data warehouse report that pulls information directly from the general ledger and agreed the individual costs per the annual report to costs per the general ledger. We then totaled the data warehouse report and agreed it to the general ledger report to ensure the data warehouse report included all items in the general ledger report. We noted no exceptions.

Agreed-Upon Procedure III

Agree amounts for all non-tariffed services, specifically make ready work and engineering per the general ledger to the amounts stated in the annual report by MLGW with the TRA.

We obtained the annual report submitted by MLGW to TRA. We also obtained copies of the invoices for "make ready and engineering work" submitted by MLGW to Memphis Networkx for the year ended December 31, 2005. We agreed the amounts per the invoices to the "Miscellaneous Accounts Receivable Account History" report provided by MLGW management without exception.

Board of Commissioners
Memphis Light, Gas & Water Division
January 11, 2007
Page 3

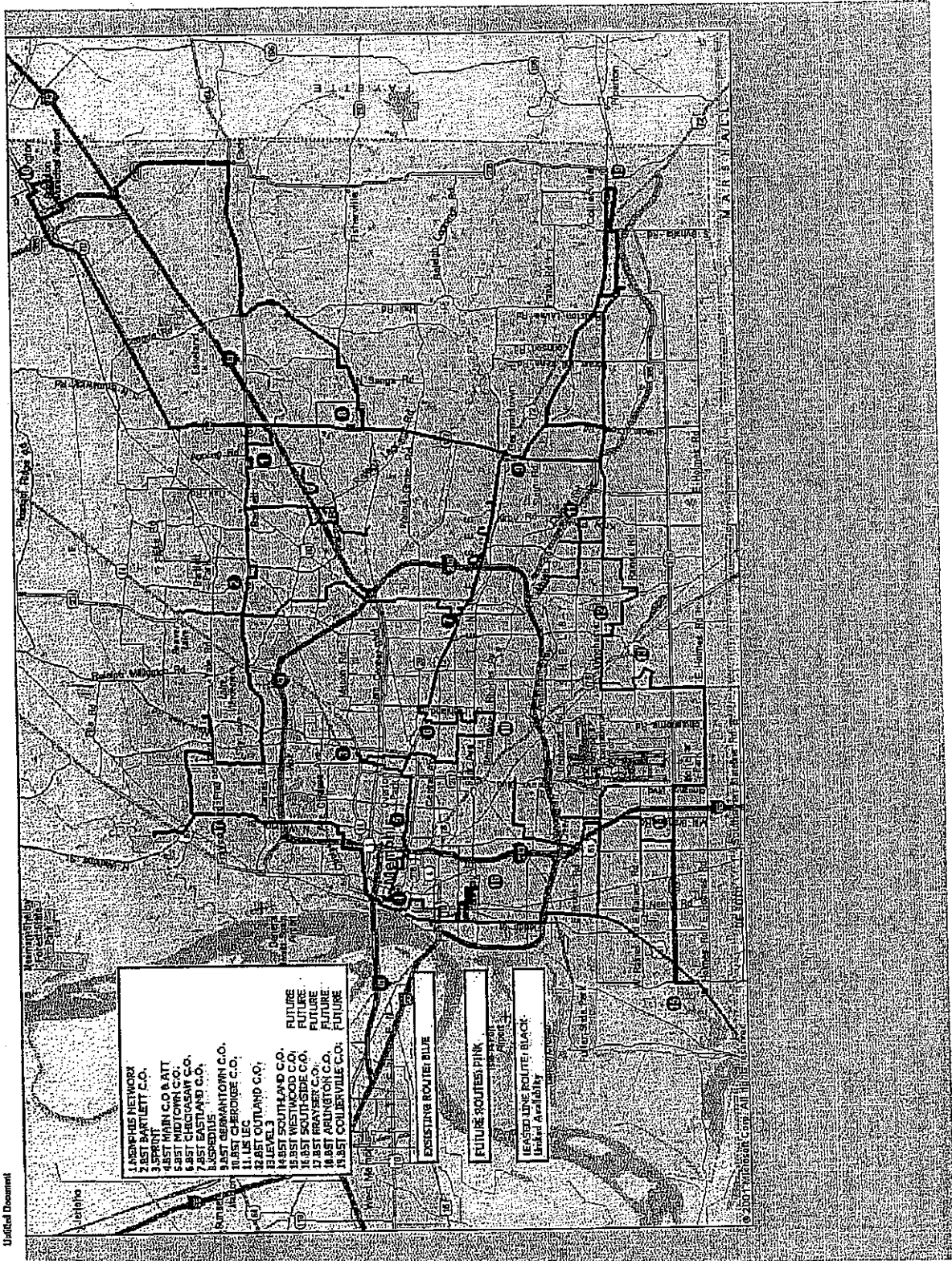
We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of MLGW, Memphis Network and the Board of Commissioners of MLGW and is not intended to be and should not be used by anyone other than those parties.

Warren, Averett, Kimbrough + Marino, LLC

Tab 11

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION



Tab 12

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

INTENTIONALLY OMITTED —

DOCUMENT PRODUCED IN FEBRUARY 1, 2008

RESPONSES TO SECOND DATA REQUEST

Tab 14

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

INTENTIONALLY OMITTED—

DOCUMENT PRODUCED IN FEBRUARY 1, 2008

RESPONSES TO SECOND DATA REQUEST

Tab 15

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

INTENTIONALLY OMITTED —

DOCUMENT PRODUCED IN FEBRUARY 1, 2008

RESPONSES TO SECOND DATA REQUEST

Tab 16

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

INTENTIONALLY OMITTED –
DOCUMENT PRODUCED IN FEBRUARY 1, 2008
RESPONSES TO SECOND DATA REQUEST

Tab 17

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

Memphis Network, LLC
Profit & Loss
January through July 2007

3:52 PM

Accrual Basis
Jan - Jul 07

Ordinary Income/Expense

Income

Revenues

Broadband Capacity Revenue	1,004,837.58
Co-Location Revenue	655,954.17
Dark Fiber IRU Revenue	0.00
Dark Fiber Lease Revenue	467,082.48
Enterprise Ethernet Revenue	990,368.42
Facility Services Revenue	29,052.73
Internet Services Revenue	279,499.77
Revenue Other	0.00
SAN Revenue	38,125.08

Total Revenues 3,464,920.23

Total Income 3,464,920.23

Cost of Goods Sold

Company Vehicle Expense

Fuel	13,836.67
Lease Payments	17,607.70
Repairs & Maintenance	2,434.28
Service	371.09

Total Company Vehicle Expense 34,249.74

Direct Depreciation

Depr - Broadband Equipment	664,726.77
Depr - OSS Software	0.00
Depr - Outside Plant	198,861.73

Total Direct Depreciation 863,588.50

Equipment Lease Payments 307,461.89

Expendable Build Supplies 6,996.34

Interconnection

CO/POP Interconnection	178,063.70
Internet Drains	78,708.81
Local Loops / UNEs	103,183.18
SAN Connection Costs	8,630.00

Total Interconnection 368,585.69

Maintenance

Fiber Maintenance	13,497.75
Hardware Maintenance	81,117.35
Software Maintenance	7,056.18

Total Maintenance 101,671.28

Outsourced Services

Fiber Repair	1,971.00

	Jan - Jul 07
NOC Monitoring	<u>91,299.00</u>
Total Outsourced Services	<u>93,270.00</u>
Project Construction	4,066.25
Rents	
Rent - Building Colocation	12,960.00
Rent - CO Colocation	5,346.00
Rent - Fiber Crossings	4,268.18
Rent - Poles & Conduits	<u>113,222.97</u>
Total Rents	<u>135,797.15</u>
Total COGS	<u>1,915,686.84</u>
Gross Profit	1,549,233.39
Expense	
Depreciation & Amortization	
Broadband Equipment	2,853.97
Computer Equipment	13,156.84
Computer Software	18,209.81
Furniture & Fixtures	4,827.29
Leasehold Improvements	<u>109,030.59</u>
Total Depreciation & Amortization	<u>148,078.50</u>
Employee Benefits	
Dental Insurance	15,394.07
Health Insurance	85,519.44
Life Insurance	1,141.50
Long Term Disability	1,712.13
Short Term Disability	1,965.27
Vision Insurance	<u>835.89</u>
Total Employee Benefits	<u>106,568.30</u>
Facilities Expenses	
Equipment Rental	
Office Equipment	3,441.02
Equipment Rental - Other	<u>163.88</u>
Total Equipment Rental	<u>3,604.90</u>
Janitorial	19,605.00
Rent - Corporate	91,562.17
Telephone	
Internet Services	450.22
Local Service	6,188.33
Long Distance	5,890.04
Mobile	16,805.53
Pagers	<u>340.89</u>
Total Telephone	<u>29,675.01</u>
Utilities	

	Jan - Jul 07
Electric	130,246.02
Garbage	1,028.55
Gas	335.13
Total Utilities	131,609.70
Total Facilities Expenses	276,056.78
General & Administrative	
Bad Debt Expense - Telco TV	0.00
Business Insurance	
Directors & Officers	8,724.94
General Business & Liability	52,150.36
Total Business Insurance	60,875.30
Financial Fees	
Bank Service Fees	11,301.99
Funding Fees	53,612.54
Late Fees & Penalties	136,169.56
Payroll Processing Expense	3,149.11
Total Financial Fees	204,233.20
Office Expenses	
Advertising	1,819.38
Computer Supplies	7,027.79
Dues & Subscriptions	3,563.93
Office Supplies	6,888.55
Postage & Delivery	3,808.34
Printing & Reproduction	4,341.69
Total Office Expenses	27,449.68
Outside Services	377,648.71
Training Expense	2,995.00
General & Administrative - Other	0.00
Total General & Administrative	673,201.89
Miscellaneous Expense	
Community Contributions	3,150.00
License & Permit Fees	2,503.93
Miscellaneous Expenses	6,745.18
Total Miscellaneous Expense	12,399.11
Professional Services	
Accounting Fees	13,044.95
Consulting Services	84,906.01
Legal Fees	105,080.26
Professional Services - Other	1,227.00
Total Professional Services	204,258.22
Repairs & Maintenance	
Building	243.27

	Jan - Jul 07
Equipment	<u>12,989.29</u>
Total Repairs & Maintenance	<u>13,232.56</u>
Salaries & Wages	
Draws & Commissions	175,392.47
On Call Premiums	11,000.06
Payroll Taxes	
FUTA	1,080.30
Medicare	12,445.94
Social Security	51,527.21
SUTA	<u>8,880.57</u>
Total Payroll Taxes	<u>73,934.02</u>
Salaries Expense	<u>678,603.38</u>
Total Salaries & Wages	<u>938,929.93</u>
Taxes	
Personal Property Taxes	180,831.00
State Franchise Taxes	29,487.00
State Sales Taxes	173,440.58
Taxes - Other	<u>0.00</u>
Total Taxes	<u>383,758.58</u>
Travel & Entertainment	
Convention Expense	
Convention Expenses	<u>1,035.00</u>
Total Convention Expense	<u>1,035.00</u>
Meals & Entertainment	
Business Meals	4,413.21
Employee Meals	614.95
Entertainment	0.00
Meals & Entertainment - Other	<u>858.05</u>
Total Meals & Entertainment	<u>5,886.21</u>
Travel	
Airfare	17,459.09
Car Rental	147.73
Ground Transportation	48.00
Lodging	6,798.03
Mileage	7,384.20
Parking	325.00
Travel - Other	<u>961.11</u>
Total Travel	<u>33,123.16</u>
Total Travel & Entertainment	<u>40,044.37</u>
Total Expense	<u>2,796,528.24</u>
Net Ordinary Income	(1,247,294.85)

Jan - Jul 07

Other Income/Expense

Other Income

Interest Income

Interest - Certificate of Depos

6,488.91

Total Interest Income

6,488.91

Other Income

Finance Charges

0.00

Total Other Income

0.00

Total Other Income

6,488.91

Other Expense

Interest Expense

Finance Charges

16,450.00

Loan Interest

117,186.72

Interest Expense - Other

35,950.81

Total Interest Expense

169,587.53

Total Other Expense

169,587.53

Net Other Income

(163,098.62)

Net Income

(1,410,393.47)

Memphis Networx, LLC
Balance Sheet
As of July 31, 2007

3:48 PM

Accrual Basis
Jul 31, 07

ASSETS

Current Assets

Checking/Savings

Cadence Bank 1,389.49

Cash - 1st Tennessee 1,616.18

Renasant Bank 69,201.31

Total Checking/Savings 72,206.98

Accounts Receivable

Trade Accounts Receivable

Allowance for Doubtful Accounts (16,197.25)

Trade Accounts Receivable - Other 641,905.87

Total Trade Accounts Receivable 625,708.62

Total Accounts Receivable 625,708.62

Other Current Assets

Deposits - Short Term 141,751.93

Other Non-Trade Receivables 14,516.80

Prepaid Expenses 51,748.76

Total Other Current Assets 208,017.49

Total Current Assets 905,933.09

Fixed Assets

Broadband Equipment

Accumulated Depreciation - Broa (4,085,533.13)

Broadband Equipment - Other 5,650,649.79

Total Broadband Equipment 1,565,116.66

Computer Equipment

Accumulated Depreciation - Equi (220,692.17)

Computer Equipment - Other 260,892.67

Total Computer Equipment 40,200.50

Computer Software

Accum Depr - Software (192,773.06)

Computer Software - Other 268,890.07

Total Computer Software 76,117.01

Furniture & Fixtures

Accumulated Depreciation - Furn (78,280.20)

Furniture & Fixtures - Other 89,392.13

Total Furniture & Fixtures 11,111.93

Leasehold Improvements

Accumulated Depreciation - LHI (662,998.73)

	Jul 31, 07
Leasehold Improvements - Other	<u>1,793,921.80</u>
Total Leasehold Improvements	<u>1,130,923.07</u>
OSS Software	
Accumulated Depreciation - OSS	(2,284,067.72)
OSS Software - Other	<u>2,284,067.72</u>
Total OSS Software	<u>0.00</u>
Outside Plant	
Accumulated Depreciation - OP	(1,368,146.57)
Build Materials	1,168,341.96
Fiber	2,590,559.34
Labor	4,287,934.80
Permits & Fees	<u>709,461.38</u>
Total Outside Plant	<u>7,388,150.91</u>
Total Fixed Assets	10,211,620.08
Other Assets	
Deposits - Long Term	<u>505,836.42</u>
Total Other Assets	<u>505,836.42</u>
TOTAL ASSETS	<u><u>11,623,389.59</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	<u>2,786,214.61</u>
Total Accounts Payable	<u>2,786,214.61</u>
Other Current Liabilities	
Accounts Payable - Other	750.00
Accrued Expenses	
Accrued 401K Liability	8,340.75
Accrued Other	140,919.18
Accrued Property Taxes	3,355.45
Sales Tax Payable	<u>510,149.86</u>
Total Accrued Expenses	<u>662,765.24</u>
Commissions Payable	45,491.90
Short Term Debt	
Due to Sygnia	32,000.00
Short Term Debt - Other	<u>4,664,926.01</u>
Total Short Term Debt	<u>4,696,926.01</u>
Total Other Current Liabilities	<u>5,405,933.15</u>
Total Current Liabilities	8,192,147.76

Jul 31, 07

Long Term Liabilities

Long Term Debt - Non Current
Unearned Revenue - Non Current
Total Long Term Liabilities

2,021,782.65
148,541.32
2,170,323.97

Total Liabilities

10,362,471.73

Equity

Contributed Capital
Memphis Broadband, LLC
Memphis Light Gas & Water
Total Contributed Capital

5,551,859.60
28,565,871.45
34,117,731.05

Opening Bal Equity
Retained Earnings
Net Income

0.40
(31,440,990.62)
(1,415,822.97)

Total Equity

1,260,917.86

TOTAL LIABILITIES & EQUITY

11,623,389.59

Tab 18

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

EXCERPT
from
MINUTES OF MEETING OF BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
MARCH 4, 1999

* * * * *

The Supervisor of Purchasing requested the Board's consideration to initiate and establish a telecommunications entity by MLGW.

It was moved by Commissioner Guinn,
seconded by Commissioner Morris,
and unanimously carried:

THAT MLGW initiate and establish a telecommunications entity. The initial capitalization will be \$450,000 for professional fees and associated expenses.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Light, Gas and Water Commissioners at a regular meeting held on 4th day of March, 1999, at which a quorum was present. This 4th day of March, 1999.

[Signature]
Secretary - Treasurer

Tab 19

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
AUGUST 19, 1999

The President submitted for approval of the Board authorization to establish a Telecommunications Division as a subdivision of the Electric Division.

WHEREAS, the Memphis Light, Gas and Water Division of the City of Memphis (MLGW) has completed its preliminary investigations into the feasibility of developing a telecommunications network through a telecommunications division of the electric division as a subdivision of the electric division of MLGW (the "Telecommunications Division") as authorized by the Board on March 4, 1999; and

WHEREAS, it is appropriate to establish the powers, duties and obligations of the Telecommunications Division.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Light, Gas and Water Commissioners, THAT:

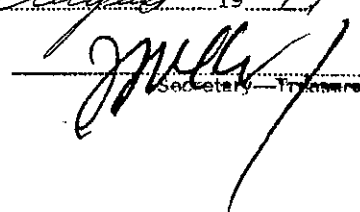
1. The Telecommunications Division shall have all powers, authority, duties, responsibilities, and obligations as are now or may hereafter be provided by applicable law, all under the direction of the President and Chief Executive Officer, or his designee, including the authority to organize, create, manage, operate, either wholly or jointly with others, an entity to provide or perform those services authorized for the Telecommunications Division.

It was moved by _____ Vice Chairman Guinn _____, seconded by

Commissioner . Graves _____ and unanimously carried:

THAT, Authority to establish the powers, duties and obligations of the Telecommunications Division as a subdivision of the Electric Division of MLGW is granted.

I hereby certify that the foregoing is a true copy of
a resolution adopted by the Board of Light, Gas and
Water Commissioners at a regular - ~~special~~ meeting
held on 19th day of August, 1999, at
which a quorum was present. This 19th day
of August, 1999.



Secretary-Treasurer

Tab 20

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

August 9, 2001

IN RE:

APPLICATION OF MEMPHIS NETWORK, L.L.C.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATION SERVICES AND JOINT
PETITION OF MEMPHIS LIGHT GAS & WATER
DIVISION, A DIVISION OF THE CITY OF MEMPHIS,
TENNESSEE ("MLGW") AND A&L NETWORKS-
TENNESSEE, L.L.C. ("A&L") FOR APPROVAL OF
AGREEMENT BETWEEN MLGW AND A&L REGARDING
JOINT OWNERSHIP OF MEMPHIS NETWORK, L.L.C.

)
)
)
) DOCKET NO.
) 99-00909
)
)
)
)
)
)

FINAL ORDER APPROVING AMENDED AND RESTATED
OPERATING AGREEMENT AND GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

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V.	APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY	34
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I. INTRODUCTION

This matter came before the Tennessee Regulatory Authority ("TRA" or "Authority") at a regularly scheduled Authority Conference held on June 12, 2001, upon the *Application and Joint Petition*, as amended on December 21, 2000, filed by Memphis Light Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW"), Memphis Broadband, LLC ("Broadband"), and Memphis Networkx, LLC ("Networkx"). The Joint Petition, as amended, requests approval of the Amended and Restated Operating Agreement entered into by MLGW and Broadband for the purpose of creating Networkx, and the Application, as amended, seeks a Certificate of Public Convenience and Necessity ("CCN") on behalf of Networkx so that Networkx may provide intrastate telecommunications services.

II. FACTUAL HISTORY

On April 15, 1998, Larry Thompson, Senior Vice President and Chief Operating Officer of MLGW; Alex Lowe, Manager of A&L Networks-Tennessee, LLC ("A&L"); and Joe Warnement, Director at Arthur D. Little, Inc. ("ADL") attended a meeting to discuss the concept of MLGW entering the telecommunications market.¹ Shortly thereafter, A&L began investigating telecommunication plans and hired ADL as a consultant on the telecommunications market.² In July 1998, ADL conducted interviews of MLGW employees and examined MLGW records and documents for the purpose of creating a proposal, at no cost to MLGW, which would provide an assessment of the value of a municipal utility entering the telecommunications market.³

On July 20 through 21, 1998, MLGW held an Executive Planning Conference during which the participants discussed whether to issue a request for proposal for a

¹ Transcript of Proceedings, Sept. 15, 2000, v. IX-A, p. 51 (Hearing - Cross-Examination of Larry Thompson).

² *Id.*

³ *Id.* v. IX-B, pp. 67-69 (Hearing - Cross-Examination of Larry Thompson).

telecommunications venture.⁴ At this same time, ADL issued its Initial Report, which presented a comprehensive overview of MLGW's telecommunications services opportunities.⁵ On September 18, 1998, MLGW issued a request for proposal to one hundred and four (104) companies in search of a strategic telecommunications partner.⁶

On September 17, 1998, A&L and ADL entered into a written contract under which A&L agreed to pay ADL a set fee for specific services related to the presentation of a proposal to MLGW.⁷

On October 14, 1998, MLGW held a mandatory pre-bid meeting which was attended by twenty-five (25) company representatives.⁸ MLGW received responses to the request for proposals on December 1, 1998 from BellSouth Business Systems, A&L, East 46th Street Partners, Hicks & Ragland Engineering, MFS Network, Motorola, and Utilicom Networks.⁹ A&L's proposal included a reference to four-hundred thousand dollars (\$400,000.00) already expended by A&L in relation to the project.¹⁰ In December 1998, MLGW asked BellSouth Business Systems, A&L, East 46th Street Partners, and MFS Network Technologies to present their proposals.

On December 28, 1998, A&L contracted with ADL for a set fee to complete further work on the telecommunications venture.¹¹ On January 6, 1999, A&L made its presentation to

⁴ Hearing Exhibits 92 and 111.

⁵ Hearing Exhibit 65 (filed under seal).

⁶ Transcript of Proceedings, Sept. 15, 2000, v. IX-D, pp. 175-177 (Hearing - Cross-Examination of Larry Thompson).

⁷ *Id.* July 20, 2000, v. IV-B, p. 148 (Hearing - Cross-Examination of Alex Lowe) (filed under seal); Hearing Exhibit 66 (filed under seal).

⁸ Hearing Exhibit 83.

⁹ Transcript of Proceedings, Sept. 15, 2000, v. IX-D, pp. 175-177 (Hearing - Cross-Examination of Larry Thompson).

¹⁰ Hearing Exhibit 62.

¹¹ Hearing Exhibit 66 (filed under seal).

MLGW.¹² A&L removed and retained the appendices to the proposal upon completion of the presentation.¹³

On March 2, 1999, A&L entered into another agreement with ADL for a set fee to define the parameters and components of the telecommunications venture.¹⁴

On March 4, 1999, the Board of Commissioners of MLGW approved the establishment of a telecommunications entity.¹⁵ On March 30, 1999, MLGW and A&L entered into a letter agreement whereby MLGW would reimburse A&L for fees and expenses related to A&L's independent investigation into the development of a telecommunications business with MLGW and A&L would own ADL's work product, but MLGW could review it.¹⁶ On April 5, 1999, MLGW signed a letter of intent to form a strategic partnership with A&L.¹⁷

On April 19, 1999, ADL invoiced A&L for \$120,000.00 in professional services and expenses.¹⁸ On April 26, 1999, A&L invoiced MLGW for \$120,000.00 in professional services and expenses.¹⁹ A&L expanded its contract with ADL on April 30, 1999 increasing the amount of fees payable to ADL for services.²⁰ On May 18, 1999, MLGW paid A&L \$120,000.00.²¹ ADL invoiced A&L for \$330,000.00 on May 25, 1999 for professional services and expenses.²² On June 1, 1999, A&L Underground, Inc.²³ invoiced MLGW \$330,000.00 for professional

¹² Hearing Exhibit 62.

¹³ Transcript of Proceedings, July 20, 2000, v. IV-A, p. 27 (Hearing - Cross-Examination of Alex Lowe).

¹⁴ Hearing Exhibit 66 (filed under seal).

¹⁵ Hearing Exhibit I (*Application and Joint Petition*, Exhibit D).

¹⁶ Hearing Exhibit 67.

¹⁷ Hearing Exhibit 43.

¹⁸ Hearing Exhibit 68.

¹⁹ *Id.*

²⁰ Hearing Exhibit 66 (filed under seal).

²¹ Hearing Exhibit 68.

²² *Id.*

²³ Alex Lowe is the President of A&L Underground, which is a construction company. Transcript of Proceedings, July 19, 2000, v. III-D, p. 235 (Hearing - Direct Examination of Alex Lowe); Transcript of Proceedings, Sept. 12, 2000, v. VI-B, p. 79 (Hearing-Cross-Examination of Alex Lowe).

services and expenses.²⁴ A&L paid ADL \$120,000.00 on June 4, 1999. On June 18, 1999, MLGW paid A&L Underground, Inc. \$330,000.00.²⁵ A&L paid ADL \$330,000.00 on June 28, 1999.²⁶

In June 1998, A&L Underground, Inc. began installation of conduit in approximately thirty-five (35) subdivisions located in municipalities around Memphis. A&L completed the projects in December 1999.²⁷

On August 18, 1999, MLGW publicly announced its intention to enter into a private joint venture with A&L to build a wholesale, carriers' carrier network.²⁸ On August 19, 1999, the MLGW Board of Commissioners approved and authorized the establishment of a Telecommunications Division and approved an inter-division loan of twenty million dollars (\$20,000,000.00) from the Electric Division to the Telecommunications Division.²⁹ On October 6, 1999, Larry Thompson of MLGW briefed John Bobango, Chairman of the General Services and Utilities Committee of the Memphis City Council, regarding MLGW's telecommunications project.³⁰

On October 11, 1999, Networkx entered into a lease for office space.³¹ On October 19 and 20, 1999, Networkx contracted with two different companies for consultation services.³²

On October 21, 1999, the Board of Commissioners of MLGW provided for the interim funding of Networkx's expenses pending receipt of regulatory approval and directed that such

²⁴ Hearing Exhibit 68.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Hearing Exhibit 52.

²⁸ A carriers' carrier network is a network of facilities that is built and owned by one carrier who leases the network facilities and/or capacity to other carriers.

²⁹ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit D, minutes of meeting).

³⁰ Transcript of Proceedings, Sept. 15, 2000, v. IX-A, pp. 27-36 (Hearing - Cross-Examination of Larry Thompson).

³¹ Hearing Exhibit 5 (filed under seal).

³² Hearing Exhibit 5 and 66 (filed under seal).

expenses would be reimbursed from the inter-division loan upon receipt of all necessary regulatory approval.³³ On November 4, 1999, MLGW reimbursed A&L approximately seven hundred thousand (\$700,000.00) for costs.³⁴ On November 8, 1999, MLGW and A&L entered into an Operating Agreement for the purpose of creating and operating Networkx,³⁵ and Networkx filed its organizational papers with the Tennessee Secretary of State's office.³⁶ On December 7, 1999, the Memphis City Council approved MLGW's "Year 2000 Budget," which included a single line item reference to the twenty million dollar (\$20,000,000.00) inter-division loan.³⁷

On November 17, 2000, A&L and Broadband enter into a "Membership Interest Purchase Agreement."³⁸ On November 29, 2000, MLGW, Broadband, and A&L executed an "Assignment of Membership Interest and Amendment to Operating Agreement of Memphis Networkx, LLC" in which A&L transferred its entire interest in Networkx to Broadband.³⁹

III. PROCEDURAL HISTORY

On November 24, 1999, MLGW, A&L, and Networkx filed an *Application and Joint Petition* requesting that the Authority approve the Operating Agreement entered into by MLGW and A&L to create Networkx and grant a Certificate of Public Convenience and Necessity to Networkx to provide intrastate telecommunications services. NEXTLINK Tennessee, Inc. ("NEXTLINK") filed a petition to intervene on December 9, 1999.

The Authority first addressed this docket at a regularly scheduled Authority Conference held on December 20, 1999. At that Conference, the Directors voted unanimously to appoint General Counsel or his designee to act as the Pre-Hearing Officer to render decisions on petitions

³³ Hearing Exhibit 3.

³⁴ Hearing Exhibit 25.

³⁵ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit E).

³⁶ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit B) and 21.

³⁷ Hearing Exhibit 17.

³⁸ Hearing Exhibit 114.

³⁹ *Id.*

for intervention, hear preliminary matters prior to the Hearing, and set a procedural schedule to completion.⁴⁰

On January 11, 2000, MLGW, A&L, and Networx filed supplemental documentation in support of their *Application and Joint Petition*. On February 4, 2000, MLGW, A&L, and Networx filed the pre-filed testimony of J. Maxwell Williams, Vice President and General Counsel of MLGW, and Ward Huddleston, Jr., Chief Executive Officer and Chief Manager of Networx, in support of their *Application and Joint Petition*. On February 8, 2000, the Authority issued a Notice setting a Pre-Hearing Conference for February 17, 2000. The Notice advised any interested party to file a petition to intervene by February 15, 2000 and directed any interested party and each current party to file a list of proposed issues to be considered at the Pre-Hearing Conference.

Petitions to Intervene were filed on February 15, 2000, pursuant to the Notice, by Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom"), Time Warner Communications of the Mid-South, L.P. ("Time Warner Communications"), the Tennessee Cable Telecommunications Association ("TCTA"), and BellSouth Telecommunications, Inc. ("BellSouth"). On February 15, 2000, lists of proposed issues were filed by MLGW, A&L, and Networx as well as NEXTLINK, Time Warner Telecom, Time Warner Communications, and TCTA.

Pursuant to the Authority's Notice, a Pre-Hearing Conference was held on February 17, 2000. Extensive discussions surrounding the issues list⁴¹ and the procedural schedule necessitated a second day, and the Pre-Hearing Conference was not concluded until February 22, 2000.

⁴⁰ Order Appointing a Pre-Hearing Officer, p. 1 (Jan. 5, 2000).

⁴¹ BellSouth presented a list of issues at the Pre-Hearing Conference on February 17, 2000 and filed its list on February 18, 2000.

During the Conference, the Pre-Hearing Officer considered and, without objection, granted all pending requests for intervention.⁴² Based upon the filings of and discussions with the parties during the Pre-Hearing Conference, the Pre-Hearing Officer established the following nine issues to guide the Authority in its consideration of the *Application and Joint Petition*:

1. Does Applicant meet the statutory criteria and requirement set forth in Tenn. Code Ann. § 65-4-201, for a certificate to operate as a competitive local exchange carrier in Tennessee?
2. Whether Joint Petitioners and Applicant have complied with the criteria set forth in Tenn. Code Ann. § 7-52-103(d) and whether the Operating Agreement of Memphis Networkx, LLC, dated November 8, 1999, adopted by MLG&W and A&L should be approved by the TRA?
3. What requirements, if any, are necessary to insure that start up expenses, already incurred, are correctly identified and properly allocated?
4. Does the MLG&W interest in Memphis Networkx, LLC violate Article 2, Section 29 of the Tennessee Constitution?
5. To what extent, if any, is MLG&W's participation as a member of Memphis Networkx, LLC in the proposal to offer telecommunications services affected by its charter and that of the City of Memphis?
6. Whether MLG&W and Memphis Networkx have complied with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405.
7. What conditions, rules and/or reporting requirements, if any, are necessary to insure compliance by MLG&W and Memphis Networkx with the provisions of Tenn. Code Ann. §§ 7-52-402 through 405?
8. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance with the prohibition against anti-competitive practices provision of Tenn. Code Ann. § 7-52-103(d)?
9. What conditions, rules or reporting requirements, if any, are necessary to insure Applicant's and Petitioners' compliance, to the extent applicable, with Tenn. Code Ann. § 65-5-208(c)?⁴³

The Pre-Hearing Officer also established a procedural schedule which called for the completion of discovery and the filing of all testimony by March 21, 2000 with the dates of March 29 and

⁴² *Report and Recommendation of Pre-Hearing Officer*, p. 3 (Mar. 9, 2000); *Initial Order Granting Petitions to Intervene*, p. 4 (Mar. 9, 2000). TDS TELECOM Companies ("TDS Telecom") filed a *Petition to Intervene* on February 23, 2000. The Pre-Hearing Officer issued a letter on February 25, 2000 requesting any comments or objections to TDS Telecom's intervention be filed no later than February 29, 2000. MLGW, A&L, and Networkx filed a response on February 29, 2001, in which they requested that TDS Telecom's participation be limited by the scheduling order and issues list. The Pre-Hearing Officer subsequently granted the petition. *Initial Order Granting Petitions to Intervene*, p. 4 (Mar. 9, 2000) (attached to *Report and Recommendation of Pre-Hearing Officer* as Exhibit 1).

⁴³ *Report and Recommendation of Pre-Hearing Officer*, pp. 5-6 (Mar. 9, 2000).

30, 2000 being set aside for the Hearing. By agreement between the parties specific dates for propounding discovery and filing documentation were extended within the framework of the procedural schedule.

On March 16, 2000, NEXTLINK requested the attendance of nine witnesses, including Alex Lowe; Wade Stinson, Vice President of Construction and Maintenance for MLGW; and Larry Thompson, for cross-examination at the Hearing. On March 17, 2000, Time Warner Telecom, Time Warner Communications, and TCTA filed a *Request to Conduct Discovery Depositions* of John McCullough, Senior Vice President, Chief Financial Officer, and Secretary/Treasurer for MLGW; Wade Stinson; Larry Thompson; Joel Halverson; and Alex Lowe. On March 22, 2000, Time Warner Telecom, Time Warner Communications, and TCTA requested that the Authority subpoena MLGW's, A&L's, and Networkx's records custodians. MLGW, A&L, and Networkx opposed all of these requests. On March 24, 2000, MLGW, A&L, and Networkx filed the pre-filed rebuttal testimony and exhibits of Ward Huddleston, Jr., J. Maxwell Williams, John McCullough, and Wade Stinson.

The Pre-Hearing Officer convened a Status Conference on March 24, 2000 for the purpose of acting on the requests of the intervenors. During the Status Conference, the intervenors acknowledged that their requests overlapped as to some witnesses and proffered that if the parties could meet to authenticate certain records while reserving relevancy objections, the requests to subpoena the records custodians would be withdrawn. In addition, after discussions, the original number of witnesses requested to appear at the Hearing and requested for depositions was reduced to two: Alex Lowe and Larry Thompson. NEXTLINK, Time Warner Telecom, Time Warner Communications, and TCTA proposed the options that Mr. Lowe and Mr. Thompson be deposed in advance of the Hearing or cross-examined at the Hearing. MLGW, A&L, and Networkx opposed the depositions and live hearing appearance, asserting that any testimony from these two witnesses would not be relevant to the issues or duplicative of

previously-filed testimony. Because MLGW, A&L, and Networx filed their rebuttal testimony one day before the Status Conference, counsel suggested that the other parties review that testimony to determine whether the testimony of Alex Lowe and Larry Thompson would be required. The Pre-Hearing Officer determined that any party seeking the testimony of Alex Lowe or Larry Thompson should file on March 27, 2000, a list of the inconsistencies between the pleadings, the responses to data requests, and the pre-filed testimony. The Pre-Hearing Officer determined that the Status Conference should be continued to allow the parties to make filings in support of their positions as to obtaining testimony from the two witnesses.⁴⁴ Because of the disputes between the parties and the need for the resolution of other matters important to the preparation of this case for a Hearing, the Pre-Hearing Officer continued the Hearing from March 29 and 30, 2001.⁴⁵ The Pre-Hearing Officer did not reschedule the Hearing, but proposed the dates of April 4 and 5 or April 12, 13 and 14 as possible dates depending on the Authority's calendar.

The Status Conference was reconvened on March 29, 2000. After reviewing filings by the parties and hearing extensive argument, the Pre-Hearing Officer determined that NEXTLINK, Time Warner Communications, Time Warner Telecom, and TCTA made a sufficient showing to demonstrate that certain testimony of Larry Thompson and Alex Lowe would be relevant to the issues in this proceeding and would not be duplicative of previously filed testimony and permitted those parties to depose the witnesses for the purpose of presenting

⁴⁴ *Pre-Hearing Order Reflecting Action Taken at Pre-Hearing and Status Conferences Held on March 24, 2000, March 29, 2000 and April 5, 2000 and Decisions on Motions in Limine and Objections to Pre-Filed Testimony and Exhibit*, p. 5 (April 28, 2000).

⁴⁵ *Id.* at 6.

their testimony at the Hearing.⁴⁶ At the request of MLGW, A&L, and Networx, the Pre-Hearing Officer made himself available to attend the depositions to rule on objections.

To facilitate the expeditious presentation of evidence at the Hearing and to address MLGW, A&L, and Networx's concerns over having their witnesses prepared to address specific documents, the Pre-Hearing Officer ordered that the parties either provide to each other a list of exhibits to be presented at the Hearing or make those exhibits available for copying or inspection by March 31, 2000.⁴⁷ The Pre-Hearing Officer determined that a Pre-Hearing Conference would be held in advance of the depositions to address objections to pre-filed testimony and exhibits and any motions in limine as to the testimony of witnesses. The parties were also directed to file objections and motions in limine prior to this Pre-Hearing Conference.

On March 31, 2000, BellSouth filed a letter in this docket explaining that it would not be presenting any witnesses or exhibits, but reserved its right to use documents for impeachment. Also on March 31, 2000, MLGW, A&L, and Networx filed a *List of Documents That May be Introduced by Applicant and Joint Petitioners in Tennessee Regulatory Authority Docket No. 99-00909* and Time Warner Communications, Time Warner Telecom, and TCTA filed their list of additional exhibits.

On April 3, 2000, the parties filed numerous discovery pleadings. Time Warner Communications, Time Warner Telecom, and TCTA filed a motion in limine "as to evidence relating to the proposed AOL/Time Warner merger, or the cross-subsidization of products or services by any Time Warner affiliate."⁴⁸ Time Warner Communications, Time Warner Telecom, and TCTA also filed objections to the rebuttal testimony of J. Maxwell Williams,

⁴⁶ *Id.* at 7-8.

⁴⁷ *Id.* at 8.

⁴⁸ *Time Warner Telecom of the Mid-South, L.P.'s, Time Warner Communications of the Mid-South's, and the Tennessee Cable Telecommunications Association's Motion in Limine*, p. 1 (Apr. 3, 2001).

Ward Huddleston, Jr., Wade Stinson, and John McCullough and motions to strike. MLGW, A&L, and Networx filed a motion in limine along with a memorandum of support, objections to exhibits of William J. Barta, and objections to the requests to produce documents at the depositions. Also on April 3, 2000, the Authority issued a *Notice of Hearing* to all interested parties informing them that the Hearing in this matter had been scheduled for April 13 and 14, 2000.

On April 4, 2000, the International Brotherhood of Electrical Workers, Local 1288 ("IBEW") filed a petition to intervene.

