

**BVU/ MI CONNECTION COMMUNICATIONS SYSTEM  
OPERATING AGREEMENT**

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**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between **THE CITY OF BRISTOL, VIRGINIA D/B/A BRISTOL VIRGINIA UTILITIES**, hereinafter “**BVU**”, a Virginia municipal corporation organized and existing under the laws of the Commonwealth of Virginia, and **MI Connection Communications System**, a North Carolina interlocal agency, hereinafter “**MI**,”

**WITNESSTH:  
THE PREMISES**

WHEREAS, MI is in the process of conducting due diligence and initial preparation in anticipation of the purchase of the HFC cable and internet access system of Adelphia in the County of Mecklenburg, and the towns of Davidson, Cornelius, and Mooresville, and

WHEREAS, BVU is in the governmental business of providing cable and internet access services, along with other communication and information services, to citizens in Virginia and has gained expertise in the area as a result, and

WHEREAS, MI desires to retain the services of BVU to manage and operate MI's System upon its purchase of MI's system, and

WHEREAS, BVU is willing to provide management and operational services to MI upon the conditions and terms contained in this Agreement.

NOW THEREFORE, in consideration of their mutual undertaking, and other good and valuable consideration, including without limitation the mutual benefits from the covenants and conditions herein set forth, the parties do covenant and agree as follows:

**ARTICLE I. DEFINITIONS**

**1.1** “Business Plan” shall mean that business plan developed by or on behalf of the Board of MI for the successful operation of MI's System to be followed by BVU in its operation of MI System.

**1.2** “Cable Subscriber” shall mean a subscriber that subscribes to cable service only.

**1.3** “Internet Subscriber” shall mean a subscriber that subscribes to internet service only.

**1.4.** “MI's System” or “System” shall mean all of the physical assets of MI, including without limitation the assets transferred from Adelphia to MI in the geographical areas served by MI. Assets consist of, including without limitation, fixtures

and equipment, real property leases, real property subleases, owned real property, rights to use right-of-ways and such other physical assets which comprise cable TV and internet access facilities and other communication and information service facilities and capabilities in MI's operating area, as well as any future additions of facilities and equipment and other assets used to provide communications services, information services and CATV services.

**1.5.** "MI Operating Expenses" or "Operating Expenses" shall mean all day to day expenses of MI, including but not limited to salary and employee benefits, personnel charges by BVU, vehicle fuel, repair and other expenses, office supplies and expenses, sales commissions, direct and indirect costs of operation, maintenance and ownership of the headend in Mooresville, and video programming expenses and various other expenses associated with operations as determined reasonably necessary by BVU, which expenses will be passed directly to the income statement of MI at actual cost. From time to time, the parties may agree that it is in MI's best interest to use other BVU services unrelated to the management of the MI system. In such event, the parties will negotiate a separate contract between MI and BVU at an agreed price, which will include a profit margin for BVU.

**1.6.** "Positive Net Income" shall mean when MI's net income after subtracting all costs and expenses related to the cost of doing business, including interest, taxes and depreciation, from Total Gross Revenues is positive.

**1.7.** "Total Gross Revenues" shall mean and include all income, fees, charges, receipts, profits and other moneys or monetary benefits actually realized by MI directly or indirectly from the ownership or operation of MI's System and the sale, furnishing or supplying of CATV, internet, communication, and information services, including, but not limited to, (A) all income, fees, charges, receipts, profits and other moneys actually realized from the sale, furnishing or supplying of the services, facilities, commodities and cable TV services and internet access services of MI's system; (B) all interest, profits or other income actually realized from the investment of any moneys required to be paid or transferred into the Funds as specified in Article XI below; (C) proceeds actually realized by MI directly or indirectly from the sale, lease, decommissioning or other disposition of property of MI's system; (D) any proceeds of insurance or condemnation awards related to MI's system; and (E) all other income, fees, receipts and profits actually realized by MI directly or indirectly from MI's system. Total Gross Revenue shall not include any capital gains or other monetary or non-monetary benefit derived by MI from the partial or total sale of the system.

**1.8** "Subscriber" shall mean an individual customer billing account, whether cable only, internet service only, telephone service only or to two or more of said services bundled. Each single service customer account and each bundled service

customer account and each business account shall count as one subscriber for purposes of this agreement.

**1.9** "Telephone Subscriber" shall mean a subscriber who subscribes to telephone services only.

**1.10** "Transition Period" shall mean the 120 days, or such other period as may be agreed, between execution of the asset purchase agreements between the MI Parties and Time Warner and the closing date for the purchase between the MI Parties and Time Warner.

**1.11.** "Usual Utility Practice" shall mean, at a particular time, any of the practices, methods and acts which, in the objective exercise of reasonable judgment in light of the facts and circumstances (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the cable TV and internet access industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with reliability and safety. Usual Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a number of possible practices, methods or acts. In evaluating whether any matter conforms to Usual Utility Practice as used in this Agreement, the parties hereto shall take into account, among other factors, (A) the fact that both BVU and MI are public bodies organized under the laws of the Commonwealth of Virginia and State of North Carolina respectively, with the statutory duties and responsibilities thereof, and (B) the intended purposes and obligations of BVU and MI under this Agreement.

## **ARTICLE II TERM OF CONTRACT**

**2.1.** The term of this Agreement shall commence upon execution of this Agreement by both parties and shall be thereafter for a term of five (5) years and four (4) months. Provided BVU gives notice of its intent to renew at least twelve (12) months before the end of the first five-year and four-month term, BVU shall have a right of renewal for an additional term of three (3) years. MI may reject BVU's noticed renewal if it notifies BVU within thirty (30) days of the notice of renewal of MI's rejection and pays BVU a rejection fee of One Million, Five Hundred Thousand (\$1,500,000.00) within 60 days of giving notice of rejection.

