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D Billye Sanders
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December 21, 2000

Via Hand-Delivery

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: Application of Memphis Networx, LLC 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, LLC ("A&L") for Approval for Agreement Between MLGW and A&L regarding Joint Ownership of Memphis Networx, LLC; Docket No.99-00909 – Amendment to Application / Pre-Filed Testimony of William Larry Thompson, Andrew P. Seamons, and Ward Huddleston, Jr.

Dear Mr. Waddell:

Enclosed you will find the original and thirteen (13) copies of the Amendment to the Application of Memphis Networx, LLC; the Pre-filed Supplemental Testimony of William Larry Thompson, on behalf of MLGW; the Pre-filed Testimony of Andrew P. Seamons, on behalf of Memphis Broadband, LLC; and the Pre-filed Supplemental Testimony of Ward Huddleston, Jr., on behalf of Memphis Networx, LLC.

Sincerely,

D. Billye Sanders

D. Billye Sanders

Enclosures

cc: Parties of Record
John Knox Walkup, Esq.
Charlotte Knight Griffin, Esq.
Ward Huddleston, Esq.
Warner Rodda, Esq.
Ricky Wilkins, Esq.

Confidential data on File
PL 12-27-00

528721.1

CERTIFICATE OF SERVICE

I, D. Billye Sanders, hereby certify that on this 21st day of December , 2000, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage pre-paid to the Counsel of Record listed below.

D. Billye Sanders

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS NETWORX, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES AND JOINT PETITION OF MEMPHIS LIGHT GAS AND WATER DIVISION, A DIVISION OF THE CITY OF MEMPHIS, TENNESSEE ("MLGW") AND A&L NETWORKS-TENNESSEE, LLC ("A&L") FOR APPROVAL OF AGREEMENT BETWEEN MLGW AND A&L REGARDING JOINT OWNERSHIP OF MEMPHIS NETWORX, LLC	)	DOCKET NO. 99-00909

PRE-FILED SUPPLEMENTAL TESTIMONY OF
WILLIAM LARRY THOMPSON ON BEHALF OF MLGW

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is William Larry Thompson. My business address is 220 South Main Street, Memphis, Tennessee 38103.

Q. WHAT IS YOUR CURRENT POSITION?

A. I am the Senior Vice President and Chief Operating Officer of Memphis, Light Gas & Water Division.

Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain the changes in membership in Memphis Networx, to summarize the substantive changes in the Operating Agreement that are set forth in the Amended and Restated Operating Agreement and the impact these changes may have on Memphis Networx, and to update the Authority regarding the action of the Memphis City Council regarding the approval of MLGW's 2001 budget and the Memphis Networx franchise application.

Q. DID MLGW CONSENT TO THE TRANSFER OF MEMBERSHIP INTEREST FROM A&L NETWORKS TO MEMPHIS BROADBAND, LLC?

A. Yes. MLGW was involved in extensive discussions during the negotiations of this transfer. In addition, we included our consent to the acquisition of the membership interest in Memphis Networx in Section 2 of the Amended and Restated Umbrella Agreement, dated November 29, 2000.

Q. DID MLGW SECURE THE NECESSARY APPROVALS FOR THE REVISIONS TO THE OPERATING AGREEMENT?

A. Yes. The resolutions submitted with the Application as Exhibit D, and hearing Exhibit 3, provided the necessary authority to Herman Morris, President of MLGW, to negotiate and execute an agreement establishing a joint venture that would provide telecommunications services. In addition, the Board of Commissioners of MLGW has been informed of the negotiations concerning the transfer of membership interest from A&L to Memphis Broadband, as well as the subsequent revisions to the Operating Agreement. They discussed changes to the Operating Agreement and Umbrella Agreement at the December 7, 2000 meeting of the Board of Commissioners. A copy of the agenda and a transcript of the discussion at meeting regarding the change in ownership are attached to this testimony as Exhibit A.

Q. ARE YOU FAMILIAR WITH THE TERMS OF THE AMENDED AND RESTATED OPERATING AGREEMENT?

A. Yes. I was personally involved in the numerous discussions with Memphis Broadband and Memphis Networx officials concerning these terms. MLGW believes that the Amended and Restated Operating Agreement represents a positive development for Memphis Networx.

Q. WHAT ARE THE SIGNIFICANT CHANGES IN THE AGREEMENT?

A. The primary change is the transfer of ownership interest from A&L Networks-Tennessee, LLC to Memphis Broadband, LLC. The other significant changes include the appointment of a new Board of Governors, the put options, and the capital contribution requirements.

Q. HOW IS THE 5 MEMBER BOARD OF GOVERNORS OF MEMPHIS NETWORX CHOSEN?

A. MLGW elects two governors, Memphis Broadband elects two governors, and the fifth governor will be designated jointly by MLGW and Memphis Broadband. (See Section 5.3 of the Amended and Restated Operating

Agreement.) The current governors are listed in Exhibit R to the Amendment to the Application.

Q. PLEASE SUMMARIZE THE PUT OPTIONS CONTAINED IN THE AMENDED AND RESTATED OPERATING AGREEMENT AND GIVE YOUR PERSPECTIVE OF THE PUT OPTIONS?

A. First, I would like to place the put options in perspective. MLGW and Memphis Broadband negotiated various terms, including the put options, contained in this Agreement. I believe it is customary for any private investor to seek some type of exit strategy from a new business venture. I believe the put options are reasonable under the circumstances. Upon the occurrence of certain conditions as specified in the Amended and Restated Operating Agreement (Section 11.6, which references Section 9 of the Amended and Restated Umbrella Agreement), Memphis Broadband has the option to sell and MLGW has the obligation to purchase Memphis Broadband's interest in Memphis Networx. These put options give MLGW the ability to buy out Memphis Broadband's interest in Memphis Networx at a price that is based upon a formula set forth in the agreement. MLGW has the discretion to buy the entire business and run it alone; buy the entire business and seek another partner; or join with Memphis Broadband in selling the entire business. Thus, MLGW has the ability to control its own destiny.

Q. PLEASE EXPLAIN THE CHANGES CONCERNING CAPITAL CONTRIBUTIONS.

A. The $10 million combined initial capital contributions of the members have not changed. From these contributions, the members have committed to make capital contributions for liabilities of Memphis Networx that are due and payable as of the date of the Amended and Restated Operating Agreement, and the members have each committed an additional $600,000 for expenses pending regulatory approval. If regulatory approval is obtained, the balance of the members' respective capital contributions will be made within ninety days after the date of the Authority's Order.

There are also two new features of Section 9.1 of the Amended and Restated Operating Agreement-authorization for the Board of Governors to make certain additional capital calls and a dilution provision if one member fails to make a required capital contribution. Under Section 9.1(e), the Board of Governors is permitted to require capital contributions from the members, up to an aggregate amount of $15 million, between the date of a TRA order granting approval of Memphis Networx's certificate of convenience and necessity, until the date that the order becomes final and non-appealable. Under Section 9.1(f), if a member fails to make a required capital contribution, there is a mechanism for the dilution of that member's

membership interest if the other member wishes to make the full required capital contribution. Section 9.1(g) provides a mechanism to reverse the dilution upon payment of a member's capital contribution shortfall within ninety days after the TRA's Order becomes final and non-appealable.

Subsequent capital contributions to Memphis Networx will be made upon approval of both members.

Q. DO YOU BELIEVE THERE IS A BENEFIT THAT RESULTS FROM THE TRANSFER OF MEMBERSHIP INTEREST IN MEMPHIS NETWORX TO MEMPHIS BROADBAND?

A. Yes. The investors and principals of Memphis Broadband, bring extensive experience in raising capital and therefore will bring additional financial resources to the Memphis Networx project. The investors and principals of Memphis Broadband also have direct experience in startup projects in Shelby County. This local interest was very important to us during the negotiations on the transfer of membership interest. Memphis Broadband's members are comprised of very prominent members of the local and national business community, who have strong ties to Shelby County. The financial capability and resources of Memphis Broadband will enhance the financial qualifications of Memphis Networx as an applicant before this Authority and in providing the services for which it has applied.

Q. DID MLGW AUDIT THE EXPENSE TRUEUP WHICH IS DISCUSSED IN SECTION 9.1 OF THE AMENDED AND RESTATED AGREEMENT?

A. Yes. MLGW has audited this expense true up and believes it reflects an accurate description of the prior costs, subsequent costs and interim contributions paid to date.

Q. DOES THE AMENDED AND RESTATED OPERATING AGREEMENT RETAIN THE COMMITMENT TO MINORITY BUSINESS PARTICIPATION IN MEMPHIS NETWORX?

A. Yes. Section 3.4 of the Amended and Restated Operating Agreement sets forth the commitment of both MLGW and Memphis Broadband to seek minority investors for Memphis Networx. The percentages set forth in the original Operating Agreement were somewhat confusing on their face. This Section has been revised to more clearly show the same allocations that were established in the original Operating Agreement. Now, the allocations of financial interests and proceeds are expressed in fractions instead of percentages. The commitment to sell up to 10% of the financial rights of Memphis Networx to minority businesses remains the same, and out of this 10%, 2/3 of the interest to be offered to minority businesses will come from MLGW (12.6% of MLGW's 53% financial rights), while the other 1/3 of the

interest to be offered to minority businesses will come from Memphis Broadband (7.1% of Memphis Broadband's 47% financial rights). Proceeds from the sale of financial rights will flow 2/3 to MLGW and 1/3 to Memphis Broadband. We continue to reaffirm our support of this provision.

Q. HAVE THERE BEEN ANY CHANGES IN THE AMENDED AND RESTATED OPERATING AGREEMENT THAT WOULD AFFECT THE PREVIOUS COMMITMENT OF MEMPHIS NETWORX TO PROVIDE SERVICES IN UNDERSERVED AREAS?

A. No. In fact Section 2.5(c) contains the identical language as set forth in the original Operating Agreement. Pursuant to this provision, Memphis Networx plans to install telecommunication fibers near St. Jude Hospital and the housing developments and the Jefferson Square, R.Q. Venson and Barry Holmes housing developments within two years after receipt of regulatory approval. In addition, Memphis Networx will commit 1% of its net operating profits, up to $1 million per year, to the development and enhancement of telecommunication services in low-income areas of Shelby County. MLGW firmly believes that these commitments, to which Memphis Broadband agreed, will help close the digital divide in Shelby County.

Q. DOES MEMPHIS NETWORX REMAIN COMMITTED TO PROVIDING TELECOMMUNICATIONS SERVICES IN UNDERSERVED AREAS IF COMPETITION IS NOT OFFERED IN THREE YEARS AFTER APPROVAL OF THE APPLICATION?

A. Yes. This was discussed and the parties reaffirmed the commitment that was made to the Authority for Memphis Networx to provide such services in underserved areas if competition is not offered within three (3) years after approval of the Application.

Q. HAVE THERE BEEN ANY PERTINENT ACTIONS TAKEN BY THE CITY OF MEMPHIS THAT MAY AFFECT THIS APPLICATION?

A. Yes. On December 5, 2000, the City Council of Memphis approved by a 12-0 vote the franchise application of Memphis Networx, and the budget of MLGW, which includes the $20 million loan from the Electric Division to the Telecommunications Division for the Memphis Networx project. A copy of the minutes from this meeting is attached to this testimony as Exhibit B. We believe that these actions demonstrate that the City does in fact support the project.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

VERIFICATION

I, William Larry Thompson, declare under penalty of perjury that I am authorized by Memphis, Light, Gas & Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

William Larry Thompson
Senior Vice President, Chief Operating Officer
Memphis, Light, Gas & Water Division

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 21st day of December, 2000.

