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**DATE: July 12, 2016**  
**TO: City Council Members**  
**CC: Mayor Prussing**  
**FROM: James Simon, City Attorney**

**RE: City of Urbana's Right of First Refusal to Purchase UC2B Assets and Consent to Transfer of the iTV-3, Inc. Cable Franchise Agreement to iTV-3, LLC (an Affiliate of Countrywide Broadband, LLC) – Update of April 15 and June 8, 2016 Memoranda**

This memorandum updates the City Attorney's prior memoranda which discussed the City's role in the pending sale of iTV-3, Inc.'s ("iTV-3") assets to Countrywide Broadband, LLC or its affiliate (iTV-3, LLC) (collectively, "CWB"). To complete the sale, iTV-3 and CWB have requested the cities of Urbana and Champaign to (i) waive their rights of first refusal to purchase those iTV-3 assets which are located in the cities ("RFR") and (ii) consent to iTV-3's request to transfer its cable franchise agreements ("Cable Agreement" or "Cable Agreements") to CWB.

For more than a month, Urbana's and Champaign's City Attorneys, the University's Assistant Campus Legal Counsel, and the UC2B NFP's ("NFP") attorney (collectively, the "Attorneys") have been collaborating on negotiations with CWB in an effort to arrive at an agreement which is acceptable to the NFP, the cities, the University, and CWB. As of the date of this memorandum, no such agreement has been reached. Regardless of the lack of agreement, the City Council must decide whether to (i) waive or exercise its RFR to purchase the iTV-3 assets located in Urbana and (ii) consent to a transfer of the Cable Agreement to CWB.

#### **LEGAL DIVISION RECOMMENDATION:**

As discussed below, based on CWB's refusal to provide information which has been requested by the cities, University and NFP and the parties' failure to reach agreement with CWB, the Urbana City Attorney recommends that the City Council take the following action:

- Refrain from taking any action to exercise the City's RFR.
- Deny, without prejudice, iTV-3's request for the City Council's consent to transfer iTV-3's rights and obligations under the Cable agreement.

(See, Exhibit 1, An Ordinance Denying iTV-3, Inc.'s Request to Assign Cable Franchise Agreement Between City of Urbana and iTV-3, Inc. Dated December 15, 2014 included herein. "Without prejudice" refers to the City Council ability to reconsider the matter if CWB provides the information requested or reaches an agreement acceptable to the NFP, cities and University.

The City Council must take some form of action at its August 1<sup>st</sup> meeting. The options for action are listed below. A failure to take action will be deemed a waiver of the RFR and consent to transfer the Cable Agreement.

**DISCUSSION:**

**1. Cities' and NFP's Efforts to Obtain Information:**

Paragraph 8 of the agreement between iTV-3 and the NFP ("NFP Agreement"), in relevant part, provides that should iTV-3 decide to sell its assets to a third person, the cities –

will have right of first refusal to purchase iTV-3's interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right [the "30-day clock"].

Emphasis supplied. Accordingly, following receipt in February of notice of iTV-3's intent to sell its assets to CWB, the NFP and the Attorneys collaborated on a detailed request for information directed at iTV-3 seeking (i) iTV-3's past handling and (ii) CWB future plans for handling the operation, maintenance and expansion of the UC2B Network and customer, community and local government relations. The NFP and the Attorneys believe that both sets of information are necessary in order for the city councils to make informed and rational decisions regarding whether to waive the RFRs and consent to the transfer of the Cable Agreements to CWB. The NFP and Attorneys believe that the CWB information is most critical.

iTV-3 has provided a large amount of information in electronic form.<sup>1</sup> The NFP and the Attorneys reviewed iTV-3's information and ultimately concluded that, while the information is not complete or necessarily accurate in all respects, it was sufficient to give an overall picture of how iTV-3 has operated the UC2B Network. The NFP and Attorneys have concluded that further requests for information regarding iTV-3 would not be fruitful.

CWB provided some very general information but failed and refuses to provide specific information regarding CWB's plans for operating, managing, and expanding the UC2B Network. CWB provided copies of its asset purchase agreement with iTV-3, a funding commitment letter from a venture capital group, a funding commitment letter from an investment bank, resumes of its four executives, and very general statements of how it intends to operate, maintain, and expand the UC2B Network.<sup>2</sup> The NFP and Attorneys have serious concern about this latter statement given iTV-3's fairly dismal track record handling and expanding the UC2B Network.

CWB has repeatedly stated that it will provide more information but only after the cities waive their RFRs. The Attorneys advised iTV-3 and CWB that the information requested is

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<sup>1</sup> Most, if not all of the information was designated "confidential" and/or "proprietary" thereby prohibiting its dissemination to the City Council and/or the general public in the form of Committee of the Whole or City Council packet information.

<sup>2</sup> CWB designated the asset purchase agreement and funding commitments as "confidential" and "proprietary" thereby prohibiting their disclosure to the public.

essential in order to conduct due diligence in connection with the cities' decision whether or not to waive their RFRs. They have also advised that iTV-3 has not fully complied with Paragraph 8 of the NFP Agreement since it has failed to provide "all of the information [the cities] request[ed] in order to make an informed decision as to whether to exercise" their RFRs. Brackets supplied. Thus, the Attorneys have concluded that the 30-day clock provided for in Paragraph 8 of the NFP Agreement has not yet begun to run and no representation to the contrary has been made by the city attorneys or any other person on behalf of the cities.

The NFP and Attorneys believe that CWB must provide at least the following in order to complete their due diligence:

- i. Business and marketing plans for operating, maintaining and expanding the UC2B Network.
- ii. Plans for handling its relations with customers, the community and local governments.
- iii. Financial proformas which demonstrate CWB's ability to carry out its operation, maintenance and expansion of the UC2B Network.
- iv. Product offerings and pricing options.
- v. Technical staff resources beyond those which CWB will be acquiring from iTV-3.
- vi. Customer support staff beyond those which CWB will be acquiring from iTV-3.

The NFP and Attorneys believes that CWB has provided this information to its venture capital group and investment bank in order to obtain their financial commitments. Since the information is likely to be proprietary and confidential, the Attorneys have offered to have a non-disclosure agreement executed. However, CWB represented that it has no intention of sharing its business, financial and marketing plans with the NFP, cities, or University, or the Attorneys under any circumstance.

In an effort to break the information "logjam", the Attorneys recommended that the NFP try to negotiate an understanding with CWB on essential terms which, hopefully, would form the basis for a formal agreement acceptable to the cities and the University. It was presumed that CWB would not reach acceptable terms of agreement unless it and its investor and lender believed CWB could carry out those terms.

## **2. Memorandum of Understanding (MOU) between NFP and CWB:**

On June 17<sup>th</sup>, the NFP notified the Attorneys that the NFP and CWB had reached a tentative understanding on certain terms contained in a memorandum of understanding ("MOU"). The NFP advised CWB that the NFP would not sign the MOU unless and until the cities and the University approved those terms. It was contemplated that should the cities and University approve the terms in the MOU, the NFP and CWB would draft a formal agreement. Unfortunately, the cities' and the University's attorneys found the terms to be unacceptable primarily because they provided no penalty should CWB fail to comply with the annual and aggregate UC2B Network expansion requirements contained in the MOU.

Since receipt of the MOU, CWB and the NFP (and Attorneys) have exchanged at least eight separate proposals with the hope of developing a reasonable remedy should CWB fail to meet agreed-upon expansion requirements including having optical fiber pass all homes in Urbana and Champaign by the end of 2022. As of the date of this memorandum, no such agreement has been reached on –

- when the 30-day clock provided for in Paragraph 8 of the NFP Agreement (relating to the time within which the cities must act on their RFRs) commences to run;
- an explicit annual rate at which CWB will expand (build out) the UC2B Network;
- a remedy or set of remedies in the event that CWB fails to meet the expansion requirements or materially breaches the agreement in other respects; and
- a common agreed-upon definition of what constitutes “exclusivity” in terms of the exclusive indefeasible right to use (“IRU”) the UC2B Network;
- representation of CWB on the NFP’s governing board; and
- CWB’s periodic report of information to the NFP concerning its handling of the UC2B Network.

The NFP and Attorneys have proposed a number of remedies for a material breach with limited receptivity on the part of CWB.

### **3. Federal Approval Required for Sale of iTV-3 Assets to CWB:**

Separate and apart from the issues relating to of RFRs and consent to assignment the Cable Agreements, the U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA) must approve any assignment of interests in the UC2B Network which were financed with the \$22,534,776 federal grant which the University received under the federal Broadband Technology Opportunities Program (BTOP) for the design, development and initial construction of the UC2B Network.<sup>3</sup>

At present, the cities and the University have no legal obligation to cooperate with iTV-3 or CWB in seeking NTIA’s consent to the iTV-3-CWB transaction. However, University counsel has represented that should the NFP and CWB reach terms of agreement acceptable to the NFP and Attorneys and if the cities waived their RFRs and consented to the assignment of the Cable Agreements, the University would request NTIA’s approval of the transaction. CWB’s failure and refusal to provide the requested information may ultimately lead the NTIA refusing to grant its consent to the iTV-3-CWB transaction.<sup>4</sup>

<sup>3</sup> The federal grant funds were used in significant part to construct the UC2B Network rings (“backbone”) and to run optical fiber past 4,750 residents and 250 businesses. At the time the NFP turned over operation of the UC2B Network to iTV-3, approximately 1,200 residences and community anchor institutions (e.g., hospitals, schools, libraries, local government offices, etc.) were connected to the system. iTV-3’s further build-out of the UC2B Network was rather modest and any information relative to iTV-3’s work has been designated as confidential by iTV3.

<sup>4</sup> The federal government also has a 77% lien interest in those assets acquired and installed using federal grant funds. That lien would remain regardless of whether iTV-3 and CWB close on their asset purchase agreement.

#### **4. Legal Framework for City Council Consideration:**

Paragraph 6.1 of the Urbana-iTV-3 Cable Agreement provides: "... the Grantee ... may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed." Champaign's Cable Agreement contains the same language.

A federal appellate court has held that a proposed cable franchisee's failure or refusal to provide information to the cable franchisor (the local government) is sufficient grounds for the local government to deny a request to transfer the cable agreement to that proposed franchisee. *Charter Communications, Inc. v. County of Santa Cruz*, 304 F.3d 927 (9th Cir. 2002). To reach that decision, the appellate court found that the local government's decision regarding whether to grant consent is legislative, not an administrative (quasi-judicial), action. *Id.* at 934. Regarding the local government's decision to deny consent, the court stated:

A government's discretion is treated deferentially by courts especially when its requests for information are necessary to evaluate an application for government privileges; a denial of that privilege is hardly arbitrary when a government's information request is refused.

*Id.* at 932.

The Urbana City Attorney believes that CWB's refusal to supply the information requested is sufficient for denying iTV-3's request to assign the Cable Agreement..

#### **OPTIONS:**

The City Council has the following options available to it:

1. Waive RFR and grant request to assign Cable Agreement.
2. Waive RFR and deny request to assign Cable Agreement. 
3. Exercise RFR and grant request to assign Cable Agreement.
4. Exercise RFR and deny iTV-3's request to assign Cable Agreement.
5. Take no action on RFR and grant request to assign the Cable Agreement.
6. Take no action on RFR and deny request to assign the Cable Agreement.
7. Take no action on RFR and take no action on request to assign the Cable Agreement.<sup>5</sup>

As previously stated, the Urbana City Attorney recommends that the City Council exercise option number six (6) which is embodied in Exhibit 1 in the draft ordinance entitled An Ordinance Denying iTV-3, Inc.'s Request to Assign Cable Franchise Agreement Between City of

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<sup>5</sup> Federal regulation (47 CFR 76.502) provides that Urbana's failure to act on iTV-3's request to assign and transfer the Cable Agreement shall constitute Urbana's consent to such assignment and transfer.

Urbana and iTV-3, Inc. Dated December 15, 2014. Reference in the draft ordinance to “without prejudice” is intended to preserve CWB’s opportunity to provide the requested information at a later date or reach terms of agreement with the NFP which the cities and University deem acceptable so that the City Council can reconsider the matter.<sup>6</sup>

**EXHIBITS:**

The Urbana City Attorney recommends that City Council view the proceedings which occurred at the Champaign City Council study session held on July 12<sup>th</sup> and review the packet of information which was distributed to the Champaign City Council. Included with this memorandum are the following exhibits:

1. Alternative Draft Ordinances for Consideration by City Council
2. Champaign City Attorney’s Memorandum to the Champaign City Council (7/12/ 2016)<sup>7</sup>  
(The Champaign City Council Study Session information packet can be found at: )
3. UC2B NFP Questions and CWB’s Responses (3/3/2016)
4. CWB’s Response to NFP’s Request for Additional Information (4/13/2016)
5. Information Provided on FCC Form 394 Notice of Intent to Transfer Cable Franchise Agreement (4/6/2016)
6. Exchange of Correspondence Regarding Insufficiency of Information Requested from CWB and iTV-3
7. Resumes of CWB’s Key Management Team
8. iTV-3 and CWB Valuation of UC2B Network<sup>8</sup>
9. UC2B NFP-Cities-University Term Sheet Submitted to CWB
10. Draft Memorandum of Understanding between UC2B NFP and CWB with Urbana City Attorney’s Review and Comment
11. Legal Division Memoranda Regarding iTV-3’s Sale of Assets to CWB
12. CWB’s Proposal (6/30/2016); UC2B NFP-University-Cities Proposal (7/1/2016); CWB Proposal (7/7/2016); UC2B NFP-Cities-University Proposal (7/11/2016)<sup>9</sup>

<sup>6</sup> The second draft ordinance included in Exhibit 1, if adopted, would provide that the City affirmatively waives its RFR and grants iTV-3’s request to transfer its Cable Agreement with the City to CWB.

<sup>7</sup> The complete Champaign City Council Study Session information packet can be found at:  
<http://documents.ci.champaign.il.us/v/BwqebO6?hp=0B9AX7CNToF-5ODN0OU1mcnhiWE0%2C0B9AX7CNToF-5TzlDckpEZnd1SWM%2C0B2M9pWvCHBVDt1cteFJBX3A5Q0U%2C0BwyGnHue8C6RY1pVUIF6Rm53bTA&ht=0B9AX7CNToF-5VzRxUEQxbUxIZUE>

<sup>8</sup> The Allocable Purchase Price Calculation provided by CWB states that the total replacement value of the UC2B Network is \$22,559,159. However, of that sum, \$17,605,929 is attributable to “private construction cost of initial network” – i.e., that part of the UC2B Network designed and constructed using federal, state and local government funds.

<sup>9</sup> The proposals seek to address several but not all of the essential terms which the NFP, University and cities deem necessary to be included in a final agreement.

**EXHIBIT 1**

**ALTERNATIVE DRAFT ORDINANCES  
FOR CONSIDERATION BY CITY COUNCIL**

ORDINANCE NO. 2016-07-058

AN ORDINANCE DENYING ITV-3, INC.'S REQUEST  
TO ASSIGN CABLE FRANCHISE AGREEMENT BETWEEN CITY  
OF URBANA AND ITV-3, INC. DATED DECEMBER 15, 2014

(Denial of iTV-3, Inc.'s request to assign and transfer cable franchise agreement to Countrywide Broadband, LLC or iTV-3, LLC)

WHEREAS, the City of Urbana ("Urbana") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power, whether legislative or administrative, and perform any function pertaining to its government and affairs not otherwise expressly reserved to the State of Illinois by legislation; and

WHEREAS, Urbana has the power and authority pursuant to the Section 10 of Article VII of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) to enter into and execute agreements with other units of government; and

WHEREAS, in August 2009, the University of Illinois ("University") submitted a proposal to the U.S. Department of Commerce seeking financial assistance in order to create and construct a high speed fiber optic network within the City of Urbana and the City of Champaign ("Champaign") to be known as the Urbana-Champaign Big Broadband project ("UC2B Network"); and

WHEREAS, in September 2009, Urbana, Champaign and the University entered into and executed an Intergovernmental Agreement ("IGA") which provided for the organization of the Urbana-Champaign Big Broadband Consortium ("Consortium") in order to create and construct the UC2B Network should the federal government approve the University's request for financial assistance to create and construct the UC2B Network; and

WHEREAS, in February 2010, the U.S. Department of Commerce awarded the University a grant of up to \$22,534,776 for the creation and construction of the UC2B Network; and

WHEREAS, in November 2010, the Illinois Department of Commerce and Economic Opportunity awarded the University a \$3,500,000 grant to construct the UC2B Network; and

WHEREAS, Urbana and Champaign provided local funding and/or in-kind value for the construction of the UC2B Network; and

WHEREAS, the Consortium commenced, undertook, and completed creation and construction of the UC2B Network in accordance with the terms and conditions of the U.S. Department of Commerce and the State of Illinois grants; and

WHEREAS, the Consortium members began operating the UC2B Network but ultimately decided to form a not-for-profit corporation to take over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, the U.S. Department of Commerce was given a 77% lien interest in the physical assets of the UC2B Network; and

WHEREAS, in August 2013, members of the Consortium amended the IGA, *inter alia*, to provide for the organization of a not-for-profit corporation to take over the operation, maintenance and expansion of the UC2B Network with the goal of expanding the UC2B Network so that all Urbana and Champaign residents, businesses and institutions would be able to subscribe to the UC2B Network; and

WHEREAS, on August 16, 2013, the Urbana Champaign Big Broadband NFP ("NFP") was incorporated; and

WHEREAS, the University applied to the U.S. Department of Commerce seeking approval of an assignment and transfer of the right to operate, maintain and expand and grant indefeasible rights of use in and to the UC2B Network to the NFP while the Consortium members retained any and all ownership rights in and to the physical assets which comprise the UC2B Network as they existed as of the date when the Consortium turned over the UC2B Network to the NFP; and

WHEREAS, on or about September 20, 2013, the U.S. Department of Commerce (the National Telecommunications and Information Administration, "NTIA") approved the University's request to assign and transfer the operation, maintenance and expansion of and to grant indefeasible rights of use in and to the UC2B Network to the NFP; and

WHEREAS, sometime after September 20, 2013, the Consortium members transferred and assigned their rights to operate, maintain and expand and to grant indefeasible rights of use in and to the UC2B Network to the NFP while retaining any and all

ownership rights in and to the physical assets which comprise the UC2B Network as of the immediate aforesaid date; and

WHEREAS, sometime prior to February 28, 2014, the NFP decided to seek a private partner which would have the resources and ability to operate, maintain and expand the UC2B Network with the goal of expanding the same throughout Urbana and Champaign; and

WHEREAS, on or about February 28, 2014, the NFP and iTV-3, Inc. ("iTV-3") entered into an agreement ("NFP Agreement") which, *inter alia*, transferred the NFP's right to operate, maintain and expand and grant indefeasible rights of use in and to the UC2B Network to iTV-3; and

WHEREAS, Paragraph 8 of the NFP Agreement states:

iTV-3 further agrees that, in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called "the Cities") will have right of first refusal to purchase iTV-3's interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.

(The "right of first refusal" referenced in Paragraph 8, hereinafter referred to as "RFR"); and

WHEREAS, iTV-3 took over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, iTV-3 and Urbana entered into and executed a Cable Television Franchise agreement ("Cable Agreement") dated December 15, 2014, whereby iTV-3 was granted the right to operate and provide cable television programming to those Urbana residents and businesses which subscribed to the programming which iTV-3 would make available; and

WHEREAS, Paragraph 6.1 of the Cable Agreement, *inter alia*, provides:

Neither the Grantee nor any other Person may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. ... The consent or approval of the City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise Agreement, known or unknown to the City or Grantee, nor any enforcement rights of the City under any ordinance or this Franchise Agreement;

and

WHEREAS, iTV-3, pursuant to the Cable Agreement, commenced providing cable television programming over the UC2B Network; and

WHEREAS, Champaign entered into a substantially similar cable franchise agreement with iTV-3; and

WHEREAS, between the date when iTV-3 took over operation, maintenance and expansion of the UC2B Network and February 2016, iTV undertook fairly minimal expansion of the UC2B Network; and

WHEREAS, on or around February 12, 2016, iTV-3 notified the NFP and the NFP notified Urbana and Champaign that iTV-3 and Countrywide Broadband, LLC ("CWB") had entered into and executed an asset purchase agreement ("APA") whereby iTV-3 agreed to sell and CWB or an affiliate created by CWB (collectively, "CWB") agreed to purchase all of iTV-3's assets wherever located including, but not necessarily limited to, those located in Urbana and Champaign; and

WHEREAS, the closing on iTV-3's sale and CWB's purchase of iTV-3's assets is believed to be contingent on Urbana and Champaign waiving their respective RFRs and granting iTV-3's request to assign and transfer the respective cable franchise agreements to CWB; and

WHEREAS, in late February-early March 2016, the NFP submitted a request to iTV-3 and CWB for information including, but not limited to CWB's plans for operating, maintaining and expanding the UC2B Network; and

WHEREAS, iTV-3 and CWB provided responses to the NFP's initial request for information which included a copy of the APA, copies of commitments to invest and lend to CWB, copies of CWB's management team's resumes, as well as generalized responses to the aforesaid request for information; and

WHEREAS, in late March-early April 2016, the NFP submitted to iTV-3 and CWB a request for information which, *inter alia*, sought more specific information regarding CWB's plans to operate, maintain and expand the UC2B Network and for handling community and local government relations; and

WHEREAS, in mid-April 2016, iTV-3 provided supplemental information in response to the NFP's request for information; and

WHEREAS, shortly after April 7, 2016, Urbana received notice from iTV-3 and CWB, in the form of a Federal Communications Commission Form 394 ("FCC 394"), that iTV-3 intended to assign and transfer its rights under the Cable Agreement to CWB; and

WHEREAS, shortly after April 7, 2016, Champaign received the same Federal Communications Commission Form 394 from CWB; and

WHEREAS, FCC 394 provided very generalized information regarding CWB; and

WHEREAS, the Urbana City Attorney formally notified CWB's attorney that the information provided by CWB on FCC 394 was wholly insufficient to allow Urbana to conduct its due diligence regarding iTV-3's request for Urbana's consent to assign and transfer the Cable Agreement to CWB; and

WHEREAS, federal regulations (47 CFR 76.502) provide that Urbana has 120 days from the date of receipt of FCC 394 in which to decide whether or not to grant iTV-3's request to assign and transfer the Cable Agreement to CWB; and

WHEREAS, after much discussion and demands by the NFP, iTV-3 provided a significant amount of information to the NFP which the NFP shared with Urbana's and Champaign's City Attorneys; and

WHEREAS, nothing in this ordinance shall be deemed or construed as constituting an acknowledgement by Urbana that the iTV-3 information is complete or accurate in all respects; and

WHEREAS, Urbana, Champaign and the NFP, through their respective attorneys, have made numerous and repeated requests to CWB for detailed information regarding (i) how CWB intends to operate, management and expand the UC2B Network, (ii) CWB's technical and financial ability for doing so; and (iii) how CWB intends to handle its relations with the community, Urbana and Champaign (collectively, "CWB Information"); and

WHEREAS, Urbana, through its City Attorney, has advised iTV-3 and CWB that the CWB Information which Urbana has repeatedly requested is necessary and critical in order for Urbana to undertake and complete its due diligence in order for its City Council to decide whether or not to (i) exercise its RFR to purchase those iTV-3 assets located in Urbana but which are not already owned by Urbana, Champaign or the University, and (ii) grant iTV-3's request to assign and transfer the Cable Agreement to CWB; and

WHEREAS, iTV-3 and CWB have consistently and repeatedly stated that CWB would provide the detailed information which Urbana has requested but only after Urbana waives its RFR under Paragraph 8 of the NFP Agreement; and

WHEREAS, Urbana's City Attorney has repeatedly rejected iTV-3's and CWB's pre-condition for providing the CWB Information since the CWB Information is necessary for determining whether to waive the RFR; and

WHEREAS, at no time has iTV-3 advised the NFP, Urbana or Champaign that it has received "an arms'-length, written offer to purchase" "at market price" those assets owned by iTV-3 (i.e., excluding assets owned by Urbana, Champaign or the University) which are located in just Urbana and Champaign notwithstanding the language of Paragraph 9 of the NFP Agreement; and

WHEREAS, the NFP, Urbana and Champaign have requested iTV-3 and CWB to provide a value for the iTV-3 assets located in just Urbana and Champaign but which are not already owned by Urbana, Champaign or the University, if for no other reason so that Urbana and Champaign will know what amounts they may be expected to pay to iTV-3 should their City Councils elect to exercise their respective RFRs pursuant to Paragraph 8 of the NFP Agreement; and

WHEREAS, on or after April 14, 2016, iTV-3 and CWB provided the NFP, Urbana and Champaign with a value of \$22,559,159 for all iTV-3 assets located in Urbana and Champaign ("CWB Valuation"); and

WHEREAS, CWB Valuation is based on a "replacement value approach" even though Paragraph 8 of the NFP required the value to be set by an "an arms-length, written offer to purchase made to iTV-3"; and

WHEREAS, Urbana and Champaign, through their respective City Attorneys, have requested the detailed means and method by which iTV-3 and CWB have arrived at the CWB Valuation; and

WHEREAS, iTV-3 and CWB have refused to provide Urbana and/or Champaign with the means and method by which iTV-3 and/or CWB arrived at the CWB Valuation; and

WHEREAS, the CWB Valuation includes a purported replacement value of \$17,605,929 for the UC2B Network physical assets already owned by Urbana, Champaign and the University which neither Urbana nor Champaign are obligated to purchase under Paragraph 8 of the NFP Agreement; and

WHEREAS, Urbana, through its City Attorney, and CWB dispute the "replacement value" of those iTV-3 assets located in just Urbana and Champaign, excluding those UC2B Network physical assets already owned by Urbana, Champaign and the University; and

WHEREAS, Urbana, through its City Attorney, reasonably believes that the "replacement value" of those iTV-3 assets located within Urbana and Champaign exclusive of those already owned by the cities and University is \$4,953,230, based on the "replacement value" figures contained in the CWB Valuation; and

WHEREAS, the attorneys for the NFP, Urbana and Champaign have advised iTV-3 and CWB that should the NFP and CWB -

- a. reach agreement on terms pursuant to which CWB will operate, maintain and expand the UC2B Network and handle community and local government relations which are acceptable to the cities and the University;
- b. provide sufficient information which demonstrates that CWB has the technical resources to comply with such terms of agreement; and

c. provide sufficient information which demonstrates that CWB has or will have the financial resources to comply with such terms of agreement, then -

Urbana and Champaign would likely waive their respective RFRs and grant iTV-3's requests to assign and transfer their respective cable franchise agreements to CWB; and

WHEREAS, on or shortly after April 18, 2016, CWB provided "Proposed Terms of Agreement" to the NFP, which the NFP forwarded to Urbana and Champaign; and

WHEREAS, CWB's "Proposed Terms of Agreement" described the terms and conditions to which CWB would agree for operating, maintaining, and expanding the UC2B Network and handling community and local government relations, and which purportedly described in very general terms how CWB intends to operate, maintain and expand the UC2B Network and handle community and local government relations; and

WHEREAS, Urbana, Champaign and the NFP found CWB's "Proposed Terms of Agreement" unacceptable; and

WHEREAS, in late April 2016, Urbana, Champaign and the NFP provided CWB a term sheet for the latter's consideration; and

WHEREAS, after much discussion between the NFP and CWB, the NFP and CWB reached an understanding regarding terms contained in a memorandum of understanding ("MOU") which the NFP would recommend to Urbana and Champaign in order for Urbana and Champaign to (i) waive their respective RFRs and (ii) grant iTV-3's request to assign and transfer the respective cable franchise agreements from iTV-3 to CWB; and

WHEREAS, the Urbana and Champaign City Attorneys and the University's attorney have carefully reviewed and considered the terms contained in the MOU and have found them to be deficient and unacceptable because, in principal part, the MOU contained no meaningful remedy or penalty should CWB fail to meet the annual and aggregated expansion requirements described in the MOU; and

WHEREAS, the attorneys for the NFP, cities and University and CWB have exchanged a number of proposals and counter-proposal regarding terms of agreement, none of which has been deemed acceptable by those parties; and

WHEREAS, neither iTV-3 nor CWB has provided Urbana with sufficient information regarding CWB's -

a. short-term and mid-term budget for capital and operating costs and expenses for operating, maintaining and expanding the UC2B Network and handling community and local government relations;

b. short-term and mid-term projections of anticipated subscription and IRU revenue from operating, maintaining and expanding the UC2B Network; and

c. technical staffing and capabilities for operating, maintaining and expanding the UC2B Network

in a manner acceptable to Urbana; and

WHEREAS, Urbana has not been provided with sufficient information to complete its due diligence regarding whether or not (i) to exercise its RFR and (ii) to grant iTV-3's request to assign and transfer the Cable Agreement to CWB; and

WHEREAS, pursuant to federal regulation 47 CFR 76.502 the City of Urbana City Council must decide at its August 1, 2016 City Council meeting or earlier whether or not to (i) exercise its RFR and (ii) grant iTV-3's request to assign and transfer the Cable Agreement to CWB.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AND FOR THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, as follows:

Section 1.

The above recitals shall be and hereby are incorporated herein as if set forth in in full in this Section 1.

Section 2.

The City Council's decision whether or not to (i) exercise Urbana's RFR to purchase those iTV-3 assets located within the City of Urbana, exclusive of those physical assets which are already owned by Urbana or the University and (ii) grant iTV-3's request to assign and transfer the Cable Agreement to CWB is a legislative, rather than administrative/adjudicative, decision.

Section 3.

The City Council believes that the 30-day clock provided in Paragraph 8 of the NFP Agreement regarding when the City Council must reach a decision whether or not to exercise Urbana's RFR has not begun to run since iTV-3 has not provided "all of the information [the cities] request in order to make an informed decision as to whether to exercise this right." Brackets supplied.

#### Section 4.

The City Council shall and hereby refrains from taking any action to exercise or refuse to exercise Urbana's right of first refusal to purchase those iTV-3, Inc. assets located solely within the City of Urbana but which are not already owned by Urbana or the University because of one or more of the following reasons:

- a. There is nothing in Paragraph 8 of the NFP Agreement which requires the City Council to exercise Urbana's RFR to purchase iTV-3's assets located within Urbana's boundaries.
- b. Neither iTV-3 nor CWB has provided Urbana with sufficient information necessary for the City Council with "all of the information they request in order to make an informed decision as to whether to exercise" Urbana's RFR.
- c. The CWB Valuation of iTV-3 assets located in Urbana and Champaign is not based on the requirements of Paragraph 8 of the NFP Agreement since the CWB Valuation does not constitute "an arms-length, written offer to purchase" the iTV-3 assets located within Urbana and Champaign.
- d. The CWB Valuation of iTV-3 assets located in Urbana and Champaign does not exclude the assets already owned by Urbana, Champaign and the University.
- e. Neither iTV-3 nor CWB has given Urbana an amount which either or both of them believe Urbana must pay in order to exercise Urbana's RFR.

#### Section 5.

Nothing in Section 4 shall be deemed, interpreted or construed as a waiver of Urbana's RFR in the absence of affirmative action on the part of the City Council.

#### Section 6.

The City Council shall and does hereby deny, without prejudice, iTV-3's request to assign and transfer the Cable Agreement to CWB because neither iTV-3 nor CWB provided Urbana with sufficient information insofar as (a) how CWB plans to operate, maintain and expand the UC2B Network and handle community and local government relations; (b) whether CWB has sufficient technical staff to operate, maintain and expand the UC2B Network in a means satisfactory to Urbana and Champaign; and (c) whether CWB has or will have sufficient financial resources to operate, maintain and expand the UC2B Network.

Section 7.

In the event that iTV-3 and/or CWB provide sufficient information regarding CWB's plans to operate, maintain and expand the UC2B Network within Urbana and Champaign and for handling CWB's relations with the Urbana community and local government, the City Council may, in its sole discretion, elect to reconsider its decision to deny, without prejudice, iTV-3's request to assign and transfer the Cable Agreement to CWB.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this \_\_\_\_ Day of \_\_\_\_\_, 2016 with the "ayes" and "nays" being recorded as follows:

AYES: \_\_\_\_\_.

NAYS: \_\_\_\_\_.

ABSTENTIONS: \_\_\_\_\_.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk.

APPROVED by the Mayor this \_\_\_\_\_ Day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor.

ORDINANCE NO. 2016-07-059

AN ORDINANCE WAIVING RIGHT OF FIRST REFUSAL AND GRANTING ITV-3, INC.'S REQUEST TO ASSIGN CABLE FRANCHISE AGREEMENT BETWEEN CITY OF URBANA AND ITV-3, INC. DATED DECEMBER 15, 2014

(Waiver of Urbana's Right to Purchase iTV-3, Inc.'s Assets in Urbana and Consent to Transfer iTV-3, Inc.'s Cable Franchise Agreement to Countrywide Broadband, LLC or iTV-3, LLC)

WHEREAS, the City of Urbana ("Urbana") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power, whether legislative or administrative, and perform any function pertaining to its government and affairs not otherwise expressly reserved to the State of Illinois by legislation; and

WHEREAS, in August 2009, the University of Illinois ("University") submitted a proposal to the U.S. Department of Commerce seeking financial assistance in order to create and construct a high speed fiber optic network within the City of Urbana and the City of Champaign ("Champaign") to be known as the Urbana-Champaign Big Broadband project ("UC2B Network"); and

WHEREAS, in September 2009, Urbana, Champaign and the University entered into and executed an Intergovernmental Agreement ("IGA") which provided for the organization of the Urbana-Champaign Big Broadband Consortium ("Consortium") in order to create and construct the UC2B Network should the federal government approve the University's request for financial assistance to create and construct the UC2B Network; and

WHEREAS, in February 2010, the U.S. Department of Commerce awarded the University a grant of up to \$22,534,776 for the creation and construction of the UC2B Network; and

WHEREAS, in November 2010, the Illinois Department of Commerce and Economic Opportunity awarded the University a \$3,500,000 grant to construct the UC2B Network; and

WHEREAS, Urbana and Champaign provided local funding and/or in-kind value for the construction of the UC2B Network; and

WHEREAS, the Consortium commenced, undertook, and completed creation and construction of the UC2B Network in accordance with

the terms and conditions of the U.S. Department of Commerce and the State of Illinois grants; and

WHEREAS, the Consortium members began operating the UC2B Network but ultimately decided to form a not-for-profit corporation to take over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, on August 16, 2013, the Urbana Champaign Big Broadband NFP ("NFP") was incorporated; and

WHEREAS, the U.S. Department of Commerce was given a 77% lien interest in the physical assets of the UC2B Network; and

WHEREAS, on or about September 20, 2013, the U.S. Department of Commerce (the National Telecommunications and Information Administration, "NTIA") approved the University's request to assign and transfer the operation, maintenance and expansion of and to grant indefeasible rights of use in and to the UC2B Network to the NFP; and

WHEREAS, sometime after September 20, 2013, the Consortium members transferred and assigned their rights to operate, maintain and expand and to grant indefeasible rights of use in and to the UC2B Network to the NFP while retaining any and all ownership rights in and to the physical assets which comprise the UC2B Network as of the immediate aforesaid date; and

WHEREAS, sometime prior to February 28, 2014, the NFP decided to seek a partner which would have the resources and ability to operate, maintain and expand the UC2B Network with the goal of expanding the same throughout Urbana and Champaign; and

WHEREAS, on or about February 28, 2014, the NFP and iTV-3, Inc. ("iTV-3") entered into an agreement ("NFP Agreement") which, *inter alia*, transferred the NFP's right to operate, maintain and expand and grant indefeasible rights of use in and to the UC2B Network to iTV-3; and

WHEREAS, Paragraph 8 of the NFP Agreement states:

iTV-3 further agrees that, in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called "the Cities") will have right of

first refusal to purchase iTV-3's interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.