On April 5, 2000, the morning of the Pre-Hearing Conference, the Pre-Hearing Officer, received copies of Time Warner Communications, Time Warner Telecom, and TCTA's requests to produce documents at the depositions of Alex Lowe and Larry Thompson. During the Conference, the Pre-Hearing Officer afforded the parties an opportunity to comment on the production of documents for the depositions. The Pre-Hearing Officer ruled that Alex Lowe and Larry Thompson should bring any documents in their possession pertaining to these proceedings to the depositions and that Time Warner Telecom, Time Warner Communications, and TCTA would have an opportunity during the depositions to inquire about any other documents in existence.⁴⁹

On the morning of April 6, 2000, the parties, Larry Thompson, Alex Lowe, and the Pre-Hearing Officer appeared in the Hearing Room of the Authority for the depositions. Counsel for Time Warner Telecom, Time Warner Communications, and TCTA requested that the rule of sequestration of witnesses be imposed in as much as the depositions were being taken for the purpose of obtaining testimony for the Hearing. At that time, counsel for MLGW, A&L, and

⁴⁹ *Pre-Hearing Order Reflecting Action Taken at Pre-Hearing and Status Conferences Held on March 24, 2000, March 29, 2000 and April 5, 2000 and Decisions on Motions in Limine and Objections to Pre-Filed Testimony and Exhibit*, p. 12 (April 28, 2000).

Networx designated Mr. Thompson as the corporate representative for MLGW, Ward Huddleston as the corporate representative for Networx, and Alex Lowe as the corporate representative for A&L. After some discussion, MLGW, A&L, and Networx proposed that the deponents appear at the Hearing to present live testimony rather than give their depositions. Time Warner Telecom, Time Warner Communications, TCTA, and NEXTLINK agreed to the offer, and the parties cancelled the depositions.

After the cancellation of the depositions on April 6, 2000, the Pre-Hearing Officer advised the parties that he would review the filings of the parties, consider the oral arguments, and issue an order reflecting his rulings on the motions in limine and the objections to pre-filed testimony and exhibits.⁵⁰ During the time that had been set aside for the depositions, the Pre-Hearing Officer facilitated discussions between the parties for the purposes of entering into stipulations of fact and reaching agreements as to the authenticity of documents. Although there was dialogue between the parties, they failed to reach any stipulations.

As a result of the occurrences on April 6, 2000, the Pre-Hearing Officer notified the parties in writing on April 7, 2000 that the Hearing scheduled for April 13 and 14, 2000 would need to be rescheduled to allow for the additional time needed for two extra witnesses. The Pre-Hearing Officer's decision was memorialized in an Order issued on April 10, 2000.⁵¹

Upon the filing of the April 10th Order, MLGW, A&L, and Networx filed an appeal to the Authority. At their request, the Directors of the Authority heard the appeal at a regularly scheduled Authority Conference on April 11, 2000. After considering the argument of the parties, the Directors voted two to one to continue the Hearing and rescheduled the Hearing for the week of May 1, 2000.⁵²

⁵⁰ *Id.* at 14-42.

⁵¹ *Pre-Hearing Officer's Order Continuing Hearing*, p. 2 (Apr. 10, 2000).

⁵² Transcript of Proceedings, Apr. 11, 2000, pp. 91-96 (Authority Conference).

On April 14, 2000, Time Warner Communications filed a *Motion for Order to Allow Additional Discovery and to Amend Procedural Schedule*, together with exhibits. MLGW, A&L, and Networx filed a response on April 17, 2000. The Pre-Hearing Officer denied the motion on the grounds that, in his opinion, when the Authority moved the hearing date to allow more time for the hearing it did not intend to provide an additional period for new discovery in advance of the new hearing dates. Further, the Pre-Hearing Officer determined the information could be elicited at the time of the hearing from witnesses already scheduled to testify.⁵³

On April 20, 2000, the Pre-Hearing Officer entered a Protective Order and issued subpoenas duces tecum for the records custodians of MLGW, Networx, and A&L to produce the requisite documents at the Hearing.

On April 24, 2000, Time Warner Communications filed a letter with the Authority requesting that the Pre-Hearing Officer's order denying the Motion for Additional Discovery be vacated. Time Warner Communications argued that the ability of the intervening parties to fully present relevant proof at the Hearing would be materially and substantially impaired should the requested depositions not take place.

The Directors addressed Time Warner Communications' letter at a regularly scheduled Authority Conference on April 25, 2000. Following extensive discussions, the Directors, by a two to one vote, granted Time Warner Communications' request to vacate the Pre-Hearing Officer's order and proceed with discovery depositions of five (5) witnesses, Alex Lowe, Wade Stinson, Ward Huddleston, John McCullough, and Larry Thompson, on April 27 and 28, 2000 in Memphis.⁵⁴

⁵³ *Order Denying Motion to Allow Additional Discovery and to Amend Procedural Schedule*, p. 4 (Apr. 19, 2000).

⁵⁴ Director Malone voted to affirm the *Order Denying Motion to Allow Additional Discovery and to Amend the Procedural Schedule*. *Order Vacating Order Denying Motion to Allow Additional Discovery and to Amend Procedural Schedule*, p. 2 (Apr. 28, 2000).

Also at the April 25, 2000 Authority Conference, MLGW, A&L, and Networx made an *ore tenus* motion to quash the *subpoenas duces tecum* for records custodians. MLGW, A&L, and Networx asserted that some of the documents requested for production had already been produced and that the request was overly burdensome. Following argument from the parties, the Directors voted unanimously to deny the motion to quash. Further, the majority of the Directors who voted that depositions should occur determined that the records custodians should appear at the depositions and produce the requested records on April 27, 2000.⁵⁵

On April 25, 2000, the Pre-Hearing Officer issued an Order granting the IBEW's petition to intervene, but limited its intervention to presenting a statement of its position and conducting limited cross-examination of witnesses testifying during the Hearing.⁵⁶

A Pre-Hearing Conference was held on April 28, 2000 during which the Pre-Hearing Officer determined the order of witnesses and addressed several preliminary matters.

On May 1, 2000, the Authority convened the Hearing in this docket. At the outset, the Directors unanimously voted to approve the Pre-Hearing Officer's *Pre-Hearing Order Reflecting Action Taken at Pre-Hearing and Status Conferences Held on March 24, 2000, March 29, 2000 and April 5, 2000 and Decisions on Motions in Limine and Objections to Pre-Filed Testimony and Exhibits*.⁵⁷ Thereafter, the parties requested a postponement of the commencement of the Hearing to permit the parties to continue settlement negotiations. The Directors voted unanimously to permit the parties to use May 1 to finalize their settlement negotiations.⁵⁸

On May 2, 2000, MLGW, A&L, Networx, NEXTLINK, Time Warner Communications, Time Warner Telecom, and TCTA filed a settlement agreement titled *Amended Application of*

⁵⁵ *Id.* at 3.

⁵⁶ *Pre-Hearing Officer's Order Granting Petition to Intervene of the International Brotherhood of Electrical Workers, Local 1288*, p. 7 (Apr. 25, 2000).

⁵⁷ Transcript of Proceedings, May 1, 2000, v. 1-A, p. 4.

⁵⁸ *Id.* v. 1-B, pp. 25-27.

Memphis Networx LLC ("Amended Application"). The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") filed a letter suggesting that the Amended Application be published to provide sufficient notice to the public. After hearing comments from the parties, a majority of the Directors⁵⁹ voted to postpone the Hearing and to remand the docket to the Pre-Hearing Officer. The Directors instructed the Pre-Hearing Officer to conduct a Status Conference for the purposes of: establishing a new procedural schedule; determining the current positions of the parties; and developing a framework for determining whether Authority Staff should assume the role of a party in this action in order to present evidence and cross-examine witnesses on issues that were no longer supported by the intervening parties.⁶⁰

The Pre-Hearing Officer convened a Status Conference on May 2, 2000 following the postponement of the Hearing. During the conference, the parties presented their respective positions as to what the intervenors' continued roles would be relative to the Hearing in light of the Amended Application. Based upon the parties' comments, the Pre-Hearing Officer ordered each party to file a written explanation as to how the Amended Application resolved the nine issues being considered in this docket and determined that the Hearing would be postponed until after the parties submitted specific filings to the Authority in accordance with a procedural schedule established during the Status Conference. On May 4, 2000, the Pre-Hearing Officer issued an *Order Reflecting Action Taken at May 2, 2000 Status Conference*.

During the May 2, 2000 Status Conference, counsel for the IBEW requested that the IBEW's intervention status be expanded to permit the IBEW to present its own testimony at the Hearing. Also, on May 5, 2000, the Consumer Advocate filed a *Petition to Intervene*. On May

⁵⁹ *Id.* May 2, 2000, v. II-A, p. 39 (Hearing). Chairman Melvin Malone voted to proceed with the Hearing as scheduled.

⁶⁰ *Order Reflecting Action Taken at May 2, 2000 Status Conference*, p. 3 (May 4, 2000).

8, 2000, the parties to the settlement, with the exception of NEXTLINK, filed their respective position statements as to Amended Application. On May 11, 2000, MLGW, A&L, and Networkx filed supplemental pre-filed testimony on behalf of Ward Huddleston, Jr., J. Maxwell Williams, and John McCullough and pre-filed testimony on behalf of Alex Lowe, Wade Stinson, and Michael D. Whitten, General Auditor for MLGW.

On May 12, 2000, MLGW, A&L, and Memphis Network responded to the Consumer Advocate's petition to intervene and filed a request to deny the expansion of the IBEW's role as an intervenor. MLGW, A&L, and Networkx also sought to have the case reset for Hearing. The IBEW filed a reply on May 18, 2000.

On May 22, 2000, the Pre-Hearing Officer issued an order granting the IBEW's request for an expanded role and the Consumer Advocate's petition to intervene, but limited their presentation of testimony to one (1) witness each. Both parties were directed to file pre-filed testimony on May 30, 2000, with MLGW, A&L, and Networkx being ordered to file rebuttal testimony on June 6, 2000.⁶¹

On May 30, 2000, the Consumer Advocate filed pre-filed direct testimony on behalf of Archie R. Hickerson, former Director of the Consumer Advocate Division Staff, and on June 1, 2000, the IBEW filed the pre-filed testimony of Brent E. Hall, President of the IBEW. On June 6, 2000, MLGW, A&L, and Networkx filed the pre-filed rebuttal testimony of Larry Thompson, Wade Stinson, John McCullough, and Ward Huddleston.

Also on June 6, 2000, MLGW, A&L, and Networkx filed Objections and a Motion to Strike portions of Brent E. Hall's pre-filed testimony relating to the alleged violations of the Memorandum of Understanding between MLGW and the IBEW. In a response filed on June 12,

⁶¹ *Pre-Hearing Officer's Order Expanding Intervention of International Brotherhood of Electrical Workers, Local 1288 and Granting Consumer Advocate Division's Petition to Intervene*, p. 5 (May 22, 2000).

2001, the IBEW asserted that issues involving labor relations among the IBEW, MLGW, and the proposed joint venture would impact not only the interests and legal rights of the members of the IBEW, but those of the general public.

On June 1, 2000, Time Warner Telecom, Time Warner Communications, and TCTA filed a *Motion for Bifurcated Hearing Schedule*. On June 5, 2000, MLGW, A&L, and Networx filed a letter with the Authority requesting to be heard at the June 6th Authority Conference for the purpose of setting a Hearing date. During the June 6, 2000 Authority Conference, the Directors permitted MLGW, A&L, and Networx to present their request and instructed the Pre-Hearing Officer to hold a Status Conference to discuss with all parties the resetting of this case for Hearing.⁶²

In compliance with the directive, the Pre-Hearing Officer convened a Status Conference on June 6, 2000, with all parties participating. The comments of all parties regarding the *Motion for Bifurcated Hearing Schedule* revealed a significant difference of opinion between the parties as to how the Authority should consider the Amended Application in the context of the Hearing. The Pre-Hearing Officer instructed the parties to meet in an attempt to resolve the issues raised by the *Motion for Bifurcated Hearing Schedule*.

On June 7, 2000, MLGW, A&L, Networx, and the Consumer Advocate filed responses to the *Motion for Bifurcated Hearing Schedule*. The IBEW filed its opposition on the following day. On June 9, 2000, the parties informed the Pre-Hearing Officer that they no longer supported the Amended Application and that it would be withdrawn. On June 12, 2000, MLGW, A&L, and Networx filed a letter withdrawing the Amended Application and advising the Authority that they wished to proceed to Hearing on the original Application.

⁶² Transcript of Proceedings, Jun. 6, 2000, pp. 56-57 (Authority Conference).

On June 19, 2000, Authority Staff filed a memorandum stating that it would not need to participate in this docket as a party. The Authority issued a *Notice of Hearing and Pre-Hearing Conference* on June 22, 2000 scheduling a Pre-Hearing Conference for July 6, 2000 and re-scheduling the Hearing for July 17, 18, 19 and 20, 2000. On June 29, 2000, Time Warner Telecom, Time Warner Communications, and TCTA filed a *Motion to Reschedule Hearing* asserting that their expert witness, William Barta, was unavailable for the Hearing.

On July 6, 2000, MLGW, A&L, and Networx filed pre-filed rebuttal testimony of Wade Stinson, Ward Huddleston, Jr., J. Maxwell Williams, and John McCullough.

During the July 6, 2000 Pre-Hearing Conference and in the *Order Re: Pending Pre-Hearing Motions* issued on July 12, 2000, the Pre-Hearing Officer ruled on certain outstanding motions.⁶³ As to the Objections and Motion to Strike portions of Brent E. Hall's pre-filed testimony, the Pre-Hearing Officer granted the motion in part and denied the motion in part. The Pre-Hearing Officer found that certain portions of Mr. Hall's pre-filed testimony question the intent of MLGW regarding future ventures. The Pre-Hearing Officer determined that MLGW's intentions in entering into the joint venture and the impact of such intentions on the Memorandum of Understanding are not material to the issues under consideration in this case. The Pre-Hearing Officer agreed that the General Assembly has acted to permit MLGW to enter into joint ventures, so intent is not material in this proceeding. As for the remaining testimony, the Pre-Hearing Officer determined that the direct testimony of Brent E. Hall permits the IBEW to present its concerns in this forum as provided for in Tenn. Code Ann. § 7-52-103(d). Therefore, the Pre-Hearing Officer granted MLGW, A&L, and Networx's objection set forth in

⁶³ See *Order Re: Pending Pre-Hearing Motions*, p. 8 (July 12, 2000). On July 7, 2000, the Pre-Hearing Officer sent MLGW, A&L, Memphis Networx, Time Warner Telecom, Time Warner Communications, and TCTA a letter requesting that the additional information be filed no later than 2:00 p.m. on July 11, 2000.

paragraph 4 of the Objections and the Motion to Strike. The Pre-Hearing Officer denied the remaining objections.⁶⁴

As to the *Motion to Set Hearing and to Close Discovery* filed on June 12, 2000, the Pre-Hearing Officer found that the motion requesting the Authority reschedule the Hearing was rendered moot by the resetting of the Hearing and granted the motion to close discovery as to "new" discovery requests, ordering the parties to discuss and resolve any outstanding discovery requests.⁶⁵ During the July 6th Pre-Hearing Conference, Time Warner Telecom, Time Warner Communications, and TCTA withdrew their *Motion to Reschedule the Hearing*.⁶⁶

The Authority convened the Hearing in this docket as scheduled on July 17, 2000. At the outset of the Hearing, the Directors denied the *Motion to Lift Protective Order* filed by Time Warner Telecom, Time Warner Communications, and TCTA on May 1, 2000 and the *Motion in* *Limine* filed by MLGW, A&L, and Networx on July 14, 2000.⁶⁷ NEXTLINK informed the Authority during the July 17, 2000 proceedings that it was withdrawing as an intervenor because it had "resolved certain contractual issues with MLG&W" and was "comfortable with the applicant's changes to its application to address cross-subsidization issues."⁶⁸ The Hearing was conducted from July 17 through 20, 2000, with the Directors of the Authority hearing testimony from Ward Huddleston, Jr., J. Maxwell Williams, John McCullough, Michael D. Whitten, and Alex Lowe. On July 20, 2000, the Authority adjourned the Hearing until the next available hearing dates starting September 11, 2000.⁶⁹

⁶⁴ *Id.* at 8-10.

⁶⁵ *Id.* at 10.

⁶⁶ Transcript of Proceedings, July 6, 2000, p. 4 (Pre-Hearing Conference)

⁶⁷ *Id.* July 17, 2000, v. I-A, pp. 6-15 (Hearing).

⁶⁸ *Id.* at 52.

⁶⁹ On August 21, 2000, the Authority issued a *Notice of Hearing* setting the Hearing for September 11, 2000 through September 15, 2000.

On September 8, 2000, Time Warner Telecom, Time Warner Communications, and TCTA filed a Motion to Continue the Hearing. On September 11, 2000, the Authority reconvened the Hearing in this docket. On the morning of the Hearing, MLGW, A&L, and Networx filed a response to the Motion to Continue. Also on that morning, Time Warner Telecom, Time Warner Communications, and TCTA filed a Motion to Compel requesting that the Authority order MLGW, A&L, and Networx to provide certain documents. At the outset of the Hearing, the Directors addressed the Motion to Continue and Motion to Compel. Throughout the proceedings on September 11, 2000, the parties and the Directors discussed the nature, content, and availability of the documents that were the subject of the motions. The Authority determined that the documents should be produced and adjourned the proceedings until September 12, 2000. On September 12, 2000, counsel for MLGW and Networx reported that MLGW, A&L, and Networx had produced the documents;⁷⁰ however, after reviewing the documents, Time Warner Telecom, Time Warner Communications, and TCTA argued that the documentation was incomplete and asked the Authority to dismiss the case and award attorneys fees and costs.⁷¹ After hearing arguments from both sides, the Authority took the motion under advisement.⁷² On September 14, 2000, the Authority directed MLGW, A&L, and Networx either to produce the missing documentation or to file affidavits explaining any failure to do so.⁷³ From September 12 through 15, 2000 the Authority heard testimony from Archie Hickerson, Alex Lowe, Brent E. Hall, and Larry Thompson.

⁷⁰ Transcript of Proceedings, September 12, 2000, v. VI-B, p. 56 (Hearing).

⁷¹ *Id.* September 13, 2000, v. VII-A, pp. 3-5, 17, 25 (Hearing).

⁷² *See id.* at 28.

⁷³ The Authority issued a *Notice of Filing and Hearing* on September 15, 2000 confirming these dates.

On September 19, 2000, MLGW, A&L, and Networx filed the affidavits of Larry Thompson, Ward Huddleston, Joel Halverson, Alex Lowe, and Joseph Warnement concerning the production of documents.⁷⁴ On September 21, 2000, Time Warner Telecom, Time Warner Communications, and TCTA filed a second *Motion to Lift Protective Order*. Immediately following the Authority Conference on September 26, 2000, the Authority convened a hearing to dispose of all outstanding motions. At issue was the motion to dismiss and award attorney fees and the *Motion to Lift Protective Order*. After hearing oral arguments, the Authority denied the motion to dismiss and award attorney's fees⁷⁵ and denied the *Motion to Lift Protective Order*.⁷⁶ On October 5, 2000, the Authority issued a *Notice of Hearing*, which scheduled the conclusion of the Hearing for October 16 through October 20, 2000.

On October 12, 2000, MLGW, A&L, and Networx filed a *Motion Show Cause-Violation of Protective Order* alleging that counsel for Time Warner Telecom and Time Warner Communications had released protected information to a Memphis newspaper. Time Warner Telecom, Time Warner Communications, and TCTA filed a response to the motion on October 15, 2000 along with an affidavit of John M. Farris. MLGW, A&L, and Networx filed a memorandum in support of their motion on October 17, 2000. In the motion and memorandum, MLGW, A&L, and Networx requested that the Authority order counsel for Time Warner Telecom and Time Warner Communications to show cause why he should not be held in violation of the Protective Order and subject to sanctions as a result thereof.

The Hearing was reconvened on October 16, 2000. At the outset of the Hearing the Directors stated that they would take the Motion to Show Cause under advisement.⁷⁷ On

⁷⁴ MLGW, A&L, and Networx filed a second copy of Joseph Warnement's affidavit on September 20, 2000 because it contained a more legible copy of an exhibit.

⁷⁵ Transcript of Proceedings, Sept. 26, 2000, p. 16 (Hearing).

⁷⁶ *Id.* at 27-29.

⁷⁷ *Id.* Oct. 16, 2000, v. X-A, p. 3 (Hearing).

October 17, 2000, at the close of MLGW, A&L, and Networx's case-in-chief, Time Warner Telecom, Time Warner Communications, and TCTA orally moved to dismiss the case.⁷⁸ After hearing the response of MLGW, A&L, and Networx, the Authority voted unanimously to deny the motion to dismiss.⁷⁹

At the start of the Hearing on October 19, 2000, MLGW, A&L, and Networx notified the Authority that it wished to file an amendment to the operating agreement deleting the call option provision, Section 11.6.⁸⁰ After hearing testimony on the amendment, the Authority entered the amendment into the record as Exhibit 112. Thereafter, the parties presented their closing arguments. Prior to adjourning the Hearing, the Authority remanded the Motion to Show Cause to the Pre-Hearing Officer.⁸¹

On October 25, 2000, the Authority issued the *Notice of Issues for Briefing* directing the parties to file post-hearing briefs on four listed issues. On November 17, 2000, the IBEW filed its post-hearing brief, and MLGW, A&L, and Networx filed a *Notice of Additional Material Evidence and Motion for Suspension of Deadline for Filing of Briefs and Finding of Facts and Conclusions of Law*. The Notice and Motion stated that A&L had agreed to sell its interest in Networx to Memphis Broadband, LLC ("Broadband") and that MLGW and Broadband intended to amend the *Application and Joint Petition*. On November 20, 2000, Time Warner Telecom, Time Warner Communications, and TCTA filed their response reserving their right to object, conduct further discovery, and conduct further hearings.

During a regularly scheduled Authority Conference on November 21, 2000, the Directors voted unanimously to remand the case to the Pre-Hearing Officer to rule on all preliminary

⁷⁸ *Id.* Oct. 17, 2000, v. XI-A, p. 33 (Hearing).

⁷⁹ *Id.* v. XI-B, pp. 3-4 (Hearing).

⁸⁰ *Id.* Oct. 19, 2000, v. XIII-A, p. 76 (Hearing).

⁸¹ *Id.* v. XIII-B, pp. 101-02 (Hearing).

matters not involving the merits of the case.⁸² On December 7, 2000, the IBEW filed a Motion to Withdraw. The IBEW explained in its motion that the sale of A&L's interest to Broadband "has alleviated the concerns of the IBEW with the Application of Memphis Networkx, LLC, as expressed in its Petition to Intervene."⁸³

On December 21, 2000, MLGW, Broadband, and Networkx filed their *Amendment to the Application of Memphis Networkx, LLC and Joint Petition of MLGW and A&L* ("Second Amended Application"). Along with the Second Amended Application, MLGW, Broadband, and Networkx submitted the pre-filed testimony of Andrew P. Seamons on behalf of Broadband and the pre-filed supplemental testimony of Ward Huddleston, Jr. and Larry Thompson on the behalf of Networkx and MLGW, respectively. The Second Amended Application stated that A&L had sold its membership interest in Networkx to Broadband and provided specific amendments to the *Application and Joint Petition*. The Second Amended Application also included the "Amended and Restated Operating Agreement of Memphis Networkx, LLC."

Having received no comments or filings from the intervening parties relating to the Second Amended Application, with the exception of the IBEW's Motion to Withdraw, the Pre-Hearing Officer scheduled a Pre-Hearing Conference for January 29, 2001. During the Pre-Hearing Conference, the Pre-Hearing Officer considered the IBEW's Motion to Withdraw and, upon hearing no objections, granted the motion. In addition, the Pre-Hearing Officer determined that the IBEW's post-hearing brief and the evidence presented by or elicited from the IBEW and its witnesses would remain a part of the record in this proceeding. Because MLGW, Broadband, and Networkx objected to this decision, the Pre-Hearing Officer permitted MLGW, Broadband,

⁸² *Id.* Nov. 21, 2000, pp. 31-35 (Authority Conference).

⁸³ *Motion to Withdraw and Dismiss Petition to Intervene of International Brotherhood of Electrical Workers, Local 1288*, p. 1, (December 7, 2000).

and Networkx to submit a filing setting forth legal grounds for their objections. Time Warner Telecom, Time Warner Communications, and TCTA requested the opportunity to respond.⁸⁴

After hearing from the parties, the Pre-Hearing Officer determined that additional discovery and pre-filed testimony would be necessary as a result of the filing of the Second Amended Application, but limited the scope of such discovery to the new issues raised in the Second Amended Application and pre-filed testimony submitted therewith.⁸⁵ The Pre-Hearing Officer, with the assistance of the parties, established a procedural schedule which called for completion of discovery and the filing of all pre-filed testimony by March 1, 2001. The Pre-Hearing Officer also determined that any depositions must be completed prior to March 1, 2001 and directed the parties to file briefs on three (3) threshold issues no later than March 1, 2001.⁸⁶ Lastly, at the request of MLGW, Broadband, and Networkx, the Pre-Hearing Officer set this

⁸⁴ *Order Granting IBEW's Motion to Withdraw, Establishing Procedural Schedule, and Setting Hearing Date*, p. 5 (Feb. 9, 2001).

⁸⁵ *Id.* at 6.

⁸⁶ The issues are:

1.
 - a. Do Tenn. Code Ann. § 65-25-231(a)(2) and §7-52-402 apply to the Telecommunications Division of the Electric Division of Memphis Light Gas & Water?
 - b. Does Tenn. Code Ann. § 65-25-231(a)(2), § 7-52-402, or any other statute permit the equity investment in Memphis Networkx by the Telecommunications Division of the Electric Division of Memphis Light Gas & Water to Memphis Networkx, LLC?
2. Please identify and explain the criteria the Authority should use when approving an operating agreement under Tenn. Code Ann. § 7-52-103(d).
3.
 - a. Was Memphis Light, Gas & Water required to issue a Request for Proposal?
 - b. What procedural requirements must Memphis Light, Gas & Water follow when proceeding through the Request for Proposal process?
 - c. Assuming Memphis Light, Gas & Water was not required to issue a Request for Proposal, was it bound to follow the procedural requirements discussed in the answer to b. once it chose to issue a Request for Proposal?
 - d. Assuming Memphis Light, Gas & Water was required to issue a Request for Proposal, but failed to follow the requirements discussed in the answer to b., how is the transfer of interest from A&L Networks-Tennessee, L.L.C. to Memphis Broadband affected?

Id. at Exhibit A.

matter for Hearing beginning on March 26, 2001 and limited the scope of the Hearing to issues surrounding the Second Amended Application.⁸⁷

During the course of discovery, MLGW, Broadband, and Networkx filed Objections to the Data Requests of the Time Warner Telecom, Time Warner Communications, and TCTA, which resulted in Time Warner Telecom and TCTA filing a Motion to Compel. After finding these filings incomplete, the Pre-Hearing Officer ordered the parties to supplement their filings by February 21, 2001.⁸⁸ Both parties submitted supplemental filings, and MLGW, Broadband, and Networkx also filed supplemental responses to the data requests.

On February 23, 2001, Time Warner Telecom, Time Warner Communications, and TCTA requested the issuance of subpoenas duces tecum for taking the depositions of Ward Huddleston, Jr., Larry Thompson, Andrew P. Seamons, and Alex Lowe on February 28, 2001. The Pre-Hearing Officer issued the subpoenas duces tecum pursuant to the ruling at the January 29, 2001 Pre-Hearing Conference that depositions would be permitted as a part of discovery. Also on February 23, 2001, MLGW, Broadband, and Networkx filed their *Memorandum of Law in Support of Objection of Memphis Networkx, LLC, MLGW, Broadband, and Memphis Networkx, and Memphis Broadband, LLC, to the Retention of Evidence, Filings and Arguments of the IBEW in this Proceeding Following the IBEW's Withdrawal From This Proceeding*.

On February 26, 2001, MLGW, Broadband, and Networkx filed a Motion to Quash the Subpoenas and Objections to the Depositions. MLGW, Broadband, and Networkx raised a number of objections including insufficient notice.

The Pre-Hearing Officer found that, under the circumstances, an undue hardship and burden would be placed on MLGW, Broadband, and Networkx if the depositions were to proceed

⁸⁷ *Id.* at 7.

⁸⁸ *Order Directing Supplemental Filings*, pp. 2-3 (Feb. 16, 2001).

on February 28, 2001 and, further, that it would not be in the best interests of all parties for the depositions to proceed until the Objections thereto were resolved. Without ruling on the merits of the Objections, the Pre-Hearing Officer cancelled the depositions and held the Motion to Quash in abeyance. The Pre-Hearing Officer scheduled a Pre-Hearing Conference to consider the Objections to the Data Requests, Motion to Compel, Motion to Quash, and Objections to the Depositions.⁸⁹

On March 1, 2001, the Consumer Advocate, MLGW, Broadband, Networx, Time Warner Telecom, Time Warner Communications, and TCTA filed their pre-hearing briefs.

On March 8, 2001, the Pre-Hearing Officer convened the Pre-Hearing Conference and after discussion on numerous issues related to the discovery requests and depositions, the parties agreed to meet within twenty-four (24) hours in an attempt to resolve their disputes. The Pre-Hearing Officer accepted this agreement and ordered, the parties to file a statement or stipulation reflecting the outcome of their meeting on March 9, 2001.⁹⁰ On March 9, 2001, the parties requested an extension of the filing deadline until March 13, 2001. The Pre-Hearing Officer granted the request, cautioning the parties that the Hearing would remain scheduled to begin on March 26, 2001.

On March 13, 2001, MLGW, Broadband, Networx, Time Warner Telecom, Time Warner Communications, and TCTA filed Joint Stipulations addressing certain outstanding discovery requests and the taking of depositions. On March 15, 2001, MLGW, Broadband, and Networx supplemented their responses to data request numbers 5, 6, 7, 8, 10, 12, 17, 20, 21, 31, 32 and 38.

On March 16, 2001, the parties informed the Pre-Hearing Officer that they had reached additional agreements regarding the taking of the depositions and the production of documents.

⁸⁹ *Order Suspending Depositions Scheduled for February 28, 2001, Holding Applicant's and Joint Petitioners' Motion to Quash in Abeyance and Setting Pre-Hearing conference for March 6, 2001*, pp. 3-4 (Feb. 26, 2001).

⁹⁰ Transcript of Proceedings, Mar. 8, 2001, p. 42 (Pre-Hearing Conference).

The depositions of Andrew P. Seamons, Ward Huddleston, Jr., and Larry Thompson were taken by agreement of the parties at the offices of the Authority on March 19, 2001. During the course of and at the conclusion of the depositions, the Pre-Hearing Officer appeared before the parties to resolve any objections raised during the depositions. The Pre-Hearing Officer entered an order on March 23, 2001 regarding the outstanding discovery disputes.⁹¹

Also, on Friday, March 23, 2000, the Pre-Hearing Officer held a Pre-Hearing Conference by telephone to establish procedures for the Hearing on Monday, March 26, 2001. During the Conference, the parties raised the possibility that MLGW, Broadband, and Networx, Time Warner Telecom, Time Warner Communications, and TCTA might enter into a settlement agreement prior to the Hearing. Because settlement between these parties appeared eminent if additional time were provided, the Pre-Hearing Officer continued the Hearing until March 27, 2001 at 9:00 a.m.⁹²

On March 26, 2001, MLGW, Broadband, Networx, Time Warner Telecom, Time Warner Communications, and TCTA filed *Joint Stipulations of Fact*. As a part of that filing, MLGW, Broadband, Networx, Time Warner Telecom, Time Warner Communications, and TCTA agreed to the following:

In connection with the filing of these Joint Stipulations of Fact, the parties hereto have agreed that Memphis Networx, MLGW and Memphis Broadband will not rely upon any fact or facts that are contrary to the facts set forth herein but shall not be precluded from relying upon any other fact or facts; and that TCTA and Time Warner neither object to nor support the Application and Joint Petition and have agreed to the submission of the Application and Joint Petition for the Tennessee Regulatory Authority's consideration and determination on the record without their further participation in cross-examination of witnesses or submission of briefs, testimony or other pleadings.⁹³

⁹¹ Order Reflecting Action Taken by the Pre-Hearing Officer at March 8, 2001 Pre-Hearing Conference and Rulings on Motions and Requests Relating to Discovery Matters (Mar. 23, 2001).

⁹² Transcript of Proceedings, Mar. 23, 2001, p. 12 (Telephonic Pre-Hearing Conference).

⁹³ *Joint Stipulations of Fact*, pp. 1-2 (Mar. 26, 2001).

On March 27, 2001, the Authority reconvened the Hearing. During the course of the Hearing, a Director brought it to the parties' attention that the Director had received an ex parte document, and a dispute over the document ensued.⁹⁴ In the end, MLGW, Broadband, and Networx were given the opportunity to examine Larry Thompson with regard to the document after first obtaining leave from the Authority to discuss the documents with the witness outside the Hearing room.⁹⁵ After hearing from the final witness, Andrew P. Seamons, the Authority adjourned the Hearing on the evening of March 27, 2001.

IV. PETITION FOR APPROVAL OF OPERATING AGREEMENT

A. Standard of Review

On March 1, 2001, MLGW, Broadband, and Networx; Time Warner Telecom, Time Warner Communications, and TCTA; and the Consumer Advocate filed pre-hearing briefs addressing, in part, the issue of the criteria to be used by the Authority when approving an operating agreement under Tenn. Code Ann. § 7-52-103(d).⁹⁶ MLGW, Broadband, and Networx argued in their brief that the Authority should resolve three questions when evaluating the Amended and Restated Operating Agreement:

1. Did the municipal electric plant receive authorization from its board or supervisory body as required of T.C.A. § 7-52-103(d) for creation of the joint venture?
2. Was a "joint venture, or any other business relationship, with one (1) or more third parties" established as set forth in T.C.A. § 7-52-103(d)?
3. Were notice and an opportunity to be heard provided to interested parties as required in T.C.A. § 7-52-103(d)?⁹⁷

In their brief, Time Warner Telecom, Time Warner Communications, and TCTA argued that the General Assembly did not provide any "specific standards or criteria" and "intentionally

⁹⁴ Transcript of Proceedings, Mar. 27, 2001, p. 48 (Hearing).

⁹⁵ *Id.* at 65.

⁹⁶ *Order Granting Motion to Withdraw, Establishing Procedural Schedule, and Setting Hearing Dates*, Exhibit A (Feb. 9, 2001).

⁹⁷ *Pre-Hearing Brief of Memphis Networx, LLC, MLGW and Memphis Broadband, LLC*, p. 9 (Mar. 1, 2001).

made the Authority's approval powers broad to allow the Authority the power to review and determine if the agreement is in the public interest."⁹⁸ The Consumer Advocate argued that the Authority first should consider the statutory criteria for approval of a certificate for convenience and necessity.⁹⁹ Next, the Consumer Advocate argued that the Authority should determine whether the agreement is in the public interest.¹⁰⁰

After considering these arguments and reviewing the specific statutory provisions, the Authority finds that the criteria for approving an agreement entered into pursuant to Tenn. Code Ann. § 7-52-103(d) are broader than those proposed by MLGW, Broadband, and Networx, but are limited by the requirements of Tenn. Code Ann. § 7-52-103(d).¹⁰¹ Given this finding, the specific standards are as follows. First, as expressly stated in Tenn. Code Ann. § 7-52-103(d), the "board or supervisory body having responsibility for the municipal electric plant"¹⁰² must authorize the joint venture. Second, the provisioning of the service must be subject to Tenn. Code Ann. § 7-52-402 through 7-52-407. Thus, the Authority should look to these statutes to determine whether the operating agreement or similar documents permit activities that would violate these sections and provide for sufficient safeguards to prevent violations. Third, Tenn. Code Ann. § 7-52-103(d) requires that the Authority give interested parties notice and an opportunity to be heard on the petition for approval. Fourth, as provided for in Tenn. Code Ann. § 7-52-103(d), the entity created as a result of the joint venture is subject to "regulation by the [Authority] in the same manner and to the same extent as other certified providers of

⁹⁸ *Brief Filed on Behalf of Time Warner Telecom of the Mid-South, L.P. Time Warner Communications of the Mid-South, and the Tennessee Cable Telecommunications Association*, p. 7 (Mar. 1, 2001).

⁹⁹ *Hearing Brief of the Consumer Advocate and Protection Division as Requested by the TRA*, p. 5 (Mar. 1, 2001).

¹⁰⁰ *Id.*

¹⁰¹ Section 7-52-103(d) permits a municipality operating an electric plant "to establish a joint venture or any other business relationship . . . to provide related services, subject to the provisions of §§ 7-52-402 through 7-52-407." Tenn. Code Ann. § 7-52-103(d) (Supp. 2000).

¹⁰² *Id.*

telecommunications services, including, without limitation, rules or orders governing anti-competitive practices”¹⁰³ Thus, the Authority must determine whether the operating agreement complies with and the resulting entity will abide by the Authority’s rules, regulations, and orders. Fifth, Tenn. Code Ann. § 7-52-103(d) further requires that the entity created through the joint venture “shall be considered as and have the duties of a public utility, as defined in T.C.A. § 65-4-101, but only to the extent necessary to effect such regulation and only with the respect to the provision of related services.”¹⁰⁴ Thus, the Authority must ensure that the operating agreement creates an entity capable of fulfilling the statutory duties of a public utility.

B. Findings of Fact and Conclusions of Law

1. The Board of Commissioners of MLGW is the supervisory body charged with responsibility for the electric plant.¹⁰⁵ On March 4, 1999, the Board of Commissioners unanimously voted to “initiate and establish a telecommunications entity.”¹⁰⁶ On August 19, 1999, the Board of Commissioners of MLGW unanimously approved a resolution to establish a Telecommunications Division as a subdivision of the Electric Division. This resolution included specific authorization for the Telecommunications Division to “organize, create, manage, operate, either wholly or jointly, with others an entity to provide or perform those services authorized for the Telecommunication Division.”¹⁰⁷ Therefore, the Directors find that the appropriate supervisory body authorized the joint venture as required by Tenn. Code Ann. § 7-52-103(d).¹⁰⁸

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Joint Stipulations of Fact*, p. 2 (Mar. 26, 2001).

¹⁰⁶ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit D).

¹⁰⁷ *Id.*

¹⁰⁸ *Pre-Hearing Brief of Memphis Networx, LLC, MLGW and Memphis Broadband, LLC*, pp. 9-10 (Mar. 1, 2001).

2. The Authority issued numerous notices advising interested parties and the public of the proceedings in this docket. In particular, the Authority issued a *Notice of Pre-Hearing Conference* on February 8, 2000 in which the Authority scheduled a pre-hearing conference and requested petitions for intervention. Thereafter, eight (8) parties officially intervened and participated in the proceedings. One organization¹⁰⁹ and members of the public attended, but did not participate, in the hearing. The Authority held an extensive Hearing in this matter on July 17th through the 20th of 2000, September 11th through the 15th of 2000, October 16th through the 19th of 2000, and March 27, 2001, totaling fifteen (15) days. Therefore, the Authority finds that it provided the requisite notice and an opportunity to be heard as required by § 7-52-103(d).