## **ARTICLE III. MANAGEMENT FEE**

**3.1.** MI shall pay to BVU as a management fee, for the services it renders pursuant to this Agreement managing and operating MI System, the sum of NINETY FOUR THOUSAND, ONE HUNDRED, THIRTY-TWO DOLLARS AND FIFTY-SIX CENTS (\$94,132.56) per month each month during the transition period. MI shall

thereafter pay to BVU as a management fee for the services it renders pursuant to this Agreement managing and operating MI's System the sum of TWENTY SEVEN THOUSAND, FOUR HUNDRED, THIRTY TWO DOLLARS AND EIGHTY-NINE CENTS (\$27,432.89) per month plus an additional monthly per-subscriber fee as hereinafter set out payable until MI has attained a positive net income of FIFTY THOUSAND, ONE HUNDRED (\$50,100.00) DOLLARS per month over three consecutive months. Thereafter MI shall pay to BVU as a management fee the sum of FORTY FOUR THOUSAND, NINETY-NINE DOLLARS AND 56 CENTS (\$44,066.56) per month plus the additional monthly per-subscriber fee as hereinafter set out for the remainder of this contract term. The first payment pursuant to this paragraph shall be due and payable for the Transition Period by wire transfer immediately on the date that MI executes the Asset Purchase Agreement(s) to purchase MI's System. After the Transition Period, MI shall make monthly payments on the same date of each succeeding month as it made the first payment. Monthly payments will continue until the end of the term of this contract. MI will make monthly payments by BVU withdrawing the sum due from the Operating Fund, unless said date is not a part of any succeeding month, in which case BVU shall withdraw said payment on the last day of such month. If this contract is renewed, the parties agree a new management fee for the renewal term in an amount to be agreed to by the parties prior to the date of renewal. The renewal term management fee shall not be less than the management fee during the final twelve months of the initial term, plus an amount equal to the change in the Charlotte Metropolitan Consumer Price Index from the effective date of this contract through the date of agreement on the fee for the second term. The Parties shall not decrease the management fee for the second term.

The monthly per-subscriber fee is a sum derived by multiplying the number of subscribers served by MI on the last day of the preceding month times EIGHT-ONE DOLLARS AND EIGHT CENTS (\$81.08) and dividing that product by the number TWELVE (12).

Should MI sell the System during this contract's term, MI will sell the System subject to the condition that either the purchasers will continue to use BVU to manage the System on terms at least as favorable as in this contract or one of the following provisions will apply. If the sale is concluded during the first three years of this contract, MI shall pay to BVU a buy-out amount equal to the full amount of the management fee payable for the remainder of the three year term, plus \$1,500,000.00, plus an amount equal to the difference between the total of the monthly payments of management fee made during said three years and \$450,000.00 per annum for each of said three years. If the sale is concluded after the end of three years and before the end of the first five year term, MI shall pay to BVU the sum of \$1,500,000.00, plus an amount equal to the difference between the total of the monthly payments of management fee made during said three years and \$450,000.00 per annum for each of said five years. If the sale is after five years, during the renewal term, MI shall pay to BVU the sum of \$1,500,000.00. Payments will be made within 60 days of MI's closing of sale. BVU has no right or entitlement to any share of the sales price or capital gain or loss which MI may experience through such sale.

## ARTICLE IV. SERVICES PROVIDED

**4.1.** During the term of this Agreement, BVU shall operate and maintain MI's System in an economical, efficient, safe, adequate, and reliable fashion in accordance with Usual Utility Practice using BVU's own personnel and such independent contractors as BVU may choose to retain. BVU shall charge to MI BVU's fully loaded actual costs, excluding any mark up for said personnel expenses, which include without limitation salary, wages and benefits. Without limiting the generality of the foregoing, MI shall pay all operating and capital expenses and all charges by BVU. No deductions shall be made to BVU's management fee for any reason. BVU shall provide such services to MI as are necessary and appropriate to carry out its obligations herein, which services shall include, but not be limited to, the following:

(i) Performing all routine and emergency maintenance, repairs and construction on MI's system.

(ii) Making all modifications, extensions, additions and improvements in and to MI's System, both present and future, as shall from time to time be required or necessary to serve, in an economical, efficient, safe, adequate and reliable manner,

(iii) Furnishing all labor, supervision and personnel services. It is understood that BVU initially intends to deploy employees, agents and/or contractors in either full or part time capacity to operate, manage and enforce the business plan;

(iv) Furnishing to MI periodic accountings and reports, with supporting data covering activities engaged in and work performed by BVU pursuant to this Agreement;

(v) Planning and assembling work orders for (A) the installation of CATV, communications and internet access equipment to serve new and existing customers of MI as such customers initiate or increase their requirements for services, and (B) maintenance jobs on MI's facilities, or any other part of MI's system;

(vi) Carrying out troubleshooting activities including, but not limited to, responding to customer calls and complaints, assessing and estimating failures or damages and potential failures and damages, safely restoring service as quickly as possible, and reporting to MI on the status of MI's system;

(vii) Providing engineering, management, and other support services as shall, from time to time, be required, including, but not limited to, system engineering, system modifications and additions, and other required services.

(viii) Providing customer billing and collection services.

(ix) Providing regulatory reporting.

(x) Providing all marketing and sales services.

(xi) Implementation of capital projects approved and funded by MI acting through its Board of Directors.

(xii) Providing accounting and budgeting services.

(xiii) It is understood between the parties that all of the services that BVU provides pursuant to this agreement, including without limitation, network operation center and customer service representative services, may be performed from BVU's Virginia office, at BVU's sole discretion.

**4.2** BVU is a member of National Cable Television Cooperative (NCTC). BVU will buy MI's System headend in Mooresville to provide video programming and other content to MI's Subscribers. BVU will purchase video programming and other content from NCTC and will provide that content to MI Subscribers as long as NCTC will sell it to BVU at NCTC member costs. If NCTC should at any time refuse to sell any or all content to BVU as a member of NCTC, BVU will assist MI in securing replacement content from another source. The cost of video programming and other content shall be an Operating Expense payable pursuant to paragraph 4.5. In event of termination pursuant to Article 15, BVU agrees to sell the then existing headend and related facilities and equipment to MI for One Dollar (\$1.00), which the parties agree is adequate consideration based on the totality of the overall relationship.

