

MLP Startup and Operational considerations

MLP Administrative Structure

In most towns, I imagine the MLP Board is currently the same as the Select Board. What considerations might a Town want to give to establishing a separate MLP Board? What process if they do — SB appoints? Election at Town Meeting? Election at ballot?

The Selectboard is not the MLP board and cannot appoint the members of the MLP board. Town meeting can create an MLP Board. MLP Board members are elected by ballot. The Selectboard should act in the interest of the Town and the MLP board should act in the interest of the rate payers and the MLP. The whole reason for having an elected light board is so that this quasi-commercial entity can operate somewhat insulated from politics and government issues that tend to plague boards of selectmen.

However M.G.L. Chap 164 Sect 56 grants authority to the selectmen to appoint the MLP manager, *“...who shall, under the direction and control of the ... selectmen or municipal light board, if any.”* *“...the selectmen in towns shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer...”* What is interesting here is that whether or not a town has an elected municipal light board, the selectmen must approve payment of all bills.

M.G.L. Chap. 164 Sect 55 – *“A Town which has established or votes to establish a gas or electric plant may elect a municipal light board consisting of either three or five citizens of the town, each for a term of three years.”*

M.G.L. Chap. 164 Sect 56A *“The words ‘municipal light commission’ as used in this section and in sections fifty-six B to fifty-six E inclusive shall mean a light commission, gas and electric commission or similar body established by act of the legislature and vested with all powers and duties formerly exercised by the mayor and selectmen under this chapter and with the powers and duties conferred upon municipal light boards under this chapter.”*

M.G.L. Chap. 41 Sect 21 *“By vote of a town meeting called for the purpose in any town at least sixty days before an annual meeting, or upon request by petition of ten per cent of the qualified voters of any town filed with the selectmen thereof at least sixty days before an annual town meeting, asking that the selectmen act as...water and municipal light commissioners, municipal light board...the selectmen of such town shall include in the warrant for such annual meeting for submission to the voters such question or questions in the following form, to be placed on the official ballot in towns using such ballot:?”*

Shall the town vote to have its selectmen act as _____?

So it appears that there are three forms of government of an MLP, the board of Selectmen, an elected board created by town meeting, or an MLP commission created by an act of the legislator.

What consideration might an MLP Board want to give to appointing an MLP Manager? What powers would a Manager have? What decisions can a Manager make without approval?



I would think that you would want someone who is capable of creating and reading a financial statement and is perceived to be diligent and capable of carrying out their duties and responsibilities as set forth in the law.

M.G.L. Chap 164 Sect 56 defines the Management of the Plant. *“...a manager of municipal lighting who shall, ... have full charge of the operation and management of the plant ... the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts.” “...he shall give bond to the city or town for the faithful performance thereof in a sum and form and with sureties to the satisfaction of the mayor, selectmen or municipal light board, if any, and shall, at the end of each municipal year, render to them such detailed statement of his doings and of the business and financial matters in his charge as the department may prescribes.”*

M.G.L. Chap 164 Sect 57 *“At the beginning of each fiscal year, the manager of municipal lighting shall furnish to the mayor, selectmen or municipal light board, if any, an estimate of the income from sales ... to private consumers during the ensuing fiscal year, and of the expense of the plant during said year, meaning the gross expenses of operation, maintenance and repair, the interest on the bonds, notes or certificates of indebtedness issued to pay for the plant, an amount for depreciation equal to three per cent of the cost of the plant exclusive of land and any water power appurtenant thereto, or such smaller or larger amount as the department may approve, the requirements of the sinking fund or debt incurred for the plant, and the loss, if any, in the operation of the plant during the preceding year...”*

What startup & construction decisions will need to be made by the MLP?

If your town chooses to participate in the WiredWest operation solution, then your town will have to execute a contract with WiredWest for services which will require joint ownership through WiredWest of the connection from the ERPS ring to Springfield and Albany and the electronics associated with this backhaul.