3. Tenn. Code Ann. § 7-52-402 specifically prohibits the subsidization of telecommunication services by the electric operations.¹¹⁰ The relationship between Networkx and the Telecommunications Division of MLGW creates the potential for inappropriate and anti-competitive cross-subsidization activities. To lessen this potential, Networkx has agreed to take certain actions. First, Networkx and MLGW will not have common employees.¹¹¹ Second, MLGW asserted that "[i]n accordance with the requirements of T.C.A. § 7-52-405, as applicable, MLGW will charge Networkx the highest rate for pole attachments and underground installations as it charges any third party under comparable agreements."¹¹² Third, MLGW will operate in

¹⁰⁹ The Coalition of Black Employees of MLG&W's Workers filed correspondence with the Authority and attended portions of the hearing.

¹¹⁰ This section provides: "A municipality providing any of the services authorized by § 7-52-401 shall not provide subsidies for such services." Tenn. Code Ann. § 7-52-402 (1998).

¹¹¹ Transcript of Proceedings, July 17, 2000, v. I-A, pp. 79-80 (Hearing - Direct Examination of Ward Huddleston, Jr.); Transcript of Proceedings, July 18, 2000, v. II-C, p. 145 (Hearing - Direct Examination of John McCullough).

¹¹² John McCullough, Pre-Filed Supplemental Testimony, p. 6 (May 11, 2000). Section 7-52-405 provides: "For regulatory purposes, a municipality shall allocate to the costs of providing any of the services authorized by § 7-52-401: (1) An amount for attachments to poles owned by the municipality equal to the highest rate charged by the municipality to any other person or entity for comparable pole attachments." Tenn. Code Ann. § 7-52-405 (1998).

accordance with the cost allocation manual submitted in this proceeding.¹¹³ Fourth, MLGW agreed that "any interdivision loan will be evidenced by a note containing an unconditional promise to pay, a rate of interest as required under Tenn. Code Ann. § 7-52-402, and repayment terms and conditions as may be required by the State Director of Local Finance pursuant to Tenn. Code Ann. § 7-52-402 and other applicable law."¹¹⁴ Fifth, MLGW agrees to abide by certain requests of the Consumer Advocate including: filing an annual report listing the level of tariffed and nontariffed services; maintaining records in a manner that will allow for audit and review by the authority; and following National Association of Regulatory Utility Commissioners' guidelines, Federal Communication Commission affiliate transaction rules, and federal structural separation provisions.¹¹⁵ Given these assertions, the Directors conclude that MLGW, Broadband, and Networkx have demonstrated that they do not intend to engage in anti-competitive activities, such as cross-subsidization, and have implemented safeguards to prevent such activities.

4. Networkx has agreed that it will comply with Authority policies, rules, and orders.¹¹⁶ The Authority further finds that Time Warner Telecom, Time Warner Communications, and TCTA failed to establish that MLGW, Broadband, and Networkx have engaged in activities in violation of the Authority's rules.

¹¹³ Transcript of Proceedings, July 17, 2000, v. I-A, pp. 79-80 (Hearing - Direct Examination of Ward Huddleston, Jr.). At the start of his direct testimony, John McCullough added the cost allocation manual as Exhibit C to his testimony. Transcript of Proceedings, July 18, 2000, v. II-C, p. 142 (Hearing - Direct Examination of John McCullough); *Joint Stipulations of Fact*, p. 6 (Mar. 26, 2001).

¹¹⁴ *Joint Stipulations of Fact*, p. 5 (Mar. 26, 2001).

¹¹⁵ Transcript of Proceedings, July 18, 2000, v. II-C, pp. 148-49 (Hearing - Direct Examination Testimony of John McCullough); *Joint Stipulations of Fact*, p. 8 (Mar. 26, 2001). During the cross-examination of Archie Hickerson, the Consumer Advocate's witness, Mr. Hickerson agreed that these concessions conformed to his recommendations and stated that the "Consumer Advocate Division supports the granting of an application that would result in [the] introduction of additional competition in the Memphis area." Transcript of Proceedings, Sept. 12, 2000, v. VI-A, pp. 20-21 (Hearing - Cross-Examination of Archie Hickerson).

¹¹⁶ Transcript of Proceedings, July 17, 2000, v. I-A, pp. 73 & 84 (Hearing - Direct Examination of Ward Huddleston, Jr.); Ward Huddleston, Jr., Pre-Filed Direct Testimony, p. 6 (Feb. 4, 2000).

5. Having found that Networkx possess the requisite technical and managerial capabilities, the Authority finds that Networkx is capable of fulfilling its duties as a public utility as required by Tenn. Code Ann. §7-52-103(d).¹¹⁷

C. Conclusion

Based on these findings and conclusions, the Directors voted unanimously to grant the Joint Petition, as amended on December 21, 2000, thereby, approving the Restated and Amended Operating Agreement between MLGW and Broadband, which creates Networkx.

V. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

A. Standard of Review

Tenn. Code Ann. § 65-4-201(c) contains certain standards that a competing telecommunications service provider must meet to receive a certificate of public convenience and necessity. Under this section, the competing provider must provide notice to the incumbent local exchange telephone companies and other interested parties. Moreover, the applicant must demonstrate that it will adhere to all applicable Authority policies, rules and orders and that it possesses "sufficient managerial, financial and technical abilities to provide the applied for services."¹¹⁸ Also, a municipality offering telecommunications services must comply with Tenn. Code Ann. §§ 7-52-401 through 7-52-407 in order to obtain a certificate.¹¹⁹ Tenn. Code Ann. § 65-5-212 requires competing telecommunications service providers to file a small and minority-owned telecommunications business participation plan with their application for a certificate.¹²⁰ The small and minority-owned telecommunications business participation plan "shall contain

¹¹⁷ For a further explanation of the managerial and technical capabilities of Networkx, see section VB of this Order.

¹¹⁸ Tenn. Code Ann. § 65-4-201(c) (Supp. 2000).

¹¹⁹ *Id.* §§ 7-52-401 to 407 (1998); see also *In re: Application of Electric Power Board of Chattanooga For a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Service*, Docket No. 97-07488, *Order Approving Application for Certificate of Public Convenience and Necessity*, pp. 2-4 (May 10, 1999).

¹²⁰ Tenn. Code Ann. § 65-5-212 (Supp. 2000).

such entity's plan for purchasing goods and services from small and minority telecommunications businesses and information on programs, if any, to provide technical assistance to such businesses."¹²¹ Lastly, absent specific exceptions, which do not apply to this case, telecommunications service providers must file "a corporate surety bond or irrevocable letter of credit in the amount of twenty thousand dollars (\$20,000.00) to secure the payment of any monetary sanction imposed in any enforcement proceeding" brought under Title 65 or the Consumer Telemarketing Protection Act of 1990.¹²²

B. Findings of Fact and Conclusions of Law

1. Network is a limited liability company organized under the laws of the State of Tennessee, and the Tennessee Secretary of States Office granted Networx authority to do business in the State of Tennessee on November 8, 1999.¹²³ Networx principal place of business is located at 7555 Appling Center Drive, Memphis, TN 38133-5069.¹²⁴

2. Networx intends to provide wholesale local exchange telecommunications services to carriers; retail local exchange telecommunications services to end users; and local services over its own facilities as well as facilities of other carriers. Additionally, Networx seeks authority to resell intraLATA local exchange and interLATA exchange services in Tennessee. The proposed services of Networx include, but are not limited to: Digital Signaling Zero (DSO) Voice and Digital Grade; Dedicated DS1 and DS3; Optical Carrier (OC) 3 and OC12; ATM; Frame Relay Service; Switched Transport; Switched Feature Group D; Toll Free Dialing; Centrex; Custom Calling Features; Asymmetric Digital Subscriber Line (ADSL); 911 and E911 emergency service; white page directory listings and directory assistance; consumer access to

¹²¹ *Id.*

¹²² *Id.* § 65-4-125(j) (Supp. 2000).

¹²³ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit B).

¹²⁴ *Id.* (*Application and Joint Petition*, p. 2).

and support for the Tennessee Relay Center, free blocking for 900, 976 type services in accordance with Authority policy; Lifeline and link-up to qualifying citizens; educational discounts consistent with Authority policy. Networkx will begin providing service in Shelby County, Tennessee in BellSouth's exchanges with eventual expansion throughout Tennessee.¹²⁵

3. Networkx provided notice of its application to eighteen (18) incumbent local exchange carriers and interested parties on November 24, 1999.¹²⁶

4. Networkx has not applied to any other state for authority to provide telecommunications services.¹²⁷

5. With respect to Networkx's managerial and technical ability, Networkx submitted the resumes of Ward Huddleston, Chief Manager; David Ori, Secretary and Chief Financial Officer; and James R. McDaniel, Manager of Engineering.¹²⁸ This evidence demonstrates extensive experience in the management of telecommunications services and business operations. In addition, Networkx explained that it would utilize the consulting and technical services of ADL, Horrell Communications, Contactica, Inc., and Nortel Networks.¹²⁹ The Authority concludes that Networkx possesses the requisite expertise to provide the applied for services based upon the foregoing demonstration of managerial fitness and technical ability.

¹²⁵ *Id.* (Application and Joint Petition, p. 5-6).

¹²⁶ *Id.* (Application and Joint Petition, Notice of Filing of Application and Joint Petition attached).

¹²⁷ Ward Huddleston, Jr., Pre-Filed Direct Testimony, p. 3 (Feb. 4, 2000).

¹²⁸ Hearing Exhibit 1 (Application and Joint Petition, Exhibit F - Resumes of Ward Huddleston, Jr. and David B. Ori & Exhibit G - Resume of James R. McDaniel). In the pre-filed testimony submitted with the *Amendment to the Application of Memphis Networkx, LLC and the Joint Petition of MLGW and A&L*, Ward Huddleston answered "no" to the question "have the managerial or technical qualifications of applicant changed." Ward Huddleston, Jr., Pre-Filed Supplemental Testimony, p. 1 (Dec. 21, 2000).

¹²⁹ Hearing Exhibit 1 (Application and Joint Petition, pp. 7-8); Ward Huddleston, Jr., Pre-Filed Direct Testimony, p. 4 (Feb. 4, 2000). In the pre-filed testimony submitted with the *Amendment to the Application of Memphis Networkx, LLC and the Joint Petition of MLGW and A&L*, Ward Huddleston stated that Memphis Networkx would utilize consultants "on an as-needed basis." Ward Huddleston, Jr., Pre-Filed Supplemental Testimony, p. 1 (Dec. 21, 2000).

6. On August 19, 1999, the Board of Commissioners of MLGW approved a twenty million dollar (\$20,000,000.00) loan from the Electric Division of MLGW to the Telecommunications Division for investment in Networkx.¹³⁰ The City Council of Memphis approved MLGW's 2000 budget, which included a line item for the twenty million dollar (20,000,000.00) loan, on December 7, 1999.¹³¹ A vice-president for MLGW testified that MLGW and Broadband have each agreed to contribute ten million dollars (\$10,000,000.00) in equity and have each committed an additional six hundred thousand dollars (\$600,000.00) for expenses pending regulatory authority.¹³² Having reviewed the capital contribution requirements of MLGW and Broadband along with the financial statements of MLGW, Broadband, and Networkx,¹³³ the Authority concludes that Networkx possesses the financial ability to offer the above listed services.

7. Networkx agrees that it will comply with Authority policies, rules, and orders.¹³⁴

8. As stated previously, Networkx has agreed to implement safeguards to ensure compliance with Tenn. Code Ann. §§ 7-52-401 through 7-52-407.¹³⁵

9. Networkx has filed with the Authority a detailed small and minority-owned telecommunications business participation plan that meets the requirements of Tenn. Code Ann. § 65-5-212.¹³⁶

¹³⁰ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit D).

¹³¹ Hearing Exhibit 17 (excerpt of City of Memphis City Council public hearing).

¹³² Larry Thompson, Pre-Filed Supplemental Testimony, p. 3 (Dec. 21, 2000).

¹³³ Ward Huddleston, Jr., Pre-Filed Supplemental Testimony, Exhibit 34 (Mar. 11, 2000) (Memphis Networkx, LLC Balance Sheet and Memphis Networkx LLC Statement of Operations) (filed under seal). *Amendment to the Application of Memphis Networkx, LLC and Joint Petition of MLGW and A&L*, Exhibit W (Dec. 21, 2000) (portions of document including exhibit W filed under seal). This document was made a part of the evidentiary record, but due to a misunderstanding was not given a number. Transcript of Proceedings, Mar. 27, 2001, v. I-A, pp. 9-10 (Hearing - Direct Testimony of Andrew P. Seamons).

¹³⁴ Transcript of Proceedings, July 17, 2000, v. I-A, pp. 73 & 84 (Hearing - Direct Examination of Ward Huddleston, Jr.); Ward Huddleston, Jr., Pre-Filed Direct Testimony, p. 6 (Feb. 4, 2000).

¹³⁵ For further explanation of the specific safeguards, see section IVB of this Order.

¹³⁶ Hearing Exhibit 1 (*Application and Joint Petition*, Exhibit L).

10. Section 2.5(c) of the Amended and Restated Operating Agreement provides:

In furtherance of its business, and not by way of limitation, the Company intends (i) within two years from the Approval Date, to install telecommunication fibers at certain locations in and near St. Jude Hospital and the housing developments known as Jefferson Square, R.Q. Venson and Barry Holmes, and (ii) in Fiscal Years the Company has Net Operating Profits, to commit 1% of its Net Operating Profits (not to exceed \$1 million per Fiscal Year) to the development and enhancement of telecommunications services in the low-income areas of Shelby County, Tennessee.¹³⁷

In addition, Networx made a commitment to the Authority that it would provide telecommunications services to underserved areas within three (3) years of approval of the Application if competition does not develop in those areas.¹³⁸

11. Networx has complied with Tenn. Code Ann. § 65-4-125(j) by filing with the Authority a letter of credit.¹³⁹

12. Upon review of the Application and the record in this matter, the Directors find that approval of Networx's Application will inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services market in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

C. Conclusion

Based on the above findings and conclusions, the Directors unanimously voted to grant Networx a certificate of public convenience and necessity for the State of Tennessee. The

¹³⁷ Amendment to the Application of Memphis Networx, LLC and Joint Petition of MLGW and A&L, Exhibit U (Dec. 21, 2000). This document was made a part of the evidentiary record, but due to a misunderstanding was not given a number. Transcript of Proceedings, Mar. 27, 2001, v. I-A, pp. 9-10 (Hearing - Direct Testimony of Andrew P. Seamons).

¹³⁸ Ward Huddleston, Pre-Filed Supplemental Testimony, p. 2 (Dec. 21, 2001); Larry Thompson, Pre-Filed Supplemental Testimony, p. 5 (Dec. 21, 2001); Andrew P. Seamons, Pre-Filed Supplemental Testimony, p. 4 (Dec. 21, 2001). Ward Huddleston, Jr. defined "underserved areas" as "principally minority populations and relatively poor that are not currently offered high speed capacity services by the incumbents." Transcript of Proceedings, July 17, 2000, v. I-C, p. 26 (Hearing - Cross-Examination of Ward Huddleston, Jr.).

¹³⁹ Networx filed a letter of credit with the Authority on July 5, 2001.

Directors further voted unanimously to require MLGW and Networx to submit to annual audits that will include an examination to assure that MLGW and Networx are in compliance with Tennessee statutes and the Authority's rules and orders.

IT IS THEREFORE ORDERED:

1. The Joint Petition of Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee and Memphis Broadband, LLC, as amended on December 21, 2000, for approval of the Amended and Restated Operating Agreement for the creation and operation of Memphis Networx, LLC is granted.

2. The Application of Memphis Networx, LLC, as amended on December 21, 2000, for a Certificate of Public Convenience and Necessity is granted.¹⁴⁰

3. Memphis Light, Gas & Water Division and Memphis Networx, LLC shall submit to an audit that will include an examination to determine whether Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee and Memphis Networx, LLC are in compliance with Tennessee law and the Authority's rules and orders. The audit shall be conducted by an independent auditor to be chosen by Memphis Networx, LLC, but the auditor shall work under the direction and supervision of the Authority. The audits shall commence one year from the date of this order and shall continue on an annual basis unless otherwise ordered by the Authority.

4. In order to prevent and deter cross-subsidization in the future, Memphis Light, Gas & Water Division and Memphis Networx, LLC shall abide by the following requirements:

- (a) Memphis Networx, LLC and Memphis Light, Gas & Water Division shall not have common employees.

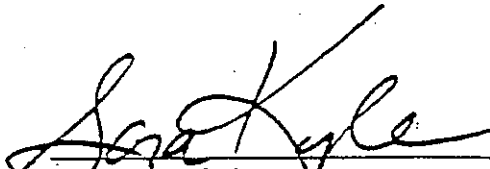
¹⁴⁰ On January 29, 2001, Networx filed the *Petition of Memphis Networx, LLC for Approval of Franchise*. This filing was assigned Docket No. 01-00091. On March 8, 2001, the Directors appointed General Counsel or his designee to act as the Pre-Hearing Officer to prepare the docket for hearing. Under the guidance of the Pre-Hearing Officer, this docket is proceeding through the pre-hearing process.

- (b) Memphis Light, Gas & Water Division shall charge Memphis Network, LLC the highest rate for pole attachments and underground installations as it charges any third party under comparable agreements as required by Tenn. Code Ann. § 7-52-405.
- (c) Memphis Light, Gas & Water Division and Memphis Network, LLC shall file an annual report which shall set forth:
 - (1) the functions performed by Memphis Light, Gas & Water Division's Telecommunications Division;
 - (2) the amount and types of costs allocated to the Telecommunications Division from Memphis Light, Gas & Water Division;
 - (3) a description of the methods and procedures used to identify and allocate such costs;
 - (4) the tariffed services provided by each of Memphis Light, Gas & Water Division's other divisions to Memphis Network, LLC;
 - (5) the dollar amount of such transactions in item (4) above;
 - (6) the non-tariffed services provided to Memphis Network, LLC by Memphis Light, Gas & Water Division;
 - (7) the dollar amount of such transactions in item (6) above;
 - (8) the method used to determine the price of such services (i.e. cost, prevailing market price, etc.);
 - (9) the services provided to Memphis Light, Gas & Water Division by Memphis Network, LLC;
 - (10) the dollar amount of each such service provided to Memphis Light, Gas & Water Division by Memphis Network, LLC; and
 - (11) the method used to determine the price of such services (i.e. cost, prevailing market price, etc.).
- (d) Memphis Light, Gas & Water Division and Memphis Network, LLC shall maintain records in a manner that shall allow for audit and review by the Authority and shall comply with:
 - (1) National Association of Regulatory Utility Commissioner's "Cost Allocation and Affiliate Transactions Guidelines for the Energy Industry";
 - (2) Federal Communication Commission affiliate transaction rules, 47 C.F.R. § 32.27; and
 - (3) Federal Communication Commission cost allocation rules, 47 C.F.R. § 64.901 - .904.

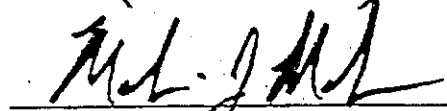
5. On behalf of its Telecommunications Division, Memphis Light, Gas & Water Division will not contract or enter into any agreement with another entity that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of revenues until the Tennessee Regulatory Authority approves such contract or agreement on petition and after notice and opportunity to be heard has been extended to interested parties. This provision shall not apply to any service or transaction which is not subject to regulation by the Tennessee Regulatory Authority.

6. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.

7. Any party aggrieved by the decision of the Tennessee Regulatory Authority may file a Petition for Review with the Tennessee Court of Appeals, Middle Division, within sixty (60) days of the date of entry of this Order.


Sara Kyle, Chairman


Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

Tab 21

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

OPERATING AGREEMENT

OF

MEMPHIS NETWORKX, LLC

A TENNESSEE LIMITED LIABILITY COMPANY

ARTICLE 1

DEFINITIONS	1
1.1. "A&L"	1
1.2. "A&L Governors"	1
1.3. "Act"	1
1.4. "Affiliate"	1
1.5. "Approval Date"	1
1.6. "Articles of Organization"	1
1.7. "Board"	1
1.8. "Capital Account"	1
1.9. "Capital Contribution"	1
1.10. "Code"	1
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THIS OPERATING AGREEMENT of Memphis Networx, LLC (the "Company"), a limited liability company organized under the Tennessee Limited Liability Company Act, is hereby adopted and approved on this 8th day of November, 1999, by the undersigned Members of the Company, who agree as follows:

ARTICLE 1 DEFINITIONS

In addition to terms defined elsewhere in this Operating Agreement, the following terms used in this Operating Agreement shall have the following meanings:

- 1.1. "A&L" means A&L Networks-Tennessee, LLC, a Kansas limited liability company.
- 1.2. "A&L Governors" means the two Governors elected by A&L.
- 1.3. "Act" means the Tennessee Limited Liability Company Act, Tennessee Code Annotated, Title 48, Chapters 201-248, as amended from time to time.
- 1.4. "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person.
- 1.5. "Approval Date" means the first date by which the Company and its Members have obtained, in form and substance reasonably satisfactory to the Members, all orders, certificates of public convenience and necessity and other regulatory approvals necessary for the Company to provide the services authorized by Tennessee Code Annotated Sections 7-52-401, *et seq.* in the State of Tennessee.
- 1.6. "Articles of Organization" means the Company's Articles of Organization, as amended from time to time.
- 1.7. "Board" means the Company's board of governors.
- 1.8. "Capital Account" means, with respect to any Equity Owner, the account maintained by the Company in accordance with Section 9.2.
- 1.9. "Capital Contribution" means any contribution to the capital of the Company in cash or property by an Equity Owner, whenever made.
- 1.10. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.11. "Controlled Subsidiary" means, as to any Person, any other Person of which the first Person beneficially owns (directly or indirectly) securities entitling the holder to cast 50% or more of the votes in the election or removal of directors (or persons holding similar positions) of the second Person.

1.12. "Deficit Capital Account" means with respect to any Equity Owner, the deficit balance, if any, in such Equity Owner's Capital Account as of the end of the Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amount which such Equity Owner is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Treasury Regulations, and will be interpreted consistently with those provisions.

1.13. "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the chief manager.

1.14. "Economic Interest Owner" means the owner of Financial Rights who is not a Member.

1.15. "Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization, and also includes local, municipal, state, United States, and foreign governments.

1.16. "Equity Owner" means an Economic Interest Owner or a Member.

1.17. "Extraordinary Net Losses" means Net Losses from (i) the sale or other disposition of all or substantially all of the assets of the Company, or of the assets of any line of business of the Company, or (ii) the liquidation and dissolution of the Company (including, without limitation, any Net Losses from adjusting the Gross Asset Values of the Company's assets).

1.18. "Extraordinary Net Profits" means Net Profits from (i) the sale or other disposition of all or substantially all of the assets of the Company, or of the assets of any line of business of the Company, or (ii) the liquidation and dissolution of the Company (including, without limitation, any Net Profits from adjusting the Gross Asset Values of the Company's assets).

1.19. "Financial Rights" means an Equity Owner's rights as provided in the Act to share in profits and losses, to share in distributions, to receive interim distributions, and to receive liquidation distributions.

1.20. "Fiscal Year" means the Company's fiscal year, which shall be the calendar year.

1.21. "Governance Rights" means a right to vote on one or more matters and all of a Member's rights as a Member in the Company other than Financial Rights and the right to assign Financial Rights.

1.22. "Governor" means a natural person serving on the Board.

1.23. "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by an Equity Owner shall be the gross fair market value of such asset, as determined by the Members.

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Members as of the following times: (a) the acquisition of an additional interest by any new or existing Equity Owner; (b) the distribution by the Company to an Equity Owner of more than a *de minimis* amount of property as consideration for an Ownership Interest; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that adjustments pursuant to clause (a) above and this clause (b) shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Equity Owners in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Equity Owner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Members; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section 9.2 and subparagraph (d) under the definition of Net Profits and Net Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this definition to the extent the Members determine that an adjustment pursuant to subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (a), (b) or (d) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

1.24. "Member" means a person who owns some Governance Rights of a Membership Interest, as reflected in the Company's records.

1.25. "Membership Interest" means a Member's interest in the Company consisting of the Member's Financial Rights, the Member's right to assign Financial Rights, the Member's Governance Rights, and the Member's right to assign Governance Rights. If a Member has assigned some or all of its Financial Rights, then, with respect to that Member, "Membership Interest" means the Member's Governance Rights, the Member's right to assign Governance Rights, any remaining Financial rights of the Member, and the Member's right to assign any remaining Financial Rights.

1.26. "MLGW" means Memphis Light, Gas, and Water Division, a division of the City of Memphis, Tennessee.

1.27. "MLGW Governors" means the two Governors elected by MLGW.

1.28. "Net Profits" and "Net Losses" means for each Fiscal Year of the Company an amount equal to the Company's net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code with the following adjustments:

(a) Any items of income, gain, loss and deduction allocated to Equity Owners pursuant to Section 10.3 or Section 10.8 shall not be taken into account in computing Net Profits or Net Losses;

(b) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be added to such taxable income or loss;

(c) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be subtracted from such taxable income or loss;

(d) In the event the Gross Asset Value of any Company asset is adjusted pursuant to clause (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits and Net Losses;

(e) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(f) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Ownership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses.

1.29. "Operating Agreement" means this Operating Agreement as originally executed and as amended from time to time.

1.30. "Operating Net Losses" means all Net Losses other than Extraordinary Net Losses.

1.31. "Operating Net Profits" means all Net Profits other than Extraordinary Net Profits.

1.32. "Ownership Interest" means, in the case of a Member, the Member's Membership Interest, and, in the case of an Economic Interest Owner, the Economic Interest Owner's Financial Rights.

1.33. "Person" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person," where the context so permits.

1.34. "Sharing Ratio" means:

<u>Members</u>	<u>Sharing Ratio</u>
MLGW	53%
A&L	47%

1.35. "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

1.36. "Voting Interest" means:

<u>Member</u>	<u>Voting Interest</u>
MLGW	50%
A&L	50%

ARTICLE 2 ORGANIZATION

2.1. Formation. The Company was formed on November 8, 1999, by the filing of the Articles with the Tennessee Secretary of State.

2.2. Principal Executive Office. The Company's principal executive office is located at 7555 Appling Center Drive, Memphis, Shelby County, Tennessee 38133. At any time the Board may change the Company's principal executive office to another location within Shelby County, Tennessee.

2.3. Registered Office and Registered Agent. The Articles set forth the street address and zip code of the Company's initial registered office in Tennessee, the county in which the office is located, and the name of its initial registered agent at that address. At any time the Board may change the Company's registered office or its registered agent in Tennessee.

2.4. Term. The term of the Company shall commence as of the effective date set forth in Section 2.1 and continue until the Company is wound up and liquidated.

2.5. Business.

(a) Initially, the sole business purpose of the Company shall be to do or cause to be done such acts or things as reasonably necessary to seek and obtain regulatory approval for the Company to provide the services authorized by Tennessee Code Annotated Sections 7-52-401, *et seq.*

(b) Subject to obtaining, and only to the extent permitted by, the necessary regulatory approvals, the business of the Company shall be to (i) provide the services authorized by Tennessee Code Annotated Sections 7-52-401, *et seq.*, (ii) acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge, and otherwise deal and trade in, any related system, plant, equipment or other property, and (iii) exercise all rights and powers and engage in all activities related to the foregoing and legally permissible under the Act.

(c) In furtherance of its business, and not by way of limitation, the Company intends (i) within two years from the Approval Date, to install telecommunication fibers at certain locations in and near St. Jude Hospital and the housing developments known as Jefferson Square, R.Q. Venson and Barry Holmes, and (ii) in Fiscal Years the Company has Net Operating Profits, to commit 1% of its Net Operating Profits (not to exceed \$1 million per Fiscal Year) to the development and enhancement of telecommunication services in the low-income areas of Shelby County, Tennessee.

**ARTICLE 3
MEMBERS AND MEMBERSHIP INTERESTS**

3.1. Initial Members. The initial Members of the Company shall be MLGW and A&L.

3.2. Nature of Membership Interest. A Membership Interest is personal property. No Member has an interest in specific property of the Company. All property transferred to or acquired by the Company is property of the Company itself.

3.3. Additional Members. Except as provided in Article 11, the Company shall not admit additional Members without the consent of all the Members.

3.4. Community Participation. To the extent permitted by law, MLGW and A&L each shall negotiate in good faith to sell a portion of its Financial Rights to one or more Minority Businesses (as defined below), in a single sale or in multiple sales, provided: (i) each Minority Business shall submit a bona fide purchase proposal to A&L and MLGW, (ii) the sale or sales shall be closed within four (4) years from the Approval Date, (iii) the Minority Business or

Minority Businesses shall not purchase, in the aggregate, more than 7.1% of A&L's Financial Rights and 12.6% of MLGW's Financial Rights, and each purchase of Financial Rights from A&L and MLGW, respectively, shall be in the ratio as 7.1% from A&L and 12.6% from MLGW, (iv) the purchase price in each sale shall be determined by an independent appraisal and shall be payable in cash at the closing, two-thirds to MLGW and one-third to A&L. For purposes of this Section 3.4, the term "Minority Business" means a corporation, partnership, limited liability company or other entity, provided at least fifty-one percent (51%) of the governance and economic rights of the entity are owned by an individual who personally manages and controls the daily operations of the entity and who is impeded from normal entry into the economic mainstream because of race, religion, sex, or national origin.

ARTICLE 4 MEETINGS OF MEMBERS

4.1. Annual Meeting. Beginning in the year 2000, the annual meeting of the Members shall be held at 10:00 a.m. on the second Tuesday of August of each year, or if the second Tuesday of August falls on a legal holiday, then at the same hour on the first succeeding business day, for the purpose of electing Governors and transacting such other business as may properly come before the meeting.

4.2. Special Meetings. Special meetings of the Members may be called at any time by any one (1) or more of the following persons: (i) any Member, (ii) the Board, or (iii) the chief manager. A person who has authority to call a meeting may call the meeting by giving written notice of demand to the Members in accordance with the Act, or by giving written notice of demand to the secretary of the Company, who shall give such notice to the Members in accordance with the Act, at the expense of the Company, within seven (7) days after receipt of the demand. If the secretary fails to cause a meeting to be called and held as properly demanded, the person making the demand may call the meeting by giving notice as required by the Act, all at the expense of the Company. In any case, the notice of a meeting of Members must be given no fewer than ten (10) days nor more than two (2) months before the meeting date.

4.3. Time and Place of Meetings. Meetings must be held on the date and at the time and place fixed by the person properly calling the meeting. Unless otherwise approved by the Members, all called meetings must be held in Shelby County, Tennessee. A meeting by electronic conference will be deemed to be held at the principal executive office or registered office of the Company, if required by the Act, or at the place properly named in the notice calling the meeting.

4.4. Record Date. Unless otherwise fixed by the Board, the record date for the determination of the owners of Membership Interests entitled to notice of and to vote at any meeting of Members shall be the close of business on the date before the first notice is sent to the Members.

4.5. Notice.

(a) Except as otherwise provided in the Act or in the Articles, written notice of all meetings of Members must be given to every member entitled to vote on the matters to be considered, unless (i) the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or (ii) the following have been mailed by first class, certified mail to the Member at the address in the Company's records and returned undeliverable: (A) two (2) consecutive meeting notices, and (B) all payments of distributions for the greater of a twelve-month period or two (2) distributions. The notice must contain the date, time, and place of the meeting, and any other information required by the Act. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the Articles or this Operating Agreement or considered necessary or desirable by the person or persons calling the meeting.

(b) A Member may waive any required notice of the meeting. Except as otherwise provided in the Act, a waiver of notice is effective, whether given before or after the meeting or other balloting, if such waiver is given in writing. If a written waiver is given, the secretary shall place such written waiver in the records of the Company. Attendance by a Member at a meeting is a waiver of notice of that meeting, except where the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at the meeting. The secretary is required to note the objection in the minutes of the meeting.

(c) Notice may be delivered in person; by facsimile, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. Written notice to the Members is effective when mailed, if mailed postpaid and correctly addressed to the Member's address shown in the Company's current record of Members. Otherwise, written notice is effective when received.

4.6. Proxies. At all meetings of Members, a Member may vote in person or by a proxy executed in writing by the Member or the Member's duly authorized attorney-in-fact. The proxy shall be filed with the secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

4.7. Quorum. The Members holding all of the Voting Interests shall constitute a quorum for the transaction of business. Once a Membership Interest is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. In the absence of a quorum at any such meeting, a majority of the Voting

Interests represented may adjourn the meeting from time to time for a period not to exceed thirty (30) days without further notice. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

4.8. Manner of Acting. The affirmative vote of Members holding all of the Voting Interests shall be the act of the Members, unless the vote of a lesser proportion or number is otherwise required by the Act, the Articles, or this Operating Agreement.

4.9. Conference Meeting. A conference among Members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes attendance at the meeting in person or by proxy if all the other requirements for a meeting are met.

4.10. Action on Written Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting by action on written consent. Any action on written consent has the effect of a meeting and vote and may be described as such in any document. To take action on written consent, a written waiver of acting at a meeting and a written consent must be signed by all Members. The action must be evidenced by one (1) or more instruments evidencing the waiver and consent, which shall be delivered to the secretary for inclusion in the records of the Company. All such instruments may be signed in counterparts. If not otherwise determined under Section 4.5 above, the record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent. The action on written consent is effective when the last required Member signs the waiver and written consent, unless a different effective time is provided in the instrument evidencing the written consent itself.

4.11. No Action on Recommendation of the Board or Chief Manager. Action on recommendation of the Board or chief manager under Section 48-223-103 of the Act is prohibited.

4.12. Authorized Representatives. Each Member shall cause an officer, employee or other representative of the Member to be duly authorized and empowered to act on behalf of the Member with respect to the Company. The MLGW representative shall be the President of MLGW, and in the event of a vacancy in this position, such interim appointments as MLGW may make from time to time.

ARTICLE 5 BOARD OF GOVERNORS

5.1. Management. Except as otherwise required in this Agreement or by applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by or under the direction of, the Board. Each Governor shall have equal voting power per capita with each other Governor.

5.2. Number. The number of Governors shall be five (5), and the number shall not be changed without the consent of all the Members.

5.3. Election and Qualifications. Effective as of the date of this Operating Agreement, the initial MLGW Governors shall be Herman Morris and John McCullough, the initial A&L Governors shall be George A. Lowe, II and Edward Powell, and the initial Fifth Governor shall be J. Maxwell Williams. At each annual meeting of Members, (i) MLGW shall elect two Governors (the "MLGW Governors"), (ii) A&L shall elect two (2) Governors (the "A&L Governors"), and (iii) MLGW and A&L, alternately, shall elect the fifth Governor (the "Fifth Governor"), beginning with the annual meeting of Members to be held in [October] 2000, when A&L shall elect the Fifth Governor. Each Governor elected by MLGW shall be either the President, the Secretary/Treasurer or the General Counsel of MLGW, or, if one or more of these offices become vacant, preventing MLGW from electing as a Governor an individual who is serving in one of these three officer positions, MLGW may elect such other individual or individuals as it chooses. Each Governor shall serve until the next annual meeting of the Members and until the Governor's successor is elected and qualified, or until the earlier death, resignation, removal or disqualification of the Governor, except that in no event shall the term of the Fifth Governor extend beyond the next annual meeting of the Members.

5.4. Resignation, Removal and Vacancies. A Governor may resign at any time by giving a written resignation to the secretary or chief manager of the Company. The resignation is effective without acceptance when it is actually received by the secretary or chief manager, unless a later effective time is specified in the resignation. MLGW, and only MLGW, may remove one or both MLGW Governors at any time, and the removal may be with or without cause. A&L, and only A&L, may remove one or both A&L Governors at any time, and the removal may be with or without cause. The Member electing the Fifth Governor, and only that Member, may remove the Fifth Governor at any time, and the removal may be with or without cause. A Governor may be removed by MLGW or A&L, whichever is applicable, only at a meeting called for the purpose of removing the Governor, and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is to remove one (1) or more Governors. If a vacancy occurs on the Board, it may be filled only at a meeting of the Members by the Member who elected the Governor whose position has been vacated.

5.5. Committees. A resolution approved by the affirmative vote of a majority of the Board may establish committees having the authority of the Board in the management of the

business of the Company to the extent provided in the resolution, including special litigation committees to consider legal rights or remedies of the Company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control and serve at the pleasure of the Board. Each member of a committee shall be a member of the Board. Each committee shall have two Governors, one a MLGW Governor, and the other an A&L Governor. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any Governor. Unless otherwise authorized by all of the Governors, the only authority of any committee shall be to make recommendations to the Board. In no event, however, shall a committee (i) authorize distributions, except according to a formula or method prescribed by the Board; (ii) approve or propose to Members actions requiring approval by Members; (iii) fill vacancies on the Board or on any of its committees; (iv) adopt a plan of merger not requiring Member approval; (v) authorize or approve reacquisition of a Membership Interest, except according to a formula or method prescribed by the Board; or (vi) authorize or approve the issuance or sale or contract for the sale of a Membership Interest, or determine the designation and relative rights, preferences, and limitations of a class or series of Membership Interests.

5.6. Restrictions on Authority of the Board. Notwithstanding the provisions of Section 5.1, the affirmative vote of all the Members shall be necessary to effect any of the following actions:

- (a) Any act in contravention of this Operating Agreement;
- (b) Any merger, consolidation, acquisition or joint venture, partnership, or business combination of the Company or any Controlled Subsidiary of the Company with or into any other Person;
- (c) Any sale, lease, assignment or other disposition by the Company or any Controlled Subsidiary of the Company, in any single transaction or series of related transactions, (i) of all or substantially all of its assets, or (ii) of a capital asset having a value of \$1 million or more at the time of its sale or other disposition, or (iii) that is not in the ordinary course of business;
- (d) Any transaction involving or consisting of a voluntary pledge of, mortgage of, grant of a security interest in, or other encumbrance in the nature of a pledge or mortgage of, any assets of the Company or any Controlled Subsidiary of the Company;
- (e) Any transaction pursuant to which the Company or any Controlled Subsidiary of the Company incurs, assumes, or otherwise becomes liable for any obligations (i) for borrowed money; (ii) evidenced by bonds, debentures, notes or other similar instruments; (iii) for the deferred purchase price for goods or services (other than trade payables or accruals incurred in the ordinary course of business); (iv) under leases required by generally accepted accounting principles to be treated as financing leases; or

(v) in the nature of guarantees of obligations described in clauses (i) through (iv) above of any other Person;

(f) Commencement of any voluntary proceeding in respect of the Company or any Controlled Subsidiary of the Company seeking liquidation, reorganization, dissolution or bankruptcy;

(g) Entry by the Company or any Controlled Subsidiary of the Company into any contract or transaction with, or for the benefit of, any Member or any Affiliate of a Member;

(h) Entry by the Company or any Controlled Subsidiary of the Company into any material agreement, or related series of agreements that in the aggregate are material, including agreements to make capital expenditures, under which the aggregate amount of payments expected to be made by the Company, divided by the number of years over which the payments are expected to be made is greater than \$5,000,000;

(i) Any amendment to the Articles or this Operating Agreement;

(j) Any change in the number of Governors of the Board;

(k) Entry into, or conduct of, any business or line of business other than those described in Section 2.5;

(l) Any material change in any accounting, tax or legal compliance policy of the Company or any Controlled Subsidiary of the Company, unless required in the good faith opinion of the Board by changes in law, regulation or accounting conventions or principles;

(m) Any issuance or redemption of Membership Interests, or any requirement of additional capital contributions from the Members;

(n) Confession of a judgment against the Company; or

(o) Liquidation or dissolution of the Company.