**4.3.** All services provided by BVU for MI pursuant to this Agreement shall be performed in accordance with Usual Utility Practice, consistent and in compliance with all applicable laws, standards, codes, rules, regulations and operating procedures.

**4.4.** In providing the services to MI pursuant to this Agreement, BVU may utilize, in addition to persons employed by BVU, such other persons, firms or entities, independent of BVU or MI ("Subcontractors"), as BVU shall deem necessary and appropriate to assist it in performing its obligations under this Agreement.

**4.5** BVU shall not be responsible for any Operating Expenses or cash outlay, except as the manager of MI's funds and assets. BVU will pass all incurred costs of operation, including charges for its own personnel and its equipment and facilities to MI as hereinbefore set forth. BVU shall give MI reasonable notice if any projected fund balances are not sufficient to cover all operating and capital outlays in any month, and it shall be MI responsibility to wire funds to cover potential shortfalls. MI will be solely responsible for any interruption of services occasioned by its failure to provide sufficient funds for continued operation.

**4.6** MI Board of Directors will appoint one person to be the sole contact person and agent of the Board between BVU and MI. This person will have the authority from the Board of Directors to speak for MI and all MI Parties on MI business. The MI Board of Directors will be responsible for supervision of said person and will hold BVU harmless from any unauthorized *actions* by said contact person. The parties agree that BVU may rely on that contact person's authority to act on MI's behalf except on matters that the Board communicates in writing directly to BVU that the Board alone can act upon.

**4.7** BVU will operate and manage MI's System in accordance with the business plan approved by the MI Board of Directors and presented to BVU as the business plan it should follow. BVU will comply with the budgets and policies adopted by the MI Board of Directors. BVU makes no warranties about the accuracy of the business plan or of the staffing levels projected in the business plan. BVU will regularly discuss the implementation of the business plan with the Board of Directors and will recommend any changes BVU believes are either necessary or desirable. BVU will have no liability for the financial or operational results of MI's business provided BVU has used reasonable commercial efforts to carry out the business plan and directives of the MI Board of Directors.

**4.8** After the issuance by the Town of Mooresville or its affiliates of certificates of participation or other tax-exempt debt to finance or refinance the MI's System (the "Tax-Exempt Debt"), BVU shall manage and operate MI's System (a) consistently with the provisions of all tax certificates and agreements executed in connection with the issuance of the Tax-Exempt Debt and (b) in a manner that will not cause interest on the Tax-Exempt Debt to fail to be exempt from income taxation under Sections 103 and 141 of the Internal Revenue Code. The parties agree that upon the issuance of the Tax-Exempt Debt, MI will provide BVU with a list of prohibited acts and operating rules necessary to preserve the tax-exempt status of the debt. MI may advise BVU in writing of any change in law or the covenants applicable to its financing that expand, contract or amend the forgoing, setting out the specific changes or future conduct that have become a violation of this provision, and BVU will amend its operation of the System accordingly. BVU's compliance with these specific instructions from MI will satisfy BVU's entire obligation to MI pursuant to this paragraph.

## **ARTICLE V. MANAGEMENT AND STAFFING**

**5.1.** The daily operations of MI's System shall be under the direct supervision and control of an Operations Manager hired and supervised by BVU. The Operations Manager shall be a full-time employee of BVU and, at all times during the Manager's employment, shall report directly to, and be subject to the direction and supervision of BVU. The Operations Manager shall devote such time and effort to the operation and maintenance of MI's System as are required to fulfill BVU's obligations under this

Agreement. To the extent that duties of the Operations Manager in fulfilling the terms of this Agreement do not require the Manager's full time and effort, the Operations Manager may perform such other activities and engage in such other duties as are requested, from time to time, by BVU, which activities and duties need not be related to the provision of services under this Agreement; provided, however, that the operation and maintenance of MI's System pursuant to the terms of this Agreement shall receive first priority over any other activities and duties assigned to the Operations Manager by BVU. Provided further, MI shall be responsible for reimbursing BVU only for that portion of the Manager's salary and benefits and other necessary expenses related to services performed on MI's behalf under this Agreement.

**5.2.** BVU shall employ such other persons as it deems necessary or required to economically and efficiently fulfill its obligations under this Agreement. Such employees may, but shall not be required to, include supervisors, billing and collection clerks, field technicians, engineers and such others as BVU determines are necessary to efficiently operate MI's System in accordance with the business plan and subsequently adopted budgets.

**5.3.** MI understands and specifically acknowledges that some or all of the personnel described in Section 5.2 above performing services for MI under this Agreement may also perform services for BVU or, at the direction of BVU, for others; however, MI shall be responsible only for that portion of the costs related to such personnel as are attributable to services performed by such personnel for the benefit of MI.

## **ARTICLE VI BUDGETING**

**6.1.** Before April 30<sup>th</sup> of each fiscal year, BVU shall transmit to MI (A) the operating and capital budget requests by category of expenditure and revenue estimates by source of revenue for MI's System for the fiscal year beginning with the forthcoming July 1; (B) a complete statement of the amount (i) expended by MI for each category of capital and operating expenditure in the budget ordinance of its immediately preceding fiscal year; (ii) estimated to be expended by MI for each category of capital and operating expenditure in its current year's budget by the end of the current fiscal year, (iii) realized by MI from each source of its Total Gross Revenues during the immediately preceding fiscal year, and (iv) estimated to be realized by MI from each source of its Total Gross Revenues by the end of the current fiscal year; and (C) such other information and data on the fiscal operations of MI's System as its Manager may reasonably request. The budget requests shall be an estimate of the financial requirements of MI's System for the fiscal year, and shall be made in such form and detail, with such supporting information and justifications, as the Manager may prescribe. The revenue estimates shall be an estimate of all Total Gross Revenues to

be realized by MI's System during the fiscal year. BVU shall consult with MI in connection with the preparation of the budget requests and revenue estimates.

