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ISAR** INC.  
TRUSTED ADVISORS

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IDAHO PUBLIC  
UTILITIES COMMISSION

ANDREW O. ISAR

4423 POINT FOSDICK DRIVE, NW  
SUITE 306  
GIG HARBOR, WA 98335  
TELEPHONE: 253.851.6700  
FACSIMILE: 866.474.3630  
WWW.MILLERISAR.COM

Via Overnight Delivery

LBT-T-10-01

June 22, 2010

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Dear Ms. Jewell:

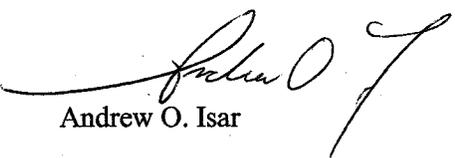
Enclosed for filing with the Public Utilities Commission of Idaho ("Commission") are an original and three (3) copies of Liberty-Bell Telecom, LLC's ("LBT") *Application for Certification and Notice* ("Application") and illustrative tariff. With this Application, LBT seeks authority to provide facilities-based local exchange and switched exchange access in local exchanges served by Qwest Corporation, and non-facilities-based interexchange telecommunications services throughout the State of Idaho.

LBT maintains that its enclosed financial statements filed at Exhibit E contain, confidential, proprietary, and trade secret information, and/or are otherwise exempt from disclosure pursuant to IDAPA Rules 31.01.067, 31.01.01.233, and 31.02.01.005.05, *Idaho Code* Sections 9-340C and -340D, and *Idaho Code* Section 48-801 *et seq.* LBT respectfully requests that the documents be protected from inspection, examination or copying by any person other than the Commissioners and Commission Staff. Applicant's financial statements are submitted on yellow paper under seal, accordingly.

Thank you for your attention to this matter. Questions regarding this filing may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

  
Andrew O. Isar

Enclosures

Regulatory Consultants to  
Liberty-Bell Telecom, LLC

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Notice )  
of Liberty-Bell Telecom, LLC )  
for Certificate of Public Convenience and )  
Necessity to Provide Competitive Local Exchange )  
And Interexchange Telecommunications Services )  
in the State of Idaho. )

Case No. LBT-T-10-01

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2010 JUN 23 AM 9:26  
IDAHO PUBLIC  
UTILITIES COMMISSION

**APPLICATION FOR CERTIFICATION AND NOTICE**

Liberty-Bell Telecom, LLC (“LBT” or “Applicant”), a privately-held corporation organized under the laws of the State of Colorado, pursuant to Idaho Code §§ 61-526 through 528, IDAPA 31.01.01.111 (“Rule 111”), Procedural Order 26665,<sup>1</sup> and Idaho Code § 62-604 and IDAPA 31.42.01 Rule 202 (“Rule 202”), Information to be Included in Notice to Commission, hereby submits this *Application for Certification and Notice* (“Application”) to the Idaho Public Utilities Commission (“Commission”). By this Application, LBT respectfully requests authority to provide competitive, facilities-based local exchange and switched exchange access in Qwest local service territory, and non-facilities-based intrastate interexchange telecommunications services between and among locations within the State of Idaho. In support of its Application, LBT states as follows.<sup>2</sup>

<sup>1</sup> See, *In the Matter of Procedural Requirements for Approval of Certificates of Public Convenience and Necessity for Telecommunications Providers Desiring to Provide Local Service in Idaho*, Procedural Order 26665, Case No. GNR-T-96-4 (November 1996) [“Order”].

<sup>2</sup> Paragraph headings adopt the Commission’s Application for Certification requirements as appear at the Commission’s web site, <http://www.puc.idaho.gov/internet/telcom/cert.htm> and the Order, unless otherwise noted. Rule 202 citations apply to the Commission’s interexchange carrier Notice requirements.

**I. Proposed Services.**

**A narrative description of the telecommunication services provided by the Applicant and the geographic area and market to be served by the company. Other items of interest are whether the company is a facilities-based provider or a reseller, or some combination thereof; what general plans the company has to build facilities in the future; to which markets the provider will appeal; how the provider will market its products; whether the company currently provides or has a history of providing other services in Idaho; how the corporate family is structured. (Rule 202 (2)(d))**

Applicant proposes to offer competitive local exchange services initially including, basic local exchange services and custom calling features for residential and commercial subscribers. Applicant also proposes to offer switched and dedicated access local exchange and interexchange telecommunications services. Applicant subsequently proposes to offer exchange access services to interconnecting carriers. Applicant's proposed services are set forth in its illustrative tariff attached hereto as **Exhibit A**.

Applicant's local exchange and exchange access services will be provided on a facilities-based basis, and consist of leased underlying carrier unbundled network elements. Applicant will also rely on the switching capabilities of its underlying carriers. Applicant does not otherwise propose to construct facilities. Applicant's interexchange services will be offered exclusively on a resold, non-facilities-based basis. Applicant will market its service exclusively through its trained, professional sales staff and online marketing.

Applicant has not heretofore provided telecommunications services in the State of Idaho. Applicant now seeks authority to provide its services in Idaho and in other states where local service is provided by the dominant incumbent local exchange carrier, Qwest Corporation. Applicant is a subsidiary of Liberty-Bell, LLC, a non-regulated parent corporation.