ARTICLE 6 MEETINGS OF THE BOARD OF GOVERNORS

6.1. Time of Meetings. An annual meeting of the Board shall be held immediately after the annual meeting of the Members, except that if a quorum of the Board cannot then be assembled, the meeting shall be adjourned until a quorum is present, but in no event later than thirty (30) days after the annual meeting of Members. Regular meetings of the Board may be

held at such times as determined by the Board. Special meetings of the Board may be held at any time upon the call of the chief manager or two (2) Governors by giving two (2) days' notice to all Governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless required by the Act, the Articles or this Operating Agreement.

6.2. Place of Meetings. The annual meeting of the Board shall be held at the same place as the annual meeting of Members, except that any adjournment thereof may be held at any place within Shelby County, Tennessee, as may be designated by the Governors adjourning the meeting. Regular meetings of the Board shall be held at such place as determined by the Board. Special meetings of the Board shall be held at such place within Shelby County, Tennessee, as fixed by the person or persons properly calling the meeting.

6.3. Notice. If a regular meeting date, time and place have been established by the Board, no notice of the meeting is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken; provided, that the period of adjournment does not exceed one (1) month for any one (1) adjournment. A Governor may waive any notice required by this Act, the Articles or this Operating Agreement before or after the date and time stated in the notice. The waiver must be in writing, signed by the Governor entitled to the notice, and filed with the minutes or other records of the Company, provided that a Governor's attendance at or participation in a meeting waives any required notice to the Governor of the meeting, unless the Governor at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.4. Quorum and Manner of Acting. All of the Governors shall constitute a quorum for the transaction of business. The affirmative vote of all of the Governors shall be the act of the Board, unless the vote of a lesser number is otherwise required by the Act, the Articles, or this Operating Agreement. If a quorum is present when a duly called or held meeting is convened, the Governors present may continue to transact business until adjournment, even though the withdrawal of a number of Governors originally present leaves less than the number otherwise required for a quorum. A Governor who is present at a meeting of the Board when Company action is taken is deemed to have assented to the action taken unless: (i) the Governor objects at the beginning of the meeting (or promptly upon the Governor's arrival) to holding it or transacting business at the meeting; (ii) the Governor's dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) the Governor delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Company immediately after adjournment of the meeting. The right of dissent or abstention is not available to a Governor who votes in favor of the action taken.

6.5. Conference Meeting. The Board may permit any or all Governors to participate by or conduct the meeting through the use of any means of communication by which all Governors participating may simultaneously hear each other during the meeting. A Governor

participating in a meeting by this means is deemed to be present in person at the meeting, which may be reflected in the minutes.

6.6. Action without a Meeting. An action required or permitted to be taken at a meeting of the Board may be taken with the consent of all the Members. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each Governor in one (1) or more counterparts, indicating the signing Governor's vote or abstention on the action, and shall be included in the minutes or filed with the Company's records reflecting the action taken. The written action shall be effective when the last required Governor signs the action, unless a different effective time is provided in the written action. A properly signed consent has the effect of a meeting vote and may be described as such in any document. Any action requiring a meeting by the board is satisfied by a properly signed consent.

ARTICLE 7 MANAGERS

7.1. Managers. The managers of the Company shall be the chief manager, the secretary, and any other managers or agents the Board considers necessary or desirable for the operation and management of the Company. Managers need not be residents of Tennessee or Members of the Company. Any number of managerial positions (or functions of those positions) other than those of chief manager and secretary may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one (1) of those positions or functions, that person may sign the document in more than one (1) capacity, but only if the document indicates each capacity in which the person signs.

7.2. Election and Term. The managers of the Company shall be elected at the annual meeting of the Board. Each manager shall hold office at the pleasure of the Board or for such other period as the Board may specify at the time of electing the manager, or until the death, resignation or removal of the manager, whichever first occurs, except that in no event shall the term of the chief manager extend beyond the next annual meeting of the Board. Nothing in this Section 7.2 shall preclude the Board from exercising such other rights to terminate a manager as may be provided in this Operating Agreement or in any contract with the manager.

7.3. Removal. The Board may remove a manager at any time with or without cause. The Board may eliminate any manager position other than chief manager or secretary at any time.

7.4. Vacancies. A vacancy in an office of manager because of death, resignation, removal, disqualification, or other cause may (or, in the case of a vacancy in the office of chief manager or secretary, must) be filled for the unexpired portion of the term by the Board. If a vacancy is created by a resignation which is made effective at a later date and the Company

accepts the future effective date, the Board may fill the pending vacancy before the effective date, if the action provides that the successor does not take office until the effective date.

7.5. Delegation. Unless prohibited by the Articles, this Operating Agreement, or by a resolution adopted by the Board, a manager, without further approval, may delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

7.6. Duties.

(a) The chief manager shall perform the duties prescribed by the Board or the Members; other managers shall perform the duties prescribed by the Board, the Members or the chief manager.

(b) Unless otherwise provided by the Board or the Members, and subject to the other provisions of this Operating Agreement, the chief manager shall have the general executive powers and duties of supervision and management as are usually vested in the president of a corporation, including, without limitation: (i) seeing that all orders and resolutions of the Board or Members are carried into effect; (ii) signing and delivering in the name of the Company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the Company (unless another signature is required by law, or by the Articles, this Operating Agreement or the Board), except that, without the approval of the Board or the Members, the chief manager shall not enter into a contract in the name of the Company with a term of more than one year; (iii) if the Company has a vacancy in the office of secretary, accepting delivery of any notices, documents or other matters otherwise required to go to the secretary; (iv) authorizing and making expenditures in accordance with periodic budgets approved by the Board; and (v) authorizing and making unbudgeted expenditures in the ordinary course of business, not to exceed \$2,000,000 per year under any one agreement, or series of related agreements, or \$3,000,000 per year in the aggregate.

(c) Unless the Board, the Members, or the chief manager otherwise provide, the secretary shall (i) keep accurate membership records for the Company, (ii) maintain records of and, whenever necessary, certify all proceedings of, the Board, the Members or committees of the Company; (iii) receive notices required to be sent to the secretary and keep a record of such notices in the records of the Company.

ARTICLE 8 LIMITATIONS ON LIABILITIES AND DUTIES

8.1. Limited Liability. A Member, Economic Interest Owner, Governor, manager, employee or other agent of the Company does not have any personal obligation and is not otherwise personally liable for (i) the acts, debts, liabilities, or obligations of the Company, whether arising in contract, tort or otherwise, or (ii) the acts or omissions of any other Member, Economic Interest Owner, manager, Governor, employee or other agent of the Company. The limited liability described in this Section 8.1 shall continue in full force regardless of any dissolution, winding up, and termination of the Company.

8.2. Other Business Activities.

(a) Any Member, Governor or Affiliate of a Member or Governor may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the Company, and neither the Company nor any Member shall have any right by virtue of this Operating Agreement in or to such other business ventures, or to the income or profits derived from such other business ventures, except that, during the period a Person is a Member or Governor of the Company, neither such Person nor any Affiliate of such Person, directly or indirectly, shall engage in, or possess an interest in, another business venture which provides telecommunication services on a wholesale basis in Shelby County, Tennessee in competition with the Company. Each Member may, independently, and on its own account, provide retail telecommunication services to the general public in Shelby County, Tennessee, including without limitation, automatic meter reading, Internet services, video on demand, and local prepay telephone services.

(b) Neither the Members or the Governors shall be required to devote all of their time or business efforts to the affairs of the Company, but shall devote so much of their time and business efforts as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company.

8.3. Transactions with Members, Governors, Managers, and their Affiliates. No contract or other transaction between the Company and any Member, Governor or manager of the Company, or any Affiliate of a Member, Governor, or manager of the Company, shall be void or voidable because of the relationship of the parties, and neither the Member, Governor, manager nor Affiliate shall be obligated to account to the Company for any profit or benefit derived from such contract or other transaction, provided (i) the terms and conditions of the contract or other transaction are not materially less favorable to the Company than generally would be available in an arms' length transaction, or (ii) the contract or other transaction is otherwise valid under Section 48-239-116 or Section 48-240-103 of the Act, or other applicable law.

ARTICLE 9
CONTRIBUTIONS AND CAPITAL ACCOUNTS

9.1. Capital Contributions.

(a) On the date hereof, MLGW shall make an initial Capital Contribution to the Company of \$533.00 in cash, and A&L shall make an initial Capital Contribution to the Company of \$467.00 in cash.

(b) Between the date hereof and the Approval Date, MLGW and A&L, in their discretion, may make additional Capital Contributions as a source of funding for the Company to seek and obtain regulatory approvals, as contemplated by Section 2.5(a) above. MLGW and A&L shall each make one-half of any Capital Contributions under this Section 9.1(b).

(c) Subsequent to the Approval Date, MLGW and A&L shall make Capital Contributions to the Company as required by that certain Agreement dated November 8, 1999 between MLGW and A&L.

(d) It is contemplated that, if and to the extent approved by the Members, the Members may make one or more Capital Contributions in addition to the Capital Contributions contemplated under subsections (a) through (c) of this Section 9.1, so that the aggregate of all Capital Contributions will be approximately \$30 million. The Member's Capital Contributions under this Section 9.1(d) shall be in proportion to the initial Capital Contributions under Section 9.1(a).

(e) The Capital Contribution of each Member shall be conditioned upon the concurrent Capital Contribution required of the other Member. Except as provided in subsections (a) and (c) of this Section 9.1, and except as mutually agreed in writing by all of the Members, no Member shall be required to make Capital Contributions.

9.2. Capital Accounts.

(a) The Company shall maintain a separate Capital Account for each Equity Owner in conformity with the requirements under Section 1.704-1(b)(2)(iv) of the Treasury Regulations. Consistent with such Treasury Regulations, each Equity Owner's Capital Account will be increased by (i) the amount of money contributed by such Equity Owner to the Company; (ii) the fair market value of property contributed by such Equity Owner to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Equity Owner of Net Profits; (iv) any items in the nature of income and gain which are specially allocated to the Equity Owner pursuant to subsections (a) through (f) of Section 10.3; and (v) allocations to such Equity Owner of

income described in Section 705(a)(1)(B) of the Code. Each Equity Owner's Capital Account will be decreased by (i) the amount of money distributed to such Equity Owner by the Company; (ii) the fair market value of property distributed to such Equity Owner by the Company (net of liabilities secured by such distributed property that such Equity Owner is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Equity Owner of expenditures described in Section 705(a)(2)(B) of the Code; (iv) any items in the nature of deduction and loss that are specially allocated to the Equity Owner pursuant to subsections (a) through (f) of section 10.3; and (v) allocations to such Equity Owner of Net Losses.

(b) In the event of a permitted sale or exchange of a Ownership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Ownership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) Upon liquidation of the Company, liquidating distributions will be made in accordance with the positive Capital Account balances of the Equity Owners, as determined after taking into account all Capital Account adjustments for the Company's Fiscal Year during which the liquidation occurs. Liquidation proceeds will be paid in accordance with Article 12.

ARTICLE 10 ALLOCATIONS AND DISTRIBUTIONS

10.1. Allocation of Operating Net Profits and Operating Net Losses. Subject to Section 10.3 below, the Operating Net Losses and Operating Net Profits for each Fiscal Year shall be allocated among the Equity Owners as follows:

(a) If the Company has Operating Net Losses, as follows:

(i) First, 50% to each of A&L and MLGW, respectively, to the extent that its Capital Contributions prior to the Approval Date exceed [A] the cumulative Net Losses allocated to it in prior Fiscal Years under this Section 10.1(a)(i) and under Section 10.2(a)(i), minus [B] the cumulative Net Profits allocated to it in prior Fiscal Years under Section 10.1(b)(iv) and 10.2(b)(iv).

(ii) Then, to A&L, to the extent that A&L's Capital Contributions after the Approval Date exceed [A] the cumulative Net Losses allocated to A&L in prior Fiscal Years under this Section 10.1(a)(i) and under Section 10.2(a)(i), minus [B] the cumulative Net Profits allocated to A&L in prior Fiscal Years under Sections 10.1(b)(iii) and 10.2(b)(iii);

(iii) Then, to MLGW, to the extent that MLGW's Capital Contributions after the Approval Date exceed [A] the cumulative Net Losses allocated to MLGW in prior Fiscal Years under this Section 10.1(a)(ii) and under Section 10.2(a)(ii) below, minus [B] the cumulative Net Profits allocated to MLGW in prior Fiscal Years under Sections 10.1(b)(ii) and 10.2(b)(ii);

(iv) Then, to A&L and MLGW in accordance with their Sharing Ratios.

(b) If the Company has Operating Net Profits, as follows:

(i) First, to A&L and MLGW, respectively, in accordance with their Sharing Ratios, to the extent that [A] the cumulative Net Losses allocated in prior Fiscal Years to A&L and MLGW, respectively, under Sections 10.1(a)(iv) and 10.2(a)(iv), exceed [B] the cumulative Net Profits allocated in prior Fiscal Years to A&L and MLGW, respectively, under this Section 10.1(b)(i) and under Section 10.2(b)(i);

(ii) Then, to MLGW, to the extent that [A] the cumulative Net Losses allocated to MLGW in prior Fiscal Years under Sections 10.1(a)(iii) and 10.2(a)(iii), exceed [B] the cumulative Net Profits allocated to MLGW in prior Fiscal Years under this Section 10.1(b)(ii) and under Section 10.2(b)(ii);

(iii) Then, to A&L to the extent that [A] the cumulative Net Losses allocated to A&L in prior Fiscal Years under Sections 10.1(a)(ii) and 10.2(a)(ii), exceed [B] the cumulative Net Profits allocated to A&L in prior Fiscal Years under this Section 10.1(b)(iii) and under Section 10.2(b)(iii);

(iv) Then, 50% to each of A&L and MLGW, respectively, to the extent that [A] the cumulative Net Losses allocated to it in prior Fiscal Years under Sections 10.1(a)(i) and 10.2(b)(i), exceed [B] the cumulative Net Profits allocated to it in prior Fiscal Years under this Section 10.1(b)(iv) and under Section 10.2(b)(iv);

(v) Then, to A&L and MLGW in accordance with their Sharing Ratios.

10.2. Allocation of Extraordinary Net Losses and Extraordinary Net Profits. Subject to Section 10.3 below, the Extraordinary Net Losses and Extraordinary Net Profits for each Fiscal Year shall be allocated among the Equity Owners as follows, after first taking into account any allocations under Section 10.1 for such Fiscal Year:

(a) If the Company has Extraordinary Net Losses, as follows:

(i) First, 50% to each of A&L and MLGW, respectively, to the extent that its Capital Contributions prior to the Approval Date exceed [A] the cumulative Net Losses allocated to it in the current and prior Fiscal Years under Section 10.1(a)(i), and in prior Fiscal Years under this Section 10.2(a)(i), minus [B] the cumulative Net Profits allocated to it in the current and prior Fiscal Years under Section 10.1(b)(iv) and in prior Fiscal Years under Section 10.2(b)(iv);

(ii) Then, to A&L to the extent that A&L's Capital Contributions after the Approval Date exceed [A] the cumulative Net Losses allocated to A&L in the current and prior Fiscal Years under Section 10.1(a)(i), and in prior Fiscal Years under this Section 10.2(a)(i), minus [B] the cumulative Net Profits allocated to A&L in the current and prior Fiscal Years under Section 10.1(b)(iii), and in prior Fiscal Years under Section 10.2(b)(iii);

(iii) Then, to MLGW to the extent that MLGW's Capital Contributions after the Approval Date exceed [A] the cumulative Net Losses allocated to MLGW in the current and prior Fiscal Years under Section 10.1(a)(ii) above, and in prior Fiscal Years under this Section 10.2(a)(ii), minus [B] the cumulative Net Profits allocated to MLGW in the current and prior Fiscal Years under Section 10.1(b)(ii) and in prior Fiscal Years under Section 10.2(b)(ii);

(iv) Then, to A&L and MLGW in accordance with their Sharing Ratios.

(b) If the Company has Extraordinary Net Profits, as follows:

(i) First, to A&L and MLGW, respectively, in accordance with their Sharing Ratios, to the extent that [A] the cumulative Net Losses allocated to A&L and MLGW, respectively, in the current and prior Fiscal Years under Section 10.1(a)(iv) and in prior Fiscal Years under 10.2(a)(iv), exceed [B] the cumulative Net Profits allocated to A&L and MLGW, respectively, in the current and prior Fiscal Years under 10.1(b)(i) and in prior Fiscal Years under this Section 10.2(b)(i);

(ii) Then, to MLGW to the extent that [A] the cumulative Net Losses allocated to MLGW in the current and prior Fiscal Years under Section 10.1(a)(iii) and in prior Fiscal Years under Section 10.2(a)(iii), exceed [B] the cumulative Net Profits allocated to MLGW in the current and prior Fiscal Years under Section 10.1(b)(ii) and in prior Fiscal Years under this Section 10.2(b)(ii);

(iii) Then, to A&L to the extent that [A] the cumulative Net Losses allocated to A&L in the current and prior Fiscal Years under Section 10.1(a)(ii) and in prior Fiscal Years under Section 10.2(a)(ii), exceed [B] the cumulative Net

Profits allocated to A&L in the current and prior Fiscal Years under Section 10.1(b)(iii) and in prior Fiscal Years under this Section 10.2(b)(iii);

(iv) Then, 50% to each of A&L and MLGW, respectively, to the extent that [A] the cumulative Net Losses allocated to it in the current and prior Fiscal Years under Section 10.1(a)(i) and in prior Fiscal Years under Section 10.2(a)(i), exceed [B] the cumulative Net Profits allocated to it in the current and prior Fiscal Years under Section 10.1(b)(iv) and in prior Fiscal Years under this Section 10.2(b)(iv);

(v) Then, 50% to A&L and 50% to MLGW.

10.3. Special Allocations to Capital Accounts. Notwithstanding Sections 10.1 and 10.2 hereof:

(a) In the event any Equity Owner unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Equity Owner, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Equity Owner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 10.3(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(b) In the event any Equity Owner would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Equity Owner is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations and such Equity Owner's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations), the Capital Account of such Equity Owner shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 10.3, if there is a net decrease in the Company's minimum gain as defined in Treasury Regulation Section 1.704-2(d) during a taxable year of the Company, then, the Capital Accounts of each Equity Owner shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Equity Owner's share of the net decrease in Company minimum gain. This Section 10.3(c) is intended to comply with the minimum gain charge back requirement of Section 1.704-2 of the Treasury

Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain charge back requirement would cause a distortion in the economic arrangement among the Equity Owners and it is not expected that the Company will have sufficient other income to correct that distortion, the Members may in their discretion cause the Company to seek to have the Internal Revenue Service waive the minimum gain charge back requirement in accordance with Treasury Regulation Section 1.704-2(f)(4).

(d) Notwithstanding any other provision of this Section 10.3 except Section 10.3(c), if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt (determined in accordance with Regulation § 1.704-2(i)(5)) as of the beginning of the year shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain shall be determined in accordance with Regulation § 1.704-2(i)(4); provided that a Member shall not be subject to this provision to the extent that an exception is provided by Regulation § 1.704-2(i)(4) and any Revenue Rulings issued with respect thereto. Any Member Nonrecourse Debt Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Member Nonrecourse Debt, and, second, if necessary, a pro rata portion of the Company's other items of income or gain for that year. This Section 10.3(d) is intended to comply with the minimum gain charge back requirement in Regulation § 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) which are attributable to any nonrecourse debt of the Company and are characterized as partner (Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Equity Owners' Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations), such deductions shall be allocated to the Equity Owners in the same manner as Net Loss is allocated for such period.

10.4. Application of Credits and Charges. Any credit or charge to the Capital Accounts of the Equity Owners pursuant to subsections (a) through (f) of Section 10.3 shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to Sections 10.1 and 10.2, so that the net amount of any items charged or credited to Capital Accounts pursuant to subsections (a) through (f) of Section 10.3 hereof shall to the extent possible, be

equal to the net amount that would have been allocated to the Capital Account of each Equity Owner pursuant to the provisions of this Article 10 if the special allocations required by Sections 10.3(a) through 10.3(f) had not occurred.

10.5. Distributions.

(a) Within sixty (60) days after the end of each Fiscal Year, unless otherwise agreed by the Members, the Company shall distribute to the Equity Owners, in accordance with their Sharing Ratios, an amount equal to the higher of: (i) forty-five percent (45%) of the Net Profits allocated to the Equity Owners with respect to such Fiscal Year, or (ii) eighty-five percent (85%) of the Company's cash flow for such Fiscal Year, which shall be equal to (i) the cash flow from operating and investing activities, plus (ii) any increase in long-term debt, minus (iii) any payments of the current portion of long-term debt.

(b) By mutual agreement, the Members may from time to time authorize additional distributions of cash or other property to Equity Owners, provided that no distribution shall be declared and paid unless, after the distribution is made, the assets of the Company exceed its liabilities, and the Company satisfies such other requirements as may apply under the Act. Except as provided in Article 12, all distributions made by the Company with respect to Ownership Interests (excluding distributions in redemption of all or part of an Equity Owner's Ownership Interest) shall be allocated among the Equity Owners in accordance with their Sharing Ratios.

10.6. Interest On and Return of Capital Contributions. No Member shall be entitled to interest on, or to a return of, the Member's Capital Contribution, except as otherwise specifically provided in this Operating Agreement.

10.7. Tax Matters Partner. A&L shall be the Tax Matters Partner as defined in Section 6231(a)(7) of the Code for so long as A&L is a Member of the Company.

10.8. Certain Allocations for Income Tax (But Not Book Capital Account) Purposes.

(a) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)-(iv) of the Treasury Regulations, if a Member contributes property with a initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution pursuant to such method as determined by the Manager.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Equity Owner within seven years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Equity Owner under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

(c) In the case of any distribution by the Company to a Equity Owner, such Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of such Equity Owner's Ownership Interest immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Equity Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Equity Owner under Section 704(c)(1)(B) of the Code if all property which (1) had been contributed to the Company within seven years of the distribution, and (2) is held by the Company immediately before the distribution, had been distributed by the Company to another Equity Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Equity Owner to the Company, then such property shall not be taken into account under this Section 10.8(c)(2) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(d) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Equity Owners to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Equity Owner is allocated any gain from the sale or other disposition of such property.

ARTICLE 11

TRANSFER OF MEMBERSHIP INTERESTS

11.1. Restrictions on Transfer of Ownership Interests. An Equity Owner shall not sell, assign, transfer, give away or otherwise dispose of all or any part of the Equity Owner's Ownership Interest except as permitted in this Article 11 or in Section 3.4.

11.2. Permitted Transfers. Each Member may grant a security interest in any or all of its Financial Rights and in its right to assign its Financial Rights (the "Collateral"), but no Member may grant a security interest in its Governance Rights or its right to assign its Governance Rights. If the secured party forecloses on its security interest in the Collateral, the foreclosure shall constitute an Involuntary Transfer under Section 11.6 below. If the Company and the other Members elect not to purchase the Collateral under Section 11.6, the Involuntary Transfer shall be effected, but the Involuntary Transfer shall not result in the secured party becoming a Member.

11.3. Prohibited Transfers. Except as provided in Sections 3.4, 11.2 and 11.6, for a period of four years following the Approval Date (the "First Period"), neither Member shall directly or indirectly transfer all or part of its Ownership Interest without the prior written consent of the other Member, which consent may be withheld for any reason.

11.4. Right of First Refusal and Come Along.

(a) From and after the expiration of the First Period, if a Member (the "Offering Member") proposes to sell all of its Ownership Interest in the Company ("Offered Interest") pursuant to a bona fide written offer ("Offer"), it shall give written notice (the "Purchase Notice") to the Company and the other Member (the "Offeree Member"), fully describing the offeror (the "Third Party Offeror") and the terms and conditions of the Offer. An Offer shall not be treated as being bona fide unless the full purchase price is payable in cash at the closing.

(b) The Offeree Member shall have an option to purchase all of the Offered Interest at the purchase price and upon the other terms specified in the Offer, exercisable by giving written notice thereof to the Offering Member and the Company within sixty (60) days after the date of the Purchase Notice.

(c) If the Offeree Member fails to exercise its option, the Company shall have an option to purchase all of the Offered Interest at the purchase price and upon the other terms specified in Offer, exercisable by giving written notice thereof to the Members within seventy (70) days after the date of the Purchase Notice.

(d) If either of the options granted in subsections (b) and (c) of this Section 11.4 is exercised, the closing shall be held at the principal executive office of the Company within thirty (30) days after the applicable option is exercised. At such closing, the Offering Member shall deliver to the Offeree Member or the Company, whichever is applicable, a bill of sale and assignment effecting the transfer of the Offered Interest,

together with such other documents which the Offeree Member or the Company reasonably requests to effect the purposes of this Operating Agreement.

(e) If neither the Offeree Member nor the Company elects to purchase all of the Offered Interest, the Offering Member may sell all of the Offered Interest to the Third Party Offeror, except that if the Purchase Notice was given within three (3) years after the expiration of the First Period (the "Second Period"), and if, within seventy-five (75) days after the date of the Purchase Notice, the Offeree Member notifies the Offering Member of its desire to participate in the sale to the Third Party Offeror, the Offering Member shall not sell the Offered Interest to the Third Party Offeror, unless the Third Party Offeror concurrently purchases all of the Offeree Member's Ownership Interest. The purchase price for the Offeree Member's Ownership Interest shall be payable in cash at the closing and shall be equal in amount to the Capital Account which would result for the Offeree Member if all of the business and assets of the Company were sold for an amount which would cause the Offering Member's Capital Account to be equal to the purchase price payable by the Third Party Offeror for the Offered Interest. The sale by the Offering Member (or by the Offering Member and the Offeree Member, if the Offeree Member exercises its right to participate in the sale) to the Third Party Offeror shall be closed within one hundred and eighty (180) days of the date of the Purchase Notice, or else the Offered Interest shall once again be subject to the provisions of this Section 11.4.

(f) The Third Party Offeror shall be bound by all of the terms and conditions of this Agreement with respect to the Ownership Interests it purchases under this Section 11.4.

11.5. Change in Control of A&L.

(a) During the First Period, A&L shall not permit a Change in Control of A&L. For purposes of this Section 11.5, the term "Change in Control of A&L" means that George A. Lowe II for any reason (other than his death or a transaction under Section 11.6) ceases to own at least 51% of the voting rights of A&L, either directly, or indirectly through one or more entities.

(b) A&L shall promptly notify MLGW (the "Change in Control Notice") of any Change in Control of A&L occurring within the Second Period. MLGW shall have the option, exercisable by giving notice thereof to A&L within thirty (30) days after the date of the Change in Control Notice, to require A&L to purchase all, but not less than all, of MLGW's Ownership Interest for a purchase price equal to the fair market value of the Ownership Interest, determined in accordance with Section 11.8 as of the date the Change in Control Notice. At the election of MLGW, the purchase price shall be payable either in cash at the closing, or by delivery of a promissory note at the closing, bearing interest at the Prime Rate plus two percent (2%), payable in five equal and consecutive annual installments of principal and interest. The closing shall be held at the principal

executive office of the Company on such date as mutually agreed upon by A&L and MLGW, but not more than fifteen (15) days after the fair market value of A&L's Ownership Interest has been determined in accordance with Section 11.8. For purposes of this Section 11.5, the term "Prime Rate" means the base rate of interest on corporate loans posted by at least seventy-five percent (75%) of the thirty (30) largest U.S. banks as reported in The Wall Street Journal.

(c) After the expiration of the Second Period, the Change in Control of A&L shall not be subject to any restrictions under this Operating Agreement.

11.6. Call Option by A&L.

(a) For a period of fifteen (15) years from the date of this Operating Agreement, A&L shall have an option to purchase all, but not less than all, of MLGW's Ownership Interest, upon satisfaction of the following conditions within such 15-year period:

(i) A corporation in control of A&L (the "Issuer") determines to register some or all of its securities ("Securities"). The terms "register" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.

(ii) A&L and the Issuer notify MLGW at least one hundred thirty-five (135) days prior to the date of the proposed registration (the "Registration Notice").

(iii) When the Registration Notice is given, the Issuer directly or indirectly owns 25% or more of the governance and financial rights in each of at least five other telecommunication companies (the "Other Companies") (in addition to its ownership interest in the Company), and the Unaffiliated Owners of at least five of the Other Companies (the "Other Participating Companies") have agreed to contribute their ownership interests in the Other Participating Companies to the Issuer in exchange for Securities, and such contributions would cause the Issuer directly or indirectly to become the owner of at least 51% of the governance and economic rights of the Other Participating Companies. The term "Unaffiliated Owners" means entities which do not directly or indirectly own a majority of the governance or economic rights of the Issuer or A&L, or in which neither the Issuer nor A&L directly or indirectly owns a majority of the governance or economic rights.

(iv) In the Registration Notice, A&L offers an option for MLGW to participate in the registration on terms and conditions substantially similar in all

material respects to the terms and conditions which have been accepted by the Other Participating Companies, and MLGW fails to exercise its option within forty-five (45) days after the date of the Registration Notice.

(b) A&L may exercise its option by giving notice thereof to MLGW within forty-five (45) days after the date of the Registration Notice. The purchase price payable for MLGW's Ownership Interest shall be equal to its fair market value determined in accordance with Section 11.8 as of the date of the Registration Notice, without regard to any premium in value which might have resulted if MLGW had participated in the registration, except that, if it is impermissible as a matter of law for MLGW to participate in the registration, the purchase price payable for MLGW's Ownership Interest shall be equal to the fair market value of the Securities which would have been issued to MLGW if it had contributed its Ownership Interest to the Issuer on terms and conditions substantially similar in all material respects to the terms and conditions applicable to the Other Participating Companies. The closing shall be held at the principal executive office of the Company on such date as mutually agreed upon by A&L and MLGW, but no later than the effective date of the registration.

11.7. Involuntary Transfers.

(a) Upon the occurrence of an Involuntary Transfer with respect to a Member (the "Affected Member"), the Company or the other Member shall have an option to purchase all (but not less than all) of the Ownership Interest of the Affected Member with respect to which the Involuntary Transfer has occurred (the "Affected Interest"). An "Involuntary Transfer" means any purported involuntary transfer, sale or other disposition of all or any part of an Ownership Interest in the Company, whether by operation of law, pursuant to court order, execution of a judgment or other legal process or otherwise, and including a purported transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors.

(b) Upon the occurrence of an Involuntary Transfer, the Affected Member shall promptly notify the Company and the other Members thereof, stating when and why the Involuntary Transfer occurred, the percentage of the Affected Member's Ownership Interest which is involved, and the name, address and capacity of the transferee, if a purported transfer has occurred. If no such notice is given, the Company or any other Member may institute purchase proceedings under this Section 11.6 by giving written notice thereof to the Affected Member.

(c) The Company shall have the first option, exercisable by giving notice thereof to the Members within thirty (30) days after the date of the notice of Involuntary Transfer, to purchase all or any part of such Affected Interest at the price and terms provided below, and the other Member shall then have a second option, exercisable by giving notice thereof to the Company and the Affected Member within sixty (60) days

after the date of the notice of Involuntary Transfer, to purchase all or any part of the Affected Interest which the Company elects not to purchase, upon the same terms and conditions as exist in favor of the Company. If the Company and the other Member do not together purchase all of the Affected Interest, the options granted in this Section 11.7 shall be inapplicable, and the Involuntary Transfer may be effected without regard to this Section 11.7.

(d) The purchase price for an Affected Interest shall be its fair market value, as determined in accordance with Section 11.8 below, as of the end of the calendar quarter immediately preceding the earlier of the date of the Affected Member's notice of Involuntary Transfer, if any, or the date the Company or any Member notifies the Affected Member that purchase proceedings have been instituted under this Section 11.7. The purchase price shall be payable entirely in cash at the closing.

(e) The closing of any sale under this Section 11.7 shall be held at the principal executive office of the Company within fifteen (15) days after the determination of the fair market value of the Affected Interest pursuant to Section 11.8. At the closing, the Affected Member shall deliver to the Company and/or the purchasing Member a bill of sale and assignment effecting the transfer of the Ownership Interest, together with such other documents which the Company and/or purchasing Member reasonably requests to effect the purposes of this Operating Agreement.

(f) Upon the occurrence of an Involuntary Transfer with respect to an Affected Member, the remaining Member may continue the existence of the Company and its business.

11.8. Fair Market Value.

(a) Whenever it is necessary to determine the fair market value of an Ownership Interest under Sections 11.5, 11.6 or 11.7, the Member selling its Ownership Interest ("Seller") and the Company and/or Member or Members purchasing the Seller's Ownership Interest ("Buyer") shall use their best efforts to agree upon the fair market value of the Ownership Interest.

(b) If the Seller and Buyer cannot agree upon the fair market value of the Ownership Interest, then, within ten (10) days after all of the applicable options have expired or been exercised, Seller and Buyer shall use their best efforts to agree upon an appraiser to determine the fair market value of the Ownership Interest. If the Seller and Buyer cannot agree upon a single appraiser, then, within twenty (20) days after all of the applicable options have been exercised, Seller and Buyer shall each appoint an appraiser.

(c) Within forty-five (45) days after all of the applicable options have been exercised, each appraiser shall make a determination of the fair market value of the

Seller's Ownership Interest. If the higher of the two values is not 120% or more of the lower value, the fair market value of the Seller's Ownership Interest shall be deemed to be the average of the two values. If the higher value is 120% or more of the lower value, then, within fifty (50) days after all of the applicable options have been exercised, the two appraisers shall each appoint a third appraiser.

(d) The third appraiser shall determine the fair market value of the Ownership Interest within seventy (70) days after all of the applicable options have expired or been exercised. If the third appraised value is higher than the first two, the higher of the first two values shall be used as the fair market value of the Seller's Ownership Interest; if the third value is lower than the first two values, the lower of the first two values shall be used as the fair market value of the Seller's Ownership Interest; if the third value is equal to or between the first two values, the third value shall be used as the fair market value of the Seller's Ownership Interest.

(e) Each appraiser shall be reasonably experienced in valuing interests in businesses similar to the business conducted by the Company. Seller and Buyer shall equally bear the costs and expenses of the appraisal. If the Buyer consists of multiple parties, the Buyer's costs and expenses shall be prorated among them based on the portion of the Seller's Ownership Interest each is purchasing.

(f) A transferee who acquires all or part of an Ownership Interest in compliance with this Article 11 shall become a substitute Member with respect to any Governance Rights included as part of such transferred Ownership Interest.

ARTICLE 12 DISSOLUTION AND TERMINATION

12.1. Dissolution Events. The Company shall be dissolved only upon the occurrence of any of the following events:

- (a) Any event specified in the Articles;
- (b) By action of the organizers pursuant to § 48-245-201 of the Act or by the Members pursuant to § 48-245-202 of the Act;
- (c) By order of a court pursuant to §§ 48-245-901 or 48-245-902 of the Act;
- (d) By action of the Secretary of State pursuant to § 48-245-302 of the Act; or
- (e) A merger in which the Company is not the surviving organization.

The Company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a Member if there is at least one (1) remaining Member.

12.2. Notice of Dissolution. If the Members agree to dissolve the Company pursuant to § 48-245-202 of the Act, or if the Company is dissolved upon the occurrence of an event specified in the Articles, the Company shall file with the Tennessee Secretary of State a notice of dissolution. The Company shall cease to carry on its business, except to the extent necessary (or appropriate) for the winding up of the business of the Company. The Members shall retain the right to revoke the dissolution in accordance with § 48-245-601 of the Act and the right to remove or appoint Governors and managers. The Company's existence shall continue until the dissolution is revoked or articles of termination are filed with the Tennessee Secretary of State.

12.3. Procedure in Winding Up. If the business of the Company is to be wound up and terminated other than by merging the Company into a surviving business entity, the following procedures shall be followed:

(a) When a notice of dissolution has been filed with the Tennessee Secretary of State, the Board, or the managers acting under the direction of the Board, shall proceed as soon as possible to collect or make provision for the collection of all known debts due or owing to the Company, including unperformed contribution agreements, and except as provided in § 48-245-502 of the Act (relating to known and unknown claims), pay or make provision for the payment of all known debts, obligations, and liabilities of the Company according to their priorities under § 48-245-1101 of the Act.

(b) When a notice of dissolution has been filed with the Tennessee Secretary of State, the Board may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of the Company without a vote of the Members. Any Net Profits or Net Losses from such sales shall be allocated to the Equity Owners' Capital Accounts in accordance with Article 10 hereof.

(c) All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the Company shall be distributed to the Equity Owners in accordance with the Capital Account balances of the Equity Owners. The assets may be distributed in cash or in kind as determined by the Board. Any assets distributed in kind shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Equity Owners shall be adjusted pursuant to the provisions of Article 10 of this Operating Agreement to reflect the deemed sale. Distributions to the Equity Owners in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(d) If any Equity Owner has a Deficit Capital Account at the time of a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the

Treasury Regulations (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which the liquidation occurs), such Equity Owner shall not be obligated to make any Capital Contribution, and the negative balance in the Member's Capital Account shall not be considered a debt owed by such Equity Owner to the Company or to any other Person for any purpose whatsoever.

12.4. Articles of Termination. The Company shall file its Articles of Termination with the Secretary of State upon its dissolution and the completion of winding up of its business.

12.5. Return of Contribution Nonrecourse to Other Equity Owners. Upon dissolution, except as provided by law or as expressly provided in this Operating Agreement, each Equity Owner shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company's assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the cash contribution of one or more Equity Owners, such Equity Owners shall have no recourse against any other Equity Owner.

12.6. Withdrawal of a Member. Neither A&L nor MLGW shall withdraw from the Company without the other's approval, subject to the right of each Member to sell or otherwise dispose of its Ownership Interest in accordance with Article 11.

ARTICLE 13 INDEMNIFICATION

13.1. Definitions. As used in this Article, unless the context otherwise requires:

(a) "Expenses" include counsel fees.

(b) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable Expenses incurred with respect to a Proceeding.

