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**DATE: June 5, 2013**  
**TO: Council Members.**  
**CC: Mayor Prussing**  
**FROM: James L. Simon, City Attorney**

**RE: Status Report on UC2B and Organizational Bylaws and Related Information.**

Included herewith is the latest draft of the organizational bylaws for a not-for-profit entity which will be created in order to undertake, complete, and manage the next phase of the UC2B project. At this time, the bylaws have **not** been “cast in stone” nor has any entity been created. These draft bylaws are the product of much deliberation by Fred Stavins, City Attorney for the City of Champaign, Lisa Power, Senior Associate Council for the University of Illinois, and myself.

At the moment, the overall organizational structure contemplates the following:

- An Illinois **not-for-profit corporation** whose directors will be selected by the three “founders” of UC2 (i.e., the City of Urbana, the City of Champaign, and the University of Illinois at Urbana-Champaign). The not-for-profit corporation will apply to the Internal Revenue Service for an income tax exemption pursuant to 26 U.S.C. § 501(c)(4). The not-for-profit will have no members but the founders will have the authority to appoint three directors each.
- An Illinois **for-profit corporation** whose shares (ownership) will be held by the not-for-profit corporation. Such an entity is necessary if the not-for-profit corporation engages exclusively in activities of a charitable or educational nature. If the not-for-profit engages in activities which are deemed by the Internal Revenue Service as prohibited under the Internal Revenue Code and its implementing rules and regulations, then the not-for-profit corporation may not qualify for Section 301(c)(4) status or may lose such status.
- One or more businesses will contract with the for-profit corporation to build-out, operate, and/or maintain the next phase of the UC2B project.
- If the new not-for-profit entity seeks to apply for a grant, whether from a private corporation, foundation, or government, and a condition for such grant is that the applicant hold a 501(c)(3) exemption, then the not-for-profit will create a 501(c)(3) entity to apply for and, hopefully, obtain any such grant. The 501(c)(3) would manage and operate the grant.

Such a structure will reduce income tax consequences should the project begin to develop a profit and should the for-profit corporation become profitable.

It must be noted that any revenue received by the not-for-profit may not simply be passed onto to the founders since such “pass-throughs” would not be deemed a charitable purpose for IRS income tax-exempt purposes. However, the not-for-profit may donate such funds as are available to local charitable organizations such as those which are currently funded separately by one or more of the founders.

It should be noted that is very unlikely that a UC2B-type entity would not qualify for Section 501(c)(3) status since (i) the IRS takes a very careful look at the purposes of applicants for this type of tax exemption; (ii) the giving of discounts to subscribers of the UC2B service does not constitute a “charitable” purpose; and (iii) the activities would likely be deemed commercial and in competition with other for-profit entities such as Comcast/Xfiniti and AT&T.

Attached is a draft discussion prepared by the outside attorneys who were retained to draft the attached bylaws and to present the proposed organizational structure to the UC2B Policy Committee. The portion of UC2B’s Business and Strategy Plan relating to “Operational Structure and Governances” is also attached.

Initially, the attorney retained to develop the organizational structure, in consultation with the founders, estimated that it would take six to eight months to obtain a 501(c)(4) exemption (while it would be expected to take far longer if 501(c)(3) status was sought). However, given the recent issues swirling around the IRS and how it processed the 501(c)(4) applications of certain political organizations, it is anyone’s guess as to how long an application for a 501(c)(4) income tax exemption will take.<sup>1</sup>

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<sup>1</sup> Section 501(c)(3) organizations, unlike Section 501(c)(4) organizations, allow donors to deduct charitable contributions made to the 501(c)(3) organization. Given that 501(c)(3) organizations are not required to pay income tax (except on income derived from activities unrelated to the organization’s charitable purpose) and, yet, allow donors to deduct their contributions, the IRS scrutinizes applications for 501(c)(3) status far more carefully. No one, to date, has suggested that the new entity created to complete, operate and maintain the UC2B project would seek private contributions – ergo, no need to apply for 501(c)(3) status.

BYLAWS

OF

UC2B NFP *[name to be determined]*

an Illinois not for profit corporation

ARTICLE I

CORPORATION

Section 1.1 Name. The name of the corporation shall be the UC2B NFP (UC2B) (the "Corporation").

Section 1.2 Statement of Role and Purposes. The Corporation shall be organized and operated exclusively for charitable, educational or scientific purposes within the meaning of Section *[501(c)(3)][501(c)(4)] [Note: final election of (c)(3) or (c)(4) status to be determined]* of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any subsequent federal tax laws, including but not limited to the following:

- A. to relieve the burdens of government by building, supporting and maintaining infrastructure for the provision of high-speed internet services to certain areas located in the State of Illinois;
- B. to provide high-speed internet services to certain governmental, educational and not-for-profit entities, including enhanced educational and training opportunities, and underprivileged members of the public; and
- C. to promote economic development and digital inclusion as it relates to broadband communication and technology, as well as to reduce the digital divide between classes of the public.

The Corporation shall have all powers granted to not-for-profit corporations organized pursuant to the Illinois General Not For Profit Corporation Act of 1986, as amended from time to time (the "Act"), including without limitation the power to acquire real and personal property by purchase, gift, grant, devise or bequest, and to hold, own, accept and dispose of the same for the purposes of the Corporation. One of the responsibilities of the Corporation shall include fulfilling the U.S. Department of Commerce National Telecommunication and Information Administration Broadband Infrastructure Grant No. NT10BIX5570044 ("Federal Grant") to provide public access to broadband services.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. Additionally, the Corporation shall neither participate nor intervene in (including the publishing or distribution of statements) any political

campaign on behalf of (or in opposition to) any candidate for public office or public referendum question.

## ARTICLE II

### OFFICES

Section 2.1 Registered Office. The Corporation shall continuously maintain in the State of Illinois and within the corporation limits of the City of Champaign or the City of Urbana, a registered office and a registered agent whose business office is identical with such office.

Section 2.2 Other Offices. The Corporation may have other offices either within or without the State of Illinois, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

## ARTICLE III

### MEMBERS

Section 3.1 Members Prohibited. The Corporation shall have no members.

Section 3.2 Effect of Prohibition. Any action which by statute would require notice to, the presence of, or the vote, consent, approval or other action by the members shall only require notice to, the presence of, or the vote, consent, approval or other action by the Board of Directors.

Section 3.3 Associates. Nothing in this Article III shall be construed as limiting the right of the Corporation to refer to persons associated with it as “members,” even though such persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 101.80 of the Act or corresponding section of any subsequent law. The Corporation may confer by amendment of these Bylaws some or all of the rights of a member as set forth in the Act on any person or persons who do not have the right to vote on changes to the Corporation’s Articles of Incorporation, or on a merger, consolidation, or dissolution of the Corporation, or on a distribution of the Corporation’s assets, or on a sale, lease, exchange or mortgage of assets, but no such person shall be a member within the meaning of Section 101.80 of the Act.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 4.1 Powers and Responsibilities. Except as otherwise provided by law, the Articles of Incorporation or these Bylaws, the Board of Directors shall have and exercise full power and authority to do all things deemed necessary and expedient in the governance, management and control of the business and affairs of the Corporation, including, but not limited

to, hiring an Executive Director and other necessary staff, establishing policies to guide the operation of the Corporation and determining the Corporation's program of services.

Section 4.2 Number. The number of directors on the Board of Directors shall be nine (9). The number of directors may be increased or decreased by the amendment of this Section 4.2. No decrease in the number or range of directors shall have the effect of shortening the term of an incumbent director. In the event there is a Withdrawing Entity (as defined below in Section 4.3), then the number of directors on the Board of Directors shall decrease from nine (9) to six (6).