James F. Greer
Notary Public
My Commission Expires: 9-28-04

JAMES F. GREER NOTARY PUBLIC AT LARGE SHELBY CO., TN

EXCERPT FROM BOARD MEETING
HELD
DECEMBER 7, 2000

Larry Thompson, Senior Vice President and COO
Update on Telecommunications

"I just wanted to bring the Board maybe up to speed on some of the things that you've been aware of in bits and pieces, in the paper, and been briefed over the past several weeks, but really on the telecommunications project, just maybe very quickly taking you back through its entire history, just four or five minutes, and then talk about where we are and what we are going to do and expect. We just talked about our strategic planning process, telecommunications has been in the plan for five plus years. It was probably started ..... on line as we saw what other companies were doing. In April of 1998, as we had been working with, particularly BellSouth to jointly install some of their facilities, the idea for MLGW actually doing a joint venture came about. It was evaluated internally, was presented during the Summer Planning Conference, again part of our planning process. The decision was made. The decision was to go forward with a request for proposal, which was done in the fall of 1998. Then, in March of 1999, after reviewing some twenty, some eight responses from twenty-two interested parties, the award was made for a joint venture with A&L Networks, Tennessee. The operating agreement with A&L was negotiated during that period of time, and in November of 1999, application to the Tennessee Regulatory Authority was made. That began a review process by the TRA and also began some opposition from other providers in the community. There was a hearing in May of 1999. During that hearing there was actually a settlement reached with the interveners, all the interveners with the exception of the IBEW. That settlement did not hold because of concern over retail or residential competition, and there were two subsequent hearings held. There were a total of three different hearings, each of which were about a week in duration, and the last one was completed in October of this year. During that process, our partner, A&L Networks, Tennessee, Mr. Alex Lowe, had indicated that he would be seeking additional investment. We had encouraged Mr. Lowe to seek as much of that investment as possible from the local community. In the fall of 1999 or in 2000, Mr. Lowe did make contact with a group called the Memphis Angels, a capital venture investment group made up of prominent local Memphians, and as part of his negotiations with them and discussions with MLGW, we had consent to change in ownership, Mr. Lowe agreed to sell his entire interest in Memphis Networx to the Memphis Angels. That sale was just consummated, closed last week. Memphis Angels have created an entity called Memphis Broadband which will actually be the entity they own. They along with a list of other investors, the Boyle family, the Belz family, and Pitt Hyde, along with a group of minority investors that are being put together by Archie Willis and Luke Yancy. So, the Memphis Angels, along with these other investors, will own Memphis Broadband which will in turn jointly with MLGW own Memphis Networx ..... faces. This past week, or this week, the City Council did approve the inclusion of the loan from the electric division of MLGW to the telecom division for investment in Memphis Networx and they also included, approved the franchise that will allow Memphis Networx to actually install facilities throughout the City of Memphis. The – so we're up to the present, so I will sort of talk about that and then talk about what we will do in the future. At this point, MLGW has spent approximately $4.8 million dollars. $2.8 of that, roughly $2.8 of that, was spent for

design, for legal costs, for business plans, for all of the documents that are necessary to put it together and actually get about two-thirds of the system actually designed and in place. The other $2 million is for cable, one of the decisions that we made on fiber. During this process, fiber has approximately a twelve to fifteen month lead time, so if we did not go ahead and get that fiber optic cable on hand, we would have been waiting for a period of time to begin construction, so that decision was made, and MLGW did advance on that. So, we are in a position to immediately begin construction on the final step of this process. During the past few weeks, we did resolve issues with IBEW, and to some degree with Time Warner. Time Warner has indicated that they will take a less active position with respect to Memphis Networx and its potential to compete locally. Particularly, we would like to thank Jack Sammons, City Councilman, who has consistently supported the Memphis project, and also Councilman Brent Taylor who over the past couple of weeks has facilitated the mediation and discussion efforts and has taken a key role in really bringing the parties together and we sincerely appreciate that. I would also point out that Mayor Herenton has consistently supported this project and he, along with Councilman Sammons, have previously written letters of support to TRA ..... and in our corner, and remain there. So, now if we could talk about the next steps. We must also have franchise agreements with Shelby County and with the other smaller towns; Germantown, Bartlett, and Collierville at least, that this service would be ..... So, those steps are in process and we must have TRA approval. There will be an amended application. We will submit documents that will document the sale of A&L Networks to Memphis Broadband. There will be some changes in the operating agreement that would obviously take out A&L Networks, Tennessee's roles and put in Memphis Broadband's roles. Really, the only significant change in the operating agreement other than the names, there is, in the previous agreement there was what was called a call or roll up option that we had already taken out and agreed to take out before TRA. In the new contract is what's called a put option which will allow MLGW to buy this system at no profit to the Memphis Broadband folks if, for whatever reason, this project does not go forward ..... joint venture was turned down by TRA, or at a later date to buy at fair market value ..... we both ..... or MLGW could agree to sell. So, all of the decisions and options .....MLGW in this scenario as opposed to the previous agreement. Probably the other change is the minority investment, though Mr. Lowe had made a commitment to minority investors, it was going to be very difficult to get that investment on the front-end with the previous arrangement. With the new investors, with the assistance of Mr. Willis and Mr. Yancy, it appears that that investment is going to be a significant part of their front-end investment and so the growth from that can take place from the beginning, which is a much preferred situation. Those amended documents will be submitted to TRA probably next week, and here we get into the guessing game again as to how long this will take. I would expect that we would get a favorable decision probably either the first or second month of next year and would be in position to begin construction in March. This remains a wholesale, open-access network which means it would be available to any telecommunications providers. There is no sole source or limited aspects to this ..... telecommunications companies could use it; Time Warner, BellSouth, or competitors to those high-speed internet providers as well. The initial construction would be of a trunk line network around the community going from Collierville to downtown that would come in contact with the same Memphis Housing Authority projects that had been designated in the initial agreement. Second horizon or phase would be to consider running services to businesses and possibly some residential areas. Then, third, with another complete business study review would be whether or not you run services directly to homes and other businesses. Again, services that would be open-access. Anybody could use them, but they would be running directly to the home. Should recognize

probably about six folks here that really have taken a lead role in this: John McCullough, Chief Financial Officer, has been in the middle of negotiating, Charlotte Knight-Griffin has been in the, carrying the legal ball, Mike Whitten, our General Auditor, has worked with John on the financial side as well as some of the operating issues. Herman's been the player/coach in this thing - all along he's been available ..... we've been in Nashville for the phone calls, but there's been times when Herman's stepped in and taken the active role in negotiating and planning, Wade Stinson, a key player who has started this whole thing off and carried it largely through the first part of it, and of course Max Williams who has shepherded this from a legal point of view, and kept us out of too much trouble along with Charlotte along the way. We did have a couple of consultants over the past few months, Ed Horrell, who is recognized certainly locally and nationally as a telecommunications expert, was brought along to help MLGW put some of this together and to help us with some of the decisions that we had to make relative to technical issues, and then John Slater, who has assisted in putting the financial deal together with the Memphis Angels. Again, we've been, this has been a roller coaster ride. We think we are on peak and we think we are going to plateau ..... I'll stop now and see if the Board might have any questions.

I'd like to thank you for your support as we've gone along. I know we've talked with you about this for most of this almost two year period, and I'd like to thank each of you for your questions and your support in this.

Comments by Board Chairman Franketta Guinn:

Thank you Larry, certainly this is a good job done by the MLGW staff. We were briefed on this earlier.

We appreciate you bringing us up to date in our public meetings.....we congratulate you and we are glad that it is working.....

MINUTES

REGULAR MEETING OF THE CITY COUNCIL

CITY OF MEMPHIS

December 5, 2000

3:30 P.M. SESSION

ROLL CALL: Joe Brown, Edmund H. Ford, Janet Hooks, E.C. Jones, Myron Lowery, Tom Marshall, TaJuan Stout Mitchell, Rickey Peete, Jack Sammons, Brent Taylor, Pat Vander Schaaf, John Vergos and Chairman Barbara Swearengen Holt

THE MEETING WAS CALLED TO ORDER BY THE SERGEANT-AT-ARMS

INVOCATION

The meeting was opened with prayer by Rev. LaSimba Gray from New Sardis Baptist church, followed by the Pledge of Allegiance. Councilwoman Mitchell presented Rev. Gray with a certificate naming him Chaplain of the day.

An original of each item is filed in the Office of Council Records, Room 2B-08, and on microfilm in the Office of Records Management, Room 2B-08.

19. ORDINANCE REZONING THE EAST SIDE OF SYCAMORE VIEW ROAD, +525.9 FEET SOUTH OF RALEIGH LAGRANGE ROAD, CONTAINING 1.3 ACRES IN THE SINGLE FAMILY RESIDENTIAL (R-S8) DISTRICT, UP FOR T H I R D AND F I N A L READING.

Ordinance No. 4832
Case No. Z 00-130

Held to December 19, 2000

20. ORDINANCE REZONING THE WEST SIDE OF LAMAR AVENUE (U.S. 78); ±1,345 FEET NORTHWEST OF HOLMES ROAD, CONTAINING 86.20 ACRES IN THE AGRICULTURAL (AG), AGRICULTURAL FLOOD PLAIN (AG[FP]) AND HIGHWAY COMMERCIAL (C-H) DISTRICTS, UP FOR T H I R D AND F I N A L READING.

Ordinance No. 4833
Case No. Z 00-145cc

Held to December 19, 2000

28. RESOLUTION APPROVING A PLANNED DEVELOPMENT LOCATED ON THE NORTHEAST CORNER OF RIVER FALL COVE AND OAK RIVER DRIVE, CONTAINING 4.7 ACRES IN THE SINGLE FAMILY RESIDENCE/AGRICULTURAL (AG) DISTRICT OVERLAID BY PD 96-362.

Case No. PD 00-358

Held to December 19, 2000

29. RESOLUTION APPROVING A SUBDIVISION REVOCATION LOCATED ON THE WEST SIDE OF SWINNEA ROAD; BEGINNING 573 FEET NORTH OF RUNWAY ROAD, CONTAINING 8.07 ACRES IN THE VACANT/TOWNHOUSE RESIDENTIAL (R-TH) DISTRICT OVERLAID BY PD 92-341.

Case No. SR 00-903

Held to December 19, 2000

36. RESOLUTION APPROVING AN APPEAL OF A DECISION OF THE LANDMARKS COMMISSION PROPERTY, LOCATED AT 295 KIMBROUGH IN CENTRAL GARDENS HC DISTRICT, CASE # MLC #01-36.

MOTION: Marshall
SECOND: Jones
AYES: Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown, Ford, Lowery and Peete did not cast a vote

APPROVED

33. RESOLUTION APPROVING THE TRANSFER OF CITY OWNED REAL ESTATE TO HABITAT FOR HUMANITY. THE PROPERTY IS A VACANT LOT AT 806 IOKA AVENUE WHICH WAS PURCHASED WITH FEDERAL FUNDS UNDER THE DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT'S REPLACEMENT HOUSING PROGRAM.

MOTION: Jones
SECOND: Vander Schaaf
AYES: Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown, Ford, Lowery and Peete did not cast a vote

APPROVED

34. RESOLUTION DECLARING DECEMBER 11, 2000, AS SHELBY COUNTY REPUBLICAN WOMEN DAY.

MOTION: Taylor
SECOND: Jones
AYES: Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown, Ford, Lowery and Peete did not cast a vote

APPROVED

37. RESOLUTION APPROVING MIDDLE INCOME HOUSING PROGRAM, FUNDING RECOMMENDATION.

MOTION: Marshall
SECOND: Vander Schaaf
AYES: Ford, Hooks, Jones, Marshall, Mitchell, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown, Lowery, Peete and Sammons did not cast a vote

APPROVED

10. RESOLUTION CONVENING CITY COUNCIL AS A RATE MAKING BOARD FOR THE PURPOSE OF DETERMINING THE FEASIBILITY OF A REVISION IN THE SCHEDULE OF RATES, AND TO PRESCRIBE RATES SUFFICIENT FOR THE OPERATION OF MEMPHIS LIGHT, GAS AND WATER DIVISION.