(The "right of first refusal" referenced in Paragraph 8, hereinafter referred to as "RFR"); and

WHEREAS, iTV-3 took over the operation, maintenance and expansion of the UC2B Network; and

WHEREAS, iTV-3 and Urbana entered into and executed a Cable Television Franchise agreement ("Cable Agreement") dated December 15, 2014, whereby iTV-3 was granted the right to operate and provide cable television programming to those Urbana residents and businesses which subscribed to the programming which iTV-3 would make available; and

WHEREAS, Paragraph 6.1 of the Cable Agreement, *inter alia*, provides:

Neither the Grantee nor any other Person may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. ... The consent or approval of the City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise Agreement, known or unknown to the City or Grantee, nor any enforcement rights of the City under any ordinance or this Franchise Agreement;

and

WHEREAS, iTV-3, pursuant to the Cable Agreement, commenced providing cable television programming over the UC2B Network; and

WHEREAS, Champaign entered into a substantially similar cable franchise agreement with iTV-3; and

WHEREAS, on or around February 12, 2016, iTV-3 notified the NFP and the NFP notified Urbana and Champaign that iTV-3 and Countrywide Broadband, LLC ("CWB") had entered into and executed an asset purchase agreement ("APA") whereby iTV-3 agreed to sell and CWB or an affiliate created by CWB (collectively, "CWB") agreed to purchase all of iTV-3's assets wherever located including, but not necessarily limited to, those located in Urbana and Champaign; and

WHEREAS, shortly after April 7, 2016, Champaign received the same Federal Communications Commission Form 394 from iTV-3; and

WHEREAS, iTV-3 and CWB have provided Urbana with certain information regarding iTV-3 and its operation, maintenance and expansion of the UC2B Network and CWB's general overall plan to operate, maintain and expand the UC2B Network and CWB's generalized plan for handling community and local government relations upon taking over the UC2B Network and the cable franchise agreements with Urbana and Champaign; and

WHEREAS, federal regulations (47 CFR 76.502) provide that Urbana has 120 days from the date of receipt of FCC 394 in which to decide whether or not to grant iTV-3's request to assign and transfer the Cable Agreement to CWB; and

WHEREAS, on or after April 14, 2016, iTV-3 and CWB provided the NFP, Urbana and Champaign with a value of \$22,559,159 for all iTV-3 assets located in Urbana and Champaign which value is based on a "replacement value approach" (Exhibit A appended hereto and made a part hereof) ("CWB Valuation"); and

WHEREAS, the CWB Valuation includes a value of \$17,605,929 for the UC2B Network physical assets already owned by Urbana, Champaign and the University which neither Urbana nor Champaign are obligated to purchase under Paragraph 8 of the NFP Agreement; and

WHEREAS, Urbana, through its City Attorney, reasonably believes that the "replacement value" of those iTV-3 assets located within Urbana and Champaign which are not already owned by Urbana, Champaign or the University is \$4,953,230, based on the "replacement value" figures provided by iTV-3 and CWB; and

WHEREAS, neither iTV-3 nor CWB has provided a value of just those UC2B Network assets located in Urbana which are not already owned by Urbana and the University; and

WHEREAS, NFP and CWB have agreed in a memorandum of understanding ("MOU") on terms which the NFP believes are acceptable and which the NFP has recommended to Urbana, Champaign and the University to approve (Exhibit B); and

WHEREAS, the Urbana and Champaign City Attorneys and the University's attorney have recommended modifications to the terms contained in the MOU and CWB has accepted those recommendations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AND FOR THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, as follows:

Section 1.

The City Council shall and hereby does waive Urbana's right of first refusal to purchase those iTV-3 assets which are located in Urbana but which are not already owned by Urbana or the University.

Section 2.

The City Council shall and does hereby grant iTV-3, Inc.'s request to assign and transfer its Cable Agreement with Urbana to CWB or its affiliate, iTV-3, LLC.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this \_\_\_\_ Day of \_\_\_\_\_, 2016 with the "ayes" and "nays" being recorded as follows:

AYES: \_\_\_\_\_.

NAYS: \_\_\_\_\_.

ABSTENTIONS: \_\_\_\_\_.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk.

APPROVED by the Mayor this \_\_\_\_\_ Day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor.

**EXHIBIT 2**

**CHAMPAIGN CITY ATTORNEY'S  
MEMORANDUM TO CHAMPAIGN  
CITY COUNCIL (7/12/2016)**



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## REPORT TO CITY COUNCIL

**FROM:** Dorothy Ann David, City Manager

**DATE:** July 8, 2016

**SUBJECT:** iTV-3 BUSINESS AND FRANCHISE TRANSFER – SS 2016-035

**A. Introduction:** This Study Session will provide an overview of the current status of the discussions among the Cities of Champaign and Urbana, the University of Illinois, the Urbana Champaign Big Broadband Not For Profit, CountryWide Broadband and iTV-3, Inc. regarding the proposed change in service providers utilizing the fiber system constructed by the UC2B Consortium. The City Council, after considering the background materials provided, should be in the position to provide guidance to the City staff regarding the proposed transfer of the cable franchise to CountryWide Broadband and the negotiations concerning deployment of broadband assets in the community.

**B. Recommended Action:** The Administration recommends as follows:

- a. Council direction to continue discussions with CountryWide Broadband, doing business through its newly created affiliate as iTV-3 of Central Illinois, LLC (CountryWide Broadband and its affiliate, iTV-3, LLC, collectively referred to as “CWB.”)
- b. Place an item on an upcoming regular meeting agenda, likely August 2, 2016, to deny transfer of the cable franchise, until CWB and iTV-3 provides further evidence of CWB’s financial and technical ability to operate, maintain and expand the cable franchise.

**C. Prior Council Action:**

- In CB 2014-200 on December 2, 2014, the Council approved a cable franchise with iTV-3, Inc.
- On April 19, 2016 at a Study Session, the Council received information relative to the then-current status with respect to Urbana Champaign Big Broadband Not For Profit (“NFP”), iTV-3, Inc. and CWB. (SS 2016-019) At the Study Session meeting on April 19, 2016, the Council gave the Administration direction to continue the due diligence process and continue with the issuance of a Request for Information to find alternative providers should the City elect to exercise its “Right of First Refusal” which is contained in the agreement between the NFP and iTV3, Inc.
- On May 13, 2016, the Council received an Information Only memo concerning: 1.) The Request for Information, and 2.) The recently received FCC Form 394 requesting a transfer

of the Cable Franchise from iTV3, Inc. to CWB's affiliate, iTV-3, LLC. (The form is attached as Exhibit D to the Study Session Report for the April 19, 2016 Study Session.)

**D. Summary:**

- 2009 – City of Champaign, Urbana, and the University of Illinois created the UC2B Consortium via an Intergovernmental Agreement in order to build the fiber backbone throughout the community, provide connections to “anchor institutions” (churches, schools, government buildings) and provide fiber-to-the-home connections to certain underserved areas, principally in the northern sections of Champaign and Urbana (collectively “FTTP” i.e. fiber-to-the-premises). The construction was funded using a Federal Broadband Technology Opportunities Program (“BTOP”) grant and matching local funds (“grant funds”). Approximately \$15 million of the \$29.4 million in grant funds was spent passing 4,750 residences and 250 businesses, connecting approximately 1,200 locations (residences and community anchor institutions), with the remainder to the construction of the backbone (i.e. fiber rings) and other facets of the system. (The total system hereinafter referred to as the “UC2B Network.”)
- 2009-2013 – Construction of UC2B fiber rings (commonly referred to as the UC2B “backbone”) throughout the community and FTTP connections.
- 2013-2014 – Creation of the NFP.
- February, 2014, agreement between the NFP and iTV-3 (“iTV-3-NFP Agreement”) in order to promote connection of and actually connecting homes and other premises to UC2B the Network.
- February, 2016 – iTV-3 at first informally indicated that it was seeking to sell its rights in the UC2B Network along with other parts of its system in Peoria, East Peoria and Pekin to CWB. The transaction between iTV3 and CWB has already formalized at this point in time. Principals with CWB visited and introduced themselves to representatives of both cities, the University and the NFP Board. By March 3, 2016, the NFP sent a request for information to iTV-3, Inc. Responses were received on March 23, 2016 and in response to the Cities’ requests, follow up additional responses were received on April 13, 2016.
- April 7, 2016, the City received a request to transfer the cable franchise from iTV-3, Inc. to CWB. Federal Law requires City action on such a request within 120 days of receipt, thus action is required at the August 2, 2016 regular meeting. The FACC Form is attached to the April 16 report.
- April 21, 2016 – The Cities and University presented a Term Sheet to CWB in hopes of negotiating a comprehensive agreement which guarantees buildout of the entire community, something CWB has indicated verbally to be their intention.
- April – Present – The Cities have requested more information, including business plans, marketing plans, financial pro formas, and technical staffing plans in order to review the proposed franchise transfer. The City has received some very generalized information. CWB has advised that it will provide more specific information after the Cities waive their respective “Rights of First Refusal” to purchase those UC2B Network assets which are not already owned by the respective Cities or the University. The Cities repeatedly advised iTV-3 and CWB that the requested information was necessary “in order [for the Cities] to make an informed decision as to whether to exercise this right.” iTV-3-NFP Agreement, ¶ 10, brackets supplied.

- May – June 23, 2016 – Representatives of the NFP and CWB negotiated certain essential terms in a memorandum of understanding (“MOU”). The NFP Board recommended to both Cities that they consider the agreement and complete negotiations. The NFP advised CWB that it would neither proceed with further negotiations to reach a final formal agreement based on the MOU nor execute the MOU itself unless and until the Cities approved of the terms contained in the MOU. The city attorneys for the Cities and the University found the terms in the MOU unacceptable as drafted.
- June 21, 2016 – July 6, 2016 – The attorneys for Champaign, Urbana, the University, and the NFP, as well as the Chair of the NFP Board meet nearly every day in an attempt to arrive at a document outline that meets the concerns expressed.
- At this time, there is no agreement between the Cities and CWB.
- Due to CWB’s refusal to provide the information requested by the NFP and the Cities and the current failure of CWB and the NFP to reach agreement on terms which are acceptable to the City, the administration is recommending that the transfer of the cable franchise not be approved.

**E. Background:**

**1. Prior Agreements.** From 2009 (the date of the federal grant and the creation of the UC2B Consortium) through 2013, the efforts of the original Consortium (consisting of the Cities of Champaign and Urbana and the University of Illinois) were primarily focused on the construction of the fiber optic system backbone throughout the community. While encountering some obstacles along the way, largely the system was successfully constructed and operational by Fall 2013. At that time, over 1,000 residential and institutional customers were connected to the UC2B system.

**2. Not-For-Profit and iTV-3.** In late 2013, the Consortium conveyed the right to use all system assets to a not-for-profit corporation created by the Consortium. The UC2B NFP Board first met on October 29, 2013. Three representatives were appointed by each member of the Consortium. As a high priority, the UC2B NFP was seeking a third-party entity to operate and expand the fiber system throughout the community. On February 28, 2014, the UC2B NFP entered into an agreement with iTV-3, Inc. whereby iTV-3 assumed:

- a. Obligations and liabilities of UC2B;
- b. Assignment of customer agreements;
- c. The agreement to lease fiber in the form of a 20 year Indefeasible Right to Use (IRU); and
- d. The use and responsibility for all the assets associated with the UC2B network, including accounts receivable, fiber optics, and electronics.

iTV-3 also agreed as follows:

“...in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called “the Cities”) will have right of first refusal to purchase iTV-3’s interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a

written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.”

As part of the agreement, iTV-3 agreed to build in various sectors in Champaign and Urbana in which pre-sales by potential customers exceed 50% of the premises in the sector. The agreement, once executed, was contingent upon an agreement for the issuance of \$15 million to provide financing for the construction in Champaign and Urbana.

An addendum to the agreement was entered into on May 27, 2014. In that addendum to agreement, iTV-3 waived the contingency with respect to financing. There is also a provision which indicates that iTV-3, five years after the date of the IRU, will make available for lease and IRU any remaining unused fiber that is allocated in any sector of the community where 50% of the pre-sale threshold has not been met.

**3. Current Status of iTV-3, Inc. Effort (2014-2016).** When reviewing the performance of iTV-3 to date, information was gathered with respect to the current customer base of iTV-3 in Champaign. One indicator of the customer base is the payment of franchise fees under the December, 2014 Cable Franchise Agreement. iTV-3 indicates that it began offering video services in Champaign in February, 2016. The fees paid to Champaign for the first quarter of 2016 (5% of revenue for video) amounts to \$30.93. The PEG fees (2% of revenue for video) have been \$11.77. The PEG channels were added to the iTV-3 video offering in May, 2016 after an inquiry by the City of Urbana.

iTV-3 represents that while the number of customers it reports is lower than when the UC2B Network was turned over in February, 2014, it has done substantial work readying the system for growth and worked hard to retain customers. In particular, the video system has been upgraded as well as components in that part of the system in Champaign-Urbana. , The video system is substantially operated from its facility in East Peoria and serves Peoria, Pekin and E. Peoria in addition to the Champaign-Urbana area. No dollar figures have been provided to the Cities relative to those expenditures.

iTV-3 represents that thousands of customers have “signed up for services that have yet to be installed.” iTV-3 is only required to actually connect persons where a “sector” has obtained 50% commitment rate. iTV-3 has not obtained a 50% commitment rate in many sectors. Since February, 2014, the 50% take rate has only been achieved in 4 sectors in Urbana and 1 in Champaign .See the map on page 5 of the RFI attached to the May 13, 2016 Information Only Report for a depiction of the sectors in total and where there is build out. A prospective customer can visit the iTV-3 website, type in an address and receive information relative to built-out status (see attached sample inquiry response for 2 addresses).

**4. Cable Franchise Agreement.** Champaign and Urbana both have entered into cable franchise agreements with iTV-3. These agreements are virtually identical to the agreement entered into with Comcast. Champaign’s agreement was approved on December 2, 2014. The agreement permits iTV-3 to operate a cable system in the public right-of-way. The cable agreement in Section 6.1 provides as follows:

“Neither the Grantee nor any other Person may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. ... The City shall process any transfer request submitted by Grantee in accordance with all applicable laws and regulations. The consent or approval of the City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise Agreement...”

The City has 120 days from the date of receipt of a completed and accurate notice of proposed transfer (FCC Form 394) pursuant to federal law to approve or deny the transfer. This notice of proposed transfer was received by the City on April 8, 2016. The notice required by federal law provides for a minimum level of information for the City to evaluate. The Cities, through the UC2B NFP, have requested more information and may yet request supplementary information in the process of evaluation. If the City does not act within the 120 day period, August 5, 2016, the transfer is deemed approved. This request and form are also attached as Attachment-D to the April Study Session report.

**5. Proposed Sale.** The UC2B NFP was informally advised of a proposed sale to a company called “CountryWide Broadband (CWB)” of iTV-3 assets, including those in Champaign, Urbana, East Peoria, Peoria, and Pekin, on approximately February 15, 2016. The details at that time were incomplete, but agreements between iTV-3 and CWB appear to have been executed at about that time.

A core group of staff from both Cities and the University and Board Members of the UC2B NFP met to begin generating information concerning the people shown by a public website to be part of the corporation proposing the purchase. The Cities and the UC2B NFP immediately began drafting information requests in an effort to understand any proposed transaction. News media began reporting details of the proposed purchase on February 23, 2016 (see attached news story as Attachment B to the April Study Session Report attached)). Representatives of the UC2B NFP, the two Cities, and the University met on February 22, 2016 to prepare for a meeting with iTV-3 concerning the proposed sale to CountryWide Broadband. iTV-3 and representatives of CWB met with local representatives in a “meet and greet” fashion on February 23, 2016. At that time, the representatives of CWB provided basic information concerning the background of the four principals. They represented that CWB was a newly formed corporation with four principal people having backgrounds in the cable and broadband industries. The company at the time presented very basic information. It did not provide a business plan.

**6. Information Gathering.** On March 3, 2016, the UC2B NFP sent a detailed request for information to iTV-3 and CountryWide Broadband on behalf of the two Cities.

**a. CWB.** The company was newly formed in 2016, consisting of four individuals with considerable business experience in cable television, fiber construction, and finance. Experience in a fiber to the home environment is more limited. One person was responsible for the fiber system in Highland, Illinois for under 2 years. CWB anticipates retaining most current employees of iTV-3 and adding marketing staff, however the City has no verifiable commitments concerning the continuity of the current iTV-3 employees nor where employees would be based or operate if they were retained. CWB proposes to operate through its affiliate, iTV-3 of Central Illinois, LLC. The Cities received responses from the attorneys for iTV-3 and CWB on March

31, 2016. The responses provided to the questions from the NFP are attached as Attachment C to the attached April, 2016 Study Session report.

**b. Finances.** The response included the Asset Purchase Agreement between iTV-3, Inc. and a newly created affiliate of CountryWide called iTV-3, LLC, as well as tentative financial Commitment Letters. The purchase price included in the Asset Purchase Agreement apparently includes systems in Peoria, Pekin, and East Peoria. As of this date, neither the UC2B NFP nor the Cities have received any written information indicating the market price proposed for assets in Champaign and Urbana exclusive of those in Peoria, Pekin, and East Peoria as is required in the agreement between the NFP and iTV-3.

The basic documents that CWB and iTV-3, Inc. have provided indicate that one financial source has provided \$15 million in equity financing (i.e. presumably for ownership interest in the iTV-3, LLC (the affiliate of CWB)). This "commitment" apparently supports the purchase of iTV-3, Inc. assets. Additionally, CWB has provided information regarding a \$5 million, one-time credit facility (i.e. loan) for capital equipment, and a \$2 million revolving line of credit for operations. Other sources of funds include \$260,000 annually, paid by current holders of IRU's (rights to use the fiber which are akin to long-term leases) for annual maintenance activities and current subscriber revenue. iTV-3, Inc. and CWB also provided an agreement to purchase iTV-3, Inc. assets, but it is unclear what part of the purchase price is attributable to assets in Champaign-Urbana. When asked, the parties provided a figure of \$22 million, but indicated that this was the replacement costs (i.e. cost of construction). The right of first refusal requires a market value figure.

CWB has not provided a pro-forma financial statement, any audited financial documents or a business plan. As an LLC in Illinois, liability is ordinarily limited to the assets of the LLC and there has been no disclosure of assets beyond those mentioned.

**7. NTIA Approval.** The original Grant Provider, National Telecommunications and Information Administration (NTIA), an agency within the U.S. Department of Commerce, has indicated that they would also be required to approve any further sale of the use of assets, just as they previously approved the transfer of the right to utilize the system from the UC2B NFP to iTV-3. It is hoped that the information that is being generated pursuant to the due diligence inquiries made by the Cities and the UC2B NFP will be useful in obtaining the approval of NTIA if the transaction continues to progress. . NTIA was the entity responsible for the original BTOP grant. The U.S. Government has a continuing lien for the amount of the grant for 20 years.

**8. UC2B Background and Status Through May, 2016.** The reports from April 19, 2016, (study session) and May 13, 2016 (information only) are attached for other detailed information.

#### **F. Current Discussion Points for the City Council.**

**1. Right of First Refusal.** The agreements between iTV-3, Inc. and the UC2B NFP contain a "Right of First Refusal" (RFR) in the name of each City. In other words, each City has a RFR for assets in its City. The "assets" referred to are the IRU (Right to Use) the fiber rings, the existing accounts at the time of transfer, the right to receive maintenance fees (currently approximately \$260,000 per year) from holders of other IRU's, including the Cities of

Champaign and Urbana, the University, and several private companies – all of whom the UC2B Consortium had negotiated and signed up prior to the transfer to iTV-3.

The RFR is a legal mechanism which allows each City to purchase back the “assets” in its community from iTV-3 at a purchase price equal to any fair market value contained in an offer that iTV-3 has received from a third party. In essence and at minimum, this provision permits the Cities to review the transaction with the third party. This provision has caused each of the parties’ issues because of the complexity of its implementation.

The Cities have 30 days to decide to exercise the option. The 30 day decision window, the Cities believe, only runs from the time each City has received adequate information with respect to the fair market value of assets in each community. Unfortunately the Cities have only been provided with incomplete and inadequate information as to the fair market value of the “assets” in each community in accordance with the NFP-iTV-3 agreement. It is apparent that the Right of First Refusal is important because it presents some leverage to the City to deal with a provider which is not devoting economic resources to the system in order to build it out. If there was substantial progress being made towards build out, it is unlikely the City would seek to exercise this provision. Under the circumstances, it seems important that if the City wishes to continue promoting build out of the fiber system that it retain some possibility of purchasing back the fiber “assets” (i.e. the IRU) in some form, even if for limited purposes or under limited circumstances.

**2. Cable Franchise Transfer.** A cable franchise is required by each City to permit any cable or video operator to utilize the City’s right-of-way. Both federal and state statutes bear on the question as well as our local ordinances. Federal law bears on the transfer of a cable franchise from one business entity to another.

The process of transfer begins with a request for transfer on Federal Communications Commission Form 394. The City received this form on April 8, 2016. The form is attachment D to the April, 2016 report. The City had 30 days to seek additional information and a total of 120 days after the receipt of the information to act to approve or disapprove. If the City fails to act, the transfer is deemed approved. (47 U.S.C. §537, attached) The date for deemed approval is August 5, 2016.

Both Cities have requested additional information, but much of the information is not being provided unless the Cities release or otherwise terminate the “Right of First Refusal”. Hence, it is the City Attorney’s opinion that the City Council would be justified in denying the transfer, at this time, and without prejudice based on the lack of information to support the financial and technical aspects of the franchise. A federal appellate court has held that the review of transfer of control of a cable franchise is a legislative act.

**3. Discussions with CountryWide Broadband.** After the Cities and University and the NFP presented a proposed “terms sheet” as the basis for a renewal agreement with the new provider on April 23, 2016, approximately four weeks went by without any substantive response. Since the end of May, however, there have been a substantial number of negotiation sessions focusing on the eight areas of interest/concerns as follows:

1. Timing of reaching agreement and City consideration.

2. Financial performance security for build out.
3. Remedies for breach of other parts of contract.
4. On-going financial support for administration of the NFP.
5. Board representation. (CWB requested seat on NFP Board.)
6. More explicit build out requirements focusing on the sectors and times of backups.
7. On-going information transfer and ability to conduct formal audits of activities in Champaign-Urbana.
8. Right of First Refusal/Option to Repurchase.

While CWB has represented that it is committed to building out to the entire City, no contractual remedies or security for build out have been agreed to relative to such construction. Since CWB appears to have little or no means in the way of cash or other assets beyond the assets purchased from iTV-3, Inc. and the debt related to the purchase, they are not able to financially commit to security to insure the build out (e.g. performance bond secured by a third party or letter of credit).

The parties have spent many hours seeking alternative remedies e.g. annual financial payment to NFP if annual building goal is not met, fiber return, loss of exclusivity (i.e. a requirement that fiber be made available to others more rapidly, (but with the other parties paying form rental fees), option to purchase in the event of very low build-out numbers, to name a few. CWB has rejected the substantial parts of the suggested remedies.

CWB has offered to:

1. Partially offset the NFP's costs of the negotiations (\$40,000);
2. An increase of \$25,000 per year for six years towards the Community Benefit Fund. The fund is in place for the NFP to promote programs to ensure all segments of the community have access to digital resources.;
3. Pay \$25,000 annually to support the NFP (needed by the NFP to actively monitor the agreement) for 6 years;
4. The company seeks the elimination of the City's Right of First Refusal.
5. Extension of the exclusive use of the fibers until the end of 2022 (currently iTV-3's period of exclusivity ends in 2019);
6. The company had committed to passing homes in the following years:

Year	Annual	Total
2016-2017	4,500	4,500
2018	3,250	7,750
2019	3,500	11,250
2020	3,750	15,000
2021	4,000	19,000
2022	3,000	22,000

The company indicates that its resources do not allow any build out in 2016 so numbers would be required to be adjusted in a manner that has not yet been agreed upon.

7. Lowering the threshold to actually connect from 50% to 45% then in 2020 to 40%, i.e. the percentage of persons required to commit to hookup before the actual connection is made in a sector.
8. Will work with the NFP to more rationally define sectors.

**G. Alternatives:**

1. Provide direction to place an item on the August 4, 2016 regular agenda which disapproves the requested transfer of the cable franchise, but with direction to continue discussions per Council direction at the Study Session.
2. Provide other direction.

**H. Discussion of Alternatives:**

**Alternative 1** would be to place an item on the agenda rejecting transfer of the franchise at this time but continue discussions with CWB as warranted.

**a. Advantages**

- Would meet the statutory deadline for action regarding the franchise transfer.
- Would be consistent with the need for additional information related to the proposed new franchisee.
- Keeps open opportunity to pursue a mutually beneficial agreement with a company that could pursue community-wide fiber build-out.

**b. Disadvantages**

- Continued discussions take a great deal of staff time.
- Rejection of the transfer could result in legal action.
- The company could withdraw from negotiations.

**Alternative 2** would be for the Council to provide other direction.

**a. Advantages**

- Depends on what other direction is provided.

**b. Disadvantages**

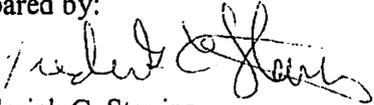
- Delaying action beyond August 5 would result in automatic transfer of franchise.

**I. Community Input:** The community is represented in the NFP Board and various members of the board have been active in the discussions with CWP and ITV-3. There was also a study session on April 19, 2016 where members of the public spoke. Additionally, there have been communications from members of the public encouraging build out.

**J. Budget Impact:** The City has no funds budgeted relative to fiber cable operations or discussions. The NFP has expended a considerable amount of effort on the negotiations, which include legal and other professional expenses. The time of board members is at no direct expense to the City except for salaries of staff who sit on the board or are involved in the processes.

**K. Staffing Impact:** The City Attorney has devoted nearly 80 hours over the past 6 weeks to these discussions and planning effort. The Director of Public Works is on the UC2B NFP Board and has devoted a considerable amount of time to the effort. Other staff members, including the City Manager, have been involved in the discussions.

Prepared by:



Frederick C. Stavins  
City Attorney

Attachments: SS 2016-019 – April 15, 2016 (for April 19, 2016 Study Session)  
Prior Council Action (Attachment A)  
News Story (Attachment B)  
Responses to Request for Information (Attachment C)  
Form 394 (Attachment D)  
May 13, 2016 Information Only Memo - Attachments: RFI  
(<http://www.uc2b.net/uc2b2016/request-for-information-coming-soon/>)  
March 3, 2016 - UC2B Request for Information – iTV-3, Inc. and CWB response  
Statute  
iTV-3 response to request for connection



**REPORT TO CITY COUNCIL**

**FROM:** Dorothy Ann David, City Manager

**DATE:** April 15, 2016

**SUBJECT:** iTV3 PROPOSED SALE – SS 2016-019

**A. Introduction:** The purpose of this report is to provide background for the City Council with respect to current business proposals relative to the fiber network which was installed by the UC2B Consortium in Champaign and Urbana including fiber to the home connections in under-served areas and institutional connections to over 1,000 customers.

**B. Recommended Action:** The Administration recommends that the City Council provide guidance to the Administration relative to the City's rights under the series of UC2B agreements.

**C. Prior Council Action:**

- For a complete listing of prior Council action, refer to Attachment A.
- The most recent Council action took place in May 2014 in CB 2014-083 which approved additional funding for the UC2B not-for-profit.

**D. Summary:**

- The UC2B Consortium transferred use of the fiber system constructed under a federal grant to the UC2B not-for-profit corporation, (UC2B NFP).
- UC2B NFP entered into an agreement with iTV-3 to operate and expand the system.
- The Cities of Champaign and Urbana have a right of first refusal if assets are proposed to be sold by iTV-3.
- i-TV-3 has proposed to sell the assets to an affiliate of CountryWide Broadband (CountryWide).
- The Cities, through UC2B NFP, are gathering information in order to present a recommendation as to whether or not to propose exercising the right of first refusal.
- The Cities must each consent to the proposed transfer of the cable franchise from iTV-3 to CountryWide pursuant to the separate right-of-way "franchise" agreements between the Cities and iTV-3. The City has 120 days (until approximately August 6, 2016) to consent or reject the transfer under federal law.

**E. Background:**

**1. Prior Agreements.** From 2009 (the date of the federal grant and the creation of the UC2B Consortium) through 2013, the efforts of the original Consortium (consisting of the Cities of Champaign and Urbana and the University of Illinois) were primarily focused on the construction of the fiber optic system backbone throughout the community. While encountering some obstacles along the way, largely the system was successfully constructed and operational by Fall 2013. At that time, over 1,000 residential and institutional customers were connected to the UC2B system.

**2. Not-For-Profit and iTV-3.** In late 2013, the Consortium conveyed the right to use all system assets to a not-for-profit corporation created by the Consortium. The UC2B NFP Board first met on October 29, 2013. Three representatives were appointed by each member of the Consortium. As a high priority, the UC2B NFP was seeking a third-party entity to operate and expand the fiber system throughout the community. On February 28, 2014, the UC2B NFP entered into an agreement with iTV-3, Inc. whereby iTV-3 assumed:

- a. Obligations and liabilities of UC2B;
- b. Assignment of customer agreements;
- c. The agreement to lease fiber in the form of a 20 year Indefeasible Right to Use (IRU); and
- d. The use and responsibility for all the assets associated with the UC2B network, including accounts receivable, fiber optics, and electronics.

iTV-3 also agreed as follows:

“...in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called “the Cities”) will have right of first refusal to purchase iTV-3’s interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.”

As part of the agreement, iTV-3 agreed to build in various sectors in Champaign and Urbana in which pre-sales by potential customers exceed 50% of the premises in the sector. The agreement, once executed, was contingent upon an agreement for the issuance of \$15 million to provide financing for the construction in Champaign and Urbana.

An addendum to the agreement was entered into on May 27, 2014. In that addendum to agreement, iTV-3 waived the contingency with respect to financing. There is also a provision

which indicates that iTV-3, five years after the date of the IRU, will make available for lease and IRU any remaining unused fiber that is allocated in any sector of the community where 50% of the pre-sale threshold has not been met.

**3. Cable Franchise Agreement.** Champaign and Urbana both have entered into cable franchise agreements with iTV-3. These agreements are virtually identical to the agreement entered into with Comcast. Champaign's agreement was approved on December 2, 2014. The agreement permits iTV-3 to operate a cable system in the public right-of-way. The cable agreement in Section 6.1 provides as follows:

“Neither the Grantee nor any other Person may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. ... The City shall process any transfer request submitted by Grantee in accordance with all applicable laws and regulations. The consent or approval of the City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of any pending violations of this Franchise Agreement...”

The City has 120 days from the date of receipt of a completed and accurate notice of proposed transfer (FCC Form 394) pursuant to federal law to approve or deny the transfer. This notice of proposed transfer was received by the City on April 8, 2016. The notice required by federal law provides for a minimum level of information for the City to evaluate. The Cities, through the UC2B NFP, have requested more information and may yet request supplementary information in the process of evaluation. If the City does not act within the 120 day period, the transfer is deemed approved.

**4. Proposed Sale.** The UC2B NFP was informally advised of a proposed sale to a company called “CountryWide” of iTV-3 assets, including East Peoria, Peoria, and Pekin assets, on approximately February 15, 2016. The details at that time were incomplete.

A core group of staff from both Cities and the University and Board Members of the UC2B NFP met to begin generating information concerning the people shown by a public website to be part of the corporation proposing the purchase. The Cities and the UC2B NFP immediately began drafting information requests in an effort to understand any proposed transaction. News media began reporting details of the proposed purchase on February 23, 2016 (see attached news story as Attachment B). Representatives of the UC2B NFP, the two Cities, and the University met on February 22, 2016 to prepare for a meeting with iTV-3 concerning the proposed sale to CountryWide Broadband. iTV-3 and representatives of CountryWide met with local representatives in a “meet and greet” fashion on February 23, 2016. At that time, the representatives of CountryWide provided basic information concerning the background of the four principals. They represented that CountryWide was a newly formed corporation with four principal people having backgrounds in the cable and broadband industries. The company at the time presented very basic information. It did not provide a business plan.

**5. Information Gathering.** On March 3, 2016, the UC2B NFP sent a request for information to iTV-3 and CountryWide Broadband on behalf of the two Cities. Both entities, iTV-3 and CountryWide Broadband, have expressed reservations with respect to confidentiality of material that they would provide.

The Cities received responses from the attorneys for iTV-3 and CountryWide on March 31, 2016. The responses provided to the questions from the UC2B NFP are attached to this report as Attachment C. The response included the Asset Purchase Agreement between iTV-3, Inc. and a newly created affiliate of CountryWide called iTV-3, LLC, as well as tentative financial Commitment Letters. Neither the Asset Purchase Agreement nor the Commitment Letter have been fully executed, at least not as provided to the UC2B NFP. The purchase price included in the Asset Purchase Agreement apparently includes systems in Peoria, Pekin, and East Peoria. As of this date, neither the UC2B NFP nor the Cities have received any written information indicating the price proposed for assets in Champaign and Urbana exclusive of those in Peoria, Pekin, and East Peoria as is required in the agreement between the UC2B NFP and iTV-3.

**6. Franchise Approval to Transfer.** On April 7, 2016, the City received a letter from iTV-3, LLC, a subsidiary of CountryWide Broadband requesting approval of a consent to the transfer of the cable franchise. The company has provided a copy of Form 394 which provides some of the same information that was provided for in the previous responses. This request and form are also attached as Attachment D.

**7. Request for Information.** The two Cities have requested that the UC2B NFP serve on our behalf as part of the due diligence process. The UC2B NFP is proceeding to work with CTC Technology and Energy, a firm that has provided advice during the grant process and initial dealings with iTV-3. The goal is to gather market data, a valuation of our system and prepare the request for information (RFI) so the Cities can explore options in the event the Cities exercise the right of first refusal, or if the CountryWide deal falls through, to provide alternatives to iTV-3.

**8. NTIA Approval.** The original Grant Provider, National Telecommunications and Information Administration (NTIA), an agency within the U.S. Department of Commerce, has indicated that they would also be required to approve any further sale of the use of assets, just as they previously approved the transfer of the right to utilize the system from the UC2B NFP to iTV-3. It is hoped that the information that is being generated pursuant to the due diligence inquiries made by the Cities and the UC2B NFP will be useful in obtaining the approval of NTIA if the transaction continues to progress.

**F. Alternatives:**

1. Continue the due diligence process as outlined in the report including the request for information.
2. Provide other direction.

## **G. Discussion of Alternatives:**

**Alternative 1** would be to continue the due diligence process through the UC2B NFP, including moving forward with the request for information.

### **a. Advantages**

- City would protect its investment in the UC2B infrastructure by attempting to establish information relative to a potential new operator of the system.
- City would ensure that a competent operator was in place to function under the existing franchise agreement.

### **b. Disadvantages**

- The process is staff intensive, taking a good deal of time in the near future.
- The resolution of the issues may not have the desired impact of promoting a more rapid development of the fiber system.

**Alternative 2** would be to provide other direction to staff.

### **a. Advantages**

- Would depend on direction provided.
- May provide creative alternatives to the status quo.
- Would provide more specific direction with respect to the fiber system.

### **b. Disadvantages**

- Would possibly consume more staff time, depending on direction.
- May not be responsive to the current situation with respect to the proposed sale.
- Could discourage the current operator or its successor if there was not definitive action taken.

**H. Budget Impact:** The City has a significant investment in the UC2B fiber infrastructure. There is significant economic development potential. Balancing this investment is the outlay of City resources to encourage an operator into a rapid deployment of fiber to the home within our community. The City has assets in the form of its ownership interests in the fiber system and public right-of-way to leverage to this effect. As mentioned below, the UC2B NFP has current financial resources to support the retention of a consultant and legal help to review the purchase proposal and make recommendations to the Cities conserving the right of first refusal, however, those resources are very limited.

**I. Staffing Impact:** Representatives from various departments, including the City Manager's Office, Legal Department and others, have devoted a good deal of time in the last month (over 40 hours) attempting to evaluate options and secure information. This work load was unexpected and could not be sustained without additional resources, including the potential to retain consultants. The UC2B NFP Board has devoted a considerable amount of time to this issue as well, and has retained counsel to help. The City's UC2B NFP representatives are the Public Works Director and two citizens.