**II. Form of Business**

**1. Name, Address and Form of Business; If the applicant is a corporation, (1) a short statement of the character of public service in which it may engage, (2) the name of the state in which it is incorporated, (3) its principal business address and its principal business address within Idaho, (4) a certified copy of its articles of incorporation, (5) if not incorporated in Idaho, a certificate of good standing issued by the Idaho Secretary of State of Idaho, and (6) name and address of registered agent for service in Idaho. (and Rule 202 (2)(a), (b), (c))**

Applicant's name, address, and contact information are:

Liberty-Bell Telecom, LLC  
2460 West 26th Avenue  
Suite #380-C  
Denver, CO 80211  
Telephone: 303.831.1977  
Facsimile: 303.831.1988

Applicant is a limited liability corporation organized under the laws of the State of Colorado on September 4, 2002. A copy of Applicant's Certificate of Organization is attached hereto at **Exhibit B**. Applicant will provide service under its legal name, Liberty-Bell Telecom, LLC, and will not assume a fictitious name. Applicant does not propose to maintain a physical presence in the State of Idaho. A copy of Applicant's Idaho Certificate of Authority to transact business is attached hereto at **Exhibit C**. Applicant's registered agent for process of service in the State of Idaho is:

CT Corporation System  
1111 West Jefferson  
Suite 530  
Boise, ID 83702

**2. If a corporation, the names and addresses of the ten common stockholders of applicant owning the greatest number of shares of common stock and the number of such shares owned by each.**

Applicant is a wholly owned subsidiary of Liberty Bell, LLC. Please refer item 4, *infra*.

**3. Names and addresses of the officers and directors of applicant.**

Applicant's officers and directors are as follows. Applicant's officers and directors are located at Applicant's principal offices:

Nigel Alexander - Managing Member;  
Christina Neher Chief Operating Officer;  
Jay Weber Executive Vice President;

2460 W. 26<sup>th</sup> Avenue  
Suite #380-C  
Denver, CO 80211

**4. Name and address of any corporation, association, or similar organization holding a 5% or greater ownership or a management interest in the applicant. As to ownership, the amount and character of the interest must be indicated. A copy of any management agreement must be attached.**

Applicant is a wholly owned subsidiary of Liberty Bell, LLC. Those maintaining an ownership interest of five percent or more in Applicant's parent corporation are as follows.

<u>Individual And Address</u>	<u>Shares Owned</u>	<u>Percentage of Shares Issued</u>	<u>Percentage of Voting Control</u>
Nigel Alexander 2460 W. 26 <sup>th</sup> Avenue, Suite #380-C Denver, CO 80211	596,000	48.57%	48.57%
Thomas G. Martino 2460 W. 26 <sup>th</sup> Avenue, Suite #380-C Denver, CO 80211	135,000	11.0%	11.0%
Robert S. Unger 2460 W. 26 <sup>th</sup> Avenue, Suite #380-C Denver, CO 80211	117,000	9.54%	9.54%
George Caulkins 2460 W. 26 <sup>th</sup> Avenue, Suite #380-C Denver, CO 80211	96,727	7.88%	7.88%

A copy of Applicant's *Third Amended and Restated Operating Agreement*, is attached hereto at **Exhibit D**.

**5. Names and addresses of subsidiaries owned or controlled by applicant.**

Applicant neither owns, nor has a controlling interest in any subsidiary entity.

**III. Telecommunication Service**

**1. The date on which applicant proposes to begin construction or anticipates it will begin to provide service.**

Applicant is prepared to initiate service upon the grant of the instant Application.

Applicant will not construct facilities or otherwise deploy equipment in Idaho.

**2. A written description of customer classes and customer service[s] that the applicant proposes to offer to the public.**

Applicant proposes to serve both commercial and residential subscribers. Applicant proposes to provide competitive basic local exchange service, custom calling features as well as dedicated, non-switched private line services to its local exchange subscribers, and non-facilities-based interexchange services to interexchange subscribers.

**IV. Service Territory**

**1. A description sufficient for determining whether service is to be offered in a particular location; and the names of all incumbent local exchange corporations with whom the proposed utility is likely to compete.**

Applicant proposes to provide service within the local exchange service territory of Qwest Corporation, its sole incumbent local exchange carrier competitor. Although Applicant initially anticipates providing services primarily in major metropolitan areas served by Qwest Corporation, Applicant will have the ability to provide service in any Qwest Corporation exchange, as set forth in the Company's Exchange and Network Services Catalog No. 3, Section 5 for northern Idaho, and Exchange and Network Services Catalog No. 1, Section 5 for southern Idaho.

**2. Written description of the intended manner of service, for example, resold services or facilities based. A general description of the property owned or controlled by applicant.**

Applicant proposes to provide local exchange services on a facilities-based basis utilizing leased Qwest unbundled network elements and on a non-facilities-based basis for interexchange services through the resale of underlying carrier interexchange services. Applicant does not anticipate owning or controlling equipment in the State of Idaho.

**3. A statement describing with whom the applicant is likely to compete.**

Applicant will compete with Qwest Corporation and other local exchange carriers as set forth in the Commission's listing of local exchange carriers,<sup>3</sup> and interexchange service providers whose identity is a matter of record with the Commission.

**4. A description of the property owned by the applicant clarifies the applicant's proposed services and operation.**

Please refer to item IV, 2. *Supra*.