MOTION: Taylor
SECOND: Jones
AYES: Ford, Hooks, Jones, Marshall, Mitchell, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown, Lowery and Peete did not cast a vote

APPROVED

****

COUNCIL RECESSES AS CITY COUNCIL AND CONVENES
AS A RATE-MAKING BOARD

****

****

MEETING CALLED TO ORDER AS A RATE-MAKING BOARD BY THE SERGEANT-AT-ARMS

****

PUBLIC HEARING Re: Revised schedule of MLGW rates

Presentation by: Memphis Light, Gas & Water

11. **RESOLUTION TO CHANGE MLG&W RETAIL GAS SCHEDULE TO BE EFFECTIVE FROM JANUARY 8, 2001 THROUGH APRIL 5, 2001.**

MOTION: Taylor
SECOND: Marshall
AYES: Ford, Hooks, Jones, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Brown did not cast a vote

APPROVED

****

ADJOURNMENT AS A RATE MAKING BOARD BY THE SERGEANT-AT-ARMS

****

****

MEETING CALLED BACK TO ORDER AS THE CITY COUNCIL BY THE SERGEANT-AT-ARMS

****

12. **RESOLUTION APPROVING THE MLGW 2001 BUDGETS OF THE ELECTRIC, GAS AND WATER DIVISIONS FOR OPERATION AND MAINTENANCE EXPENSES AND CAPITAL EXPENDITURES.**

MOTION: Lowery - Include the $20 million dollars
SECOND: Hooks

Friendly Amendment:

1) MLGW shall provide Council with annual review of status and payback schedule (including interest accrued) of $20,000,000.00 loan with review of MLGW Budget

2) Any pledge, loan, or other use of MLGW credit or assets relating to investment in Networx must be reviewed and approved by Council

MOTION: Peete
SECOND: Vander Schaaf

Lowery accepted Mr. Peete's motion as a Friendly Amendment

MAIN MOTION: Taylor
SECOND: Sammons
AYES:

MAIN MOTION: Taylor
SECOND: Sammons
AYES: Brown, Ford, Hooks, Jones, Lowery, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt
Marshall recused himself

APPROVED, as amended

13. **RESOLUTION APPROVING LOCAL PREFERENCE POLICY FOR HEALTH, EDUCATION AND HOUSING FACILITIES BOARD.**

MOTION: Brown
SECOND: Peete
AYES: Brown, Ford, Hooks, Jones, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt

APPROVED

14. **RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH PATTON TULLY TRANSPORTATION LLC FOR CERTAIN LANDS IN THE PRESIDENTS ISLAND INDUSTRIAL PARK, AS APPROVED BY THE BOARD OF COMMISSIONERS OF THE MEMPHIS AND SHELBY COUNTY PORT COMMISSION ON MAY 26, 2000.**

Contract No. CR-4612

MOTION: Sammons
SECOND: Peete
AYES: Brown, Ford, Hooks, Jones, Lowery, Marshall, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt

APPROVED

15. **ORDINANCE GRANTING A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY OF MEMPHIS UNDER PROVISIONS OF ORDINANCE #4404 TO MEMPHIS NETWORK UP FOR THIRD AND FINAL READING.** (Held from 2/15; 3/7; 4/11; 4/25; 5/16; 6/6; 6/20; 7/11; 7/25; 8/15; 9/19; 11/7; 11/21)

Ordinance No. 4744

Chairman Holt recognized the following persons from the audience:

Debra Godwin, IBEW 1288
Brent Hall, IBEW 1288
Charlie Jones, 3290 New Getwell, Mphs, TN 38118
Bill Ray, 6055 Primacy Pkwy, Suite 438, Mphs, TN 38119
Frances Turner, 83 Asphodel Dr., Mphs, TN 38103

MOTION: Taylor
SECOND: Jones
AYES: Brown, Ford, Hooks, Jones, Lowery, Mitchell, Peete, Sammons, Taylor, Vander Schaaf, Vergos and Chairman Holt

MOTION: Marshall - Add items #38 and #39
SECOND: Peete

APPROVED, by unanimous voice vote, items added

16. ORDINANCE GRANTING A FRANCHISE FOR A GAS LINE TO PROTEIN TECHNOLOGIES, INC., UP FOR THIRD AND FINAL READING.(Held from 5/16;6/6; 6/20; 7/11;7/25;8/1; 8/15; 9/5; 10/3; 10/17; 11/7; 11/21)

Ordinance No. 4761

DROPPED

17. ORDINANCE REZONING THE NORTH SIDE OF FINCH ROAD AT THE INTERSECTION OF APRIL FOREST DRIVE, CONTAINING 4.97 ACRES IN THE SINGLE FAMILY RESIDENCE AND BARN/AGRICULTURAL (AG) DISTRICT, UP FOR THIRD AND FINAL READING.

Ordinance No. 4830
Case No. Z 00-142cc
(Companion Case No. S 00-043cc)

Applicant: Fred Elam
Doveland Engineering - Frank Palumbo, Representative

Request: Single Family Residential (R-S6) District

LUCB and OPD recommendation: REJECTION

MOTION: Peete
SECOND: Vander Schaaf
AYES: Ford, Jones, Lowery, Mitchell, Peete, Taylor and Chairman Holt
Brown, Hooks, Marshall, Sammons, Vander Schaaf and Vergos did not cast a vote

APPROVED

30. RESOLUTION APPROVING A SUBDIVISION APPEAL LOCATED ON THE NORTH SIDE OF FINCH ROAD AT THE INTERSECTION OF APRIL FOREST DRIVE.

Case No. S 00-043cc
(Companion Case No. Z 00-142cc- Ordinance No. 4830)

Applicant: Fred Elam
Frank Palumbo - Representative

Request: An appeal to overturn the action of the Land Use Control Board rejecting the preliminary plan for the Chelsea Estates Subdivision

LUCB and OPD recommendation: REJECTION

MOTION: Peete
SECOND: Jones
AYES: Brown, Ford, Jones, Lowery, Mitchell, Peete, Taylor and Chairman Holt
Hooks, Marshall, Sammons, Vander Schaaf and Vergos

APPROVED

18. ORDINANCE REZONING THE SOUTH SIDE OF OLD HIGHWAY 78 AT THE INTERSECTION OF REPUBLIC DRIVE, CONTAINING 9.073 ACRES IN THE AGRICULTURAL (AG) DISTRICT, UP FOR THIRD AND FINAL READING.

Ordinance No. 4831
Case No. Z 00-112cc

Applicant: Wayne E. Lomax
Fisher & Arnold - Representative

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS NETWORX, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES AND JOINT PETITION OF MEMPHIS LIGHT GAS AND WATER DIVISION, A DIVISION OF THE CITY OF MEMPHIS, TENNESSEE ("MLGW") AND A&L NETWORKS-TENNESSEE, LLC ("A&L") FOR APPROVAL OF AGREEMENT BETWEEN MLGW AND A&L REGARDING JOINT OWNERSHIP OF MEMPHIS NETWORX, LLC	)	DOCKET NO. 99-00909

PRE-FILED TESTIMONY OF ANDREW P. SEAMONS ON BEHALF OF MEMPHIS BROADBAND, LLC

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Andrew P. Seamons. My business address is 6510 Poplar Avenue, Suite 395, Memphis, Tennessee 38119.

Q. PLEASE DESCRIBE YOUR CURRENT POSITION AND JOB DUTIES.

A. I am a Vice President and one of the principals of Paradigm Capital Partners, LLC, a Memphis based venture capital firm. In addition, I am one of the three Managers of Memphis Broadband, LLC.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I was awarded a Masters in Business Administration from the Harvard Business School, where I was designated a Baker Scholar. I also hold a Bachelor of Science in Engineering, *Summa Cum Laude*, in Electrical Engineering from Duke University where I focused on high frequency communications.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. I spent almost six years with McKinsey & Company, an international management consultancy. There I led the day-to-day activities of client engagement teams. At McKinsey, I focused on operations and service operations engagements and worked with a range of communications companies including a Regional Bell Operating Company (RBOC) and a major communications equipment manufacturer.

Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS DOCKET?

A. No.

Q. WHAT IS THE PURPOSE OF YOUR PRE-FILED TESTIMONY?

A. The purpose of my pre-filed testimony is to provide the Authority with information pertaining to Memphis Broadband's ownership of and participation in Memphis Networx.

Q. PLEASE DESCRIBE THE CORPORATE STRUCTURE OF MEMPHIS BROADBAND, LLC.

A. Memphis Broadband, LLC is a Delaware limited liability company, having at present, four members, including Memphis Angels, LLC ("the "Memphis Angels"); M-Net 2000, a Tennessee general partnership; Belz Broadband Associates, a Tennessee general partnership; and Joseph R. Hyde, III. Memphis Broadband was created specifically for the purpose of participating in the Memphis Networx project. A copy of the organizational chart for Memphis Broadband was submitted as Exhibit S to the Amendment to the Application.

Q. DESCRIBE THE BACKGROUND OF MEMPHIS BROADBAND AND ITS MEMBERS.

A. Memphis Broadband was created by the Memphis Angels, and the other members, with the help of the Paradigm Capital Partners. The principals of the members of Memphis Broadband have extensive experience in all facets of running and growing businesses and represent some of the greatest success stories in American business during the past 30 years. In addition to their primary businesses, many of the principals have extensive experience investing in and supporting new ventures. Based on the principals' experience, Memphis Broadband can provide Memphis Networx with broad strategic and functional support going forward.

As an example of the relevant experience, Robert Blow, a member of the Memphis Angels, was a co-founder and Managing Director of Columbia

Capital Corporation, a private equity investment bank focused on the communications industry. Mr. Blow was the head of Columbia's Mergers & Acquisitions group specializing in wireless technologies. Additionally, he was actively involved in the development and investment of capital raised by Columbia Capital Equity Partners II, LP, a $450 million venture capital fund. In that capacity, he served on several boards of directors of private and public companies in the communications industry.

Q. PLEASE EXPLAIN THE CHANGES IN THE MEMBERSHIP OF MEMPHIS NETWORX.

A. On November 29, 2000, Memphis Broadband, LLC acquired the membership interest of A&L Networks-Tennessee, LLC in Memphis Networx. We have executed an Amended and Restated Operating Agreement for Memphis Networx, which was attached to the Amendment as Exhibit U.

Q. WHAT IS MEMPHIS BROADBAND'S ROLE IN MEMPHIS NETWORX?

A. Memphis Broadband is a partial owner pursuant to the terms of the Amended and Restated Operating Agreement and will have representation on the Board of Governors as set forth in the agreement.

Memphis Broadband will contribute or raise additional capital for Memphis Networx as agreed upon by the members and/or Board of Governors of Memphis Networx.

Q. HAS MEMPHIS BROADBAND PROVIDED ANY CAPITAL CONTRIBUTIONS TO MEMPHIS NETWORX?

A. Yes. To date, Memphis Broadband has made approximately $3.2 million of its $4.7 million capital requirements to Memphis Networx. Included in this $3.2 million contribution is prior capital contributions made by A&L Networks-Tennessee, LLC, payment of liabilities of Memphis Networx that were due and payable, as well as operating expenses. Memphis Broadband has committed a total of $600,000 for expenses pending regulatory approval. If regulatory approval is obtained, the balance of Memphis Broadband's capital contributions will be made within ninety days after the date of the Authority's Order.

Q. ARE YOU FAMILIAR WITH THE CROSS SUBSIDY PROHIBITIONS UNDER STATE LAW?

A. Yes. All transactions between MLGW and Memphis Networx will be at arm's length. I understand that MLGW has adopted safeguards to prevent subsidies to Memphis Networx. Memphis Broadband supports the adoption of these safeguards. Memphis Broadband also supports the steps offered by Memphis Networx to prevent subsidies, including the submission of annual reports to the Authority, and the utilization of independent auditors to review Memphis Networx's books.