(c) "Official Capacity" means the position of Governor and the elective or appointive office or position held by a manager, member of a committee of the Board, or the employment or agency relationship undertaken by an employee or agent on behalf of the Company. "Official Capacity" does not include service for any other foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprises.

(d) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a Proceeding.

(e) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

(f) "Responsible Person" means an individual who is or was a Governor of the Company, or an individual who, while a Governor of the Company, is or was serving at the Company's request as a governor, manager, director, officer, partner, trustee, employee, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, employee benefit plan or other enterprise. A Governor is considered to be serving an employee benefit plan at the Company's request if the Governor's duties to the Company also impose duties on, or otherwise involve services by the Governor to the plan or to participants in or beneficiaries of the plan. "Responsible Person" includes, unless the context requires otherwise, the estate or personal representative of a Responsible Person.

(g) "Special Legal Counsel" means counsel who has not represented the Company or a related limited liability company, or a Governor, manager, member of a committee of the Board, agent or employee, whose indemnification is in issue.

13.2. Authority to Indemnify. The Company shall indemnify an individual made a Party to a Proceeding because such individual is or was a Responsible Person against Liability incurred in the Proceeding if the individual acted in good faith and reasonably believed, in the case of conduct in such individual's Official Capacity with the Company, that such individual's conduct was in the Company's best interest, and in all other cases, that such individual's conduct was at least not opposed to the Company's best interests, and in the case of any criminal Proceeding, had no reasonable cause to believe such individual's conduct was unlawful.

(a) A Responsible Person's conduct with respect to an employee benefit plan for a purpose such person reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of this Section 13.2.

(b) The termination of a Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Responsible Person did not meet the standard of conduct described in this Section 13.2.

(c) Except as provided in Section 13.5 below, the Company may not indemnify a Responsible Person in connection with a Proceeding by or in the right of the Company in which the Responsible Person was adjudged liable to the Company, or in connection with any other Proceeding charging improper personal benefit to such Responsible Person, whether or not involving action in such person's Official Capacity, in

which such person was adjudged liable on the basis that personal benefit was improperly received by such person.

13.3. Mandatory Indemnification. The Company shall indemnify a Responsible Person who was wholly successful, on the merits or otherwise, in the defense of any Proceeding to which the person was a Party because the person is or was a Responsible Person of the Company against reasonable Expenses incurred by the person in connection with the Proceeding.

13.4. Advances for Expenses. The Company shall pay for or reimburse the reasonable Expenses incurred by a Responsible Person who is a Party to a Proceeding in advance of final disposition of the Proceeding if (i) the Responsible person furnishes the Company a written affirmation of good faith belief that the Person has met the standard of conduct described in Section 13.2; (ii) the Responsible Person furnishes the Company a written undertaking, executed personally or on such person's behalf, to repay the advance if it is ultimately determined that the Person is not entitled to indemnification; and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article. The undertaking required by this section must be an unlimited general obligation of the Responsible Person but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this section shall be made in the manner specified in Section 13.6.

13.5. Court-Ordered Indemnification. A Responsible Person of the Company who is a Party to a Proceeding may apply for indemnification to the court conducting the Proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(a) The Responsible Person is entitled to mandatory indemnification under Section 13.3, in which case the court shall also order the Company to pay the Responsible Person's reasonable Expenses incurred to obtain court-ordered indemnification; or

(b) The Responsible Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the person met the standard of conduct set forth in Section 13.2 or was adjudged liable as described in Section 13.2(c), but if the person was adjudged so liable the person's indemnification is limited to reasonable Expenses incurred.

13.6. Determination and Authorization of Indemnification. Except as provided in Section 13.5, the Company may not indemnify a Responsible Person under Section 13.2 unless authorized in the specific case after a determination has been made that indemnification of the Responsible Person is permissible in the circumstances because the person has met the standard of conduct set forth in Section 13.2. The determination shall be made:

(a) By the Board by majority vote of a quorum consisting of Governors not at the time Parties to the Proceeding;

(b) If a quorum cannot be obtained under Section 13.6(a), by majority vote of a committee duly designated by the Board (in which designation Governors who are parties may participate), consisting solely of two (2) or more Governors not at the time parties to the Proceeding;

(c) By independent Special Legal Counsel selected by the Board or by a committee in the manner prescribed in Section 13.6(a) or (b), or if a quorum of the Board cannot be obtained under Section 13.6(a) and a committee cannot be designated under Section 13.6(b), selected by majority vote of the full Board (in which selection Governors who are parties may participate); or

(d) By the members of the Company, but ownership interests owned by or voted under the control of members who are at the time parties to the Proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of Expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by Special Legal Counsel, authorization of indemnification and evaluation as to reasonableness of Expenses shall be made by those entitled under Section 13.6(c) to select counsel.

13.7. Indemnification of Managers, Employees and Agents.

(a) A manager of the Company who is not a Responsible Person is entitled to mandatory indemnification under Section 13.3, and is entitled to apply for court-ordered indemnification under Section 13.5, in each case to the same extent as a Responsible Person.

(b) The Company may indemnify and advance Expenses to a manager, employee, independent contractor or agent of the Company who is not a Responsible Person to the same extent as a Responsible Person.

(c) The Company may also indemnify and advance Expenses to a manager, employee, independent contractor or agent who is not a Responsible Person to the extent, consistent with public policy, provided by general or specific action of the Board, or by contract.

13.8. Insurance. The Company shall purchase and maintain insurance on behalf of an individual who is or was a Responsible Person, manager, employee, independent contractor, or agent of the Company, or who, while a Responsible Person, manager, employee, independent

contractor, or agent of the Company, is or was serving at the request of the Company as a Responsible Person, manager, partner, trustee, employee, independent contractor, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against Liability asserted against or incurred by such person in that capacity or arising from such person's status as a Responsible Person, manager, officer, employee, independent contractor, or agent, whether or not the Company would have power to indemnify such person against the same Liability under Section 13.2 or 13.3.

13.9. Application of Article. The indemnification and advancement of Expenses provided by this Article shall not be deemed exclusive of any other rights to which a Responsible Person seeking indemnification or advancement of Expenses may be entitled, whether contained in the Act, the Articles, or this Operating Agreement, or when authorized by the Articles or this Operating Agreement, in a resolution of members, a resolution of Governors, or an agreement providing for such indemnification; provided, that no indemnification may be made to or on behalf of any Responsible Person if a judgment or other final adjudication adverse to the Responsible Person or officer establishes such person's Liability for any breach of the duty of loyalty to the Company or its members, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or under § 48-237-101 of the Act (relating to wrongful distributions). Nothing contained in this section shall affect any rights to indemnification to which the Company's personnel, other than Responsible Persons, may be entitled by contract or otherwise under law. This section does not limit the Company's power to pay or reimburse Expenses incurred by a Responsible Person in connection with such person's appearance as a witness in a Proceeding at a time when such person has not been made a named defendant or respondent to the Proceeding.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1. Notices. Except as otherwise provided in this Operating Agreement, all notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by facsimile.

14.2. Books of Account and Records. The manager shall keep complete records and books of account at the principal executive office of the Company, which shall be open to the reasonable inspection and examination by the Equity Owners and their duly authorized representatives during reasonable business hours.

14.3. Application of Law. This Operating Agreement shall be governed by the laws of the State of Tennessee. To the extent permitted by law, the courts of Shelby County, Tennessee shall be the exclusive forum for the litigation of any disputes under this Operating Agreement.

14.4. Amendments. This Operating Agreement may not amended without the unanimous approval of the Members.

14.5. Heirs, Successors and Assigns. This Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

14.6. Creditors and Other Third Parties. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any third parties, including, without limitation, any creditors of the Company.

14.7. Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14.8. Limitation of Liability. The obligations of MLGW under this Operating Agreement shall be limited to the extent required by applicable state and federal law and shall be further subject to the second sentence of Section 1 of the Wholesale Power Contract between MLGW and the Tennessee Valley Authority dated December 26, 1984 and to Paragraph 1 of the Schedule of Terms and Conditions attached to the Wholesale Power Contract (and to substantially similar anti-commingling provisions in any subsequent contract or amended contract between TVA and MLGW). Without limitation of the foregoing, A&L acknowledges that (i)

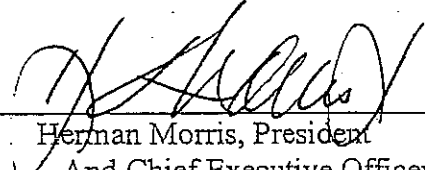
MLGW's liability for any tortious acts or omissions or breaches of contract under this Operating Agreement shall be limited to its Ownership Interest in the Company and the other resources and assets within, or allocated to, the Telecommunications Division of the Electric Division of MLGW; (ii) neither the Electric Division (except for its Telecommunications Division), the Gas Division, nor the Water Division of MLGW assumes any financial obligation under this Operating Agreement; and (iii) neither the tax revenues nor the taxing power of the City of Memphis, Tennessee are in any way pledged or obligated under this Operating Agreement.

14.9 Entire Agreement. This Operating Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.

THIS AGREEMENT has been adopted by the undersigned on the day and year first above written.

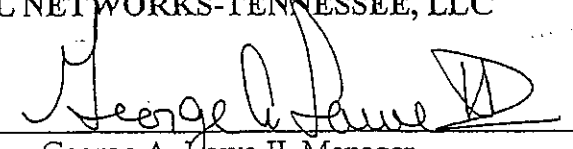
MEMPHIS LIGHT, GAS & WATER
DIVISION

By: _____


Herman Morris, President
And Chief Executive Officer

A&L NETWORKS-TENNESSEE, LLC

By: _____


George A. Lowe II, Manager

Tab 22

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

AMENDED AND RESTATED OPERATING AGREEMENT

OF

MEMPHIS NETWORKX, LLC

A TENNESSEE LIMITED LIABILITY COMPANY

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THIS AMENDED AND RESTATED OPERATING AGREEMENT (the "Operating Agreement") of Memphis Network, LLC (the "Company"), a limited liability company organized under the Tennessee Limited Liability Company Act, is hereby adopted and approved as of November 29, 2000, by the undersigned Members of the Company, who agree as follows:

WITNESSETH:

WHEREAS, on November 8, 1999, Memphis Light, Gas, and Water Division, a division of the City of Memphis, Tennessee ("MLGW"), and A&L Networks-Tennessee, LLC, a Kansas limited liability company ("A&L"), formed the Company under and pursuant to the Tennessee Limited Liability Company Act; and

WHEREAS, as of November 29, 2000, Memphis Broadband, LLC, a Delaware limited liability company ("MB") acquired A&L's entire membership interest in the Company, and was admitted as a Member thereof; and

WHEREAS, MLGW and MB desire to amend and restate the Company's Operating Agreement dated as of November 8, 1999, as amended by Amendment No. 1 thereto dated as of October 18, 2000 (collectively, the "Original Operating Agreement"), in order to clarify their mutual rights and obligations.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Members hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

In addition to terms defined elsewhere in this Operating Agreement, the following terms used in this Operating Agreement shall have the following meanings:

1.1. "Act" means the Tennessee Limited Liability Company Act, Tennessee Code Annotated, Title 48, Chapters 201-248, as amended from time to time.

1.2. "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person.

1.3. "Approval Date" means the first date by which the Company and its Members have obtained, in form and substance reasonably satisfactory to the Members, all orders, certificates of public convenience and necessity and other regulatory approvals necessary for the Company to provide the services authorized by Tennessee Code Annotated Sections 7-52-401, *et seq.* in the State of Tennessee.

1.4. "Articles of Organization" means the Company's Articles of Organization,

as amended from time to time.

1.5. "Board" means the Company's board of governors.

1.6. "Capital Account" means, with respect to any Equity Owner, the account maintained by the Company in accordance with Section 9.2.

1.7. "Capital Contribution" means any contribution to the capital of the Company in cash or property by an Equity Owner, whenever made.

1.8. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.9. "Controlled Subsidiary" means, as to any Person, any other Person of which the first Person beneficially owns (directly or indirectly) securities entitling the holder to cast 50% or more of the votes in the election or removal of directors (or persons holding similar positions) of the second Person.

1.10. "Deficit Capital Account" means with respect to any Equity Owner, the deficit balance, if any, in such Equity Owner's Capital Account as of the end of the Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amount which such Equity Owner is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Treasury Regulations, and will be interpreted consistently with those provisions.

1.11. "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided,

however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the chief manager.

1.12. "Economic Interest Owner" means the owner of Financial Rights who is not a Member.

1.13. "Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization, and also includes local, municipal, state, United States, and foreign governments.

1.14. "Equity Owner" means an Economic Interest Owner or a Member.

1.15. "Extraordinary Net Losses" means Net Losses from (i) the sale or other disposition of all or substantially all of the assets of the Company, or of the assets of any line of business of the Company, or (ii) the liquidation and dissolution of the Company (including, without limitation, any Net Losses from adjusting the Gross Asset Values of the Company's assets).

1.16. "Extraordinary Net Profits" means Net Profits from (i) the sale or other disposition of all or substantially all of the assets of the Company, or of the assets of any line of business of the Company, or (ii) the liquidation and dissolution of the Company (including, without limitation, any Net Profits from adjusting the Gross Asset Values of the Company's assets).

1.17. "Extraordinary Net Profits Sharing Ratio" means:

Members	Extraordinary Net Profits Sharing Ratio
MLGW	50%
MB	50%

1.18. "Final Order" means the date the TRA Order with respect to the Amended Application and Joint Petition becomes final and non-appealable.

1.19. "Financial Rights" means an Equity Owner's rights as provided in the Act to share in profits and losses, to share in distributions, to receive interim distributions, and to receive liquidation distributions.

1.20. "Fiscal Year" means the Company's fiscal year, which shall be the calendar year.

1.21. "Governance Rights" means a right to vote on one or more matters and all

of a Member's rights as a Member in the Company other than Financial Rights and the right to assign Financial Rights.

1.22. "Governor" means a natural person serving on the Board.

1.23. "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by an Equity Owner shall be the gross fair market value of such asset, as determined by the Members.

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Members as of the following times: (a) the acquisition of an additional interest by any new or existing Equity Owner; (b) the distribution by the Company to an Equity Owner of more than a *de minimis* amount of property as consideration for an Ownership Interest; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that adjustments pursuant to clause (a) above and this clause (b) shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Equity Owners in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Equity Owner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Members; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section 9.2 and subparagraph (d) under the definition of Net Profits and Net Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this definition to the extent the Members determine that an adjustment pursuant to subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (a), (b) or (d) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

1.24. "Interim Contributions" means, between the date of the Original Umbrella Agreement and the date of the Final TRA Order, additional Capital Contributions to the Company by MLGW and MB, if and to the extent necessary to pay obligations reasonably incurred by the Company and to seek the approval of the TRA.

1.25. "MB" means Memphis Broadband, LLC, a Delaware limited liability company.

1.26. "MB Governors" means the two Governors elected by MB.

1.27. "Member" means a person who owns some Governance Rights of a Membership Interest, as reflected in the Company's records.

1.28. "Membership Interest" means a Member's interest in the Company consisting of the Member's Financial Rights, the Member's right to assign Financial Rights, the Member's Governance Rights, and the Member's right to assign Governance Rights. If a Member has assigned some or all of its Financial Rights, then, with respect to that Member, "Membership Interest" means the Member's Governance Rights, the Member's right to assign Governance Rights, any remaining Financial rights of the Member, and the Member's right to assign any remaining Financial Rights.

1.29. "MLGW" means Memphis Light, Gas, and Water Division, a division of the City of Memphis, Tennessee.

1.30. "MLGW Governors" means the two Governors elected by MLGW.

1.31. "Net Profits" and "Net Losses" means for each Fiscal Year of the Company an amount equal to the Company's net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code with the following adjustments:

(a) Any items of income, gain, loss and deduction allocated to Equity Owners pursuant to Section 10.3 or Section 10.8 shall not be taken into account in computing Net Profits or Net Losses;

(b) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be added to such taxable income or loss;

(c) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be subtracted from such taxable income or loss;

(d) In the event the Gross Asset Value of any Company asset is

adjusted pursuant to clause (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits and Net Losses;

(e) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(f) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Ownership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses.

1.32. "Operating Agreement" means this Amended and Restated Operating Agreement as originally executed and as it may be further amended or restated from time to time.

1.33. "Operating Net Losses" means all Net Losses other than Extraordinary Net Losses.

1.34. "Operating Net Profits" means all Net Profits other than Extraordinary Net Profits.

1.35. "Original Umbrella Agreement" means that certain Agreement dated November 8, 1999, between MLGW and A&L.

1.36. "Ownership Interest" means, in the case of a Member, the Member's Membership Interest, and, in the case of an Economic Interest Owner, the Economic Interest Owner's Financial Rights.

1.37. "Person" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person," where the context so permits.

1.38. "Prime Rate" means the base rate of interest on corporate loans posted by at least seventy-five percent (75%) of the thirty (30) largest U.S. banks as reported

in *The Wall Street Journal*.

1.39. "Prior Costs" means certain costs incurred by A&L to provide consulting and other services to MLGW, and costs incurred by MLGW to decide whether and how to provide telecom services.

1.40. "Sharing Ratio" means:

<u>Members</u>	<u>Sharing Ratio</u>
MLGW	53%
MB	47%

1.41. "Subsequent Costs" means, between the date of the Original Umbrella Agreement and the date of the Final Order, additional costs incurred by MLGW and MB to seek and obtain the relief requested in the Application and Joint Petition, as amended.

1.42. "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

1.43. "Umbrella Agreement" means that certain Amended and Restated Agreement dated as of November 29, 2000, between MLGW and MB.

1.44. "Voting Interest" means:

<u>Member</u>	<u>Voting Interest</u>
MLGW	50%
MB	50%

ARTICLE 2 ORGANIZATION

2.1. Formation. The Company was formed on November 8, 1999, by the filing of the Articles with the Tennessee Secretary of State.

2.2. Principal Executive Office. The Company's principal executive office is located at 7555 Appling Center Drive, Memphis, Shelby County, Tennessee 38133. At any time the Board may change the Company's principal executive office to another location within Shelby County, Tennessee.

2.3. Registered Office and Registered Agent. The Articles set forth the street address and zip code of the Company's initial registered office in Tennessee, the

county in which the office is located, and the name of its initial registered agent at that address. At any time the Board may change the Company's registered office or its registered agent in Tennessee.

2.4. Term. The term of the Company shall commence as of the effective date set forth in Section 2.1 and continue until the Company is wound up and liquidated.

2.5. Business.

(a) Initially, the sole business purpose of the Company shall be to do or cause to be done such acts or things as reasonably necessary to seek and obtain regulatory approval for the Company to provide the services authorized by Tennessee Code Annotated Sections 7-52-401, *et seq.*

(b) Subject to obtaining, and only to the extent permitted by, the necessary regulatory approvals, the business of the Company shall be to (i) provide the services authorized by Tennessee Code Annotated Sections 7-52-401, *et seq.*, (ii) acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge, and otherwise deal and trade in, any related system, plant, equipment or other property, and (iii) exercise all rights and powers and engage in all activities related to the foregoing and legally permissible under the Act.

(c) In furtherance of its business, and not by way of limitation, the Company intends (i) within two years from the Approval Date, to install telecommunication fibers at certain locations in and near St. Jude Hospital and the housing developments known as Jefferson Square, R.Q. Venson and Barry Holmes, and (ii) in Fiscal Years the Company has Net Operating Profits, to commit 1% of its Net Operating Profits (not to exceed \$1 million per Fiscal Year) to the development and enhancement of telecommunication services in the low-income areas of Shelby County, Tennessee.

ARTICLE 3 MEMBERS AND MEMBERSHIP INTERESTS

3.1. Current Members. The Members of the Company shall be MLGW and MB.

3.2. Nature of Membership Interest. A Membership Interest is personal property. No Member has an interest in specific property of the Company. All property transferred to or acquired by the Company is property of the Company itself.

3.3. Additional Members. Except as provided in Article 11, the Company shall not admit additional Members without the consent of all the Members.

3.4. Community Participation. To the extent permitted by law, MLGW and MB

each shall negotiate in good faith to sell a portion of its Financial Rights to one or more Minority Businesses (as defined below), in a single sale or in multiple sales, provided: (i) each Minority Business shall submit a bona fide purchase proposal to MB and MLGW, (ii) the sale or sales shall be closed within four (4) years from the Approval Date, (iii) the Minority Business or Minority Businesses shall not purchase, in the aggregate, more than 7.1% of MB's respective Financial Rights and 12.6% of MLGW's respective Financial Rights, and each purchase of Financial Rights from MB and MLGW, respectively, shall be in the ratio of one-third from MB and two-thirds from MLGW, (iv) the purchase price in each sale shall be determined by an independent appraisal and shall be payable in cash at the closing, two-thirds to MLGW and one-third to MB. For purposes of this Section 3.4, the term "Minority Business" means a corporation, partnership, limited liability company or other entity, provided at least fifty-one percent (51%) of the governance and economic rights of the entity are owned by an individual who personally manages and controls the daily operations of the entity and who is impeded from normal entry into the economic mainstream because of race, religion, sex, or national origin.

ARTICLE 4 MEETINGS OF MEMBERS

4.1. Annual Meeting. Beginning in the year 2001, the annual meeting of the Members shall be held at 10:00 a.m. on the second Tuesday of November of each year, or if the second Tuesday of November falls on a legal holiday, then at the same hour on the first succeeding business day, for the purpose of electing Governors and transacting such other business as may properly come before the meeting.

4.2. Special Meetings. Special meetings of the Members may be called at any time by any one (1) or more of the following persons: (i) any Member, (ii) the Board, or (iii) the chief manager. A person who has authority to call a meeting may call the meeting by giving written notice of demand to the Members in accordance with the Act, or by giving written notice of demand to the secretary of the Company, who shall give such notice to the Members in accordance with the Act, at the expense of the Company, within seven (7) days after receipt of the demand. If the secretary fails to cause a meeting to be called and held as properly demanded, the person making the demand may call the meeting by giving notice as required by the Act, all at the expense of the Company. In any case, the notice of a meeting of Members must be given no fewer than ten (10) days nor more than two (2) months before the meeting date.

4.3. Time and Place of Meetings. Meetings must be held on the date and at the time and place fixed by the person properly calling the meeting. Unless otherwise approved by the Members, all called meetings must be held in Shelby County, Tennessee. A meeting may take place by telephone conference call or any other form of electronic communication through which the Members participating may simultaneously hear each other. A meeting by electronic conference will be deemed to be held at the principal executive office or registered office of the Company, if required by the Act, or at the place properly named in the notice calling the meeting.

4.4. Record Date. Unless otherwise fixed by the Board, the record date for the determination of the owners of Membership Interests entitled to notice of and to vote at any meeting of Members shall be the close of business on the date before the first notice is sent to the Members.

4.5. Notice.

(a) Except as otherwise provided in the Act or in the Articles, written notice of all meetings of Members must be given to every member entitled to vote on the matters to be considered, unless (i) the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or (ii) the following have been mailed by first class, certified mail to the Member at the address in the Company's records and returned undeliverable: (A) two (2) consecutive meeting notices, and (B) all payments of distributions for the greater of a twelve-month period or two (2) distributions. The notice must contain the date, time, and place of the meeting, and any other information required by the Act. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the Articles or this Operating Agreement or considered necessary or desirable by the person or persons calling the meeting.

(b) A Member may waive any required notice of the meeting. Except as otherwise provided in the Act, a waiver of notice is effective, whether given before or after the meeting or other balloting, if such waiver is given in writing. If a written waiver is given, the secretary shall place such written waiver in the records of the Company. Attendance by a Member at a meeting is a waiver of notice of that meeting, except where the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at the meeting. The secretary is required to note the objection in the minutes of the meeting.

(c) Notice may be delivered in person; by facsimile, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. Written notice to the Members is effective when mailed, if mailed postpaid and correctly addressed to the Member's address shown in the Company's current record of Members. Otherwise, written notice is effective when received.

4.6. Proxies. At all meetings of Members, a Member may vote in person or by a proxy executed in writing by the Member or the Member's duly authorized attorney-in-fact. The proxy shall be filed with the secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution,

unless otherwise provided in the proxy.

4.7. Quorum. The Members holding all of the Voting Interests shall constitute a quorum for the transaction of business. Once a Membership Interest is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. In the absence of a quorum at any such meeting, a majority of the Voting Interests represented may adjourn the meeting from time to time for a period not to exceed thirty (30) days without further notice. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

4.8. Manner of Acting. The affirmative vote of Members holding all of the Voting Interests shall be the act of the Members, unless the vote of a lesser proportion or number is otherwise required by the Act, the Articles, or this Operating Agreement.

4.9. Conference Meeting. A conference among Members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes attendance at the meeting in person or by proxy if all the other requirements for a meeting are met.

4.10. Action on Written Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting by action on written consent. Any action on written consent has the effect of a meeting and vote and may be described as such in any document. To take action on written consent, a written waiver of acting at a meeting and a written consent must be signed by all Members. The action must be evidenced by one (1) or more instruments evidencing the waiver and consent, which shall be delivered to the secretary for inclusion in the records of the Company. All such instruments may be signed in counterparts. If not otherwise determined under Section 4.5 above, the record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent. The action on written consent is effective when the last required Member signs the waiver and written consent, unless a different effective time is provided in the instrument evidencing the written consent itself.

4.11. No Action on Recommendation of the Board or Chief Manager. Action on recommendation of the Board or chief manager under Section 48-223-103 of the Act is prohibited.

4.12. Authorized Representatives. Each Member shall cause an officer, employee or other representative of the Member to be duly authorized and empowered to act on behalf of the Member with respect to the Company. The MLGW representative shall be the President of MLGW, and in the event of a vacancy in this position, such interim

appointments as MLGW may make from time to time.

ARTICLE 5 BOARD OF GOVERNORS

5.1. Management. Except as otherwise required in this Operating Agreement or by applicable law, all powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by or under the direction of, the Board. Each Governor shall have equal voting power per capita with each other Governor.

5.2. Number. The number of Governors shall be five (5), and the number shall not be changed without the consent of all the Members.

5.3. Election and Qualifications. Governors need not be residents of the State of Tennessee nor hold Membership Interests, but must be natural persons. Effective as of the date of this Operating Agreement, the MLGW Governors shall be Herman Morris and Larry Thompson, the initial MB Governors shall be Frank A. McGrew, IV and Andrew Seamons, and the initial Fifth Governor shall be designated jointly by MLGW and MB. At each annual meeting of Members, beginning with the annual meeting of Members to be held in November, 2001, (i) MLGW shall elect two Governors (the "MLGW Governors"), (ii) MB shall elect two (2) Governors (the "MB Governors"), and (iii) MLGW and MB jointly shall elect the fifth Governor (the "Fifth Governor"). Each Governor elected by MLGW shall be either the President, the Secretary/Treasurer, the Chief Operating Officer or the General Counsel of MLGW, or, if one or more of these offices become vacant, preventing MLGW from electing as a Governor an individual who is serving in one of these three officer positions, MLGW may elect such other individual or individuals as it chooses. Each Governor shall serve until the next annual meeting of the Members and until the Governor's successor is elected and qualified, or until the earlier death, resignation, removal or disqualification of the Governor, except that in no event shall the term of the Fifth Governor extend beyond the next annual meeting of the Members.

5.4. Resignation, Removal and Vacancies. A Governor may resign at any time by giving a written resignation to the secretary or chief manager of the Company. The resignation is effective without acceptance when it is actually received by the secretary or chief manager, unless a later effective time is specified in the resignation. MLGW, and only MLGW, may remove one or both MLGW Governors at any time, and the removal may be with or without cause. MB, and only MB, may remove one or both MB Governors at any time, and the removal may be with or without cause. The Fifth Governor may be removed at any time, but only through the joint action of MLGW and MB, and the removal may be with or without cause. A Governor may be removed by MLGW or MB (or both), whichever is applicable, only at a meeting called for the purpose of removing the Governor, and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is to remove one (1) or more Governors. If a vacancy occurs on the Board, it may be filled only at a meeting of the Members by the

Member who elected the Governor whose position has been vacated.

5.5. Committees. A resolution approved by the affirmative vote of a majority of the Board may establish committees having the authority of the Board in the management of the business of the Company to the extent provided in the resolution, including special litigation committees to consider legal rights or remedies of the Company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control and serve at the pleasure of the Board. Each member of a committee shall be a member of the Board. Each committee shall have two Governors, one a MLGW Governor, and the other an MB Governor. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any Governor. Unless otherwise authorized by all of the Governors, the only authority of any committee shall be to make recommendations to the Board. In no event, however, shall a committee (i) authorize distributions, except according to a formula or method prescribed by the Board; (ii) approve or propose to Members actions requiring approval by Members; (iii) fill vacancies on the Board or on any of its committees; (iv) adopt a plan of merger not requiring Member approval; (v) authorize or approve reacquisition of a Membership Interest, except according to a formula or method prescribed by the Board; or (vi) authorize or approve the issuance or sale or contract for the sale of a Membership Interest, or determine the designation and relative rights, preferences, and limitations of a class or series of Membership Interests.

5.6. Restrictions on Authority of the Board. Notwithstanding the provisions of Section 5.1, the affirmative vote of all the Members shall be necessary to effect any of the following actions:

- (a) Any act in contravention of this Operating Agreement;
- (b) Any merger, consolidation, acquisition or joint venture, partnership, or business combination of the Company or any Controlled Subsidiary of the Company with or into any other Person;
- (c) Any sale, lease, assignment or other disposition by the Company or any Controlled Subsidiary of the Company, in any single transaction or series of related transactions, (i) of all or substantially all of its assets, or (ii) of a capital asset having a value of \$1 million or more at the time of its sale or other disposition, or (iii) that is not in the ordinary course of business;
- (d) Any transaction involving or consisting of a voluntary pledge of, mortgage of, grant of a security interest in, or other encumbrance in the nature of a pledge or mortgage of, any assets of the Company or any Controlled Subsidiary of the Company if the amount of the encumbrance exceeds \$100,000;
- (e) Any transaction pursuant to which the Company or any Controlled Subsidiary of the Company incurs, assumes, or otherwise becomes liable for any

obligations (i) for borrowed money; (ii) evidenced by bonds, debentures, notes or other similar instruments; (iii) for the deferred purchase price for goods or services (other than trade payables or accruals incurred in the ordinary course of business); (iv) under leases required by generally accepted accounting principles to be treated as financing leases; or (v) in the nature of guarantees of obligations described in clauses (i) through (iv) above of any other Person if the amount of the obligations exceeds \$100,000;

(f) Commencement of any voluntary proceeding in respect of the Company or any Controlled Subsidiary of the Company seeking liquidation, reorganization, dissolution or bankruptcy;

(g) Entry by the Company or any Controlled Subsidiary of the Company into any contract or transaction with, or for the benefit of, any Member or any Affiliate of a Member;

(h) Entry by the Company or any Controlled Subsidiary of the Company into any material agreement, or related series of agreements that in the aggregate are material, including agreements to make capital expenditures, under which the aggregate amount of payments expected to be made by the Company, divided by the number of years over which the payments are expected to be made is greater than \$5,000,000;

(i) Any amendment to the Articles or this Operating Agreement;

(j) Any change in the number of Governors of the Board;

(k) Entry into, or conduct of, any business or line of business other than those described in Section 2.5;

(l) Any material change in any accounting, tax or legal compliance policy of the Company or any Controlled Subsidiary of the Company, unless required in the good faith opinion of the Board by changes in law, regulation or accounting conventions or principles;

(m) Any issuance or redemption of Membership Interests, or any requirement of additional capital contributions from the Members not otherwise required by this Operating Agreement;

(n) Confession of a judgment against the Company; or

(o) Liquidation or dissolution of the Company.

ARTICLE 6 MEETINGS OF THE BOARD OF GOVERNORS

6.1. Time of Meetings. An annual meeting of the Board shall be held

immediately after the annual meeting of the Members, except that if a quorum of the Board cannot then be assembled, the meeting shall be adjourned until a quorum is present, but in no event later than thirty (30) days after the annual meeting of Members. Regular meetings of the Board may be held at such times as determined by the Board. Special meetings of the Board may be held at any time upon the call of the chief manager or two (2) Governors by giving two (2) days' notice to all Governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless required by the Act, the Articles or this Operating Agreement.

6.2. Place of Meetings. The annual meeting of the Board shall be held at the same place as the annual meeting of Members, except that any adjournment thereof may be held at any place within Shelby County, Tennessee, as may be designated by the Governors adjourning the meeting. Regular meetings of the Board shall be held at such place as determined by the Board. Special meetings of the Board shall be held at such place within Shelby County, Tennessee, as fixed by the person or persons properly calling the meeting.

6.3. Notice. If a regular meeting date, time and place have been established by the Board, no notice of the meeting is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken; provided, that the period of adjournment does not exceed one (1) month for any one (1) adjournment. A Governor may waive any notice required by this Act, the Articles or this Operating Agreement before or after the date and time stated in the notice. The waiver must be in writing, signed by the Governor entitled to the notice, and filed with the minutes or other records of the Company, provided that a Governor's attendance at or participation in a meeting waives any required notice to the Governor of the meeting, unless the Governor at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

6.4. Quorum and Manner of Acting. A majority of Governors then in office shall constitute a quorum at any meeting of the Board except for any matter that requires the approval of a greater proportion of the Governors pursuant to the Act, the Articles or this Operating Agreement. If a quorum is present, the affirmative vote of a majority of the Governors present at the meeting shall be the act of the Board, except as to matters which the consent of a greater proportion of the Governors is otherwise required by the Act, the Articles or this Operating Agreement. Each Governor shall be entitled to one (1) vote on any matter entitled to be voted on by the Board. If a quorum is present when a duly called or held meeting is convened, the Governors present may continue to transact business until adjournment, even though the withdrawal of a number of Governors originally present leaves less than the number otherwise required for a quorum. A Governor who is present at a meeting of the Board when Company action is taken is deemed to have assented to the action taken unless: (i) the Governor objects at the beginning of the meeting (or promptly upon the Governor's arrival) to holding it or transacting business at the meeting; (ii) the Governor's dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) the

Governor delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Company immediately after adjournment of the meeting. The right of dissent or abstention is not available to a Governor who votes in favor of the action taken.

6.5. Conference Meeting. The Board may permit any or all Governors to participate by or conduct the meeting through the use of any means of communication by which all Governors participating may simultaneously hear each other during the meeting. A Governor participating in a meeting by this means is deemed to be present in person at the meeting, which may be reflected in the minutes.

6.6. Action without a Meeting. An action required or permitted to be taken at a meeting of the Board may be taken with the consent of all the Members. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each Governor in one (1) or more counterparts, indicating the signing Governor's vote or abstention on the action, and shall be included in the minutes or filed with the Company's records reflecting the action taken. The written action shall be effective when the last required Governor signs the action, unless a different effective time is provided in the written action. A properly signed consent has the effect of a meeting vote and may be described as such in any document. Any action requiring a meeting by the board is satisfied by a properly signed consent.

ARTICLE 7 MANAGERS

7.1. Managers. The managers of the Company shall be the chief manager, the secretary, and any other managers or agents the Board considers necessary or desirable for the operation and management of the Company. Managers need not be residents of Tennessee or Members of the Company. Any number of managerial positions (or functions of those positions) other than those of chief manager and secretary may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one (1) of those positions or functions, that person may sign the document in more than one (1) capacity, but only if the document indicates each capacity in which the person signs.

7.2. Election and Term. The managers of the Company shall be elected at the annual meeting of the Board. Each manager shall hold office at the pleasure of the Board or for such other period as the Board may specify at the time of electing the manager, or until the death, resignation or removal of the manager, whichever first occurs. Nothing in this Section 7.2 shall preclude the Board from exercising such other rights to terminate a manager as may be provided in this Operating Agreement or in any contract with the manager.

7.3. Removal. The Board may remove a manager at any time with or without cause. The Board may eliminate any manager position other than chief manager or

secretary at any time.

7.4. Vacancies. A vacancy in an office of manager because of death, resignation, removal, disqualification, or other cause may (or, in the case of a vacancy in the office of chief manager or secretary, must) be filled for the unexpired portion of the term by the Board. If a vacancy is created by a resignation which is made effective at a later date and the Company accepts the future effective date, the Board may fill the pending vacancy before the effective date, if the action provides that the successor does not take office until the effective date.

7.5. Delegation. Unless prohibited by the Articles, this Operating Agreement, or by a resolution adopted by the Board, a manager, without further approval, may delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

7.6. Duties.

(a) The chief manager shall perform the duties prescribed by the Board or the Members; other managers shall perform the duties prescribed by the Board, the Members or the chief manager.

(b) Unless otherwise provided by the Board or the Members, and subject to the other provisions of this Operating Agreement, the chief manager shall have the general executive powers and duties of supervision and management as are usually vested in the president of a corporation, including, without limitation: (i) seeing that all orders and resolutions of the Board or Members are carried into effect; (ii) signing and delivering in the name of the Company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the Company (unless another signature is required by law, or by the Articles, this Operating Agreement or the Board), except that, without the approval of the Board or the Members, the chief manager shall not enter into a contract in the name of the Company with a term of more than one year; (iii) if the Company has a vacancy in the office of secretary, accepting delivery of any notices, documents or other matters otherwise required to go to the secretary; (iv) authorizing and making expenditures in accordance with periodic budgets approved by the Board; and (v) authorizing and making unbudgeted expenditures in the ordinary course of business, not to exceed \$50,000 per expenditure, or series of related expenditures, or \$100,000 per year in the aggregate.

(c) Unless the Board, the Members, or the chief manager otherwise provide, the secretary shall (i) keep accurate membership records for the Company, (ii) maintain records of and, whenever necessary, certify all proceedings of, the Board, the Members or committees of the Company; (iii)

receive notices required to be sent to the secretary and keep a record of such notices in the records of the Company.

ARTICLE 8 LIMITATIONS ON LIABILITIES AND DUTIES

8.1. Limited Liability. A Member, Economic Interest Owner, Governor, manager, employee or other agent of the Company does not have any personal obligation and is not otherwise personally liable for (i) the acts, debts, liabilities, or obligations of the Company, whether arising in contract, tort or otherwise, or (ii) the acts or omissions of any other Member, Economic Interest Owner, manager, Governor, employee or other agent of the Company. The limited liability described in this Section 8.1 shall continue in full force regardless of any dissolution, winding up, and termination of the Company.

8.2. Other Business Activities.

(a) Any Member, Governor or Affiliate of a Member or Governor may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the Company, and neither the Company nor any Member shall have any right by virtue of this Operating Agreement in or to such other business ventures, or to the income or profits derived from such other business ventures, except that, during the period a Person is a Member or Governor of the Company, neither such Person nor any Affiliate of such Person, directly or indirectly, shall engage in, or possess an interest in, another business venture which provides telecommunication services on a wholesale basis in Shelby County, Tennessee in competition with the Company. Each Member may, independently, and on its own account, provide retail telecommunication services to the general public in Shelby County, Tennessee, including without limitation, automatic meter reading, Internet services, video on demand, and local prepaid telephone services.