Section 4.3 Eligibility and Qualifications. Directors shall be residents of the State of Illinois. The initial Board of Directors shall consist of two individuals appointed by each of the duly elected or appointed officials or officers of the following three (3) entities: City Manager of the City of Champaign, an Illinois home rule municipal corporation ("Champaign"); the Mayor of the City of Urbana, an Illinois home rule municipal corporation ("Urbana"); and the Chancellor of the University of Illinois at Urbana-Champaign ("University"), respectively. Champaign, Urbana and University are collectively referred to in these Bylaws as the "Appointing Entities." In the event an Appointing Entity voluntarily withdraws from the Corporation as a participant (hereinafter a "Withdrawing Entity"), each of the directors appointed by the Withdrawing Entity (hereinafter "Withdrawing Entity Directors"), if such director elects not to individually resign, may continue to serve the remaining balance of his or her term; provided, however, that a majority of the directors appointed by the other Appointing Entities shall have the right to remove the Withdrawing Entity Directors without the requirement of an affirmative vote by a Director appointed by the Withdrawing Entity. Once the Withdrawing Entity Directors have completed their terms of service, whether by expiration of their terms or their resignation or removal as described herein, the number of directors on the Board of Directors shall decrease from nine (9) to six (6) until such time that the remaining directors amend this Section or approve the inclusion of a new Appointing Entity to work with the Corporation to further its mission and purpose.

Section 4.4 Term. The members of the Board of Directors shall serve for terms not to exceed three (3) years or until their successors are appointed. As near as may be, terms may be staggered in such manner as to cause the terms of one of each of the three (3) Directors appointed by each Appointing Entity to expire at one (1) year, two (2) years and three (3) years. Directors shall be eligible for re-appointment.

Section 4.5 Vacancies. Vacancies in the Board of Directors shall be filled by the Appointing Entity with respect to the vacant position.

Section 4.6 Removal of Directors. A Director may be removed for any reason for cause by an affirmative vote of not less than two-thirds (2/3) of the Directors then entitled to vote; provided, however that such affirmative vote must include at least one (1) Director appointed by each of the Appointing Entities. Prior to the meeting at which Directors shall consider the removal of a Director, written notice of the purpose of the meeting shall have been delivered to each Director at least twenty-one (21) calendar days prior to such meeting, and the Director being considered for removal shall have had an opportunity to state his or her position and respond to any pertinent questions. For this purpose, cause shall include but not be limited

to malfeasance, unethical or unprofessional behavior, breach of a duty to the Corporation and/or conduct which prevents or makes it difficult for the Board to conduct business.

Section 4.7 Conflict of Interest. Each member of the Board of Directors shall be required to certify in writing to the Corporation that no conflict of interest exists which would impair that member's ability to serve as a Director. Each Director shall also certify that he or she has read and accepted the Corporation's Conflict of Interest Policy and each Director shall comply with the Corporation's conflict of interest policy.

Section 4.8 Reports. The Directors may provide reports from time to time to the Appointing Entities regarding the activities of the Corporation. The report shall provide the Appointing Entities with information concerning the financial condition of the Corporation, and the plans for the future year of the Corporation's activities and any other information that the Board collectively believes is relevant to the continuing operation of the Corporation.

## ARTICLE V

### BOARD OF DIRECTORS MEETINGS

Section 5.1 Annual Meeting. The annual meeting of the Board of Directors shall be held during the fourth quarter of each calendar year.

Section 5.2 Regular Meetings of the Board. Regular meetings of the Board of Directors shall be held at such time and place as such Board shall from time to time determine; however, the Board of Directors shall meet at least quarterly. Said meetings may be held within or without the State of Illinois.

Section 5.3 Meetings by Electronic Device. Members of the Board may participate in and act at any meeting of the Board of Directors through the use of a conference telephone or interactive technology, including but not limited to electronic transmission, Internet usage, or remote communication, by means of which all persons participating in the meeting can communicate with each other. Participation in such a meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 5.4 Special Meetings of the Board. Special meetings of the Board of Directors may be called by the Chair or any two (2) Directors of the Board at any time by means of such written notice by first class mail, courier service, telephone, facsimile or such other communication reasonably designed to provide prompt notice of the time, place and purpose thereof to each Director. Any action taken at any such meeting shall not be invalidated for want of notice if such notice shall be waived as hereinafter provided.

Section 5.5 Public Meetings of the Board. Generally, the meetings of the Board of Directors shall be open to the public; provided, however, that the Board may close any meeting or portion thereof when, in its sole discretion, the Board determines that the closing of the meeting would be beneficial to the operation of the Corporation, or when otherwise provided in these Bylaws.

Section 5.6 Notices and Mailings. All written notices required to be given by any provisions of these Bylaws shall state the authority pursuant to which they are issued and copies shall be sent to the Secretary to be retained with records of the Corporation. Unless otherwise provided in these Bylaws, notice of any special meeting of the Board of Directors shall be given at least five (5) calendar days prior to the dates of the meeting. Every written notice shall be deemed duly served when the same has been deposited in the United States mail in a sealed envelope so addressed, with proper postage thereon prepaid, delivered to a courier service, transmitted by electronic mail, facsimile, graphic scanning or such other written communication reasonably designed to provide prompt notice, plainly addressed to the addressee at his/her last address appearing on the appropriate record of the Corporation.

Section 5.7 Waiver of Notice. Notice of the time, place and purpose of any meeting of the Board of Directors may be waived by facsimile or other writing, either before or after such meeting has been held. Attendance at any meeting, except for the sole purpose of objecting to the holding of such meeting, shall constitute a waiver of notice of said meeting.

Section 5.8 Quorum. A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, irrespective of whether there is a Director present to represent each of the Appointing Entities. If less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting to another time without further notice. If lack of a quorum during the course of a convened meeting results from a temporary absence of a Director, the minutes of the meeting shall be so noted and the matter under consideration shall be considered as having been postponed until the next regular meeting; provided, however, that matters approved when a quorum was present at the meeting shall be deemed final.

Section 5.9 Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws. Unless otherwise provided for by statute, the final expression of any Director, when a vote is called for, of "abstain," "pass," or "present" or failure to vote when physically present shall not be construed as a vote or acquiescence with either side of the vote taken. Such Director shall be considered absent for the purpose of determining a quorum with respect to the item under consideration.

Section 5.10 Voting. Each Director is entitled to one vote on any matter properly submitted to the Directors for their vote. Voting shall be in person or via telephonic or other forms of interactive participation including electronic ballot. There shall be no voting by proxy.

Section 5.11 Procedure. Except as otherwise adopted by the Board of Directors, Roberts Rules of Order Revised (latest edition) shall govern procedure at all meetings of the Board of Directors and committees to the extent that such procedure is not otherwise covered expressly by these Bylaws.

Section 5.12 Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if all members of the Board of Directors or of such committee, as the case may be, at the time in office, consent thereto in writing and the writing or writings are filed with the minutes

of the proceedings of the Board of Directors or of such committee. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a prior or subsequent effective date.

Section 5.13 Compensation. The Directors as such shall not be entitled to any compensation for their services to the Corporation as Directors, provided that such prohibition shall not prevent any such individual from receiving compensation for services rendered as an officer, employee or agent of the Corporation. Directors, however, shall be entitled to reimbursement from the Corporation for all of their proper expenses in accordance with such policies adopted by the Board of Directors. Directors shall also be indemnified from costs and liabilities as provided in these Bylaws.