Assuming that your town is going to be operating as a member of WiredWest you will need to work with the Design Engineers to make sure that some of the fibers running from you town hut to your town borders are spliced with some of the fibers running from your neighboring towns hut to their border. You will need to specify that equipment be placed in your hut to enable an ERPS ring with your neighboring towns. Even if your town is not going to be operating initially as a member of WiredWest, it may be a good idea to go ahead and make these splices to keep your options open for the future.

WiredWest will work with the services vendor and the design engineers to specify the electronics that will be used in the network so that all towns have the same equipment.

Whether or not your town is operating as a member of WiredWest, you will need to work with your Design Engineers and your neighboring town and perhaps legal counsel to figure out how you will service those premises that are in your town but can only be reached from your neighbor's town. You could choose to not service them or you could lease fiber from your neighbor or you could pay for make ready and string your own fiber through your neighbor's town.

Your town will need to decide on a couple of policy questions. How many feet of driveway will the drop be installed for free and how much will the consumer pay if the distance is greater. Will



there be a penalty charge if the consumer chooses to have a drop installed after the construction is complete.

Your town will need to decide where your hut or POP (Point of Presence) will be located. Once choice would be to locate it behind your public safety complex so it can be tied into the emergency generator.

Your town will need to decide how your town will collect the required depreciation reserves and debt service. These may be added in whole or in part to the consumers' bills as surcharges or raised and appropriated at town meeting.

Your town will need to work with your services vendor to hold signup events and encourage your citizens to subscriber for services. The higher the take rate the more viable your network operations will be and the lower the price for the consumer.

During any construction project there are always change orders. Someone in your town should be given the authority to approve or disapprove change orders up to a certain maximum cost so that construction is not delayed. Typically during a construction project there are weekly meetings with the owner, project manager, engineers, and the construction company to review progress and discuss change orders. If your town is working with WiredWest, then WiredWest will attend these meetings on your behalf, otherwise you will need to designate someone from your town to represent your town's interests.

If your town is not working with WiredWest, you will need to issue RFPs for various services, interview respondents and select vendors for ISP, Phone, Insurance, outside plant maintenance, inside plant maintenance, network operations, etc. You will need to determine what your service offerings will be and what the retail price will be and how much you will need to add to the bill to cover your operating costs. Someone in your town will need to be designated to manage these contracts and approve the monthly bills. Your town will need to establish a loss reserve account to cover the insurance deductibles for the outside plant insurance. This initial loss reserve account can be funded from the construction capital.

What kinds of decisions might the MLP Board or Manager be expected to have to make on a regular basis through the course of a year once operational? It will be helpful to outline for MLPs what to expect in terms of responsibilities and annual workload.

If your town is a member of WiredWest, the MLP Manager should be the towns' delegate to the WiredWest board and as such would be expected to work with the other board members to approve or disapprove any of the contracts that the Executive Committee brings forward for board approval, to approve or disapprove price changes recommended by the Executive Committee, to approve or disapprove the ratios and amounts of money that will distributed to the towns from excess income.

In compliance with M.G.L. Chap 164 Sect 56 "*...at the end of each municipal year, render to them such detailed statement of his doings and of the business and financial matters in his charge as the department may prescribes.*" The WiredWest Executive Committee will work with the WiredWest Accountant to prepare the necessary business and financial reports for each of the member towns.



In compliance with M.G.L. Chap 164 Sect 57 *“At the beginning of each fiscal year, the manager of municipal lighting shall furnish to the mayor, selectmen or municipal light board, if any, an estimate of the income from sales ... to private consumers during the ensuing fiscal year, and of the expense of the plant during said year.”*

The WiredWest Executive Committee will work with the WiredWest Accountant to prepare for board approval a budget for the following year for WiredWest as a whole and for each of the member towns.

If the town is not a member of WiredWest, the manager will need to manage the contractual relationships with the various vendors, approve monthly bills and produce the required financial reports, determine the services to be offered and the retail price that will be charged, determine the operational fee that will be assessed to each consumer and to maintain and manage the cash reserves required for insurance deductibles.

MLP Accounting & Budgeting

It will be helpful if we can map out a template Chart of Accounts that a Town can use to set up its MLP accounts.