## **V. Financial Information**

**1. Current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balances for the twelve months ended as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year.**

A copy of Applicant's most current income statement and balance sheet for the twelve month period ending December 31, 2009, are attached hereto at Confidential **Exhibit E**. Pursuant to IDAPA Rules 31.01.067, 31.01.01.233, and 31.02.01.005.05, *Idaho Code* Sections 9-340C and -340D, and Idaho Code Section 48-801 *et seq*. Applicant maintains that the enclosed financial statements are, and contain, confidential, proprietary, and trade secret information,

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<sup>3</sup> See, [http://www.puc.state.id.us/internet/UIS\\_public\\_clec.html](http://www.puc.state.id.us/internet/UIS_public_clec.html)

and/or are otherwise exempt from disclosure under Idaho law. Applicant respectfully requests that the documents be protected from inspection, examination or copying by any person other than the Commissioners and Commission Staff.

Applicant has profitably managed its current operations, and maintains that it has the financial ability to provide reliable and responsible telecommunications services in Idaho.

**2. If a balance sheet and income statement are not available, the applicant must submit financial data sufficient to establish that it possesses adequate financial resources to provide the proposed services.**

Please refer to item V. 1., *supra*.

**VI. "Illustrative" Tariff Filings**

**Proposed initial tariff and price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service.**

A copy of Applicant's illustrative combined local exchange and interexchange tariff and price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service are attached hereto at **Exhibit A**.

**VII. Customer contacts**

**1. Contact information for the Applicant.**

**a) The name, address, and telephone number and electronic mailing addresses (if available) of the person(s) responsible for consumer inquiries and complaints from the public.**

The name, address, and telephone number and electronic mailing addresses (if available) of the person(s) responsible for consumer inquiries and complaints from the public is:

Christina Neher  
Chief Operating Officer  
Liberty-Bell Telecom, LLC

2460 West 26th Avenue  
Suite #380-C  
Denver, CO 80211  
Telephone: 303.831.1977  
Facsimile: 303.831.1988  
Electronic Mail: cneher [at] libertybelltelecom [dot] com

**b) A toll-free number for customer inquiries and complaints. (Rule 202 (2)(e))**

Applicant's Toll Free number for customer inquiries and complaints is 866.664.2355.

**c) The name, number and electronic mailing addresses (if available) of the person(s) designated as a contact for the Commission Staff for resolving complaints, inquiries and matters concerning rates and price lists or tariffs. (Rule 202 (2)(f))**

The name, number and electronic mailing addresses of the person(s) designated as a contact for the Commission Staff for resolving complaints, inquiries and matters concerning rates and price lists or tariffs are:

Christina Neher – Chief Operating Officer  
Liberty-Bell Telecom, LLC  
2460 West 26th Avenue, Suite #380-C  
Denver, CO 80211  
Telephone: 303.831.1977  
Facsimile: 303.831.1988  
Electronic Mail: cneher [at] libertybelltelecom [dot] com

**VIII. Interconnection Agreements**

**1. Statements of whether the applicant has initiated interconnection negotiations and, if so, when and with whom.**

Applicant will be negotiating an interconnection agreement with Qwest Corporation following the grant of the instant Application.

## **IX. Compliance with Commission Rules**

**A written statement that the applicant has reviewed all of the Commission rules and agrees to comply with them, or a request for waiver of those rules believed to be inapplicable.**

Applicant hereby avers that it has reviewed all of the Commission rules and agrees to comply with such rules. Should Applicant maintain that the rules are inapplicable, Applicant will request a waiver of such rules following confirmation of the need to request such waiver with the Commission.

## **X. Escrow Account or Security Bond**

**1. If a company requires advance deposits by its customers, the company must submit a signed copy of an escrow account with a bonded escrow agent or a security bond. The escrow or bond shall be sufficient to meet customer deposit refunds in case of company default.**

**2. At the Commission's discretion, an additional deposit may be required to keep customers whole in case of company default.**

**3. The Commission will review the individual requirement of establishing an escrow or security account by the Company upon good showing by the Company for a period of two years.**

Applicant does not require advanced deposits. Applicant requests that the requirement for escrow account or security bond be waived, accordingly.

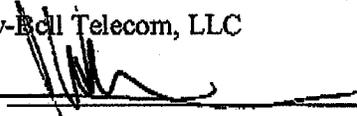
## **XI. Conclusion**

The information contained in this Application and in the attached exhibits identifies Company, describes the Company's proposed Idaho operations, and its ability to responsibly serve the public in Idaho with viable and economic telecommunications service alternatives.

WHEREFORE, Liberty-Bell Telecom, LLC respectfully Applies to the Public Utilities Commission for a Certificate of Public Convenience and Necessity to provide competitive, facilities-based local exchange and switched exchange access in Qwest local service territory, and non-facilities-based intrastate interexchange telecommunications services between and among locations within the State of Idaho.

Respectfully submitted this 18<sup>th</sup> day of June, 2010.