Prepared by:

Frederick C. Stavins  
City Attorney

Attachments: Prior Council Action (Attachment A)  
News Story (Attachment B)  
Responses to Request for Information (Attachment C)  
Form 394 (Attachment D)

## Attachment A

### Prior Actions Taken to Date by Champaign City Council

- Council Bill No. 2009-160 stated the City's support of the Federal grant application.
- Council Bill No. 2009-161 approved the intergovernmental agreement among the University of Illinois, the City of Urbana and the City of Champaign and created the Urbana Champaign Big Broadband Consortium.
- Council Bill No. 2010-035 approved a resolution accepting the Federal grant award.
- Council Bill No. 2011-120 rejected bids for UC2B Phase 1 construction and authorized the City Manager to negotiate a revised scope of work and associated pricing with the low bidder.
- Council Bill No. 2011-161 approved a subaward agreement with the University of Illinois for UC2B construction and authorized the City Manager to enter into a contract with Western Utility Contractors for Phase 1 construction.
- Council Bill No. 2011-162 approved a non-binding Letter of Understanding between the University of Illinois, the City of Urbana and the City of Champaign that articulated the roles and responsibilities for parties for the operational phase of UC2B.
- Council Bill No. 2011-168 approved an engineering services agreement with Shive Hattery for construction and observation of UC2B Phase 1 construction in the City of Champaign.
- Council Bill No. 2011-183 approved a budget amendment that established the UC2B operational fund.
- Council Bill No. 2011-244 authorized the City Manager to execute a contract for professional consulting services for business planning with NEO Fiber, LLC.
- Council Bill No. 2012-020 approved an alternative procurement process in an effort to provide for more minority inclusion in contracting for Phase 2 construction and installation.
- Council Bill No. 2012-056 authorized the City Manager to execute professional services agreements to retain two law firms, Baller and Herbst and Holland and Knight, to perform legal work for UC2B.
- Council Bill No. 2012-085 amended the intergovernmental agreement for UC2B.
- Council Bill No. 2012-086 authorized the City Manager to execute a contract with Power Up Electrical for Phase 2 construction and installation.
- Council Bill No. 2012-100 authorized the City Manager to execute a contract with KGP Telecommunications, Inc. for the purchase of materials and equipment associated with the fiber to the premise connections.
- Council Bill No. 2012-101 approved a change order to the contract with NEO Fiber, LLC to provide for additional professional consulting services related to preparation of the UC2B business plan and to provide assistance with preparation of documents to outsource customer call center and billing services and technical repair and maintenance of the UC2B fiber infrastructure.
- Council Bill No. 2012-113 approved a budget amendment providing for the fiber to the premise construction and the purchase of the necessary equipment and materials.

- Council Bill No. 2012-116 approved a change order to the Shive Hattery engineering services agreement to provide for construction observation and inspection of the Phase 2 fiber to the premise construction and installation project.
- Council Bill No. 2012-117 approved a budget amendment to accommodate the Shive Hattery change order approved by Council Bill No. 2012-116.
- Council Bill No. 2012-134 approved the UC2B Business and Strategic Plan.
- Council Bill No. 2012-156 approved a budget amendment that included changes to the UC2B operational fund, in part acknowledging expenses and revenues associated with business operations.
- Council Bill No. 2012-164 authorized the City Manager to execute an agreement with Solix to provide customer call center and billing/collection services for UC2B.
- Council Bill No. 2012-176 approved a change order with Chrisp Media, LLC to provide grassroots outreach and customer acquisition services for UC2B.
- Council Bill No. 2012-177 rejected proposals for UC2B fiber optic locating services.
- Council Bill No. 2012-195 approved an amendment to the Salary and Staffing Ordinance to add staff for the UC2B initiative.
- Council Bill No. 2012-217 approved a change order to the contract with Power Up Electrical to extend the time of performance, authorize additional payment for residential installations and back office support, and to improve customer service.
- Council Bill No. 2013-004 authorized the City Manager to execute an agreement with United States Infrastructure Corp. for UC2B fiber optic infrastructure locating services.
- Council Bill No. 2013-007 authorized the City Manager to execute an agreement with Columbia Telecommunications Corporation to provide professional consulting services associated with UC2B expansion negotiations and evaluation.
- Council Bill No. 2013-047 approved a change order with Solix for customer call center support and billing/collections services.
- Council Bill No. 2013-071 was postponed from the May 7, 2013 Regular Council Meeting agenda and reconsidered on May 14, 2013. This Council Bill approved a change order with Western Utility Contractors to provide for Phase 2.5, additional fiber to the premise construction and installation work.
- Council Bill No. 2013-081 approved an alternative procurement process to provide for more minority inclusion in contracting for UC2B Phase 3 construction and installation.
- Council Bill No. 2013-107 approved a change order with KGP Telecommunications, Inc. to purchase equipment and materials for Phase 3 construction and installation.
- Council Bill No. 2013-108 approved a budget amendment for the change order with KGP Telecommunications, Inc.
- Council Bill No. 2013-111 authorized the City Manager to execute a contract with Western Utility Contractors, Inc. to install and construct UC2B Phase 3.
- Council Bill No. 2013-112 approved a budget amendment for UC2B Phase 3 construction.
- Council Bill No. 2013-130 which the Champaign and Urbana City Councils met in a Joint Study Session on July 30, 2013 to discuss proposed amendments to the Intergovernmental Agreement that would provide for the authority to create a not-for-profit corporation to be known as Urbana-Champaign Big Broadband, replacing the UC2B Intergovernmental Consortium. Incorporated into the amendments was also a proposed set of new organizational bylaws for the not-for-profit.

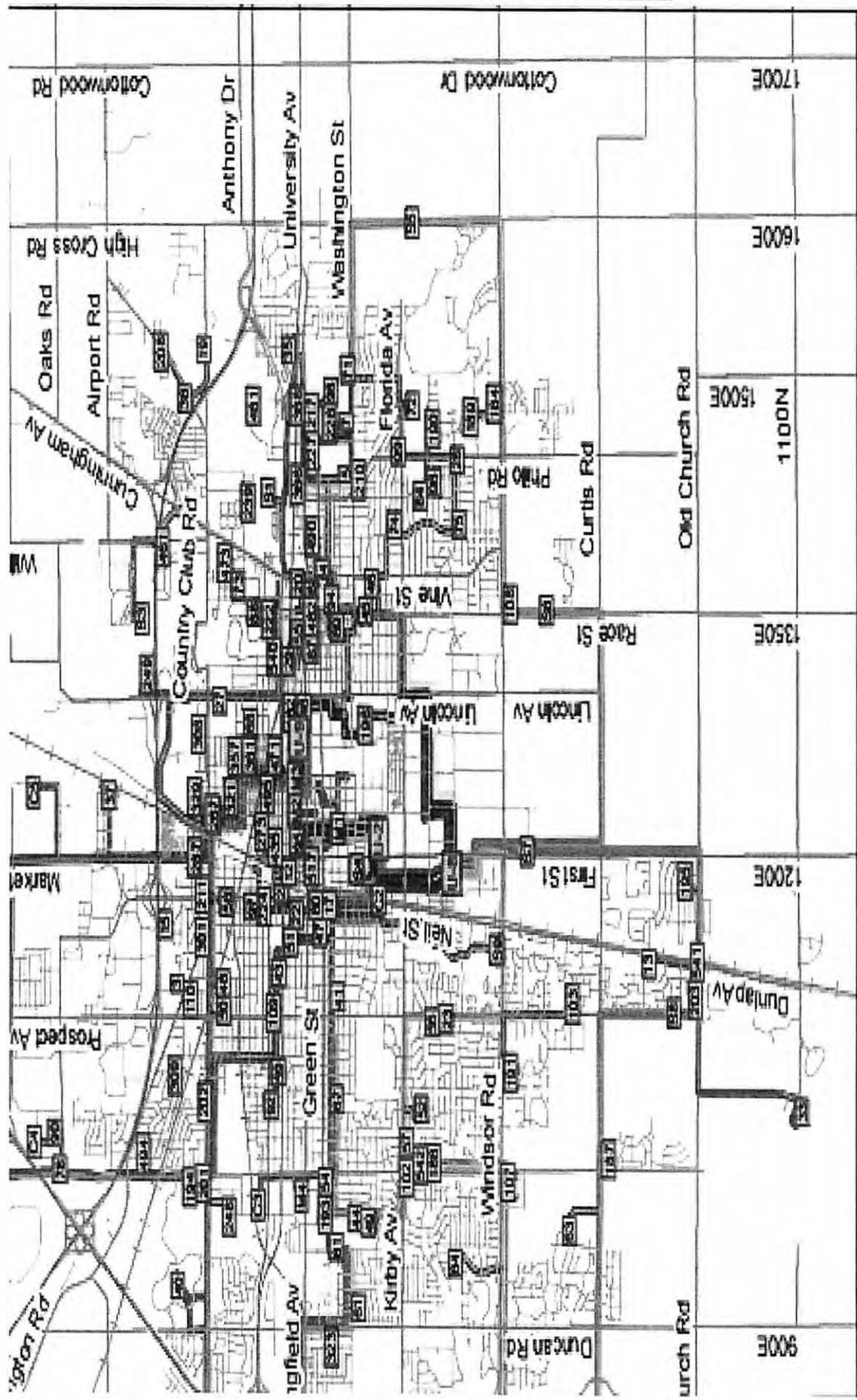
- Council Bill No. 2014-083 which in May, 2014 Council approved a Third Amended Agreement between UC2B Consortium and UC2B-NFP to provide additional funding for the iTV-3 for profit.

## Some History of UC2B

- \$ 22.5 million US Department of Commerce (BTOP) Grant administered by NTIA
- \$3.5 million from State of Illinois
- \$3 million local match
- 2009 Intergovernmental Agreement creates UC2B Consortium with board representation from the University of Illinois, City of Urbana and the City of Champaign
- University is grant administrator- Champaign is "lead agency"
- Grant Goal – Build backbone- Connect the underserved areas and community anchor institutions

# What the UC2B project Completed

- . Each of those seven rings has 216 strands of fiber, and there are 1,296 total strands of fiber between the two core nodes on two diverse pathways.
- At the end of the NTIA grant period in 2014, there were some 1,058 residences, 75 businesses and 256 CAIs connected via gigabit Adtran Active Ethernet.
- IRUs in place for :Champaign , Urbana, University, CU MTD, BBS LLC, and PEG



U-#

0 0.35



2014-2016

UC2B NFP and iTV-3,Inc.

ted at the end of 2013 and first met in February 2014

d members appointed by Champaign ,Urbana and the University –each entity appoint  
is as follows:

Dennis Schmidt

John Koontz,Vice Chair

Gordy Hulten

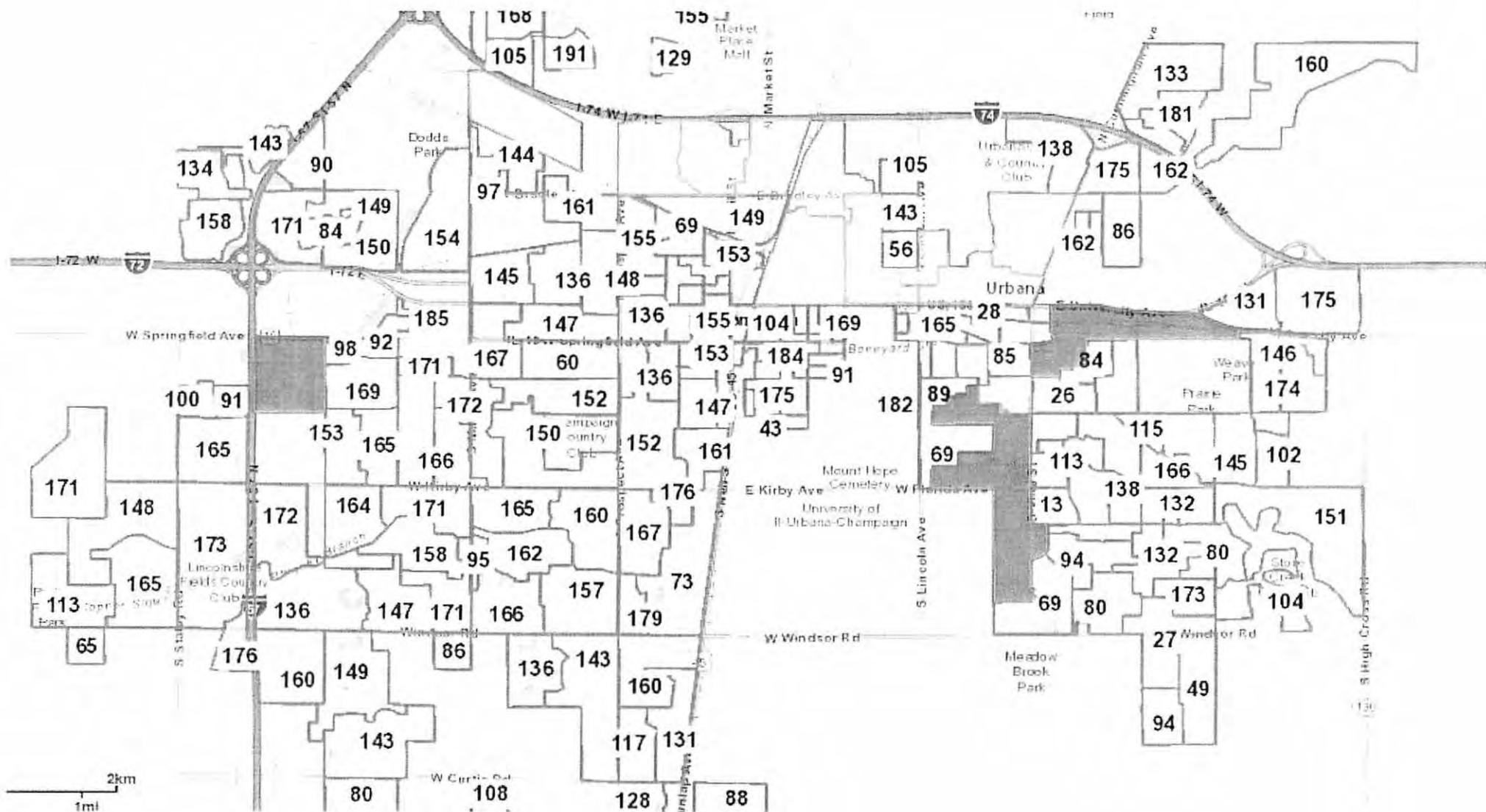
Pete Resnick

Brandon Bowersox-johnson

## iTV-3, Inc. Activity

- February, 2014- Agreement between NFP and iTV-3
- Highlights of agreement
  - 20 year IRU for remaining fiber, with options for renewal
  - Requirement to connect when 50% take rate is achieved
  - "exclusive use of the fiber for 5 years, then others allowed to build out in sectors where iTV-3 has not built
  - \$50k for Community Benefit fund for first 3 years, then \$25k for next 2 years
  - Cities have right of first refusal in the event of a proposed sale

December, 2014- City and iTV-3 enter into cable franchise agreement



2km  
1mi

# Announcement of proposed Sale by iTV-3

- February 15, 2016 announcement
- February 23, 2016, CountryWide Broadband principles introduced
  - Company is newly formed, so no track record
  - Four principles have experience in cable television, and corporate finance and fiber construction in different companies over diverse time frames
  - The company proposes to operate under a newly formed Illinois LLC
  - CountryWide Broadband has tentative financial commitments for the purchase from iTV-3 and some operating capital

# Franchise Transfer implicates Federal Law

- ITV-3 submitted a FCC Form 394 requesting transfer on April 8,2016
- City has until August 8,2016 to say yes or no, otherwise the transfer is deemed approved
- The City must decide on the proposed transferee's financial status, it's technical expertise to operate the system , its legal status IE ownership factors

## Right of First Refusal

- Contained in the NFP agreement with iTV-3

Permits the City to match the fair market value of assets located in Champaign. Same right for Urbana

## Council Direction requested

- Continue to negotiate
- Conditional denial of franchise transfer

## **EXHIBIT 3**

### **UC2B NFP QUESTIONS AND CWB'S RESPONSES (3/3/2016)**

## Responses to UC2B's 3/3/16 Questions

### 1. **Timeline for Deployment**

- 1(a) *What is CW's proposed schedule and strategy for completing the community wide FTTP build-out in the three years remaining on the iTV-3 contract? What are the plans for increasing the staffing at iTV-3 to allow for a faster build-out in C-U? Please provide specific breakdown by position. What are the plans to increase marketing and community engagement to reach the commercial market, community anchor institutions and the residential market? What will be the marketing priorities among these segments? Will you add new market segments and services?*

iTV-3, LLC, the prospective buyer of the iTV-3 network (“we” or the “Buyer”), plans to aggressively expand the network and customer base in Champaign, Urbana and the other communities served by the network. Buyer anticipates spending millions of dollars per year expanding the network and services, and marketing its services to new commercial and residential customers, beginning immediately upon closing of the acquisition. Marketing and sales efforts will include direct sales, advertising, participation in/support of local community events, community education and outreach, and periodic meetings with key community leaders and institutions to update them on our progress and receive input. Buyer will expand iTV-3’s local engineering and sales staffs as required to achieve its expansion and growth objectives. Due to the competitively sensitive nature of Buyer’s build out plans, a more specific description of those plans must await waiver of UC2B’s first right of refusal.

### 2. **Economic Development, Innovation and Community Benefit**

- 2(a) *What are your priorities to support economic development and innovation in your strategy for serving the Urbana-Champaign community?*

We share UC2B’s view that making Champaign and Urbana “Gigabit” cities has the potential to dramatically increase the community’s ability to attract and retain businesses and highly skilled employees. Our first priority, therefore, will be to expand the iTV-3 network to serve more homes and businesses in the community. We also will continue iTV-3’s contributions to the UC2B NFP Community Benefit Fund, as called for in the agreements between iTV-3, Inc. (“Seller”) and UC2B, and to closely coordinate our support of local economic development with UC2B and other local community leaders and institutions.

- 2(b) *What are your priorities to support digital inclusion in your strategy for serving the Urbana-Champaign community?*

Expanding the base of digitally-educated citizens serves both the community objectives of UC2B and the commercial interests of iTV-3. We will therefore continue to contribute to the UC2B NFP Community Benefit Fund as called for in the agreements between Seller and UC2B, and otherwise pursue efforts to encourage and enhance digital literacy and inclusion in the Urbana-Champaign community. Moreover, we will appoint a local

“Digital Inclusion” officer to identify and take steps to enhance digital literacy and inclusion in the community, in part based on discussions with UC2B.

- 2(c) *In what ways do you see working with the UC2B NFP, its partners, private sector and other community stakeholders to improve digital inclusion and economic growth in Urbana-Champaign? How might your experiences add-value to address these issues in Urbana- Champaign?*

As indicated above, we anticipate working closely with local community leaders and stakeholders, such as UC2B, through periodic meetings and other effort, to improve digital literacy and inclusion and encourage economic growth in the Urbana-Champaign community. Buyer’s contributions to this effort will include the investment of many millions of dollars to expand the iTV-3 gigabit network within the community; the offering of education to consumers to enhance their digital literacy; and the participation in and support of community organizations and events that, in consultation with UC2B and other community groups, are directed at improving digital inclusion and economic development in the Urbana-Champaign community.

### 3. Experience

- 3(a) *Provide a statement of experience discussing CW's past performance, capabilities, and qualifications in assuming a project such as the one that CW is acquiring. Identify other networks your firm has designed, built, maintained, or operated; include the levels of broadband speed, availability, and adoption among different categories of end users and unique capabilities or attributes. Discuss partnerships with other service providers, government, or nonprofit entities you have undertaken, particularly any involving dark fiber leasing. Describe the nature of the projects and CW's role. To the extent CW has undertaken or been involved in marketing of projects similar to the one currently operated by iTV-3, what has been CW's market level of penetration - i.e., market share, rate of market share increase?*

Buyer was just recently formed by experienced fiber and cable industry executives for the specific purpose of acquiring and operating the iTV-3 network and employing the iTV-3 employees in Champaign, Urbana and other communities. Buyer therefore does not have a track record of acquiring and operating other systems. However, the individuals constituting Buyer’s management have extensive experience building, operating, expanding, marketing and successfully developing fiber optic and similar consumer communications systems. Specifically:

- **Grier Raclin**, Buyer’s President and CEO, has been one of the most senior officers in very large, domestic cable television and international fiber optic systems. Grier formerly was General Counsel and Chief Administrative Officer of Charter Communications, one of the country’s largest cable television system operators, which owned and operated over 6,000 hybrid fiber/coax cable television franchises and systems throughout the United States. At Charter, Grier managed major areas of the company’s operations, including programming, procurement, business development, and legal and regulatory compliance. Before Charter, Grier was General Counsel and

Chief Administrative Officer of Global TeleSystems in London, England, which, among other things, built and operated the first trans-national fiber optic network that provided fiber optic connectivity to virtually every country in Western Europe, and the "Flag" trans-oceanic fiber optic systems that provided fiber optic connectivity literally around the World. At GTS, Grier managed the company's Asian operations as well as key corporate departments, including Human Resources, legal and regulatory compliance procurement and facilities. Grier also was General Counsel and Chief Administrative Officer of SAVVIS, Inc. (now CenturyLink Technology Solutions), the worldwide data center operator, where he managed the acquisition and integration of major businesses, such as Cable and Wireless America and the Intel data centers, as well as corporate areas such as Legal, Regulatory, Procurement and Facilities (including the company's data centers).

- **Dan Kennedy**, Buyer's COO and CTO, and a U S Army Veteran, has had an extensive career developing, managing and marketing complex telecommunications networks throughout the United States, as a corporate executive, entrepreneur and consultant. Dan's skills include business modeling, product development, market development, network architecture, and design of data, voice and video networks. At Fidelity Communications, Dan served for 6 years as the Vice President of Sales and Business Development, where he led teams implementing and deploying complex triple play solutions for RBOC, MSO, Municipal, Utility, independent CATV and Developer customers. Corporate and community leaders in Memphis TN then hired Dan to serve as the Vice President of Engineering and Product Development at Memphis Networx, where Dan developed the strategy to build out a municipality-owned, 250 route-mile fiber network in the metropolitan area, and developed all service offerings and brought the first Ethernet-based services to the community. Dan began his telecommunications career in the US Army where he served as an essential member of the Army communications maintenance team, supervising and performing field and sustainment level maintenance on radio receivers, transmitters and communication security (COMSEC) equipment. During his deployment in the Middle East, he performed complex repairs of defective components, sub-assemblies, and related cabling, ensuring that National Security Agency-approved components were used in communication security/controlled cryptographic equipment, and was awarded the Bronze Star for distinguishing and meritorious service assistance to subordinates.
- **Sam Valencia**, Buyer's Chief Financial Officer has over 30 years of experience with PricewaterhouseCoopers LLP (the world's largest accounting firm) where he was an Assurance Partner. Sam served clients in multiple industries, nearly all of which were middle-market sized businesses. One of his practice specialties was assisting clients with M&A transactions. This will provide significant value to the Buyer in the completion of the iTV-3 transaction and in preparing the company for the future. Sam's experience will also serve to guide us in the establishment of a secure internal control environment and accurate and complete financial reporting system.
- **Mike Whitaker**, Buyer's Director of Sales and Marketing, previously was the Vice President of Strategic Alliances for Williams Communications, Inc. While at Williams,

Mike was part of a team that was responsible for the building out of a national network consisting of 43,000 miles of fiber optic cable with OC -192 capabilities. The network sold dark fiber IRU's to wholesale customers. Mike also served as Vice President and General Manager of Broadband Services for Core Express, where he managed a team of professionals that provided managed services on a nationwide OC-192 fiber network. The network sold dark fiber IRU services to wholesale customers. Finally, Mike served as Chief Operations Officer at Memphis Network. Where his team designed, built and helped lead a collaborative public and private effort with the City of Memphis to build a 110 mile metropolitan communications OC-48 fiber network, connecting 12 Bell South central offices. The team developed a comprehensive Operation support system that allowed for efficient provisioning, ordering, customer inventories, and billing. The network sold dark fiber IRU's to wholesale customers.

Seaport Capital, Buyer's Equity Sponsor, also has substantial experience in developing fiber optic systems similar to iTV-3's. Seaport is a private equity investment partnership which has invested approximately \$600 million of committed equity capital across four investment funds since 1997. Seaport Capital is focused exclusively on making investments in communications services, business and information services, and media industries. Seaport Capital is a very knowledgeable investor in the media and cable television sectors, having invested in the sectors since 1997. Their portfolio includes Everest, a Kansas City area broadband and cable television provider which was purchased from a publicly-traded utility, Aquila, Inc.; Marianas Cablevision, which provides triple-play broadband services on the island of Guam; and MetroCast Cablevision, which provides triple-play broadband services in New Hampshire.

#### 4. Technical:

*At a high level, summarize the technological and operational approach you would use for this project.*

Buyer's technological and operational approach will be very similar to Seller's as we are purchasing all of the Seller's assets. Notable differences would be that (i) we will build out the network into new neighborhoods and commercial areas more aggressively than Seller was able to; (ii) we will more actively and aggressively market iTV-3's services to customers in our network footprint; and (iii) we are working to roll out new services (e.g., home security; residential, commercial and public WiFi; etc.) in addition to the standard triple-play products and services currently provided by iTV-3. Our first priority will be to expand our footprint and customer base in the network's service area. Due to the competitively sensitive nature of Buyer's build out plans, a more specific description of those plans must await waiver of UC2B's first right of refusal.

- a. *What technologies are proposed to meet UC2B's goals, including non-discrimination and interconnection (e.g. open access) and the community benefit fund? What priority does CW place in meeting these goals?*

We will fundamentally follow the same technological approach, after the proposed acquisition, that Seller currently is following because we are purchasing Seller's

network in its entirety. In addition, Buyer will continue to satisfy all requirements of non-discrimination, open access and contributions to the Community Benefit Fund that are set forth in NTIA regulations and Seller's agreements with UC2B, which we propose to assume.

*b. How will you perform network management?*

Network management will be performed after the acquisition in fundamentally the same manner as before the acquisition, utilizing the Network Operations Center and Central Office located in East Peoria, Illinois.

*c. Where will the proposed network operations center (NOC) be located?*

The NOC will continue to be located at 602 High Point Lane, East Peoria, Illinois.

*d. Will NOC support staff be provided 24/7?*

As before the proposed acquisition, NOC staff will be provided and available to respond to any network issue 24 hours a day; 7 days a week.

*e. Will NOC support staff be provided in-house or contracted out?*

Just as the Seller does now, Buyer will employ in-house NOC support staff on a full time basis.

*f. Who will be involved in the technical management of the local system?*

Ultimate responsibility for the technical management of the iTV-3 network (other than the CEO) will reside in COO/CTO, Dan Kennedy, and General Manager Brian Olson, who currently serves as Seller's General Manager of the network.

*g. Describe the qualifications of senior technical management staff including years of experience and technical accomplishments.*

The network's senior technical staff will continue to be the same individuals who have served in that capacity prior to the acquisition, augmented by COO/CTO Dan Kennedy. Dan's biographical information is set forth above.

*h. What approach will CW use to interconnect with the Internet and other public networks?*

Buyer will use the same approach to interconnect to the Internet and other public networks that Seller utilizes today, including the use of redundant 10 Gbps internet drains. The exact methodology and design of our interconnection processes is competitively sensitive and proprietary.

*i. How is Internet capacity going to be brought in?*

See response to prior question.

ii. *Will there be any differences in Internet capacity?*

Internet capacity will be adjusted to meet network demand. While no change in capacity is anticipated at the present time, capacity will be increased as appropriate to satisfy demand.

iii. *Will there be any changes proposed from the current system for peering or to access Amazon, Netflix, etc.?*

We will constantly pursue steps to enhance our customers' experience, such as opportunities for direct peering with high-demand Web destinations, such as Netflix and Amazon. While the network's current and potential peering and similar relationships are competitively sensitive and proprietary, we might be able to discuss them with the Cities of Champaign and Urbana in connection with our franchise requests, after the Cities have waived their rights of first refusal related to Buyer's proposed acquisition of all of Seller's assets.

iv. *Where will the headend and hub buildings be located?*

The headend and hub buildings will continue to be located where they are now, at 602 High Point Lane, East Peoria, IL.

v. *Describe the back-up power strategy for the headend, hubs, and network. What changes to the current system do you anticipate making for back-up power?*

Buyer will continue to provide redundant power supplies to the network headend, hubs and other critical elements, as Seller does now. iTV-3's specific network design is competitively sensitive and proprietary.

vi. *Describe the proposed staffing for the headend and any hub buildings.*

The network headend and hubs will continue to be staffed as they are currently staffed by Seller. iTV-3's specific staffing plans are competitively sensitive and proprietary.

5. **Services:**

*Describe the service options CW plans to offer*

Buyer is in the process of developing its proposed service plans at this time. However, it must be recognized that Buyer will operate in an exceedingly competitive market and therefore must offer service options and pricing that is competitive to be successful. Any changes from current service plans will in part likely be directed at simplifying plans and keeping them cost effective and affordable for our customers.

a. *How will your residential and business offerings differ?*

See response to prior question.

- b. *Describe what technical and practical solutions you will provide to prioritize unfettered data access.*

It is in Buyer's best business interest to provide its customers with unfettered, high speed access to the internet. Buyer therefore has no plans to restrict such access.

- c. *What download/upload or symmetrical speeds will you offer and guarantee to end-users by commercial and residential service?*

Buyer will continue to offer internet access speeds up to 1 Gbps. Our plans and ability to offer faster speeds are competitively sensitive and proprietary, although they may be discussed with the Cities of Champaign and Urbana in connection with our franchise requests, after the Cities have waived their rights of first refusal related to Buyer's proposed acquisition of all of Seller's assets.

- d. *What types of service level agreements (for lit services: availability, packet delivery, packet loss, latency, jitter, and other; for dark fiber: repair time, other) would you be prepared to offer?*

The service level agreements and similar offerings Buyer might make to commercial customers are competitively sensitive and proprietary. Seller maintains, and Buyer intends to continue to maintain an internal Network Operations Center to monitor system operations and to identify and remedy any system deficiency, and its own, in-house splicing team to minimize downtime caused by inadvertent fiber cuts and disruptions.

- e. *What level of public, educational, and governmental (PEG) access programming capacity are you planning to make available and what funding levels are you planning to support?*

After the proposed acquisition, Buyer will continue to honor all PEG channel carriage and funding obligations as described in each franchise agreement that is assumed from Seller.

- f. *List the companies with whom you are negotiating to obtain access to cable programming and provision of telephone services.*

The satellite delivered and local television broadcast programming currently carried by iTV-3 is listed on its Website. Buyer will regularly consider changes to its programming channel lineup based on customer demand.

- g. *What is the anticipated interruption of iTV-3's currently planned and/or committed build-out?*

Buyer does not anticipate any interruption in the currently-planned build-out of the Urbana and Champaign communities. Indeed, Buyer anticipates a more expeditious build-out than Seller was able to undertake because of the need to upgrade the network's head-end and central office.

- h. To what extent will each IRU remain in full force and effect with the agreed-upon levels of service and fiber availability that their IRUs reflect?*

Buyer anticipates that all IRU agreements, which Seller proposes to assign to Buyer and Buyer proposes to assume from Seller, will continue in full force and effect after the proposed acquisition.

- i. What direct customer support will be provided?*

Buyer anticipates opening one or more retail business offices in the Champaign Urbana community that will provide customer Sales and Support. At these locations, customers will be able to pay bills, alter services, discuss their service with local ITV-3 representatives, and pick up and drop off equipment, among other services. Buyer also will offer telephonic Tier 1 and 2 customer Support through its Customer Services Representatives (“CSRs”) in its Customer Service Center, and telephonic Tier 3 Support through its Network Operations Center (“NOC”).

- i. Is it to be provided by NOC personnel or others?*

See prior response.

- ii. Will it be available 24/7?*

Buyer plans for NOC, customer service and fiber splicing support to continue to be available 24/7 after the acquisition.

- iii. Will it be available by phone, walk-in offices, or other means?*

Both. Buyer will continue to provide CSRs, available by phone, and currently anticipates establishing at least one retail presence in the Urbana-Champaign community to provide customer support; equipment trade-in; bill payment and similar services to customers in the community during normal business hours.

**6. Pricing:**

*Provide your approach to pricing the proposed services.*

Buyer’s anticipated approach and plans for service pricing are competitively sensitive and proprietary.

- a. Will you commit to maintaining the current legacy UC2B service plans and rates, and, if so, for how long will you maintain the current UC2B/iTV-3 pricing levels and structure?*

Buyer has not yet finalized its plans for service packages and pricing. As Buyer will operate in an exceedingly competitive market, it must offer service options and pricing that are competitive and responsive to customer needs in order to be successful.

- b. *Will you offer any special discount programs for services to low-income and senior populations? Will you offer special discount programs for services to community anchor institutions that serve vulnerable populations?*

Buyer has not yet finalized its plans for service packages and pricing. However, it will honor all existing obligations to provide discounts to low-income and senior populations and to community anchor institutions serving vulnerable populations. In addition, as a part of its involvement in the local community and as appropriate to provide connectivity to the most vulnerable populations, Buyer will consider extending current or adopting new discount and similar support programs, such as those supported by HUD's "ConnectHome" program.

## 7. References

*Provide a minimum of three (3) references, including contact information, from previous similar contracts or partnerships.*

References for new senior personnel and members of Buyer are as follows:

### **Grier Raclin:**

Neil Smit; Former President and CEO of Charter Communications; (215) 286-7776

Jeff Von Deylen, former President and CEO of SAVVIS, Inc., (630) 944-9042;  
[jeff.vondeylen@ensono.com](mailto:jeff.vondeylen@ensono.com)

Robert Amman: former President and CEO of Global TeleSystems; (404) 281-6482;  
[rjamman@cox.net](mailto:rjamman@cox.net)

### **Dan Kennedy:**

Scott Mackinaw: Vice President and Engineer of TDC2- 469-999-7411  
[smackinaw@tdc2.com](mailto:smackinaw@tdc2.com)

Mark Latham: City Administrator of City of Highland, IL 618-654-3115  
[mlatham@ci.highland.il.us](mailto:mlatham@ci.highland.il.us)

Andrew Michael Cohill, Ph. D: President Design Nine, Inc 540-951-4400  
[cohill@designnine.com](mailto:cohill@designnine.com)

### **Sam Valencia:**

John Tvrdik: Missouri Market Managing Partner, PricewaterhouseCoopers LLP; (314) 206-8195; [john.tvrdik@us.pwc.com](mailto:john.tvrdik@us.pwc.com)

### **Mike Whitaker:**

- a. *Current resume and bio of each team member*

See biographical statements above

*b. Job/position description for each team member*

**Grier C. Raclin**; President and CEO. The President and CEO of the Company has general and active supervisory authority for the management of the business of the Company and shall see that all orders and resolutions of the Board are carried into effect.

**Dan Kennedy**; Vice President, COO and CTO. Subject to the Board and the CEO, the COO has general and active supervisory authority for the day-to-day operations of the Company.

**Sam Valencia**; Vice President and CFO. The CFO keeps and maintains proper financial books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses and capital.

**Brian Olson**: General Manager. As a current employee of Seller and General Manager reporting to the COO, the Brian will be responsible for Buyer's meeting its network expansion, installation, repair and similar technical and operational objectives.

**Mike Whitaker**: Director of Sales and Marketing Director. Mike will be responsible for achieving Buyer's aggressive growth objectives for the communities served by the network.

*c. Reference contact information for each team member*

**Grier Raclin**: (m) 314-308-5509; [graclin@cwvinc.net](mailto:graclin@cwvinc.net) (iTV-3 contact information will be provided after closing)

**Dan Kennedy**: (m) 314-442-4432; [dkennedy@cwvinc.net](mailto:dkennedy@cwvinc.net) (iTV-3 contact information will be provided after closing)

**Sam Valencia**: (m) 636-346-6130; [svalencia@cwvinc.net](mailto:svalencia@cwvinc.net) (iTV-3 contact information will be provided after closing)

**Brian Olson**: (o) 309-670-0571; [brian.olson@itv-3.com](mailto:brian.olson@itv-3.com)

**Mike Whitaker**: (m) 636-795-4660, [mwhitaker@cwvinc.net](mailto:mwhitaker@cwvinc.net) (iTV-3 contact information will be provided after closing)

*d. Personal financial statements submitted to any commercial or institutional lender and/or investor*

None

*e. Statement of no conflict of interest with the City of Champaign, City of Urbana,*

*University of Illinois and State of Illinois*

To Buyer's and its owners' and Officers' knowledge, neither Buyer nor any of its officers or affiliates has any conflict of interest or affiliation with either the City of Champaign, the City of Urbana, the University of Illinois or the State of Illinois.