Q. DOES MEMPHIS BROADBAND AGREE THAT MEMPHIS NETWORX SHOULD PROVIDE TELECOMMUNICATIONS SERVICES TO RESIDENTIAL CUSTOMERS IN UNDERSERVED AREAS IF COMPETITION IS NOT AVAILABLE IN SUCH AREAS IN THREE YEARS AFTER APPROVAL OF THE APPLICATION?

A. Yes. Memphis Broadband joins MLGW in supporting Memphis Networx's commitment to provide direct service to residential customers in underserved areas if competition is not available within three (3) years after approval of the Application.

Q. DO YOU AGREE TO ABIDE BY THE RULES AND REGULATIONS OF THE AUTHORITY?

A. Yes. Memphis Broadband agrees to abide by the rules and regulations of the Authority.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

VERIFICATION

I, Andrew P. Seamons, declare under penalty of perjury that I am authorized by Memphis Broadband, LLC to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

Andrew P. Seamons
Manager
Memphis Broadband, LLC

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 20th day of December, 2000.

WARNER B. RODDA NOTARY PUBLIC MY COMMISSION EXPIRES MARCH 12, 2002 AT LARGE SHELBY COUNTY, TENNESSEE

Notary Public
My Commission Expires: 3-12-2002

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS NETWORX, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES AND JOINT PETITION OF MEMPHIS LIGHT GAS AND WATER DIVISION, A DIVISION OF THE CITY OF MEMPHIS, TENNESSEE ("MLGW") AND A&L NETWORKS-TENNESSEE, LLC ("A&L") FOR APPROVAL OF AGREEMENT BETWEEN MLGW AND A&L REGARDING JOINT OWNERSHIP OF MEMPHIS NETWORX, LLC	)	DOCKET NO. 99-00909

PRE-FILED SUPPLEMENTAL TESTIMONY OF WARD HUDDLESTON, JR. ON BEHALF OF MEMPHIS NETWORX, LLC

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Ward Huddleston, Jr. My business address is 7555 Appling Center Drive, Memphis, Tennessee 38133-5069.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain the impact, if any, that the partial change in ownership of Memphis Networx will have on the managerial, technical and financial ability of Applicant.

Q. HAVE THE MANAGERIAL OR TECHNICAL QUALIFICATIONS OF THE APPLICANT CHANGED?

A. No. The staff of Memphis Networx that was identified in the Application and testimony as possessing the necessary managerial and technical qualifications to provide the applied for services has not changed. Memphis Networx will utilize consultants on an as-needed basis. For information on

any additional managerial expertise of Memphis Broadband, I defer to the Pre-Filed Testimony of Andrew Seamons.

Q. HAVE THE SERVICES THAT MEMPHIS NETWORX PLANS TO OFFER CHANGED?

A. No. Memphis Networx still intends to offer the same services as earlier proposed in the Application. The pro formas and capital budgets earlier submitted previously are still valid. Memphis Networx will review and update its business plan as necessary to reflect the changes in the market and customer demand which may have occurred since the filing of the Application.

Q. WILL THERE BE ANY CHANGES IN THE SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN OF MEMPHIS NETWORX?

A. No. Memphis Networx remains committed to its plan, submitted as Exhibit L to the Application.

Q. WILL MEMPHIS NETWORX CONTINUE TO BE AUDITED BY INDEPENDENT AUDITORS AND PROVIDE ANNUAL REPORTS TO THE AUTHORITY?

A. Yes. All start up expenses incurred by Memphis Networx will continue to be audited by an independent auditor, Ernst & Young to ensure that they are properly allocated.

The accounting standards and cost allocation procedures utilized by MLGW will not be affected by Memphis Broadband's ownership in Memphis Networx.

Q. WILL MEMPHIS NETWORX HONOR THE COMMITMENT MADE TO THE AUTHORITY AT THE HEARING CONCERNING THE DIRECT PROVISION OF TELECOMMUNICATIONS SERVICES TO RESIDENTIAL CUSTOMERS IF COMPETITION IS NOT OFFERED WITHIN THREE YEARS FOLLOWING APPROVAL OF THIS APPLICATION?

A. Yes. Memphis Networx will continue to honor its obligation to provide direct telecommunications services to residential customers if competition is not offered within the three years following approval of this Application.

Q. WHAT BENEFITS DOES MEMPHIS BROADBAND BRING TO MEMPHIS NETWORX?

A. First, Memphis Broadband has access to significant financial resources for financing the build-out of the proposed telecommunications system. Second, the principals and members of Memphis Broadband have strong ties to the community and are highly respected, successful business people in both the local and national arenas. Thus, the addition of Memphis Broadband will enhance the financial capabilities of Memphis Networx.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

VERIFICATION

I, Ward Huddleston, Jr. declare under penalty of perjury that I am authorized by Memphis Networx, LLC to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

Ward Huddleston, Jr.
Chief Manager
Memphis Networx, LLC

STATE OF Tennessee)
)
COUNTY OF Shelby)

Sworn to and subscribed before me this 18th day of December, 2000.

Kim D. Crumpton
Notary Public
My Commission Expires: 1/31/2004

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS NETWORX, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES AND JOINT PETITION OF MEMPHIS LIGHT GAS AND WATER DIVISION, A DIVISION OF THE CITY OF MEMPHIS, TENNESSEE ("MLGW") AND A&L NETWORKS-TENNESSEE, LLC ("A&L") FOR APPROVAL OF AGREEMENT BETWEEN MLGW AND A&L REGARDING JOINT OWNERSHIP OF MEMPHIS NETWORX, LLC	)	DOCKET NO. 99-00909

AMENDMENT TO THE APPLICATION OF MEMPHIS NETWORX, LLC AND JOINT PETITION OF MLGW AND A&L

Background

At the hearing in this proceeding, the witness for A&L Networks-Tennessee, LLC ("A&L") testified that its parent company, Aptus Networks, LLC, was in the process of raising additional capital from investors. In the course of seeking such investors, an investor group became interested in Memphis Networx, LLC ("Memphis Networx"), but was only interested in purchasing A&L's entire membership interest in Memphis Networx, instead of an equity investment in Aptus. On November 17, 2000, Memphis Networx, Memphis Light, Gas & Water Division ("MLGW") and A&L notified the Tennessee Regulatory Authority ("TRA") that A&L had entered into an agreement to sell its membership interest in

Memphis Networx to Memphis Broadband, LLC ("Memphis Broadband"). On November 29, 2000, Memphis Broadband acquired A&L's membership interest in Memphis Networx. Consequently, A&L no longer has an interest in Memphis Networx. Thus, the two members of Memphis Networx are MLGW and Memphis Broadband. As a result of this change in ownership, MLGW and Memphis Broadband have amended the Operating Agreement of Memphis Network as of November 29, 2000 (the "Amended and Restated Operating Agreement"). The Applicant (Memphis Networx) and the Joint Petitioners (MLGW and Memphis Broadband) seek approval of the Application as amended herein and approval of the Amended and Restated Operating Agreement. In the interest of judicial economy, the Applicant and Joint Petitioners will supplement the existing record in the proceeding as indicated below. Memphis Broadband's acquisition of A&L's interest in Memphis Networx merely enhances the Application and Joint Petition.

Memphis Networx seeks approval of its Application for a Certificate of Public Convenience and Necessity ("CCN") to provide intrastate intraLATA local exchange telecommunications services in Tennessee, as amended herein. In addition, MLGW and Memphis Broadband, seek approval of the Amended and Restated Operating Agreement of Memphis Networx pursuant to T.C.A. § 7-52-103(d) (the "Joint Petition").

Memphis Networx, MLGW and Memphis Broadband submit the following amendments to the original Application and Joint Petition and statements in support thereof.

1. Exhibit A to the Application and Joint Petition, and the reference thereto in paragraph 5 of the Application and Joint Petition are deleted and replaced with the revised list of Board of Governors and Officers of Memphis Networx which is attached as Exhibit R and referred to as same in paragraph 5.

2. Paragraph 6 of the Application and Joint Petition is deleted and the following new paragraph 6 is substituted:

> 6. Ownership of Memphis Networx. Memphis Networx has two members. They are MLGW and Memphis Broadband, LLC. MLGW was created by Chapter 381 of the Private Acts of 1939 amending the charter of the City of Memphis and giving MLGW authority over municipal utility systems. MLGW currently operates a municipal electric system, as well as municipal gas and water distribution systems. Memphis Broadband, LLC is a Delaware limited liability company which is owned by the Memphis Angels LLC, a Delaware limited liability company ("Memphis Angels"), M-Net 2000, a Tennessee general partnership, Belz Broadband Associates, a Tennessee general partnership, and Joseph R. Hyde, III. Memphis Angels is an investment group created to fund early-stage emerging growth companies located primarily in the Southeast. The principals of the Memphis Angels include a number of prominent Memphis business persons such as: Robert B. Blow, Co-Founder and Managing Director of Paradigm Capital Partners, LLC; William B. Dunavant, Jr. Chairman and Chief Executive Officer of Dunavant Enterprises, Inc.; Thomas M. Garrott, Chairman of National Commerce Bancorporation; Frederick W. Smith, Chairman, President and Chief Executive Officer of FedEx Corp.; Willard R. Sparks, Chairman of Sparks Companies, Inc. and members of the Kemmons Wilson family of the Wilson Companies. Memphis Broadband will be a manager managed limited liability company under Delaware law, having three individuals selected by its members to serve as managers. These managers include Andrew P. Seamons, Frank A. McGrew, IV, and Ronald A. Belz. A copy of an organizational chart for Memphis Broadband, and a revised organization chart for Memphis Networx are attached as Exhibit S. A copy of the

Certificate of Formation, and a Certificate of Qualification to do business in Tennessee for Memphis Broadband are attached as Exhibit T. The MLGW Board of Commissioners has approved the establishment of a telecommunications division within the MLGW electric division and pursuant to T.C.A. § 7-52-103(d), and further approved the establishment of an entity to provide telecommunications services jointly with others. Copies of the resolutions of MLGW's Board of Commissioners establishing a telecommunications division, approving the establishment of a telecommunications entity, and approving a loan from the MLGW Electric Division to the MLGW Telecommunications Division are attached to the Application as Exhibit D. A copy of the resolution of MLGW's Board of Commissioners authorizing the President and Secretary-Treasurer of MLGW to execute and deliver such documents and to make such expenditures for the purpose of MLGW's participation in a telecommunications entity is included in the record in this proceeding as hearing Exhibit 3, and Exhibit Q to the Application. These Board of Commissioner resolutions provided Herman Morris, President of MLGW, with the requisite authority to enter into the Amended and Restated Operating Agreement with Memphis Broadband discussed below. Subject to TRA approval, MLGW and Memphis Broadband have entered into an Amended and Restated Operating Agreement, dated as of November 29, 2000, which sets forth their agreement with respect to ownership and operation of Memphis Networx. MLGW and Memphis Broadband seek approval of the Amended and Restated Operating Agreement pursuant to T.C.A. § 7-52-103(d) in conjunction with this Amendment to the Application. A copy of the Amended and Restated Operating Agreement is attached as Exhibit U. For the convenience of the Authority, a CompareRite™ version of the Amended and Restated Operating Agreement showing the changes made to the original Operating Agreement is attached as Exhibit V.

Memphis Networx is not authorized to provide telecommunications services in any other state, nor has it applied for such authority.

Other than the transfer of A&L's membership interest in Memphis Networx to Memphis Broadband, Memphis Networx has not been involved in any pertinent acquisitions or mergers.