Liberty-Bell Telecom, LLC

By: 

Jay Weber  
Executive Vice President  
2460 West 26th Avenue  
Suite #380-C  
Denver, CO 80211  
Telephone: 303.831.1977

Andrew O. Isar  
Miller Isar, Inc.  
4423 Point Fosdick Drive NW  
Suite 306  
Gig Harbor, WA 98335  
Telephone: 253.851.6700  
Facsimile: 253.851.6474

Regulatory Consultants to  
Liberty-Bell Telecom, LLC

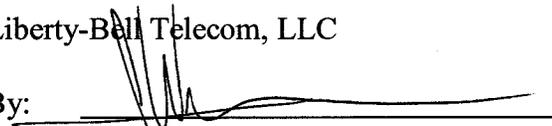
VERIFICATION OF APPLICANT

STATE OF COLORADO )  
 ) ss.  
County of DENVER )

I, Jay Weber, being duly sworn, hereby state that I am Executive Vice President of Liberty Bell Telecom, LLC, an Applicant for Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange And Interexchange Telecommunications Services in the State of Idaho, that I have examined and reviewed the foregoing Application and exhibits attached thereto, and that to the best of my knowledge, information, and belief, all statements of fact contained in said application are true, and the said Application is correct and accurate in respect to each and every matter set forth therein.

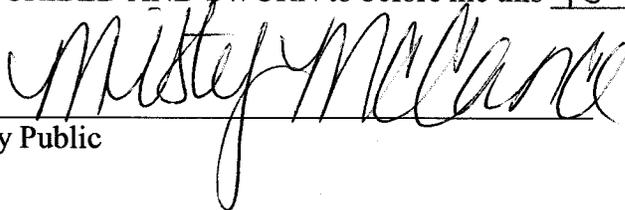
Respectfully submitted this 18 day of June, 2010.

Liberty-Bell Telecom, LLC

By: 

Jay Weber  
Executive Vice President  
2460 West 26th Avenue  
Suite #380-C  
Denver, CO 80211  
Telephone: 303.831.1977

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of June, 2010.

  
\_\_\_\_\_  
Notary Public

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Notice )  
of Liberty-Bell Telecom, LLC )  
for Certificate of Public Convenience and )  
Necessity to Provide Competitive Local Exchange )  
And Interexchange Telecommunications Services )  
in the State of Idaho. )

Case No. LBT-T-10-01

**LIST OF EXHIBITS**

- |           |   |
|-----------|---|
| EXHIBIT A | ILLUSTRATIVE TARIFF   |
| EXHIBIT B | ARTICLES OF ORGANIZATION  |
| EXHIBIT C | CERTIFICATE OF AUTHORITY TO TRANSACT<br>BUSINESS                    |
| EXHIBIT D | OPERATING AGREEMENT   |
| EXHIBIT E | CONFIDENTIAL FINANCIAL STATEMENT AND<br>REQUEST FOR CONFIDENTIALITY |

**EXHIBIT B**

**ARTICLES OF ORGANIZATION**  
(Attached)

ARTICLES OF ORGANIZATION  
OF  
LIBERTY BELL TELECOM, LLC

The undersigned, a natural person eighteen years of age or older, intending to organize a limited liability company pursuant to §7-80-203, Colorado Revised Statutes, delivers these Articles of Organization to the Colorado Secretary of State for filing, and states as follows:

FILED  
DONNETA DAVIDSON  
COLORADO SECRETARY OF STATE

1. The name of the limited liability company is Liberty Bell Telecom, LLC.
2. The principal place of business of the limited liability company is 50.00  
4695 S. Monaco Street, Suite 111  
Denver, CO 80237  
20031065277 C  
SECRETARY OF STATE  
02-27-2003 13:09:15
3. The name, and the business address, of the registered agent for service of process on the limited liability company are:  
  
Thomas G. Martino  
4695 S. Monaco Street, Suite 111  
Denver, CO 80237
4. The management of the limited liability company is vested in managers rather than members. The name and business address of the initial manager is:  
  
Thomas G. Martino  
4695 S. Monaco Street, Suite 111  
Denver, CO 80237

The (a) name or names, and (b) mailing address or addresses, of any one or more of the individuals who cause this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, are:

D. Laird Blus  
Jones & Keller, P.C.  
1625 Broadway, 16<sup>th</sup> Floor  
Denver, Colorado 80202  
Voice (303) 573-1600  
Fax (303) 573-0769  
e-mail [lblus@joneskeller.com](mailto:lblus@joneskeller.com)

COMPUTER UPDATE COMPLETE  
VF

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**EXHIBIT C**

**CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS**  
(Attached)



# APPLICATION FOR CERTIFICATE OF AUTHORITY FOR FOREIGN LIMITED LIABILITY COMPANY

(Instructions on back of application)

10 MAR -5 PM 3:40  
SECRETARY OF STATE  
STATE OF IDAHO

1. The name of the limited liability company is:

Liberty Bell Telecom, LLC

2. If the name of the limited liability company is not permissible or is not available in Idaho, the name the foreign limited liability company will use in Idaho is:

3. The jurisdiction under whose laws the limited liability company is formed is: Colorado

4. The name and complete street address of the registered agent in Idaho is:

CT Corporation System                      1111 West Jefferson, Suite 530, Boise, ID 83702

5. The street and mailing address of the limited liability company's principal office is:

2460 West 26th Avenue, Suite 380-C, Denver, CO 80211

*Street Address*

*Mailing Address, if different*

6. The street and mailing address of the limited liability company's office in the jurisdiction under whose laws it is organized is:

2460 West 26th Avenue, Suite 380-C, Denver, CO 80211

*Street Address*

*Mailing Address, if different*

7. The name and mailing address of at least one member or manager:

Nigel Alexander                      2460 West 26th Avenue, Suite 380-C, Denver, CO 80211

8. The mailing address for future correspondence:

2460 West 26th Avenue, Suite 380-C, Denver, CO 80211

9. Signature of an authorized person:

*Authorized Signature*

Nigel Alexander

*Typed Name*

Secretary of State use only

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Revised 07/2008

IDAHO SECRETARY OF STATE  
03/05/2010 05:00  
CK: 18326 CT: 20168 BH: 1211195  
1 @ 100.00 = 100.00 REGFORGLLC # 2  
1 @ 20.00 = 20.00 EXPEDITE C # 3

W91201

Ben Ysursa  
Secretary of State

450 N 4th Street  
PO Box 83720  
Boise ID 83720-0080



Phone: (208) 334-2301  
Fax: (208) 334-2080

sosinfo@sos.idaho.gov  
www.sos.idaho.gov

STATE OF IDAHO  
SECRETARY OF STATE

**ANNUAL REPORTING REQUIREMENTS**

Each corporation, limited liability company, limited partnership and limited liability partnership authorized to transact business in this state must deliver to the secretary of state for filing an annual report on a form provided by this office.

If an annual report is not received on or before the due date, the following will occur:

- 1) Domestic corporations and limited liability companies will be subject to administrative dissolution;
- 2) Foreign corporations will be subject to revocation of its authority to do business in Idaho;
- 3) Foreign limited liability companies will be subject to administrative cancellation;
- 4) Limited partnerships will be subject to administrative cancellation / termination.
- 5) Limited liability partnerships will lose their limited liability status and revert to general partnerships:

The form must be executed by a person authorized by the company, indicating such capacity, setting forth the name of the company, the state or country under whose law it is incorporated/organized, along with the names and addresses of its current registered agent and officers.

The first, and all subsequent annual reports shall be delivered to the secretary of state each year before the end of the month during which a corporation or limited liability company was initially authorized to transact business. (Please note: the first annual report is not due until 1 year after the initial filing date.)

A post card will be sent to notify you that your annual report is due. There is no filing fee if the annual report is received in this office by the date it is due. A post mark date is not sufficient.

A sample of the post card and a generated annual report is included on the back of this letter.

File your annual report electronically via our website: [www.sos.idaho.gov](http://www.sos.idaho.gov) or request a mail in report form. Please follow the instructions carefully when entering the data. The annual report will only be available for filing 60 days prior to the due date.

If you have any questions or need further assistance, please do not hesitate to contact this office at (208) 334-2301.

Very truly yours,

COMMERCIAL DIVISION  
IDAHO SECRETARY OF STATE'S OFFICE

Enclosures: cited

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE**

I, Bernie Buescher, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

**LIBERTY BELL TELECOM, LLC**

is a **Limited Liability Company** formed or registered on 02/27/2003 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20031065277.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/25/2010 that have been posted, and by documents delivered to this office electronically through 03/04/2010 @ 13:15:07.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 03/04/2010 @ 13:15:07 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 7591148.



A handwritten signature in black ink that reads "Bernie Buescher".

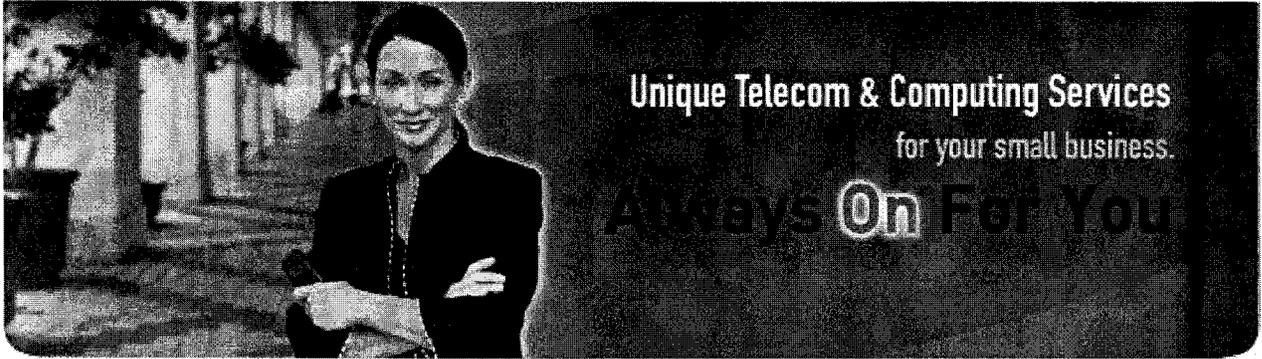
Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click Business Center and select "Frequently Asked Questions."*

**EXHIBIT D**

**OPERATING AGREEMENT**  
(Attached)



**THIRD AMENDED AND RESTATED OPERATING AGREEMENT OF  
LIBERTY-BELL, LLC**



## THIRD AMENDED AND RESTATED OPERATING AGREEMENT OF LIBERTY-BELL, LLC

This Third Amended and Restated Operating Agreement (this "Agreement") of Liberty-Bell, LLC (the "Company"), effective as of the close of business on September 8, 2009, is made and entered into by and among the Company, Nigel Alexander, Thomas G. Martino, Robert S. Unger, Jay Weber, Rainmaker Investments, LLC, Steven I. Levey, Christina M. Neher, Shawn Stickle and George Caulkins, each individually, a "Member" and, together with any other Person that is hereafter admitted as a Member in accordance with the terms and provisions hereof, but excluding any Person that ceases to be a Member pursuant to the provisions of this Agreement, the "Members").