## ARTICLE VI

### OFFICERS

Section 6.1 Officers. The officers of the Corporation shall be an Executive Director, a Chair, a Vice Chair, a Treasurer, a Secretary, and such other officers as may be appointed by the Board of Directors. Officers whose authority and duties are not prescribed in these Bylaws shall have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices other than the offices of Chair, Executive Director and Secretary may be held by the same person.

Section 6.2 Election and Term of Office. The officers of the Corporation shall be appointed annually by the Board of Directors at the regular annual meeting of the Board. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she or shall resign or shall have been removed in the manner provided in Section 6.3 of these Bylaws. Election of an officer shall not of itself create contract rights.

Section 6.3 Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 6.4 Executive Director. The Executive Director shall be the principal executive officer of the Corporation. Subject to the direction and control of the Board of Directors, the Executive Director shall be in charge of the business and affairs of the Corporation, shall see that the resolutions and directives of the Board of Directors are carried into effect, except in those instances in which that responsibility is assigned to some other person by the Board of Directors, and, in general, shall discharge all duties incident to the Office of Executive Director and such other duties as may be prescribed by the Board of Directors.

Section 6.5 Chair. The Chair shall preside at all meetings of the Board of Directors. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board of



Directors or these Bylaws, the Chair may execute for the Corporation any contracts, deeds, mortgages, bonds, or other instruments which the Board of Directors has authorized to be executed, and may accomplish such execution either under or without the seal of the Corporation, if any, and either individually or with the Secretary or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument. The Chair may vote all securities which the Corporation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Corporation by the Board of Directors.

Section 6.6 Vice Chair. The Vice Chair shall assist the Chair in the discharge of his or her duties as the Chair may direct and shall perform such other duties as from time to time may be assigned to him or her by the Chair or by the Board of Directors. In the absence of the Chair, or in the event of the Chair's inability or refusal to act, the Vice Chair shall perform the duties of the Chair, as applicable, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board of Directors or these Bylaws, the Vice Chair may execute for the Corporation any contracts, deeds, mortgages, bonds or other instruments which the Board of Directors has authorized to be executed, and may accomplish such execution either under or without the seal of the Corporation, if any, and either individually or with the Secretary or any other Officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument.

Section 6.7 Treasurer. The Treasurer shall be the principal accounting and financial officer of the Corporation. The Treasurer shall: (a) have charge of and be responsible for the maintenance of adequate books of account for the Corporation; (b) have charge and custody of all funds and securities of the Corporation, and be responsible therefor, and for the receipt and disbursement thereof; and (c) perform all the duties incident to the Office of Treasurer and such other duties as from time to time may be assigned by the Chair or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. The Treasurer need not be a Director.

Section 6.8 Secretary. The Secretary shall record the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and of the seal of the Corporation; keep a register of the post office address, email addresses and phone numbers of each Director which shall be furnished to the Secretary by such director; and perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Chair, the Executive Director or by the Board of Directors. The Secretary need not be a Director.

Section 6.9 Appointive Officers. The Executive Director may appoint other officers and agents as he or she deems necessary to carry out the purposes of the Corporation; provided, however, that all appointments made by the Executive Director, and all the terms and conditions of the roles of such appointees, are subject to the sole approval and discretion of the Board of Directors. No appointive officer shall have any contractual rights against the Corporation for compensation by virtue of such appointment.

Section 6.10 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed by these Bylaws for regular election or appointment to such office, provided that such vacancy shall be filled when it occurs and not on an annual basis.

Section 6.11 Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors, which salaries may be nothing.

## ARTICLE VII

### COMMITTEES

Section 7.1 Establishment of Committees. The Board may from time to time establish such Committees as it deems necessary for the efficient operation of the Corporation. The Board of Directors shall appoint the members of said Committees and any Chair thereof, unless otherwise directed by the provisions of these Bylaws. Unless otherwise expressly designated by the Board, each Committee shall be chaired by a member of the Board of Directors. Members of each Committee may include persons who are not members of the Board of Directors. The Committee Chairs shall present to the Board periodic reports describing the activities of the respective Committees and the recommendations resulting therefrom. The membership of each Committee shall serve until the next succeeding annual meeting or until such time as the Committee has concluded its work, whichever is shorter. Each Committee shall consist of at least three (3) members. Committees and their agents shall have only such authority, powers and responsibilities as may be delegated to them by the Board or the provisions of these Bylaws. However, no such committee shall have the authority of the Board of Directors with respect to:

- a. amending, altering or repealing the Bylaws;
- b. electing, appointing or removing any member of any such committee or any director or officer of the Corporation;
- c. amending the Articles of Incorporation;
- d. adopting a plan of merger or adopting a plan of consolidation with another corporation;
- e. authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation;
- f. authorizing the voluntary dissolution of the Corporation or revoking proceedings therefor;
- g. adopting a plan for the distribution of the assets of the Corporation; or

- h. amending, altering, repealing or taking action inconsistent with any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee.

The designation and appointment of any such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him or her by law.

Section 7.2 Term of Office; Vacancies. Each member of a committee shall continue as such until the next annual meeting of the Board of Directors of the Corporation and until his or her successor is appointed, unless (a) the committee shall be sooner terminated, (b) the authorizing resolution provides a specific term for such committee, (c) such member is removed from such committee, or (d) such member shall cease to qualify as a member thereof. Vacancies in the membership of any committee, commission or advisory board may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.3 Records. Each committee and subcommittee shall maintain a written record of its procedure and activities, including minutes of meetings, and submit written reports to the Board of Directors and the Secretary. Said written reports shall be delivered at the next meeting of the Board of Directors following the committee meeting.

Section 7.4 Quorum; Manner of Acting. Unless otherwise provided in the resolution of the Board of Directors, a quorum of any committee is defined as a majority of its membership. The act of the majority of the committee members present at a meeting in which a quorum is present shall be the act of the committee.

Section 7.5 Committee Procedures. Reasonable notice of the meetings of any Committee shall be given to the members thereof and to the Chair of the Board and the Executive Director, each of whom shall have the right to attend the meetings of the Committees. The Chair of the Board, the Executive Director or the Committee Chair may invite any individuals to attend any Committee meeting as they may select who may be helpful to the deliberations of the Committee. Each Committee may operate through the establishment of one or more subcommittees to be composed of such Committee members and to have such duties and responsibilities as shall be delegated to the subcommittee by the Committee Chair; however, no act of a subcommittee shall be binding upon the Corporation without the requisite vote by the Board. Each Committee may adopt rules for its own operations and that of its subcommittees not inconsistent with these Bylaws or the policies of the Board of Directors.

## ARTICLE VIII

### CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 8.1 Checks, Drafts and Money Orders. All checks, drafts and orders for payment of money shall be signed and countersigned in the name of the Corporation by such officers or agents as selected by the Board of Directors evidenced by resolution.

Section 8.2 Contracts, Conveyances and Other Legal Documents. The Board of Directors shall have the power to designate by resolution the officers and agents who shall have the authority to execute any instrument on behalf of the Corporation consistent with the Bylaws.

Section 8.3 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, savings and loan associations, trust companies or other depositories as the Board of Directors may select.

Section 8.4 Audits. All the accounts and records of the Corporation together with all supporting data shall be audited by a disinterested certified public accounting firm appointed by vote of the Board of Directors. Following the end of each fiscal year, an audited financial statement shall be submitted to the Board of Directors detailing the revenues and disbursements during the preceding year.