(b) Neither the Members or the Governors shall be required to devote all of their time or business efforts to the affairs of the Company, but shall devote so much of their time and business efforts as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company.

8.3. Transactions with Members, Governors, Managers, and their Affiliates. No contract or other transaction between the Company and any Member, Governor or manager of the Company, or any Affiliate of a Member, Governor, or manager of the Company, shall be void or voidable because of the relationship of the parties, and neither the Member, Governor, manager nor Affiliate shall be obligated to account to the Company for any profit or benefit derived from such contract or other transaction, provided (i) the terms and conditions of the contract or other transaction are not

materially less favorable to the Company than generally would be available in an arms' length transaction, or (ii) the contract or other transaction is otherwise valid under Section 48-239-116 or Section 48-240-103 of the Act, or other applicable law.

ARTICLE 9 CONTRIBUTIONS AND CAPITAL ACCOUNTS

9.1. Capital Contributions.

(a) As of the date hereof, MLGW has made Capital Contributions to the Company of \$2,795,185.00 (excluding contributions made or to be made by MLGW for the cost of any cable purchased by the Company), and MB has made Capital Contributions to the Company (including credit for Capital Contributions made by A&L) of \$2,789,359.60. The difference between the foregoing shall be referred to hereinafter as the "Expense True Up." In addition, MLGW has made Capital Contributions for the cost of cable purchased by the Company in the amount of \$1,422,186.00, and anticipates making additional Capital Contributions for such purpose in the approximate amount of \$637,847.85 (the "Cable Costs"). The Cable Costs referred to above, and any Capital Contributions made by MB with respect to the purchase of cable by the Company prior to, at and after the TRA Order (as defined below) in order to satisfy MB's obligation hereunder to match Capital Contributions of MLGW for such costs, shall be treated as Interim Contributions for Capital Account purposes hereunder, notwithstanding the date such contributions are actually made.

(b) Between the date hereof and the earlier of (i) the order from the Tennessee Regulatory Authority ("TRA") granting in all material respects the relief requested in the Amended and Restated Application and Joint Petition of the Company, MLGW and MB (the "TRA Order"), or (ii) the exercise by MB of the Regulatory Put Rights under Section 11.6(a) hereof, MLGW and MB shall make equal and simultaneous Capital Contributions to the Company, to the extent necessary to pay obligations reasonably incurred by the Company, including, without limitation, expenses incurred to seek and obtain regulatory approval and to obtain the relief requested in the Company's regulatory filings, up to a total aggregate capital contributions of \$600,000 per Member, in addition to liabilities of the Company as of the date hereof, and determined to be due and payable.

(c) From and after the date hereof, MLGW and MB also shall make Capital Contributions to the Company as follows:

(i) Within ten (10) days of the date hereof, MB will make a Capital contribution to the Company in the amount of the Expense True-Up. The Expense True-Up shall be treated as an Interim Contribution of MB, and for purposes of Capital Account treatment hereunder, this contribution shall be treated as a Capital Contribution occurring prior to

the Approval Date.

(ii) If the parties obtain the TRA Order, then, within ninety (90) days after the date of the TRA Order, (A) MB shall contribute to the capital of the Company \$4,666,200, minus an amount equal to its share of the Prior Costs, the Subsequent Costs, and the Interim Contributions, and, concurrently therewith (B) MLGW shall contribute to the capital of the Company \$5,332,800, minus an amount equal to its share of the Prior Costs, the Subsequent Costs and the Interim Contributions. MLGW's obligation to contribute to the Company under this Section 9.1(c)(ii) shall be subject to the condition precedent that, on or before the date of contribution, the Tennessee Valley Authority and the Tennessee Director of Local Finance shall have approved an inter-divisional loan of \$20 million from the Electric Division of MLGW to the Telecommunication Division of the Electric Division of MLGW. MB's obligation to contribute to the Company under this Section 9.1(c)(ii) shall be subject to the condition precedent that, on or before the date of its contribution, MB shall have raised total equity funding of at least \$5,500,000. For purposes of Capital Account treatment hereunder, such Capital Contributions shall be treated as having occurred after the Approval Date.

(d) The Capital Contributions of each Member shall be conditioned upon the concurrent Capital Contribution required of the other Member. Except as specified in Sections 9.1(b) and (c), no Member shall be obligated to make any additional Capital Contributions to the Company without the unanimous approval of the Members. The Members shall be permitted, but not required, to make loans to the Company. Loans shall not be treated as a Capital Contribution unless such is approved by all the Members. Loans shall bear interest from the date advanced until repaid at the fluctuating Prime Rate.

(e) After all of the Capital Contributions required under subsections (a) – (d) of this Section 9.1 have been made (with or without dilution under Section 9.1(f)), at any time between the date of the TRA Order and the date of the Final TRA Order, the Board of Governors can require that the Members make additional Capital Contributions in proportion to their respective Sharing Ratios, up to a total additional aggregate amount of \$15,000,000. Each Member shall, within thirty (30) days of receipt of notice of the required Capital Contribution, make the required Capital Contribution to the Company.

(f) In the event that one Member (the "Non-Contributing Member") fails to contribute all of such Member's share of the additional Capital Contributions required pursuant to this Section 9.1 (the "Non-Contributing Member Shortfall") within the time specified, and the other Member (the "Contributing Member") is willing to contribute to the capital of the Company all of such Contributing Member's share of the additional Capital Contribution required pursuant to this Section 9.1 along with the Non-Contributing Member Shortfall,

the Contributing Member may contribute its required Capital Contribution along with the Non-Contributing Member Shortfall. Subject to Section 9.1(g), the Contributing Member's Capital Contribution shall cause the Sharing Ratio and the Extraordinary Net Profits Ratio of the Contributing Member to be increased, and the Sharing Ratio and the Extraordinary Net Profits Ratio of the Non-Contributing Member to be correspondingly decreased (as of the date of such Capital Contribution), to equal the percentage derived from the ratio (i) the numerator of which shall be the sum of the aggregate amount of such Contributing Member's Capital Contributions as of the date of such Capital Contribution (including the amount of the Contributing Member's contribution under this Section 9.1(f)), and (ii) the denominator of which shall be the aggregate amount of the Capital Contributions for all Members as of the date of such Capital Contribution (including the amount of the Contributing Member's contribution under this Section 9.1(f)).

(g) At any time prior to ninety (90) days after the date of the Final TRA Order, a Member (the "Reconciling Member") whose Capital Contributions to the Company have been less than the amount of (i) the Reconciling Member's original Sharing Ratio under this Operating Agreement multiplied by (ii) the aggregate amount of all Capital Contributions made as of such date (the "Aggregate Shortfall"), shall have the option but not the requirement to reimburse the other Member for the Aggregate Shortfall, plus an amount of interest calculated at 6% per annum from the date of each such Capital Contribution which created the Aggregate Shortfall. Upon such payment, the original Sharing Ratios and the Extraordinary Net Profits Ratios of the Members shall be restored. Any such restoration shall be made without reduction in the aggregate Capital Contributions to the Company and without regard to prior Company profits, losses and distributions.

9.2. Capital Accounts.

(a) The Company shall maintain a separate Capital Account for each Equity Owner in conformity with the requirements under Section 1.704-1(b)(2)(iv) of the Treasury Regulations. Consistent with such Treasury Regulations, each Equity Owner's Capital Account will be increased by (i) the amount of money contributed by such Equity Owner to the Company; (ii) the fair market value of property contributed by such Equity Owner to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Equity Owner of Net Profits; (iv) any items in the nature of income and gain which are specially allocated to the Equity Owner pursuant to subsections (a) through (f) of Section 10.3; and (v) allocations to such Equity Owner of income described in Section 705(a)(1)(B) of the Code. Each Equity Owner's Capital Account will be decreased by (i) the amount of money distributed to such Equity Owner by the Company; (ii) the fair market value of property distributed to such Equity Owner by the Company (net of liabilities secured by such distributed property that such

Equity Owner is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Equity Owner of expenditures described in Section 705(a)(2)(B) of the Code; (iv) any items in the nature of deduction and loss that are specially allocated to the Equity Owner pursuant to subsections (a) through (f) of section 10.3; and (v) allocations to such Equity Owner of Net Losses.

(b) In the event of a permitted sale or exchange of a Ownership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Ownership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) Upon liquidation of the Company, liquidating distributions will be made in accordance with the positive Capital Account balances of the Equity Owners, as determined after taking into account all Capital Account adjustments for the Company's Fiscal Year during which the liquidation occurs. Liquidation proceeds will be paid in accordance with Article 12.

ARTICLE 10 ALLOCATIONS AND DISTRIBUTIONS

10.1. Allocation of Operating Net Profits and Operating Net Losses. Subject to Section 10.3 below, the Operating Net Losses and Operating Net Profits for each Fiscal Year shall be allocated among the Equity Owners as follows:

(a) If the Company has Operating Net Losses, as follows:

(i) First, to MB, to the extent that MB's Capital Contributions (including for this purpose, Capital Contributions made to the Company by A&L) exceed [A] the cumulative Net Losses allocated to MB in prior Fiscal Years under this Section 10.1(a)(i) and under Section 10.2(a)(i), minus [B] the cumulative Net Profits allocated to MB in prior Fiscal Years under Sections 10.1(b)(iii) and 10.2(b)(iii);

(ii) Then, to MLGW, to the extent that MLGW's Capital Contributions exceed [A] the cumulative Net Losses allocated to MLGW in prior Fiscal Years under this Section 10.1(a)(ii) and under Section 10.2(a)(ii) below, minus [B] the cumulative Net Profits allocated to MLGW in prior Fiscal Years under Sections 10.1(b)(ii) and 10.2(b)(ii); and

(iii) Then, to MB and MLGW in accordance with their Sharing Ratios.

(b) If the Company has Operating Net Profits, as follows:

(i) First, to MB and MLGW, respectively, in accordance with their Sharing Ratios, to the extent that [A] the cumulative Net Losses allocated in prior Fiscal Years to MB and MLGW, respectively, under Sections 10.1(a)(iii) and 10.2(a)(iii), exceed [B] the cumulative Net Profits allocated in prior Fiscal Years to MB and MLGW, respectively, under this Section 10.1(b)(i) and under Section 10.2(b)(i);

(ii) Then, to MLGW, to the extent that [A] the cumulative Net Losses allocated to MLGW in prior Fiscal Years under Sections 10.1(a)(ii) and 10.2(a)(ii), exceed [B] the cumulative Net Profits allocated to MLGW in prior Fiscal Years under this Section 10.1(b)(ii) and under Section 10.2(b)(ii);

(iii) Then, to MB to the extent that [A] the cumulative Net Losses allocated to MB in prior Fiscal Years under Sections 10.1(a)(i) and 10.2(a)(i), exceed [B] the cumulative Net Profits allocated to MB in prior Fiscal Years under this Section 10.1(b)(iii) and under Section 10.2(b)(iii); and

(iv) Then, to MB and MLGW in accordance with their Sharing Ratios.

10.2. Allocation of Extraordinary Net Losses and Extraordinary Net Profits.
Subject to Section 10.3 below, the Extraordinary Net Losses and Extraordinary Net Profits for each Fiscal Year shall be allocated among the Equity Owners as follows, after first taking into account any allocations under Section 10.1 for such Fiscal Year:

(a) If the Company has Extraordinary Net Losses, as follows:

(i) First, to MB to the extent that MB's Capital Contributions (including for this purpose, Capital Contributions made to the Company by A&L) exceed [A] the cumulative Net Losses allocated to MB in the current and prior Fiscal Years under Section 10.1(a)(i), and in prior Fiscal Years under this Section 10.2(a)(i), minus [B] the cumulative Net Profits allocated to MB in the current and prior Fiscal Years under Section 10.1(b)(iii), and in prior Fiscal Years under Section 10.2(b)(iii);

(ii) Then, to MLGW to the extent that MLGW's Capital Contributions exceed [A] the cumulative Net Losses allocated to MLGW in the current and prior Fiscal Years under Section 10.1(a)(ii) above, and in prior Fiscal Years under this Section 10.2(a)(ii), minus [B] the cumulative Net Profits allocated to MLGW in the current and prior Fiscal Years under Section 10.1(b)(ii) and in prior Fiscal Years under Section 10.2(b)(ii); and

(iii) Then, to MB and MLGW in accordance with their Sharing Ratios.

(b) If the Company has Extraordinary Net Profits, as follows:

(i) First, to MB and MLGW, respectively, in accordance with their Sharing Ratios, to the extent that [A] the cumulative Net Losses allocated to MB and MLGW, respectively, in the current and prior Fiscal Years under Section 10.1(a)(iii) and in prior Fiscal Years under 10.2(a)(iii), exceed [B] the cumulative Net Profits allocated to MB and MLGW, respectively, in the current and prior Fiscal Years under 10.1(b)(i) and in prior Fiscal Years under this Section 10.2(b)(i);

(ii) Then, to MLGW to the extent that [A] the cumulative Net Losses allocated to MLGW in the current and prior Fiscal Years under Section 10.1(a)(ii) and in prior Fiscal Years under Section 10.2(a)(ii), exceed [B] the cumulative Net Profits allocated to MLGW in the current and prior Fiscal Years under Section 10.1(b)(ii) and in prior Fiscal Years under this Section 10.2(b)(ii);

(iii) Then, to MB to the extent that [A] the cumulative Net Losses allocated to MB in the current and prior Fiscal Years under Section 10.1(a)(i) and in prior Fiscal Years under Section 10.2(a)(i), exceed [B] the cumulative Net Profits allocated to MB in the current and prior Fiscal Years under Section 10.1(b)(iii) and in prior Fiscal Years under this Section 10.2(b)(iii); and

(iv) Then, to MB and MLGW in accordance with their Extraordinary Net Profits Ratios.

10.3. Special Allocations to Capital Accounts. Notwithstanding Sections 10.1 and 10.2 hereof:

(a) In the event any Equity Owner unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Equity Owner, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Equity Owner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 10.3(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(b) In the event any Equity Owner would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any

amount that such Equity Owner is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations and such Equity Owner's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations), the Capital Account of such Equity Owner shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 10.3, if there is a net decrease in the Company's minimum gain as defined in Treasury Regulation Section 1.704-2(d) during a taxable year of the Company, then, the Capital Accounts of each Equity Owner shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Equity Owner's share of the net decrease in Company minimum gain. This Section 10.3(c) is intended to comply with the minimum gain charge back requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain charge back requirement would cause a distortion in the economic arrangement among the Equity Owners and it is not expected that the Company will have sufficient other income to correct that distortion, the Members may in their discretion cause the Company to seek to have the Internal Revenue Service waive the minimum gain charge back requirement in accordance with Treasury Regulation Section 1.704-2(f)(4).

(d) Notwithstanding any other provision of this Section 10.3 except Section 10.3(c), if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt (determined in accordance with Regulation § 1.704-2(i)(5)) as of the beginning of the year shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain shall be determined in accordance with Regulation § 1.704-2(i)(4); provided that a Member shall not be subject to this provision to the extent that an exception is provided by Regulation § 1.704-2(i)(4) and any Revenue Rulings issued with respect thereto. Any Member Nonrecourse Debt Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Member Nonrecourse Debt, and, second, if necessary, a pro rata portion of the Company's other items of income or gain for that year. This Section 10.3(d) is intended to comply with the minimum gain charge back requirement in Regulation § 1.704-2(i)(4) and shall be interpreted consistently

therewith.

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) which are attributable to any nonrecourse debt of the Company and are characterized as partner (Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Equity Owners' Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations), such deductions shall be allocated to the Equity Owners in the same manner as Net Loss is allocated for such period.

10.4. Application of Credits and Charges. Any credit or charge to the Capital Accounts of the Equity Owners pursuant to subsections (a) through (f) of Section 10.3 shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to Sections 10.1 and 10.2, so that the net amount of any items charged or credited to Capital Accounts pursuant to subsections (a) through (f) of Section 10.3 hereof shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Equity Owner pursuant to the provisions of this Article 10 if the special allocations required by Sections 10.3(a) through 10.3(f) had not occurred.

10.5. Distributions.

(a) Within sixty (60) days after the end of each Fiscal Year, unless otherwise agreed by the Members, the Company shall distribute to the Equity Owners, in accordance with their Sharing Ratios, an amount equal to forty-five percent (45%) of the Net Profits allocated to the Equity Owners with respect to such Fiscal Year to the extent of cash available therefore.

(b) By mutual agreement, the Members may from time to time authorize additional distributions of cash or other property to Equity Owners, provided that no distribution shall be declared and paid unless, after the distribution is made, the assets of the Company exceed its liabilities, and the Company satisfies such other requirements as may apply under the Act. Except as provided in Article 12, all distributions made by the Company with respect to Ownership Interests (excluding distributions in redemption of all or part of an Equity Owner's Ownership Interest) shall be allocated among the Equity Owners in accordance with their Sharing Ratios.

10.6. Interest On and Return of Capital Contributions. No Member shall be entitled to interest on, or to a return of, the Member's Capital Contribution, except as otherwise specifically provided in this Operating Agreement.

10.7. Tax Matters Partner. MB shall be the Tax Matters Partner as defined in Section 6231(a)(7) of the Code for so long as MB is a Member of the Company.

10.8. Certain Allocations for Income Tax (But Not Book Capital Account) Purposes.

(a) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)-(iv) of the Treasury Regulations, if a Member contributes property with a initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution pursuant to such method as determined by the Manager.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Equity Owner within seven years of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Equity Owner under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

(c) In the case of any distribution by the Company to a Equity Owner, such Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain in an amount equal to the lesser of:

(1) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of such Equity Owner's Ownership Interest immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Equity Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Equity Owner under Section 704(c)(1)(B) of the Code if all property which (1) had been contributed to the Company within seven years of the distribution, and (2) is held by the Company immediately before the distribution, had been distributed by the Company to another Equity Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Equity Owner to the

Company, then such property shall not be taken into account under this Section 10.8(c)(2) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(d) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Equity Owners to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Equity Owner is allocated any gain from the sale or other disposition of such property.

ARTICLE 11 TRANSFER OF MEMBERSHIP INTERESTS

11.1. Restrictions on Transfer of Ownership Interests. An Equity Owner shall not sell, assign, transfer, give away or otherwise dispose of all or any part of the Equity Owner's Ownership Interest without the prior written consent of the other Members, except as permitted in this Article 11 or in Section 3.4.

11.2. Permitted Transfers. Each Member may grant a security interest in any or all of its Financial Rights and in its right to assign its Financial Rights (the "Collateral"), but no Member may grant a security interest in its Governance Rights or its right to assign its Governance Rights. If the secured party forecloses on its security interest in the Collateral, the foreclosure shall constitute an Involuntary Transfer under Section 11.7 below. If the Company and the other Members elect not to purchase the Collateral under Section 11.7, the Involuntary Transfer shall be effected, but the Involuntary Transfer shall not result in the secured party becoming a Member.

11.3. Prohibited Transfers. Except as provided in Sections 3.4, 11.2 and 11.6 hereof, for a period of four years following the Approval Date (the "First Period"), neither Member shall directly or indirectly transfer all or part of its Ownership Interest without the prior written consent of the other Member, which consent may be withheld for any reason.

11.4. Right of First Refusal and Come Along.

(a) From and after the expiration of the First Period, subject to the provisions of Section 11.6, if a Member (the "Offering Member") proposes to sell all of its Ownership Interest in the Company ("Offered Interest") pursuant to a bona fide written offer ("Offer"), it shall give written notice (the "Purchase Notice") to the Company and the other Member (the "Offeree Member"), fully describing the offeror (the "Third Party Offeror") and the terms and conditions of the Offer. An Offer shall not be treated as being bona fide unless the full purchase price is

payable in cash at the closing.

(b) The Offeree Member shall have an option to purchase all of the Offered Interest at the purchase price and upon the other terms specified in the Offer, exercisable by giving written notice thereof to the Offering Member and the Company within sixty (60) days after the date of the Purchase Notice.

(c) If the Offeree Member fails to exercise its option, the Company shall have an option to purchase all of the Offered Interest at the purchase price and upon the other terms specified in Offer, exercisable by giving written notice thereof to the Members within seventy (70) days after the date of the Purchase Notice.

(d) If either of the options granted in subsections (b) and (c) of this Section 11.4 is exercised, the closing shall be held at the principal executive office of the Company within thirty (30) days after the applicable option is exercised. At such closing, the Offering Member shall deliver to the Offeree Member or the Company, whichever is applicable, a bill of sale and assignment effecting the transfer of the Offered Interest, together with such other documents which the Offeree Member or the Company reasonably requests to effect the purposes of this Operating Agreement.

(e) If neither the Offeree Member nor the Company elects to purchase all of the Offered Interest, the Offering Member may sell all of the Offered Interest to the Third Party Offeror, except that if the Purchase Notice was given within three (3) years after the expiration of the First Period (the "Second Period"), and if, within seventy-five (75) days after the date of the Purchase Notice, the Offeree Member notifies the Offering Member of its desire to participate in the sale to the Third Party Offeror, the Offering Member shall not sell the Offered Interest to the Third Party Offeror, unless the Third Party Offeror concurrently purchases all of the Offeree Member's Ownership Interest. The purchase price for the Offeree Member's Ownership Interest shall be payable in upon the same terms and conditions set forth in the Offer, and shall be an amount which is proportionate to the amount otherwise payable with respect to the Offered Interest. The sale by the Offering Member (or by the Offering Member and the Offeree Member, if the Offeree Member exercises its right to participate in the sale) to the Third Party Offeror shall be closed within one hundred and eighty (180) days of the date of the Purchase Notice, or else the Offered Interest shall once again be subject to the provisions of this Section 11.4.

(f) The Third Party Offeror shall be bound by all of the terms and conditions of this Operating Agreement with respect to the Ownership Interests it purchases under this Section 11.4.

11.5. Change in Control of MB. MB shall not permit a Change in Control of MB, without the prior written consent of MLGW, which consent will not be unreasonably withheld, conditioned or delayed. For purposes of this Section 11.5, the term "Change

in Control of MB" means that (a) owners of MB on the date hereof for any reason (other than death or a transaction under Section 11.6) cease to own at least 51% of the voting rights of MB, either directly, or indirectly through one or more Entities, and (b) as a result of or related to such 51% change, each of the MB Governors who have been appointed by MB are (or have been) replaced.

11.6. MB Put Options. The parties shall have the following put option and other rights and obligations:

(a) Regulatory Put. MB shall have the option to sell and MLGW shall have the obligation to purchase MB's Ownership Interest at the applicable purchase price ("Purchase Price") set forth herein (the "Regulatory Put Option") upon the occurrence of any of the events described in Sections 11.6(a)(i) through (iv) below (each, a "Regulatory Put Option Event"):

(i) at any time after the TRA denies in any material respect the Amended Application and Joint Petition, or the City of Memphis denies or rejects approval of a franchise to the Company on terms and conditions acceptable to MB, unless the denial of the requested relief or franchise results primarily from a material breach of a contractual obligation of MB to MLGW after the date hereof;

(ii) at any time on or after June 30, 2001, if a TRA Order has not been obtained approving in all material respects the Amended Application and Joint Petition, unless the denial of the requested relief results primarily from a material breach of a contractual obligation of MB to MLGW after the date hereof;

(iii) the City of Memphis shall fail to grant a franchise to the Company on terms and conditions acceptable to MB at any time on or after the earlier of (A) June 30, 2001, or (B) sixty (60) days after the TRA Order; or

(iv) MB determines that any of the regulatory proceedings related to obtaining a Final TRA Order, approval of the City of Memphis or any other regulatory approval becomes unduly burdensome or untenable.

The Purchase Price payable under Sections 11.6(a) (i), (ii), (iii) or (iv) above shall be an amount equal to the sum of (A) \$2,789,359.60, (B) the Prior Costs, the Subsequent Costs, the Interim Contributions or other amounts, however designated, paid by MB to the Company, (C) the lesser of (x) 50% of the costs and expenses incurred by MB in connection with the acquisition of A&L's Ownership Interest in the Company (the "Acquisition") and any equity raising and (y) \$50,000, and (D) a rate of return calculated at MLGW's cost of funds (6%) on the amounts described in (A) and (B) paid by MB, calculated from the date(s) paid by MB to the closing of the sale of the Ownership Interest

pursuant to the exercise of the Regulatory Put Option.

(b) Fair Market Value Put. MB shall have the option to sell and MLGW shall have the option (and, if applicable, the obligation as provided in Section 11.6(e) under the circumstances set forth therein) to purchase MB's Ownership Interest at the applicable Purchase Price set forth herein (the "FMV Put Option" and, together with the Regulatory Put Option, the "Put Options") upon the occurrence of any of the events described in Sections 11.6(b)(i) and (ii) below (each, a "FMV Put Option Event" and, together with any Regulatory Put Option Event, a "Put Option Event"):

(i) if more than 10% of MLGW (measured as a whole) is sold, assigned or transferred to any person or entity other than an Affiliate, or MLGW sells, assigns or transfers all or any part of its Ownership Interest in the Company to any person or entity other than an Affiliate; or

(ii) at any time after thirty (30) months from the date of the TRA Order.

The Purchase Price with respect to a FMV Put Option under Sections 11.6(b)(i) or (ii) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below.

(c) The applicable Purchase Price set forth in this Section 11.6 shall be payable on the Put Option Closing Date in cash or by wire transfer of immediately available funds in lawful money of the United States of America to the account designated by MB. If MB has the right to exercise its Put Option under more than one of the Put Option Events, MB shall be deemed to have exercised (or to have changed its election to) whichever Put Option Event will result in a higher Purchase Price.

(d) The exercise of a Put Option by MB shall be deemed to be, and shall constitute without any further action on the part of MB, an irrevocable offer by MB to sell, and (x) as to a Regulatory Put Option, an obligation, or (y) as to a FMV Put Option, an option (or, if applicable under the circumstances described in Section 11.6(e) below, an obligation), of MLGW to purchase, the Ownership Interest of MB in the Company on the terms described herein. If pursuant to such option, MLGW does not give MB notice of its election to purchase the Ownership Interest of MB in the Company within thirty (30) days after the determination of fair market value in the case of the exercise of the FMV Put Option by MB, MLGW shall be deemed to have elected not to purchase MB's Ownership Interest in the Company. The closing (the "Applicable Closing Date") of the sale of the Ownership Interest of MB pursuant to the exercise of the applicable Put Option (the "Put Option Closing"), shall occur no later than ninety (90) days after the exercise of the Regulatory Put Option by MB, and, in the case of a FMV Put Option, no later than the later of (i) ninety (90) days after the

determination of fair market value as provided in Section 11.8, and (ii) one hundred twenty (120) days after the exercise of a FMV Put Option by MB. At the Put Option Closing, MB shall assign, transfer and convey its entire Ownership Interest in the Company to MLGW free and clear of all liens, claims, debts or other encumbrances. The closing of any transfer of the Ownership Interest pursuant to this Operating Agreement shall occur at the principal office of the Company. At such closing, MB shall do all other things and execute and deliver all such documents as may be necessary or reasonably requested by MLGW in order to consummate the transfer of such Ownership Interest.

(e) If MLGW fails for any reason to purchase MB's Ownership Interest pursuant to the exercise of the Put Option by MB on or before the Applicable Closing Date, or, if applicable, MLGW elects not to purchase MB's Ownership Interest pursuant to the exercise of the FMV Put Option by MB, then MLGW and MB shall, as soon as practicable, engage an investment banking firm or another nationally recognized firm with substantial experience in the marketing and sale of telecommunications companies, and use their best efforts to sell (including obtaining all applicable regulatory approvals) the Company (or with the mutual agreement of the parties their respective Ownership Interests in the Company) to one or more third parties (the "Memphis Networkx Sale"). In the event of a Memphis Networkx Sale, the amounts payable to the Members shall be determined in accordance with this Operating Agreement and not based on the Purchase Price of the Ownership Interest pursuant to the exercise of the Put Option. If MLGW fails or refuses to consummate the Memphis Networkx Sale, or fails to cooperate and act in good faith, in the sale and negotiation of the Memphis Networkx Sale, to a bona fide purchaser on terms reasonably acceptable to MB, MB shall have the right to sell the Ownership Interest to MLGW, and MLGW shall be deemed to have accepted and shall be obligated to purchase the Ownership Interest within thirty (30) days thereafter, and in such case the Purchase Price shall be at 100% of the fair market value redetermined, as provided in Section 11.8, as of a date not less than sixty (60) days prior to the closing. Notwithstanding the foregoing, if the purchase price offered in connection with the Memphis Networkx Sale is 85% or less than the fair market value, as determined in Section 11.8 (the "Offered Price"), MLGW shall have the option ("MLGW Option"), for a period of thirty (30) days after the receipt of such offer, to purchase, and, if exercised, MB shall sell the Ownership Interest to MLGW within thirty (30) days thereafter at the amount which would be payable to MB, determined in accordance with this Operating Agreement, if the Company were sold in a Memphis Networkx Sale at the Offered Price. In the event MLGW fails to exercise the MLGW Option within the time period set forth above, MB shall have the right and MLGW shall be deemed to have agreed to, and shall enter into and consummate, the Memphis Networkx Sale at a price not less than the Offered Price.

11.7. Involuntary Transfers.

(a) Upon the occurrence of an Involuntary Transfer with respect to a Member (the "Affected Member"), the Company or the other Member shall have an option to purchase all (but not less than all) of the Ownership Interest of the Affected Member with respect to which the Involuntary Transfer has occurred (the "Affected Interest"). An "Involuntary Transfer" means any purported involuntary transfer, sale or other disposition of all or any part of an Ownership Interest in the Company, whether by operation of law, pursuant to court order, execution of a judgment or other legal process or otherwise, and including a purported transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors.

(b) Upon the occurrence of an Involuntary Transfer, the Affected Member shall promptly notify the Company and the other Members thereof, stating when and why the Involuntary Transfer occurred, the percentage of the Affected Member's Ownership Interest which is involved, and the name, address and capacity of the transferee, if a purported transfer has occurred. If no such notice is given, the Company or any other Member may institute purchase proceedings under this Section 11.7 by giving written notice thereof to the Affected Member.

(c) The Company shall have the first option, exercisable by giving notice thereof to the Members within thirty (30) days after the date of the notice of Involuntary Transfer, to purchase all or any part of such Affected Interest at the price and terms provided below, and the other Member shall then have a second option, exercisable by giving notice thereof to the Company and the Affected Member within sixty (60) days after the date of the notice of Involuntary Transfer, to purchase all or any part of the Affected Interest which the Company elects not to purchase, upon the same terms and conditions as exist in favor of the Company. If the Company and the other Member do not together purchase all of the Affected Interest, the options granted in this Section 11.7 shall be inapplicable, and the Involuntary Transfer may be effected without regard to this Section 11.7.

(d) The purchase price for an Affected Interest shall be its fair market value, as determined in accordance with Section 11.8 below, as of the end of the calendar quarter immediately preceding the earlier of the date of the Affected Member's notice of Involuntary Transfer, if any, or the date the Company or any Member notifies the Affected Member that purchase proceedings have been instituted under this Section 11.7. The purchase price shall be payable entirely in cash at the closing.

(e) The closing of any sale under this Section 11.7 shall be held at the principal executive office of the Company within fifteen (15) days after the determination of the fair market value of the Affected Interest pursuant to Section 11.8. At the closing, the Affected Member shall deliver to the Company and/or the purchasing Member a bill of sale and assignment effecting the transfer of the

Ownership Interest, together with such other documents which the Company and/or purchasing Member reasonably requests to effect the purposes of this Operating Agreement.

(f) Upon the occurrence of an Involuntary Transfer with respect to an Affected Member, the remaining Member may continue the existence of the Company and its business.

11.8. Fair Market Value.

(a) For purposes of this Operating Agreement, the "fair market value" of an Ownership Interest means the fair market value of the Ownership Interest determined by valuing the Company as a whole and as a going concern, without any discounts for liquidity, minority interest or similar discounts, as of the end of the fiscal quarter of the Company immediately preceding the exercise of the applicable options, as mutually agreed upon in writing by MLGW and MB within fifteen (15) days after the exercise of the applicable option. If the parties do not agree upon the fair market value of the Ownership Interest within such fifteen (15) day period, such value shall be based upon the fair market value determined by a board of up to three (3) appraisers, one of whom shall be designated by MLGW, one by MB, and the two so appointed shall, if necessary, select a third. Each member of the board of appraisers shall (i) be an independent valuation/appraisal specialist or investment banker specializing in the field of making appraisals of equity interests in telecommunications businesses, (ii) have not less than ten (10) years' experience in such field, and (iii) be recognized as ethical and reputable within the field (each, a "Qualified Appraiser"). MLGW and MB shall be solely responsible for and shall pay all of the fees and expenses of their respective Qualified Appraisers appointed by them pursuant to this Section 11.8(a), and each shall pay one-half (½) of the fees and expenses of the third Qualified Appraiser, if any, appointed pursuant to this Section 11.8(a). MLGW and MB shall make their appointments within five (5) days after the expiration of the foregoing fifteen (15) day period. The two Qualified Appraisers selected by MLGW and MB shall submit to MLGW and MB, within thirty (30) days after their appointments to the board of appraisers, their written determinations of the fair market value of the Ownership Interest, and if the difference between the two (2) determinations is less than ten percent (10%), the mean of the two determinations shall be the fair market value of the Ownership Interest. Otherwise, the Qualified Appraisers shall appoint a third Qualified Appraiser to the board of appraisers within five (5) days after the expiration of the thirty (30) day period described in the immediately preceding sentence, who shall submit to MLGW and MB, within fifteen (15) days after its appointment, its written determination of the fair market value of the Ownership Interest. In such event, the fair market value shall be the mean of the two (2) closest determinations of fair market value by the three (3) Qualified Appraisers, but in no event shall be higher than the highest determination of fair market value by the initial two (2) Qualified Appraisers or lower than the lowest

determination of fair market value by the initial two (2) Qualified Appraisers.

(b) Any determination of fair market value under this Section 11.8 shall be final and conclusive. If either party shall fail to select a Qualified Appraiser as aforesaid, the fair market value shall be determined by the Qualified Appraiser selected by the other party. If the two (2) Qualified Appraisers selected as described above fail to agree upon the selection of a third (3rd) Qualified Appraiser as aforesaid, then within five (5) days after the expiration of the time period for appointing the third (3rd) Qualified Appraiser, either of the parties upon written notice to the other party may seek arbitration in Memphis, Tennessee to select the third (3rd) Qualified Appraiser, before an arbitrator appointed by the American Arbitration Association and pursuant to the Commercial Rules of the American Arbitration Association (the "Rules") in effect at the time any arbitration proceeding is commenced, which Rules are hereby incorporated by reference hereto and made a part of this Agreement.

ARTICLE 12 DISSOLUTION AND TERMINATION

12.1. Dissolution Events. The Company shall be dissolved only upon the occurrence of any of the following events:

- (a) Any event specified in the Articles;
- (b) By action of the Members pursuant to § 48-245-202 of the Act;
- (c) By order of a court pursuant to §§ 48-245-901 or 48-245-902 of the Act;
- (d) By action of the Secretary of State pursuant to § 48-245-302 of the Act; or
- (e) A merger in which the Company is not the surviving organization.

The Company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a Member if there is at least one (1) remaining Member.

12.2. Notice of Dissolution. If the Members agree to dissolve the Company pursuant to § 48-245-202 of the Act, or if the Company is dissolved upon the occurrence of an event specified in the Articles, the Company shall file with the Tennessee Secretary of State a notice of dissolution. The Company shall cease to carry on its business, except to the extent necessary (or appropriate) for the winding up of the business of the Company. The Members shall retain the right to revoke the dissolution in accordance with § 48-245-601 of the Act and the right to remove or appoint Governors and managers. The Company's existence shall continue until the

dissolution is revoked or articles of termination are filed with the Tennessee Secretary of State.

12.3. Procedure in Winding Up. If the business of the Company is to be wound up and terminated other than by merging the Company into a surviving business entity, the following procedures shall be followed:

(a) When a notice of dissolution has been filed with the Tennessee Secretary of State, the Board, or the managers acting under the direction of the Board, shall proceed as soon as possible to collect or make provision for the collection of all known debts due or owing to the Company, including unperformed contribution agreements, and except as provided in § 48-245-502 of the Act (relating to known and unknown claims), pay or make provision for the payment of all known debts, obligations, and liabilities of the Company according to their priorities under § 48-245-1101 of the Act.

(b) When a notice of dissolution has been filed with the Tennessee Secretary of State, the Board may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of the Company without a vote of the Members. Any Net Profits or Net Losses from such sales shall be allocated to the Equity Owners' Capital Accounts in accordance with Article 10 hereof.

(c) All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the Company shall be distributed to the Equity Owners in accordance with the Capital Account balances of the Equity Owners. The assets may be distributed in cash or in kind as determined by the Board. Any assets distributed in kind shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Equity Owners shall be adjusted pursuant to the provisions of Article 10 of this Operating Agreement to reflect the deemed sale. Distributions to the Equity Owners in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(d) If any Equity Owner has a Deficit Capital Account at the time of a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which the liquidation occurs), such Equity Owner shall not be obligated to make any Capital Contribution, and the negative balance in the Member's Capital Account shall not be considered a debt owed by such Equity Owner to the Company or to any other Person for any purpose whatsoever.

12.4. Articles of Termination. The Company shall file its Articles of Termination with the Secretary of State upon its dissolution and the completion of winding up of its business.

12.5. Return of Contribution Nonrecourse to Other Equity Owners. Upon dissolution, except as provided by law or as expressly provided in this Operating Agreement, each Equity Owner shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company's assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the cash contribution of one or more Equity Owners, such Equity Owners shall have no recourse against any other Equity Owner.

12.6. Withdrawal of a Member. Neither MB nor MLGW shall withdraw from the Company without the other's approval, subject to the right of each Member to sell or otherwise dispose of its Ownership Interest in accordance with Article 11.

ARTICLE 13 INDEMNIFICATION

13.1. Definitions. As used in this Article, unless the context otherwise requires:

- (a) "Expenses" include counsel fees.
- (b) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable Expenses incurred with respect to a Proceeding.
- (c) "Official Capacity" means the position of Governor and the elective or appointive office or position held by a manager, member of a committee of the Board, or the employment or agency relationship undertaken by an employee or agent on behalf of the Company. "Official Capacity" does not include service for any other foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprises.
- (d) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a Proceeding.
- (e) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.
- (f) "Responsible Person" means an individual who is or was a Governor of the Company, or an individual who, while a Governor of the Company, is or was serving at the Company's request as a governor, manager, director, officer, partner, trustee, employee, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, employee benefit plan or other enterprise. A Governor is considered to be serving an employee benefit plan at the Company's request if the Governor's duties to the Company also impose duties on, or otherwise involve services by the Governor to the plan or to participants in or beneficiaries of the plan."