3. Paragraph 9 C. of the Application and Joint Petition is deleted and replaced with the following:

> C. Financial Capability. Memphis Networx has the financial capability to provide the services it proposes to offer. MLGW and Memphis Broadband have agreed to provide equity funding to Memphis Networx as set forth in Article 9 of the Amended and Restated Operating Agreement. (See Exhibit U.) Attached as **CONFIDENTIAL** Exhibit H to the original Application were pro forma financial statements of Memphis Networx for three years which were offered to demonstrate the Applicant's financial ability to provide the proposed services. Included in **CONFIDENTIAL** Exhibit H is a three-year capital budget outlining the specific equipment to be deployed, the location of deployment and its cost. The budget and pro formas remain valid.
>
> Attached as Exhibit I to the original Application are the 1998 audited financial statements of MLGW and the June 30, 1999 financial statements of MLGW. Also submitted as Exhibit 33 at the hearing, are the audited financial statements of MLGW for the year ending December 31, 1999. Attached as **CONFIDENTIAL** Exhibit W is a financial statement for Memphis Broadband.

4. Paragraph 14 of the Application and Joint Petition is deleted and replaced with the following:

> 14. Franchises, etc. The franchise application of Memphis Networx for use of rights-of-way in the City of Memphis was approved by the City Council of Memphis on December 5, 2000. Memphis Networx will file a separate petition seeking approval by the TRA of its franchise agreement with the City of Memphis, pursuant to T.C.A. § 65-4-107. Applicant will, as necessary, obtain such other local franchises, permits or licenses in accordance with applicable law, and submit such franchises to the TRA for approval pursuant to T.C.A. § 65-4-107.

5. Pre-filed Testimony. Additional notarized, pre-filed testimony from Andrew P. Seamons, Manager of Memphis Broadband, Ward Huddleston, Jr., Chief Manager of Memphis Networx, and Larry Thompson, Senior Vice President and

Chief Operating Officer of MLGW is being filed simultaneously with this Amendment.

6. Exhibit M, the agreement between MLGW and A&L regarding preliminary matters is deleted and replaced with Exhibit X, the Amended and Restated Agreement between MLGW and Memphis Broadband regarding preliminary matters (the "Amended and Restated Umbrella Agreement"), which is attached for informational purposes. MLGW's consent to the transfer of A&L's membership interest in Memphis Networx pursuant to Section 11.3 of the original Operating Agreement is contained in Section 2 of the Amended and Restated Umbrella Agreement.

7. The remaining portions of the Application and Joint Petition are unchanged. The managerial and technical qualifications of Memphis Networx have not changed. Memphis Networx will utilize consultants on an as-needed basis. The financial qualifications of MLGW and the cross-subsidy safeguards presented by MLGW have not changed. The financial fitness of Memphis Networx, which has been previously established, will only be enhanced by Memphis Broadband. Consequently, Applicant and Joint Petitioner request that the TRA supplement the record with evidence regarding Memphis Broadband's ownership of Memphis Networx and the related changes set forth in the Amended and Restated Operating Agreement. Attached to this Amendment is a list of the new exhibits, as well as a list of the obsolete exhibits, for the convenience of the Authority.

8. The "Conclusion" in the original Application is amended to substitute Memphis Broadband for A&L and seek approval of the Application as amended, and the Amended and Restated Operating Agreement, such that the conclusion reads as follows:

Conclusion

For the foregoing reasons, MLGW, Memphis Broadband, and Memphis Networx request that the Tennessee Regulatory Authority set this matter for a pre-hearing conference to determine the extent of additional proceedings necessary to approve the Amended and Restated Operating Agreement and to grant the Certificate of Convenience and Necessity to Memphis Networx to operate as a competing telecommunications service provider within the state of Tennessee and grant such other relief to which Applicant and its owners may be entitled.

Respectfully submitted,

By: D. Billye Sanders

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis
A Professional Limited Liability Company
Nashville City Center
511 Union Street, Suite 2100
Nashville, Tennessee 37219-8966
(615) 244-6380

Attorney for MLGW and
Memphis Networx, LLC

By: John Knox Walkup by DBS

John Knox Walkup, Esq.
Wyatt, Tarrant & Combs
511 Union Street, Suite 1500
Nashville, Tennessee 37219-1750
(615) 244-0200

Attorney for Memphis Broadband and Memphis Networx, LLC

List of Exhibits

Exhibit R	Board of Governors, Officers for Memphis Networx, LLC
Exhibit S	Organizational Chart of Memphis Broadband, LLC Revised Organizational Chart of Memphis Networx, LLC
Exhibit T	Certificate of Formation, and Certificate of Qualification to do business in Tennessee of Memphis Broadband, LLC
Exhibit U	Amended and Restated Operating Agreement of Memphis Networx, LLC
Exhibit V	CompareRite ™ version of the Amended and Restated Operating Agreement
Exhibit W	Financial Statement of Memphis Broadband, LLC - **CONFIDENTIAL**
Exhibit X	Agreement concerning preliminary matters between MLGW and Memphis Broadband, LLC

List of Obsolete Exhibits

Earlier Exhibit:	Replaced by:
Exhibit A Board of Governors and Officers of Memphis Networx	**Exhibit R** Board of Governors and Officers of Memphis Networx
Exhibit C Articles of Organization of A&L Networks-Tennessee, LLC	**Exhibit T** Certificate of Formation of Memphis Broadband, LLC
Exhibit E Operating Agreement of Memphis Networx	**Exhibit U** Amended and Restated Operating Agreement of Memphis Networx
Exhibit J **CONFIDENTIAL** Financial Statements A&L Networks, LLC	**Exhibit W** **CONFIDENTIAL** Financial Statement of Memphis Broadband, LLC
Exhibit L Certificate of Authority to do business in Tennessee for A&L Networks-Tennessee, LLC	**Exhibit T** Certificate of Authority to do business in Tennessee for Memphis Broadband, LLC
Exhibit M Umbrella Agreement	**Exhibit X** Amended and Restated Umbrella Agreement
Hearing Exhibit 2 Memphis Networx Organizational Chart	**Exhibit S** Revised Memphis Networx Organizational Chart

Exhibit R

Board of Governors of Memphis Networx, LLC

According to Section 5.3 of the Amended and Restated Operating Agreement, the following individuals have been named to the Memphis Networx Board of Governors:

1. Herman Morris (MLGW)

2. Larry Thompson (MLGW)

3. Frank A. McGrew, IV (Memphis Broadband)

4. Andrew P. Seamons (Memphis Broadband)

5. An unidentified fifth member to be appointed jointly by MLGW and Memphis Broadband, LLC.

Officers of Memphis Networx, LLC

Ward Huddleston, Jr. – Chief Manager

David Ori – Secretary and Chief Financial Officer

EXHIBIT S-1

ORGANIZATIONAL CHART OF MEMPHIS BROADBAND, LLC

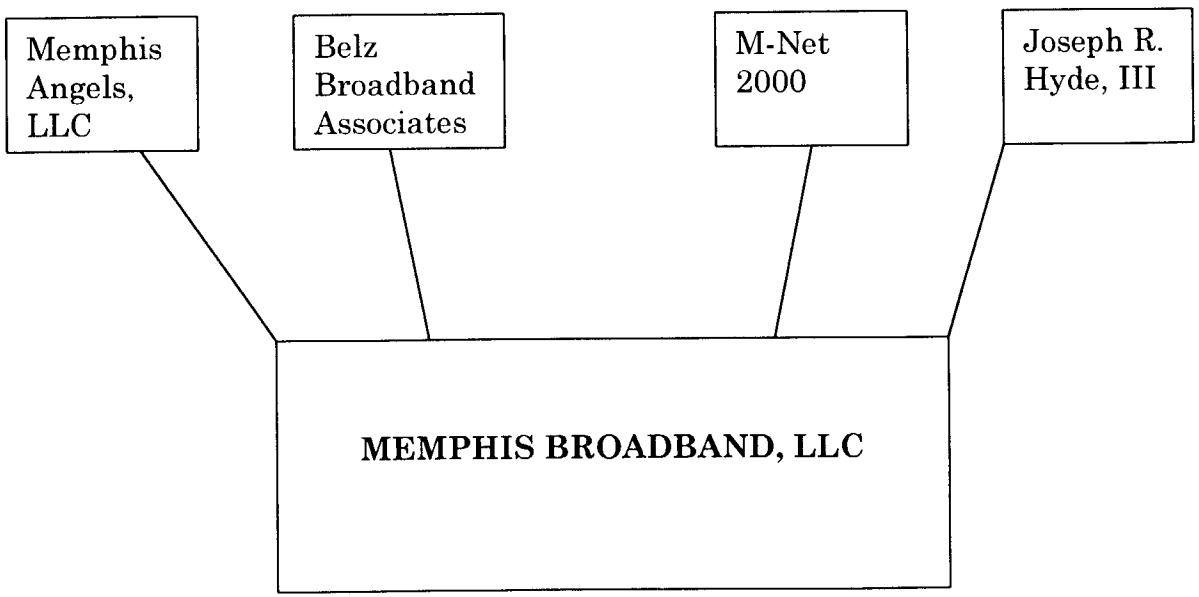
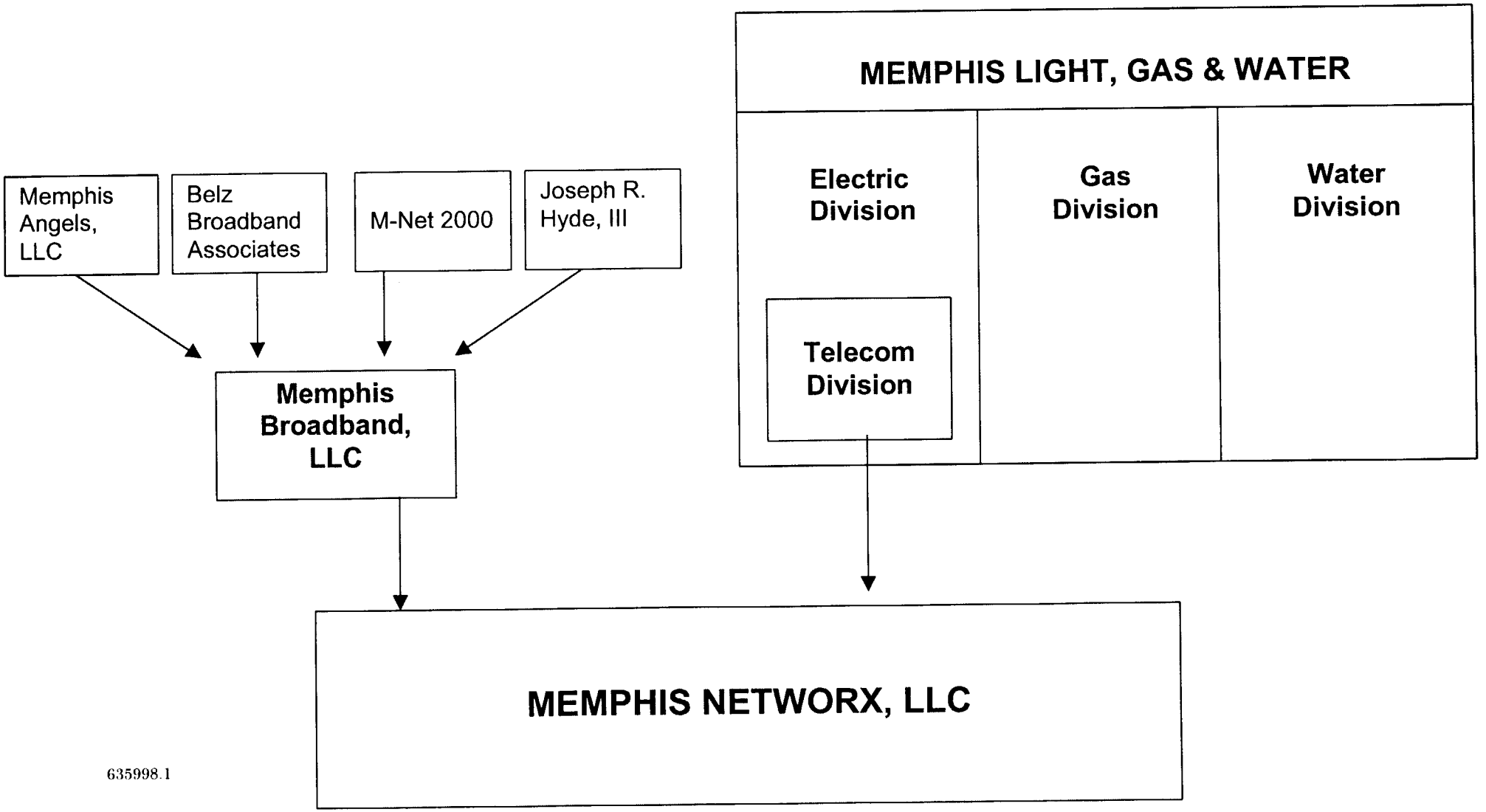