**6.2.** Following receipt and due consideration of the budget requests, revenue estimates and the information required by Section 6.1 above, MI shall adopt a budget by June 15<sup>th</sup> of each year for the operation of MI's System for the ensuing fiscal year in accordance with the provisions of the General Statutes provided for the budgeting and appropriations by a MI formed under North Carolina law. Said budget shall include not only the operating budget but shall contain a capital budget for all proposed capital costs for the ensuing fiscal year with such budget and appropriation acts on the part of the individual political subdivisions as are necessary to render said budget and appropriation lawful under the requisite statutes.

## **ARTICLE VII. RATES**

**7.1.** The Board of Directors of MI ("Board of Directors") shall determine, from time to time, proposed schedules of rents, rates, fees, charges and penalties for the provision of cable TV services and internet access services, telephone and other services, if any, furnished or supplied by or through MI's System of MI ("Rates"). Each such rate determination shall be recommended by BVU to MI and shall be duly considered by MI in the exercise of its governmental discretion. The Rates recommended and established by the Board of Directors shall take into account the revenues needed (A) to meet the obligations of MI and each of MI's constituent political subdivisions pursuant to its own local agreement for purchase and ownership of MI's system, and (B) to pay any and all other amounts payable from or constituting a charge or lien upon such revenues, including amounts sufficient to pay the principal of and interest on all debt incurred by MI to finance MI's system.

**7.2.** A portion of the revenues generated by the Rates established by MI may be allocated to and collected for making capital improvements to MI's System. Such allocation shall be included in the revenue estimates transmitted by BVU to MI pursuant to Section 6.1.

## **ARTICLE VIII. BILLING, COLLECTION AND ACCOUNTING SERVICES**

**8.1.** BVU shall perform customer billing, customer account collection, and all accounting for MI's System. BVU shall establish and implement a customer billing and collection system or systems and an accounting system or systems appropriate for MI's System at MI's expense. For purposes of this contract, the expense of implementation and start up of this billing and collection system shall be a MI operating expense.

**8.2.** BVU shall establish at least one collection office at which retail customers of MI's System may make payments, either in person or by mail, for services furnished or provided by or through MI's system. BVU also may establish one or more "drop box" or places of business in the geographical areas comprising MI at which retail customers of MI's System may deposit or make payment for services furnished or provided by or through MI's system. BVU shall determine the location of the collection office, the "drop boxes" or places of business where payments may be made.

**8.3.** Each month during the term of this Agreement, BVU shall establish one or more dates upon which BVU shall prepare, date and mail to the customers of MI's System a monthly bill showing (A) the amount charged for customer requested cable TV internet access, and telephone and other services, if any, and (B) the total amount payable by the customer therefore at MI's Rate with applicable taxes included. The amounts shown on the monthly bill to be paid by the customer shall be due and payable in accordance with customer service policies established and modified from time to time by BVU with the consent and approval of MI Board of Directors.

**8.4.** BVU shall keep accurate records and accounts relating to MI's system. Such records and accounts shall contain information related to customer billings, customer account collection, and such other accounting data as is necessary to support the allocation of BVU's operating costs and MI's operating costs. The books of account kept pursuant to this provision shall be kept as an entirely separate and distinct set of books from the book of accounts of BVU's other utility operations. In connection therewith, BVU shall develop, or cause to be developed, a billing and collection system or systems and an accounting system or systems for MI which may include the purchase of computers and other necessary equipment, the development of software and applications appropriate to the systems so developed, and the training of employees in the implementation and use of such systems. All costs associated with the development of the billing, collection, and accounting systems, including the purchase of computer and other equipment and the development of related software and appropriate applications thereto, shall be borne by MI.

**8.5.** MI shall have the right to review all accounting records and the related support therefore.

**8.6** MI, or its professional advisors, may conduct an on site evaluation of BVU's internal controls and accounting procedures upon reasonable notice. In the event that such evaluation finds significant deficiencies and/or material weaknesses, MI shall give BVU written notice and 30 days to cure. MI will not conduct a financial audit more than once every twelve months. In the event a financial audit finds BVU is not using accounting principles generally accepted in the United States of America, MI shall give BVU written notice and 30 days to cure. If BVU has not achieved a cure in either instance, MI has the right to seek any available remedy in law or equity, consistent with

the terms of this agreement including, without limitation, the right to terminate this contract in accordance with the procedures in Article XV.

## **ARTICLE IX FACILITIES**

**9.1.** BVU will have the use, at no cost to BVU, of all facilities MI acquires for implementing this agreement.

**9.2.** BVU may undertake the study, planning, engineering, design, construction, reconstruction, and maintenance of all facilities of MI's system, including obtaining federal, state, and local permits, licenses, and approvals necessary in connection therewith upon agreement with MI.

## **ARTICLE X. PROPERTY, EQUIPMENT AND SUPPLIES**

**10.1.** During the term of this Agreement, BVU shall, in accordance with Usual Utility Practice, applicable state law and the governmentally approved budget, purchase, acquire, lease or otherwise obtain, for MI's system, such property, equipment and supplies as are necessary for BVU to perform its obligations under this Agreement. All existing property, equipment and supplies of MI's System shall be used by BVU in performing its obligations under this Agreement, including facilities. All property, equipment and supplies acquired by BVU and paid for by MI shall be the property of MI during and after the term of this contract. The Parties agree that BVU will procure all such necessary property and equipment as an agent for MI and shall issue purchase orders for the same in MI's name, clearly showing BVU as MI's purchasing agent. In so doing, BVU will comply with all applicable North Carolina procurement law.

**10.2.** BVU may, in the ordinary course of operating and maintaining MI's System and in accordance with the Usual Utility Practice and applicable state law, abandon, scrap, trade-in, sell, return to its titled owner without further obligation, or otherwise dispose of any property, equipment or supplies of MI's system, if BVU determines that such property, equipment or supplies is surplus, obsolete or otherwise not required for the operation and maintenance of MI's system. BVU will notify MI in writing of its intent to dispose of said property. All proceeds from such disposal shall be deposited in the operating fund of MI.