Section 8.5 Loans and Indebtedness. No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors with such authority being either general or confined to specific instances or otherwise approved by the policies of the Corporation. Under no circumstances shall the Corporation loan any of its funds to an Officer or Director of the Corporation.

## ARTICLE IX

### INDEMNIFICATION AND INSURANCE

Section 9.1 Third Party Proceedings. The Corporation shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, in which judgment was given in his or her favor, he or she was acquitted or had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 9.2 Proceedings by the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to the best interests of the Corporation, provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation, unless, and only to the extent that the court in which such action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 9.3 Successful Defense. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in Sections 9.1 and 9.2 of this Article IX or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith, if that person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation.

Section 9.4 Determination of Standard of Conduct. Any indemnification under Sections 9.1 or 9.2 of this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case, upon the determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 9.1 or 9.2. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of directors who are not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion. Such determination shall be made with respect to a person who is a director or officer at the time of the determination: (1) by the majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (2) by a committee of the directors designated by a majority vote of the directors, even through less than a quorum, designated by a majority vote of such directors, (3) if there are no such directors, or if the directors so direct, by independent legal counsel in a written opinion, or (4) by the members entitled to vote, if any.

Section 9.5 Advance Payment. Expenses (including attorneys fees) incurred by an officer or director of the Corporation in defending a civil or criminal action, suit or proceeding may be paid by the Corporation on such terms and conditions, if any, as the Corporation deems appropriate and at all times consistent with the Errors and Omissions insurance coverage described in Section 9.7 of this Article IX.

Section 9.6 Construction of This Article. The right of indemnification and advancement of expenses provided by or granted under Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any Bylaw, agreement, vote of disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the Articles of Incorporation or a bylaw shall not be eliminated or impaired by an amendment to such provision

after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorized such elimination or impairment after such act or omission has occurred. The indemnification and advancement of expenses provided by or granted under Article IX shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of that person.

Section 9.7 Insurance. The Corporation shall purchase and maintain insurance, including but not limited to, Errors and Omissions insurance with minimum limits of Ten Million Dollars (\$10,000,000.00) on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or who is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article IX. If Errors and Omissions insurance coverage limits of a minimum of Ten Million Dollars (\$10,000,000.00) are not commercially available, the Corporation shall purchase and maintain such coverage at such lesser limits as may be commercially available.

## ARTICLE X

### MISCELLANEOUS

Section 10.1 Books and Records. The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its Board of Directors and committees having authority from the Board of Directors. All books and records of the Corporation may be inspected by the any Director or his or her agent or attorney for any purpose related in any way whatsoever to the Corporation during regular business hours.

Section 10.2 Fiscal Year. The fiscal year of the Corporation shall end on December 31 of each year.

Section 10.3 Non-Discrimination. The Corporation recognizes the rights of all persons to equal opportunity in employment, compensation, promotion, education, positions of leadership and authority and shall not at any time discriminate against any employee, applicant for employment, Director, Officer, contractor, or any other person with whom it deals, because of race, religion, color, handicap, disability, sex, national origin, ancestry, marital status, sexual orientation or age.

## ARTICLE XI

### AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS

Section 11.1 Articles of Incorporation. The Articles of Incorporation of the Corporation may be amended only by action of two-thirds of then serving Directors; provided,

however that such action must include at least one (1) Director appointed by each of the Appointing Entities.

Section 11.2 Bylaws. The power to alter, amend or repeal the Bylaws of the Corporation or to adopt new Bylaws shall be vested in the Board of Directors and shall require approval of no less than two-thirds of the then-serving Directors; provided, however that such action must include at least one (1) Director appointed by each of the Appointing Entities.

## ARTICLE XII

### DISSOLUTION OF CORPORATION

(for use if Code §501(c)(3) status is sought)

*[Note: further revisions required if 501(c)(4) status is elected]*

Section 12.1 Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation out of the assets of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organizations as shall at the time qualify as tax-exempt organizations under Code Section 501(c)(3) (or corresponding section of any future federal tax laws), as the Board of Directors shall determine and at all times consistent with the Federal Grant. Any such assets not so disposed of shall be disposed of by the circuit court of the county in which the principal office of the Corporation is then located, exclusively for the purposes of the Corporation or to such organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

## Holland & Knight

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barbara.adams@hklaw.com

### Memorandum

Date: May 1, 2013

To: Frederick C. Stavins, City of Champaign  
James Simon, City of Urbana  
Lisa Power, University of Illinois

From: Barbara A. Adams, Thomas Kinasz and Lisa Katz

Re: UC2B: Corporate Structure and Tax-Exempt Status

In the last few months, we have worked with you to prepare a draft of the Bylaws for a proposed not-for-profit corporation for the UC2B network. The issues of corporate structure were initially raised for UC2B in the UC2B Business and Strategic Plan, which was adopted in September, 2012 ("Strategic Plan"), particularly pages 81-90.

You now anticipate reviewing these Bylaws and the key legal issues they raise with the UC2B Policy Board. In connection with that review, you asked that we summarize the key legal issues affecting the proposed structure for the operation of UC2B network. This memo will outline those issues and explain the options available for how to structure UC2B and its related affiliates.

1. *What is a Not-For-Profit Corporation? What is a Tax-Exempt Corporation? What is the difference?*

Under Illinois law, a Not-for-Profit (NFP) corporation is one that:

- (a) is organized for a specified "non-profit" purpose<sup>1</sup>,
- (b) insulates volunteer directors from liability for errors of judgment<sup>2</sup>, and
- (c) may not have shares or pay dividends or distributions to its members, directors or officers.<sup>3</sup>

A NFP entity can make a profit. However, because it cannot pay dividends or distributions to its members, directors or officers, that profit needs to be used for a proper purpose. The NFP entity should and effectively, must, reinvest those profits towards its purpose as stated in its articles of incorporation and bylaws. If an entity seeks to insulate its directors from liability, but still wanted to pay dividends to owners of the entity, then we would recommend

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<sup>1</sup> 805 ILCS 105/103.05.

<sup>2</sup> 805 ILCS 105/108.70.

<sup>3</sup> 805 ILCS 105/109.10.



forming a for-profit corporation or limited liability company instead of a not-for-profit corporation. You have advised us that you do not wish to have any of the initial organizations (the Cities of Champaign and Urbana and the University of Illinois) be members of or own shares in the NFP entity.

A Tax-Exempt Entity is one that is exempt from federal (and usually Illinois) income taxation. A NFP entity is not automatically exempt from federal and state income taxation. In most cases, a NFP entity applies to the Internal Revenue Service ("IRS") to obtain a determination that it is exempt from income tax.

The IRS recognizes about 28 types of tax-exempt entities. The 501(c)(3) entity is probably the type that the public feels is most common. Section 501(c)(3) status is frequently sought in order to achieve two major goals: (1) avoid any profits being subject to income tax, and (2) make all contributions to the entity tax-deductible by the donor. The IRS will look to a number of factors in deciding whether to grant 501(c)(3) status to the organization; a key factor is whether the entity is organized and operated exclusively for one or more permitted purposes under IRC Section 501(c)(3).

Status as a NFP entity does not necessarily make it a Tax-Exempt Entity; however, most Tax-Exempt entities will be organized as a NFP entity under the laws of the state under which it is formed.