EXHIBIT S-2

OWNERSHIP OF APPLICANT, MEMPHIS NETWORX, LLC
DECEMBER, 2000



Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "MEMPHIS BROADBAND, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTEENTH DAY OF DECEMBER, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

Edward J. Freel, Secretary of State

3316652 8300

001630699

AUTHENTICATION: 0858454

DATE: 12-15-00

Secretary of State
Division of Business Services
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

DATE: 12/19/00
REQUEST NUMBER: 4056-3197
TELEPHONE CONTACT: (615) 741-2286
FILE DATE/TIME: 12/18/00 1218
EFFECTIVE DATE/TIME: 12/18/00 1218
CONTROL NUMBER: 0400301

TO:
PARADIGM CAPITAL PARTNERS, LLC
6410 POPLAR AVE
STE. 395
MEMPHIS, TN 38119

RE:
MEMPHIS BROADBAND, LLC
APPLICATION FOR CERTIFICATE OF AUTHORITY -
LIMITED LIABILITY COMPANY

WELCOME TO THE STATE OF TENNESSEE. THE ATTACHED LIMITED LIABILITY COMPANY CERTIFICATE OF AUTHORITY HAS BEEN FILED WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

A LIMITED LIABILITY COMPANY ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE LIMITED LIABILITY COMPANY'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE LIMITED LIABILITY COMPANY AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE LIMITED LIABILITY COMPANY TO ADMINISTRATIVE REVOCATION OF ITS CERTIFICATE OF AUTHORITY.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE LIMITED LIABILITY COMPANY CONTROL NUMBER GIVEN ABOVE.

FOR: APPLICATION FOR CERTIFICATE OF AUTHORITY - LIMITED LIABILITY COMPANY

ON DATE: 12/19/00

FROM:
PARADIGM CAPITAL PARTNERS, LLC
6410 POPLAR AVE.
STE. 395
MEMPHIS, TN 38119-0000

	FEES	
RECEIVED:	$300.00	$0.00

TOTAL PAYMENT RECEIVED: $300.00

RECEIPT NUMBER: 00002775667
ACCOUNT NUMBER: 00352007

Riley C Darnell

RILEY C. DARNELL
SECRETARY OF STATE

SS-4458

FILED

RECEIVED

00 DEC 18 PM 12:18

RILEY DARNELL
SECRETARY OF STATE

APPLICATION FOR

CERTIFICATE OF AUTHORITY

FOR

MEMPHIS BROADBAND, LLC

To the Secretary of State of Tennessee:

Pursuant to the provisions of Tenn. Code Ann. § 48-246-301, the undersigned limited liability company hereby submits this Application for a Certificate of Authority to transact business in the State of Tennessee, and for that purpose sets forth the following:

1. The name of the limited liability company is Memphis Broadband, LLC.

2. The jurisdiction under whose law it is organized is the State of Delaware, and the date of its organization is November 15, 2000.

3. The street address of its registered office in the State of Tennessee is 6410 Poplar Avenue, Suite 395, Memphis, Tennessee 38119, and the name of its registered agent at that office is Warner B. Rodda.

4. The street address of its principal executive office is 6410 Poplar Avenue, Suite 395, Memphis, Tennessee 38119.

5. The limited liability company will have four (4) members at the date of filing this Application for a Certificate of Authority.

Dated at Memphis, Tennessee, on December 15, 2000.

MEMPHIS BROADBAND, LLC, a Delaware limited liability company

By: Frank A. McGrew IV

Frank A. McGrew, IV,
Manager

AMENDED AND RESTATED OPERATING AGREEMENT

OF

MEMPHIS NETWORX, LLC

A TENNESSEE LIMITED LIABILITY COMPANY

THIS AMENDED AND RESTATED OPERATING AGREEMENT (the "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 as of November 29, 2000, by the undersigned Members of the Company, who agree as follows:

W I T N E S S E T H:

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:

Members	Sharing Ratio
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:

Member	Voting Interest
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 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) 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 Networx Sale"). In the event of a Memphis Networx 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 Networx Sale, or fails to cooperate and act in good faith, in the sale and negotiation of the Memphis Networx 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 Networx 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 Networx 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 Networx 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 to 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

By:

Herman Morris, President
and Chief Executive Officer

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. Glen

Its: Manager

AMENDED AND RESTATED OPERATING AGREEMENT

OF

MEMPHIS NETWORX, LLC

A TENNESSEE LIMITED LIABILITY COMPANY

THIS AMENDED AND RESTATED OPERATING AGREEMENT **(the " 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>~~ **as** of November~~<, 1999>~~ **29, 2000**, by the undersigned Members of the Company, who agree as follows:

W I T N E S S E T H:

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~~<. "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>~~ **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.

~~<1.5>~~ **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.

~~<1.6>~~ **1.4**. "Articles of Organization" means the Company's Articles of Organization, as amended from time to time.

~~<1.7>~~ **1.5**. "Board" means the Company's board of governors.

~~<1.8>~~ **1.6**. "Capital Account" means, with respect to any Equity Owner, the account maintained by the Company in accordance with Section 9.2.

~~<1.9>~~ **1.7**. "Capital Contribution" means any contribution to the capital of the Company in cash or property by an Equity Owner, whenever made.

~~<1.10>~~ **1.8**. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

~~<1.11>~~ **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.

~~<1.12>~~ **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.

~~<1.13>~~ **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.

~~<1.14>~~ **1.12**. "Economic Interest Owner" means the owner of Financial Rights who is not a Member.

~~<1.15>~~ **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.

~~<1.16>~~ **1.14**. "Equity Owner" means an Economic Interest Owner or a Member.

~~<1.17>~~ **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).

~~<1.18>~~ **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.

~~<1.25>~~ **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.

~~<1.26>~~ **1.29**. "MLGW" means Memphis Light, Gas, and Water Division, a division of the City of Memphis, Tennessee.

~~<1.27>~~ **1.30**. "MLGW Governors" means the two Governors elected by MLGW.

~~<1.28>~~ **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.

~~<1.29>~~ **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.

~~<1.30>~~ **1.33**. "Operating Net Losses" means all Net Losses other than Extraordinary Net Losses.

~~<1.31>~~ **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 ~~<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>~~ **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 ~~<1.34>~~. "Sharing Ratio" means:

Members	Sharing Ratio
MLGW	53%

~~<A&L 47%>~~ **MB** **47%**

~~<1.35>~~ **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 ~~<1.36>~~. "Voting Interest" means:

Member	Voting Interest
MLGW	50%
~~<A&L>~~ **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. ~~<Initial>~~ **Current** Members. The ~~<initial>~~ Members of the Company shall be MLGW and ~~<A&L>~~ **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 ~~<A&L>~~ **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 ~~<A&L>~~ **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 ~~<A&L's>~~ **MB's respective** Financial Rights and 12.6% of MLGW's **respective** Financial Rights, and each purchase of Financial Rights from ~~<A&L>~~ **MB** and MLGW, respectively, shall be in the ratio ~~<as 7.1%>~~ **of one-third** from ~~<A&L>~~ **MB** and ~~<12.6%>~~ **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 ~~<A&L>~~ **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 ~~<2000>~~ **2001**, the annual meeting of the Members shall be held at 10:00 a.m. on the second Tuesday of ~~<August>~~ **November** of each year, or if the second Tuesday of ~~<August>~~ **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 ~~<initial>~~ MLGW Governors shall be Herman Morris and ~~<John McCullough,>~~ **Larry Thompson,** the initial ~~<A&L>~~ **MB** Governors shall be ~~<George A. Lowe, II and Edward Powell>~~ **Frank A. McGrew, IV and Andrew Seamons**, and the initial Fifth Governor shall be ~~<J. Maxwell Williams>~~ **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) ~~<A&L>~~ **MB** shall elect two (2) Governors (the "~~<A&L>~~ **MB** Governors"), and (iii) MLGW and ~~<A&L, alternately,>~~ **MB jointly** 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**, 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. ~~<A&L,>~~ **MB,** and only ~~<A&L>~~ **MB**, may remove one or both ~~<A&L>~~ **MB** 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, >~~**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 ~~<A&L>~~ **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 ~~<A&L>~~ **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. ~~<All>~~ **A majority** of ~~<the>~~ Governors **then in office** 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>~~ **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~~<, 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>~~ **$50,000 per expenditure**, or series of related ~~<agreements, or $3,000,000>~~ **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 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.>~~ **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, ~~<50% to each of A&L and MLGW, respectively>~~ **to MB**, to the extent that ~~<its>~~ **MB's** Capital Contributions ~~<prior to the Approval Date>~~**(including for this purpose, Capital Contributions made to the Company by A&L)** exceed [A] the cumulative Net Losses allocated to ~~<it>~~ **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** ~~<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)>~~**(ii)** 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); **and**

(iii)~~<(iv)>~~ Then, to ~~<A&L>~~ **MB** and MLGW in accordance with their Sharing Ratios.

(b) If the Company has Operating Net Profits, as follows:

(i) First, to ~~<A&L>~~ **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 ~~<A&L>~~ **MB** and MLGW, respectively, under Sections ~~<10.1(a)(iv) and 10.2(a)(iv)>~~ **10.1(a)(iii) and 10.2(a)(iii)**, exceed [B] the cumulative Net Profits allocated in prior Fiscal Years to ~~<A&L>~~ **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)(iii) and 10.2(a)(iii)>~~ **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 ~~<A&L>~~ **MB** to the extent that [A] the cumulative Net Losses allocated to ~~<A&L>~~ **MB** in prior Fiscal Years under Sections ~~<10.1(a)(ii) and 10.2(a)(ii)>~~ **10.1(a)(i) and 10.2(a)(i)**, exceed [B] the cumulative Net Profits allocated to ~~<A&L>~~ **MB** in prior Fiscal Years under this Section 10.1(b)(iii) and under Section 10.2(b)(iii); **and**~~<(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>~~**(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, ~~<50% to each of A&L and MLGW, respectively,>~~ **to MB** to the extent that ~~<its>~~ **MB's** Capital Contributions ~~<prior to the Approval Date>~~**(including for this purpose, Capital Contributions made to the Company by A&L)** exceed [A] the cumulative Net Losses allocated to ~~<it>~~ **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 ~~<it>~~ **MB** in the current and prior Fiscal Years under Section ~~<10.1(b)(iv)>~~ **10.1(b)(iii),** and in prior Fiscal Years under Section ~~<10.2(b)(iv);>~~ **10.2(b)(iii);**

~~<(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)>~~**(ii)** 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); **and**

(iii)~~<(iv)>~~ Then, to ~~<A&L>~~ **MB** and MLGW in accordance with their Sharing Ratios.