**10.3.** BVU shall use MI's system's property, equipment or supplies only in the normal and ordinary course of operating MI's system. BVU shall not operate the property or equipment in a reckless or abusive manner. Except to the extent required by law, neither the property nor the equipment shall be altered or modified in any way without the written consent of MI, and BVU shall use the property and equipment only within its normal capacity and for the purpose for which it is intended. If the property and equipment is used in connection with other equipment or vehicles, such other equipment or vehicles shall be in good operating condition. Except as provided herein,

the property and equipment, and any vehicles pulling or otherwise transporting the property and equipment, may only be used or operated by a properly licensed employee, agent or sub contractor of BVU, who is eighteen (18) years of age or older. BVU shall conduct its operations in a good, workmanlike manner consistent with Usual Utility Practice, and comply fully with all manufacturers' instructions and recommendations relating to the property and equipment.

## **ARTICLE XI FUNDING**

**11.1** Both parties agree that there are substantial expenditures, both capital and operating, that are set forth in the business plan created for MI that MI must make available to BVU during the Transition Period. BVU will create a Transition Expenditure fund for such operating and capital expenditures. MI will deposit by wire transfer the sum called for in business plan, less the Management Fee, immediately upon deciding to purchase MI system. BVU will make all budgeted operating and capital expenditures called for in the business plan during the Transition Period from said fund and account to MI for the fund's receipts and expenditures monthly. After the Transition Period expenses identified in the business plan are paid, the balance in the Transition Expenditure fund will be transferred to either a Capital Fund or an Operating fund and the Transition Expenditure fund will be closed and will cease to exist. If the Transition Expenditure fund balance proves to be insufficient to cover Transition Period expenses, BVU shall give notice to MI that additional funding is required and such funding must be made by MI within five business days. BVU is hereby granted all necessary authority to expend funds from the Transition Expenditure Fund related to Transition Period activities authorized by the Business Plan.

**11.2** It is understood by both parties that the governmental bond financing will not close until the Closing Date of the governmental bodies' contract with Time Warner. At closing, MI or the governmental bodies will transfer funds to BVU as trustee for MI under this Agreement. Such funds will consist of the following, (A) an Operating and Revenue Fund (working capital proceeds from bond transaction) (the "Operating Fund") and (B) an Emergency Fund in the amount of one million dollars (\$1,000,000) and (C) a Capital Reserve Fund. The proceeds from MI's issuance of bonds will be held by MI's escrow agent and will be requisitioned by BVU from time to time to cover all capital expenses for MI's System pursuant to the business plan. MI will provide BVU the authority to requisition such funds for the Capital Reserve Fund from the escrow agent. All capital funds requisitioned by BVU from the MI escrow agent on behalf of MI will be deposited into the Capital Reserve Fund.

**11.3** BVU shall have the authority to pay management fees, operating costs, and capital costs from these three funds in accordance with the provisions of this agreement without further authority from MI, unless otherwise expressly required herein.

Moneys in each of the funds shall not be commingled with any other MI fund nor with any other moneys held by BVU; provided, however, that moneys in each of the Funds not required for immediate disbursement for the purposes for which each Fund is created shall, to the fullest extent practicable and reasonable, be invested and reinvested by BVU in interest sweep accounts permitted by the General Statutes which shall mature or be subject to redemption at the option of the holder thereof on or before the respective dates when the moneys in such Funds will be required for the purposes intended. All checks, drafts, or other orders for the payment of money issued in connection with MI's System from any of the Funds shall be signed by such person or persons as shall be determined from time to time by BVU.

**11.4.** In the event BVU determines that the amount in any of the funds detailed above are insufficient for it to maintain the Operations, Emergency fund or Capital fund needs of MI's System in an economical, efficient, safe, adequate, budgetary and reliable fashion, BVU shall inform MI in a timely manner that BVU deems the fund balances insufficient. If MI shall fail to deposit the amount stated by BVU into the fund upon which notice has been given, BVU may elect to not perform its obligations to be performed under this Agreement. If BVU elects not to perform its obligations pursuant to this Section 11.2, the balance of deposits of MI, less any monies needed to pay bills already incurred and any pro rata amounts of management fees earned and unpaid as of that date, shall be returned by BVU to MI within fifteen (15) days.

**11.5. Emergency Fund.** The Emergency Fund is to provide a monetary reserve for emergencies, catastrophic events, and unforeseen major expenses of MI's system. BVU, for the benefit of MI, shall make a recommendation to MI for an additional deposit to MI's Emergency Fund, not less than annually.

BVU shall also use the Emergency Fund for transfers to the Operating Fund to cover shortfalls in that fund if MI has not provided necessary funds by wire transfer to prevent shutdown in operations or default in any obligation related to the operation of MI's system.

If, at any time during any fiscal year during the term of this Agreement, BVU determines that funds on deposit in the Emergency Fund of MI are inadequate or insufficient, BVU may demand and MI shall deposit additional funds to the Emergency Fund.

**11.6. Capital Reserve Fund.** The Capital Fund shall provide a depository of requisitioned funds from MI's bond escrow agent to be used for the budgeted capital improvements to and on MI's system. BVU shall also use the Emergency Fund for transfers to the Capital Fund to cover shortfalls in that fund if MI has not provided necessary funds by wire transfer to prevent shutdown in operations or default in any obligation related to the operation of MI's system. In such event, any amount needed by the Operating Fund to cover bills already incurred and earned management fee

unpaid shall be paid to the Operating Fund before transfer of the needed funds or all remaining monies left, whichever is less, to the Capital Fund.

**11.7. MI funding obligation.** The Parties agree that BVU will not be required to advance any monies for the operation of MI's System. It will be MI's obligation to maintain funding balances or advance money on an emergency basis to cover all expenditures made by BVU on behalf of MI regardless of the circumstances. MI will hold BVU harmless from any claims by MI or third parties arising from MI's failure to meet its obligations under this paragraph and the other funding paragraphs in this agreement.