### RECITALS

A. The Company was formed by the filing of Articles of Organization with the Colorado Secretary of State's office on September 4, 2002 (the "Articles").

B. The Company and Alexander are parties to that certain Operating Agreement dated as of September 4, 2002 (the "Original Agreement").

C. The Company and certain Members are parties to that certain Second Amended and Restated Operating Agreement effective as of November 30, 2008 (the "Second Amended Agreement").

D. The Members now desire to amend and restate the Second Amended Agreement in its entirety as set forth below.

### AGREEMENT

The Members hereby (i) ratify and in all respects confirm the formation of the Company under the laws of the State of Colorado pursuant to the Articles, and (ii) amend and restate the Second Amended Agreement in its entirety as follows:

1. Name. The name of the limited liability company is Liberty-Bell, LLC.
2. Purpose; Powers. The Company was formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Colorado Limited Liability Company Act, C.R.S. Sections 7-8-101, et seq., as amended (the "Act"). In furtherance of its purposes, but subject to all of the provisions of this Agreement, the Company shall have the power and is hereby authorized to do such things and engage in such activities related to the foregoing as may be necessary, convenient or incidental to the conduct of the business of the Company, and have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.
3. Principal Office. The address of the principal office of the Company is 2460 West 26<sup>th</sup> Avenue, Suite 380-C, Denver, Colorado 80211.

4. Registered Agent and Registered Office. The Company shall at all times maintain a registered agent and a registered office in the State of Colorado as provided in the Act. Until changed by the Members in accordance with this Agreement and the Act, the registered agent of the Company shall be Nigel Alexander.

5. Members. A list of Members of the Company shall be maintained and recorded in the books and records of the Company, and available to any Member upon written request to the Company. The list of Members shall be updated by the Manager from time to time to reflect the admission of additional or substitute Members. No additional or substitute Members shall be admitted to the Company, except (i) pursuant to the issuance of Units or securities in accordance with Section 7, or (ii) pursuant to a Transfer of Units in accordance with Section 23(c). In order to obtain the rights of a Member under this Agreement, the holder of any Units must execute a counterpart to this Agreement, or a Joinder Agreement in the form attached as **Exhibit A** hereto.

6. Limited Liability. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Members shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member of the Company.

7. Capital Structure; Voting Rights.

(a) All interests in the Company shall be evidenced by units ("Units"), with each Unit evidencing a proportional part of the membership/ownership interests in the Company during its existence except as otherwise expressly provided herein. The ownership of Units shall be maintained and recorded in the books and records of the Company, and available to any Member upon written request to the Company. The list of unitholders shall be updated from time to time to reflect the admission of additional or substitute unitholders. The schedule of ownership of Units shall be amended from time to time by the Manager without the consent of the Members to reflect the issuance of additional Units or transfer of outstanding Units. The authorized capital of the Company shall consist of such number of Units as may be issued from time to time by the Company as designated by the Manager at the time of the issuance of such Units, subject to the provisions of Section 16(b). Each holder of Units shall be entitled to one vote per Unit held of record on the Company's books as to all matters that come before the Members for a vote. The holders of Units shall be entitled to distributions of available cash of the Company, when, as and if declared out of funds legally available therefore, subject to the provisions of Section 14. Upon any liquidation, dissolution or winding up of the Company, any of the Company's net assets available for distribution shall be distributed to the holders of the Units in accordance with the provisions of Section 26.

(b) Subject to the provisions of Section 16(b), the Manager is authorized to cause the issuance of any other type of security of the Company from time to time to Members or other Persons on terms and conditions established by the Manager. Such securities may include unsecured and secured debt obligations of the Company, debt obligations of the Company convertible into Units, and options, rights or warrants to purchase any such Units.

8. Capital Contributions. As of the date hereof, the Members have made contributions to capital as set forth in the books and records of the Company (a "Capital Contribution"). The Manager shall determine the required Capital Contribution upon issuance of any additional Units. Subsequent to issuance of any Units, no Member shall be required to make additional Capital Contributions to the Company.

9. No Interest. Except as otherwise expressly provided in this Agreement, no interest shall be paid by the Company on capital contributions, balances in any Member's Capital Accounts or any other funds contributed to the Company or distributed or distributable by the Company under this Agreement.

10. No Withdrawal; Return of Contribution. No Member shall have the right to withdraw any portion of such Member's Capital Account without the consent of Members owning no less than seventy five percent (75%) of the outstanding Units (a "Required Interest"). Except as required by the Act, no Member shall be personally liable to any other Member for the return of any capital contributions (or any additions thereto), it being agreed that any return of capital as may be made from time to time shall be made solely from the assets of the Company and only in accordance with the terms hereof.

11. Transactions with Members. Subject to the provisions of Section 16(b), a Member may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to other applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not a Member.