Your town has three choices to make for the accounting for your towns MLP. The accountant can create accounts on the town’s books, create a separate set of books for the MLP, or the town can vote to create an Enterprise Fund.

If your town is a member of WiredWest your town will need the following minimum accounts.

Revenue

- Bond proceeds for construction
- Distributions from WiredWest
- Depreciation Reserves
- Connection Fees from Subscribers
- Expansion Fees from Developers

Expenses

- Construction costs (to MBI)
- Insurance (startup only paid from Bond proceeds)
- Pole Licenses (startup only paid from Bond proceeds)
- Connection costs (for new connections after operational)
- Expansion costs (for new construction after operation)?

What kind of annual reporting & statements will the MLP be required to generate for DOR? What kinds of oversight and/or approval?

As an MLP, you may, but are not required to, submit annual reports to the DPU. Since you are not serving natural gas, nor electric, and simply telecommunications, other municipal telecommunication serving entities don’t even report on those activities.

As for DOR, MLPs are required to collect sales tax on any taxable item sold to a customer. If the router is included as part of the service, and it remains property of the town, there is no charge sales tax for that. Any sales on ancillary services (not part of the install package), must collect for sales tax. This could include wiring and ports, antennas, phones.



As for oversights and approvals, the typical Board of Selectmen or MLP board if there is one would have the oversight, and as sound financial practice, should have their books audited annually. However, I'm aware of some MLPs that have gone many years without auditing their books (not recommended).

WiredWest will collect, remit and report to DOR all sales taxes and any other taxes that are required to be collected.

WiredWest will have their book audited annually.

Does the MLP operating budget have to be appropriated at Town Meeting?

No, however if the depreciation reserves and/or the debt service are to be paid by the town and not by the subscribers then there will need to be raise and appropriate language on the warrant to cover these expenses.

How is the relationship between General Fund and MLP Accounts handled?

If the accountant sets up a separate set of books for the MLP then there is no relationship. If the town chooses to establish an Enterprise Fund then the relationship is defined in the laws governing Enterprise Funds.

If there are MLP operational expenses to be covered by the Town/tax levy, are these appropriated at Town Meeting and then somehow become part of tax recap?

All funds raised and appropriated are part of the tax recap.

What about the reverse — excess revenue to be transferred back to the Town's General Fund? Can that be appropriated immediately?

Any funds transferred from the MLP to the town will go into the General Fund and cannot be appropriated until after free cash is certified. It may be the case that the DOR will allow the excess funds transferred from the MLP to be used on the Tax Recap sheet as anticipated revenue after a certain number of years of history have elapsed to establish the certainty of this income.

Can the MLP's Depreciation Reserve get appropriated from anticipated Revenue, or only from previous year revenue? What if there is a shortfall? What about excess?

The law assumes that depreciation reserves are collected as part of the retail fees for services but does not seem to require this means of funding. M.G.L. Chap 164 Sect 57 *"The income from sales ... shall be used to pay the annual expense of the plant, defined as above, for the fiscal year, except that no part of the sum therein included for depreciation shall be used for any other purpose than renewals in excess of ordinary repairs, extensions, reconstruction, enlargements and additions"* *"The surplus, if any, of said annual allowances for depreciation after making the above payments shall be kept as a separate fund and used for renewals other than ordinary repairs, extensions, reconstructions, enlargements and additions in succeeding years..."* So it appears to be wise to manage your depreciation reserve fees to they don't produce large excesses.

I assume we only have to set aside Depreciation Reserve in the year following completion of construction, and thus, theoretically in first of year of operation. If it can only be appropriated from previous year funds, then how might the MLP handle that first year? Does it have to come from that year's tax levy?



See the previous answer. Depreciation reserves can be forward funded from surplus or other means, funded during the fiscal year from fees or funded at the end of the fiscal year as long as the account is funded.

WW is going to cover insurance and pole license/bonding fees after operational. How will this work — paid directly by WW? (can they do that?) or reimbursed to the MLP? If the latter, will these funds be usable by MLP in the same fiscal year? It would be helpful to identify for MLPs an optimum timing (in terms of cash flow) for when these bills should come due, assuming MLPs can negotiate an annual date with providers.