## **ARTICLE XII. OPERATING REVENUE AND CAPITAL EXPENSE REIMBURSEMENT**

**12.1.** All management services rendered by BVU under this Agreement shall be paid for from the Operating Fund as set forth above, except wire payments made during the Transition Period. All other MI Operating Expenses shall be paid from funds on deposit in the Operating Fund of MI, including transfers to the Operating Fund from the Emergency Fund made pursuant to 11.3 above. These costs expended from the Operating Fund shall be billed to MI by BVU for the immediately preceding month as soon as practicable after the end of each such month and shall be payable by MI on or before the fifteenth (15<sup>th</sup>) day following the date of said bills. If any of said costs were paid using Emergency Funds as hereinabove set forth, that portion of each payment made by MI will be placed back in the Emergency Fund upon payment, subject to call if an additional shortfall should take place.

**12.2** All emergency expenses, including internal transfers to the Operating Fund shall be paid from funds in the Emergency Funds as is appropriate. These expenditures from the Emergency Fund shall be billed to MI by BVU for the immediately preceding month as soon as practicable after the end of each such month and shall be payable by MI on or before the fifteenth (15<sup>th</sup>) day following the date of said bills.

**12.3** All capital expenses shall be paid from funds in the Capital Fund, except for initial capital expenditures which shall be paid from the Transition Expenditure Fund as set forth in paragraph 11.1, which will be made from that fund until exhausted and the fund ceases to exist. These expenditures from the Capital Fund shall be billed to MI by BVU for the immediately preceding month as soon as practicable after the end of each such month and shall be payable by MI on or before the fifteenth (15<sup>th</sup>) day following the date of said bills.

## ARTICLE XIII. INSURANCE

13.1. BVU shall obtain and maintain at all times during the term of this Agreement minimum insurance coverage set forth below:

TYPE	LIMITS	
WORKER'S COMPENSATION	Statutory	
EMPLOYER'S LIABILITY	Each Accident	\$1,000,000
	Disease-Policy Limit	\$1,000,000
	Disease-Each Employee	\$1,000,000
COMMERCIAL GENERAL LIABILITY	Each Occurrence	\$1,000,000
	Aggregate	\$1,000,000

Commercial General Liability Policy shall be written on an occurrence form, including premises/operations, broad form property damage, products-completed operations, personal injury and contractual coverage. MI shall be named as Additional Insured under this policy.

AUTOMOBILE LIABILITY	Combined Single Limit	\$1,000,000
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Automobile Policies shall cover vehicles owned, leased or used by MI or BVU in connection with MI's system. MI shall cause to be issued an automobile policy in this amount for all such vehicles supplied to the project by MI at MI's expense and shall cause BVU to be a shown as a named insured on said policy. BVU shall cause such a policy to be in place for all such vehicles supplied to operation of MI's System by BVU, the cost of which shall be passed through to MI as an operating expense on a prorata basis calculated as the percentage of miles used on MI business in relation to the total mileage of vehicle use for each month. MI shall be shown as Named Insured with respect to such BVU vehicle policies.

PROPERTY COVERAGE	Amount to be determined
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To the extent and amount to be determined by BVU, in its sole discretion, all property pertaining to the operation of MI's System shall be insured against direct physical loss by fire and extended coverage perils. Insured property shall include all property, including vehicles and mobile equipment, owned by MI and used by BVU in the performance of its obligations under this Agreement. MI and BVU shall be Named Insureds under such policy and all loss adjustment shall be negotiated with and payable to BVU for their implementation of repair and replacement of all damaged property. Coverage shall also be provided for loss of business income caused by any of the same insured perils in an amount to be established by BVU subject to the approval of MI.

All insurance policies shall be written by a full qualified insurance company licensed to provide insurance in the State of North Carolina with an A M Best rating of at least A- VL.

BVU will provide at its own expense D & O Insurance covering employee dishonesty related to this contract. BVU and MI will be Named Insureds under such policy.

**13.2.** Prior to commencing any performances hereunder, and at all times during the term of this Agreement, BVU shall submit satisfactory evidence to MI that such insurance is in effect and shall not be cancelled or materially altered until at least thirty (30) days prior written notice has been given to MI.

**13.3.** BVU shall require that all subcontractors and sub-consultants employed by BVU in the performance of this Agreement shall maintain Workers' Compensation and all liability coverage as required in paragraph 13.1 subject to the same limits and conditions specified. Additionally, whenever MI requests BVU to, BVU shall require all subcontractors and sub-consultants to provide a performance and completion bond or an irrevocable letter of credit in favor of BVU and MI conditioned upon the completion of the work so contracted and in an amount sufficient to complete the work if said contractor does not do so in a timely fashion.

**13.4.** MI and BVU hereby waive their respective rights of recovery and release each other from any claim for damages caused to any of their property (including buildings, personal property, vehicles and equipment) and shall each have any insurance policies covering such properties endorsed to include waiver of subrogation.

**13.5.** MI and BVU shall have their respective Workers' Compensation policies amended to include a Waiver of Right to Recover from Others Endorsement naming the other contracting party (or parties) in the endorsement schedule.

**13.6.** The costs of all the above insurance, which will be maintained as separate policies for these operations pursuant to this Agreement, including for employment related policies for employees of BVU in the Commonwealth of Virginia who work on MI operations pursuant to this contract, and the cost thereof, shall be an operating expense of MI payable as all other MI Operating Expenses are payable. However, employment related insurance expenses for BVU employees shall be chargeable to MI on a pro rata basis if said employee is engaged in duties other than the obligations of BVU pursuant to this agreement.