2. *Is it possible to be a Tax-Exempt Entity and not be a 501(c)(3)?*

Yes. An application for recognition under other 501(c) categories is also possible. Where an entity does not have any serious expectation that it will receive significant contributions from donors who are seeking deductions from their own income taxes, it may not be necessary to go through higher scrutiny by the IRS to obtain 501(c)(3) status. The IRS carefully examines whether such an entity is organized and operated *exclusively* to accomplish charitable, scientific, educational, or religious purposes, and whether any part of the entity's assets inure to the benefit of a private person. If the IRS has doubts that cannot be resolved in the exemption application review process, it will not issue a 501(c)(3) approval.

If the initial organizations feel that avoiding income tax would be a positive benefit, but anticipate that the entity will not likely receive a large amount of revenue through contributions, it may be best to seek status as a different kind of tax-exempt entity, perhaps a 501(c)(4). We understand that the Business Plan lists the 501(c)(12) entity as an option, however, we would need to review these regulations in more detail in light of UC2B's activities in order to provide you with an analysis of that option.

3. *What is a 501(c)(4) entity? Is it a good alternative to a 501(c)(3) for UC2B?*

A tax-exempt 501(c)(4) entity is sometimes referred to as a "civic league" or "social welfare organization." Applications for 501(c)(4) status undergo far less scrutiny from the IRS. Some characteristics of a 501(c)(4) entity are:

- It pays no tax on profit as long as its proceeds: (a) do not constitute "unrelated business income" ("UBI"), and (b) are used for the mission of the organization as

stated in the bylaws and articles of incorporation. This treatment is the same as a 501(c)(3) entity.

- One or more purposes of the entity must be considered as the "promotion of social welfare." It is important to identify these purposes and include them in the articles of incorporation and bylaws.
- Contributions to the entity are not deductible as "charitable contributions." They may be deductible as business expenditures, however.
- The entity may engage in legislative or lobbying activity. In contrast, this type of activity is very strictly limited for 501(c)(3) entities.

In Illinois, only a 501(c)(3) must register with the Illinois Attorney General's office; a 501(c)(4) is not required to do so which eliminates time and cost for purposes of getting the entity up and running.

For most organizations, a business activity generates UBI that will be subject to income taxation if it is carried on regularly and it fails to sufficiently relate to the tax-exempt purpose of that tax-exempt organization—that is, if it is unrelated to its "exempt" mission. The tax exempt status of any entity, whether a 501(c)(3) or 501(c)(4), is jeopardized if a substantial portion of its income or activities produce UBI.

For example, in considering options for the structure of UC2B, we discussed the possibility that a network operator might pay the NFP entity either a lease fee for access to the real property/physical fibers, or a license fee for the use of the personal property. Depending on its structure, the proceeds of any such arrangement may constitute UBI because the lease or license is not directly related to the charitable mission of the organization. If the UBI constitutes a substantial portion of the entity's income, then the IRS may not allow it to be exempt as either a 501(c)(3) or a 501(c)(4).

#### 4. *Why should you establish a For-Profit Entity?*

A "for-profit" (FP) entity should be organized concurrently with the NFP entity where the non-exempt activities of the organization (e.g., commercial-type activities that generate UBI) are substantial and could thereby impair the NFP entity's ability to qualify for tax exemption. If the organization is going to be limited exclusively to charitable or educational activities, then there would be no reason to incur the additional costs to establish a FP affiliate; however, based on a review of your Business Plan as approved, there will likely be UBI, because the activities will not be so limited.

A FP entity will pay taxes on all net income and may distribute its profits to its shareholders.

#### 5. *How will funds flow between the customer, network operator, NFP and FP entities?*

Frederick C. Stavins  
James Simon  
Lisa Power  
May 1, 2013  
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We understand that you cannot project what percentage of the customers who will utilize the UC2B network will be non-exempt commercial customers. As a result, we recommend forming a FP entity that acts as an intermediary between the network users and the NFP entity. This means that users will pay a usage fee to the network operator, the network operator will pay the FP entity for service, and then the FP entity will pay a license or lease fee to the NFP entity. See Exhibit A for a sample Flow of Funds.

6. *How should the board of directors for the FP be structured?*

If the FP entity is organized as a wholly owned subsidiary of the NFP entity, it would be acceptable, and fairly customary, for some or all of the NFP's directors to also serve on the FP's board. The presence of common directors by itself should not interfere with the separate entity status of the two corporations. However, the unique nature of the anticipated business activities of the FP may require that individuals with a different skill set and experience be selected on the FP board. The NFP will own all the shares of the FP and as a result, it will have sole control of the FP. This will ensure that dividends are in fact paid to the NFP entity. See Exhibit B for an illustration of who appoints the board for each of the NFP and FP entities.

7. *On what kinds of income will the 501(c)(4) entity pay income tax?*

As stated in item 3 above, the 501(c)(4) entity must pay taxes on any income that is UBI and does not go toward its exempt purpose and mission. For example, if the entity has \$100 in proceeds, and \$25 goes to maintenance of the network, \$10 to a church that utilizes the network, and \$65 is used for anything else not related to proper purposes of the entity (the "promotion of social welfare"), then the entity will pay taxes only on the \$65.

8. *How will assets get transferred from the current owners to the NFP entity?*

We understand that an objective of the Cities of Champaign and Urbana and the University of Illinois is not to own the UC2B network, but to transfer it to another entity. Under both the federal and state grants, consent of the grant officers will be required to transfer the assets of the network to the NFP entity. If the consortium owns the assets, it would transfer all rights in the network to the NFP as a capital contribution.

9. *What are the timing constraints that are relevant to our analysis?*

An application to the IRS for 501(c)(4) or a 501(c)(3) designation could take between 6-8 months to get a response. However, in some instances where persuasive reasons are shown, it is possible to request that the IRS could expedite the review of the application and provide a response letter within two to three months. If and when you receive IRS approval for the 501(c)(4) or 501(c)(3) designation, as applicable, the effectiveness of that status will backdate to the date of submission of the application.

We look forward to your questions and comments after you review these materials with the Policy Board. Once you are ready to proceed to incorporate the entity, we will need to receive from you the additional information previously identified to prepare the Articles of Incorporation and the Section 1023 or 1024 Application, depending on whether 501(c)(3) or 501(c)(4) status is desired. If you would like to set up a meeting or conference, please let Barb know.