*f. Amount which each team member has invested personally in company*

The personal financial affairs of Buyer's direct and indirect owners are their personal and proprietary information. That being said, Buyer's Officers have made and plan to make substantial financial investments in the acquisition and growth of iTV-3.

*g. Amount which each team member pledges to invest in company*

The personal financial affairs of the CW team members are their personal and proprietary information.

**8. Company Information - General Information**

*a. Headquarters location*

Buyer's headquarters currently is located at 3 Harcourt Drive in St. Louis, MO 63105. After consummation of the transaction, Buyer will move its headquarters to Seller's current headquarters location, at 602 High Point Lane, East Peoria, IL.

*b. Application of organization submitted to state in which company is organized*

Buyer's Certificate of Organization to be provided when received.

*c. Evidence of company's good standing in state organized*

Buyer's Certificate of Good Standing to be provided when received.

*d. Applications submitted to all states, including Illinois, in which company seeks to operate*

The only state in which Buyer proposes to operate after closing is Illinois.

*e. Evidence of company's authority to operate in Illinois*

See response to prior questions.

*f. All state and federal regulatory filings*

Buyer's application for an FCC 214 License, any FCC Form 394 applications it files, and its application for an Illinois State Certificate of Public Convenience and Necessity will be provided when they are filed with the relevant agencies.

*g. Number of employees beyond leadership team including job descriptions*

Seller currently employees approximately 52 people. Buyer currently anticipates that all of Seller's employees will continue in their current positions although Buyer may make certain changes in personnel, positions or some job responsibilities in the normal course of business.

- h. Company financial statements provided to any commercial and/or institutional lender, investor*

None

- i. Investment/private offering memoranda which have been provided to prospective investors, whether commercial, institutional or individual*

None

- j. Plans to open one or more offices in Champaign and/or Urbana*

Buyer currently anticipates establishing at least one new retail offices in either or both of Champaign and Urbana.

- k. Company's organizational chart*

Buyer's employment organizations chart is competitively sensitive and proprietary but can be discussed once the Cities of Champaign and Urbana have waived their right of first refusal.

- l. Company's communications with iTV-3 employees regarding continued employment*

Buyer and Seller have communicated to the iTV-3 employees that Buyer has no current plans to reduce employment and anticipates the need to hire additional employees to meet anticipated network and customer growth requirements

- m. Identity of any iTV-3 employee (other than Levi Dinkla) who will not continue working for Countrywide*

None known at this time.

- n. Identify other communities in which efforts to acquire fiber optic networks are in process. Identify each public and/or private entity that CW has approached about acquiring that public entity's and/or private entity's fiber optic network and state the status of such outreach and the end status of each such outreach.*

Buyer's and any affiliates' plans to acquire fiber optic or other telecommunications systems are competitively sensitive and proprietary. The acquisition and growth of the iTV-3 network and customer base is Buyer's principal objective and focus at this time.

- o. Willingness to commit in writing to place UC2B system build-out as top priority*

The build-out of the iTV-3 network and customer base is Buyer's top priority at this time.

**9. Company Information - Financial Information**

*a. Sale-purchase contract with iTV-3*

The Asset Purchase Agreement between Buyer and Seller has been provided under separate cover along with a request that it be kept confidential and proprietary.

*b. Complete current financial statements*

Buyer does not have current financial statements as it is a newly formed entity that will be capitalized at the closing of the acquisition of iTV-3, Inc.'s assets.

*c. Financial information submitted to each commercial/institutional lender*

Buyer's financial projections and models submitted to its investor and lender are competitively sensitive and proprietary to Buyer.

*i. Loan applications.*

None

*ii. Personal financial statements.*

None

*iii. Company financial statements*

None

*iv. Executed loan agreements*

Buyer currently is negotiating a loan agreement with its senior lender, which is competitively sensitive and proprietary to Buyer.

*v. Anticipated lien filings which will be required if lending as approved and made*

It is anticipated that Buyer's senior lender will take a first lien on all of Buyer's assets, subject to the Federal Interest in the UC2B network.

*vi. Personal guarantees*

None

*vii. Status of any applications - e.g., granted, pending, rejected. Loan commitments - pending and/or issued*

Buyer currently is negotiating a loan agreement with its senior lender, which is competitively sensitive and proprietary to Buyer. A copy of its financing commitment letters have been provided under separate cover with requests that they be kept confidential and proprietary.

*d. Financial information submitted to any investor*

No historical financial information of Buyer was provided to investors. Models of projected future operations were provided but are competitively sensitive and proprietary to Buyer.

*e. Private offering memoranda submitted to any investor including exhibits*

None

*f. Written evidence of investment commitment, including monetary level of commitment, from each investor*

Buyer's financing commitment letters have been provided under separate cover with requests that they be kept confidential and proprietary.

*g. Written evidence of loan commitments*

Buyer's financing commitment letters have been provided under separate cover with requests that they be kept confidential and proprietary.

*h. Executed contracts for fiber installation*

Seller has executed contracts for fiber installation that it has relied upon to construct the network to date. Buyer is negotiating agreements to assume Seller's construction and installation contracts, or enter into new construction and installation contracts, which are competitively sensitive and proprietary to Buyer.

*i. Pending contracts for fiber installation*

See response to prior question.

*j. List of customer accounts and IRUs company will be acquiring*

Customer accounts are private, personally identifiable information of our customers that are protected by federal law, and are competitively sensitive and proprietary to Buyer and its customers. The Cities have all information for IRU's applicable to fiber owned by the Cities. Information about Seller's other IRUs that Buyer proposes to acquire is competitively sensitive and proprietary to Seller and Buyer.

## **iTV-3 Specific Information Request.**

### **1. Fiber Leases:**

- a. *ITV-3 has received significant fiber maintenance fees from UC2B's dark fiber IRU holders. Please account for how those funds have been spent, and what remains in the fiber maintenance fund. What is the current annual revenue from fiber maintenance?*

Maintenance revenue has consistently and exclusively been used to maintain the iTV-3 network. There is no separate maintenance fund maintained by Seller; all monies collected go into a general account. As Seller has encountered substantial issues with the construction of the UC2B network, it has incurred substantial unanticipated construction and splicing costs.

- b. *What was traded with IDOT for fiber strands on UC2B? How many fiber strands does IDOT have on each UC2B ring or sub-ring? Does IDOT have an IRU for those strands? If so, please provide a copy of it.*

Seller cannot divulge specific customer information other than to say that the only significant fiber IRU/Leasing activity has been a fiber swap which gives Seller access to fiber in a state agency's fiber network.

- c. *Are there any other new dark fiber leases or IRUs? If so, please provide copies of the documentation.*

Seller's network assets and design are competitively sensitive and proprietary to Seller.

- d. *Is iTV-3 in negotiation with any person for any lease of dark fiber? If so, identify each such person and the anticipated terms of any such lease.*

Please see prior response.

- e. *Identify each person contacted about leasing dark fiber.*

Please see prior response.

### **2. Customer Count:**

- a. *As of March 1, 2016, how many current customers are there in the following categories:*

i. *Residential in the original grant-funded FTTP areas.*

ii. *Businesses in the grant-funded FTTP areas.*

iii. *Community Anchor Institutions connected by the grants - everywhere*

- iv. *Residential in the iTV-3-built FTTP areas*
- v. *Businesses in the iTV-3-built areas*
- vi. *Community Anchor Institutions in the iTV-3 built FTTP areas*
- vii. *Businesses outside of any of the FTTP area*
- viii. *What is the current backlog of customer installations?*
- ix. *Inventory of delinquent accounts*

As of March 1, 2016, iTV-3 had 8,921 Residential customers and 805 Commercial customers. Seller does not segregate grant funded versus non-grant funded customers. It is important to note that, when UC2B transferred the system to Seller, it represented to Seller that there were 1,387 customers active on the system. After analysis and review of this customer list, it was discovered that only 827 were paying customers.

- b. *As of March 1, 2016,*
  - i. *Identify each person who has committed to receiving service from iTV-3 but for which service has not been established.*

Customer information is private, personally identifiable information of our customers that is protected by federal law, and is competitively sensitive and proprietary to Seller.
  - ii. *Identify for each person who has committed to receiving service from iTV-3 the sector wherein such service would be provided.*

Customer accounts are private, personally identifiable information of our customers that are protected by federal law, and are competitively sensitive and proprietary to Seller.
  - iii. **For each of iTV-3's sectors, identify the number and percent for that sector of persons who have committed to receiving iTV-3 service when such service becomes available.**

Please see <http://maps.itv-3.com/champaign-urbana/>

- c. *Locations where iTV-3 is delivering Layer Two services for another provider.*

Seller's customer information is competitively sensitive and proprietary to Seller.
- d. *Current services offered & pricing lists*

iTV-3's currently-offered services and associated prices are listed on its web site: <http://itv-3.com>

### 3. Infrastructure Information

- a. *Please provide information describing the current details of the equipment and software deployed on a parts of the network including the NOC to deliver video, Internet and telephone services to all customers in Urbana-Champaign.*

iTV-3 currently is using a new (commissioned in 2015), state of the art, \$1.5mm Head End to provide Gigabit Internet, IP Video, and Voice services. Our primary equipment vendor is Ericsson. The network architecture is highly proprietary information.

- b. *Please include:*

- i. *Inventory of all technical assets which will be transferred to the purchaser*

Provided under separate cover with request that it be maintained confidential and proprietary.

- ii. *Current as-builts (any current fiber routes, what ITV3 has added/not added)*

1,724 route-mile owned and Indefeasible Right of Use Fiber-Optic Network including 687 owned route miles and 1,037 miles of IRU fiber. A review of the map can be arranged via an online viewing with a conference call or in person.

- iii. *Route maps - Provide copies of maps in GIS format and PDF format*

See prior response

- iv. *Strand maps - Provide copies of maps in GIS format and PDF format*

See prior response

- v. *Any equipment upgrades, and if so -*

1. *Type/description of each piece of upgraded equipment*

2. *Location of each piece of upgraded equipment*

A tour of the iTV-3 core network can be arranged at which time the equipment can be identified along with any explanations necessary to determine its value to the network.

- vi. *Documentation of all work done to upgrade the network core costs.*

iTV-3's network architecture is highly proprietary, an in person architecture can be arranged.

- c. *What happened to the old core equipment? Whose is it? How disposed of? Are the core electronics upgrades included in the sale?*

The old core equipment from Champaign is still in use and is servicing some of the original grant-funded customers. The old core network equipment is not capable of providing Gigabit Internet or video and is set up in a way that future customers should not be added to it. Seller has been migrating customers to the new core equipment as they request additional services or higher speeds.

- i. *Any current contracts for maintenance or support that would encumber the future operator (this includes both fiber and electronics maintenance)*

Seller maintains its own network physically. Electronics maintenance contracts are typically a year in duration and are in place for critical network electronics.

- d. *Details about contracts and equipment for on-going installations.*

- i. *With whom do contracts for maintenance and support exist?*

Seller maintains and supports its own network and customers

- ii. *Are the contracts assignable? Provide copies of contracts*

See prior response

- iii. *Location for each contracted future installation*

iTV-3 cannot provide customer-specific information.

- iv. *Inventory levels of equipment available and related consumables for installations*

The Inventory value at the signing of the APA was \$1.35M.

#### 4. **Acquisition of ITTV3**

- a. *Provide the sales agreement including all exhibits*

See response to question 9(a)

- b. *Any contract documents (including exhibits), written commitments, agreements (including exhibits), letters of intent, or correspondence between Highland Ventures, Ltd. (or its subsidiaries, affiliates or divisions) and Countrywide Broadband, Inc. (or its subsidiaries, affiliates or divisions)*

Any such documents, to the degree they existed at all, are superseded by the APA and are competitively sensitive and proprietary to Buyer, Seller, Highland Ventures, Ltd. and CW.

- c. *Any contract documents (including exhibits), written commitments, letters of intent, agreements (including exhibits), or correspondence between Highland Ventures, Ltd. (or its subsidiaries, affiliates or divisions) and any potential buyers.*

This information is competitively sensitive and proprietary to Seller and its affiliates, is in large part superseded by the APA and is irrelevant to UC2B's consideration of whether to exercise its first right of refusal or to grant Buyer a franchise.

- d. *Any internal memos, emails, or other correspondence from Highland Ventures, Ltd. (or its subsidiaries, affiliates or divisions) relating to the sale or potential sale of iTV3*

This information is competitively sensitive and proprietary to Seller and its affiliates, is in large part superseded by the APA and is irrelevant to UC2B's consideration of whether to exercise its first right of refusal or to grant Buyer a franchise.

- e. *Any term sheets pertaining to the sale of iTV3*

This information is competitively sensitive and proprietary to Seller and its affiliates, is in large part superseded by the APA and is irrelevant to UC2B's consideration of whether to exercise its first right of refusal or to grant Buyer a franchise.

- f. *Any memoranda of understanding (MOU) or letters of understanding (LOU) pertaining to the sale of iTV3*

This information is competitively sensitive and proprietary to Seller and its affiliates, is in large part superseded by the APA and is irrelevant to UC2B's consideration of whether to exercise its first right of refusal or to grant Buyer a franchise.

- g. *Any draft contracts with potential buyers of iTV3*

This information is competitively sensitive and proprietary to Seller and its affiliates, is in large part superseded by the APA and is irrelevant to UC2B's consideration of whether to exercise its first right of refusal or to grant Buyer a franchise.

- h. *Description of manner in which Countrywide Broadband, Inc., was identified as a buyer.*

Highland Ventures, Ltd. (formerly Midstates Video Corp. and parent of iTV-3, Inc.) entered into an agreement with RBC Capital Markets, LLC (RBC) to provide investment banking and financial advisory services in connection with a possible transaction involving iTV-3, Inc. RBC

brought several prospective purchasers to the attention of Highland Ventures and the bid of Countrywide Broadband was evaluated and accepted in February 2016.

- i. *Any documentation pertaining to the commitment to retain iTV-3 employees. Please include documentation of the role of Levi Dinkla including responsibilities and length of commitment.*

There is no documentation pertaining to a commitment to retain ITV3 employees. As stated in the APA, Levi Dinkla has agreed to make himself available for consultations (conferences and e-mail communications) with the Buyer at mutually convenient times for three months after closing.

**EXHIBIT 4**

**CWB'S RESPONSE TO UC2B NFP'S  
REQUEST FOR ADDITIONAL  
INFORMATION (4/13/2016)**

## **MEMORANDUM**

TO: John Gant, Chairman of the Board, UC2B

cc: David Krchak, UC2B  
cc: James Simon, City of Urbana  
cc: Fred Stavins, City of Champaign  
cc: Lisa Power, University of Illinois

FROM: Grier Raclin, President and CEO, CountryWide Broadband, LLC and iTV-3, LLC

DATE: April 13, 2016

RE: Responses to Follow-Up Questions

I am writing in response to your request to Levi Dinkla for more information surrounding CWB/iTV-3's vision and strategy for growing the iTV-3 fiber-to-the-home network in Champaign and Urbana. We look forward to sharing in person tomorrow morning our plans for making Gigabit FTTH a reality for Urbana and Champaign, and want to provide the following as potential discussion points during our meeting. We look forward to working together with UC2B, the Cities and the University as we undertake our network expansion, marketing, customer service and growth initiatives. We understand the uniqueness of this relationship and the opportunity it provides, and hope that you will leave our meeting equally excited about working together to make this opportunity a reality.

The CWB's team's extensive fiber and broadband experience, when combined with the existing iTV-3's team's specific experience in Champaign and Urbana, will support our growth plans in Urbana and Champaign. Members of the CWB team have been responsible for, or involved in tens of thousands of miles of fiber network expansion, including AT&T's 42,000 fiber backbone and the largest fiber network in Western Europe. This experience includes virtually all aspects of network expansion, including design and operational planning; procurement and supply-chain management; legal and regulatory compliance; sales and marketing initiatives; and providing superior customer service (including the management of "back-office" billing, operational and business support systems).

Our experience has encompassed a variety of business and market circumstances and characteristics. This includes the successful turn-around of small market systems, such as in Highland, Illinois; the green-field construction of the first US Ethernet-based public/private fiber system. located in Memphis, TN; an all-Gigabit Network, interconnecting 22 Schools in Missoula Montana; a Gigabit Fiber Network for Bozeman Montana, used to connect municipal and business anchor customers as well as the area schools and colleges; and the dramatic improvement in Charter Communication's

operations, sales and customer service functions in small and large markets throughout the United States. We have learned to tailor our approach to the unique characteristics of our market and customer needs, first by taking steps to understand the desires of our prospective customers, and then by following through on our service commitments.

In Urbana and Champaign, for example, we understand the frustration that has developed over delays in network and service deployment that resulted from certain unanticipated technical circumstances. Our first priority will therefore be to use the financial capital we have available to us to expand the network to reach as many new homes in the area as possible. In that regard, we have already negotiated agreements with suppliers and contractors that should allow us (weather and other circumstances permitting) to construct approximately *13,000 feet per week* of new fiber extension, just in Champaign and Urbana. If we are allowed to initiate our planned buildout in the very near future, and are successful in our network expansion and sales and marketing efforts, we should be able to open our network to 3,500-4,500 additional homes, and provide service to 1,500-2,000 new customers in Urbana and Champaign within our first year of operation.

Our experience also allows us to recognize the unique and positive characteristics of an all-fiber system. Fiber is *fundamentally different* from HFC cable systems in that an all-fiber system has virtually unlimited capacity to carry and provide services. The management of a successful fiber system therefore is focused on developing demand for, and providing new services to be facilitated by the system, rather than shepherding capacity by imposing customer control mechanisms, such as speed throttles and capacity limitations. As a FTTP operator, our focus will therefore be on expanding usage of the system by extending its geographic coverage into all areas of the Cities that desire our services; maintaining a network infrastructure that is open to layer two providers; educating potential customers on the opportunities created by their use of Gigabit fiber technology; and providing products and service expected by our customers. CWB's and UC2B's interests should be aligned in that successfully pursuing those and similar steps will serve not only CWB's commercial objectives, but also UC2B's goals of empowering local residents and businesses, supporting economic development and an entrepreneurial environment, and the community's profile and "brand" as the home of forward thinking technology leaders.

While the iTV-3 network provides inherent competitive advantages, we understand effective sales and marketing, and providing superior customer service are the keys to competitive success. As for sales and marketing, our initiatives will go beyond door hangers to include a variety of PR, branding and direct sales initiatives, potentially supporting apprenticeship programs at local schools, and partnering with UC2B and other community leaders to use community events to promote digital education and other efforts to bridge the digital divide. A current draft of our sale and marketing plan for the Urbana Champaign community will be circulated at tomorrow's meeting.

As for customer service, we intend to pursue affirmative steps to remain informed about our customers' desires and their perception of our performance, and to continue iTV-3, Inc.'s empowerment of its employees to *resolve customer issues* without the need for

extensive “up-the-chain” approvals. We believe in a culture of erring on the side of the customer. We will pursue a variety of information gathering techniques, from 30-day new customer queries to holding regular, periodic meetings with community leaders, such as the leaders of home owners’ associations and UC2B itself. We plan to contact all newly installed customers within 30days of their respective installations to ensure they are satisfied with our service; and to ask them about their experience with the install to ensure that we address any issues that may have arisen during the installation process. We also believe in surveying our existing customers by randomly calling on them throughout the year to determine if they are happy with the ITV-3 experience and to inquire if we need to address potential changes in service.

I have been told that UC2B requires iTV-3, Inc. to provide a “market price” at which it would sell its’ “interests” in the respective Champaign and Urbana cities. That is inherently difficult since the Champaign and Urbana network is managed and served by the Central Office and Headend located in Peoria, and thus the agreement between iTV-3, Inc. and CWB does not bifurcate or distinguish between the assets located in Champaign and Urbana from assets located in other communities. Nevertheless, in a good faith effort to obtain the Cities’ consent as expeditiously as possible, we have attached a calculation of what we estimate to be the replacement cost to construct the network located in Urbana and Champaign, ignoring the cost of the headend, central office and similar assets required to operate the system and that are located outside the cities’ boundaries.

We are aware that our initial response to UC2B’s inquiries failed to include references for one of CWB’s management team (Mike Whitaker), and included only one reference for another management team member (Sam Valencia). The references for Mike, which were inadvertently not included in the initial response, were sent to UC2B on February 28th, and are repeated below. We also have included two additional references for Sam.

References for Sam Valencia:

John Tvrdik  
Office Managing Partner  
PricewaterhouseCoopers LLP  
[john.tvrdik@us.pwc.com](mailto:john.tvrdik@us.pwc.com)  
Office: (314) 206-8195

Bill Moreton  
Executive Vice Chairman  
Panera Bread Company  
[Bill.Moreton@panerabread.com](mailto:Bill.Moreton@panerabread.com)  
Cell: (630) 310-4257

Ed Alizadeh  
President & CEO  
Geotechnology, Inc.  
[éalizadeh@geotechnology.com](mailto:éalizadeh@geotechnology.com)  
Cell: (314) 724-6014

References for Mike Whitaker:

Jim Wootten  
VP SAVVIS, Inc.  
Sr. Director, Major Projects  
314 406 0787  
[jim.wootten@sbcglobal.net](mailto:jim.wootten@sbcglobal.net)

Joe Timpone  
Edward Jones Co.  
Sr. Director  
636 699 9352  
[joe.timpone@edwardjones.com](mailto:joe.timpone@edwardjones.com)

Michael Mora  
Knowledge Lake  
Sr. Director, IT services  
636-675-4662  
[mike.mora@knowledgelake.com](mailto:mike.mora@knowledgelake.com)

Finally, we have attached detailed resumes for Grier, Sam and Mike. A detailed resume for Dan will be provided shortly.

We look forward to our continued discussions tomorrow and, hopefully, to an expeditious approval of our proposed transaction with iTV-3, Inc.

GCR

**EXHIBIT 5**

**INFORMATION PROVIDED ON  
FCC FORM 394 NOTICE OF INTENT  
TO TRANSFER CABLE FRANCHISE  
AGREEMENT (4/6/2016)**

FCC 394

**APPLICATION FOR FRANCHISE AUTHORITY  
CONSENT TO ASSIGNMENT OR TRANSFER OF CONTROL  
OF CABLE TELEVISION FRANCHISE**

FOR FRANCHISE AUTHORITY USE ONLY

**SECTION I. GENERAL INFORMATION**

DATE: 04/6/2016	1. Community Unit Identification Number:
-----------------	--

2. Application for:  Assignment of Franchise  Transfer of Control

3. Franchising authority: City of Urbana	
4. Identify community where the system/franchise that is the subject of the assignment or transfer of control is located:  City of Urbana, Illinois	
5. Date system was acquired or (for system's constructed by the transferor/assignor) the date on which service was provided to the first subscriber in the franchise area:	12/15/2014
6. Proposed effective date of closing of the transaction assigning or transferring ownership of the system to transferee/assignee:	As soon as closing conditions are satisfied

7. Attach as an Exhibit a schedule of any and all additional information or material filed with this application that is identified in the franchise as required to be provided to the franchising authority when requesting its approval of the type of transaction that is the subject of this application.

Exhibit No. N/A
--------------------

**PART I - TRANSFEROR/ASSIGNOR**

1. Indicate the name, mailing address, and telephone number of the transferor/assignor.

Legal name of Transferor/Assignor (if individual, list last name first)  iTV-3, Inc.			
Assumed name used for doing business (if any)			
Mailing street address or P.O. Box  2500 Lehigh Avenue			
City  Glenview	State  IL	ZIP Code  60026	Telephone No. (include area code)  (847) 904-9015

2. (a) Attach as an Exhibit a copy of the contract or agreement that provides for the assignment or transfer of control (including any exhibits or schedules thereto necessary in order to understand the terms thereof). If there is only an oral agreement, reduce the terms to writing and attach. (Confidential trade, business, pricing, or marketing information, or other information not otherwise publicly available, may be redacted.)

Exhibit No. 1
------------------

(b) Does the contract submitted in response to (a) above embody the full and complete agreement between the transferor/assignor and transferee/assignee?

Yes  No

If No, explain in an Exhibit

Exhibit No. N/A
--------------------

**PART II - TRANSFEREE/ASSIGNEE**

1. (a) Indicate the name, mailing address, and telephone number of the transferee/assignee.

Legal name of Transferee/Assignee (if individual, list last name first)			
iTV3, LLC			
Assumed name used for doing business (if any)			
Mailing street address or P.O. Box			
3 Harcourt Drive			
City	State	ZIP Code	Telephone No. (include area code)
St. Louis	MO	63105	(314) 448-1235

(b) Indicate the name, mailing address, and telephone number of the person to contact, if other than the transferee/assignee.

Name of contact person (list last name first)			
Raclin, Grier			
Firm or company name (if any)			
iTV-3, LLC			
Mailing street address or P.O. Box			
3 Harcourt Drive			
City	State	ZIP Code	Telephone No. (include area code)
St. Louis	MO	63105	(314) 448-1235

(c) Attach as an Exhibit the name, mailing address, and telephone number of each additional person who should be contacted, if any.

Exhibit No. N/A
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(d) Indicate the address where the system's records will be maintained.

Street address			
602 High Point Lane			
City	State	ZIP Code	
East Peoria	IL	61611	

2. Indicate on an attached Exhibit any plans to change the current terms and conditions of service and operations of the system as a consequence of the transaction for which approval is sought.

Exhibit No. 2
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**SECTION II. TRANSFEREE'S/ASSIGNEE'S LEGAL QUALIFICATIONS**

1. Transferee/Assignee is:

<input checked="" type="checkbox"/> Corporation (Limited Liability Company)	a. Jurisdiction of incorporation: <b>Delaware</b>	d. Name and address of registered agent in jurisdiction:  <b>The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE, 19801</b>
	b. Date of incorporation: <b>2/16/2016</b>	
	c. For profit or non-for-profit: <b>For profit</b>	

<input type="checkbox"/> Limited Partnership	a. Jurisdiction in which formed:	c. Name and address of registered agent in jurisdiction:
	b. Date of formation:	

<input type="checkbox"/> General Partnership	a. Jurisdiction whose laws govern formation:	b. Date of formation:
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Individual

Other - Describe in an exhibit

Exhibit No. N/A
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2. List the transferee/assignee, and, if the transferee/assignee is not a natural person, each of its officers, directors, stockholders beneficially holding more than 5% of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than 5%. Use only one column for each individual or entity. Attach additional pages if necessary. (Read carefully - the lettered items below refer to corresponding lines in the following table.)

- (a) Name, residence, occupation or principal business, and principal place of business. (If other than an individual, also show name, address and citizenship of natural person authorized to vote the voting securities of the applicant that it holds.) List the applicant first, officers next, then directors and, thereafter, remaining stockholders and/or partners.
- (b) Citizenship.
- (c) Relationship to the transferee/assignee (e.g., officer, director, etc.)
- (d) Number of shares or nature of partnership interest.
- (e) Number of votes.
- (f) Percentage of votes.

(a)	See Exhibit 3		
(b)			
(c)			
(d)			
(e)			
(f)			

3. If the applicant is a corporation or a limited partnership, is the transferee/assignee formed under the laws of, or duly qualified to transact business in, the State or other jurisdiction in which the system operates?

If the answer is No, explain in an Exhibit.

Yes  No

Exhibit No.  
N/A

4. Has the transferee/assignee had any interest in or in connection with an application which has been dismissed or denied by any franchise authority?

If the answer is Yes, describe circumstances in an Exhibit.

Yes  No

Exhibit No.  
N/A

5. Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the transferee/assignee in a civil, criminal or administrative proceeding, brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authority (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or employment discrimination?

If the answer is Yes, attach as an Exhibit a full description of the persons and matter(s) involved, including an identification of any court or administrative body and any proceeding (by dates and file numbers, if applicable), and the disposition of such proceeding.

Yes  No

Exhibit No.  
N/A

6. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights with respect to any attributable interest as described in Question 2 (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

If Yes, provide particulars in an Exhibit.

Yes  No

Exhibit No.  
4

7. Do documents, instruments, agreements or understandings for the pledge of stock of the transferee/assignee, as security for loans or contractual performance, provide that: (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of any ownership rights by a purchaser at a sale described in (b), any prior consent of the FCC and/or of the franchising authority, if required pursuant to federal, state or local law or pursuant to the terms of the franchise agreement will be obtained?

If No, attach as an Exhibit a full explanation.

Yes  No

Exhibit No.  
5

### SECTION III - TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS

1. The transferee/assignee certifies that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate the facilities for three months.

Yes  No

2. Attach as an Exhibit the most recent financial statements, prepared in accordance with generally accepted accounting principles, including a balance sheet and income statement for at least one full year, for the transferee/assignee or parent entity that has been prepared in the ordinary course of business, if any such financial statements are routinely prepared. Such statements, if not otherwise publicly available, may be marked CONFIDENTIAL and will be maintained as confidential by the franchise authority and its agents to the extent permissible under local law.

Exhibit No.  
6

### SECTION IV - TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS

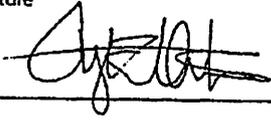
Set forth in an Exhibit a narrative account of the transferee's/assignee's technical qualifications, experience and expertise regarding cable television systems, including, but not limited to, summary information about appropriate management personnel that will be involved in the system's management and operations. The transferee/assignee may, but need not, list a representative sample of cable systems currently or formerly owned or operated.

Exhibit No.  
7

**SECTION V - CERTIFICATIONS**

**PART 1 - Transferor/Assignor**

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.	Signature 
	Date April 6, 2016
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.	Print full name Craig Hartner
	Check appropriate classification: <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Chief Financial Officer) <input type="checkbox"/> Other: Explain:

**PART II - Transferee/Assignee**

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The transferee/assignee certified that he/she:

- (a) Has a current copy of the FCC's Rules governing cable television systems.
- (b) Has a current copy of the franchise that is the subject of this application, and of any applicable state laws or local ordinances and related regulations.
- (c) Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.	Signature
	Date April __, 2016
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.	Grier Raclin
	Check appropriate classification: <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (President & CEO) <input type="checkbox"/> Other: Explain:



## EXHIBIT 1

Under the terms of the proposed transaction, iTV-3, LLC (“Assignee”) will acquire and assume from iTV-3, Inc. (“Assignor”) substantially all of the assets and business of Assignor. The terms of the transaction are set forth in an Asset Purchase Agreement, which is a confidential and proprietary document. Assignee has previously made available a copy of the Asset Purchase Agreement to the local franchising authority, and will provide an additional copy upon request, provided the local franchising authority agrees and confirms that the document will be kept confidential and treated as proprietary under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et. seq.*

## **EXHIBIT 2**

Transferee has no current plans to change the terms and conditions of service or operations of the system as a consequence of the transaction for which approval is sought. The cable system will be operated pursuant to the terms of the franchise agreement and/or applicable law after the consummation of the proposed transaction. Transferee reserves the right to make service and operational changes in accordance with the terms of the current franchise agreement and applicable law.

### EXHIBIT 3

**Assignee:**

ITV-3, LLC  
3 Harcourt Drive  
St. Louis, MO 63105  
Country of Citizenship: United States

**Owners of 5% or Greater Ownership Interest of Assignee:**

- (1) Seaport/CWB iTV-3 Holdings, LLC  
40 Fulton St, 27th floor  
New York, NY 10038  
Percentage of iTV-3, LLC Equity Interest Held: 100  
Country of Citizenship: United States  
Principal Business: Holding Company
- (2) Seaport iTV-3 Investors, LLC  
40 Fulton St, 27th floor  
New York, NY 10038  
Percentage of iTV-3, LLC Equity Interest Held: 97.2 (through 97.2% interest in Seaport/CWB iTV-3 Holdings, LLC)  
Country of Citizenship: United States  
Principal Business: Holding Company
- (3) Seaport Associates IV, LLC  
40 Fulton St, 27th floor  
New York, NY 10038  
Percentage of iTV-3, LLC Equity Interest Held: 97.2 (as Managing Member of and 100% voting interest in Seaport iTV-3 Investors, LLC )  
Country of Citizenship: United States  
Principal Business: Investments
- (4) William Luby  
40 Fulton St, 27th floor  
New York, NY 10038  
Percentage of iTV-3, LLC Equity Interest Held: 48.6 (through 50% equity interest in Seaport iTV-3 Investors, LLC and 50% interest in Seaport Associates IV, LLC)  
Country of Citizenship: United States  
Principal Business: Investor
- (5) James Collis  
40 Fulton St, 27th floor  
New York, NY 10038

Percentage of iTV-3, LLC Equity Interest Held: 48.6 (through 50% equity interest in  
Seaport iTV-3 Investors, LLC and 50% interest in Seaport Associates IV, LLC)  
Country of Citizenship: United States  
Principal Business: Investor

**Assignee's Officers:**

See Exhibit 6.

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#### **EXHIBIT 4**

Assignee is negotiating the terms of a Purchase Warrant for Equity Securities under which one of its lenders will hold warrants to purchase not more than three percent (3%) of Assignee's ownership units under certain circumstances described in the Warrant. Assignee will make available a copy of the Purchase Warrant for Equity Securities, once it exists, provided the local franchising authority agrees and confirms that the document will be kept confidential and treated as proprietary under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et. seq.*

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## EXHIBIT 5

Assignee is negotiating a Credit and Guaranty Agreement with certain lenders, which has not yet been finalized. It is anticipated that Assignee's lenders will obtain a first lien on all of Assignee's assets, including the system identified in this application, as a condition of providing funds to Assignee, subject to the Federal Government's reversionary interest. Under the anticipated terms of the Credit and Guaranty Agreement, Assignee's lenders will need to seek all necessary approvals under applicable law prior to taking control or operating the system at issue in this application. Assignee will make available a copy of the Credit and Guaranty Agreement to local franchising authority officials or representatives, provided the local franchising authority agrees and confirms that the document will be kept confidential and treated as proprietary under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et. seq.*

## EXHIBIT 6

Assignee does not have any financial statements, as it is a newly formed entity that will not be capitalized until closing of its acquisition of Assignor's assets. To demonstrate its financial qualifications, Assignee will make available a copy of the financing commitment letters relating to this transaction to local franchising authority officials or representatives provided the local franchising authority agrees and confirms that the document will be kept confidential and treated as proprietary under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et. seq.*

served as an essential member of the Army communications maintenance team, supervising and performing field and sustainment level maintenance on radio receivers, transmitters and communication security (COMSEC) equipment. During his deployment in the Middle East, he performed complex repairs of defective components, sub-assemblies, and related cabling, ensuring that National Security Agency-approved components were used in communication security/controlled cryptographic equipment, and was awarded the Bronze Star for distinguishing and meritorious service assistance to subordinates.

- **Sam Valencia**, the Assignee's Chief Financial Officer has over 30 years of experience with PricewaterhouseCoopers LLP (the world's largest accounting firm) where he was an Assurance Partner. Sam served clients in multiple industries, nearly all of which were middle-market sized businesses. One of his practice specialties was assisting clients with M&A transactions. This will provide significant value to the Buyer in the completion of the iTV-3 transaction and in preparing the company for the future. Sam's experience will also serve to guide us in the establishment of a secure internal control environment and accurate and complete financial reporting system.
- **Mike Whitaker**, the Assignee's Vice President of Operations, previously was the Vice President of Strategic Alliances for Williams Communications, Inc. While at Williams, Mike was part of a team that was responsible for the building out of a national network consisting of 43,000 miles of fiber optic cable with OC -192 capabilities. The network sold dark fiber IRU's to wholesale customers. Mike also served as Vice President and General Manager of Broadband Services for Core Express, where he managed a team of professionals that provided managed services on a nationwide OC-192 fiber network. The network sold dark fiber IRU services to wholesale customers. Finally, Mike served as Chief Operations Officer at Memphis Networx. Where his team designed, built and helped lead a collaborative public and private effort with the City of Memphis to build a 110 mile metropolitan communications OC -48 fiber network, connecting 12 Bell South central offices. The team developed a comprehensive Operation support system that allowed for efficient provisioning, ordering, customer inventories, and billing. The network sold dark fiber IRU's to wholesale customers.