#### **ARTICLE XIV. INDEMNIFICATION**

**14.1.** To the fullest extent permitted by applicable law, BVU agrees to indemnify, defend and hold harmless MI against any and all losses, damages, expenses (including

reasonable legal and other fees and expenses), liabilities or claims (or actions in respect thereof) to which MI may become subject under any federal or state law or other statutory law or at common law or otherwise, caused by or arising from negligent or intentional acts, errors or omissions of BVU in performing its obligations under this Agreement; provided, however that BVU shall not be required to indemnify MI in the event that any loss, damage, expense, liability or claim is the direct result of negligence on the part of MI or any constituent political subdivision, including their council members, manager, employees, agents or attorneys. The indemnity provided under this paragraph will extend upon the same terms and conditions from MI and its constituent political subdivisions to BVU, its Board, General Manager, employees, agents and attorneys. Such defense by any indemnifier herein extends, without limitation, to any and all expenses whatsoever, reasonably incurred by any indemnitee to whom a duty is owed pursuant to this provision in connection with investigating, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of, any loss, damage, expense, liability or claim referred to in this paragraph (or action in respect thereof), whether or not resulting in any liability. The indemnity will include the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein, if such settlement is effected with the written consent of the indemnitor. None of the provisions of this Agreement shall impose any personal liability upon any chief operating officer, agent, employee or attorney of MI, BVU or the constituent political subdivisions of MI. This indemnification paragraph is expressly made applicable to any suit brought by any third party contesting MI's right to provide any service it attempts to provide with MI system, as it is now or hereinafter constituted. MI will indemnify BVU for any costs, including defense costs arising from being a party defendant or arising in any other way from such lawsuit.

## **ARTICLE XV. TERMINATION**

**15.1.** If MI shall fail to perform any of its obligations or covenants set forth in this Agreement, BVU may terminate this Agreement by serving written notice thereof upon MI specifying the reasons for such termination or nature of the default. If MI causes an interruption in services by a failure to fund in accordance with this agreement, BVU shall have the right to terminate this contract without any cure time available to MI and any liability to MI other than the return of any fund not needed to pay incurred bills and earned but unpaid management fee. Otherwise, if, after the expiration of thirty (30) days following the date of said notice, MI shall have failed to rectify the reason given for termination or remedy the default, or if the reason given for termination or the default shall be of a nature that it cannot be completely rectified or remedied or cured in said thirty (30) day period, this Agreement may be terminated by BVU at any time thereafter; provided, however, that BVU shall give MI not less than ninety (90) days written notice of the date it intends to terminate this Agreement.

**15.2.** If BVU shall fail to perform any of its obligations or covenants set forth in this Agreement, MI may terminate this Agreement by serving written notice thereof upon BVU specifying the reasons for such termination or nature of the default. If, after the expiration of thirty (30) days following the date of said notice, BVU shall have failed to rectify the reason given for termination or remedy the default, or if the reason given for termination or the default shall be of a nature that it cannot be completely rectified or remedied or cured in said thirty (30) day period, this Agreement may be terminated by MI at any time thereafter; provided, however, that MI shall give BVU not less than ninety (90) days written notice of the date it intends to terminate this Agreement.

**15.3.** Notwithstanding any provision of this Agreement to the contrary, any party to this Agreement may terminate this Agreement after the initial five year term, if BVU does not exercise its right to renew for an additional three years and in such event at the end of the eight year term, provided that written notice of intent to terminate shall have been given to other party hereto not less than twelve (12) months prior to the intended date of termination.

## **ARTICLE XVI. MISCELLANEOUS**

**16.1. Future Projects.** BVU may from time to time operate and maintain, and conduct negotiations with respect to the operation and maintenance of, cable TV and telephone services and internet access services for other cities, towns, municipalities or corporations. It is expressly understood that nothing in this Agreement shall preclude BVU from contracting with such entities for the operation and maintenance of their cable TV and internet access services.

**16.2. Regulatory Compliance.** In addition to all requirements contained herein, BVU shall comply with applicable federal, state and local laws, ordinances, permit requirements, regulations, orders, directives, rules and policies now in force or as hereafter enacted, adopted or promulgated. BVU shall comply with all applicable present and future regulatory requirements for technical standards, testing requirements, rules, regulations, and orders, regardless of when they become or became effective, in connection with and relating to the construction, installation, maintenance, removal, replacement, occupancy and use of the MI System.

**16.3. Confidentiality.** To the extent permitted by Applicable Law, BVU will not disclose any of the Confidential Information of MI. If Applicable Law requires disclosure of MI's Confidential Information, then BVU will promptly give MI written notice and assist MI in limiting the disclosure to only those portions of that Confidential Information as is necessary to be disclosed according to Applicable Law. "Confidential Information" of MI

means the business plans, financial information, intellectual property, trade secrets. This includes, without limitation, information about the MI system, MI customers and MI vendors that is confidential or otherwise trade secrets under Applicable Law. In addition, BVU's obligations not to disclose MI's Confidential Information will continue as long as such information may be held free from disclosure under Applicable Law. Further, absent a separate agreement with MI, BVU agrees to not use any intellectual property which belongs to MI for any purpose other than fulfilling BVU's obligations under this Agreement. BVU agrees to not use, or to allow others to use the MI's System to transmit any material (by email, uploading, posting, or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software. BVU will register and will cause MI to be registered under the Digital Millennium Copyright Act of 1998.

**16.4. Hazardous Materials.** BVU shall comply in all material respects with all laws related to Hazardous Materials that are applicable to BVU, MI, or the MI System. Without limiting the foregoing, BVU covenants that it will not use, generate, store, or dispose of any Hazardous Material on, under, about or within any MI property in violation of any law or regulation. MI makes no representation or warranty that any MI Property is free of Hazardous Materials, and BVU must satisfy itself as to the condition of all such MI Property; provided that, MI shall notify BVU of any known presence of Hazardous Materials at such site. As used in this Section, "Hazardous Material" shall mean substances that are identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation.

**16.5 Customer Privacy.** BVU shall protect the privacy of all users of the MI System. BVU shall adopt, clearly document, and fully disclose its privacy policy. This privacy policy shall adhere to all applicable federal and state laws, and shall be communicated to all users on the MI System. The privacy policy shall, at a minimum, keep personal information about users only as long as it is operationally necessary.

**16.7. Compliance With Equal Employment Ordinances.** As a condition to providing Services to MI, BVU shall comply with all Equal Employment Opportunity laws and regulations in every jurisdiction where the MI's System is located.