(b) If the Company has Extraordinary Net Profits, as follows:

(i) First, to ~~<A&L>~~ **MB** and MLGW, respectively, in accordance with their Sharing Ratios, to the extent that [A] the cumulative Net Losses allocated to ~~<A&L>~~ **MB** and MLGW, respectively, in the current and prior Fiscal Years under Section ~~<10.1(a)(iv)>~~ **10.1(a)(iii)** and in prior Fiscal Years under ~~<10.2(a)(iv)>~~ **10.2(a)(iii)**, exceed [B] the cumulative Net Profits allocated to ~~<A&L>~~ **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)(iii)>~~ **10.1(a)(ii)** and in prior Fiscal Years under Section ~~<10.2(a)(iii)>~~ **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 ~~<A&L>~~ **MB** to the extent that [A] the cumulative Net Losses allocated to ~~<A&L>~~ **MB** in the current and prior Fiscal Years under Section ~~<10.1(a)(ii)>~~ **10.1(a)(i)** and in prior Fiscal Years under Section ~~<10.2(a)(ii)>~~ **10.2(a)(i)**, exceed [B] the cumulative Net Profits allocated to ~~<A&L>~~ **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, 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.>~~**(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 ~~<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>~~ **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. ~~<A&L>~~ **MB** shall be the Tax Matters Partner as defined in Section 6231(a)(7) of the Code for so long as ~~<A&L>~~ **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 ~~<11.6>~~ **11.7** below. If the Company and the other Members elect not to purchase the Collateral under Section ~~<11.6>~~ **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 ~~<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>~~ **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 ~~<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 **Operating** Agreement with respect to the Ownership Interests it purchases under this Section 11.4.

11.5. Change in Control of **MB. MB** ~~<A&L.~~

~~(a) During the First Period, A&L>~~ shall not permit a Change in Control of ~~<A&L>~~ **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 ~~<A&L">~~ **MB"** means that ~~<George A. Lowe II>~~**(a) owners of MB on the date hereof** for any reason (other than ~~<his>~~ death or a transaction under Section 11.6) ~~<ceases>~~ **cease** 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.~~> 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 Networx Sale"). In the event of a Memphis Networx 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 Networx Sale, or fails to cooperate and act in good faith, in the sale and negotiation of the Memphis Networx 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 Networx 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 Networx 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 Networx 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 ~~<11.6>~~ **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 to 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>~~ **For purposes of this Operating Agreement, the "fair market value" of an Ownership Interest means** 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>~~ **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**~~<.~~

~~(b) If the Seller and Buyer cannot agree>~~ 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 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,>~~ **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** ~~<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.>~~**. 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.**

~~<(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~~**(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 ~~<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>~~ **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, ~~<A&L>~~ **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 ~~<on>~~ **as of** 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>~~

MEMPHIS BROADBAND, LLC

~~<By:~~
_____~~>~~**By:**

~~<George A. Lowe, II, Manager>~~ **Its:**

---------- COMPARISON OF FOOTERS ----------
<
~~FOOTER 1~~
~~Walnut 392574.9>~~

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -
original document : E:\USERS\WTM\ANGEL\MNET\OPERATING AGREEMENT1.WPD
and revised document: E:\USERS\WTM\ANGEL\MNET\OPERATING AGREEMENT7A.WPD

CompareRite found 323 change(s) in the text
CompareRite found 1 change(s) in the notes

Deletions appear as Strikethrough text surrounded by <>
Additions appear as Bold+Dbl Underline text

EXHIBIT W

CONFIDENTIAL EXHIBIT FILED UNDER SEAL

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT is entered into as of the "Effective Date" (as hereinafter defined) between MEMPHIS LIGHT, GAS & WATER DIVISION, a division of the City of Memphis created by Chapter 381 of the Private Acts of 1939, amending the Charter of the City of Memphis ("MLGW"), and MEMPHIS BROADBAND, LLC, a Delaware limited liability company ("Memphis Broadband").

WHEREAS, MLGW owns and operates municipal electric, gas and water systems in and around Shelby County, Tennessee; and

WHEREAS, pursuant to Tennessee Code Annotated Section 7-52-401, *et seq.*, MLGW has the power and authority, acting through the authorization of its Board of Commissioners having responsibility for its Electric Division, to own and operate any system, plant and equipment for the provision of telephone, telegraph, and telecommunication services ("Telecom Services"), and, pursuant to Tennessee Code Annotated Section 7-52-103, MLGW has the power and authority, acting through the authorization of its Board of Commissioners having responsibility for its Electric Division, to establish a joint venture to provide Telecom Services; and

WHEREAS, MLGW and A&L Networks-Tennessee, LLC, a Kansas limited liability company ("A&L"), entered into an Agreement dated November 8, 1999 (i) to organize Memphis Networx, LLC, a Tennessee limited liability company (the "Company"), (ii) to seek the approval of the Tennessee Regulatory Authority (the "TRA") for the Company to provide Telecom Services, and (iii) subject to obtaining the approval of the TRA, to cause the Company to provide Telecom Services (the "Original Umbrella Agreement"); and

WHEREAS, MLGW and A&L entered into an Operating Agreement of the Company dated as of November 8, 1999, as amended by Amendment No. 1 thereto dated as of October 18, 2000 (collectively, the "Operating Agreement"), pursuant to which MLGW and A&L set forth their rights and obligations with respect to the Company; and

WHEREAS, Memphis Broadband desires to purchase the "Ownership Interest" of A&L in the Company (the "Acquisition") and desires to obtain the consent of MLGW, as a member of the Company, to the Acquisition and the assignment of the Ownership Interest of A&L in the Company to Memphis Broadband; and

WHEREAS, MLGW desires that Memphis Broadband purchase the Ownership Interest of A&L in the Company; and

WHEREAS, Memphis Broadband and Memphis Angels, LLC, the holder of a majority of the outstanding voting membership interests in Memphis Broadband ("Memphis Angels"), desire to rely on the substantial investment banking expertise and experience of Paradigm Capital Partners, LLC in raising capital and on the Memphis Angels to facilitate the funding of the capital contribution obligations of Memphis Broadband as provided herein; and

WHEREAS, Memphis Broadband and MLGW desire to amend and restate the Original Umbrella Agreement between the Company and A&L as provided herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MLGW and Memphis Broadband agree as follows:

1. Amended and Restated Agreement. MLGW and Memphis Broadband hereby amend and restate the Original Umbrella Agreement to read as set forth herein.

2. Consent to Acquisition. MLGW consents to the Acquisition, notwithstanding any provision in the Operating Agreement to the contrary.

3. Subsequent Changes in Control. Following the closing of the Acquisition (the "Closing"), Memphis Broadband shall not permit a "Change in Control" of Memphis Broadband or a sale of its Ownership Interest in the Company (as that term is defined in the Amended and Restated Operating Agreement) without the consent of MLGW which consent will not be unreasonably withheld, conditioned or delayed. "Change in Control" means that (i) owners of Memphis Broadband on the date hereof for any reason cease to own at least 51% of the voting rights of Memphis Broadband, either directly, or indirectly through one or more entities, and (ii) as a result of or related to such 51% change, each of the Memphis Broadband Governors which have been appointed to the Company's Board of Governors by Memphis Broadband are (or have been) replaced.

4. Acknowledgment of Prior Contributions to Memphis Networx. At or before Closing, MLGW, Memphis Broadband and A&L will identify and acknowledge, as of the date of Closing, that with respect to Prior Costs, Subsequent Costs, and Interim Contributions (as defined herein), A&L has paid $2,789,359.60 in Prior Costs, Subsequent Costs and Interim Contributions, and MLGW has paid $2,795,185.00 in Prior Costs, Subsequent Costs and Interim Contributions. The difference between the foregoing shall be referred to hereinafter as the "Expense True Up." In addition, MLGW has made contributions for the cost of cable purchased by the Company in the amount of $1,422,186,

and anticipates making additional contributions for such purpose in the approximate amount of $637,847.85 ("Cable Costs"). The Cable Costs referred to above, and any capital contributions made by Memphis Broadband with respect to the purchase of cable by the Company prior to, at and after the TRA Order in order to satisfy Memphis Broadband's obligation hereunder to match capital contributions of MLGW for such costs, shall be treated as Interim Contributions for Capital Account purposes under Section 7 of this Agreement and Article 10 of the Amended and Restated Operating Agreement notwithstanding the date such contributions are actually made.

5. Expense Sharing Pending Regulatory Approval. Between Closing and the earlier of (i) the order from the TRA granting in all material respects the relief requested in the "Amended Application and Joint Petition" (as defined below) of the Company, MLGW and Memphis Broadband (the "TRA Order"), and (ii) the exercise of the Regulatory Put Right under Section 9 hereof by Memphis Broadband, the parties 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 Amended Application and Joint Petition, up to a total aggregate capital contributions of $600,000 per party, in addition to liabilities of the Company as of the date hereof, and determined to be due and payable.

6. Prior Expense True-Up. Within ten (10) days of Closing, Memphis Broadband 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 (as defined herein) of Memphis Broadband, and for purposes of capital account treatment under Article 10 of the Amended and Restated Operating Agreement, this contribution shall be treated as a "Capital Contribution" occurring prior to the "Approval Date" (as those terms are defined in the Amended and Restated Operating Agreement).

7. Capital Contributions. If the parties obtain the TRA Order, then, within ninety (90) days after the date of the TRA Order, (i) Memphis Broadband 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 (ii) 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 7 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. Memphis Broadband's obligation to contribute to the

Company under this Section 7 shall be subject to the condition precedent that, on or before the date of its contribution, Memphis Broadband shall have raised total equity funding of at least $5,500,000. For purposes of capital account treatment under Article 10 of the Amended and Restated Operating Agreement, such capital contributions shall be treated as having occurred after the Approval Date. If either party fails to timely make its required capital contribution under this Section 7, then, unless otherwise agreed by the parties, the Financial Rights interest of the non- contributing Member shall be diluted as provided in the Amended and Restated Operating Agreement.

8. Regulatory Approval. As soon as reasonably possible after the Closing, the parties shall use their best efforts (i) to file with the TRA any and all notifications and documents necessary to supplement or amend the pending Application and Joint Petition, including all necessary regulatory approval of the Amended and Restated Operating Agreement of the Company, in the form attached hereto as Exhibit "A" (the "Amended and Restated Operating Agreement"), (ii) to fulfill and carry out the intent of the parties set forth herein and (iii) to request that the TRA approve the change of control contemplated herein and grant any and all such other relief to which the Company and the parties hereto may be entitled (the "Amended Application and Joint Petition"). Notwithstanding anything to the contrary herein, it is understood and agreed that if Memphis Broadband 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, Memphis Broadband may exercise its Regulatory Put Option (defined below) pursuant to clause (iv) of Section 9(a).

9. Put Rights.

(a) Regulatory Put. Memphis Broadband shall have the option to sell and MLGW shall have the obligation to purchase Memphis Broadband'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 clauses (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 Memphis Broadband, unless the denial of the requested relief or franchise results primarily from a material breach of a contractual obligation of Memphis Broadband 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 Memphis Broadband 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 Memphis Broadband at any time on or after the earlier of (A) June 30, 2001, or (B) sixty (60) days after the TRA Order, or

(iv) at any time on or after Memphis Broadband makes the determination described in the last sentence of Section 8.

The Purchase Price payable under clause (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 Memphis Broadband to the Company, (C) the lesser of (x) 50% of the costs and expenses incurred by Memphis Broadband in connection with 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 Memphis Broadband, calculated from the date(s) paid by Memphis Broadband to the closing of the sale of the Ownership Interest pursuant to the exercise of the Regulatory Put Option.

(b) Fair Market Value Put. Memphis Broadband shall have the option to sell and MLGW shall have the option (and, if applicable, the obligation as provided in Section 9(f) under the circumstances set forth therein) to purchase Memphis Broadband'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 clauses (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" (as defined in the Amended and Restated Operating Agreement), 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 clause (i) or (ii) shall be 90% of the fair market value of the Ownership Interest of Memphis Broadband, determined as provided in subsection (d) below.