In addition, **Seaport Capital**, the Assignee's Equity Sponsor, also has substantial experience in developing fiber optic systems similar to iTV-3's. Seaport is a private equity investment partnership which has invested approximately \$600 million of committed equity capital across four investment funds since 1997. Seaport Capital is focused exclusively on making investments in communications services, business and information services, and media industries. Seaport Capital is a very knowledgeable investor in the media and cable television sectors, having invested in the sectors since 1997. Their portfolio includes Everest, a Kansas City area broadband and cable television provider which was purchased from a publicly-traded utility, Aquila. Inc.; Marianas Cablevision, which provides triple-play broadband services on the island of Guam; and MetroCast Cablevision, which provides triple-play broadband services in New Hampshire.

**EXHIBIT 6**

**EXCHANGE OF CORRESPONDENCE  
REGARDING INSUFFICIENCY OF  
INFORMATION REQUESTED  
FROM CWB AND iTV-3**



City of Urbana  
400 South Vine Street  
Urbana, IL 61801

Paul D. Abbott  
Mintz Levin  
One Financial Center  
Boston, MA 02111

**VIA FEDERAL EXPRESS**

Attn. Vice President  
iTV-3, Inc.  
602 High Point Lane  
East Peoria, IL 61611

**Re: Proposed Transfer of iTV-3, Inc. Assets to iTV-3, LLC Including Cable Franchise Agreement Between the City of Urbana, Illinois and iTV-3, Inc. Dated December 15, 2014.**

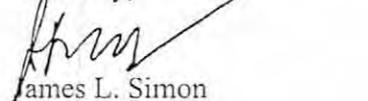
Dear Mr. Abbott:

Please be advised that the City of Urbana, Illinois is in receipt of your letter dated April 7, 2016 and your client's FCC Form 394 (Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise) and Exhibits 1 through and including 7 submitted therewith. At this time, the City of Urbana finds that the information provided on the aforesaid Form 394 and accompanying exhibits is insufficient. Therefore, pursuant to , 47 CFR 76.502(b), the City of Urbana requests that Countrywide Broadband, LLC, as parent of and affiliate to the newly created iTV-3, LLC provide the information contained on the enclosed "UC2B Request for Information from iTV-3 and Countrywide Broadband."

Please note that your client and iTV-3, Inc. have responded to the immediate aforesaid request. However, the City of Urbana does not believe that sufficient information has been provided to date by your client or iTV-3, Inc. so that the City of Urbana City Council, as local franchise authority, can make an informed decision regarding whether or not to grant consent to the transfer contemplated in FFC Form 394. I kindly request that all information be provided in written form.

Your cooperation in facilitating your client's full disclosures of the information requested is greatly appreciated.

Sincerely,



James L. Simon  
City Attorney

Enclosure.

cc: Mayor Laurel Lund Prussing – w/o enclosure.

iTV-3, Inc., Attn: Chief Financial Officer, 2500 Leigh Avenue, Glenview, IL 60026 –  
w/o enclosure.



April 25, 2016

James Simon, Esq.  
City Attorney  
City of Urbana  
400 South Vine Street  
Urbana, IL 61801

**Re: Proposed Transfer of iTV-3, Inc. Assets to iTV-3, LLC Including Cable Franchise Agreement Between the City of Urbana and iTV-3, Inc. Dated December 15, 2014**

Dear Mr. Simon:

iTV-3, Inc. (“iTV-3”) and iTV-3, LLC (“CWB”) has on April 22, 2016 received your undated letter sent on behalf of the City of Urbana (the “City”) in connection with the above-captioned transaction and stating that the information submitted to the City in the FCC Form 394 dated April 7, 2016 (the “Application”) was insufficient for the City to review iTV-3’s franchise transfer request. Your letter asks that CWB provide additional information in response to a list of inquiries from Urbana Champaign Big Broadband NFP (“UC2B”) to CWB titled “UC2B Request for Information from iTV-3 and Countrywide Broadband” (the “UC2B Request”).

Your letter provides no detail or explanation whatsoever as to how any of the information asked for in the UC2B Request relates to the City’s review of the proposed assignment of iTV-3, Inc.’s franchise to CWB, and thus the request is outside of the statutory and regulatory bounds set by Congress and the Federal Communications Commission for franchise authority review of proposed cable system franchise transfers. Furthermore, your assertion that Countrywide has not provided sufficient information is contradicted in the very next sentence where you acknowledge that the transacting parties have already responded to the UC2B Request in full.

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

BOSTON | LONDON | LOS ANGELES | NEW YORK | SAN DIEGO | SAN FRANCISCO | STAMFORD | WASHINGTON

April 25, 2016

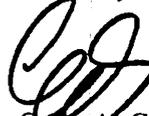
Page 2

That all being said, we think you are improperly conflating and leveraging two roles. As a municipality and franchising authority, it may be appropriate for you to evaluate whether CWB has the capacity to manage the franchise it is seeking, and we have provided you sufficient information to do so. At the holder of a putative first right of refusal, it may be appropriate for you to see the agreement you may have the right to assume, and we have provided that. We have provided you a good faith valuation of the Champaign Urbana assets involved in that transaction notwithstanding the fact the IRU does not require us to do so and notwithstanding our serious misgivings about your right to cherry pick elements of the Asset Purchase Agreement. Despite what we have provided, we are most troubled by the City's using UC2B NFP's requests to uncover CWB's operational plans that would not answer either the franchise question or the first right of refusal question, but clearly appear to be sought solely to assist the cities and UC2B NFP in shopping our proposal to other potential buyers, through the RFI process or otherwise. It seems clear to us that the City's again presenting the UC2B NFP's Information Request under the guise of the franchise transfer process simply is an improper attempt to use the federal and state regulatory franchise approval scheme as leverage for obtaining competitively sensitive information. Nothing about such an effort comports with the federal statutory and regulatory scheme governing the City's review of the franchise transfer.

While we do not believe that the additional information you have requested is required by FCC Form 394 or the cable franchise agreement, nor is it otherwise necessary for consideration by the City within the proper scope of its review, we are re-submitting our response to the UC2B Request with the understanding that such document is being provided without prejudice to our position that (1) the information is not necessary for the City's review and (2) any failure or delay in submitting the requested document and information does not excuse the City's obligation to timely process the Form 394.

We trust that you will find the information contained herein to be fully responsive to your request for additional information. Please do not hesitate to contact me if you have additional questions or if I can be of further assistance.

Sincerely,



Craig A. Gilley  
Attorney for iTV-3, LLC

cc: Mayor Laurel Lunt Prussing, City of Urbana  
John Furton, iTV-3, Inc.  
Michael Donahue, Esq., Attorney for iTV-3, Inc.



City of Urbana  
400 South Vine Street  
Urbana, IL 61801

May 3, 2016

Craig A. Gilley  
Mintz Levin  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

**Re: Proposed Transfer of iTV-3, Inc. Assets to iTV-3, LLC Including Cable Franchise Agreement Between City of Urbana and iTV-3, Inc. Dated December 15, 2014.**

Dear Mr. Gilley:

The City of Urbana (“City”) respectfully disagrees with your assertion that it is “conflating and leveraging” whether to consent to the assignment of the cable franchise agreement with whether to exercise its right of first refusal to purchase those UC2B network assets which iTV-3, Inc. installed within the City’s boundaries. Rather, it is Countrywide Broadband, LLC (“CW”) and its affiliate, iTV-3, LLC, which have been “conflating and leveraging” the two issues in order to gain a benefit by conditioning their provision of the requested information on Urbana’s and Champaign’s respective prior waivers of their right of first refusal. In other words, CW recognizes that the City needs the same information to complete its due diligence and to take action on both issues.

As you are aware, the City has broad discretion to request information regarding iTV-3, Inc.’s request to assign its cable franchise agreement to iTV-3, LLC since the City is the steward of the public good for its community. *Charter Communications, Inc. v. County of Santa Cruz*, 304 F.3d 927 (9<sup>th</sup> Cir. 202). The City is not confined in its information request to that which is provided on FCC Form 394. CW’s and iTV-3, LLC’s failure or refusal to produce the requested information provides more than ample grounds for the City to deny iTV-3, Inc.’s request to assign the cable franchise agreement. *Id.* Likewise, a decision by the City to grant or deny a request to consent to an assignment of the cable franchise agreement is given great deference since any such action is deemed legislative in nature. *Id.*

Surely you can understand the City’s need for detailed responses to its questions, especially considering that both CW and iTV-3, LLC are newly formed organizations with no on-going internet or cable television business of their own. Since CW and iTV-3, LLC have refused or failed to provide the information requested by the City, the latter, as steward of the public good, is entitled to be properly concerned about the long term operation of the system under the cable franchise agreement. Clearly, it would be a breach of the public trust for the City to consent to iTV-3, Inc.’s request to assign its cable franchise agreement to persons about which the City has little information.

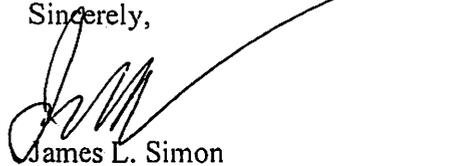


Craig A. Gilley  
May 4, 2016  
Page 2

Given that the two issues are inextricably linked, the City also must question CW's purported valuation of the cable and internet system assets. CW asserts that the valuation it has provided represents the cost of replacing the UC2B fiber optic network, cable system and supporting equipment located within the City of Champaign and the City of Urbana. However, CW provides no information regarding how it arrived at such replacement cost, what specific assets are included in such replacement, what the differing replacement costs are for the various components of the system, and what part of the asset value CW ascribes to the assets located within the City of Urbana's boundaries. Indeed, CW's purported valuation does not state whether it limited to only those assets which iTV-3, Inc. installed after it took over operating of the UC2B network or whether the valuation also includes the assets which the two cities and the University of Illinois installed using federal, state and local funds which they continue to own. Surely, CW and iTV-3, LLC does not expect the City to purchase capital assets which it already owns.

For the reasons stated above, the City renews its request for CW and iTV-3, LLC to provide the information, in detail, previously requested.

Sincerely,



James L. Simon  
City Attorney

cc: Laurel Lunt Prussing, Mayor – via e-mail.  
Fred Stavins, City of Champaign City Attorney via e-mail.  
Lisa Power, Attorney for University of Illinois via e-mail.  
Dr. Jon Gant, President, UC2B NFP via e-mail.  
David Krchak, attorney for UC2B NFP – via email.

# MINTZ LEVIN

Craig A. Gilley | 202 434 7459 | cagilley@mintz.com

701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
202-434-7300  
202-434-7400 fax  
www.mintz.com

May 12, 2016

VIA E-MAIL AND FEDERAL EXPRESS

James L. Simon  
City Attorney  
City of Urbana  
400 South Vine Street  
Urbana, IL 61801

**Re: Cable Franchise Transfer Review—Form 394**

Dear Mr. Simon:

On behalf of iTV-3, LLC and Countrywide Broadband, LLC (collectively, “CWB”), this responds to your May 5, 2016 letter, sent on behalf of the City of Urbana (the “City”) to CWB and iTV-3, Inc. (“iTV-3”). Rather than address each individual assertion in your letter, CWB will reserve all of its rights with respect to the issues you raise and offer a proposal to move our discussions forward.

Preliminarily, CWB wishes to make clear that it recognizes and respects the City’s need to review the proposed transfer of the iTV-3 cable franchise to CWB. To that end, it has proposed a bifurcated review process. Under this proposal, the City would first consider whether to exercise its purported right of first refusal to buy the iTV-3 assets in the City (the “RFR”), relying upon the same information iTV-3 provided to CWB and the other parties that expressed interest in purchasing iTV-3’s assets. The second step – a review of CWB’s qualifications to hold iTV-3’s cable franchise – could also include a discussion about CWB’s plans for the Urbana network, and would be pursued if the City decides not to exercise the RFR. We believe that this proposal properly balances the City’s legitimate right to review the proposed franchise transfer, with CWB’s legitimate concern about revealing proprietary commercial information to a competitor.

The specifics of our proposal are as follows:

First, we understand iTV-3 has offered the City, through Urbana Champaign Big Broadband NFP (“UC2B”), access to the same information that iTV-3 offered to other prospective buyers (including CWB) before accepting CWB’s purchase offer. With this information in hand, the City will be on a level playing field with all other parties in considering whether to purchase iTV-3’s assets as it evaluates whether to exercise its RFR. As to the price at which the City could buy the iTV-3 network assets located in Urbana, there is, as you know, no

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

James L. Simon  
May 12, 2016  
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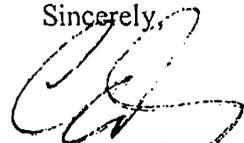
requirement for iTV-3 or CWB (or the City, for that matter) to specify that price. CWB and iTV-3 nevertheless have provided their best estimate of the cost to replace the assets, rights, and future opportunities within the overall value of iTV-3. They simply don't have a better mechanism to set the RFR price because CWB never contemplated nor discussed with iTV-3 the purchase solely of the assets located in either Urbana or Champaign.

Upon iTV-3's provision of the information described above, which we understand has occurred or is underway, the City will then have thirty (30) calendar days to decide whether to exercise its RFR. If the City properly exercises the RFR within that 30-day period, with the same showing of financing capability that other bidders were required to provide, then there would be no need to proceed further with consideration of the transfer of the City franchise from iTV-3 to CWB. If the City cannot or decides not to exercise the RFR, the parties would move to the next phase of the bifurcated process, described below.

Second, upon the City's expressing in writing that it is not exercising the RFR, CWB will promptly meet with the City or its representative (e.g., UC2B) to discuss the proposed franchise transfer and provide information that the City may reasonably request and CWB possesses. This could include a discussion of CWB's plans to expand the fiber network in the City. We, of course, would want to undertake those discussions and, hopefully, receive the City's approval of the franchise transfer as soon as possible, to allow at least some expansion of the iTV-3 network in the City to occur in 2016.

We look forward to your prompt response and agreement to the proposal set forth in this letter. Please do not hesitate to contact me should you have any questions.

Sincerely,



Craig A. Gilley  
*Attorney for iTV-3, LLC*

cc: Levi Dinkla  
Michael Donahue, Esq.  
*Attorney for iTV-3, Inc.*  
Jon Gant, UC2B



City of Urbana  
400 South Vine Street  
Urbana, IL 61801

May 19, 2016

Craig A. Gilley  
Mintz Levin  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

**VIA FEDERAL EXPRESS**

**Re: Proposed Transfer of iTV-3, Inc. Assets to iTV-3, LLC Including Cable Franchise Agreement Between City of Urbana and iTV-3, Inc. Dated December 15, 2014.**

Dear Mr. Gilley:

I am in receipt of your letter dated May 12, 2016. The City of Urbana ("Urbana") shares your client's ("CWB") desire to proceed with the information disclosure process in a reasonable and orderly manner so that Urbana can make a rational and informed decision concerning whether to (i) exercise its right of first refusal to purchase those UC2B assets which are currently being operated by iTV-3, Inc. and which were installed in the Urbana with iTV-3, Inc. funds ("RFR"); and (ii) grant or withhold its consent to an assignment and transfer of the iTV-3, Inc.-Urbana cable franchise agreement ("Cable Agreement"). CWB's proposal seems to be a reiteration of what it has urged previously – i.e., that Urbana waive its RFR before CWB provides any information for Urbana's consideration in connection with whether to grant or withhold its consent to an assignment of the Cable Agreement. Once again, CWB's proposal is unacceptable. As reiterated below, the information which Urbana is seeking is necessary to complete its due diligence on both matters.

**CWB's Proposed First Step - Access and Review of iTV-3, Inc. Information:**

You are correct that iTV-3, Inc. has offered Urbana and Champaign (through UC2B NFP) access to certain information which iTV-3, Inc. placed in an electronic data room ("Data Room") managed by Royal Bank of Canada. Further, iTV-3, Inc. has provided responses to a number of questions which UC2B NFP and the cities have been seeking for some time. iTV-3, Inc. has also attempted to link certain documents in its Data Room to its respective answers. At this time, however, I do not believe that Dr. Jon Gant (UC2B NFP President) has had an opportunity to enter the Data Room or review the documents which iTV-3, Inc. has tied to its responses. Further, I believe Dr. Gant is now on vacation. Thus, whether the responses are complete and verifiable so as to start the 30-day clock on Paragraph 8 of the iTV-3, Inc.-UC2B NFP agreement has yet to be determined. I must state, however, that iTV-3, Inc.'s reluctance and foot-dragging on the sharing of information is rather disconcerting especially since Section 5.4.1 of the Cable Agreement expressly grants Urbana the right to audit iTV-3, Inc.'s books and records in all aspects regarding iTV-3, Inc.'s compliance with the Cable Agreement. I believe that Champaign's cable franchise agreement with iTV-3, Inc. contains the same language.



I have been led to believe that the information in iTV-3, Inc.'s Data Room is the same information to which potential purchasers of iTV-3, Inc. have been granted access in order for their respective due diligence insofar as whether they wish to tender purchase offers to iTV-3, Inc. Levi Dinkla indicated that the Data Room was set up in order to maintain a "level playing field" insofar as the information made available to prospective purchasers. Unfortunately, Urbana does not see itself in the same position as an outside prospective purchaser of iTV-3, Inc. Unlike a for-profit company, Urbana serves as the steward of the public good for its citizens. Thus, Urbana must properly remain concerned about the long-term consequence of a newly created company which will operate the UC2B system (the "System") which was in significant part created with federal, state and local funding. Granted, the information in iTV-3, Inc.'s Data Room may provide some assistance in ascertaining how successful iTV-3, Inc. has been in operating the System, what build-out has been initiated and completed since UC2B NFP turned over operation of the System to iTV-3, Inc., and the basis for how iTV-3, Inc. values its interest in that System overall. (Without having studied the information offered by iTV-3, Inc., Urbana, Champaign and UC2B NFP cannot determine yet whether it in fact supports the answers given by iTV-3, Inc. or whether it sufficiently answers other pertinent questions posed.)

Unfortunately, to my knowledge, the information in iTV-3, Inc.'s Data Room does not address Urbana's questions or concerns regarding how CWB intends to manage, operate, maintain, and build out the System or interact with the Urbana community as a whole and city government going into the future. Further, I do not believe there is any information in iTV-3, Inc.'s Data Room which discloses CWB's mid-term and long-term financing for further build-out and operation of the System. Only your client can provide such information. (As acknowledged in prior correspondence, Urbana recognizes that CWB provided commitments for Goldman Sachs to Seaport Capital and Seaport Capital to CWB which relate to CWB's intent to purchase iTV-3, Inc.'s assets. However, it is not clear whether funds proposed as being offered through those commitments can be used for building out, operating or maintaining the System or for customer and community support.)

As indicated in my prior letter, iTV-3, Inc. does not own the assets which were acquired and installed using federal, state and local funds. Rather, the cities and the University of Illinois own those assets. They granted UC2B NFP a right to use them which right was assigned to iTV-3, Inc. iTV-3, Inc. only owns those assets it installed beyond what existed at the time iTV-3, Inc. commenced its arrangement with UC2B NFP. I don't believe that Urbana has an obligation to purchase from iTV-3, Inc. assets which Urbana already owns. Given Urbana's stewardship obligations to its citizens, it has a very serious interest in promoting and assuring the future operation, maintenance and expansion of the UC2B system in Urbana. Thus, it is more than reasonable for Urbana to be concerned about the future insofar as how CWB will manage the operation, maintenance, financing, expansion, and customer/community relations aspects if it takes over the System.

I agree that Paragraph 8 of the iTV-3, Inc.-UC2B NFP agreement does not specifically require iTV-3, Inc. or CWB to provide an evaluation of the assets CWB seeks to purchase. However, given the nature and scope of CWB's offer to purchase and given how CWB and iTV-3, Inc. have attempted to value the iTV-3, Inc. assets located in the Urbana-Champaign area alone, Paragraph 8, as drafted, becomes wholly inoperable. CWB has offered \$35 million to

purchase all of iTV-3, Inc.'s assets regardless of where located. Clearly, Urbana has no obligation to purchase iTV-3, Inc. assets located anywhere other than in Urbana. CWB and iTV-3, Inc. have asserted that the assets located in the Urbana-Champaign area are valued at about \$22 million and that this value is based on replacement cost. Again, Urbana has no obligation to purchase assets in Champaign. Clearly, CWB used different means and methods when valuing iTV-3, Inc.'s assets for purposes of tendering its purchase offer as opposed to valuing those iTV-3, Inc. assets located in the Urbana-Champaign area. Urbana certainly has a right to know what and how CWB and iTV-3, Inc. valued the latter's assets located just in Urbana, if for no other reason than to know what amount to place on the check should Urbana exercise its RFR. In short, Urbana has a right know (i) what assets were included in the valuation; (ii) whether the valuation included assets which Urbana or the University (at least insofar as University assets are located in Urbana) already own; (iii) how iTV-3, Inc. and CWB value the assets which Urbana owns separate from those which iTV-3, Inc. owns; and (iv) what is the breakdown of replacement costs by type of asset. In short, CWB has jettisoned the fair market value based on an arms'-length offer approach to valuing the assets as provided in Paragraph 8 of the iTV-3, Inc.-UC2B NFP agreement.

For the reasons stated above, the simple provision of just the information contained in iTV-3, Inc.'s Data Room is not sufficient for Urbana to reach a decision whether or not to exercise its RFR and/or to consent to an assignment of the Cable Agreement.

**CWB's Proposed Second Step - Timing of Your Client's Provision of Information:**

I believe that I have addressed in my prior letter CWB's proposed second step in the information-giving process. As stated above and in prior correspondence, CWB's request that the City waive its RFR as a condition to receiving information remains wholly unacceptable.

I am aware that CWB presented a generalized term sheet in mid-April. UC2B NFP, in consultation with Urbana and Champaign, responded with a detailed term sheet in late April, early May in response thereto. The UC2B NFP term sheet was arrived at after considering your client's term sheet. To date, CWB has not directly responded to UC2B NFP's, Champaign's and Urbana's term sheet. Rather, CWB has expressed concern that UC2B NFP and the cities have shared and/or will share with other possible purchasers any detailed term sheet which CWB provides. I believe such concerns are unfounded since there is no evidence whatsoever that UC2B NFP or either city has shared with any third person information which CWB has provided and which is marked confidential or proprietary. To my knowledge, all three entities have honored the spirit of confidentiality even in the absence of an executed non-disclosure agreement. I have little doubt that Urbana, Champaign and UC2B NFP will continue to treat CWB's information as confidential and proprietary.

Urbana remains willing to confer with CWB about resolving the information production dilemma so that both sides can move forward with the more substantive issues. I'm sure you can appreciate that any communications regarding a resolution of this dilemma must include Champaign and UC2B NFP. Urbana cannot reach any reasonable conclusion about whether to waive or exercise its RFR and/or grant or withhold its consent under the Cable Agreement in the absence of information which it, Champaign and UC2B NFP have requested from CWB.

Craig A. Gilley  
May 19, 2016  
Page 4

As always, if you wish to discuss this matter further, do not hesitate to contact me.

Sincerely,

James L. Simon  
City Attorney

cc: Laurel Lunt Prussing, Mayor – via e-mail.  
Fred Stavins, City of Champaign City Attorney via e-mail.  
Lisa Power, Attorney for University of Illinois via e-mail.  
Dr. Jon Gant, President, UC2B NFP via e-mail.  
David Krchak, attorney for UC2B NFP – via email.



City of Urbana  
400 South Vine Street  
Urbana, IL 61801

June 3, 2016

Craig A. Gilley  
Mintz Levin  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

**VIA FEDERAL EXPRESS**

**Re: Proposed Transfer of iTV-3, Inc. Cable Franchise Agreement between City of Urbana and iTV-3, Inc. Dated December 15, 2014 to iTV-3, LLC, an Affiliate of Countrywide Broadband, LLC**

Dear Mr. Gilley:

Please be advised that, as of this date, your client, iTV-3, LLC, an affiliate of Countrywide Broadband, LLC, has not provided all the information which the City of Urbana ("City") has requested and which the City deems necessary in order to evaluate whether to grant or withhold the City's consent to iTV-3, Inc.'s request to transfer and assign the above-referenced cable franchise agreement. Please note that the ten (10) day period for providing such information has long since passed. 47 CFR 76.506(b).

As you are aware, your client represented that it would provide the information which the City requested but only on condition that the City waive its right of first refusal to purchase those iTV-3, Inc. assets which are located within the City and which are not already owned by the City. There is nothing in 47 CFR 76.506 or any other federal or state regulation or statute which allows iTV-3, LLC to condition its production of information on a franchisor's waiver of a legal right.

While the City of Urbana City Council has not taken up the matter, given the lack information requested from your client, it is likely that the City Council will not grant iTV-3, Inc.'s request to transfer and assign the above-referenced cable franchise agreement. Likewise, if the City Council chooses to deny iTV-3, Inc.'s request, it may do so with or without prejudice.

Please note that your client's submission of its FCC Form 394 is not in compliance with 47 CFR 76.506 which clearly contemplates that the current cable operator (cable franchisee) is the party which must submit the form. However, with the hope of expediting the matter, the City elected not raise this issue and has chosen to accept your client's, rather than iTV-3, Inc.'s, submission of FCC Form 394 to the City.

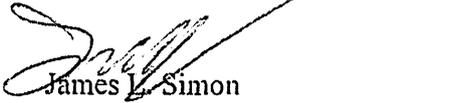
Finally, it is my understanding that UC2B NFP and Countrywide Broadband, LLC (the latter, presumably, on behalf of iTV-3, LLC) have commenced discussions and negotiations about possible mutually accept terms which they might recommend to the City of Urbana and the



City of Champaign in order for them to consider waiving the respective rights of first refusal under the iTV-3, Inc.-UC2B NFP agreement and to grant their respective consents to transfers and assignments of their respective cable franchise agreements. Please understand that, while UC2B NFP has been serving as the cities' contact point, UC2B NFP does not have the authority to bind either city into any agreement with Countrywide Broadband, LLC or its affiliate, iTV-3, LLC.

It remains my hope that all parties concerned can reach a conclusion to this matter which will be mutual beneficial to all parties.

Sincerely,



James L. Simon  
City Attorney

cc: Laurel Lunt Prussing, Mayor – via e-mail  
Dr. Jon Gant, President, UC2B NFP – via e-mail  
David Krchak, attorney for UC2B NFP – via e-mail  
Fred Stavins, City Attorney for City of Champaign – via e-mail  
Lisa M. Power, Assistant Campus Legal Counsel,  
University of Illinois at Urbana-Champaign – via e-mail



City of Urbana  
400 South Vine Street  
Urbana, IL 61801

June 6, 2016

Mr. Levi Dinkla  
iTV-3, Inc.  
602 High Point Lane  
East Peoria, IL 61611

VIA U.S. MAIL & ELECTRONIC MAIL

**Re: City of Urbana Waiver of Right of First Refusal to Purchase Assets and iTV-3, Inc.'s Request for City of Urbana's Consent for iTV-3, Inc. to Assign and Transfer Cable Franchise Agreement Dated December 15, 2014**

Dear Levi,

I am in receipt of Dave Krchak's letter to you dated May 31, 2016 which indicates that UC2B NFP (the "NFP") has reviewed the information which iTV-3, Inc. provided the NFP and which the latter has confirmed in terms of "quality, relevance, and utility to address [the NFP's] questions." Brackets supplied. In Dave's letter, he further indicated that the "Cities of Champaign and Urbana will independently determine if the information provided is satisfactory."

Please note that I would have sent this to iTV-3, Inc.'s attorney but, as of yet, I am not aware of any attorney who is representing iTV-3, Inc. in regarding to its sale of assets to Countrywide Broadband, LLC ("CWB"). If I am mistaken in my understanding, please forward this letter to iTV-3, Inc.'s attorney.

Please be advised that the City of Urbana finds the information which iTV-3, Inc. provided to the NFP incomplete in several respects.

**1. CWB Information:**

The iTV-3, Inc. information contains very little in terms of how Countrywide Broadband, LLC (and/or its affiliate, iTV-3, LLC, collectively and individually, "CWB") intends to operate, maintain and expand the UC2B system and handle customer, community and local government relations if and when it takes over the system. While the iTV-3, Inc. information is important for reviewing what has occurred up to now, the City of Urbana ("City") believes it is critical to have information regarding how CWB will handle the system in the future. In short, iTV-3, Inc.'s information is only half of what the City needs in order to determine whether or not to exercise its right of first refusal granted by the iTV-3, Inc.-NFP agreement. Likewise, detailed information regarding CWB's plan to operate, maintain and expand the system and handle customer, community and local government relations is equally important in order for the City to decide whether to grant or deny iTV-3, Inc.'s request to transfer and assign the above-referenced cable franchise agreement to CWB.



I realize that CWB has not historical track-record operating a system like the UC2B system. In my “past life” as a private practitioner, I represented a number of new ventures in dealing with venture capitalists and investment banks. They have been required to prepare and submit detailed business plans, projections and financial proformas in order to obtain investment and credit. I have very little doubt that CWB provided Seaport Capital and/or Goldman Sachs with such information. If providing such information to the City raises confidentiality concerns, the City has no problem with executing an NDA. Indeed, to date, neither the cities nor the NFP has disclosed any information which iTV-3, Inc. and CWB have marked as proprietary and confidential.

## **2. Overall Valuation of Assets in Cities:**

iTV-3, Inc. has provided very minimal information insofar as how it and/or CWB arrived at its asset value of \$22,559,159 for the assets located in Urbana and Champaign combined. The reason this information is important due to the fact that iTV-3, Inc. and/or CWB chose not to use the valuation metric provided for in the iTV-3, Inc.-NFP agreement – i.e., a “market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate.” See Paragraph 8. Rather, iTV-3, Inc. and/or CWB chose to use a replacement cost metric. One fact is clear from the one-page sheet provided, the iTV-3/CWB valuation of \$22,559,159 includes \$17,605,929 worth of assets which the cities have no obligation to purchase since they already own those assets.

I realize that Mr. Hoogland suggested that the Indefeasible Right of Use could be included in the valuation in order to bring the value up to iTV-3, Inc.’s \$22,559,159 figure. However, the current replacement cost valuation which iTV-3, Inc. and/or CWB elected to provide the cities does not include the IRU. Moreover, my research suggests that it would be extremely difficult to value the IRU insofar as it relates to just the cities. Rational business logic would suggest that any value (assuming that one could be computed) would require significant deflators to reflect (i) the remaining time left before access by others must be provided; (ii) the utility and future marketability of the IRU in the absence of video (cable television) and voice (telephone) service; (iii) the limitation of the IRU to just the cities; (iv) the very limited experience with and lack of comparables to the IRU; and (v) the value of the IRU insofar as it involves Urbana alone would likely be minimal. Indeed, the only metric for valuing the IRU for Urbana alone is that which the City paid when given an IRU by the NFP – i.e., \$0. Further, the information you provided to the NFP does not appear to disclose any new IRU sales since iTV-3, Inc. took over the UC2B system more than 14 months ago. Thus, the demand for the IRU appears low to non-existent.

## **3. Valuation of Assets Located Just in Urbana:**

I have also repeatedly asked for iTV-3, Inc.’s valuation of those assets which are located just within Urbana. Any fair interpretation of Paragraph 8 of the iTV-3, Inc.-NFP agreement suggests that the City has a right to purchase those assets which are located in Urbana. Paragraph 8 does not impose on Urbana any obligation to purchase assets located in Champaign or elsewhere other than in Urbana. Thus, if for no other reason than to know how much should be put on a check should the City elect to exercise its right of first refusal, iTV-3, Inc. has a

contractual obligation to provide the City with a value based on a “market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate.” Of course, any such value should exclude assets which the City, Champaign, and/or the University already own.

In the recent telephone conference, Mr. Hoogland stated that it is up to the cities to decide how to apportion between them the value which iTV-3, Inc. and CWB has provided. Nothing in the iTV-3, Inc.-NFP agreement requires the cities to apportion any value. Rather, Paragraph 8 of the iTV-3-NFP agreement states that the cities “have a right of first refusal to purchase iTV-3’s interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 ...” Thus, it is incumbent on iTV-3, Inc. to provide a value to the City for just those assets located in Urbana without including the assets which the City already owns.

I appreciate Mr. Hoogland’s efforts to “educate” me on the terms of the iTV-3, Inc.-NFP agreement when stating that the City had 30 days in which to request information following iTV-3, Inc.’s intent to sell its assets. Unfortunately, I believe he is misinterpreting the agreement. There is nothing in the aforesaid agreement which requires the City to submit its request for information within 30 days following notification that iTV-3, Inc. has received an offer to purchase the system. Two 30-day timeframes are provided in the agreement: (i) “Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right”; and (ii) “The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.” Thus, the 30-day timeframes to which Mr. Hoogland referred only apply to when iTV-3, Inc. must provide the information requested and when the City must make its decision, if any, following receipt of all information requested.

Up until now, the City has agreed with the NFP’s lead in the information-gathering process so as not to “gang-up” on iTV-3, Inc. or to require iTV-3, Inc. to engage in duplicative efforts. Likewise, the communications between the parties (other than the FCC Form 394 information and communication exchanges related thereto and the NFP’s actual request for information) have been on a rather informal basis. However, as Dave Krchak’s letter acknowledges, it is ultimately up to the cities insofar as whether they believe that they have enough information on which to base their respective decisions. Clearly, I believe the City has not been given all the information which has been requested informally and, now, formally. Thus, please consider this letter as the City’s written memorialization of the requests which have heretofore been made on an oral basis.

Given the current status of the information disclosure, as noted above, I seriously doubt that Urbana’s City Council would consent to a transfer and assignment of the cable franchise agreement to a company about which it knows very little and which has failed or refuses to disclose its plans for future operations.

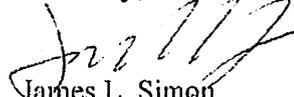
Finally, to my understanding, the NFP and CWB are currently engaged in discussions and negotiations in an effort to arrive at mutually satisfactory terms which they believe would be acceptable to the cities as consideration for the cities’ waiver of the rights of first refusal and for

Levi Dinkla  
June 6, 2016  
Page 4

granting iTV-3, Inc.'s requests for the cities' consent to the transfer and assign their respective cable franchise agreements. I am hoping that these negotiations proceed and progress in an orderly fashion. However, while those discussions proceed and on the 'oft chance that they may break down, the City still requests the information described above so that it can complete its due diligence on the two pending issues: (i) whether to waive the City's right of first refusal to purchase those assets located within Urbana but which are not now owned by the City; and (ii) whether to grant iTV-3, Inc.'s request to transfer and assign the cable franchise agreement with the City.

I look forward to receiving the information requested and remain hopeful that the CWB-NFP discussions bear fruit.

Sincerely,



James L. Simon  
City Attorney

cc: Laurel Lunt Prussing, Mayor  
Dr. Jon Gant, President, UC2B NFP  
David Krehak, attorney for UC2B NFP  
Fred Stavins, City Attorney, City of Champaign  
Lisa M. Power, Assistant Campus Legal Counsel,  
University of Illinois at Urbana-Champaign – via e-mail

June 6th, 2016  
Mr. James Simon  
City of Urbana  
400 South Vine Street  
Urbana, IL 61801

Mr. Simon,

In response to your letter dated June 6th, 2016 iTV-3, Inc. please see my comments below:

1. CWB Information:

iTV-3, Inc cannot answer for CWB's future plans as iTV-3 does not know those plans and therefore cannot answer for CWB. The information you are looking for is best discovered as part of the cable franchise agreement transfer process. It is our understanding that CWB has had and continues to have detailed discussions with UC2B and has provided a substantial amount of information pertaining to their plan going forward. I would suggest contacting Jon Gant at UC2B for this information as it potentially could answer your questions.

2. & 3. Overall Valuation of Assets in Cities and breakdown by City:

As stated, iTV-3 has received an arm's length written offer from Country Wide Broadband for its assets, rights, and future opportunities in the amount of \$35.5M. Upon the request of UC2B to provide a breakout of the valuation of the assets, rights, and future opportunities located in Champaign and Urbana, IL; Country Wide Broadband provided an arm's length written valuation of \$22,559,159.00 to iTV-3, Inc. the Cities, and UC2B. As we have stated before, iTV-3, Inc. does not have any information on how CWB values this transaction other than the numbers provided as their purchase price or valuation.

Unfortunately there is no mechanism in the IRU granted to iTV-3, Inc. to break down the value in each community; all iTV-3, Inc. can suggest is the following: In section 9.3 of 2A Second Amended IGA, Bylaws Executed 8.15.13 (1) which is attached, the Consortium outlines the formula for sharing costs as it relates to the Network. In this formula the University pays 33%, Champaign pays 42%, and Urbana pays 25%. Since the University is not party to the Right of First Refusal iTV-3 would propose that the University share be split between Champaign and Urbana. This would result in Champaign paying 58.5% (\$13,197,108) and Urbana paying the remaining 41.5% (\$9,362,050).