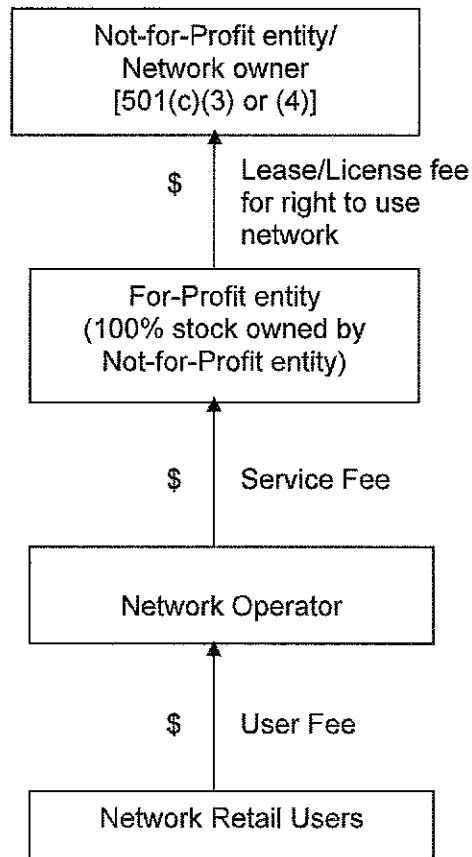
Frederick C. Stavins  
James Simon  
Lisa Power  
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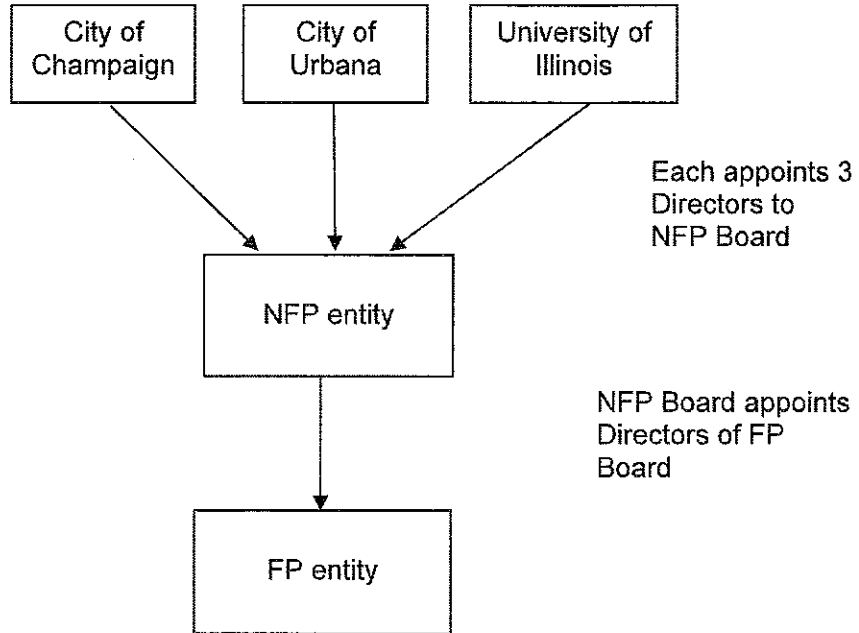
**EXHIBIT A**

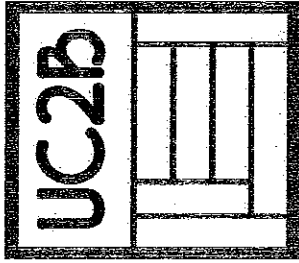
**SAMPLE FLOW OF FUNDS**



**EXHIBIT B**

**APPOINTED BOARDS OF DIRECTORS**





Urbana-  
Champaign  
Big Broadband

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**UC2B Business and Strategic Plan**

**Operational  
Structure and  
Governances**



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## Current Operating Structure

UC2B today is operating as a governmental consortium in partnership with the City of Urbana, the City of Champaign and the University of Illinois. Although there have been numerous successful endeavors that have been executed in cooperation between these agencies, and this organizational structure and governance may be more than adequate in the short term, there may be potential issues in continuing to operate an Internet and FTTP network in the long term within this current organizational structure.

The potential pitfalls may be the following:

- Procurement processes are public with open bids, open negotiation and full disclosures. Key vendors and strategic partners may see this as a barrier to do business with UC2B as they may not want to disclose all of the nuances of the relationship, pricing, cost structures, etc. to potential competitors, their customers and the public in general. Transparency requirements in business practices often cause competitive conflict.
- The open procurement process and the nature in which decisions are made, i.e. with City Council or Board approval, may create a hindrance for UC2B to remain nimble, flexible and able to make decisions in a timely manner in order to best compete in this highly-competitive marketplace.
- Long term commitment to the mission, goals and business of the business may be threatened with the change in City Council members occurring every two years, or that the mission may not be aligned with the mission of the three agencies. It is recognized that all three agencies are fully committed to the success of UC2B today; however, this may change over time as new members are brought to the City Council or to the various Boards. Long term ability to attract funding from a range of sources may be limited based upon the current organizational structure. Operating expenses will be significant and funding or revenue must be in place to cover investment and operational expenses.
- The FTTP business is a new line of business for the consortium and the ability to operate must be built, acquired or outsourced. This requires a strong management team that will oversee this process of organizational growth. Aside from a few individuals who now work for the University, UC2B does not currently have organizational experience in the utility, telecom, Internet or fiber optic business. UC2B must develop and manage marketing and sales and compete with other community network providers. This business requires a commitment to maintenance, customer service and management of an organization that is not yet in place.





## Current Operating Structure, cont'd

Providing an open forum to solicit input and to share information with the public can often provide a good platform for innovation, creativity and valuable input into the processes. However, if openness and transparency affects UC2B's ability to negotiate with vendors, and to continue to be nimble, flexible and make timely decisions, then perhaps there needs to either be a Communication Policy put in place and/or a new organizational structure may need to be established. Several service providers have expressed an interest in developing a relationship with UC2B and have expressed their desire to provide services in partnership with UC2B. However, the current Open Meetings Act laws prohibit elected or appointed decision-makers meeting in a non-public forum. The existing operational structure helps ensure UC2B's mission; however, **the existing operational structure restricts future capitalizations, service development and expansion, and long-term stability with the private sector partners/customers.**

What is the best operational structure to be:

- Innovative
- Scalable
- Sustainable
- Nimble and Flexible
- Financeable
- Open

**Scalability and sustainability will require flexibility in governance, continued innovation and deployment, and the ability to adapt to the competitive environment through partnerships, service enhancements and salable pricing model.**

The current organizational structure may serve UC2B well in the short term. The question will be, "at what point does it make sense to restructure the organization?" The answer to that question will be, "when the challenges of this organizational structure limit UC2B success."

NEO recommends a hybrid approach, a 501c(3) non-profit with for-profit LLC subsidiaries. This organizational structure that may mitigate the potential challenges of other organizational structures, while at the same time provide flexibility in gaining funding from a number of potential sources, and give the organization the ability to offer multiple types of products, services and revenue sources; and the ability to partner with MANY entities and service providers. This approach also allows innovation, scalability, sustainability and allows UC2B to be nimble and flexible.

Each type of organizational structure has its benefits and potential pitfalls. There is no bad organizational structure; each has its set of challenges. An outline of the possible organizational structures, their pros, cons and examples of other FTTP networks are shown on the following pages.