Since the pole license fees, pole bonds, and outside plant insurance premiums need to be paid prior to the network going live, each town will need to make these payments from their bond funds. M.G.L. Chap 44 Sect 8 (8) specifies that the borrowing can be used for *“Establishing, purchasing, extending, or enlarging ... a telecommunications system...”* Paying these fees is part of establishing the telecommunications system.

After the first year, WiredWest will pay the pole license fees, pole bonds, and outside plant insurance premiums for each of the towns. This arrangement will be specified in the contract between the towns and WiredWest. The vendors of these services don't care who pays as long as the bills are paid.

Startup & Construction

What are the startup costs that have to be handled by the MLP until the network is operational and WW takes over: insurance, pole licensing and bonding, — what else? Presumably this is taken from original appropriation, for startup.

See the previous answer for the associated outside plant expenses.

There may be an assessment made by WiredWest to the member towns to cover the legal expenses necessary to work on vendor contracts and the contract between the towns and WiredWest. There may be an assessment by WiredWest to the towns to cover the initial cost of obtaining backhaul from the ring to Springfield and Albany and the associated electronics. There also may be an assessment to cover the cost of hiring an engineer to act as the Owners project manager to represent all of the member towns at the weekly construction meetings. These assessments could be taken from the town's bond funds as part of “establishing” the telecommunications network.

WiredWest will be assessing each subscriber a \$99 activation fee to fund the cash reserves necessary to cover insurance deductibles and any bills that come due prior to collection of sufficient revenue from subscribers.

What if there is more than one year before operational?

If construction and turn-up take longer than one year for a town after the pole licenses are issued, then the town should be able to pay for the second year outside plant expenses from the bond funds under the “establishing” clause.

What engineering guidance will WW provide? Is MLP responsible for procuring its own engineer to oversee MBI construction? How to determine costs?



WiredWest will work with the Design Engineers and service provider engineers to select and recommend to the towns the equipment and design that will be consistent with the creation of a regional network.

There may be an assessment to cover the cost of hiring an engineer to act as the Owners project manager to represent all of the member towns at the weekly construction meetings. If after consulting with the project manager engineer and the service provider engineer and the member towns that an owners project manager engineer needs to be engaged, then WiredWest will issue an RFP for their services. The member towns acting through the WiredWest board will approve any fees and contracts prior to their signing.

Local MLP Recovery Fees

How do decisions get made about whether/how much to recover Depreciation Reserve from MLP fees? Presumably MLP Board can make a unilateral decision to cover all through MLP fees. What if they wish not to? Can that decision be made by MLP Board alone, since it would impact town operating budget? Does this have to go to Select Board? Town Meeting? Or would this be covered by the process of appropriation for any Depreciation Reserve at Town Meeting as part of the annual town budget?

The MLP manager working with the Board of Selectmen or the MLP Board if any will determine how the depreciation reserves and debt service will be funded. They may add both or neither or one and not the other or parts of one or the other to the consumer bill as a surcharge. If any portion of the depreciation reserve and/or the debt service is anticipated to be paid from the general fund of the town then the appropriate article needs to appear on the annual town warrant to raise and appropriate the needed funds.

It may be prudent to put the depreciation reserve and the debt service amounts on the town warrant so that if there is a shortfall in collections from consumers then the shortfall can be funded. Any appropriated money unspent would be returned to the general fund. M.G.L. Chap 164 Sect 57A allows town meeting to appropriate all funds necessary to operate the MLP that are then paid for by the MLP fees collected. *“Any city or town having a municipal light plant may appropriate money for the maintenance and operation of such plant, specifying that the same shall be taken from the receipts of the department; and where such appropriations are made, the city or town treasurer may, in advance of the collection of said receipts, pay bills on account of the said appropriations, and any sum so advanced shall be repaid to the city or town from such receipts, when collected, and shall be applied as reimbursement to the city or town, or to the payment of any temporary loan made by the city or town in anticipation of revenue of that year.”*

How do decisions get made about whether/how much to recover Debt Service from MLP fees? I imagine this is more of a SB/Town decision, since the debt is a general town obligation.