Finally, iTV-3, Inc. disagrees with your open ended interpretation of the timelines governing this right of first refusal as per our written confirmation from UC2B, the timeline started on May 14, 2016 and expires on June 14<sup>th</sup>, 2016. The questions you are asking are follow up questions but in no way change the expiration of the right of first refusal on June 14<sup>th</sup>, 2016.

I too remain hopeful that the CWB and NFP discussions will bear fruit shortly. My understanding is that the meeting last week between them was very productive and substantial progress was made pertaining to the future growth in Urbana and Champaign areas. It may be beneficial for you to touch base with Jon Gant for an update.

Sincerely,

Levi Dinkla  
Vice President & COO  
iTV-3  
(309)670-0572-Direct  
(309)670-0372-Fax  
[www.itv-3.com](http://www.itv-3.com)





City of Urbana  
400 South Vine Street  
Urbana, IL 61801

June 7, 2016

Mr. Levi Dinkla  
iTV-3, Inc.  
602 High Point Lane  
East Peoria, IL 61611

VIA ELECTRONIC MAIL

**Re: City of Urbana Waiver of Right of First Refusal to Purchase Assets and iTV-3, Inc.'s Request for City of Urbana's Consent for iTV-3, Inc. to Assign and Transfer Cable Franchise Agreement Dated December 15, 2014**

Dear Levi,

Thank you for your quick response.

**CWB Information:**

Paragraph 8 of the iTV-3 NFP agreement provides: "Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right." Emphasis supplied. Clearly, information regarding CWB's plans for taking over the UC2B system is as necessary for Urbana to "make an informed decision as to whether to exercise this right [of first refusal]." Brackets supplied. Urbana, at this point in time, is more interested in the future operation of the UC2B than its past operation.

There is nothing within Paragraph 8 which limits the cities' request for information to just how iTV-3 has operated the system in the past. Likewise, there is nothing in Paragraph 8 which requires the cities to ask CWB for information. Given iTV-3's working relationship with CWB, it is quite logical for the cities to request information from iTV-3 about CWB's plans after taking over the system.

iTV-3 and CWB have been working together on your so-called "bifurcated approach" which requires the cities to waive their respective rights of first refusal before receiving information which is absolutely necessary in order to "make an informed decision" whether to waive or exercise those rights. You have reaffirmed that iTV-3 and CWB continue to pursue this strategy to this day. Unfortunately, and with no disrespect intended, Urbana flatly rejects the total illogic of the iTV-3-CWB "bifurcated approach" and is not obligated to "buy into" any such strategy.

**Asset Valuation:**



I appreciate your acknowledgement that iTV-3 has not received a "market price" "offer to purchase" those iTV-3 assets which are located in just the cities, let alone Urbana. Likewise, I appreciate your acknowledgement that "there is no mechanism in the IRU" to value the IRU.

Clearly, the iTV-3-NFP agreement contains no means, method or metric for valuing the IRU. As I noted in yesterday's e-mail, iTV-3 has placed the exact same value on assets located within the cities which include and which exclude the IRU. In short, the now-inclusion of the IRU has not changed the value previously provided.

Your reference to Section 9.3 of the Second Amended IGA ("2<sup>nd</sup> IGA") thoroughly escapes me. There is nothing in Section 9.3 which refers to, much less attempts to value, any IRU. Section 9.3 simply represents a continuation of the UC2B Consortium members' (cities and University) agreement to support the non-construction operations of the UC2B system for the period August 15, 2011 to September 30, 2013. This same cost-sharing formula was included in Section 9.3 of the First Amended IGA – long before the Consortium even contemplated creating another entity (the NFP) to take over operating and expanding the UC2B system. Section 9.A. of the 2<sup>nd</sup> IGA addresses the creation of the NFP and there is nothing in Section 9.A. which even refers to, much less attempts to value, any IRU. Likewise, there is nothing in the NFP bylaws which provides any means, method or metric for valuing any IRU.

It is also important to note that your response to my letter does ignore the fact that the value provided to the cities and the NFP (\$22,559,159) which iTV-3 has ascribed to the iTV-3 assets located within the cities includes a value (\$17,605,929) for assets already owned by the cities and the University. Since iTV-3 maintains that the value of the assets located within the cities (including those owned by the cities) is the same whether or not the IRU is included in the equation, then the value of the assets in the cities (with and without a value for the IRU), net of what is already owned by the cities, also remains at \$4,953,230.

As for conferring with Dr. Gant, I remain in regular contact with him. Jon has confirmed that the discussions between the NFP and CWB are proceeding in an orderly fashion and, with some luck, may produce a satisfactory agreement. I share your hope, if for no other reason than to get between the information-sharing quagmire.

Sincerely,



James L. Simon  
City Attorney

cc: Laurel Lunt Prussing, Mayor  
Dr. Jon Gant, President, UC2B NFP  
David Krchak, attorney for UC2B NFP  
Fred Stavins, City Attorney, City of Champaign  
Lisa M. Power, Assistant Campus Legal Counsel,  
University of Illinois at Urbana-Champaign – via e-mail

**EXHIBIT 7**

**RESUMES OF CWB'S KEY  
MANAGEMENT TEAM**

# GRIER C. RACLIN

35 West Brentmoor Park  
St. Louis, Missouri 63105

Office: (314) 448-1235  
Email: [grier@raclin.com](mailto:grier@raclin.com)

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## CHIEF EXECUTIVE OFFICER

Accomplished Chief Executive Officer, with in-depth experience as in-house General Counsel and Chief Administrative Officer of Fortune 500 and multinational telecommunications companies, and as Managing Partner of major corporate law firm. Known as an effective and decisive leader, able to build and motivate high performance teams and help create and implement corporate visions. Skilled in successfully managing and resolving complex litigation and negotiating domestic and international financial transactions, including M&A, restructurings, financings and other "transformational" events, especially involving technology. Brings diverse and hands-on experience directing major, corporate functions, such as Business Development, Human Resources, Procurement, Facilities Management and Government Relations. Recognized for having a critical role in positioning dynamic companies to succeed in competitive environments.

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## PROFESSIONAL BACKGROUND

### COUNTRYWIDE BROADBAND, LLC CO-FOUNDER, PRESIDENT AND CEO

CURRENT

Leading a team of experienced, telecommunications professionals in the acquisition and operation of fiber optic and cable television systems nationwide. Initial acquisition reported at <http://www.prnewswire.com/news-releases/st-louis-based-countrywide-broadband-inc-to-acquire-itv-3-cable-business-300224173.html>  
Concurrently, a lecturer and mentor the St. Louis University School of Business.

### SCIENTIFIC GAMES CORP. (NASDAQ: "SGMS"), New York, NY SVP AND GENERAL COUNSEL

2011-2012

Managed all legal and compliance matters for this leading, public, multinational provider of highly-regulated gaming and gambling products and services. Significant attention devoted to securities law and regulatory compliance; board and corporate governance matters; management of complex, international litigation and corporate transactions; governmental relations; and commercial sales.

### THOMPSON COBURN L.L.P., St. Louis, MO CO-CHAIR, PRIVACY AND DATA SECURITY DEPARTMENT

2010-2011

Represented clients in the negotiation of intellectual property litigation settlements and other complex transactions; advised on privacy and data security matters; and resolved technology policy issues. Concurrently served as Adjunct Professor of Securities Regulation at Washington University School of Law.

### CHARTER COMMUNICATIONS, INC. (NASDAQ: "CHTR"), St. Louis, MO EVP AND CHIEF ADMINISTRATIVE OFFICER (2009) EVP, GENERAL COUNSEL, CHIEF COMPLIANCE OFFICER & CORPORATE SECRETARY (2005-2009)

2005-2009

Recruited to improve operational performance and manage \$14B in public debt refinancings at this leading operator of cable television systems nationwide. Member of the senior management team, reporting to the CEO with responsibility for all legal and regulatory compliance, litigation and transaction management, business development, procurement and governmental relations. Selected accomplishments included:

- **Utilizing strong negotiation skills** to successfully resolve numerous, multi-million dollar IP infringement suits and consumer class actions, and recover more than two years' total legal expense through a single plaintiff's action
- **Reorganizing Legal Department and restructuring external counsel relationships**, reducing legal fees by 40% in two years while dramatically improving client service and employee morale

- **Devising and implementing programs to ensure compliance with all corporate and Board governance requirements** in connection with numerous related-party transactions during periods of heightened scrutiny

**SAVVIS, INC.** (NASDAQ: "SVVS") (acquired by CenturyLink), St. Louis, MO  
**EVP, CHIEF LEGAL OFFICER AND CORPORATE SECRETARY**

**2003-2005**

Member of the Senior Management team, reporting to the CEO and directing all legal and regulatory affairs, data center facilities management, procurement and intellectual property protection in this leading provider of cloud and managed IT services. Managed all Board affairs and ensured compliance with corporate governance, capitalization and regulatory requirements in the U.S. and 30 foreign countries.

- **Instrumental in nearly tripling company revenues** (from \$236M to \$667M), through strategic acquisitions
  - Structured and negotiated all major corporate transactions, including the acquisition of Cable and Wireless' U.S. assets and Intel's data centers and hosting business
  - Principally devised and managed post-acquisition synergy programs that achieved >\$100M in cost savings

**GLOBAL TELESYSTEMS, INC.** (NYSE, AMST, LUX: "GTS"), London, England  
**EVP, GENERAL COUNSEL AND CHIEF ADMINISTRATIVE OFFICER**

**1997-2002**

Member of Senior Management, reporting to the CEO, in this leading provider of international voice, mobile and data services to businesses throughout Europe and Asia. Directed all legal, regulatory and other administrative functions and managed all interactions with regulatory bodies in more than 20 countries.

- Resolved all legal and regulatory issues related to constructing and operating the first, trans-European fiber optic network and operating the largest private telecommunications service provider in Russia and Central Europe
- Managed all legal aspects of \$6.5B in foreign and domestic acquisitions, divestitures and financings
- In anticipation of business requirements, re-sized and reorganized numerous corporate departments to ensure business support and achieve millions of dollars in cost savings
- Resolved all legal issues in connection with the recapitalization of the company's \$3B balance sheet; reorganizing the company into four stand-alone businesses and divesting \$1.5B in business units

### **ADDITIONAL LEGAL EXPERIENCE**

**GARDNER, CARTON & DOUGLAS**, Chicago, IL/Washington, D.C. (merged with Drinker, Biddle & Reath)  
**VICE CHAIRMAN OF THE MANAGEMENT COMMITTEE; MANAGING PARTNER, WASHINGTON, D.C. OFFICE;**  
**CHAIRMAN OF STRATEGIC PLANNING COMMITTEE**

At this and prior firms, including **Sidley & Austin**, represented multinational technology equipment suppliers and high technology companies in international financial and commercial transactions (including Space Shuttle experiments); regulatory compliance; and the resolution of intellectual property and other complex litigation. Led the successful defense of one of the largest international patent infringement cases involving telecommunications devices, and the representation of videotape manufacturers in U.S. Supreme Court's *Betamax* copyright litigation. Also served as **Senior Law Clerk to Judge Wilbur Pell of the U.S. (7<sup>th</sup> Circuit) Court of Appeals in Chicago.**

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## EDUCATIONAL BACKGROUND

J.D., NORTHWESTERN UNIVERSITY SCHOOL OF LAW; Chicago, Illinois  
Member, Editorial Board: *Northwestern University Law Review*

UNIVERSITY OF CHICAGO SCHOOL OF BUSINESS; Chicago, Illinois  
Executive MBA Program (relocated to D.C. before completing degree program)

B.A. (*Cum Laude*), NORTHWESTERN UNIVERSITY; Evanston, Illinois  
Degree in Philosophy — Highest Departmental Honors — *Phi Beta Kappa*

GEORGE WASHINGTON UNIVERSITY; Washington, D.C.  
Certificate in Basic Electrical Engineering

---

## BOARD MEMBERSHIPS and PROFESSIONAL AFFILIATIONS

Past and present member of various corporate, charitable and civic governing boards, including NORTHWESTERN UNIVERSITY LAW SCHOOL (NATIONAL CHAIR, FUND BOARD); GOLDEN TELECOM, INC. (NASDAQ: "GLDN"); the FEDERAL COMMUNICATIONS BAR ASSOCIATION'S TRANSACTIONS COMMITTEE (CHAIRMAN), the ST. LOUIS MUSEUM OF CONTEMPORARY ART and THE MONTESSORI SCHOOL OF WASHINGTON, D.C.

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## PUBLISHED ARTICLES AND SPEECHES

Author of numerous articles and speeches, including

- "The State of the Cloud: The Real Story and What it Means for You," a St. Louis Business Journal panel discussion (Sept. 13, 2011)
- "Cloud Computing Agreements," ACC Corporate Counsel Institute (May 12, 2011)
- "Buzz, Cookies and Targeting: A Business Guide to Rapidly Expanding Privacy Laws" (Nov. 4, 2010)
- "Managing Complex Litigation: a General Counsel's Perspective," ACC Chicago Chapter (Aug. 25, 2010)
- "The Patent Laws Need Updating," *St. Louis Post Dispatch* (Feb. 10, 2008)
- "Competition In The Video Marketplace," 2007 Telecommunications Symposium, United States Department of Justice, Antitrust Division (Nov. 29, 2007), and
- Other articles appearing in *The Wall Street Journal*, *The Northwestern University Law Review*, *The Northwestern University Journal of International Law and Business*, *The Journal of the National Law Center for the Public Interest*; and network television commentary

**Michael L Whitaker**  
156 Grange Hill Lane  
Weldon Spring, MO 63304  
wgpwhitaker@sbcglobal.net  
636 447 9668

Senior Manager/Executive in telecommunications industry that offers expertise and outstanding leadership in the areas of Operations, Sales, Contracts, and Engineering. Has made significant accomplishments within the industry in a variety of sectors to include CLEC, ILEC etc....Has worked in both start up and well-established environments and nurtured growth in those organizations.

## History of Experience

### **CountryWide Broadband, Inc, -St Louis, MO January 2012 to Present**

#### **COO**

- CountryWide was developed to purchase Rural and or smaller CLEC's and develop business plans that increased EBIDTA through new technologies and consolidating service offerings
- Developed operational business plans for optimizing capex and lowering opex within the CLEC or ILEC regulated footprint
- Negotiated and restructured existing vendor contracts
- Developed improvements for existing BSS/OSS

### **Visual Collaboration Communications, Inc,-St Louis, MO August 2005 to 2011**

#### **CEO/Partner**

- Designed and managed new communication software for content delivery
- Acquired funding from angel investors
- Designed hiring plan, developed employment contracts
- Negotiated supplier contracts for services
- Developed a business model to acquire funding
- Wrote and negotiated MSA, Master Service Agreements with suppliers

### **StepsAhead, LLC-St Louis, MO**

**May 2003 to August 2005**

#### **Consultant /Owner**

- Hired as a consultant by Infinium Labs of Sarasota, FL as Vice President of IT and Operations to design, build and, manage an ERP system for a national gaming company.
- Negotiated contracts with suppliers with fortune 500 companies, Oracle, Cisco, Adobe, etc
- Successfully completed the design and implementation of the Enterprise Resource Planning software to run all company operations , finance, supply ,software development, all within contract time frame of 14 months

**Michael L Whitaker**  
156 Grange Hill Lane  
Weldon Spring, MO 63304  
wgpwhitaker@sbcglobal.net  
636 447 9668

**Memphis Networx, LLC- Memphis, TN**  
**Chief Operating Officer**

**August 2001 to May 2003**

- Developed business continuity, employment contracts and hiring plans
- Hired and trained a team of 20 direct reports
- My team designed, developed, installed and, operated a metro area fiber network comprised of 110 miles of 144 strand fiber to connect 13 Bell South Central Offices and 70 other nodes.
- Major City Networx, LLC is a certified CLEC authorized public and private collaboration of City Light Gas and Water and City Broadband.
- Assisted in securing a CLEC licensed by the State of Tennessee.
- My team developed a cost effective OSS to support all the functional areas of our network, OMS, NMS, Billing, Order Entry, and CRM
- Lead in contract negotiations with network hardware supplier Nortel

**COREEXPRESS, INC- St Louis, MO**

**November 2000 to August 2001**

**Vice President/General Manager Broadband Services**

- Responsible for the development and implementation of all contracted broadband services within the Core Express network.
- Responsible for the advance and execution of order entry and customer service process.
- Hired and supervised a broadband sales and project coordination team that synchronized product management with operational and sales requirements.
- Created and supervised a team of seventeen that included and interacted with members representing sales, marketing, customer operations, engineering, legal, billing, information technology, finance and regulatory departments.
- Supervised the coordination of interconnects between our regional pop sites, fiber and customer sites.
- Supervised the evolution of the Metro rings and the build-out of last mile building laterals to comply with customer requests.
- Developed an OSS strategy that combined the effectiveness of the NOC with our network software intelligent and trouble reporting systems.

**Michael L Whitaker**  
**156 Grange Hill Lane**  
**Weldon Spring, MO 63304**  
**wgpwhitaker@sbcglobal.net**  
**636 447 9668**

**WILLIAMS TECHNOLOGIES -St Louis, MO                      September 1997 to September 2000**  
**Vice President of Strategic Alliance**

- Was assigned the task of developing and negotiating a contractual alliance between Williams and Southwestern Bell Telephone Company.
- My staff of 28 worked as the focal point within Williams to manage the process with legal, provisioning, network build, IT, sales, marketing and, finance to produce a definitive Master Services Agreement.
- The MSA allowed Williams to IPO in October of 1999 with an increase of 10 Billion dollars of created market cap. The agreement is for twenty years with an investment by SBC for \$500,000,000 in William's stock, pre-IPO.
- Responsible for administration and project management of time lines for the completion of the William's network
- Oversaw the deployment of two DMS 250 switches in Texas to allow SBC to sell LD when granted permission by the FCC. Texas SBC long distance and data revenue accounted for 36% of the Williams revenue.
- My team was accountable for the management of all five RBOC's and 26 affiliates associated with the MSA.
- My team assisted in the merger of Ameritech and SBC that allowed Williams to participate in the acquisition of fiber assets, switches, and software and voice platforms from certain Ameritech affiliates.

**INTERTEL, CORP- St Louis, MO    May 1995 to September 1997**  
**Regional Manager/Midwest**

- Hired as a leader and mentor to inspire and deliver a new message to dealers in a mature but under performing territory. Increased sales 150% in 18 months
- Training, technical support and, product introductions for a new technology in digital PBX were accomplished within the first year.
- New dealers were hired and new sales teams replaced old, ineffective performers.
- Introduced new technology to existing markets and exceeded company goals every quarter.
- Was part of a test team that successfully developed and marketed a VOIP product introduction to the wholesale distributor market.

**Michael L Whitaker**  
156 Grange Hill Lane  
Weldon Spring, MO 63304  
wgpwhitaker@sbcglobal.net  
636 447 9668

**EDUCATION**

Indiana State University, graduated with a BS degree in Management and Political Science.



# SAMUEL VALENCIA

## Senior Financial Executive

14761 Brook Hill Drive  
Chesterfield, MO 63017  
636-346-6130 samuel.valencia1@gmail.com

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### EXECUTIVE SUMMARY

Big Four Assurance Partner (PwC) with 30+ years of experience with private equity, public and middle-market private companies. Created strong business advisor relationship with client executives to assist them in reaching company strategic and operational objectives.

#### Operational Excellence

- Strong financial operations expertise including P&L management, cash flow forecasting and debt management/restructuring
- Efficiency driver for company-wide cost reduction initiatives, including identification and negotiation of outsourcing opportunities
- Establishment of operating models for finance that provide the appropriate balance between service levels and the cost of processes and services
- Customer focus and history of building and maintaining strong business relationships
- Built internal infrastructure/relationships with functional business leads to ensure disciplined execution throughout the organization

#### Asset protection and compliance with financial reporting and control requirements

- International markets experience
- Compliance with the Sarbanes-Oxley Act and other relevant Federal, State and contractual regulations
- Complex accounting, financial reporting, tax, and infrastructure issues
- Corporate governance systems and policies
- Risk Management

#### Strategic Expertise

- Shapes business strategy aligned with customer needs/key external factors to deliver stakeholder value to both customers and shareholders
- M&A strategy/due diligence...IPO's...Joint Ventures...Alliances...Divestitures
- Evaluates and prioritizes investment options and improvement projects
- Debt financing...refinancing...raising capital...compliance experience/expertise
- Deal negotiation

- ❖ Consistently developed creative solutions to complex accounting/tax /business issues to achieve transaction/business problem objectives.
- ❖ Played leadership role in PwC's human capital development program, hiring, training, mentoring, evaluating, and promoting hundreds of staff
- ❖ Developed robust researching skills to help produce successful outcomes on projects, as well as an understanding of how to access outside resources for information, experience and additional perspective.
- ❖ Diverse industry exposure including Construction, Real estate, Manufacturing, Private Equity, Hospitality, Energy, and Business Services sectors provides a unique perspective to anticipate and solve operational issues.

- ❖ Outstanding oral and written communication skills, regularly interacting with Boards of Directors, and members of client senior management team. High degree of comfort communicating complex and contentious issues to varied audiences, often in high stress environments.
- ❖ Highly effective directing large, often globally based matrix teams of professionals with specialized skills that required establishing a positive leadership style to develop a sense of teamwork and camaraderie.
- ❖ Consistent success establishing win/win long-term client relationships that supported premium fee arrangements.

**PROFESSIONAL EXPERIENCE**

**COUNTRYWIDE BROADBAND LLC** **March 2013 – Present**  
 Start-up telecommunications firm organized to acquire FTTP and cable assets through a Partnership with Seaport Capital. Strategy is to enhance existing networks through the introduction of additional capital, update technology, expand services, improve customer service philosophy, expand sales and marketing efforts, and achieve economies of scale. Pursued numerous acquisition targets including performing extensive due diligence procedures, evaluated multiple debt and equity financing sources, and created comprehensive financial spreadsheets in order to model planned future financial performance under various scenarios.  
**Chief Financial Officer**

**PRICEWATERHOUSECOOPERS LLP** **1981 – June 2011**  
 (Merger between Price Waterhouse LLP and Coopers & Lybrand LLP effective June 1998)  
*1981-1988 Indianapolis, Indiana office; 1989 New York City office in the Transaction Services Dept.; 1990-1996 Returned to Indianapolis; Admitted to Partnership effective 1994; 1996-2011 Relocated to the St. Louis, MO office to take on leadership of the office Middle Market practice.*  
**Partner** 1994 – June 2011  
**Manager** 1985 – 1994  
**Senior Accountant** 1982 – 1985  
**Staff Accountant** 1981 – 1982

**Representative client accomplishments at PwC in a diverse range of business sectors including Manufacturing, Private Equity, Venture Capital, Energy, Construction, Agricultural Cooperatives, and Higher Education:**

CLIENT	LEADERSHIP ROLES / ACCOMPLISHMENTS
<b>\$1.5 Billion public restaurant chain</b>	Began serving the Company when they had approximately 200 stores and \$170 million in revenues versus 1450 stores and \$1.5 Billion in revenues today. Instrumental in establishing an Intellectual Property Holding Company saving \$2 Million annually in FIT. Developed an employee comp system using equity ownership on a per store basis to minimize employee comp expense. Worked on various SEC filings, Comment letters and Uniform Franchise Offering Circular.
<b>Tax credit based venture capital fund with over \$500 million in capital</b>	Provided audit and tax services for approximately 25 early stage investment funds working closely with management on a variety of valuation issues and regulatory compliance assessments.
	Consulted on the business structure including the original partnership, management

<b>\$200 Million bio-tech venture capital fund</b>	and operating agreements. The first fund was in the form of an SBIC – assisted management with applicable regulatory accounting issues, and with valuation methodology of portfolio companies. Provided frequent consulting on relevant accounting issues related principally to investment valuation matters.
<b>\$1 Billion industrial facility contractor</b>	Assisted with a large acquisition in terms of due diligence, valuation of intangible assets, purchase accounting and operational integration. Assisted with divestures and overall corporate restructuring of businesses into separate business units. Also worked with client to assess a significant fraud perpetrated by the Company Controller.
<b>\$2 Billion agricultural dairy cooperative</b>	Worked closely with the Board in forming its initial audit committee. Involved in the review of a number of complex issues including self-insurance for workers comp and general liability, OPEB, tax accruals and calculations of patronage dividends.
<b>\$2 Billion Premier University with \$6 Billion Endowment</b>	Worked on several debt offerings totaling over \$300 Million. Discovered a large error in previously issued cash flow statements, and developed a successful strategy to correct the error without requiring a restatement. Developed a more comprehensive audit strategy for investments to ensure appropriate valuation and disclosure considerations. Met with the Board regularly to discuss financial audit and A-133 testing results.
<b>\$1 Billion public coal company</b>	Assisted management with a variety of highly complex accounting issues associated with asset valuations, depreciation, self-insurance related to workers compensation, Black Lung disease and other post employment benefits, and asset retirement obligations associated with mine closures. Assisted with the sale of the Company for over \$1 Billion.

**NCR CORP.**, Dayton, OH  
Associate Auditor  
International Audit Division

1979 – 1981

## EDUCATION / LICENSES

**Indiana University** 1975-1979  
B.S. Accounting (Kelley School of Business)  
Held CPA Licenses in the States of Missouri and Indiana

## BOARD POSITIONS / AFFILIATIONS

Meadowbrook Country Club (Member Board of Governors)  
Congregation B'nai Amoona (Treasurer and Executive Committee Member)  
Association for Corporate Growth (Former Treasurer and 15 year Board Member)  
The Mental Health Association (Former President and Board Member)  
American Institute of Certified Public Accountants  
Missouri CPA Society

## **EXHIBIT 8**

# **iTV-3 AND CWB VALUATION OF UC2B NETWORK**

**ITV-3/COUNTRYWIDE BROADBAND  
ALLOCABLE PURCHASE PRICE CALCULATION FOR THE UC SYSTEM  
APRIL 14, 2016**

**REPLACEMENT VALUE APPROACH**

	<u>Initial Footage</u>	<u>Footage as of December 31, 2015</u>
UC Total Current Footage (As Built Per the NTIA Grant)	996,374	996,374
New Construction Built by ITV-3		73,060
	<u>996,374</u>	<u>1,069,434</u>
<b>Construction Costs:</b>		
Labor Per Foot	\$ 15.60	
Materials Per Foot	\$ 2.07	
	<u>\$ 17.67</u>	
Private Construction Cost of Initial Network	<u>\$ 17,605,929</u>	
Existing Customers at December 31, 2015		980
Per Subscriber Value	\$ 3,737	
Total Value of Subscribers as of December 31, 2015	<u>\$ 3,662,260</u>	
Total Current Value of System (Replacement Cost Plus Sub Count)	<u>\$ 21,268,189</u>	
Additional Footage Constructed by ITV-3 as of December 31, 2015		73,060
Cost Per Foot	\$ 17.67	
Total Additional Network Replacement Cost	<u>\$ 1,290,970</u>	
Total actual Replacement Value as of December 31 2015	<u>\$ 22,559,159</u>	

**NOTE:** The replacement value approach calculates the cost to build the fiber optic network in the Urbana/Champagne markets based on comparable pricing being paid currently for sector build-outs. In addition, it includes the cost to purchase the existing customer base based on the allocated customer cost of the entire ITV-3 acquisition. It does not however, include the cost of a central office, head end, CSR department, installer staff and trucks, engineering department, sales and marketing, billing and accounting, regulatory, and management. Accordingly, a very substantial additional investment would be required to operate the network.

**EXHIBIT 9**

**UC2B NFP-CITIES-UNIVERSITY  
TERM SHEET SUBMITTED TO CWB**

## **TERM SHEET FOR DISCUSSIONS WITH COUNTRYWIDE BROADBAND**

The UC2B NFP and the Cities of Champaign and Urbana tender the following possible terms in an effort to reach an agreement with respect to the assignment of the existing agreements between UC2B NFP and iTV-3, Inc., the approval of CATV franchise transfers in both cities. No preferred terms shall be binding unless and until the final agreements are approved by the respective governing bodies of the two Cities and the NFP board and NTIA:

1. The City of Champaign and the City of Urbana will not in this instance exercise Right of First Refusal contained in the agreement between iTV-3, Inc. and UC2B NFP.
2. UC2B NFP will agree to the assignment of the IRU from iTV-3, Inc. to iTV-3, LLC.
3. UC2B will amend the agreement with iTV-3, Inc. to add an additional period of time whereby iTV-3 will not be required to sell subIRU's, such period ending on December 31, 2020.
4. UC2B, NFP will cooperate in seeking NTIA and the Cities' approval on transfers and franchises.
5. iTV-3, Inc. will provide a full accounting/audit of the Maintenance Fund received from IRU holders, which will include a detailed listing of expenditures and receipts and where necessary an explanation of any such expenditure. Further, CountryWide ("CW") will agree to maintain a separate account of the maintenance fund and the amount of the maintenance fund will not reduce the purchase price paid by CW to iTV-3, Inc.
6. CW will post a \$500,000.00 letter of credit in order to secure buildout commitments.

This letter of credit will have a diminishing principal. If the goals set for market penetration in terms of either homes offered or accepting services are met by target dates of December 31, 2017 and December 31, 2018, the principal amount of the letter of credit will be diminished by \$150,000.00, otherwise such amount will be paid to UC2B NFP. If the market penetration goals for 2019 are met in full by December 31, 2019, the letter of credit balance can be diminished by \$200,000.00, otherwise such amount will be paid to UC2B NFP. If all of the benchmark goals are met within the timeframes provided, the balance of the letter of credit on December 31, 2019 will be \$0.00. If there remains any amount on the letter of credit on December 31, 2019, it will be forfeited to UC2B NFP. If at any time prior to December 31, 2019, CW transfers any of its assets to a third party, the then remaining balance of the letter of credit will be paid to UC2B NFP. The letter of credit will be in a form acceptable to UC2B NFP.

7. Single Family Homes will be "passed" such that service to each of the residences could be implemented by the following dates:

2016 – 3,000 new single-family C-U homes passed  
2017 – 4,725 new single-family C-U homes passed  
2018 – 4,725 new single-family C-U homes passed  
2019 – 4,725 new single-family C-U homes passed  
2020 – 4,725 new single-family C-U homes passed  
22,000 Total new single-family C-U homes passed

Additionally, CW will prioritize the sectors in which these residences are located by offering service in sectors that have at least 25% of the residences preregistering at \$0 to receive service. All residences, which have made a monetary deposit for receiving service will count double if the household pledged \$100 and count quintupled if the household pledged \$500 when computing the actual percentage of homes pre-registered.

By December 31, 2018, 50% of all dwelling units in Champaign and Urbana will be passed as described above. By December 31, 2019, 70% of all the dwelling units in Champaign and Urbana will be passed. All residences, which have made a monetary deposit for receiving service will count double if the household pledged \$100 and count quintupled if the household pledged \$500 when computing the actual percentage of homes pre-registered.

In addition, for all homes passed consistent with the goals established above, 25% of the residents must have purchased services from CW.

8. CW commits to meeting all construction standards for the fiber system.
9. CW will submit quarterly reports with quarter to quarter changes and discussed in executive session with the UC2B NFP board to the UC2B NFP Board of Directors including:
  - a. An itemized accounting of expenses for fiber maintenance and the revenues from UC2B's IRU holders for fiber maintenance.
  - b. The number of new single-family residences, businesses and Community Anchor Institutions passed with fiber to the curb in the previous quarter and the cumulative totals to date (including iTV-3 and the grant-funded construction).
  - c. The total number of active customers in the following categories:
    - i. Single Family Residential
    - ii. Internet Only
    - iii. Internet and Video only
    - iv. Internet, Video and Telephone
  - d. Multiple Family (MDU) Residential
    - i. Internet Only
    - ii. Internet and Video only
    - iii. Internet, Video and Telephone

- iv. Connected by CWB to other providers via VLANs (Layer 2)
- e. Business Locations
  - i. Connected to CWB services
  - ii. Connected by CWB to other providers via VLANs (Layer 2)
  - iii. Connected to other providers via other provider's dark fiber (Layer 1)
  - iv. Total Cellular towers served
- f. Community Anchor Institutions
  - i. Connected to CWB services
  - ii. Connected by CWB to other providers via VLANs (Layer 2)
  - iii. Connected to other providers via other provider's dark fiber (Layer 1)
  - iv. Connected internally via their own dark fiber (Layer 1)
- g. The total number of CWB customers with these services:
  - i. CWB Internet customers
  - ii. CWB Telephone customers
  - iii. CWB Video Customers
- h. As built descriptions and mapping on GIS for all changes made during the prior month with copies provided to Urbana and Champaign.
- i. All data on increase in subscriptions, both gross and net.
- j. The amount of marketing expenditures in dollars during the previous month.
- k. A description of the activities of CW in the UC2B area.
- l. Network backbone capacity.
- m. Network peering capacity (throughput to external providers or peers).
- n. Total bandwidth utilized per week of year.
- o. Total number of consumer subscribers broken out by level of service.
- p. Total number of commercial subscribers utilizing any portion of NTIA provided resources.
- q. Total geographic territory covered (area within 200' of any active fiber line).

- r. Customer service reports including a report from each customer of the quality of installation, time to respond to problems, and time needed to repair any outages in the system, including a reliability percentage.

All of this data will be presented to the UC2B NFP Board Secretary on or before the 15<sup>th</sup> of the month following the month reported.

10. Complete cooperation with the members of the intergovernmental consortium with research, economic development, community development, digital inclusion, and public engagement initiatives involved with or using the fiber optic system. As a partner in these activities, UC2B or intergovernmental consortium members may include expenses for CW to support any of these initiatives in proposals for funding with overhead rates not to exceed 10% or the funder's guidelines for indirect cost recovery for CW's related expenses to the project budget. CW may cooperate by assisting UC2B led-team with proposal development, providing letters of support, providing technical descriptions of network or services related to specific projects, advising on technical solutions to support projects, engaging with local and participating in meetings or conferences. Some current initiatives include: US Ignite – NSF Funded Smart Gigabit Communities; Next Centuries Cities; Global Cities Teams Challenge; MetroLab Network; Broadband Communities; Coalition for Local Internet Choice; National Digital Inclusion Alliance; and Schools, Health and Library Coalition.

11. Right of first refusal provided to the Cities of Champaign and Urbana will be based on an independent appraisal of the UC2B assets located solely in Champaign County with time frames extended for exercise of such right to end 60 days after the receipt of such appraisal in final form signed by the appraiser. CW and the Cities of Champaign and Urbana shall agree upon the appraiser who shall have experience undertaking and valuing the type of assets, which comprise the UC2B system, and the uses thereof and CW shall pay for such appraisal. CW and the Cities of Champaign and Urbana agree that they shall provide any and all information they deem relevant to the appraiser to allow him or her to complete the appraisal. The parties agree that this appraised value will be the price at which the Cities may purchase the assets, which are located within Champaign County. Should the Cities decide not to exercise the right of first refusal, there will be a transfer fee of 1% of the entire purchase price to be paid for the assets or 1% of the appraised value as demonstrated by the aforesaid appraisal whichever figure is higher. UC2B NFP will be reimbursed for any expenses incurred in evaluating the purchase and the option to exercise the right of first refusal.

12. CW will provide an independent audit of the books and records of iTV-3, LLC as of July 1, 2017, July 1, 2018 and every other year following.

13. Each UC2B partner contributes to the expenses and operation of the UC2B NFP. CW will provide annual payments to UC2B NFP in the following sums:

- a. \$75,000.00 annually for staff expenses
- b. \$45,000.00 annually for administrative fees paid to outside consultants, attorneys and accountants.

c. \$100,000.00 annual donation to the Community Benefit Fund.

14. CW will reimburse all reasonable administrative fees (consultants and attorneys) utilized for the purpose of evaluating the present transfer.

15. If CW receives assignments from the Cities of the Cities' respective cable franchise agreements, CW will comply with all terms provided in those franchise agreements within 14 days of acceptance of the assignment or transfer of those franchise agreements including, but not limited to, compliance with providing and hosting PEG channels and PEG programming.