Business Model Comparison

Commonly Called	Owned By	Operated By	Pros	Cons	Examples
1. Public Utility	Municipal/Co-Op	City, Enterprise or Private Sector	<ul style="list-style-type: none"> <li>Enterprise services with a high level of local control over network funding and priorities.</li> <li>Public good often overrides profit motives.</li> <li>User access fees; can result in savings for the public utility.</li> <li>Utility investment can be managed in either a wholesale model which encourages provider partners and extends community investment or through retail model which engages end-users.</li> <li>Dedicated retail customer (sticky).</li> <li>Community model creates loyalty –not just price.</li> </ul>	<ul style="list-style-type: none"> <li>Often greater capital investment with no guarantee that service adoption will cover investment and operational expenses.</li> <li>Usually a new line of business requirements</li> <li>Organization must build –acquire organizational experience</li> <li>Public Utility must develop and manage marketing, sales and compete with other community network providers</li> <li>Many cities are uncomfortable with maintenance and management commitment</li> <li>Government fund accounting not allow certain shared revenue/cost for municipal utility</li> <li>Transparency requirements in business practices can cause competitive conflict.</li> </ul>	<p>Wholesale Models:</p> <ul style="list-style-type: none"> <li>Chelan, WA</li> </ul> <p>Retail Models:</p> <ul style="list-style-type: none"> <li>St. Louis Park, MN;</li> <li>Chattanooga, TN</li> <li>Bristol, VA</li> <li>Chaska, MN; St. Cloud, FL</li> <li>Benton Public Utility District, -</li> <li>Kennewick, Washington</li> <li>Saint Louis Park, Minnesota</li> </ul>
2. Non-profit 501(c)3 501(c)12	Typically a committed, cross-sector group of leaders that facilitate sustainability and local ownership.  (Community Stakeholders, Independent Service Corporation, Institutional or Institutional Partners)	<p>Management of Non-profit with flexible governance:</p> <ul style="list-style-type: none"> <li>Charitable Community Leaders</li> <li>Private and/or public sector governance</li> <li>Hybrid Public-Private Governance</li> </ul> <p>(Can either be a charitable or service related non-profit.)</p>	<ul style="list-style-type: none"> <li>Non-profit mission will be directed by the selected governance model and their individual mandates.</li> <li>Non-Profit can have a social mandate that focuses on community needs and operates network independent from other govt. business.</li> <li>Can aggregate demand and leverage capital assets.</li> <li>More funding options are available to the non-profit versus municipal led initiatives.</li> <li>Also provides flexible business models that can evolve to address selected community needs.</li> <li>501(c)3 enables charitable giving and provides shelter for assets.</li> <li>501(c)12 provides tax advantages for service organizations</li> </ul>	<ul style="list-style-type: none"> <li>Usually a new line of business requirements</li> <li>Organization must build –acquire organizational experience</li> <li>Non-Profit must develop and manage marketing, sales and compete with other community network providers.</li> <li>Start-up structure and funding may be complex and difficult</li> <li>Requires member or stakeholder buy-in</li> <li>Fund-raising may be difficult.</li> <li>Traditional financing may be more complicated by business model and ROI analysis</li> <li>IRS has had increasing interest in reviewing and ensuring non-profit status and has in recent years pierced the veil when a non-profit is used as a shelter</li> <li>IRS may require hybrid non-profit and for-profit corporation to manage unrelated business income.</li> <li>Mission often limits ability to take advantage of new opportunities</li> </ul>	<ul style="list-style-type: none"> <li>OneCommunity, OH,</li> <li>Boston, MA;</li> <li>Cape Cod, MA;</li> <li>Rhode Island</li> </ul>

<p>3. Publicly Owned</p> <p>Municipality</p> <p>Government Authority</p> <p>Privately Operated</p>	<p>Municipal/Government governance, non-profit, consortium of cities, public/private consortium, or private company operated</p> <p>Management of the Non-profit governed by a municipal or government council or through operating agreement with private sector partner.</p>	<ul style="list-style-type: none"> <li>• Can encourage build out of "middle mile" across a region and competition in local broadband market. Generally encourages private sector investment through incentives or through revenue commitments.</li> <li>• Easier for government to leverage assets, participate in collaborative ventures, and partner with non-profit.</li> <li>• Can aggregate public enterprise demand-use and leverage capital assets to reduce cost.</li> <li>• Can create alternative revenue streams to lower overall operating expenses.</li> </ul>	<ul style="list-style-type: none"> <li>• Providers develop and invest in infrastructure based on anticipated ROI.</li> <li>• Varying business models make it difficult to ensure success</li> <li>• Competitive providers may not continue to invest in the network and may not offer services that meet community needs pushing the underserved burden and expenses onto the publicly owned asset while they cherry pick the high value customers.</li> </ul>	<ul style="list-style-type: none"> <li>• Utopia, West Valley City, UT</li> <li>• Winneton, Minnesota</li> <li>• Newark, Nevada, (NO)</li> <li>• Corpus Christi, TX</li> </ul>
<p>4. Consortium</p>	<p>Group of public partners, private partners, or public and private partners</p>	<ul style="list-style-type: none"> <li>• Buying consortia with the option to aggregate services with the benefit of volume discounts and option to co-invest in new infrastructure at a lower shared cost per individual if services are otherwise unavailable</li> <li>• A Broadband buyers club for big broadband users across a region.</li> </ul>	<ul style="list-style-type: none"> <li>• Usually focuses on consortia/membership and does not solve connectivity for all end users in a region.</li> <li>• Buyers club is subject to market conditions and rates may change based on provider market costs and willingness to sell at discounted rates.</li> <li>• Consortium member's services limited to provider contracts/services.</li> </ul>	<ul style="list-style-type: none"> <li>• Frederickton, NB;</li> <li>• Ohio Middle Mile Consortium (OMMIC)</li> <li>• Wireless Silicon Valley</li> </ul>
<p>5. Public/Private/Of Franchise</p>	<p>Public/Private Investment with either public or Private leadership</p> <p>Typically a Private sector provider or reseller</p>	<ul style="list-style-type: none"> <li>• Minimizes financial, development and operational commitment by the cities/university</li> <li>• Provides the entity option to use services for their direct benefit without significant capital risk.</li> </ul>	<ul style="list-style-type: none"> <li>• Cities/University has limited input and control; typically the entity contracts with one private sector partner for network services.</li> <li>• The entity has little or no impact on competition in the local broadband market.</li> <li>• Citizen services are driven by purely profit motive.</li> <li>• No control over the service providers and services being offered. There is no guarantee that service provider will invest and whether they will provide services that meet the needs of community.</li> </ul>	<ul style="list-style-type: none"> <li>• Philadelphia;</li> <li>• Urmatilla county;</li> <li>• Rio Rancho, NM;</li> <li>• Tucson, AZ</li> </ul>
<p>6. Subscriber Based/Private</p>	<p>Private sector</p>	<ul style="list-style-type: none"> <li>• No financial risk for the and no control over services being delivered or made available to the community</li> <li>• Limited or no political risk for city.</li> </ul>	<ul style="list-style-type: none"> <li>• Common carrier, cable and third party providers.</li> <li>• The status quo! Any number of private networks may serve a community.</li> </ul>	

Community, locally based. Can continue to focus on the needs of the community.

Unique funding model; may use several approaches to financing; crowd funding, service providers can participate in the capital

funding, individuals, and government.

Can aggregate public enterprise demand-use and leverage capital assets to reduce cost.

Can create alternative revenue streams to lower overall operating expenses.

Management of the Non-profit governed by a municipal or government

council or through operating agreement with private sector partner.

Municipal/Government governance, non-profit, consortium of cities, public/private consortium, or private company operated

7. Co-Op Model

Providers develop and invest in infrastructure based on anticipated ROI and Capital Membership

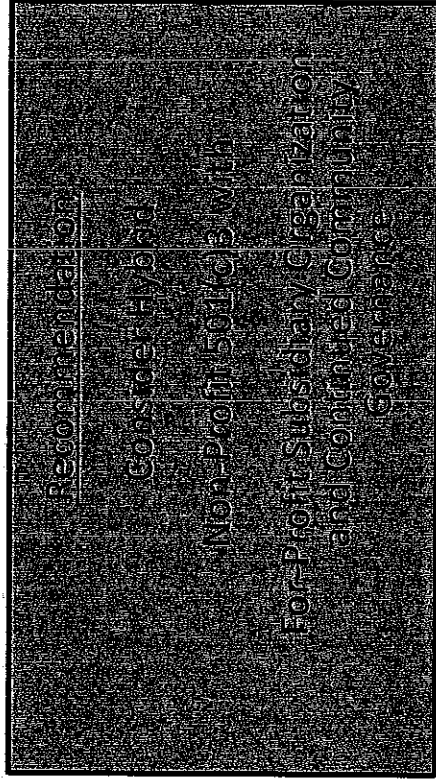
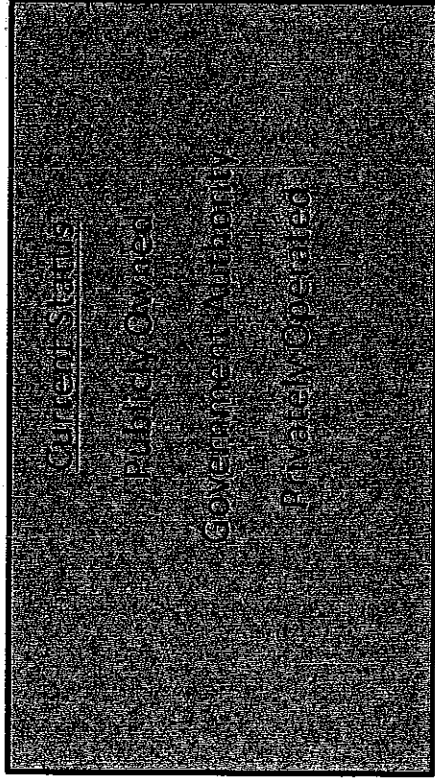
Varying business models make it difficult to ensure success