(c) The applicable Purchase Price set forth in this Section 9 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 Memphis Broadband. If Memphis Broadband has the right to exercise its Put Option under more than one of the Put Option Events, Memphis Broadband 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) For purposes of this 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 going concern, without any discounts for lack of liquidity or a minority interest, as of the end of the fiscal quarter of the Company immediately preceding the exercise of the FMV Put Option, as mutually agreed upon in writing by MLGW and Memphis Broadband within fifteen (15) days after the exercise of the FMV Put 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 Memphis Broadband, 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 Memphis Broadband 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 9(d), and each shall pay one-half (1/2) of the fees and expenses of the third Qualified Appraiser, if any, appointed pursuant to this Section 9(d). MLGW and Memphis Broadband 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 Memphis Broadband shall submit to MLGW and Memphis Broadband, 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 Memphis Broadband, 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 higher of the determination of fair market value by the initial two (2) Qualified Appraisers or lower than the lower of the determination of fair market value by the initial two (2) Qualified Appraisers.

Any determination of fair market value under this Section 9(d) 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.

(e) The exercise of a Put Option by Memphis Broadband shall be deemed to be, and shall constitute without any further action on the part of Memphis Broadband, an irrevocable offer by Memphis Broadband 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 10(f) below, an obligation), of MLGW to purchase, the Ownership Interest of Memphis Broadband in the Company on the terms described herein. If pursuant to such option, MLGW does not give Memphis Broadband notice of its election to purchase the Ownership Interest of Memphis Broadband 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 Memphis Broadband, MLGW shall be deemed to have elected not to purchase Memphis Broadband's Ownership Interest in the Company. The closing (the "Applicable Closing Date") of the sale of the Ownership Interest of Memphis Broadband 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 Memphis Broadband, 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 9(d), and (ii) one hundred twenty (120) days after the exercise of a FMV Put Option by Memphis Broadband. At the Put Option Closing, Memphis Broadband 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 Agreement shall occur at the principal office of the Company. At such closing, Memphis Broadband 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.

(f) If MLGW fails for any reason to purchase Memphis Broadband's Ownership Interest pursuant to the exercise of the Put Option by Memphis Broadband on or before the Applicable Closing Date, or, if applicable, MLGW elects not to purchase Memphis Broadband's Ownership Interest pursuant to the exercise of the FMV Put Option by Memphis Broadband, then MLGW and Memphis Broadband 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 Networx Sale"). In the event of a Memphis Networx Sale, the amounts payable to the Members shall be determined in accordance with the Amended and Restated 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 Networx Sale, or fails to cooperate and act in good faith, in the sale and negotiation of the Memphis Networx Sale, to a bona fide purchaser on terms reasonably acceptable to Memphis Broadband, Memphis Broadband 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 9(d), 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 Networx Sale is 85% or less than the fair market value, as determined in Section 9(d) above (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, Memphis Broadband shall sell the Ownership Interest to MLGW within thirty (30) days thereafter at the amount which would be payable to Memphis Broadband, determined in accordance with the Amended and Restated Operating Agreement, if the Company were sold in a Memphis Networx Sale at the Offered Price. In the event MLGW fails to exercise the MLGW Option within the time period set forth above, Memphis Broadband shall have the right and MLGW shall be deemed to have agreed to, and shall enter into and consummate, the Memphis Networx Sale at a price not less than the Offered Price.

10. Intellectual Property. Through the payment of the Prior Costs, MLGW and Memphis Broadband (directly or indirectly from its predecessor in interest) have obtained, and through the payment of the Subsequent Costs, MLGW and Memphis Broadband may obtain, certain studies, reports, analyses and other information in connection with the matters contemplated by this Agreement (collectively, the "Intellectual Property"). Each party shall have an unlimited right to possess, own and use the Intellectual Property, and subject to the following:

(a) Except as otherwise required by law, each party shall hold the Intellectual Property in confidence, and neither party shall disclose the Intellectual Property to third parties, except that (i) either party may disclose the Intellectual Property as reasonably necessary for such party or an Affiliate of such party to provide, or to decide whether and how to provide, Telecom Services, either by itself, or in combination with third parties, and (ii) this Section 10(a) shall not limit the right of a party to disclose Intellectual Property which becomes publicly available, or which was known to the party prior to the date the Prior Costs or Subsequent Costs were incurred to develop or obtain the Intellectual Property.

(b) Between the date of this Agreement and the date the parties obtain a "Final Order" (as defined herein), neither party will use the Intellectual Property in a manner which would adversely affect the consummation of the transactions contemplated by this Agreement.

(c) Memphis Broadband and MLGW shall grant to the Company an exclusive, perpetual, and royalty-free license to use the Intellectual Property in furtherance of its business in and near Shelby County, Tennessee, provided that the license shall terminate if, and on the date that, the Company discontinues providing Telecom Services in Shelby County, Tennessee.

11. General Operating Matters.

(a) MLGW and Memphis Broadband will use their best efforts to obtain all applicable regulatory approvals, including, without limitation, the TRA, of the Amended and Restated Operating Agreement.

(b) MLGW and Memphis Broadband will agree to allocate up to 15% of Net Profits (as defined in the Amended and Restated Operating Agreement) of the Company on a "carried interest" or similar basis to attract and retain employees and consultants.

(c) The Board of Governors of the Company will be five (5), with two (2) selected by Memphis Broadband, two (2) by MLGW and a fifth independent governor jointly selected by Memphis Broadband and MLGW.

12. Conditions Precedent. The Closing of the Acquisition and the Effective Date of this Agreement shall be subject to the following terms and conditions, all of which shall be deemed conditions precedent to the Closing:

(a) The receipt by MLGW of all necessary consents and approvals from the Board of Commissioners of MLGW.

(b) The receipt by Memphis Broadband of all necessary consents and approvals from the Managers or Members of Memphis Broadband.

(c) The receipt by Memphis Broadband of financial, operating and other due diligence information from A&L and its Affiliates as Memphis Broadband shall request.

(d) The receipt by either party of any other consents or approvals and filings from or with any governmental body necessary to the Closing, including any required statutory or regulatory approvals.

(e) The completion, to the reasonable satisfaction of either party, of any additional legal, financial and operational due diligence.

13. Closing; Effective Date. The Closing for the Acquisition contemplated under this Agreement shall occur on November 28, 2000, at 10:00 Memphis time, at the offices of Waring Cox, PLC, 50 N. Front St., Suite 1300, Memphis, Tennessee 38018 or such other time and place as the parties mutually agree. The actual date of Closing of the Acquisition shall constitute the effective date of this Agreement (the "Effective Date").

14. Transaction Expenses. Each party will be solely responsible for the payment of all costs and expenses of its attorneys, accountants and other professional advisers incurred by it in connection with the negotiation of this Agreement and the Closing contemplated herein.

15. Brokers or Agents. Each party represents to the other that, except as described in Exhibit "B", it has not incurred any unpaid liability (for any brokerage fees, finders' fees, commissions or otherwise) to any, broker, finder or agent in connection with the transactions contemplated by this Agreement. Each party agrees to pay any such fees or commissions incurred by such party (the "paying party") and to pay on behalf of the other party any claims asserted against the other party for any such fees or commissions by any person purporting to act or to have acted for or on behalf of the paying party.

16. Press Release. Neither party shall issue any press release or otherwise make any public statements with respect to this transaction prior to Closing, except as may be, in the reasonable judgment of the disclosing party, required by law or with the prior consent of the other party. Following Closing, the parties will take reasonable steps, including the release of mutually agreeable press releases containing the endorsement of Memphis Broadband and its principals, to emphasize the economic development and other community benefits of the Memphis Networx project. In the event TRA denies the Application and Joint Petition, for a period of 18 months after such denial, Memphis Broadband shall not make any public statement detrimental to MLGW in connection with the Memphis Networx or similar project.

17. Governing Law. This Agreement, the rights and obligations of the parties, and any claims or disputes relating thereto, shall be governed by and construed under and in accordance with the laws of the State of Tennessee, excluding the choice of laws rules thereof.

18. Assignment. References in this Agreement to either party shall include such party's successors and assigns.

19. Termination. Upon failure of the parties to satisfy the conditions precedent prior to date of Closing set forth in Section 13, this Agreement shall automatically terminate and shall be of no further force and effect, except for the obligations under Section 10 and the final sentence of Section 16 which shall survive such termination.

20. Counterparts; Effectiveness. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective as of the date specified in the opening paragraph, upon the execution by each of the parties 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 exchange of facsimile copies 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.

21. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held in any jurisdiction invalid, illegal or unenforceable for any reason, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provisions of this Agreement, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders unenforceable any provision hereof.

22. Further Assurances. The parties further agree that upon request, they shall do such further acts and deeds, and shall execute, acknowledge, deliver and record such other documents and instruments, as may be reasonably necessary from time to time to evidence, confirm or carry out the intent and purposes of this Agreement.

23. Representations and Warranties. Each party hereby represents and warrants to the other party as follows:

(a) Such party is duly organized, validly existing and in good standing under applicable law, with full power and authority to conduct its business as it is now being conducted, to own and use the properties and assets that it purports to own and use, and to execute and deliver, and, subject to applicable law, to perform its obligations under, this Agreement.

(b) Subject to applicable law, this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

(c) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time) contravene, conflict with or result in a violation of the charter (in the case of MLGW) or the certificate of formation or limited liability company agreement (in the case of Memphis Broadband), or any resolution adopted by its Board of Commissioners (in the case of MLGW) or its Managers or Members

(in the case of Memphis Broadband), or contravene, conflict with or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any contract or instrument to which such party is a party or by which such party is bound.

24. Limitation of Liability. The obligations of MLGW under this 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, Memphis Broadband acknowledges that (i) MLGW's liability for any tortious acts or omissions or breaches of contract under this 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 TelecommunicationsDivision), the Gas Division, nor the Water Division of MLGW assumes any financial obligation under this 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 Agreement.

25. Definitions.

"Interim Contributions" means, between the date of the Original Umbrella Agreement and the date of the TRA Order with respect to the Amended Application and Joint Petition becomes final and non-appealable (the "Final Order"), additional capital contributions to the Company by MLGW and Memphis Broadband, if and to the extent necessary to pay obligations reasonably incurred by the Company and to seek the approval of the TRA.

"Prior Costs", as set forth in Exhibit "C", 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.

"Subsequent Costs" means, between the date of the Original Umbrella Agreement and the date that the Final Order, additional costs incurred by MLGW and Memphis Broadband to seek and obtain the relief requested in the Application and Joint Petition, as amended.

26. Miscellaneous.

(a) This Agreement may be amended, modified or supplemented at any time by written agreement of the parties. Any failure of any party to comply with any term or provision of this Agreement may be waived by the other party at any time by an instrument in writing signed by or on behalf of such other party, but such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

(b) Except as otherwise provided in this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) This Agreement and the attached exhibits constitute the full and entire understanding and agreement among the parties with regard to its subject matter and supersede all prior written or oral agreements, understandings, representations and warranties made with respect thereto.

(d) No provision of this Agreement shall be interpreted or construed against any party because that party or its legal representative drafted such provision. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

(e) No waiver by any party of one or more defaults by the other party shall operate or be construed as a waiver of any future default or defaults, whether of a like or different nature. No failure or delay on the part of any party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

[The Balance of the Page Is Intentionally Left Blank-Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first set forth above.

MEMPHIS LIGHT, GAS & WATER DIVISION

By: _____
Name: Herman Morris
Title: President and Chief Executive Officer

MEMPHIS BROADBAND, LLC

By: _____
Name: Frank A. McGrew, IV
Title: Manager