## **ARTICLE XVII. REVIEW OF BVU'S PERFORMANCE**

**17.1.** Notwithstanding any other provision of this Agreement to the contrary, at any time during the term of this Agreement, MI may review or audit, or contract with another for the review or audit of, the performance by BVU of its obligations under this

Agreement. BVU shall cooperate with any requests reasonably made in connection with any such review or audit, so long as such requests are reasonable in relation to the performance of BVU of its obligations under this Agreement and do not interfere unreasonably with the performance by BVU of its obligations under this Agreement.

**17.2.** The results of any such review or audit shall be shared with BVU as soon as practicable upon receipt thereof by MI; provided, however, that the results of such review or audit shall be advisory only with respect to, and not binding upon, BVU and nothing contained in the results of such review or audit shall require or direct BVU to take any action, or refrain from taking any action, in connection with the performance of its obligations under this Agreement.

**17.3** The Parties agree to create a mutually agreeable set of performance standards in keeping with generally accepted industry practices to be used by MI in evaluating BVU's performance as set out in Article XVII. MI may terminate this contract in accordance with the procedures in Article XV if BVU fails to comply with such standards and fails to correct the non-compliance after notice and opportunity to cure.

#### **ARTICLE XVIII. SURVIVAL**

**18.1.** Where any covenants, obligations, indemnities or other provisions contained in this Agreement, or in any other instrument executed in connection with the transactions described herein, by its context or otherwise, evidences the intent of the parties that such provision should survive the termination of this Agreement, the provision shall survive the termination. Without limiting the generality of the foregoing, the parties specifically acknowledge and agree that all covenants, obligations and indemnities made in this Agreement shall survive the termination.

#### **ARTICLE XIX. ASSIGNMENT**

**19.1.** This Agreement shall not be assigned by any party without the prior written consent of the parties hereto.

#### **ARTICLE XX. MODIFICATION**

**20.1.** This Agreement may not be modified, altered or amended in any manner except (A) by an agreement in writing duly executed by each of the parties hereto, or B) as may be required by any law, regulation, governmental agency or court in order to be in compliance with law.

**ARTICLE XXI. SEVERABILITY**

**21.1.** Should any portion of this Agreement be declared void or invalid by a court of competent jurisdiction, the remaining portions of this Agreement, if any, shall be in full force and effect as if the void or invalid portion was severable and not a part of this Agreement. If all of this Agreement should be declared void or invalid by a court of competent jurisdiction, this Agreement shall terminate immediately without any liability of either party to the other.

**ARTICLE XXII. NOTICE**

**22.1.** Any notices to be given hereunder by one party to another shall be in writing and may be delivered either by personal delivery or by overnight or regular mail. Mailed notices shall be addressed to the parties at the addresses appearing below. Each party may change its address by written notice in accordance with this paragraph.

If to BVU: Wes Rosenbalm, President and CEO  
Bristol VA Utilities  
P O Box 8100  
15022 Lee Highway  
Bristol, VA 24203

If to MI: MI Connection Communications System Board Chairman  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE XXIII. GOVERNING LAW**

**23.1.** The obligations of each party under this Agreement shall be governed and interpreted under the laws of the State of North Carolina, except as to those operational matters related to the law of the Commonwealth of Virginia, in which case the law of Virginia shall apply. The parties agree to bring any actions brought to enforce the terms or interpretation of this agreement in the courts with jurisdiction in Iredell County, North Carolina, and all parties hereby consent to the jurisdiction of said courts.

## **ARTICLE XXIV. BINDING EFFECT**

**24.1.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

## **ARTICLE XXV. NO IMPLIED WAIVER**

**25.1.** Any party at any time may waive, solely for that party, compliance by another with any obligation, covenant, or condition contained in this Agreement. No such waiver, however, shall be deemed to constitute the waiver of any other obligation, covenant or condition. The failure by any party hereto from time to time to exercise any right or power provided herein shall not be construed as a waiver by such party to exercise such right or power at any subsequent time or against any other party.

## **ARTICLE XXVI. COMPLIANCE WITH LAWS**

**26.1.** Each party to this Agreement shall at all times comply with all applicable laws and regulations and shall obtain and maintain all necessary licenses for it to perform its obligations under this Agreement.

## **ARTICLE XXVII. COUNTERPARTS**

**27.1.** More than one counterpart of this Agreement may be executed by the parties hereto, and each fully executed counterpart shall be deemed an original without production of the others.

## **ARTICLE XXVIII MI**

**28.1** MI will provide to BVU a copy of all documents by which MI is created and an opinion from its attorney that MI is duly constituted under the laws of the State of North Carolina, that MI has the right under the laws of the State of North Carolina to obligate itself to every obligation set forth in this agreement, that the proper public officials have completed every act necessary to authorize the creation of MI and the execution of this contract by the person executing it and that this contract is binding on MI.

**ARTICLE XXIX BRISTOL VIRGINIA UTILITIES**

**29.1** By signing this agreement, BVU promises and warrants that it has all necessary legal authority and power under the laws of the Commonwealth of Virginia to perform its duties under this agreement. BVU will provide to MI an opinion from its attorney that BVU has the right under the laws of the Commonwealth of Virginia to obligate itself to every obligation set forth in this agreement, to perform the same, that the proper public officials have completed every act necessary to authorize execution of this contract by the person executing it and that this contract is binding on BVU.

**29.2** BVU hereby represents and warrants that Bristol Virginia Utilities is part of the City of Bristol, Virginia, is not *sui juris*, and is not an entity separate from the City of Bristol, Virginia for any legal or tax purpose. BVU, in its own right and on behalf of the City of Bristol, Virginia, waives any claim of sovereign immunity as a defense to its failure to perform, its failure to cure or adequately remedy any non-performance of its obligations under this contract. BVU covenants and agrees that each of the statements in the preceding sentence shall be true and accurate during the entire term of this Agreement.

**ARTICLE XXX. ENTIRE AGREEMENT**

**30.1.** This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in each case by authority of their respective governing bodies duly given.

Executed the \_\_\_\_\_ day of August, 2007.

BRISTOL VIRGINIA UTILITIES

By \_\_\_\_\_  
Wesley Rosenbalm, President

Attest:

\_\_\_\_\_  
Linda Davis, Secretary