Competitive providers or individuals may not continue to invest in the network and may not offer services that meet community needs.

United Electric Cooperative (Missouri)  
Paul Bunyan (Minnesota)  
Camino Fiber Network Coop.



## NEO's Recommendation: A Hybrid Approach



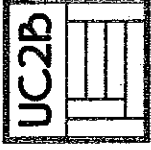
The benefits of a Hybrid Non-Profit 501c(3) organization with For-Profit Subsidiaries will combine the benefits of the Non-Profit organization (tax advantages, charitable contributions, maintaining the mission for the societal good and maintain the interest of government and the community) with the benefits of For-Profit LLCs or C-Corps (another set of funding sources, and may maximize opportunities for operational flexibility, efficiency and financial sustainability.)

This organizational structure may alleviate the potential concern of open procurement processes which may be seen by vendors, key strategic partners as a barrier to do business with UC2B. This organizational structure may also allow UC2B to make decisions more quickly and allow UC2B to be more nimble and flexible in order to best compete in the marketplace. This organizational structure may mitigate the potential concern of change in City Council members occurring every two years and may provide an environment whereby long-term commitments to the mission, goals and business of the business can be kept in place. And finally, this separate, stand-alone entity operates at arms length from the cities and UI and lessens the financial and legal risks of operating this network.

**The recommendation of a hybrid structure gives UC2B the advantages of both a non-profit entity and a for-profit business.**

This allows UC2B to move forward with a number of various entities in partnership (service providers, network infrastructure funders, customers, i.e. the medical community, schools, and businesses) and gives UC2B the most flexibility in maintaining the local and societal focus. Local ownership and control by the member agencies would remain in place with the appointment of representatives to the Board of Directors. The details of such an entity would need to be negotiated among the member agencies in a new intergovernmental agreement and set of organizational by-laws.

# UC2B – Business Strategy & Operations Recommended Operation, Legal and Tax Structure (Post Grant)



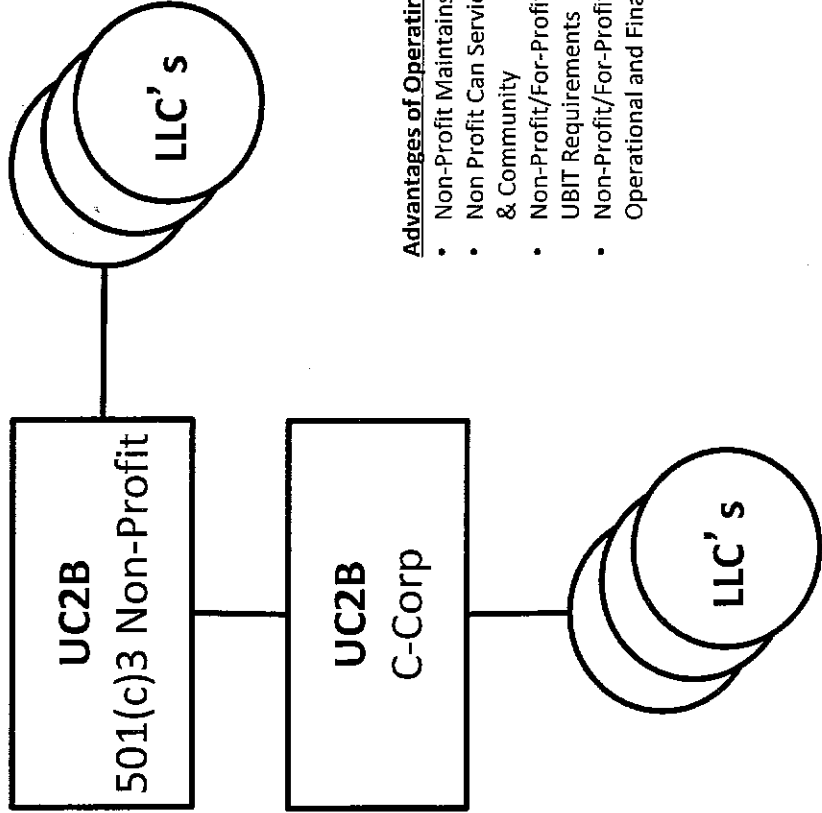
Urban-  
Campaign  
big broadband

## Mission Oriented Community Programs

- Capital Infrastructure
- Fiber IRUs
- Equipment Donations
- Community Applications
- Government Service
- Underserved Health & Education
- Digital Inclusion Programs

## Member Programs

Maintain Target Percentage of Ownership <30%



## Un-Related Business Income

Maintain Target Percentage of Ownership <30%

## 100% Ownership by UC2B Non-Profit

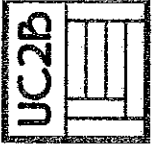
- Unrelated revenue recognition
- Royalty Use of Assets
- Target Unrelated Mission Use

## Limited Liability Company

- Vendor Service Partnerships
- Network Vendor Agreements
- 100% Unrelated Income Recognition

## Advantages of Operating Structure

- Non-Profit Maintains Mission Focus
- Non Profit Can Service the Interest of Government & Community
- Non-Profit/For-Profit Arrangement Manages IRS UBIT Requirements
- Non-Profit/For-Profit Maximize Opportunities for Operational and Financial Sustainability



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## **This Structure Facilitates Multiple Funding Sources**

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- Grants/Loans from Charitable Foundations & Trusts
- Donations from Corporate Entities
- Bond Financing-public ownership and either G.O. Debt or Revenue Bonds
- Hybrid Bond financing using Pooled or Citizen Opt-In Bond Programs
- Private operator and private capital with Public ownership of underlying asset
- Institutional Investor (international fund)
- Potential investor/banker
- International Infrastructure Funds
- International/Sovereign wealth funds with an interest in such investments targeting education and social programs
- Hybrid public/private model using an “on behalf of entity” or alter ego entity or even create a community venture fund partnered with Private sector owner who would also manage

This hybrid organizational structure allows for numerous funding options, giving UC2B more flexibility and options available for funding its expansion.

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## **This Structure Facilitates Flexibility in Sourcing Operations**

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- Outsourcing and Staffing Flexibility
  - Service Trades
  - Accept Donations and In-Kind Service Partnerships
  - Simplified Service Contracting
  - Broad Range of Contract Service Options



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**To Summarize: This Structure Would Create**

- A variety of sources of funds in combination over time
- A variety of revenue and other outcomes
- A portfolio management approach