12. Capital Accounts. The Company shall maintain for each Member a separate capital account ("Capital Account") in accordance with the rules prescribed pursuant to Sections 704(b) and (c) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations (the "Treasury Regulations") promulgated thereunder, including but not limited to Treasury Regulations Section 1.704-1(b)(2)(iv). The Capital Account of each Member shall be valued pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f).

13. Allocations of Profits and Losses.

(a) After giving effect to the provisions of Sections 13(b) through (h), all profits and losses of the Company (as determined under the capital accounting rules of Treasury Regulation Section 1.704-1(b)(2)(iv) for purposes of adjusting the Capital Accounts of the Members, including the provisions of paragraphs (b), (f) and (g) of those regulations relating to the computation of items of income, gain, deduction and loss) shall be allocated among the Members in proportion to their respective Units.

(b) In accordance with Section 704(c) of the Code and the applicable Treasury Regulations thereunder, income, gain, loss, deduction and tax depreciation with respect to any property which has a Book Basis different from its adjusted basis as determined for Federal income tax purposes shall, solely for income tax purposes (and without adjusting any Member's Capital Account therefor), be allocated among the Members so as to take into account any variation between the adjusted tax basis of such property to the Company and the Book Basis of such property. For this purpose, the "Book Basis" of an asset of the Company shall mean the asset's adjusted tax basis, as determined for Federal income tax purposes; provided, however, that (i) if property is contributed to the capital of the Company, the initial Book Basis of such property shall be its fair market value on the date of contribution, as determined in

good faith by the Members; (ii) if the Capital Accounts of the Company are adjusted (at the discretion of the Manager pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect the fair market value of the Company's assets), the Book Basis of each such asset shall be adjusted to equal its fair market value, as determined in good faith by the Members as of the time of such adjustment in accordance with such regulation; and (iii) the Book Basis of all assets shall be adjusted thereafter by depreciation and amortization as provided in Treasury Regulations Section 1.704-1 (b)(2)(iv)(g).

(c) Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of Units by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

(d) In the case of any promissory note to or from a Member, to the extent the Company has taxable interest income or interest expense with respect to such promissory note pursuant to Section 483, Sections 1271 through 1288, or Section 7872 of the Code, such interest income or interest expense shall be specially allocated to the Member to whom such promissory note relates.

(e) The following special allocations shall, except as otherwise provided, be made in the following order:

(i) Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Section 13, if there is a net decrease in partnership minimum gain or partner nonrecourse debt minimum gain (within the meaning of Treasury Regulations Section 1.704-2) during any taxable period, items of income and gain for such taxable period (and, if necessary, subsequent taxable periods) shall be allocated among the Members in accordance with Treasury Regulations Section 1.704-2(d), 1.704-2(f), 1.704-2(g) and 1.704-2(i). The items to be so allocated, and the order in which such items must be allocated, shall be determined in accordance with Treasury Regulations Section 1.704-2(j)(2). This Section 13(e)(i) is intended to comply with the minimum gain chargeback requirements set forth in Treasury Regulations Section 1.704-2 and shall be interpreted consistently therewith.

(ii) If any Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), then items of income and gain shall be specifically allocated to such Member in accordance with the requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(d). This Section 13(e)(ii) is intended to comply with the "qualified income offset" provision of the regulation last cited and shall be interpreted consistently therewith.

(iii) Nonrecourse deductions (within the meaning of Treasury Regulations Section 1.704-2(b)(1)) for any fiscal year or other period shall be allocated among the Members under Treasury Regulations Section 1.704-2(e) in accordance with their respective Units.

(iv) Any partner nonrecourse deduction (within the meaning of Treasury Regulations Section 1.704-2(i)) for any period shall be allocated to the Member that potentially bears an economic risk of loss with respect to the partner nonrecourse debt (within the meaning of Treasury Regulations Section 1.704-2(b)(4)) to which such partner nonrecourse deductions are attributable, all in accordance with the principles of Treasury Regulations Section 1.704-2(i)(1) and (2).

(v) It is the intent of the parties to this Agreement that the allocation in this Section 13(e) (the "Regulatory Allocations") satisfy the requirements of certain Treasury Regulations under Section 704(b) of the Code. It is further intended that the allocations under this Section 13 shall effect an allocation for Federal income tax purposes in a manner consistent with Section 704(b) of the Code and comply with any limitations or restrictions therein and, to the extent possible, that any Regulatory Allocations shall be offset with other special allocations of income, gain, loss or deduction in whatever manner the Manager reasonably and in good faith determines so that, after such offsetting allocations are made, each Member's Capital Account balance is (to the extent possible) equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all items of income, gain, loss and deduction were allocated pursuant to Section 13(a). In exercising its discretion with respect to the Regulatory Allocations, the Manager shall take into account future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made. If for any reason the allocations contained in this Agreement conflict with the Treasury Regulations promulgated under Section 704 of the Code, the Members acknowledge that such Treasury Regulations shall control.

(f) Any "excess nonrecourse liabilities" (as defined in Treasury Regulations Section 1.752-3(a)(3)) shall be allocated among the Members in accordance with their respective Units.

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain or loss and such gain or loss shall be specially allocated to the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m).

(h) If any interest in the Company is transferred, or upon the admission or withdrawal of a Member in accordance with the provisions of this Agreement, the income or loss attributable to such interest in the Company for such calendar year shall be divided and allocated between the Members on such basis as shall be determined by the Manager.