16. Prior to and as a pre-condition to any transfer, CW will provide a transition plan which will include a complete listing of employees, their home location, their function and reporting alignment, this employee listing will be updated on a semiannual basis. Additionally the transition plan will provide a marketing plan specific to the Champaign-Urbana area, and an anticipated construction schedule for the first 6 months after completion of transfer. Such transition plan shall also provide any changes in subscriber rates which CW will undertake during the first 12 months following the closing on the sale of assets by iTV-3, Inc. to iTV-3, LLC.

17. Each month, CW shall report to the Board of the NFP regarding construction occurring or planned and annually, during January, a proposed construction schedule for the remainder of the calendar year.

18. Prior to transfer, iTV-3, Inc. will provide an audited statement of franchise and PEG fees due and payable to the cities.

19. Prior to transfer, iTV-3, Inc will provide a statement to the NFP Board and the Cities with respect to its current compliance with FCC and Illinois customer service standards. CW will provide this annually during December of each year.

20. CW will maintain a physical retail storefront presence within the corporate limits of Champaign or Urbana, open to the public at least 40 hours per week.

**EXHIBIT 10**

**DRAFT MEMORANDUM OF  
UNDERSTANDING BETWEEN  
UC2B NFP AND CWB WITH  
URBANA CITY ATTORNEY'S  
REVIEW AND COMMENT**

## MEMORANDUM OF UNDERSTANDING

Urbana Champaign Big Broadband, an Illinois not-for-profit corporation (“UC2B”) and iTV-3, LLC, a Delaware limited liability company (“CWB”), enter into this Memorandum of Understanding on this 15<sup>th</sup> day of June, 2016:

WHEREAS CWB has entered into an agreement (the “APA”) to purchase substantially all of the assets of iTV-3, Inc. an Illinois corporation (“iTV-3”), including, without limitation, all of iTV-3’s rights and obligations under that certain “Agreement Granting Indefeasible Right To Use Optical Fiber and Other Assets” between iTV-3 and UC2B, dated May 31, 2014, as amended on January 29, 2015 (the “IRU”), and that certain “Agreement” between iTV-3 and UC2B, dated February 28, 2014 (the “UC2B Agreement”);

WHEREAS Section 9.1.1 of the IRU and Section 8 of the UC2B Agreement grant to the Cities of Champaign and Urbana, Illinois (separately, a “City” and together, the “Cities”) a right of first refusal to purchase certain assets not already owned by a City or the Board of Trustees of the University of Illinois subject to the APA (the “RFR”), which CWB has asked the Cities to waive;

WHEREAS a waiver by the National Telecommunications and Information Administration (“NTIA”) of its IRU rules may be is required in order for iTV-3 to assign its rights under the IRU to CWB, or for UC2B to amend and restate the IRU with CWB, and agree to allow iTV-3 to assign its rights under the IRU to CWB, and CWB has asked UC2B to obtain such waiver;

WHEREAS ~~CWB may also request the Cities to assign iTV-3’s cable franchises to CWB, or to grant new cable franchises to CWB~~ iTV-3 has requested the Cities to consent to iTV-3’s assignment and transfer of its cable franchise agreements with the Cities;

WHEREAS CWB has submitted to each City a FCC Form 394 which provides certain information regarding CWB intent to accept assignment and transfer of each City’s cable franchise agreement as more fully provided for in 47 CFR 76.502;

WHEREAS the Cities have asked UC2B to undertake appropriate due diligence and to recommend to the Cities whether to waive their RFR and grant consent to a transfer and assignment of the respective cable franchises to CWB;

WHEREAS UC2B is willing to recommend to the Cities that they waive their RFR and grant the requested consent to transfer and assignment of the Cities’ respective cable franchise agreements to CWB, and is willing to support CWB’s request for a waiver from the NTIA, on condition that CWB operate, develop and expand the fiber network assets that are the subject of the IRU under the terms and conditions set forth herein; and

Comment [JLS1]: Should have a different heading.

Comment [JLS2]: I believe it would be iTV-3, Inc.’s request for the cities to waive since CWB has no privity with the cities.

WHEREAS CWB is willing to comply with the network operational, expansion and development requirements set forth herein on condition that the Cities waive their rights under the RFR and, if requested, grant consent to the transfer and assignment of their respective cable franchise agreements to CWB, and that the NTIA grant the waiver requested by CWB;

NOW, THEREFORE, in exchange of good, valuable and mutual consideration which each party hereto acknowledges as having in hand received and in consideration for the mutual terms, covenants and conditions contained herein, the parties hereto agree as follows:

**Obligations of CWB**

Subject to *force majeure*, and conditioned upon the Cities' waiving their rights under their respective RFRs and, the granting of the Cities' consent to the transfer and assignment of to CWB of their respective cable franchise agreements between them and iTV-3, if requested, granting cable franchises to CWB, and upon the NTIA's granting of a waiver of its IRU rules on terms reasonably agreeable to CWB;

1. CWB will extend the BTOP (as defined in the IRU) Grant-Funded Network (the "Network") to pass additional residences within the City Limits of the Cities at the following annual rate during the Term:

- 2016 and 2017 – 4,500 new HP
- 2018 – 3,250 new HP – 7,750 total
- 2019 – 3,500 new HP – 11,250 total
- 2020 – 3,750 new HP – 15,000 total
- 2021 – 4,000 new HP – 19,000 total
- 2022 – 3,000 new HP – 22,000 total
- Total – 22,000 new HP

"HP" will refer to each residential dwelling unit or commercial structure, including each dwelling unit in an Multiple Dwelling Unit building ("MDU") and each business in a multi-business commercial building ("MBUs"), *provided that* dwelling units in MDUs having more than 8 dwelling units, and businesses in MBUs having more than 8 businesses, cannot constitute more than 10% of an annual HP calculation pursuant to this Section. The addition of HP in any year in excess of the minimums set forth above will be credited against the minimum requirement set forth above for the next ensuing year. Any penalty described in Section 4 hereof that is triggered by a failure to build the minimum HP set forth above during any respective year will be null and void (and the exclusivity period thereby re-extended) if, during the next ensuing year, CWB extends the Network to pass new HPs equal to the next ensuing year's minimum plus the number of homes by which CWB failed to meet the minimum requirement in the prior year.

2. Within 90 days after consummating its purchase of iTV-3, ~~the~~, CWB, after consulting with UC2B, shall subdivide the Cities into geographic areas (the "New Sectors"), of any size as

Comment [JLS3]: I don't believe that the NTIA approval can be gained at the request of CWB but, rather, it must be requested by UC2B/NFP.

Comment [JLS4]: I strongly encourage that this agreement start with a full definition section and that definitions be used consistently throughout the agreement. There should also be section/paragraph headings so one can easily navigate through the agreement.

Comment [JLS5]: What is meant by "residences"? Single family, duplexes, triplexes, etc.? What is meant by "pass"? How passed?

Comment [JLS6]: "Term" is not defined. What is the term (duration) of the agreement?

Comment [JLS7]: Definition of "HP" needs to be more carefully and clearly delineated. This conflicts with the lead-in sentence - i.e., "residences" vs. "commercial structure." Does commercial structure mean a business, an apartment building, a school, a hospital, etc.

Comment [JLS8]: Are these sections or paragraphs?

Comment [JLS9]: I don't understand this concept. Thus, the assessment or determination of any penalty requires at least a one year waiting period to see what happens in a subsequent year. Is this suspension of penalty cumulative - e.g., penalty not applicable even though CWB fails to meet the metric in two consecutive years but meets those years' requirements plus the third year's requirements? The metric should be viewed strictly on a yearly basis without cumulation.

determined by CWB, but each of which shall, to the extent commercially practicable, consist of either (i) 80% or more of dwelling units in MDUs or businesses in MBUs, or (ii) 20% or less of dwelling or business units in MDUs and MBUs, with the remainder (in each of "(i)" and "(ii)") being single family residences ("SFRs"), stand-alone businesses ("SABs"), or vacant lots ("VL"). The subdivision and resulting maps shall be derived from GIS data for address points in Champaign County, as provided to CWB by the Champaign County GIS Consortium. For the purposes of calculating ratios and percentages pursuant to this section, each dwelling unit and or business unit in an MDU or MBU with eight or fewer units shall be considered an SFR or SAB, as the case may be, in both the numerator and denominator, and VLs shall be included in the denominator. During the first three years of the Term hereof, CWB will build FTTP in any New Sector in which residents (in the case of SFRs or MDUs) or representatives (in the cases of MBUs and SABs) of at least 45% of the total dwelling or business units (as the case may be) in such New Sector express a confirmed interest in purchasing CWB's internet access services over the network (a "Pre-Sale"). During the remainder of the Term hereof, CWB will build FTTP in any New Sector in which Pre-Sales have been made to at least 40% of the total dwelling or business units (as the case may be) in such New Sector. CWB shall review the map of a New Sectors annually to determine, after consulting with UC2B during the August meetings called for in Section 5, whether changes in the boundaries of the New Sectors are appropriate in light of changed circumstances, such as, but not necessarily limited to, the identification of errors in GIS data used to design the subdivision, the expansion of the network to nearby areas, and changes in the relevant geographic areas, such as new home or business construction or changes in competitive circumstances.

3. In any Sector of Geographic Area that has at least 20 residences that have made deposits in connection with Pre-Sales, and which has Pre-Sales to at least 35% of the total premises in that Sector or Geographic Area, CWB will actively market its services for at least six months in a good faith effort to cause that Sector or Geographic Area to achieve the 45% Pre-Sale criterion for years 1 through 3, and 40% Pre-Sale criterion for years 4 through 6, set forth in Section 2 hereof.

4. Subject to the terms of Section 1 above, for any calendar year in which CWB fails to build-out the CU Network as called for in Section 1 above, CWB's period of exclusivity referred to in Section 18 below shall be reduced by six months. Given that exclusivity of use is a significant, and perhaps the largest single factor in the value of the Network, the parties have determined that the potential loss of exclusivity provides a powerful and adequate incentive for CWB to satisfy the build-out requirements set forth herein, without diverting resources from an expeditious build out of the network, which is both parties' principal objective.

5. In each August prior to a year within the Term, CWB will meet with UC2B NFP to discuss the areas of Champaign and Urbana that CWB will plan to build out during the following calendar year.

**Comment [JLS10]:** This makes no sense. What it appears to be saying is that each sector will have 80% or more multiple dwelling units/multiple business units or 20% or less of multiple dwelling units/multiple business units. What is the rationale and how does it work?

**Comment [JLS11]:** What subdivision?

**Comment [JLS12]:** What if a prospective customer does not want internet but wants just telephone and/or cable TV? Is that a "confirmed interest in purchasing?"

**Comment [JLS13]:** Two different metrics are proposed here - "express a confirmed interest in purchasing" and "Pre-Sales." What is considered to be "express a confirmed interest in purchasing" and a "Pre-Sale?"

**Comment [JLS14]:** So far, the term "Geographic Area" is not defined. Why does it appear in initial caps?

**Comment [JLS15]:** "Residences" is not a defined term. What does it mean?

**Comment [JLS16]:** Is a deposit required to constitute a "Pre-Sale?" What about "a confirmed interest in purchasing?"

**Comment [JLS17]:** This creates a harsher metric than what was provided in the UC2B-iTV-3 agreement. Essentially, CWB is required to do no marketing in an area until achieves 35% in "Pre-Sales." Again, "Pre-Sales" is not defined. What about "express a confirmed interest in purchasing?"

**Comment [JLS18]:** See comment above about cumulative failures to meet the build-out requirement.

**Comment [JLS19]:** No need for this lengthy sentence in the agreement.

**Comment [JLS20]:** Prior to what "year?" This is not clear.

**Comment [JLS21]:** Are the parties merely going to "discuss" or should there be some metric to require change?

6. When building out the Network, CWB will conform to the construction standards set forth in the original Fiber Construction Manual from the BTOP grant.

Comment [JLS22]: Should be an exhibit which should be incorporated into the agreement to avoid any chance of confusion.

7. On April 30, July 31, October 31 and January 31 of each year during the Term, subject to a non-disclosure agreement reasonably satisfactory to CWB, CWB will report to UC2B on the changes to the CU Network during the prior calendar quarter, including:

Comment [JLS23]: "CU Network" is not a defined term; "Network" is the defined term. Is something else intended to be referred to?...

a. The expenses for fiber maintenance and revenues paid to CWB by UC2B IRU holders for fiber maintenance;

b. The number of residences, businesses and Community Anchor Institutions within the Cities and by City newly passed by the Network in the previous calendar quarter, and the cumulative totals of such passings to date;

Comment [JLS24]: These 3 things are not defined.

c. The number of customers within the Cities, broken out by City, businesses and residences, and by services subscribed to;

d. Information in CWB's possession that UC2B is required to provide to NTIA; and

e. "As built" descriptions and map of the Network in the same format and with the same detail as provided to the Cities pursuant to their respective franchise agreements and ordinances. The data formats include providing map data in ArcGIS 10.x compatible format including as shapefiles or ArcGIS data layers. All data will include metadata and a data dictionary.

Comment [JLS25]: Should this be in the same form as "b"? - i.e., new customers signed during prior quarter and cumulative number of customers by business, residential, and services subscribed to.

8. UC2B NFP and the Cities will inform CWB as soon as reasonably practicable about commercial and residential development prospects in the Cities, and will invite CWB to any and all planning meetings with developers, the Cities or the community that involve cable, fiber, communications or utility issues or needs. CWB will participate in planning meetings for commercial and residential projects planned in either Champaign or Urbana, and will use its reasonable commercial efforts to lay its conduit in any development where relevant trenching is planned or available

Comment [JLS26]: This puts an unreasonable burden on the cities. I think a better approach would be for CWB to monitor the cities'

9. CWB will undertake reasonable commercial efforts to support local and national projects with the members of the intergovernmental consortium (i.e. the Cities, the University of Illinois and UC2B NFP) on research, economic development, community development, digital inclusion and public engagement initiatives involved with or using the Fiber Assets ("Projects"). By way of example, CWB may cooperate in a Project by assisting the Project lead with proposal development, providing letters of support of the Project, engaging with local officials or citizens' groups, or participating in meetings or conferences. Also by way of example, some current Projects include: US Ignite, NSF Funded Smart Gigabit Communities; Coalition for Local Internet Choice; National Digital Inclusion Alliance; and Schools, Health and Library Coalition. Where CWB supports or undertakes Projects, the Project Lead - whether UC2B NFP or another

Comment [JLS27]: Another undefined term.

Comment [JLS28]: "Project lead" is not defined.

intergovernmental consortium member - will include CWB's expenses to support the Project in proposals for Project funding, with overhead rates not to exceed 10% or the funder's guidelines for indirect cost recovery for expenses to the Project budget.

10. CWB will take a visible role in supporting community groups and events, including service clubs and festivals.

11. If, during the Term, the CWB Board determines to seek proposals from third parties to purchase some or all of the CU Network on a "stand alone" basis (i.e., not as part of a larger sale of assets), it shall, in writing, advise-notify UC2B NFP and each City of this intent prior to disclosing it to any third party other than CWB's affiliates and advisors, and the written notice it shall specifically identify to the Cities all assets CWB intends to sell. The Cities shall have 30 days from the letter of UC2B NFP's and each City's receipt of CWB's written notice disclosing such intent to UC2B NFP to decide whether to offer to purchase the assets identified in CWB's written notice of intent to sell all the CU Network assets which are located within their respective city limits, and, if so, to provide CWB with a written description of all material terms of such offer, including the price to be paid for those assets; the timeframe in which the Cities will consummate the purchase; the form, method and time of the payment the Cities will make for such assets; the source of all funds required for such purchase; and the security the Cities will provide to CWB to secure their performance of their payment and other obligations in the sale (the "Offer"). If either or both of the Cities fail to provide CWB with an Offer meeting the requirements of this section within such 30-day period, they shall be deemed to have waived their rights under this section. CWB shall have a 30-day period after the Cities deliver written their Offer to decide whether to accept the Offer. If CWB accepts the Offer, CWB and the Cities shall undertake all reasonable commercial efforts to negotiate a purchase agreement, incorporating the terms of the Offer, as soon as reasonably practicable. If either or both Cities fail to make an offer during such 30-day period, or fail to provide all material terms of the Offer, or if CWB declines the Cities' Offer, CWB may initiate efforts to sell the CU Network to other parties, but may not accept an offer from a third party that is materially equivalent to, or provides materially less benefits to CWB than, the Cities' Offer (the "New Terms") unless CWB shall first provide the Cities 15 days to consider whether to purchase the CU Network under the New Terms. If, within such 15-day period, the Cities provide to CWB a written offer to buy the CU Network on the New Terms (the "New Offer"), the parties shall undertake all reasonable commercial efforts to negotiate a purchase agreement, incorporating the New Terms, as soon as reasonably practicable. If either or both of the Cities do not make a New Offer proposing the New Terms within such 15-day period, they shall be deemed to have waived their rights under this paragraph and CWB may sell the CU Network to a third party under the New Terms.

12. CWB shall make a \$50,000 annual donation to the Community Benefit Fund. This donation will be made in equal monthly installments during each year the during the term of this Agreement year.

**Comment [JLS29]:** This entire paragraph needs to be clarified. What is that one wants CWB to do?

**Comment [JLS30]:** What is a "visible role"? What community groups and events? Any limit? E.g., must CWB take a "visible role" in Urbana's Sweetcorn Festival, Champaign's Blues, Brews and BBQ festival, etc.?

**Comment [JLS31]:** What is the process should CWB seek to sell all of its fiber optic/IRU assets - not just those within the Cities? I.e., what happens in a "larger sale of assets," and what is a "larger sale of assets?"

**Comment [JLS32]:** Given how local government operates, 30 days is far too short and unrealistic since each City's City Council must approve or decide to waive off on such purchase.

**Comment [JLS33]:** This is inconsistent. As written, CWB could seek to sell a single piece of equipment for \$1,000 and doing so will require the Cities to purchase ALL assets located within their respective boundaries.

**Comment [JLS34]:** Why include source of funds? Either the Cities agree to purchase or not and if they do, it is up to them how they aggregate the funds to do so.

**Comment [JLS35]:** Not clear insofar as what "Offer" refers to. Should be clarified.

**Comment [JLS36]:** This paragraph requires that both Cities make a joint offer to purchase assets. I'm not sure this agreement can bind the two cities to function as one.

**Comment [JLS37]:** Too tight a timeframe

**Comment [JLS38]:** I don't understand this sentence - is this a "second chance" to purchase provision? Maybe it should read that if CWB receives an offer from a third person which is less beneficial to CWB, the cities will have a right to initiate a new offer based on the less beneficial terms.

**Comment [JLS39]:** Too tight a timeframe.

**Comment [JLS40]:** Too tight a timeframe.

**Comment [JLS41]:** This is inconsistent with how the paragraph starts. The start of this paragraph contemplates selling some assets while this paragraph contemplates selling all assets located within the cities. Paragraph needs to be cleaned-up significantly - ... [1]

**Comment [JLS42]:** This paragraph is confusing. In all events, the timeframes (30 days, 15 days) is wholly unrealistic for a ... [2]

13. CWB will make a \$25,000 annual donation to UC2B NFP in support of the Projects enumerated in Section 9 above and in support of digital inclusion and eliminating the digital divide. This donation will be made in equal monthly installments during ~~the each year during the term of this Agreement.~~

14. CWB will establish and maintain a physical retail storefront presence within the corporate limits of at least one of the Cities, which shall be open the public at least 40 hours a week and which must be open on every Saturday or Sunday.

15. CWB's obligations herein shall apply only during the period it has exclusivity of capacity usage as discussed in Section 18 hereof.

16. Conditioned upon (i) the execution of this MOU by UC2B no later than the close of business on June 15, 2016; (ii) ~~the agreement by both the Cities of Champaign and Urbana, no later than June 21, 2016, to waive their respective RFRs and to consent to transfers and assignments of the Cities' iTV-3 cable franchise agreements to CWB, if requested by CWB, to either transfer iTV-3, Inc.'s cable franchises to CWB or to grant new cable franchises to CWB, on the same terms and conditions as the franchise granted to iTV-3, and~~ (iii) UC2B's exercising all reasonable, commercial efforts to obtain, as expeditiously as reasonably possible, a waiver from the NTIA of its IRU rules to the extent necessary to effectuate the terms of this MOU, CWB will donate to UC2B up to \$40,000 to reimburse UC2B's reasonable and actual out-of-pocket third-party fees and expenses for external (*i.e.* not City-employed) consultants and attorneys who have been or are utilized for the purpose of evaluating the present franchise and IRU transfers and obtain necessary approvals.

Comment [JLS43]: Date has passed.

Comment [JLS44]: Can't be done.

#### Obligations of UC2B

17. UC2B shall recommend to each of the Cities that it waive in this instance its respective RFR and, ~~if requested by CWB, to consent to iTV-3's request to transfer and assign its cable franchise agreements with the Cities grant a cable franchise to CWB in time to allow the Cities to waive its respective RFR and grant its respective franchise by June 21, 2016.~~

Comment [JLS45]: Can't be done.

18. Consistent with the terms of this MOU, UC2B shall amend and restate the IRU, including an amendment of Section 4.3 of the IRU to grant CWB exclusive use of all available capacity on the Network for at least six years from the assignment of the amended and restated IRU, and shall consent to the assignment of the amended and restated IRU to CWB, and to the assumption by CWB of the amended and restated IRU. Any fiber strands that are already committed to IRUs with other entities will remain with those entities pursuant to the terms of those IRUs.

19. As soon as practicable, UC2B shall seek on an expedited basis the consent of the NTIA to the amended and restated IRU or a waiver from the NTIA IRU rules from the NTIA in connection with the assignment and grant of an amended and restated IRU.

20. For the term that CWB is making one or both of the contributions described in Sections 12 and 13, hereof, UC2B shall appoint one CWB member to the UC2B NFP Board, who shall have the right to participate in all UC2B NFP Board discussions except those discussing transactions with CWB.

[ MOU is lacking a number of basic and essential standard terms such as notice requirements, default, notice of default, opportunity to cure default, dispute resolution, governing law, jurisdiction and venue, duplicate originals, etc. ]

**URBANA CHAMPAIGN BIG BROADBAND,**

an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Jon Gant, its Chair

iTV-3, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Grier Raclin, its President and CEO

**Page 5: [1] Comment [JLS41]**

**Simon, James**

**6/16/2016 1:39:00 PM**

This is inconsistent with how the paragraph starts. The start of this paragraph contemplates selling some assets while this paragraph contemplates selling all assets located within the cities. Paragraph needs to be cleaned-up significantly – assuming the concept articulated herein is acceptable at all.

**Page 5: [2] Comment [JLS42]**

**Simon, James**

**6/16/2016 1:33:00 PM**

This paragraph is confusing. In all events, the timeframes (30 days, 15 days) is wholly unrealistic for a municipality given that the Cities' respective City Councils must approve any such agreement to purchase.

**EXHIBIT 11**

**LEGAL DIVISION MEMORANDA  
REGARDING iTV-3 SALE  
OF ASSETS TO CWB**



**LEGAL DIVISION**  
400 S. Vine St., Urbana, IL 61801  
P.O. Box 219, Urbana, IL 61803-0219  
(217) 384-2464  
Fax: (217) 384-2460

**DATE:** April 15, 2016  
**TO:** City Council, Mayor Prussing  
**CC:** Mike Monson  
**FROM:** James Simon, City Attorney

**RE:** Possible Sale of UC2B Assets by iTV-3, Inc. to iTV-3, LLC (an Affiliate of Countrywide Broadband, LLC).

Recently, the cities of Urbana and Champaign and the University of Illinois were informed by iTV-3, Inc. ("iTV-3") that the latter had entered into an Asset Purchase Agreement whereby it would sell all of iTV-3's rights and interest in and to the UC2B fiber optic system to another entity (iTV-3, LLC) which was recently organized by Countrywide Broadband, LLC (iTV-3, LLC and Countrywide Broadband, LLC, hereinafter, singly or collectively, "Countrywide" in order to avoid confusion between the two iTV-3 entities). The purpose of this memorandum is to provide an initial brief summary of events which have occurred to date regarding the aforesaid transaction and the cities and University involvement therewith.

*Please note that certain information has been provided by iTV-3 and Countrywide which they deem highly confidential and proprietary and, therefore, not available for public disclosure. That particular information is not included with this memorandum as to do so would violate iTV-3's and Countrywide's proprietary and confidential rights in the information. Thus, City staff involved in communicating with iTV-3 and Countrywide cannot disclose their confidential and proprietary information at this time. At the time(s) City Council action is requested, such information as the City Council deems necessary and appropriate will be provided in order to make informed decisions on whether to take the action(s) recommended by City staff. The information included with this memorandum does not bear any legend stating that it was provided to City staff on a confidential basis.*

Ultimately, the City Council will decide whether or not (i) to exercise the City's right of first refusal (provided for in the UC2B NFP-iTV-3 transition agreement) to purchase the UC2B assets which were installed in the City; and (ii) to consent to an assignment of iTV-3's cable franchise agreement with the City to Countrywide. If the City waives its right of first refusal, the asset purchase will occur. If the City exercises its right of first refusal, the City will need to pay iTV-3 the value of the UC2B assets located within the City which value, at this time, has yet to be determined. If the City consents to the cable franchise agreement assignment, Countrywide will become the new cable operator. If the City refuses such consent, iTV-3 will continue to operate the cable system.

## **Background of UC2B:**

In 2009, the University submitted a request for federal funding, the proceeds of which would be used to construct the foundation for and partially build out a high speed fiber optic system in Urbana and Champaign. The initial target areas for such build out were low income neighborhoods which likely had little or no access to reasonably priced internet service. Thereafter and in that same year, the cities and the University entered into an intergovernmental agreement which created the “Urbana Champaign Big Broadband Consortium” – commonly and hereinafter referred to as the “Consortium.” The purpose of the Consortium was to develop technical and business plans and undertake steps for creating, building out, operating, managing, and maintaining a fiber optic system in the cities. The grant was awarded and additional funding was secured from the state and the cities.

After some fits and starts, construction of the UC2B system began. In 2012, Consortium members approved a Business and Strategic Plan which provided for the design, build-out and operation of the UC2B fiber optic system. Several amendments to the cities’ and University’s intergovernmental agreement were made. During this period, the fiber optic system was built out to a certain level and became operational. Approximately 1,200 commercial and residential customers subscribed to the UC2B fiber optic system. Certain anchor institutions were granted access as well.

Sometime prior to July 2013, due to financial constraints, the Consortium and its three members decided that none of them could operate, manage, maintain, and further build out the UC2B system on an on-going basis. After much consideration, the Consortium members agreed to form a not-for-profit corporation which would take over complete operation, management, maintenance, and further build out of the fiber optic system. However, as part of those decisions, it was agreed that the Consortium members would retain ownership over the system assets which were acquired, assembled and installed using the federal grant, state and cities’ money.

On July 30, 2013, the Champaign and Urbana City Councils met in a joint session to discuss proposed amendments to the intergovernmental agreement that would create a not-for-profit corporation and vest authority over the fiber optic system in that corporation. To accomplish the aforesaid, the cities and the University executed an amendment to the intergovernmental agreement (Second Amended and Restated Intergovernmental Agreement Providing for the Creation of the Urbana-Champaign Big Broadband Consortium, “2<sup>nd</sup> IGA”). The Consortium members agreed that “transfer” of the system to the not-for-profit would include “the conveyance of rights to use and/or to access” the fiber optic system but not ownership of the assets which comprise the system itself. 2<sup>nd</sup> IGA Secs. 1, 9.7, 9A5, 15.1, 17.1. Thereafter, UC2B NFP (“NFP”) was incorporated.

In the fall 2013, the Consortium entered into an Agreement to Transition Big Broadband Operations to the NFP whereby the NFP was given the right use, operate, maintain and build out the fiber optic system. The transition agreement did not convey ownership of the fiber optic system itself to the NFP. Agreement to Transition Big Broadband Operations Sec. 4.1. At about this same time, a 77% first priority security interest in all assets acquired and installed using federal grant funding was given to the federal government for the respective useful lives of the various assets. The NFP took over all aspects of operating, managing, maintaining, and building out the fiber optic system.

As time passed, the NFP's board of directors came to the conclusion that the NFP did not have and could not generate the financial resources to undertake an aggressive build out of the fiber optic system. In late 2013, the NFP commenced searching for a partner who could take over the operation, management, maintenance and build out of the fiber optic system. Prior to February 28, 2014, the NFP identified iTV-3 as the most likely partner to take over the said system and build it out more quickly than the NFP could. However, prior to entering into an agreement with iTV-3, the cities and the University were required to obtain consent from the federal government (the National Telecommunications and Information Administration, "NTIA") of such transaction prior to it becoming effective. After obtaining NTIA consent to the proposed transaction, on February 28, 2014, the NFP transferred such rights which the NFP had in the fiber optic system to iTV-3. Since the NFP did not own the system itself, its agreement with iTV-3 did not include any transfer of ownership of the system itself but, rather, the full right to operate, manage, maintain, and build-out the system. Pursuant to that agreement, iTV-3 would obtain and retain all ownership rights in and to the further build out of the fiber optic system which it undertook. Thereafter, iTV-3 tied the then existing UC2B system into its other fiber optic systems located and operated in Peoria, East Peoria, and Pekin, Illinois. Both cities also entered into cable franchise agreements with iTV-3. iTV-3 began a rather slow expansion of the UC2B system based on the terms contained in its agreement with the NFP.

Of relevance to this memorandum, the agreement between iTV-3 and the NFP includes the following provision:

... in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called "the Cities") will have right of first refusal to purchase iTV-3's interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.

Section 6.1 of the iTV-3-Urbana franchise agreement provides:

Neither the Grantee nor any other Person may transfer the Cable System or this Franchise Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. ... The City shall process any transfer request submitted by Grantee in accordance with all applicable laws and regulations. The consent or approval of the City to any assignment, sale, transfer, or sublet, shall not constitute a waiver or release of ... any enforcement rights of the City under any ordinance or this Franchise Agreement.

Section 6.1 of Champaign's cable franchise agreement with iTV-3 contains the identical language as Urbana's agreement.

Prior to February 2016, iTV-3 came to the conclusion that it did not have the assets or capital to undertake a more robust build-out of the UC2B fiber optic system. Thus, as the NFP did previously, iTV-3 began looking for a partner or someone to whom it could transfer its rights in the said system.

**Proposed Sale By iTV-3 of UC2B Assets To Countrywide:**

On or about February 15, 2016, iTV-3 informally advised the cities of a proposed sale of its assets in Urbana, Champaign, Peoria, East Peoria, and Pekin to an entity named "Countrywide." Very little information regarding the aforesaid sale or the purchaser was provided to the cities at that time. Thus, a core group of staff and others from Urbana and Champaign and NFP board members immediately met to begin identifying what information the NFP, cities and University needed in order to assess whether the cities would (i) exercise their respective rights of first refusal under the NFP-iTV-3 agreement to purchase the assets located within their cities and (ii) give their consents to any assignment of their respective cable franchise agreements with iTV-3.<sup>1</sup>

On February 22, 2016, representatives of the NFP, the cities and the University met to prepare for an initial meeting with iTV-3 and Countrywide to obtain more information about the transaction involving Countrywide and about Countrywide itself. Thereafter, the NFP's, cities' and University's representatives met with representatives from iTV-3 and Countrywide. During that meeting, the representatives from Countrywide provided their background in the cable and high speed internet industry and the company's intention and desire to acquire iTV-3's assets and to build out the UC2B system at an accelerated pace. Following the aforesaid meeting, the iTV-3 and Countrywide representatives met with the cities' officials separately and in their respective cities. Despite these meetings, there still was a dearth of information regarding Countrywide generally and its plan for building out, financing and marketing the fiber optic system. Likewise, very little specific information was provided concerning Countrywide's commitment to the cities and University themselves. Rather, much of what Countrywide provided was highly general. However, early in the communications Countrywide advised the NFP, cities and University that it would hire all of iTV-3's employees (other than Levi Denkla) so that should the sale proceed it would have little or no impact on subscribers and provide for no loss of jobs.

Following the aforesaid meetings, representatives of the NFP, cities and the University collaborated to develop a list of very specific questions to be presented to and answered by iTV-3 and Countrywide. On March 3, 2016, the aforesaid list of questions was tendered to both entities. The list of questions is attached to this memorandum.

iTV-3's and Countrywide's initial responses to the NFP's questions provided little detailed information about Countrywide on grounds that such information was confidential and proprietary and that disclosure of the same would become public by virtue of the Freedom of Information Act. The iTV-3's and Countrywide's initial responses are attached to this memorandum. After some assurances that the information would be kept confidential under one or more exceptions to the Freedom of Information Act, Countrywide provided a copy of its Asset Purchase Agreement with iTV-3, Inc. and two letters of financial commitment to provide funds

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<sup>1</sup> The City's "staff and others" have included Peter Resnick, Charlie Smyth (both appointees to the UC2B NFP), Mike Monson, and the City Attorney.

issued by investment bankers. Each page of these items has been marked "Confidential and Proprietary per 5 ILCS 140/7(i)(g)." Thus, the Asset Purchase Agreement and financial commitment letters have not been included with this memorandum. On April 13, 2016, Countrywide supplemented its responses to the NFP's questions. The supplemental responses are attached to this memorandum. Also attached are the resumes of the key Countrywide management team.

**Status of Pending Transaction:**

In addition to notification that iTV-3 intends to sell its assets to Countrywide, the cities have received letters from attorneys representing Countrywide requesting that the cities consent to assignment of their respective cable franchise agreements with iTV-3. The letters enclosed copies of FCC Form 394 which the Federal Communication Commission requires be submitted in connection with assignment of the existing cable franchises. The attorneys' letter and FCC Form 394 are attached to this memorandum. (Note, the person identified as receiving the assignment, if the City consents, would be iTV-3, LLC, the entity recently created by Countrywide.) The information contained on that form is essentially the same as that which was provided in iTV-3's and Countrywide's responses to the NFP's, cities', and University's questions. In short, the information is relatively scant. Under federal law, the City has 120 days from the date of receipt of a completed and accurate FCC Form 394. Title 47, Chapter I, Subchapter C, Part 76, Subpart J, Section 76.502 of the Code of Federal Regulations provides:

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

47 CFR 76.502. Since neither Countrywide nor its newly-organized affiliate (iTV-3, LLC) has provided complete information on FCC Form 394, the City will need to advise them of that fact within 30 days of receipt of the FCC Form 394. The attorneys' letter and FCC Form 394 are included with this memorandum.

On April 14, 2016, representatives from the NFP, cities and University met with the principals of Countrywide Broadband LLC and a representative from its venture capital funding source to obtain further clarification of Countrywide's vision for building out the UC2B system and serving the cities including under-served communities. Discussion included Countrywide's

commitment to minority communities in terms of hiring employees, retaining contractors and neighborhood.

Countrywide has signaled its willingness to consider modifications to the NFP-iTV-3 agreement or an entirely new agreement with the NFP either of which could include a more definitive metric and timetable for building out the fiber optic system as well as incentives to do so. Detailed terms have not been discussed as of the date of this memorandum. Further meetings are planned in the coming weeks.

The NFP has retained the services of CTC Technology and Energy, a company which has provided consulting services to the University, cities and NFP throughout the process of applying for and obtaining the federal grant to transitioning the operation and build out of the fiber optic system to the NFP and, thereafter, to iTV-3. CTC has been requested to gather and provide market data and to develop a value (or, at least a metric for valuing) the fiber optic system located in the cities and at the University (i.e., exclusive of iTV-3's assets and holdings in Peoria, East Peoria and Pekin). Further, the NFP is considering issuing a request for information (RFI) to assess whether other viable partners might be interested in taking over the operation, maintenance and build out of the fiber optic system should the cities decide to exercise their rights to purchase the fiber optic system as provided for in the iTV-3-NFP agreement and should the cities choose to withhold their consent for assignment of iTV-3's rights and obligations under the cable franchise agreements to Countrywide. CTC has been requested to assist with the preparation of the RFI. A decision whether and when to release the RFI will depend in significant part on the NFP's early negotiations with iTV-3 and Countrywide over changes in or a new agreement regarding the fiber optic system.