Responsible Person" includes, unless the context requires otherwise, the estate or personal representative of a Responsible Person.

(g) "Special Legal Counsel" means counsel who has not represented the Company or a related limited liability company, or a Governor, manager, member of a committee of the Board, agent or employee, whose indemnification is in issue.

13.2. Authority to Indemnify. The Company shall indemnify an individual made a Party to a Proceeding because such individual is or was a Responsible Person against Liability incurred in the Proceeding if the individual acted in good faith and reasonably believed, in the case of conduct in such individual's Official Capacity with the Company, that such individual's conduct was in the Company's best interest, and in all other cases, that such individual's conduct was at least not opposed to the Company's best interests, and in the case of any criminal Proceeding, had no reasonable cause to believe such individual's conduct was unlawful.

(a) A Responsible Person's conduct with respect to an employee benefit plan for a purpose such person reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of this Section 13.2.

(b) The termination of a Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Responsible Person did not meet the standard of conduct described in this Section 13.2.

(c) Except as provided in Section 13.5 below, the Company may not indemnify a Responsible Person in connection with a Proceeding by or in the right of the Company in which the Responsible Person was adjudged liable to the Company, or in connection with any other Proceeding charging improper personal benefit to such Responsible Person, whether or not involving action in such person's Official Capacity, in which such person was adjudged liable on the basis that personal benefit was improperly received by such person.

13.3. Mandatory Indemnification. The Company shall indemnify a Responsible Person who was wholly successful, on the merits or otherwise, in the defense of any Proceeding to which the person was a Party because the person is or was a Responsible Person of the Company against reasonable Expenses incurred by the person in connection with the Proceeding.

13.4. Advances for Expenses. The Company shall pay for or reimburse the reasonable Expenses incurred by a Responsible Person who is a Party to a Proceeding in advance of final disposition of the Proceeding if (i) the Responsible person furnishes the Company a written affirmation of good faith belief that the Person has met the standard of conduct described in Section 13.2; (ii) the Responsible Person furnishes

the Company a written undertaking, executed personally or on such person's behalf, to repay the advance if it is ultimately determined that the Person is not entitled to indemnification; and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article. The undertaking required by this section must be an unlimited general obligation of the Responsible Person but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this section shall be made in the manner specified in Section 13.6.

13.5. Court-Ordered Indemnification. A Responsible Person of the Company who is a Party to a Proceeding may apply for indemnification to the court conducting the Proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(a) The Responsible Person is entitled to mandatory indemnification under Section 13.3, in which case the court shall also order the Company to pay the Responsible Person's reasonable Expenses incurred to obtain court-ordered indemnification; or

(b) The Responsible Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the person met the standard of conduct set forth in Section 13.2 or was adjudged liable as described in Section 13.2(c), but if the person was adjudged so liable the person's indemnification is limited to reasonable Expenses incurred.

13.6. Determination and Authorization of Indemnification. Except as provided in Section 13.5, the Company may not indemnify a Responsible Person under Section 13.2 unless authorized in the specific case after a determination has been made that indemnification of the Responsible Person is permissible in the circumstances because the person has met the standard of conduct set forth in Section 13.2. The determination shall be made:

(a) By the Board by majority vote of a quorum consisting of Governors not at the time Parties to the Proceeding;

(b) If a quorum cannot be obtained under Section 13.6(a), by majority vote of a committee duly designated by the Board (in which designation Governors who are parties may participate), consisting solely of two (2) or more Governors not at the time parties to the Proceeding;

(c) By independent Special Legal Counsel selected by the Board or by a committee in the manner prescribed in Section 13.6(a) or (b), or if a quorum of the Board cannot be obtained under Section 13.6(a) and a committee cannot be designated under Section 13.6(b), selected by majority vote of the full Board (in which selection Governors who are parties may participate); or

(d) By the members of the Company, but ownership interests owned by or voted under the control of members who are at the time parties to the Proceeding may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of Expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by Special Legal Counsel, authorization of indemnification and evaluation as to reasonableness of Expenses shall be made by those entitled under Section 13.6(c) to select counsel.

13.7. Indemnification of Managers, Employees and Agents.

(a) A manager of the Company who is not a Responsible Person is entitled to mandatory indemnification under Section 13.3, and is entitled to apply for court-ordered indemnification under Section 13.5, in each case to the same extent as a Responsible Person.

(b) The Company may indemnify and advance Expenses to a manager, employee, independent contractor or agent of the Company who is not a Responsible Person to the same extent as a Responsible Person.

(c) The Company may also indemnify and advance Expenses to a manager, employee, independent contractor or agent who is not a Responsible Person to the extent, consistent with public policy, provided by general or specific action of the Board, or by contract.

13.8. Insurance. The Company shall purchase and maintain insurance on behalf of an individual who is or was a Responsible Person, manager, employee, independent contractor, or agent of the Company, or who, while a Responsible Person, manager, employee, independent contractor, or agent of the Company, is or was serving at the request of the Company as a Responsible Person, manager, partner, trustee, employee, independent contractor, or agent of another foreign or domestic limited liability company, corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against Liability asserted against or incurred by such person in that capacity or arising from such person's status as a Responsible Person, manager, officer, employee, independent contractor, or agent, whether or not the Company would have power to indemnify such person against the same Liability under Section 13.2 or 13.3.

13.9. Application of Article. The indemnification and advancement of Expenses provided by this Article shall not be deemed exclusive of any other rights to which a Responsible Person seeking indemnification or advancement of Expenses may be entitled, whether contained in the Act, the Articles, or this Operating Agreement, or when authorized by the Articles or this Operating Agreement, in a resolution of members, a resolution of Governors, or an agreement providing for such

indemnification; provided, that no indemnification may be made to or on behalf of any Responsible Person if a judgment or other final adjudication adverse to the Responsible Person or officer establishes such person's Liability for any breach of the duty of loyalty to the Company or its members, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or under § 48-237-101 of the Act (relating to wrongful distributions). Nothing contained in this section shall affect any rights to indemnification to which the Company's personnel, other than Responsible Persons, may be entitled by contract or otherwise under law. This section does not limit the Company's power to pay or reimburse Expenses incurred by a Responsible Person in connection with such person's appearance as a witness in a Proceeding at a time when such person has not been made a named defendant or respondent to the Proceeding.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1. Notices. Except as otherwise provided in this Operating Agreement, all notices, requests, demands, letters, waivers and other communications required or permitted to be given under this Operating Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by facsimile and the appropriate answer back is received or receipt is otherwise confirmed.

14.2. Books of Account and Records. The manager shall keep complete records and books of account at the principal executive office of the Company, which shall be open to the reasonable inspection and examination by the Equity Owners and their duly authorized representatives during reasonable business hours.

14.3. Application of Law. This Operating Agreement shall be governed by the laws of the State of Tennessee. To the extent permitted by law, the courts of Shelby County, Tennessee shall be the exclusive forum for the litigation of any disputes under this Operating Agreement.

14.4. Amendments. This Operating Agreement may not amended without the unanimous approval of the Members.

14.5. Heirs, Successors and Assigns. This Operating Agreement shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

14.6. Creditors and Other Third Parties. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any third parties, including, without limitation, any creditors of the Company.

14.7. Counterparts. This Operating Agreement may be executed in

counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. This Agreement shall become effective as of the date specified in the opening paragraph and shall be binding on each party upon the execution by each party of at least one counterpart hereof, and it shall not be necessary that any single counterpart bear the signatures of all parties. Execution and delivery of this Agreement by delivery of a facsimile copy bearing the facsimile signature of a party shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

14.8. Limitation of Liability. The obligations of MLGW under this Operating Agreement shall be limited to the extent required by applicable state and federal law and shall be further subject to the second sentence of Section 1 of the Wholesale Power Contract between MLGW and the Tennessee Valley Authority dated December 26, 1984 and to Paragraph 1 of the Schedule of Terms and Conditions attached to the Wholesale Power Contract (and to substantially similar anti-commingling provisions in any subsequent contract or amended contract between TVA and MLGW). Without limitation of the foregoing, MB acknowledges that (i) MLGW's liability for any tortious acts or omissions or breaches of contract under this Operating Agreement shall be limited to its Ownership Interest in the Company and the other resources and assets within, or allocated to, the Telecommunications Division of the Electric Division of MLGW; (ii) neither the Electric Division (except for its Telecommunications Division), the Gas Division, nor the Water Division of MLGW assumes any financial obligation under this Operating Agreement; and (iii) neither the tax revenues nor the taxing power of the City of Memphis, Tennessee are in any way pledged or obligated under this Operating Agreement.

14.9. Entire Agreement. This Operating Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.

THIS AMENDED AND RESTATED OPERATING AGREEMENT has been adopted by the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION



Herman Morris, President
and Chief Executive Officer

By:

MEMPHIS BROADBAND, LLC

By:

Its:

THIS AMENDED AND RESTATED OPERATING AGREEMENT has been adopted by
the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: _____

Herman Morris, President
and Chief Executive Officer

MEMPHIS BROADBAND, LLC

By: _____

Frank M. Lee

Its: _____

Manager

Tab 23

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

SECOND AMENDMENT TO OPERATING AGREEMENT

This Second Amendment ("Second Amendment") to the Amended and Restated Operating Agreement of Memphis Networkx, LLC dated November 29, 2000, as amended by Amendment ("First Amendment") to Amended and Restated Operating Agreement dated April 1, 2003, (collectively, the "Operating Agreement") is entered into effective as of the 2nd day of June, 2005 by and between Memphis Light, Gas and Water Division ("MLGW") and Memphis Broadband, LLC ("MB").

WHEREAS, MLGW and MB are parties to the Operating Agreement and are the sole members of Memphis Networkx, LLC. (Capitalized terms that are not defined herein shall have the same meaning as defined in the Operating Agreement; Sections referenced herein are references to Sections of the Operating Agreement.)

WHEREAS, MB and MLGW desire to amend the Operating Agreement, upon the terms and subject to the conditions contained herein.

NOW, THEREFORE, the parties hereby agree that effective immediately upon the execution of the Second Amendment (the "Effective Date"), the Operating Agreement shall be amended as follows:

1. Section 1.40. Section 1.40 is amended to read as follows

1.40 "Sharing Ratio" means:

<u>Member</u>	<u>Sharing Ratio</u>
MLGW	56.14 %
MB	43.86 %

2. Sections 5.3 – 5.4. Sections 5.3 and 5.4 are amended to read as follows:

5.3. Election and Qualifications. Governors need not be residents of the State of Tennessee nor hold Membership Interests, but must be natural persons. Upon the Effective Date and at each annual meeting of Members, beginning with the annual meeting of Members to be held in November, 2005, (i) MLGW shall be entitled to elect three (3) of the seven (7) Governors (the "MLGW Governors"), (ii) MB shall be entitled to elect three (3) of the seven (7) Governors (the "MB Governors") and (iii) the seventh Governor shall be any natural person approved by all of the Members. Each Governor elected by MLGW shall be either the President, the Secretary/Treasurer, the Chief Operating Officer, or other officer of MLGW (other than MLGW's General Counsel) selected by the President of MLGW, or a member of the Board of Commissioners of MLGW, or a person not affiliated with MLGW. It is agreed that nominee(s) for MLGW Governors who are not affiliated with MLGW must be approved by all of the Members. Each Governor shall serve until the next annual meeting of the Members and until the

Governor's successor is elected and qualified, or until the earlier death, resignation, removal or disqualification of the Governor.

Effective as of the date of the Second Amendment, the MLGW Governors elected or designated by MLGW are Nick Clark, Joseph Lee and John McCullough; and the MB Governors elected or designated by MB are Andrew Seamons, Luke Yancey and _____.

5.4. Resignation, Removal and Vacancies. A Governor may resign at any time by giving a written resignation to the secretary or chief manager of the Company. The resignation is effective without acceptance when it is actually received by the secretary or chief manager, unless a later effective time is specified in the resignation. MLGW, and only MLGW, may remove any of the MLGW Governors at any time, and the removal may be with or without cause. MB, and only MB, may remove any of the MB Governors at any time, and the removal may be with or without cause. A Governor may be removed by MLGW or MB, whichever is applicable, only at a meeting called for the purpose of removing the Governor, and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is to remove one (1) or more Governors. If a vacancy among the MLGW Governors or the MB Governors occurs on the Board, such vacancy may be filled only by the Member who elected the Governor whose position has been vacated. In the case of any other vacancy occurring on the Board, such vacancy shall be filled by a unanimous vote of Members.

3. Section 9.1(d). Section 9.1(d) is amended to read as follows:

(d) The Capital Contributions of each Member shall be conditioned upon the concurrent Capital Contribution required of the other Member. Except as specified in Sections 9.1(b) and (c), no Member shall be obligated to make any additional Capital Contributions to the Company without the unanimous approval of the Members. The Members shall be permitted, but not required, to make loans to the Company. Loans shall not be treated as a Capital Contribution unless such is approved by all the Members. Loans shall bear interest from the date advanced until repaid at the fluctuating Prime Rate. Notwithstanding the foregoing, with the unanimous approval of the Members, the Capital Contributions of the Members shall include the maximum, aggregate dollar amount of (i) any personal guarantee(s) made or (ii) letters of credit provided by a Member (or the constituent members of a Member) to any bank or other financial institution for loans or credit facilities made to the Company, which shall be credited as of the date of closing of any such loan or credit facility.

4. Section 11.6(b)(ii). Section 11.6(b)(ii) is amended to read as follows:

(ii) at any time after the earlier of March 1, 2006 or, the if Memphis City Council does not to approve MLGW's request (made after the date of the date of this Second Amendment) to make an Additional Capital Contribution (as defined in that certain Capital Contribution Allowance Agreement with an

effective date of even date herewith), then the day after the Memphis City Council's decision becomes final and non appealable.

5. Effect on Capital Contribution Agreement. MLGW and MB acknowledge and agree that (i) that certain Capital Contribution Agreement with an effective date of April 1, 2002 is hereby terminated, and that such agreement shall have no further full force or effect, and (ii) MLGW and MB have entered into a certain Capital Contribution Allowance Agreement with an effective date of even date herewith.

6. Restatement of Operating Agreement. Except as expressly modified herein, the provisions of the Operating Agreement shall remain in full force and effect. At the request of either Member, MLGW and MB will prepare and execute an amendment and restatement of the Operating Agreement that embodies this Amendment.

7. Entire Agreement. This Second Amendment constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.

8. Counterparts; Execution by Facsimile. This Second Amendment may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Each such counterpart may be executed by any party hereto by facsimile transmission.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

THIS SECOND AMENDMENT has been duly adopted and executed by the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: _____

Its: _____

MEMPHIS BROADBAND, LLC

By: Andrew R. Pearson

Its: Manager

THIS SECOND AMENDMENT has been duly adopted and executed by the undersigned
as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: Joseph L. [Signature]
Its: President / CEO

MEMPHIS BROADBAND, LLC

By: _____
Its: _____

CAPITAL CONTRIBUTION AGREEMENT

This Capital Contribution Agreement ("Agreement") is made effective as of April 1, 2002 ("Effective Date") by and between Memphis Light, Gas and Water Division ("MLGW") and Memphis Broadband, LLC ("MB") in accordance with Section 9.1(d) of that certain Amended and Restated Operating Agreement of Memphis Networkx, LLC ("Company") dated November 29, 2000 ("Operating Agreement"). MLGW and MB are the sole members of Memphis Networkx, LLC. (Capitalized terms that are not defined herein shall have the same meaning as defined in the Operating Agreement; Sections referenced herein are references to Sections of the Operating Agreement.)

NOW, THEREFORE, the parties hereby agree as follows:

1. Schedule of Capital Requirements. MLGW and MB approve the aggregate amount of additional Capital Contributions to the Company shown in the Schedule of Capital Requirements attached hereto (the "Schedule"). The Schedule lists the estimated monthly Capital Contributions of each Member, and all Capital Contributions are due on the first day of each month shown in the Schedule. Company management shall notify the Members of the actual required monthly Capital Contributions at least ten (10) days prior to the first of the month; provided that neither the monthly budgets beyond March, 2003 nor any monthly variance of twenty percent (20%) or more between the actual Capital Contribution and the estimated Capital Contribution as shown in the Schedule shall be effective without the prior approval of the Company Board of Governors. The aggregate amount of all Capital Contributions as shown in the Schedule shall not be increased without the prior written consent of the Members.

2. Capital Contribution True-Up. If a Member (the "Reconciling Member") whose Capital Contributions to the Company have been less than the amount of the Reconciling Member's original Sharing Ratio under the Operating Agreement multiplied by (ii) the aggregate amount of all Capital Contributions made as of such date (the "Aggregate Shortfall"), makes a monthly Capital Contribution pursuant to the Schedule that is in excess of the Reconciling Member's then-current Sharing Ratio multiplied by the required monthly Capital Contributions of both Members, then the Members' Sharing Ratios and Extraordinary Net Profits Ratios shall be adjusted in accordance with Paragraph 3 of this Agreement. The Reconciling Member shall pay the other Member a rate of return in accordance with the rate schedule attached hereto as Exhibit A on the amount by which the Member's capital contribution exceeds the Reconciling Member's then-current Sharing Ratio multiplied by the required monthly Capital Contributions of both Members (the "Excess Payment"). For purposes of calculating the required rate of return, the Excess Payment shall be deemed applied to the Aggregate Shortfall in order of the earliest to the most recent shortfall amounts that in total comprise the Aggregate Shortfall.

3. Adjustment of Ratios. A Capital Contribution to the Company shall cause the Sharing Ratios and the Extraordinary Net Profits Ratios of the Members to be adjusted as of the date of such Capital Contribution. Each Member's Sharing Ratio and Extraordinary Net Profits Ratio shall equal the percentage derived from the ratio (x) the numerator of which shall be the sum of the aggregate amount of such Member's Capital Contributions as of the date of such Capital Contribution (plus the amount of any reimbursement payments that the Member makes under Section 9.1(g) and minus the amount of any reimbursement payments that the Member receives under Section 9.1(g)), and (y) the denominator of which shall be the aggregate amount

of the Capital Contributions for all Members as of the date of such Capital Contribution (which will not include the amount of either Member's reimbursements under Section 9.1(g)).

4. Counterparts; Execution by Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Such counterpart may be executed by any party hereto by facsimile transmission.

THIS CAPITAL CONTRIBUTION AGREEMENT has been adopted by the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: Linda K. Reppers
for Herman Morris, President
and Chief Executive Officer

MEMPHIS BROADBAND, LLC

By: _____

Its: _____

of the Capital Contributions for all Members as of the date of such Capital Contribution (which will not include the amount of either Member's reimbursements under Section 9.1(g)).

4. Counterparts; Execution by Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Such counterpart may be executed by any party hereto by facsimile transmission.

THIS CAPITAL CONTRIBUTION AGREEMENT has been adopted by the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: _____
Herman Morris, President
and Chief Executive Officer

MEMPHIS BROADBAND, LLC

By: Andrew Leamons
Its: Manager

EXHIBIT A

DAYS SINCE CAPITAL CONTRIBUTION REQ'D	PER ANNUM RATE OF RETURN

1-30	6.00%

31-60	6.00%

61-90	6.00%

91-120	7.00%

121-150	8.00%

151+	8.75%

ESTIMATED SCHEDULE OF MEMPHIS NETWORK CAPITAL REQUIREMENTS

Date	Estimated Memphis Network needs	Estimated Capital contribution requirements	
		Memphis Broadband	MLGW
		47%	53%
Apr-02	\$ 1,365,000	\$ 641,550	\$ 723,450
May-02	\$ 2,262,479	\$ 1,063,365	\$ 1,199,114
Jun-02	\$ 966,272	\$ 454,148	\$ 512,124
Jul-02	\$ 586,712	\$ 275,755	\$ 310,957
Aug-02	\$ 496,548	\$ 233,378	\$ 263,170
Sep-02	\$ 468,492	\$ 220,191	\$ 248,301
Oct-02	\$ 516,520	\$ 242,764	\$ 273,756
Nov-02	\$ 580,703	\$ 272,930	\$ 307,773
Dec-02	\$ 592,513	\$ 278,481	\$ 314,032
Jan-03	\$ 658,479	\$ 309,485	\$ 348,994
Feb-03	\$ 595,739	\$ 279,997	\$ 315,742
Mar-03	\$ 1,437,140	\$ 675,456	\$ 761,684
From March 03 to March 04	\$ 7,079,575	\$ 3,327,400	\$ 3,752,175
TOTAL	\$17,606,172	\$ 8,274,901	\$ 9,331,271

PRIOR CAPITAL CONTRIBUTIONS TO MEMPHIS NETWORK AND SHARING RATIOS

	Contributed capital (and sharing ratio)			
	Memphis Broadband		MLGW	
As of 4/1/02 *	\$ 5,551,858	28.79%	\$ 13,730,872	71.21%

* NOTE: Anticipated 7/1/02 true-up payment not reflected. With true up payment, anticipated capital contributions as of March, 2004 are MLGW @ \$19,551,118 and MB @ \$17,337,784

WAIVER AGREEMENT

This Waiver Agreement ("Agreement") is made effective as of March 1, 2002 ("Effective Date") by and between Memphis Light, Gas and Water Division ("MLGW") and Memphis Broadband, LLC ("MB").

WHEREAS, MLGW and MB are parties to that certain Amended and Restated Operating Agreement of Memphis Networkx, LLC dated November 29, 2000 ("Operating Agreement"), and are the sole members of Memphis Networkx, LLC. (Capitalized terms that are not defined herein shall have the same meaning as defined in the Operating Agreement; Sections referenced herein are references to Sections of the Operating Agreement.)

WHEREAS, MB and MLGW continue to support the feasibility of the Memphis Networkx business plan, and in order to facilitate raising additional capital to fund MB's Capital Contributions under the Operating Agreement, MB and MLGW desire to waive certain provisions of the Operating Agreement, upon the terms and subject to the conditions contained herein.

NOW, THEREFORE, the parties hereby agree as follows:

1. Waiver. Notwithstanding anything to the contrary in the Operating Agreement, MLGW and MB (i) waive the expiration of Section 9.1(g) and extend the expiration date to July 1, 2002, (ii) waive the requirement for full reimbursement of the Aggregate Shortfall, and (iii) modify the required rate of return to conform to the rate schedule attached hereto as Exhibit 1. Following the waiver, Section 9.1(g) shall read as follows:

(g) At any time prior to July 1, 2002, a Member (the "Reconciling Member") whose Capital Contributions to the Company have been less than the amount of (i) the Reconciling Member's original Sharing Ratio under the Operating Agreement multiplied by (ii) the aggregate amount of all Capital Contributions made as of such date (the "Aggregate Shortfall"), shall have the option but not the requirement to reimburse the other Member (the "Reimbursed Member") for all or any part of the Aggregate Shortfall, plus interest from the date of each such Capital Contribution which created the Aggregate Shortfall.

(1) If the Reconciling Member elects to reimburse the Reimbursed Member for less than all of the Aggregate Shortfall, for purposes of calculating the required rate of return payments, the reimbursements shall be applied in the order that the other Member made such Capital Contributions, with the first payment to be applied to the earliest of such Capital Contributions. The required rate of return payment shall be calculated in accordance with the rate schedule attached hereto as Exhibit 1. The Reconciling Member's reimbursement to the Reimbursed Member of less than all of the Aggregate Shortfall shall cause the Sharing Ratio and the Extraordinary Net Profits Ratio of the Reimbursing Member to be increased, and the Sharing Ratio and the Extraordinary Net Profits Ratio of the Reimbursed Member to be correspondingly decreased (as of the date

of such Aggregate Shortfall payment), to equal the percentage derived from the ratio (x) the numerator of which shall be the sum of the aggregate amount of such Reimbursing Member's Capital Contributions as of the date of such Capital Contribution (plus the amount of the Reimbursing Member's reimbursement payment under this Section 9.1(g)), and (y) the denominator of which shall be the aggregate amount of the Capital Contributions for all Members as of the date of such Capital Contribution (which will not include the amount of the Reimbursing Member's reimbursement under this Section 9.1(g)). Any such restoration shall be made without reduction in the aggregate Capital Contributions to the Company and without regard to prior Company profits, losses and distributions.

(2) If the Reconciling Member elects to reimburse the Reimbursed Member for all of the Aggregate Shortfall, the required rate of return payment shall be calculated in accordance with the rate schedule attached hereto as Exhibit 1. Upon such payment, the original Sharing Ratios (as stated in Section 1.40 of the Operating Agreement) and the Extraordinary Net Profits Ratios of the Members (as stated in Section 1.17 of the Operating Agreement) shall be restored. Any such restoration shall be made without reduction in the aggregate Capital Contributions to the Company and without regard to prior Company profits, losses and distributions.

2. Conditional Waiver. In the event that the original Sharing Ratios and Extraordinary Net Profits Ratios of the Members are restored as of July 1, 2002 pursuant to Section 9.1(g)(2) under Paragraph 1 of this Agreement, then notwithstanding anything in the Operating Agreement to the contrary, MLGW and MB (i) waive the expiration of Section 9.1(g) and extend the expiration date to January 31, 2003, (ii) waive the requirement for full reimbursement of the Aggregate Shortfall, and (iii) modify the required rate of return to conform to the rate schedule attached hereto as Exhibit 1. The terms and conditions of the waiver shall be in accordance with the language of Section 9.1(g) under Paragraph 1 of this Agreement.

3. Amendment of Operating Agreement. In the event that, at any time on or after July 1, 2002, the Sharing Ratio and Extraordinary Net Profits Ratio of MB is less than thirty-five percent (35%) and the Sharing Ratio and Extraordinary Net Profits Ratio of MLGW is greater than sixty-five percent (65%), then, to the fullest extent permitted by law, the Operating Agreement shall be deemed amended, as outlined herein, without any further action necessary on the part of the Members. MLGW and MB shall take all reasonable steps to obtain all necessary regulatory approvals required to effectuate such amendment:

(a) Section 5.3 shall be amended to permit the Member having a sixty-five percent (65%) or greater Sharing Ratio to elect four (4) Governors and to permit the other Member to elect three (3) Governors; provided that such amendment shall be effective only with respect to any period during which the Sharing Ratios of the Members equal or exceed the foregoing percentages.

(b) The last paragraph of Section 11.6(b) shall be amended as follows:

The Purchase Price with respect to a FMV Put Option under Sections 11.6(b)(i) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below. The Purchase Price with respect to a FMV Put Option under Section 11.6(b)(ii) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below, if the fair market value of the Company as a whole equals or exceeds the aggregate of all Capital Contributions to the Company; but if the fair market value of the Company as a whole is less than the aggregate of all Capital Contributions to the Company, then the Purchase Price with respect to a FMV Put Option under Section 11.6(b)(ii) shall be 85% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below.

4. Entire Agreement. This Waiver Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.

5. Counterparts; Execution by Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Such counterpart may be executed by any party hereto by facsimile transmission.

THIS WAIVER AGREEMENT has been adopted by the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: Linda K. Peppers
for Herman Morris, President
and Chief Executive Officer

MEMPHIS BROADBAND, LLC

By: _____

Its: _____

The Purchase Price with respect to a FMV Put Option under Sections 11.6(b)(i) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below. The Purchase Price with respect to a FMV Put Option under Section 11.6(b)(ii) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below, if the fair market value of the Company as a whole equals or exceeds the aggregate of all Capital Contributions to the Company; but if the fair market value of the Company as a whole is less than the aggregate of all Capital Contributions to the Company, then the Purchase Price with respect to a FMV Put Option under Section 11.6(b)(ii) shall be 85% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below.

4. Entire Agreement. This Waiver Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.

5. Counterparts; Execution by Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Such counterpart may be executed by any party hereto by facsimile transmission.

THIS WAIVER AGREEMENT has been adopted by the undersigned as of the day and year first above written.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: _____
Herman Morris, President
and Chief Executive Officer

MEMPHIS BROADBAND, LLC

By: Andrew Sammons

Its: Manager

EXHIBIT 1

DAYS SINCE CAPITAL CONTRIBUTION REQ'D	PER ANNUM RATE OF RETURN

1-30	6.00%
31-60	6.00%
61-90	6.00%
91-120	7.00%
121-150	8.00%
151+	8.75%

AMENDMENT TO OPERATING AGREEMENT

This Amendment ("Amendment") to the Amended and Restated Operating Agreement of Memphis Networkx, LLC dated November 29, 2000 ("Operating Agreement") is entered into effective this 31st day of March, 2003 by and between Memphis Light, Gas and Water Division ("MLGW") and Memphis Broadband, LLC ("MB").

WHEREAS, MLGW and MB are parties to the Operating Agreement and are the sole members of Memphis Networkx, LLC. (Capitalized terms that are not defined herein shall have the same meaning as defined in the Operating Agreement; Sections referenced herein are references to Sections of the Operating Agreement.)

WHEREAS, MB and MLGW desire to amend the Operating Agreement, upon the terms and subject to the conditions contained herein.

NOW, THEREFORE, the parties hereby agree as follows:

1. Section 1.44. Section 1.44 is amended to read as follows

1.44 "Voting Interest" means:

<u>Member</u>	<u>Voting Interest</u>
MLGW	MLGW's then current Sharing Ratio
MB	MB's then current Sharing Ratio

2. Section 4.7. Section 4.7 is amended to read as follows:

4.7. Quorum. The Members holding a majority of the Voting Interests shall constitute a quorum for the transaction of business. Once a Membership Interest is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting. In the absence of a quorum at any such meeting, a majority of the Voting Interests represented may adjourn the meeting from time to time for a period not to exceed thirty (30) days without further notice. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

3. Sections 5.2 – 5.4. Sections 5.2 through 5.4 are amended to read as follows:

5.2. Number. The number of Governors shall be seven (7), and the number shall not be changed without the consent of all the Members.

5.3. Election and Qualifications. Governors need not be residents of the State of Tennessee nor hold Membership Interests, but must be natural persons. Effective immediately upon execution of the Amendment, the MLGW Governors shall be Herman Morris, Larry Thompson, John McCullough, L.R. Jalinak and Max Williams, and the MB Governors shall be Andrew Seamons and Luke Yancey. At each annual meeting of Members, beginning with the annual meeting of Members to be held in November, 2003, (i) MLGW shall elect a number of the seven (7) Governors in proportion to MLGW's then current Sharing Ratio (rounding up to the next whole number if the fractional portion of the proportional number is greater than one-half, and rounding down otherwise) (the "MLGW Governors"), and (ii) MB shall elect a number of the seven (7) Governors in proportion to MB's then current Sharing Ratio (rounding up to the next whole number if the fractional portion of the proportional number is greater than one-half, and rounding down otherwise) (the "MB Governors"); but notwithstanding the foregoing, during the forty eight (48) months after the date of the TRA Order, MB shall always appoint at least two (2) Governors. If there are four (4) or fewer MLGW Governors, each Governor elected by MLGW shall be either the President, the Secretary/Treasurer, the Chief Operating Officer, the General Counsel of MLGW, or a member of the Board of Commissioners of MLGW, or, if one or more of these offices become vacant, preventing MLGW from electing as a Governor an individual who is serving in one of these positions, MLGW may elect such other individual or individuals as it chooses. If there are more than four (4) MLGW Governors, any additional MLGW Governor beyond the foregoing four (4) appointments may be such other individual or individuals as MLGW chooses. Each Governor shall serve until the next annual meeting of the Members and until the Governor's successor is elected and qualified, or until the earlier death, resignation, removal or disqualification of the Governor.

5.4. Resignation, Removal and Vacancies. A Governor may resign at any time by giving a written resignation to the secretary or chief manager of the Company. The resignation is effective without acceptance when it is actually received by the secretary or chief manager, unless a later effective time is specified in the resignation. MLGW, and only MLGW, may remove any of the MLGW Governors at any time, and the removal may be with or without cause. MB, and only MB, may remove any of the MB Governors at any time, and the removal may be with or without cause. A Governor may be removed by MLGW or MB, whichever is applicable, only at a meeting called for the purpose of removing the Governor, and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is to remove one (1) or more Governors. If a vacancy occurs on the Board, it may be filled only at a meeting of the Members by the Member who elected the Governor whose position has been vacated.

4. Section 5.6. In order to vest the Board of Governors with additional powers, Section 5.6 is amended to read as follows:

5.6. Restrictions on Authority of the Board. Notwithstanding the provisions of Section 5.1, the affirmative vote of all the Members shall be necessary to effect any of the following actions:

- (a) Any act in contravention of this Operating Agreement;

(b) Any merger, consolidation, acquisition or joint venture, partnership, or business combination of the Company or any Controlled Subsidiary of the Company with or into any other Person;

(c) Any sale, lease, assignment or other disposition by the Company or any Controlled Subsidiary of the Company, in any single transaction or series of related transactions of all or substantially all of its assets;

(d) [Reserved];

(e) [Reserved];

(f) Commencement of any voluntary proceeding in respect of the Company or any Controlled Subsidiary of the Company seeking liquidation, reorganization, dissolution or bankruptcy;

(g) Entry by the Company or any Controlled Subsidiary of the Company into any contract or transaction with, or for the benefit of, any Member or any Affiliate of a Member;

(h) [Reserved];

(i) Any amendment to the Articles or this Operating Agreement;

(j) Any change in the number of Governors of the Board;

(k) Entry into, or conduct of, any business or line of business other than those described in Section 2.5;

(l) Any material change in any accounting, tax or legal compliance policy of the Company or any Controlled Subsidiary of the Company, unless required in the good faith opinion of the Board by changes in law, regulation or accounting conventions or principles;

(m) Any issuance or redemption of Membership Interests, or any requirement of additional capital contributions from the Members not otherwise provided by this Operating Agreement;

(n) Confession of a judgment against the Company; or

(o) Liquidation or dissolution of the Company.

5. Section 9.1(d). Section 9.1(d) is amended to read as follows:

(d) The Capital Contributions of each Member shall be conditioned upon the concurrent Capital Contribution required of the other Member. Except as specified in Sections 9.1(b) and (c), no Member shall be obligated to make any additional Capital Contributions to the Company without the approval of the Member or Members holding a

majority of the Voting Interests. The Members shall be permitted, but not required, to make loans to the Company. Loans shall not be treated as a Capital Contribution unless such is approved by all the Members. Loans shall bear interest from the date advanced until repaid at the fluctuating Prime Rate.

6. Section 10.5(b). Section 10.5(b) is amended to read as follows:

(b) With the approval of the Member or Members holding a majority of the Voting Interests, the Members may from time to time authorize additional distributions of cash or other property to Equity Owners, provided that no distribution shall be declared and paid unless, after the distribution is made, the assets of the Company exceed its liabilities, and the Company satisfies such other requirements as may apply under the Act. Except as provided in Article 12, all distributions made by the Company with respect to Ownership Interests (excluding distributions in redemption of all or part of an Equity Owner's Ownership Interest) shall be allocated among the Equity Owners in accordance with their Sharing Ratios.

7. Section 11.6(a). Section 11.6 is amended by deleting the language of Section 11.6(a) in its entirety and by striking all provisions in Section 11.6 relating specifically to the Regulatory Put Option and by replacing Section 11.6(a) with the following language:

(a) MLGW Fair Market Value Put. MLGW shall have the option to sell and MB shall have the option (and, if applicable, the obligation) to purchase MLGW's Ownership Interest at the applicable purchase price ("Purchase Price") in the same manner and to the same extent as MB's FMV Put Option under Section 11.6(b)(ii) and Sections 11.6(c) – (e), below.

8. Section 11.6(b). Section 11.6(b) is amended to read as follows:

(b) Fair Market Value Put. MB shall have the option to sell and MLGW shall have the option (and, if applicable, the obligation as provided in Section 11.6(e) under the circumstances set forth therein) to purchase MB's Ownership Interest at the applicable Purchase Price set forth herein (the "FMV Put Option") and, together with the Regulatory Put Option, the "Put Options") upon the occurrence of any of the events described in Sections 11.6(b)(i) and (ii) below (each, a "FMV Put Option Event" and, together with any Regulatory Put Option Event, a "Put Option Event"):

(i) if more than 10% of MLGW (measured as a whole) is sold, assigned or transferred to any person or entity other than an Affiliate, or MLGW sells, assigns or transfers all or any part of its Ownership Interest in the Company to any person or entity other than an Affiliate; or

(ii) at any time after forty eight (48) months from the date of the TRA Order.

The Purchase Price with respect to a FMV Put Option under Sections 11.6(b)(i) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below. The Purchase Price with respect to a FMV Put Option

under Section 11.6(b)(ii) shall be 90% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below, if the fair market value of the Company as a whole equals or exceeds the aggregate of all Capital Contributions to the Company; but if the fair market value of the Company as a whole is less than the aggregate of all Capital Contributions to the Company, then the Purchase Price with respect to a FMV Put Option under Section 11.6(b)(ii) shall be 85% of the fair market value of the Ownership Interest of MB, determined as provided in Section 11.8 below.

9. No Effect on Capital Contribution Agreement. MLGW and MB acknowledge and agree that this Amendment shall have no impact on that certain Capital Contribution Agreement with an effective date of April 1, 2002, and that such agreement is and remains in full force and effect.

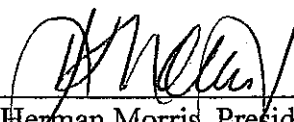
10. Restatement of Operating Agreement. Except as expressly modified herein, the provisions of the Operating Agreement shall remain in full force and effect. At the request of either Member, MLGW and MB will prepare and execute an amendment and restatement of the Operating Agreement that embodies this Amendment.

11. Entire Agreement. This Amendment constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.

12. Counterparts; Execution by Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Such counterpart may be executed by any party hereto by facsimile transmission.

THIS AMENDMENT has been adopted by the undersigned as of the day and year first above written.

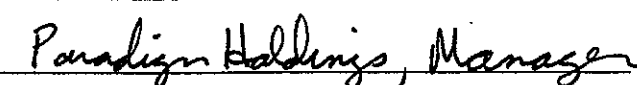
MEMPHIS LIGHT, GAS & WATER DIVISION

By: 
Herman Morris, President
and Chief Executive Officer

**"APPROVED AS TO
FORM AND LEGALITY"**



MEMPHIS BROADBAND, LLC

By: 
Its: 

Tab 24

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF LOCAL FINANCE
SUITE 500 JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0274
PHONE (615) 741-4276
FAX (615) 532-9237

November 24, 1999

Mr. John McCullough
Vice-President, Finance and
Chief Financial Officer
Memphis Light, Gas and Water Division
PO Box 430
Memphis, Tennessee 38101-0430

Dear Mr. McCullough:

You have submitted letters dated September 30, 1999, and November 19, 1999, together with supporting documentation, concerning a plan which has been approved by the Board of Commissioners of the Memphis Light, Gas and Water Division to develop, construct and operate a telecommunications system pursuant to the authority of Tennessee Code Annotated, Title 7, Chapter 52, Part 401. Title 7, Chapter 52, Part 402(2) provides that inter-division loans may be executed to provide funds for such projects, and requires that such loans be approved in advance by this office. Pursuant to this requirement, you have requested approval for the execution of an inter-division loan in the amount of \$5,300,000 from the Electric Division to the Telecommunications Division of the Memphis Light, Gas and Water Division. The information you have submitted provides that the loan will be completely repaid in approximately six (6) years, and that the rate of interest on the loan will not be less than the highest rate earned on invested electric system funds, as required by Title 7, Chapter 52, Part 402(2).