See previous answer.

If Debt Service is to be covered by MLP fees, all or in part, how does transfer from MLP revenue to General Fund need to happen — transfer at Annual Town Meeting?

The transfer from the MLP excess revenue account to the Town’s General Fund will be the decision of the MLP manager in consultation with the Selectboard or the MLP Board if there is one.



All General Fund balances need to be certified as free cash before they can be appropriated at a town meeting.

Can transfer from MLP be appropriated by Town immediately? Or does it need to be certified as Free Cash and then appropriated in following FY?

All General Fund balances need to be certified as free cash before they can be appropriated at a town meeting.

What other operating expenses might an MLP want to consider recovering through subscriber fees — Accounting costs? Anything else?

Each town may add depreciation reserve and/or debt service as surcharges to the consumer's bills.

How often can an MLP decide to adjust the MLP fee? Will WW/WCF establish set schedule for changes across the board? Annually? Semi-annually?

M.G.L. Chap 164 Sect 58 "There shall be fixed schedules of prices ... which shall not be changed oftener than once in three months. Any change shall take effect on the first day of a month, and shall first be advertised in a newspaper, if any, published in the municipality."

Other Operational

How might the MLP handle new connections? WW says that it will not charge connection fees; initial connections will presumably be covered by Town/MLP during construction; what about future connections?

The MLP manager with the Selectboard or the MLP board if there is one will set policy for new connections after construction. Presumably there is enough money in the debt authorization left after construction to add a new connection. The estimate for the construction budget included the cost of the connections of all current premises. The MLP manager may decide that there will be a flat charge of say \$1,000 for future connects to encourage citizens to take service during construction thus increasing the take rate and also to help offset the cost of the connection after construction. The town also might want to update their zoning bylaws to include the cost of connections for developers.

If an MLP wishes to cover this through a subscriber charge, does the MLP indicate as much to the service vendor and they just collect and keep? Or does it have to pass through the MLP books?

The service vendor can be instructed to apply a connection fee as a surcharge for new connections after construction is complete. The connection surcharge would be collected by the service vendor and remitted to WiredWest who in turn would remit the funds to the town's MLP.

What if the Town/MLP does not wish the customer to be charged? Will the service vendor bill WW, who then in turn bills the town's MLP? Or will the service vendor bill the MLP directly?

WiredWest will negotiate a contract with a qualified installer who may also be the service vendor for the installation of drops after the construction period. The installer would invoice the town's MLP directly. This will be true whether or not the customer is being billed in whole or in part for the installation of the drop.



Future Expansion

If/when expansion is required, due to new growth, how is that handled? Do expansion costs need to be appropriated at Town Meeting, or can they be handled internally by MLP? How are these costs covered? Can/should a town build up Expansion reserves?

Any funds not appropriated from the borrowing authorization can be borrowed to cover the cost of expansion. The borrowing authorization does not expire unless specifically terminated by a town meeting. The MLP may want to keep some of the excess revenue that may be returned from consumer fees as cash reserved to cover unforeseen costs. The town also might want to update their zoning bylaws to include the cost of connections for developers as they currently do for roads, drainage, etc.

Will an option for any expansion services be able to be provided by the service vendor? Will that be addressed in the contract? Or will the MLP need to procure completely separately?

If the service provider is capable and willing to provide this service then that might be negotiated. It also may be wise to issue an RFP for this service to get the best rate. WiredWest would make this arrangement on behalf of its member towns.

How will the inside wiring of homes and businesses be handles. Who will arrange for contractors? Who will provide the specifications?

WiredWest will work with the design engineers and the service provider engineers to develop the specifications for inside wiring. WiredWest will issue an RFP to find local electricians who are capable of performing this service in each of the member towns. The cost of inside wiring may be borne by the consumer who may choose to perform the work themselves, hire their own contractor, or use a WiredWest contractor.