**Action Requested of the City Council:**

At this time, *no action* is requested by the Urbana City Council. City staff and the City's representatives to the NFP will continue to participate in and cooperate with representatives from Champaign and the University in gathering more information from iTV-3 and Countrywide as well as negotiating terms which might be acceptable to the NFP going forward. Depending on the course of the future discussions, City staff and representatives from the NFP will recommend a course of action which the City Council might take – i.e., whether to (i) exercise or waive the City's right of first refusal to purchase the fiber optic system assets located within Urbana; and (ii) consent or refuse consent to a transfer of iTV-3's rights and obligations under its cable franchise agreement with the City.



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**DATE: June 8, 2016**  
**TO: City Council Members**  
**CC: Mayor Prussing**  
**FROM: James Simon, City Attorney**

**RE: City of Urbana's Right of First Refusal to Purchase UC2B Assets and Consent to Transfer of the iTV-3, Inc. Cable Franchise Agreement to iTV-3, LLC (an Affiliate of Countrywide Broadband, LLC)**

In a prior memorandum dated April 15, 2016, the City Attorney discussed the pending sale of iTV-3, Inc. assets to an entity (iTV-3, LLC) an affiliate of Countrywide Broadband, LLC.<sup>1</sup> The closing on the sale is contingent upon Urbana and Champaign (i) waiving their respective rights of first refusal ("RFR") to purchase those iTV-3 assets located within the cities and (ii) giving their consents to iTV-3's request to transfer its rights and obligations under the cities' cable franchise agreements ("Cable Agreement") to CWB. Dr. Jon Gant, president of UC2B NFP ("NFP") and the NFP's attorney (David Krchak) have been serving and continue to serve as the primary contacts between the NFP, the cities, iTV-3 and CWB. This memorandum updates the prior memorandum.

As discussed below, in the relatively near future, the City Council will be asked to –

- i. waive or exercise Urbana's RFR to purchase those iTV-3 assets which are located in Urbana other than those which were acquired and installed using federal, state and/or local funding ("UC2B Assets") and which are still owned by the University and/or Urbana; and
- ii. grant or withhold Urbana's consent to iTV-3's request to transfer and assign its rights and obligations to its Cable Agreement.

If the City Council chooses to purchase the assets, it must provide sufficient funds to do so. Currently, the purchase price for the assets is in dispute. If Urbana decides to deny iTV-3's request to transfer the Cable Agreement, the City Council will need to articulate a sound reason for doing so and iTV-3 will be obligated under the Cable Agreement to continue providing cable services. The City of Champaign faces these same issues.

<sup>1</sup> Note: Effective February 28, 2014, UC2B NFP entered into an agreement with a corporation known as "iTV-3, Inc." Since then, iTV-3, Inc. has operated the UC2B fiber optic system. Countrywide Broadband, LLC recently created a new limited liability company known as "iTV-3, LLC" to purchase iTV-3, Inc.'s assets. References in this memorandum to iTV-3, Inc. will be "iTV-3" while references to Countrywide Broadband, LLC and/or iTV-3, LLC will be "CWB."

**A. DEADLINES FOR ACTION:**

**1. Right of First Refusal (RFR) to Purchase iTV-3 Assets:**

Paragraph 8 of the agreement between iTV-3 and the NFP states:

iTV-3 further agrees that, in the event it or any affiliated entity plans to sell the iTV-3 affiliate for Champaign and Urbana or assign or sell interests in the Assets, the cities of Champaign and Urbana (hereinafter called “the Cities”) will have right of first refusal to purchase iTV-3’s interests in their respective communities at market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate. Within 30 days of a written request by the Cities, iTV-3 shall promptly provide them all of the information they request in order to make an informed decision as to whether to exercise this right. The Cities shall have 30 days following provision by iTV-3 of the requested information to choose whether to exercise the right.

Thus, once iTV-3 has provided all the information which the cities have requested, the cities will have 30 days in which to decide whether or not to exercise their respective RFRs. Currently, as discussed below, there is a dispute between the cities (and NFP) and iTV-3 insofar as whether the latter has provided all the information which the cities have requested.

**2. Consent to Assign iTV-3’s Cable Agreement Rights to CWB:**

Federal law governs the deadline when the City Council must decide whether or not to consent to an assignment of iTV-3’s rights and obligations under the Cable Agreement to CWB. The time clock for reaching a decision was triggered by Urbana’s receipt of an FCC Form 394 from iTV-3.<sup>2</sup> FCC Form 394 is intended to provide Urbana with sufficient information about CWB in order to make a decision whether to grant or withhold its consent to the proposed Cable Agreement assignment.

Federal regulation 37 CFR 76.502(a) provides that the City Council has 120 days from –

the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

Emphasis supplied. Upon receipt of FCC Form 394, Urbana had 30 days in which to request CWB to provide complete responses – i.e., additional information. 37 CFR 76.502(b). The City Attorney did request additional information within the 30-day timeframe provided for in the regulation. CWB had ten (10) days in which to provide the requested information. 37 CFR 76.502(b). To date, CWB has provided some but not all the additional information requested and

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<sup>2</sup> Federal regulation (47 CFR 76.502) requires iTV-3 to submit FCC Form 394 to Urbana. To date, iTV-3 has not submitted that form but CWB has. As a show of good faith and in order to avoid slowing down the due diligence process, the City Attorney has deemed CWB’s submission of the form as meeting the submission requirement provided in the regulation.

the 10-day period has expired. CWB is conditioning its provision of the requested additional information on the cities' waiver of their respective RFRs. The request for additional information and CWB's failure or refusal to provide the information does not toll the 120-day period.

### **3. Summary of Deadlines for City Council Action:**

*Deadline for City Council Action on Exercising the City's RFR:* At this time, iTV-3, CWB, the NFP, and the cities are in a dispute insofar as whether the 30-day clock has started to run regarding the cities' exercise their respective RFRs.

*Deadline for City Council Action on Consent to Assign Cable Agreement:* The 120-day clock started on April 8<sup>th</sup> when Urbana received CWB's FCC Form 394. The 120-day period ends on August 8<sup>th</sup>. Thus –

- *the Committee of the Whole must consider the matter no later than at its July 25<sup>th</sup> meeting; and*
- *the City Council must take action whether to grant or withhold consent to assignment of the Cable Agreement by no later than August 1<sup>st</sup>.*

However, these dates are subject to change but only by agreement between Urbana and CWB.

## **B. DISCUSSION:**

### **1. Status of Information Requests to iTV-3 and CWB:**

In March-April, pursuant to the iTV-3-NFP agreement and the two Cable Agreements, the cities and the NFP prepared and submitted a list of questions to both iTV-3 and CWB.<sup>3</sup> iTV-3 and CWB responded with some information consisting primarily of (i) an asset purchase agreement; (ii) an unsigned letter from a venture capital company which describes the terms and conditions under which it would invest in and lend money to CWB; (iii) a letter from a large investment banking company to the venture capital company which outlined the terms and conditions under which the investment company would make money available to the venture capital company for the latter's investment in and loan to CWB; and (iv) resumes of the managing principals of CWB.<sup>4</sup> In mid-April the cities and the NFP requested additional and more detailed responses.

On May 14<sup>th</sup> iTV-3 provided more detailed information regarding its operation of the fiber optic system. On May 31<sup>st</sup>, the NFP "reviewed [iTV-3's] information to confirm its quality, relevance and utility to address [the NFP's questionnaire]. David Krchak letter dated

<sup>3</sup> The obligation to produce information rests solely with iTV-3 because of its agreement with the NFP and federal regulation 37 CFR 76.502. CWB is not a party to the iTV-3-NFP agreement or the Cable Agreements. However, the NFP and the cities submitted their requests for information to both iTV-3 and CWB in a good faith effort to expedite the cities' information-gathering part of their due diligence.

<sup>4</sup> The first three items bear a legend which reads "Confidential and Proprietary per 5 ILCS 140/7(1)(g)." To date, those participating in discussions with iTV-3 and CWB have committed to respecting the confidentiality and proprietary nature of any document iTV-3 and/or CWB provide and which bears such legend.

May 31, 2016, brackets supplied. However, the NFP recognized that it was up to the cities respectively to independently determine whether the information was satisfactory. On June 3<sup>rd</sup> and June 6<sup>th</sup>, the City Attorney sent letters to CWB's attorneys and iTV-3 which advised that the information which both entities had provided as of those dates was wholly insufficient for the City to complete its due diligence "in order to make an informed decision" regarding whether to (i) waive the City's RFR and/or (ii) grant iTV-3's request to assign the Cable Agreement to CWB. The information provided by iTV-3 and CWB is deficient in at least four respects.

1. The value given for the assets located in the cities is not based on the metric provided for in Paragraph 8 of the iTV-3-NFP agreement – i.e., a "market price, as determined by an arms-length, written offer to purchase made to iTV-3."
2. No separate values, much less "market values", of any kind have been provided for the assets located in each city.
3. No "market value" has been given for the assets located in each city which are not already owned by Urbana, Champaign and/or the University.
4. Almost no, much less detailed, information has been provided regarding CWB's ability and plans to operate, maintain and expand the fiber optic network and how it intends to handle customer, community and local government relations.

CWB and iTV-3 have consistently maintained that the CWB information will be provided but only after the cities have waived their RFRs. The City Attorney has repeatedly and consistently rejected such bifurcated approach since the information is needed for the City Council to complete its due diligence on both issues and so that the Council can "make an informed decision." The City Council needs the information not only to assess past operation of the UC2B system (i.e., operation while in iTV-3's hands) but also planned future operation of the system (i.e., operation when in CWB's hands) since Urbana is the steward of the public good. *Charter Communications, Inc. v. County of Santa Cruz*, 304 F.3d 927 (9<sup>th</sup> Cir. 2002), cert. denied, \_\_\_ U.S. \_\_\_, 124 S.Ct. 1035 (2004). Indeed, the City Attorney has indicated that he believes information regarding the future operation of the fiber optic system is more important since the City Council and City staff already have general information about iTV-3's past operations. Likewise, the City Attorney has repeatedly and consistently advised iTV-3 and CWB that they must provide a rational value of the fiber optic network assets located just within Urbana, excluding those assets which are already owned by Urbana and/or the University, if for no other reason than to know what amount Urbana must put on a check should the City Council exercise Urbana's RFR.

Federal case law gives local government wide latitude in refusing to consent to a transfer of a cable franchise agreement since such a decision is legislative, rather than administrative (quasi-judicial), in nature. In a case which addressed issues nearly identical to the ones under consideration here, a federal appellate court expressly held that "... a denial of that privilege [to take over the operation of a cable franchise] is hardly arbitrary when a government's information request is refused." *Charter Communications*, 304 F.3d at 932, brackets supplied. As noted above, absent a special meeting, the Committee of the Whole and the City Council must act on iTV-3's request to transfer and assign the Cable Agreement to CWB on July 25<sup>th</sup> and August 1<sup>st</sup> respectively. Failure to do so will be construed as granting consent to such an assignment and

transfer. As discussed above, there remains some dispute over when the 30-day time clock starts for when the Committee of the Whole and City Council must decide whether or not to exercise Urbana's RFR to purchase assets.

## **2. Cost of Exercising the City's RFR:**

The iTV-3-CWB asset purchase agreement includes a single purchase price for all iTV-3's assets located in Peoria, East Peoria, Pekin, Champaign, Urbana, and elsewhere.<sup>5</sup> The cities and the NFP repeatedly requested iTV-3 and/or CWB to provide a valuation (based on the metric provided in Paragraph 8 of the iTV-3-NFP agreement) for only those assets which are located within the cities other than those assets already owned by the cities and University. On or about April 13<sup>th</sup>, iTV-3 and CWB provided a valuation \$22,559,159 for the assets located within the cities combined. However, that valuation is not based on the language of Paragraph 8 of the iTV-3-NFP agreement which includes the RFRs – i.e., “market price, as determined by an arms-length, written offer to purchase made to iTV-3.” Rather, the value is based on asset replacement cost. Likewise, CWB and iTV-3 did not provide how they arrive at their replacement cost figure – i.e., (cost of equipment, material, and supplies) + (costs of installation).

CWB's and iTV-3's valuation of the assets located in the cities includes a replacement cost value for “private construction cost of the initial network” in the amount of \$17,605,929 - i.e., those assets which were purchased and installed using federal, state and local funding. Thus, the iTV-3 and CWB replacement cost valuation includes assets which are already owned by the cities and the University.<sup>6</sup> The cities' and NFP's representatives believe that the assets which iTV-3 placed in both cities have a replacement cost value of \$4,953,230 (using iTV-3's and CWB's figures, such as they are) ( $\$22,559,159 - \$17,605,929 = \$4,953,230$ ).

In response to the cities' request for a valuation of the iTV-3 assets which does not include those assets already owned by the cities and the University, iTV-3 has begun asserting that its replacement cost figure includes a value for the exclusive Indefeasible Right of Use (IRU) which the NFP assigned to iTV-3. However, iTV-3 has not given the cities a value for the IRU. It is worth noting that iTV-3 has acknowledged that there is no mechanism for valuing the IRU which the NFP assigned to it. In any event, iTV-3 stands by its asset replacement cost value of \$22,559,159 with and without inclusion of the IRU thereby suggesting that the IRU has no real value.

## **3. Public Request For Information:**

The cities and NFP advised that if they did not receive the information they requested by May 10<sup>th</sup>, the NFP would release a public Request for Information (“RFI”) to the internet service provider and cable operator community generally.

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<sup>5</sup> CWB has designated the asset purchase agreement with iTV-3 as confidential and proprietary.

<sup>6</sup> The UC2B Consortium did not transfer to the NFP ownership of the assets installed using federal, state and local funds. Therefore, the NFP could not transfer ownership of government-funded assets to iTV-3 and iTV-3 cannot transfer ownership of those assets to CWB.

CWB did not provide the requested information within the deadline set by the NFP. On May 10<sup>th</sup>, the NFP released its public RFI. Responses were due by May 24, 2016. The RFI may be viewed at: <http://www.uc2b.net/uc2b2016/request-for-information-coming-soon/>.

The NFP received six (6) responses of which four (4) are extremely strong. The NFP has created a team to evaluate the public RFI responses.

#### **4. Exchange of Terms and Conditions:**

In mid-April, 2016, CWB tendered a memorandum entitled “Proposed Agreement Terms.” The proposed terms outlined the conditions which CWB would accept in consideration of the cities’ waiver of their RFRs and in granting consent to transfer of iTV-3’ rights and obligations under the Cable Agreements. Thereafter, representatives for the cities and the NFP met with representatives of CWB to respond to CWB’s “Proposed Agreement Terms.” During that meeting the cities and the NFP presented their own set of terms which they hoped CWB would accept in consideration for the cities’ waiver of their RFRs and consents to transfer the Cable Agreements. The representatives of the NFP and CWB (exclusive of attorneys and iTV-3 representatives) have commenced negotiations in earnest with the intent of reaching mutually satisfactory terms which the NFP can present to the cities with the hope that they will be sufficiently acceptable to allow the cities to waive their RFRs and to give their consents to the assignment of the Cable Agreements.<sup>7</sup> As of the date of this memorandum, the NFP has reported that the negotiations have been progressing smoothly. If CWB and the NFP reach terms of agreement, the NFP will recommend that the cities (i) find those terms acceptable, (ii) waiver their respective RFRs, and (iii) consent to assignment and transfer of the respective cable franchise agreements.

#### **5. Transactional Issues:**

As noted above, CWB has offered to purchase iTV-3’s assets in total. Paragraph 8 of the iTV-3-UC2B NFP agreement sets a metric for determining the price which the cities would need to pay should they exercise their RFRs – i.e., “market price, as determined by an arms-length, written offer to purchase made to iTV-3 or its affiliate.” The cities have no obligation to purchase assets other than what are located within the cities and which are not already owned by the cities and the University. As discussed above, iTV-3 chose to use a different method for calculating the value of the assets than the one provided in the iTV-3-NFP agreement. Likewise, iTV-3’s valuation included assets which the cities and University already own. Therefore, iTV-3 insists that the asset value is \$22,559,159 while the City Attorney asserts that the value of the assets (using iTV-3’s own replacement cost figures) is \$4,953,230.

There is a continuing dispute regarding the cities’ and the NFP’s request to for CWB’s information. The parties hope that this impasse can be bridged by negotiating what the parties believe would be fair terms pursuant to which CWB will operate, maintain and expand the fiber optic system and handle customer, community and local government relations.

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<sup>7</sup> CWB, the cities, and the NFP have not disclosed their respective proposals to the general public out of concern that doing so could negatively impact the discussions and because they are very much in draft form and fall well within the FOIA exceptions provided in Subsections 140/7(f) and (g) regarding preliminary drafts and recommendations and trade secrets and proprietary confidential information. 5 ILCS 140/7(f), (g).

**C. FEDERAL GRANT AGENCY (NTIA) APPROVAL OF TRANSACTION:**

Notwithstanding any of the foregoing, the National Telecommunications and Information Administration (NTIA) which awarded the Broadband Technology Opportunities Program (BTOP) grant must consent to any transfer or assignment of the iTV-3-NFP agreement to CWB.<sup>8</sup> Currently, the federal government has a 77% lien interest on all assets acquired and installed in the cities and at the University with funds from the BTOP Program.

The iTV-3-NFP agreement and the Cable Agreements contain no provision which requires the NFP, the cities or the University (as grantee) to use their best efforts to obtain NTIA consent to the iTV-3-CWB transaction. Likewise, NTIA will not likely communicate directly with iTV-3 or CWB to obtain NTIA's consent to the iTV-3-CWB transaction. It is possible that should NTIA learn that CWB has been less than forthcoming with information about its future plans for the UC2B fiber optic network, NTIA may withhold its approval to the iTV-3-CWB transaction.

**D. RAMIFICATIONS OF CURRENT STATUS:**

In the event Urbana and Champaign's city councils were to exercise their cities' RFRs to purchase those iTV-3 assets located wholly within the cities but which are not already owned by the cities or the University, they would have to tender payment to iTV-3 for those assets. However, as discussed above, the value of the assets located within the cities but which are not already owned by the cities and the University is in dispute.<sup>9</sup> iTV-3 has represented to the cities' and the NFP's representatives that it will accept nothing less than \$22,559,159 should the cities exercise their RFRs.

In the event the City Council withholds Urbana's consent to transfer and assign the Cable Agreement, the City Council would need to provide a valid reason for doing so. At present, CWB's refusal to provide the information requested would constitute a valid reason for not granting the consent requested. *Charter Communications, Inc.*, 304 F.3d 927. Should the City Council refuse to grant such consent, iTV-3 would remain obligated to provide cable service pursuant to the Cable Agreement.

**E. NEXT STEPS:**

The Mayor, City staff, as well as their counterparts in Champaign, as well as the NFP will review whatever information and proposals which iTV-3 and CWB provide.

The City Attorney will report to the City Council on any action recommended in connection with the public RFI responses.

City Staff and the Mayor will make recommendations insofar as the City's RFR and iTV-3's request to transfer and assign the Cable Agreement to CWB.

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<sup>8</sup> NTIA consented to the NFP's assignment of operation of the UC2B system to iTV-3.

<sup>9</sup> This memorandum does not address the possibility that only one city may exercise its RFR.

**EXHIBIT 12**

**CWB PROPOSAL (6/30/2016)**

**UC2B NFP-CITIES-UNIVERSITY  
PROPOSAL (7/1/2016)**

**CWB PROPOSAL (7/7/2016)**

**UC2B NFP-CITIES-UNIVERSITY  
PROPOSAL (7/11/2016)**

**CWB COUNTERPROPOSAL TO UC2B NFP - 6/30/16**

In partial replacement of Section 1 and full replacement of Sections 4, 11 and 17 of the current Memorandum Of Understanding:

<b>Year</b>	<b>Aggregate Build-Out Target</b>
2017	<u>3,250</u> <del>3,600</del> HP
2018	<u>6,750</u> <del>7,500</del> HP
2019	<u>10,500</u> <del>11,400</del> HP
2020	<u>14,200</u> <del>15,900</del> HP
2021	<u>18,000</u> <del>22,000</del> HP
<u>2022</u>	<u>22,000</u> HP

**Financial Penalty for Failure to Meet Aggregate Annual Build-Out Target**

<b>Year</b>	<b>Penalty</b>
2017	\$25,000
2018	\$35,000
2019	<u>\$40,000</u> <del>60,000</del>
2020	\$25,000
2021	\$25,000

**Fiber Penalty for Failure to Meet 30% of Aggregate Build-Out**

<b>Year</b>	<b>Target (30% of Aggregate)</b>	<b>Penalty</b>
<del>2017</del>	<del>1,080</del>	<del>10% of unused fiber</del>
2018	<u>2,025</u> <del>2,250</del>	<del>25</del> <u>10%</u> of remaining unused fiber
2019	<u>3,150</u> <del>3,420</del>	<del>15</del> <u>10%</u> of remaining unused fiber
<u>2020</u>	<u>4,260</u>	<u>20%</u> of remaining unused fiber

The two penalties are separate but cumulative. That is, the financial penalty is for failure to meet the complete aggregate build-out target. The claw back is for failure to meet 30% aggregate at the conclusion of any calendar year. Both would be assessed immediately after the close of any year in which the target of 30% aggregate was not met. We understand and agree that force majeure exceptions would apply for any relevant year.

~~On December 31, 2019, if CWB has failed to reach the target of passing 3,420 homes (11,400HP x 30%), the Cities shall have the option to purchase back all unused fiber and the fiber built out by CWB for a price to be determined at that time based on the market value of the unused strands and the construction completed by CWB. The Cities have 90 days, or until March 31 of 2020, to decide whether to exercise the option to purchase. Following the notice of intent to exercise the option, CWB will have 180 days to find another acceptable purchaser who will complete the terms of the existing IRU and other agreements with UC2B.~~

Section 4.3 of the IRU will be amended to state: Beginning no later than December 31, 2022, Grantee will make available for lease or IRU any unused ring fiber in the network provided that Grantee will not be obligated to make available for lease or IRU fiber in New

Sectors where it has constructed FTTP because that fiber will be necessary to meet growing demand in those New Sectors. At the time that the unused ring fiber is made available for Lease or IRU, Grantee will no longer be obligated to build fiber in Sectors where some or all of the allocated ring fiber has been made available by lease or IRU. Grantee will offer the fiber for lease or IRU at the Illinois Century Network's then-existing pricing for similar leases or IRUs, with associated maintenance costs to be set at market price as of the date of the fiber lease or IRU.

Annual payments to the Community Development Fund and UC2B for their administrative purposes described in Sections 12 and 13 shall continue until December 31, 2022.

UC2B shall recommend to each of the Cities that it waive in this instance its respective RFR and, if requested by CWB, grant a cable franchise to CWB in time to allow the Cities to waive its respective RFR and grant its respective franchise by August 2, 2016.

~~The exclusive right to use the fibers involved in the IRU expires on December 31, 2021. Annual payments to the Community Development Fund and UC2B for their administrative purposes continue for the life of the IRU.~~

All other provisions in the draft Memorandum of Understanding which are not inconsistent with any of the above would be incorporated into a final agreement which will contain other language customarily used – e.g., default, options to cure, dispute resolution, governing law, jurisdiction for dispute resolution, etc.

**UC2B NFP COUNTERPROPOSAL TO CWB - 7/1/16**

<b>Year</b>	<b>Aggregate Build-Out Target</b>
2017	3,425 HP
2018	7,125 HP
2019	10,950 HP
2020	15,050 HP
2021	20,000 HP
2022	22,000

**Financial Penalty for Failure to Meet Annual Build-Out Target**

<b>Year</b>	<b>Penalty</b>
2017	\$25,000
2018	\$35,000
2019	\$50,000
2020	\$25,000
2021	\$25,000

**Fiber Penalty for Failure to Meet 30% of Aggregate Build-Out**

<b>Year</b>	<b>Target (30% of Aggregate)</b>	<b>Penalty</b>
2017	1,080	10% of unused fiber
2018	2,250	25% of remaining unused fiber
2019	3,420	15% of remaining unused fiber

The two penalties are separate but cumulative. That is, the financial penalty is for failure to meet the complete aggregate build-out target. The claw back is for failure to meet 30% aggregate at the conclusion of any calendar year. Both would be assessed immediately after the close of any year in which the target of 30% aggregate was not met. We understand and agree that force majeure exceptions would apply for any relevant year.

If CWB fails to reach 30% of the aggregate target in any one of the years listed above, the Cities shall have the option to purchase back all unused fiber and the fiber built-out by CWB for a price to be determined at that time based on the market value of the IRU and the construction completed by CWB. The market value will be established by an independent evaluator selected by the Fiber To The Home Council. The cost of the evaluator will be borne by the Cities. The Cities shall have 90 days, or until March 31 following the end of any such calendar year for which the target was not met to provide notice of intent to exercise the option to purchase. Following receipt of the notice, CWB will have 180 days to find another purchaser who will agree to complete the terms established in the IRU and other agreements. (Note: The language in the preceding paragraph, if accepted, will be exchanged for the language under "Fiber Penalty" above.

The new IRU will read as follows:

Beginning no later than December 31, 2022, Grantee shall make available for lease or IRU any unused ring fiber (e.g. dark fiber) in the network at the amount

IRU's for ring fiber strands have been sold to third parties by either the consortium or UC2B. Prior to December 31, 2022, Grantee has no obligation to make optical fiber (e.g. lit fiber) available to any third party; however, throughout the term of the IRU, CWB is required to lease access on their built-out connections at wholesale prices to third parties. At the time that the unused fiber is made available for lease or IRU, Grantee will no longer be obligated to build fiber in Sectors where some or all of the allocated ring fiber has been made available by lease or IRU to a third party.

(Note: This is not the final language of the agreement, however, it explains the concept of exclusivity as it relates to the open access requirements of the grant.)

Annual payments to the Community Development Fund and UC2B for their administrative purposes described in Sections 12 and 13 shall continue throughout the life of the IRU.

All other provisions in the draft Memorandum of Understanding which are not inconsistent with any of the above would be incorporated into a final agreement, except the reimbursement for administrative expenses for evaluating and negotiating the transfer is \$60,000.00. The final agreement will contain other language customarily used – e.g., default, options to cure, dispute resolution, governing law, jurisdiction for dispute resolution, etc.

(CWB proposal – 7/7)

Dave:

Thank you for your counterproposal of July 1. Unfortunately, we do not believe the significant and, in many cases, unsupported changes you seek to make in the agreement that CWB and UC2B negotiated are justified or workable.

Based on our discussions, first with UC2B and now with the Cities and the University, we understand the goal of the “local representatives” is to reach an agreement that will, in fairly short order, either cause CWB to build out the system, or give the local representatives an opportunity to find someone who will do that. We take this to be a reflection on your experience with iTV-3, Inc., which you clearly do not want to repeat.

With respect to your experience with iTV-3, we trust that you can appreciate that CWB is in a *fundamentally different position* than iTV-3 was in when it entered the IRU Agreement with UC2B. For better or for worse, UC2B granted iTV-3 the IRU when iTV-3 had not made any cash investment in the network. Without getting into the basis for iTV-3's failure to build out the network more aggressively, we believe it is a critical economic factor that iTV-3's cash investment was limited to its own build out expenditures. Because of that, iTV-3 was and is in a position to decide, with little or nothing at risk, whether, when and how much to invest in Champaign/Urbana.

By striking contrast, under our proposal, CWB and its investors would be investing *millions of dollars* in the Champaign Urbana assets and IRU before a single network extension is built. From our first day that investment will be at risk and our management and investors will demand that we immediately go to work aggressively seeking to earn a return on that investment. That can only be accomplished by adding value to the system -- by building it out and increasing its sales. Unlike iTV-3, we therefore will have immediate incentives to expand the network. Any step that puts that investment at increased risk will have no effect other than to drive away our, and Champaign/Urbana's, investors.

With all that in mind, we are still willing to try to put the local representatives in a far better position than they are with iTV-3, in order to ensure the prompt and aggressive build out of the fiber assets. My comments below are addressed to that goal, while identifying our specific concerns:

#### HP Build-Out Targets

The annual and aggregate HP build-out targets set forth in the agreement between CWB and UC2B were negotiated in good faith between professionals, experienced in fiber network construction, including Jon Gant, Mike Smeltzer and Paul Hixson for UC2B, and Grier Raclin, Dan Kennedy and Mike Whitaker for CWB. The targets approved by UC2B were, after substantial negotiation, agreed by both sides to be meaningful yet feasible, and would provide the Cities, for the first time, with enforceable rights to truly become Gigabit Communities. The targets agreed by UC2B also took into account the vagaries involved in large, multi-year construction projects, by not imposing penalties based on a single year's performance, but allowing CWB to spread the risk of penalties over 2 or 3 years.

Given that your 6/29 e-mail called the CWB/UC2B-agreed targets “reasonable,” we were taken aback that your most recent proposals dramatically and, without explanation, increased the build-out targets and imposed penalties based on a *single* year’s experience. While we understand your interest in reaching a timely determination about whether CWB is accomplishing the agreed build out, gratuitously increasing build-out targets from what was agreed by UC2B will have the opposite impact by increasing the risk, and thus discouraging the interest of investors. We remain willing to agree to the targets set forth in the agreement between CWB and UC2B, or even the higher targets we proposed on June 30<sup>th</sup> in a good faith effort to bridge this gap. But we are not willing to put our proposed investment in the Champaign and Urbana communities at risk to the arbitrarily-increased targets you most recently proposed.

#### Financial Penalties

We are confused by your re-insertion of the word “Annual” instead of “Aggregate” in the title of this section of your 7/1 Counterproposal given that there no longer are annual build-out targets, only the aggregate targets set forth in your proposal. Again, we see the principal goal of our discussions being to expedite and ensure a timely build out of the network, not just to focus on discrete annual targets. We therefore believe the reference in the title should be to the “Aggregate” targets agreed by the parties.

#### Fiber Strand Forfeitures

We understand you have decided to abandon this remedy, preferring a network purchase option if CWB fails to meet the “30%” targets. As they would appear to be moot, we have not commented on the forfeiture penalties.

#### Purchase Option Remedy

To expedite a completion of our discussions, and assuming we come to an agreement on the other outstanding issues, we would grant the Cities an option to purchase the assets located within the Cities for \$7.5M plus our build out expenses if, at end of 2019, we have not build out the network to 3150 additional HP (30% of the aggregate target for that year end).

#### IRU Section 4.3

Your conversion of the loss of exclusivity, from a penalty for a failure to build out as required in the IRU to a time-based certainty, and your removal of the provision’s trigger when the target build out has been achieved, are again totally unexplained. We therefore respectfully reject this approach. With appropriate changes to reflect to revised build-out obligation, we think the current IRU’s relevant text could be used and would provide at least some incentive for the Grantee to increase the buildout. Also, the wholesale price should be based on a neutral market indicator – such as the Illinois Century Network’s wholesale price – rather than a price one of the parties control.

## UC2B and CDF Contributions

Our discussions have been bogged down by impact of the proposed local franchise transfers and the Cities' right of first refusal. We believe that both hurdles can be set aside. As admitted on UC2B's own Web site, the Cities' time to exercise the right of first refusal has expired. As to the local franchises, we can simply obtain a statewide franchise governing our proposed operations in Champaign and Urbana if we decide to move forward with the proposed acquisition of the Champaign and Urbana network.

As for our financial support of UC2B and the Community Development Fund, we have already proposed to expand and extend the support iTV-3 provides. We cannot, however, undertake to become UC2B's or the CDF's permanent funding mechanism. There is, again, no support offered for your facially extortive demand for an additional \$7.5M payment from CWB over the potential life of the IRU, nor for the additional \$20,000 demanded for claimed expenses. We therefore respectfully decline to agree to these demands.

\* \* \*

Our goal continues to be to negotiate a transfer of the IRU that will provide the local representatives with far greater ability to ensure the prompt build out and subscription to the Urbana and Champaign fiber network. To that end, we are willing to abide by the terms of the IRU between UC2B and iTV-3, Inc., as amended by (i) the agreement negotiated and agreed on June 15<sup>th</sup> by CWB and UC2B, (ii) the increased aggregate build-out targets proposed by CWB on 6/30/16; and (iii) a buy-back penalty provision to be negotiated by the parties in the event the aggregate targets are not attained, replacing Sections 4 and 11 of the CWB/UC2B agreement. Because both sides need to bring these discussions to a close, this offer will expire at the close of business on July 8, 2016. Short of that, with no support being provided for your additional and increasing demands, we do not believe further discussions would be productive.

**COUNTERPROPOSAL 7/11/16**

<b>Year</b>	<b>Annual</b>	<b>Aggregate Build-Out Target</b>
2017	3,425	3,425 HP
2018	3,700	7,125 HP
2019	3,825	10,950 HP
2020	4,100	15,050 HP
2021	4,950	20,000 HP
2022	2,000	22,000

**Response:** You supply the numbers to reach 22,000 by end of 2022. You know our goal. Your previous 6/29 transmittal only achieved passing 17,000.

**A. Financial Remedy for Failure to Meet Aggregate Build-Out Target**

<b>Year</b>	<b>Penalty</b>
2017	\$25,000
2018	\$35,000
2019	\$50,000
2020	\$25,000
2021	\$25,000

**Response:** We lowered these annual penalties from our proposal made prior to 7/1.

**B. Fiber Remedy for Failure to Meet 30% of Aggregate Build-Out**

<b>Year</b>	<b>Target (30% of Aggregate)</b>	<b>Penalty</b>
2017	1,080	10% of unused fiber
2018	2,250	25% of remaining unused fiber
2019	3,420	15% of remaining unused fiber

**Explanation**

The two remedies in A and B above are separate but cumulative. That is, the financial penalty is for failure to meet the complete aggregate build-out target in any year. The claw back in B is for failure to meet 30% aggregate at the conclusion of any calendar year. Both would be assessed immediately after the close of any year in which the target of 30% aggregate was not met. We understand and agree that force majeure exceptions would apply for any relevant year.

**C. Option to Purchase Remedy**

This option to purchase survives any sale, assignment or transfer of assets by CWB. Beginning January 1, 2020, if CWB fails to reach 30% of the aggregate target in any one year or subsequent year until 100% buildout is achieved or is otherwise in material breach of the agreement, the Cities shall have the option to purchase back all rights under the IRU and the fiber built-out by CWB for a price to be determined based on the market value of the IRU and the actual cost of construction completed by CWB. The market value of the IRU will be \$7.5

million reduced by the percentage of the unused fiber no longer under CWB's control at the time the option to purchase is exercised.

The Cities shall have 90 days, or until March 31 following the end of any such calendar year for which the target was not met to provide notice of intent to exercise the option to purchase.

D. Exclusivity

The new IRU will read as follows:

Beginning no later than December 31, 2022, Grantee shall make available for lease or IRU any unused ring fiber (e.g. dark fiber) in the network at the amount IRU's for ring fiber strands have been sold to third parties by either the consortium or UC2B. Prior to December 31, 2022, Grantee has no obligation to make optical fiber (e.g. lit fiber) available to any third party; however, throughout the term of the IRU, CWB is required to lease access on their built-out connections at wholesale prices to third parties. At the time that the unused fiber is made available for lease or IRU, Grantee will no longer be obligated to build fiber in Sectors where some or all of the allocated ring fiber has been made available by lease or IRU to a third party.

(Note: This is not the final language of the agreement, however, it explains the concept of exclusivity as it relates to the open access requirements of the grant.)

E. Annual payments to the Community Development Fund and UC2B for their administrative purposes described in Sections 12 and 13 shall continue throughout the life of the IRU.

F. All other provisions in the draft Memorandum of Understanding which are not inconsistent with any of the above would be incorporated into a final agreement, except the reimbursement for administrative expenses for evaluating and negotiating the transfer is \$60,000.00. The final agreement will contain other language customarily used – e.g., default, options to cure, dispute resolution, governing law, jurisdiction for dispute resolution, etc. We requested an increase from \$40,000 to \$60,000 to reflect the significant increase in UC2B's legal and consulting fees due to the length of the negotiations.

G. Right of First Refusal

Notwithstanding your statement, "as admitted on UC2B's own Web site, the Cities time to exercise the right of first refusal has expired", the Cities deny that the right of first refusal has expired.

H. Support for Community Board Fund

We believe that this notion of support for efforts to provide digital inclusion is a basic premise of the system. This expands your potential market. To call this "facially extortive" is perhaps not what you meant.

I. Support for the Not for Profit

Again, not an unusual component when there is no other payment made for use of a fiber backbone of significant value.