Title 7, Chapter 52, Part 103(d) provides that a municipality, acting through the supervisory board of its municipal electric system, may enter into a joint venture with a third party for this type of project, provided that any contracts or agreements with such third parties are first approved by the Tennessee Regulatory Authority (TRA). You have advised us that since this project involves such a joint venture, this plan will be submitted to the TRA for their review and approval in accordance with this statute.

Subject to your receipt of approval for this project by the Tennessee Regulatory Authority, as required by Title 7, Chapter 52, Part 103(d), this constitutes approval by this office, pursuant to Title 7, Chapter 52, Part (402)(2), for an inter-division loan in an amount not to exceed \$5,300,000 from the Electric Division to the Telecommunications Division of the Memphis Light, Gas and Water Division. We are hereby requesting that you provide this office with a copy of the report issued by the Tennessee Regulatory Authority.

Sincerely,

David H. Bowling
Acting Director

Tab 25

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF LOCAL FINANCE
SUITE 1700 JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0274
PHONE (615) 401-7976
FAX (615) 532-5232

January 22, 2002

Mr. John McCullough
Chief Financial Officer
Memphis Light, Gas and Water Division
PO Box 430
Memphis, Tennessee 38101-0430

Dear Mr. McCullough:

You have previously submitted your letter of December 18, 2001 enclosing documents regarding a plan to develop, construct and operate a telecommunications system pursuant to the provisions of Title 7, Chapter 52, Part 401, Tennessee Code Annotated. TCA 7-52-103(d) provides that a municipality, acting through the supervisory board of its municipal electric system, may enter into a joint venture with a third party for this type of project, provided that any contracts or agreements with such third parties are first approved by the Tennessee Regulatory Authority (TRA.) You have previously advised us that this plan includes such a joint venture and has been submitted to the TRA for its review. The documents you have now submitted contain the action of the Tennessee Regulatory Authority on August 9, 2001 approving the joint venture agreement.

TCA 7-52-402(2) provides that interdivision loans may be executed to provide funds for the development of a telecommunications system, subject to approval by our office. You have submitted a copy of the action taken on August 19, 1999, by the Board of Commissioners of the Memphis Light, Gas and Water Division authorizing an interdivision loan in the amount of \$20,000,000 from the electric system to the telecommunications division. The document you have submitted with your December 18 letter includes a proposal for an interdivision loan, not to exceed \$20,000,000, which will be loaned by the electric system to the telecommunications division. The plan indicates that all loaned funds will be completely repaid to the electric system within ten (10) years from the initial loan date.

This constitutes approval by this office, pursuant to the provisions of Tennessee Code Annotated Title 7, Chapter 52, Part 402(2), for an interdivision loan not to exceed \$20,000,000 between the electric division and the telecommunications division. As required by TCA 7-52-402(2), the rate of interest on the loan must be not less than the highest rate earned on invested electric funds.

Sincerely,

David H. Bowling
Director

Tab 26

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF LOCAL FINANCE
SUITE 1700 JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0274
PHONE (615) 401-7976
FAX (615) 532-5232

August 28, 2002

Mr. John W. McCullough
Chief Financial Officer
Memphis Light, Gas and Water Division
PO Box 430
Memphis, Tennessee 38101-0430

Dear Mr. McCullough:

We are in receipt of your letter of August 19, 2002 requesting approval by this office for an increase of \$12,000,000 for the interdivision loan between the electric system and the telecommunications division. You have previously submitted your letter of December 18, 2001 enclosing documents regarding a plan to develop, construct and operate a telecommunications system pursuant to the provisions of Title 7, Chapter 52, Part 401, Tennessee Code Annotated. TCA 7-52-402(2) provides that interdivision loans may be executed to provide funds for the development of a telecommunications system, subject to approval by our office.

You have previously submitted a copy of actions taken on August 19, 1999, by the Board of Commissioners of the Memphis Light, Gas and Water Division authorizing an interdivision loan in the amount of \$20,000,000 from the electric system to the telecommunications division, which our office approved on January 22, 2002. Your current letter includes actions taken by the Board of Commissioners on June 6 and July 11, 2002 authorizing an increase in the interdivision loan from \$20,000,000 to \$32,000,000. As in previous documents you have submitted to our office, you have included schedules which indicate that all loaned funds will be completely repaid to the electric system within ten (10) years from the initial loan date.

TCA 7-52-103(d) authorizes a municipality, acting through the supervisory board of its municipal electric system, to enter into a joint venture with a third party for this type of project, provided that any contracts or agreements with such third parties are first approved by the Tennessee Regulatory Authority (TRA.) You have also previously advised us that this plan was submitted to the TRA for its approval since it includes such a joint venture, and you provided us documentation indicating approval by the TRA on August 9, 2001.

This constitutes approval by our office, pursuant to the provisions of Tennessee Code Annotated Title 7, Chapter 52, Part 402(2), for an increase in the interdivision loan from \$20,000,000 to \$32,000,000 between the electric division and the telecommunications division. As required by TCA 7-52-402(2), the rate of interest on the loan must be not less than the highest rate earned on invested electric funds.

Sincerely,


David H. Bowling
Director

Tab 27

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION



MEMPHIS LIGHT, GAS AND WATER DIVISION

October 23, 2007

Mr. Scott Beer
General Counsel
Zayo Bandwidth
950 Spruce St., Suite 1A
Louisville, CO 80027

Re: Memphis Networx

Dear Scott:

As you know, Memphis Light, Gas and Water Division (MLGW) has received a Memphis City Council Request for Information from Rhea & Ivy, P.L.C., the firm of certified accountants engaged by the Memphis City Council to evaluate information related to MLGW and Memphis Networx, LLC. (Copy enclosed).

MLGW has responded to those requests for which it had sufficient information in its possession. In some cases, MLGW's ability to respond was constrained by confidentiality provisions of the Membership Interest Purchase Agreement between MLGW, Memphis Broadband, LLC and CII Holdco, Inc., now known as Zayo Bandwidth, Inc.

On behalf of MLGW, I am requesting that Memphis Networx provide information responsive to the following requests for information:

6. How many customers does Memphis Networx have?
 - 6.1 Who are they (customers)?
 - 6.3 What fees are charged to each customer?
8. Who are the creditors of Memphis Networx?
 - 8.1 How much is owed to each creditor?
 - 8.2 How long has the debt been outstanding for each creditor?

- 11.1 What were/are the salaries?
- 11.2 Who are the employees that have been paid bonuses?
- 12.1 What were the costs of computer equipment?
- 13.4 Provide a schedule of intangible assets (software licenses, intellectual property, copyright, trademark, etc.) as of each December 31 date.
- 23.2 How is V02 Networx related to Memphis Networx?

Please provide the responses of Memphis Networx directly to Mr. Jeffrey A. Kitterman, Rhea & Ivy, P.L.C., Suite 250, 6000 Poplar Avenue, Memphis, TN 38119-3971 with a copy to me.

Your prompt attention to this matter is appreciated.

Sincerely,



Charlotte Knight Griffin
General Counsel

st

Enclosure

c: Mr. Allan Wade, Esq.

Tab 28

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION



MLGW MEMPHIS LIGHT GAS AND WATER DIVISION

June 27, 2007

(via e-mail only)

Mr. Tom Marshall
Chairman, Memphis City Council
125 North Main Street, Room 514
Memphis, TN 38103

Re: Pending Sale of MLGW's Interest in Networx

Dear Chairman Marshall:

As an MLGW Board member, I regret the delay in the release of Networx's information concerning the two competing offers for the purchase of MLGW interest in Networx. In order to expedite the release of information that is subject to non-disclosure agreements with the two competing firms, Networx's attorneys have request that those competing firms sign a waiver for the release of their "proposal to purchase Networx and related documents thereto".

Our goal was to secure those waivers this morning. We have such a wavier with American Fiber Systems and it is supplied in the release of documents associated with this e-mail transmittal. We were unsuccessful in directly securing a wavier from Bti, the other competing firm. I have included Bti's Mutual Non-Disclosure Agreement which was faxed to Networx's agent Tom Swanson from Bti Home Theater on March 28, 2007. Section 4 of the agreement allows for release of documents "that is disclosed pursuant to a requirement of a court or government agency". My understanding is that Bti has functionally accepted the waiver we sent them given that they have delivered to the City Council office a copy of their proposal. I have no way of determining whether what Bti sent to City Council is the same thing that Networx got. In addition, it would not include the various e-mails that better define what the proposal was after it was examined by the McLean Group. I assume that if the City Council wants the full set of Bti documents that they will send a subpoena to MLGW for such so that MLGW will not be violating the Mutual Non-Disclosure Agreement.

I have been on the Networx Board for only the past 29 months, and my position on that board is to represent MLGW's financial interest. As I have stated earlier and publicly, given the negative cash flow of the Networx, my orientation as a board member has been:

- Net Asset Preservation;
- Net Income Growth; and
- Net Asset Appreciation.

There has been a public outcry over the financial loss that MLGW now faces. The reality is that the loss began years ago. The MLGW Board now faces two issues:

1. An immediate issue of what to do regarding its investment in Networx, and
2. A more global issue addressing how and why such a substantial loss occurred.

What is the Business Issue that MLGW's Board now faces:

Basic Information:

1. Networx has accounts payable of \$1.65 million, and requires further cash investment to supplement cash flow necessary to support continuing operations and business expansion.
2. Given the negative cash flow and only getting near positive EBITDA (earnings before interest, taxes, depreciation, and amortization), the firm either has to be put on life support to achieve positive near-term cash flow while at the same time limiting its ability to ever achieve long-term positive cash flow as well as a positive net equity, or a capital infusion of some sort must happen.
3. The only way for Networx to achieve positive net equity is to have a capital infusion which can address these issues:
 - Fund the negative working capital (which includes A/P) of \$2,359,507.
 - Fund the estimated capital requirements for growth over the next twelve months of \$6,200,000.
 - Fund an undetermined amount of net operating loss over the next twelve months.
4. Networx is owned by two entities, MLGW and Memphis Broadband. Earlier this year, it was determined that neither was interested in making additional capital or loan guarantees on behalf of Networx. Additional capital could be raised by other sources such as by mezzanine debt or the sale of a minority, majority, or entire interest in Networx. The Networx Board unanimously chose to pursue the sale of the entire interest in Networx as a means of returning to its present owners the maximum cash, while at the same time eliminating further liability of cash calls.

Core Business Decision that MLGW's Board Faces:

In summary, the courses of actions available to the Board are:

1. Sell MLGW's membership interest in Networkx to CII for a return of capital of approximately \$1,000,000, or 3% of its original investment.
2. Choose to invest additional capital in Networkx, either in partnership with Memphis Broadband or by way of a capital reallocation. Note that the 12-month estimate would be approximately \$8,500,000 without including an estimate for net operating losses. Please note that this investment is at the level of investing into a Stage 2 or Stage 3 pre-IPO entity.
3. Purchase Memphis Broadband's interest in Networkx, which would require approximately \$7,800,000 in cash or loan guarantees, and then MLGW would make the additional capital investment referenced above of approximately \$8,500,000 for a total new exposure of \$16,300,000.
4. Decide not to sell Networkx or invest additional cash in Networkx, thereby creating the likelihood that the senior secured creditors could foreclose on the assets of the company and leave the equity investors with nothing.

The Global Issue of How and Why Such a Substantial Loss Occurred

I am not an expert on the history of Memphis Networkx, but I will share what I have learned over the past 29 months:

The Concept: The Memphis Networkx concept was probably conceived in 1998, and the effort to start Memphis Networkx began in 1999 at the height of the Internet and Telecommunications bubble. At the time, demand for broadband infrastructure was outpacing supply and thousands of new data networks were announced. In this environment, any organization that had right-of-way was viewed as a natural owner for a broadband data network. As a result, many municipalities, utilities, and railroads began deploying fiber networks.

Confirmation of Concept: It was in this environment that Memphis Light Gas & Water (MLGW) began an effort to study the feasibility of a metro area network in Memphis. They commissioned a reputable consulting firm, Arthur D. Little, to conduct a market opportunity study for the company. That study (dated May 11, 1999) confirmed the need for additional broadband capacity in Memphis and the opportunity for a fiber-optic-based entrant.

The Startup Stumbles on Capital Funding: Based on this confirmatory diligence, MLGW partnered with a long-time vendor to begin planning and deploying a network. The Memphis Networkx, LLC was formed on November 8, 1999. About a year into that effort, it became

evident that the initial private partner did not have sufficient capital to fulfill its obligation to fund half of the build-out of the network. At that time, MLGW engaged an investment banker to secure a new partner. In December 2000, Memphis Broadband bought out the original private partner's interest and committed \$5.0 million to the build-out of the network. The new investor group also brought support from key local business leaders.

The Competitive Environment at the Tennessee Regulatory Authority (TRA): Although the company was founded in 1999 and the new private investor group closed on its partnership with MLGW in December 2000, the firm's ability to proceed was delayed. The primary reason for this lengthy delay was the opposition of Time Warner to the issuance of the required Tennessee Regulatory Authority Certificate of Convenience and Necessity ("CCN"). In an effort to keep competition out of the City, Time Warner pursued an aggressive legal effort to convince the TRA not to issue a certificate. This resulted in approval taking nearly two years instead of the traditional few months.

The TRA Approval: On August 9, 2001, the Tennessee Regulatory Authority (TRA) issued a final order approving the Company's amended and restated operating agreement (dated November 29, 2000) and granting a certificate of public convenience and necessity for the State of Tennessee. In addition, MLGW received approval from the State Comptroller's office to release funds from the previously approved \$20,000,000 loan from the Electric Division to the Telecommunications Division.

The Internet / Telecom Bubble and Bust: As almost everyone who lived through the popping of the Internet Bubble knows, the telecom industry was particularly hard hit by the downturn in the technology industry. The demand for broadband bandwidth and the fiber infrastructure through which it travels was overestimated by a wide margin and was significantly overbuilt nationally. This led to an unprecedented recession in the telecom industry and the bankruptcy of thousands of telecom-related companies. It also led to the drying up of financing for telecom related investments at the time that Networx was scheduled to return to the market to secure outside financing to complete the build and reach profitability. Shortly after the TRA approval, the events of 9/11/01 occurred and ushered in a general business recession as well.

While the infrastructure in Memphis was not overbuilt like that in many larger cities, we nonetheless saw a dramatic and prolonged decrease in bandwidth pricing which challenged the Networx team by making it more difficult to build revenue as quickly as planned. Below are a few excerpts from the media describing the business events of that time period:

(NASDAQ) Historically, the dot-com boom can be seen as similar to a number of other technology-inspired booms of the past, including railroads in the 1840s, automobiles and radio in the 1920s, transistor electronics in the 1950s, computer time-sharing in the 1960s, and home computers and biotechnology in the early 1980s.

Over 1999 and early 2000, the Federal Reserve had increased interest rates six times, and the runaway economy was beginning to lose speed. The dot-com bubble burst, numerically, on March 10, 2000, when the technology-heavy NASDAQ Composite index peaked at 5,048.62 (intra-day peak 5,132.52), **more than double its value just a year before.** (*Wikipedia*)

(International Perspective) **An unprecedented "boom and bust" investment cycle** occurred in the high-tech industries at the turn of the century, in particular in the telecommunications sector. Regulatory reforms and technological innovation fueled expectations of robust growth in traffic, revenue and earnings. Eventually, however, the volume of traffic expanded less than anticipated. (*Organization for Economic Co-operation and Development (OECD), After the Telecommunications Bubble, Economics Department Working Papers No.361*)

(The Telecom Bubble) Triggered by emergence of the Internet and its enormous growth, **companies all over the world tried to establish their own telecom backbone networks, expecting to recoup their future benefit in an information-rich era.** Wavelength Division Multiplexing (WDM) also accelerated the growth of capacity of the telecom backbone network by enabling high capacity for each optical fiber. In consequence, many telecom service providers heavily over invested in the backbone network.

Telecom bubble emerged from many causes including overly optimistic demand forecast (which induced a mismatch with real demand) and excessive fiber installation because of the high cost for construction. However, historically, bubbles have occurred many times in different industries. Such booms include the canal boom in the early nineteenth century, the railroad booms and busts in the late nineteenth century, and similar effects in industries such as electricity transmission and Interstate highways. All of these industries share certain characteristics: all are politically and economically important, and are affected by financial instability and/or government regulation. Telecom also experienced similar boom-and-burst dynamics, and has similar characteristics as other industries which have experienced bubbles. (*A System Dynamics Model for Analyzing Bubble Effects in the LD Telecom Industry, Kurebayashi Thesis 2004*)

(Internet Bubble -vs- Telecom Bubble) Seven years ago (in 2000) the communications business, made up of companies providing everything from phones to computer networks to routers and switches, was laid low by **the worst collapse to hit a U.S. industry since the Great Depression.**

With breathtaking speed and little advance warning, high-flying companies like Global Crossing Ltd. and WorldCom Inc., which had loaded up on debt to build out fiber-optic networks and buy up companies in anticipation of a never-ending

e-commerce boom, collapsed into bankruptcy. Giants such as AT&T were ripped apart as they scrambled to recover from free-falling sales and profits.

Hundreds of thousands of workers lost their jobs. Prices of some inflated stocks--boasting price-to-earnings ratios that topped 400 in the most extreme cases--tumbled 95% or more. Investors saw some \$2 trillion of market value vanish in a little more than two years – twice the damage caused by the parallel bursting of the Internet bubble. (*Businessweek*, June 25, 2007)

July 2002 Major Cash Call: It was during this period that the company sought external financing and was unable to find willing investors. An arrangement had been worked out between Broadband and MLGW whereby each would contribute an additional \$6,000,000 into Networx. MLGW ultimately agreed to continue investing up to its approved internal limit to keep the company in business and growing (an additional \$12,000,000 instead of \$6,000,000). The private investors were diluted as the new capital was invested. It was anticipated that the capital available to invest by MLGW would be sufficient for the company to reach cash flow breakeven.

This was a pivotal point for Networx. In hindsight, the Internet & Telecom bust was still in process. That, combined with a business plan that was three years old, born of the Telecom Bubble and lacking "proof of concept", resulted in an initial additional investment of \$6,000,000 on MLGW's part and then an increase in that additional investment to \$12,000,000 evidently due to pressure from some City Council members (see *MCA 7-11-02 Concerns about Networx's Use of Funds May Arise at LG&W - Board Weighs Larger Outlay.pdf*).

Inability to Reach Positive Cash Flow by 2005: Amidst the prolonged slump in the telecom industry and continued downward pressure on pricing, Networx did not reach positive cash flow prior to running out of cash from the 2002 capital infusion by MLGW.

Offer to Purchase with Stock 11-23-04: The company again needed to raise additional capital. The management team, the Board, and the investor group again sought and considered outside financing. While the company was not successful in identifying external sources of minority equity capital at a reasonable valuation, they did consider and reject a \$5.7 million offer for the company. This offer was to be paid for by stock in American Fiber Systems (AFS), a privately held corporation, and would constitute 6.9% of the ownership in AFS. This stock would be of value only after AFS went through an IPO and would receive return only after the preferred stockholders. At the time, those involved felt that the offer undervalued the asset, given the revenue growth and that the stock dilution would result in no ability to specifically grow Networx for the benefit of its present owners. In addition, the existing members would be responsible for the aged payables.

2005 Cash Call: Memphis Broadband guaranteed approximately \$7,000,000 in loans in 2005 to attempt to resuscitate Networx while it responded to changes in the technology marketplace. MLGW requested that the City Council allow MLGW to guarantee its share of the loans in both May and June of 2005; the City Council chose not to allow such. That caused MLGW to lose 35.48% of its ownership in Networx. In late 2005, the private investors at this time injected an additional \$6.6 million in capital through the guarantying of debt. The round of financing valued the company at \$10.0 million prior to the transaction, which was a fair valuation in light of the current market price two years later. Again, this round of financing was expected to take the company to positive cash flow from operations.

MLGW's Due Diligence Concerning Loan Guarantees: In April of 2005 in preparation for considering whether MLGW should participate in the upcoming loan guarantees, MLGW's attorney engaged the CCG Consulting Group to evaluate the Fair Market Value of Networx and to offer insight from their experience regarding Networx's operation. (See "CCG Consulting's estimate of value of Networx 4-1-05.pdf".) CCG made an estimate of \$9,200,000 based upon averaging the 2004 Book Value (minus depreciation and the OSS book value) and the NPV. In hindsight, it should be pointed out that the NPV model used projected 2005 revenues of \$6,600,000, when in reality by the end of 2005, revenues were only \$4,045,611 (61% of projected revenues). Without the actual spreadsheet model and knowledge of the growth rate, one cannot determine how this large variance would impact the Fair Market Calculation.

One should also note that for 12/31/05, Current Assets minus Current Liabilities is a deficit of \$3,312,419. If the company were sold at that time, deductions would also need to be made for the investment banking fee and any required Net Working Capital Adjustment including payoff of debt and aged payables. It should also be noted that the 1999 Arthur D. Little Study's ProForma indicated a projected 2005 Revenue amount of \$51,050,000, over 12 times what the actual revenue was for 2005. This difference in revenue projections shows the depth of the failure in the original business model.

Notification of Loss of Value to City Council June 2005: In a Memphis Commercial Appeal article of June 17, 2005, Charles Carpenter, MLGW's outside attorney in this matter at that time, is quoted as saying:

They're (i.e. MLGW) even balking at what private investors say is the company's value. Memphis Broadband puts the value of Networx at \$10 million. "Some people think that's pretty high," Carpenter said. "They've only had a potential offer earlier that was substantially less than that. It was not even a full cash offer."

I believe Joseph Lee stated to the Council that the top line value of Networx was in the \$10,000,000 to \$12,000,000 (without deduction for debt, etc.). The Council committee tape should show that there was clear communication to the City Council of the substantial loss that had occurred.

Post 2005 Experience: The publicity afforded the 2005 funding process hurt the company, resulting in slower sales growth than forecasted. Nevertheless from 2006 through today, the company has largely met the goals set out for it at the time of the 2005 round of financing. It steadily grew the top line revenue and aggressively trimmed its cost structure so that today it is cash flow neutral excluding capital needed for growth. In addition, due to the company's success providing wholesale capacity to other regional and national carriers, the company is faced with an array of growth opportunities. However, virtually every opportunity requires an upfront investment of capital to add customer premise equipment and to extend the network through the "last mile" to the customer location.

Ultimate Value is a Function of the Future: To illustrate the important role of capital's relationship to value, note this example of the typical contract. A carrier will sign an agreement with Networkx to provide a circuit for a monthly price for a three- to five-year contracted period. These long-term contracts give Networkx great stability and visibility to future revenue. However, on average, a new contract requires approximately 20-25% of the total contract value in upfront costs. If Networkx gets a contract for three years which pays \$5,000 per month, it has a total contract value of \$180,000, but it might require \$45,000 in upfront installation costs. That contract is profitable, but it requires an upfront cash expenditure which creates a working capital drain. It is this aspect of the business that requires the company to seek additional capital to fund future growth at this point in its maturation. As the company continues to mature and grow, more and more of its contracts are renewals where the upfront installation has occurred in the past, so the cost of growth should continue to come down in the future. It has a good future revenue model, but the model doesn't value the substantial investment that has already been made.

The Decision to Explore Sale of Networkx: After deciding to explore capital infusion and sale opportunities, Memphis Networkx engaged the McLean Group (www.mcleanllc.com) of McLean, Virginia, in December 2006 to conduct a sale process. This organization was chosen because of its prior familiarity with the company, its experience in smaller valuation and M&A transactions, and the telecom industry relationships of one of its principals.

Who is the McLean Group? The McLean Group describes themselves:

As a private investment bank providing merger & acquisition, business valuation, capital formation, executive advisory and litigation support services. The firm focuses on serving middle-market businesses generating from \$5 million and \$300 million in revenues.

The McLean Group's investment banking and valuation practice is headquartered in McLean, Virginia, just outside Washington, DC, in the center of Northern Virginia's technology, communications and government contracting corridor. The firm also has 20 offices located across the United States. The McLean Group's investment bankers are supported by a staff of research analysts and associates

that leverages state-of-the-art, proprietary corporate information and transaction data on behalf of the firm's clients.

The McLean Group serves clients both nationally and internationally with a broad resume of successfully consummated financial transactions. While The McLean Group's diverse client base spans numerous industries, the firm has particular expertise in technology, telecommunications, government contracting, travel, hospitality and renewable energy.

Who is Tom Swanson? The lead contact with the McLean Group is Tom Swanson, whose web bio states:

Tom Swanson joined The McLean Group in 2006 and specializes in emerging technology, infrastructure and bio-technology companies. He is also President of TJSwanson Co., a revenue consulting firm focused on assisting early and exit stage companies with their revenue challenges. He has over 25 years of experience as a senior executive within technology companies, including over thirty capital formation, merger and acquisition transactions as an operating executive.

Mr. Swanson was a Management Consultant with Deloitte Consulting, advising Global 1000 enterprises from a variety of industry segments. He was a senior Sales and Marketing executive with several premier Silicon Valley technology companies; leading them through multiple rounds of Venture Fund raising from Tier 1 West Coast VC's, through IPO, to over \$100 million+ in revenue including multiple merger and acquisitions. Tom's consulting work with early and exit stage technology companies enables him to maintain a current network of Private Equity and Venture Capital Investors on the East and West Coast.

Tom is a graduate of John Carroll University with a B.S.B.A in Finance and the University of Michigan, Ross School of Business Executive Program.

Memphis Networx engaged the McLean Group in December 2006 to address the critical funding needs that Networx was going to face in 2007 and to address how to secure funding for the preservation of the entity. Such methods could involve the sale of a minority, majority or entire firm.

Who is Dennis Roberts? The oversight on the engagement rests with Dennis Roberts whose web bio states:

Dennis Roberts is Chairman of The McLean Group, LLC. Mr. Roberts has more than 35 years of accounting and investment-banking experience involving a multitude of transactions across a wide variety of industries and markets.

Mr. Roberts was the founder, chairman, and CEO of a publicly held regional holding company from 1984 to 1992. Prior to that, he was founder and senior partner of a large Washington, DC-area accounting firm that he sold to his partners in 1987. While a practicing Certified Public Accountant, Mr. Roberts focused on M&A, commercial finance, and similar transactions. Until 1995, Mr. Roberts was the managing partner for the Washington, D.C. regional office of Matrix Capital Markets Group, a regional investment bank specializing in M&A representation and corporate finance.

A graduate of Benjamin Franklin University (subsequently merged with George Washington University), Mr. Roberts is also a Certified Valuation Analyst (CVA), is accredited in Business Valuation (ABV) by The American Institute of Certified Public Accountants, and is an enrolled Federal Tax Accountant. He teaches, lectures, and writes on M&A, business valuation, and corporate finance to national audiences. He is a National Association of Securities Dealers (NASD) registered representative and firm principal (Series 7, 24, 28, 63).

The Process of the McLean engagement is best described as:

- The McLean Strategic Funding Presentation, which was presented to the Networx board on 12/18/2006, outlining the process for raising capital or selling the company;
- The McLean Business Valuation study, which was presented to the Networx board on 1/31/07, indicating certain parameters regarding the current value of the company;
- McLean contacted approximately 50 firms as potential acquisition candidates. It was designed as a two-phased approach: contact and move many companies quickly through the process given Networx's precarious cash position.
- After conversation and qualification of potential bidders, there were ten organizations which signed NDAs (non-disclosure agreements) and requested a copy of the CIM (confidential investment memorandum).
- Of the ten organizations which signed the NDAs, eight organizations submitted bids for the company and two chose not to bid. The Buyer List Companies that were contacted were presented to the board. During two board presentations in February and March, the board was updated, discussion occurred concerning the acceleration strategy, and the board approved to go forward with the eight potential acquirers.

- The process identified three bidders that were in a range higher than the rest of the indications of interest. After negotiating with each of the three finalists to get their best terms, the management team and the Board in consultation with the investment banker analyzed the three offers. The decision process involved a set of key criteria:
 1. Net purchase price to equity owners once after factoring in working capital and other adjustments,
 2. Purchase price in cash, stock or combination including evaluation of near term marketability of any stock,
 3. Verifiable financial wherewithal of the bidder to complete the proposed transaction,
 4. Experience in the telecom industry and ability to effectively run and grow the network to insure the payment of aged payables, and
 5. Quality of due diligence performed which correlates with evaluating the amount to time required to close.
- The firm CII provided the highest cash offering and was selected by the board (from three final firms) as the firm which was the best for the current owners of Memphis Network and its customers and employees.

Selection of Communications Infrastructure Investors (CII): Based on these criteria, the CII proposal was selected. The Network team, including the Board, continued to vigorously negotiate elements of the terms and purchase agreement with CII through the signing of the contingent purchase agreement.

The transaction being submitted to the owners for approval is a sale of their membership interests in Network for a gross purchase price of \$11.5 million. After the payoff of debt, adjustments to working capital, and fees and expenses related to the transaction, this yields approximately \$2.0 to \$2.5 million to equity holders depending upon post-closing adjustments.

The buyer, Communications Infrastructure Investors, will continue to operate the network in the same manner as it is operated today so customers will see no change in service. The network will become part of a broader network which ultimately should provide greater opportunities to serve national and regional carriers seeking connection to customers in Memphis and enterprises in Memphis looking for connections to points outside of the region.

The Contract to Sell: The contract was finalized between CII, MLGW, and Memphis Broadband on June 7, 2007. A copy of that contract has been publicly distributed. In addition, the following documents have been distributed to the MLGW Board and the City Council:

Documents For Release #1 (June 11, 2007)	
#0	Nick Clark's e-mail of 6-11-07 to MLGW Board
#1a	1999-05-11 Networx – ADL Study for MLGW
#1b	ADL Proforma model.xls
#2	2000-05-00 Networx – Tennessee Digital Divide (TRA)
#3	2000-05-10 Networx – Teletrics (MSDW)
#4	2000-10-11 Networx – Value Creation Opportunities for Utilities in Telecom 2 (Navigant)
#5	TMG – Memphis Strategic Funding Presentation 12 18 2006.ppt
#6	2007-05-30 Networx – Sale Transaction Waterfall Projection v4
#7	Memphis Networx SPA Execution Version-2 (Executed)
#8	Allan Wade Opinion Liquidation of Investment in the Memphis Networx 6-8-07

Documents For Release #2 (June 18, 2007)	
#9	Questions & Answers Concerning Networx Sale Transaction
#10	Networx Historical Accounting Files
#11	1999-2001 Networx Annual Report
#12	2002 Networx Annual Report
#13	2003 Networx Annual Report
#14	2004 Networx Annual Report
#15	2005 Networx Annual Report
#16	Final Note #9 from MLGW 2006 Audited Statement
#17	Pole Attachment Contract between Networx & MLGW

Documents For Release #3 (June 19, 2007)	
#18	Questions & Answers Concerning Networx Sale Transaction #2
#19	MCA 7-11-02 Concerns about Networx's Use of Funds May Arise at LG&W – Board Weights Larger Outlay
#20	MBJ 7-26-02 Minority investors in Networx risk most
#21	Networx Capitalization Issues 6-05 & 3-06
#22	Final Note #9 from MLGW 2006 Audited Statement
#23	CCG Consulting's estimate of value of Networx 4-1-05
#24	Redacted Networx Operating Agreement MNETAROpAgv.2(Clean)
#25	MLGW Board Resolution of 6-2-05 Concerning Networx

Documents For Release #4 (June 27, 2006)	
#26	A System Dynamics Model for Analyzing Bubble Effects in the LD Telecom Industry, Kurebayashi Thesis 2004
#27	OCED After The Telecommunications Bubble, Economics Department Working Papers No.361, 6-25-03

#28	MCA 5-20-05 Networx vote challenged -- MLGW board asks reconsideration
#29	MCA 6-6-05 LGW re-pitches deal for Networx -- Give us \$2.9 million, instead of \$6 million, it asks City Council
#30	MCA 6-17-05 MLGW advised to sell Networx -- Attorney says pull out while utility is still majority owner
#31	BusinessWeek 6-25-07 Telecom - Back From The Dead.pdf
#32	AFS Letter to Rick Masson of 6-14-07 Concerning Networx Sale.pdf
#33	2007-02-22 Networx - AFS MemphisNetworx NDA 02262007 (executed).pdf
#34	2007-03-28 Networx - BTI NDA (executed).pdf
#35	Networx McLean LLC NDA with CII 032007.pdf
#36	2007-06-27 Networx - McLean Summary of Sales Transaction.pdf
#37	AFS Executed Consent to Disclose 06 27 07 with Documents.pdf
#38	Bti's Bid Document Disclosure – Bti refused to sign the waiver, therefore the file is still missing.

Documents Remaining to be Released: If there are any further documents that need to be released, please let me know.

Questions of Potential Conflict of Interest, etc.: The question has been raised on several occasions about compensation to Directors of Networx. Networx Directors are not compensated in any way by Memphis Networx. As for the private directors, there are two Directors who receive some form of "carried interest" from their respective investment partnerships which they represent.

Carried interest is the common form of compensation for investment fund managers and it pays a specified percentage of the investment profit that the investors reap after their initial capital is paid back to the manager. This compensation method is used throughout the investment world because it aligns the interests of the fund manager with that of the investors.

There are two important points to note in this regard as it relates to the proposed Networx transaction. First, this compensation is borne only by the private investors in their investment partnership and the terms were set at the time of the investment (years ago). Second, this type of compensation motivates the fund managers in their service as Networx Directors to seek the best and highest payback for the shareholders and does not motivate anyone to choose a specific offer as has been alleged.

Solicitation of Further Questions: At the MLGW Board meeting this past week, the Board requested and encouraged that the City Council as well as any citizen submit any questions concerning the pending sale of Networx by sending an e-mail to mlgwboard@mlgw.org. That e-mail address will forward such e-mail to each of the MLGW Board members and a board member will be responsible for publishing and answering those questions in writing prior to the

MLGW Board meeting of July 5, 2007. We request that these questions be submitted by noon on Monday, July 2nd.

Invitation to City Council for MLGW Board Meeting Presentation on Proposal Sale of Networx: The MLGW Board meetings are open to the general public at all times. It is the MLGW Board's special desire to invite City Council members to be present on July 5, 2007, at 2:30 p.m.. Given the critical timing of this transaction, if a City Council member desires to provide input on the business decision which MLGW needs to make, it is imperative that they provide questions in writing for the benefit of a written response prior to the MLGW Board meeting and that, if they wish to address the MLGW Board, they appear at the July 5 meeting at 2:30 p.m. Questions may be e-mail to mlgwboard@mlgw.com. While MLGW will be making the business decision as to whether to sell Networx at its July 5th meeting, it is more than pleased to appear before Council to review the issues and questions surrounding how this loss was incurred.

Sincerely,

Nick Clark
Commissioner

cc: Mayor Herenton
Memphis City Council (via e-mail only)
MLGW Board of Commissioners (via e-mail only)
Networx Board of Directors (via e-mail only)

Tab 29

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

INTENTIONALLY OMITTED –
DOCUMENT PRODUCED IN FEBRUARY 1, 2008
RESPONSES TO SECOND DATA REQUEST

Tab 30

TO OCTOBER 23, 2007 LETTER TO
JEFFREY A. KITTERMAN
FROM CHARLOTTE KNIGHT GRIFFIN,
GENERAL COUNSEL FOR MEMPHIS LIGHT, GAS & WATER DIVISION

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 5, 2006

IN RE:

APPLICATION OF VO2 NETWORKX, INC. FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE COMPETING LOCAL
TELECOMMUNICATIONS SERVICES WITHIN THE
STATE OF TENNESSEE

)
)
) DOCKET NO.
) 06-00055
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INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on May 4, 2006, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by Vo2 Networkx, Inc. ("Vo2") on February 22, 2006. In its *Application*, Vo2 seeks a certificate of public convenience and necessity ("CCN") for authority to provide competing resold and facilities-based local exchange and interexchange telecommunications services within the State of Tennessee.¹

Legal Standard for Granting Certificate of Public Convenience and Necessity

Vo2's *Application* was made pursuant to, and was considered in light of, the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (2004), which provides, in pertinent part:

¹ Vo2 previously was granted a CCN by an order issued February 11, 2004 in Docket No. 03-00641. Vo2's certification was revoked on September 26, 2005 for non-payment of fees. *See In re: Application of Vo2 Networkx, Inc. for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Competing Local Exchange Telecommunications Services*, Docket No. 03-00641, *Order Revoking Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Competing Local Exchange Telecommunications Services for Non-payment of Fees* (October 6, 2005).

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.²

² Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d) *AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, *Memorandum Opinion and Order*, 14 FCC Rcd 11064 (1999); *Memorandum Opinion and Order*, 16 FCC Rcd 1247 (2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, LLC to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The May 4, 2006 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on April 18, 2006. No persons sought intervention prior to or during the Hearing. At the Hearing held on May 4, 2006, Mr. Beau Peyton, Chief Operating Officer of Vo2, participated in the Hearing and was subject to examination by the Hearing Officer. Upon Vo2's conclusion of the presentation of its proof, the Hearing Officer granted Vo2's *Application* based upon the following findings of fact and conclusions of law:

I. Vo2 Networx, Inc.'s Qualifications

1. Vo2 is a corporation organized under the laws of the State of Tennessee on August 1, 2003.
2. The complete street address of Vo2's registered agent is National Registered Agents, Inc., 1900 Church Street, Suite 400, Nashville, Tennessee 37203. The complete street address of Vo2's corporate office is 1835 Moriah Woods Boulevard, Suite 1, Memphis, Tennessee 38117. The telephone number is (901) 842-5400 and the facsimile number is (901) 842-5402.
3. The *Application* and supporting documentary information existing in the record indicate that Vo2 has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of

Tennessee. Specifically, Vo2's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Vo2 has the necessary capital and financial ability to provide the services it proposes to offer.

5. Vo2 has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

II. Proposed Services

Vo2 intends to provide competing resold and facilities-based local exchange and interexchange telecommunications services within the State of Tennessee.

III. Permitting Competition to Serve the Public Convenience and Necessity

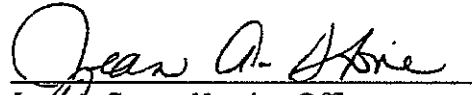
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Vo2's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. Small and Minority-Owned Telecommunications Business Participation Plan

Vo2 has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

IT IS THEREFORE ORDERED THAT:

1. The *Application for Certificate to Provide Competing Local Telecommunications Services* filed by Vo2 Networx, Inc. is approved;
2. Vo2 Networx, Inc. is directed to file a tariff with the Authority in conformance with TRA Rules; and
3. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.


Jean A. Stone, Hearing Officer