#### 14. Distributions.

(a) Except as otherwise provided in Section 14(b), and Section 26 pursuant to a dissolution of the Company, the available cash of the Company shall be distributed to the holders of Units at the times and in the aggregate amounts determined by the Manager, and shall be allocated among the Members in proportion to their respective Units.

(b) On or before March 31 of each year, commencing March 31, 2010, the Company shall distribute to each Member cash in an amount equal to the positive difference, if any, between (i) 30% of the Company's taxable income for the prior calendar year allocated to such Member, and (ii) distributions paid to such Member during the prior calendar year; provided, however, the Company shall not make distributions to the Members under this Section 14(b) if such distribution would be prohibited by, or cause a default under, any loan or other agreement to which the Company is a party.

15. Designation of Manager.

(a) The Manager of the Company as of the date hereof, as such term is used in Section 7-80-102(8) of the Act, is Nigel Alexander (the "Manager").

(b) The Manager shall serve indefinitely but may be removed at any time, with or without cause, by a Required Interest.

(c) Upon the removal, death, retirement, resignation, bankruptcy, court declaration of incompetence or dissolution of a Manager, the Members shall appoint a new Manager to serve in such capacity by vote of a Required Interest.

16. Management.

(a) Subject to the provisions of Sections 16(b) and 16(c), the business and affairs of the Company shall be directed and managed by the Manager, and the Manager shall have full power and discretion to make any and all decisions with respect thereto. Without limiting the foregoing, the Manager shall have the authority, power and discretion to do the following:

(i) to manage, maintain, control and otherwise provide for the day-to-day operation of the property of the Company;

(ii) to manage, control, invest, reinvest, acquire or purchase, lease or otherwise sell, contract to purchase or sell, grant, obtain, or exercise options to purchase, options to sell or conversion rights, assign, transfer, convey, deliver, endorse, exchange, pledge, mortgage, abandon, improve, repair, maintain, insure, lease for any term and otherwise deal with any and all property of whatsoever kind and nature, and wheresoever situated, in furtherance of the purposes of the Company;

(iii) to employ, engage or contract with or dismiss from employment or engagement persons to the extent deemed necessary by the Manager for the operation and management of the Company's business, including but not limited to service personnel, advertisers, marketers, contractors, subcontractors, engineers, architects, surveyors, mechanics, consultants, accountants, attorneys, insurance brokers, real estate brokers and others;

(iv) to enter into contracts on behalf of the Company and to perform or cause to be performed by power of attorney or otherwise all of the Company's obligations;

(v) to borrow money, procure loans and advances from any person for Company purposes, and to apply for and secure, from any person, credit for accommodations; to contract liabilities and obligations, direct or contingent and of every kind and nature with or without security; and to repay, discharge, settle, adjust, compromise, or liquidate any such loan, advance, credit, obligation or liability;

(vi) to pledge, hypothecate, mortgage, assign, deposit, deliver, enter into sale and leaseback arrangement or otherwise give as security or as additional or substitute security, or for sale or other disposition any and all Company property, tangible or intangible and to make substitutions thereof, and to receive any proceeds thereof upon the release or surrender thereof; to sign, execute and deliver and receive written agreements, undertakings and instruments of every kind and nature; to give oral instructions and make oral agreements; and generally to do any and all other acts and things

incidental to any of the foregoing or with reference to any dealings or transactions which any attorney may deem necessary, proper or advisable;

(vii) to acquire and enter into any contract of insurance which the Manager deems necessary or appropriate for the protection of the Company, for the conservation of the Company's assets or for any purpose convenient or beneficial to the Company;

(viii) to conduct any and all banking transactions on behalf of the Company; to adjust and settle checking, savings, and other accounts which such institutions as the Manager shall deem appropriate; to draw, sign, execute, accept, endorse, guarantee, deliver, receive and pay any checks, drafts, bills of exchange, acceptances, notes, obligations, undertakings and other instruments for or relating to the payment, of money in, into, or from any account in the Company's name; to execute, procure, consent to and authorize extensions and renewals of the same; to make deposits and withdraw the same and to negotiate or discount commercial paper, acceptances, negotiable instruments, bills of exchange and dollar drafts;

(ix) to demand, sue for, receive, and otherwise take steps to collect or recover all debt, rents, proceeds, interests, dividends, goods, chattels, income from property, damages and all other property, to which the Company may be entitled or which are or may become due the Company from any person; to commence, prosecute or enforce, or to defend, answer or oppose, contest and abandon all legal proceedings in which the Company is or may hereafter be interested; and to settle, compromise or submit to arbitration any accounts, debts, claims, disputes and matters which may arise between the Company and any other person and to grant an extension of time for the payment or satisfaction thereof on any terms, with or without security;

(x) to make arrangements for financing, including the taking of all actions deemed necessary or appropriate by the Manager to cause any approved loans to be closed;

(xi) to take all reasonable measures necessary to insure compliance by the Company with applicable arrangements, and other contractual obligations and arrangements entered into by the Company from time to time in accordance with the provisions of this Agreement, including periodic reports as required to lenders and using all due diligence to insure that the Company is in compliance with its contractual obligations;

(xii) to maintain the Company's books of account and records; and

(xiii) to prepare and deliver, or cause to be prepared and delivered by the Company's accountants, all financial and other reports with respect to the operations of the Company, and preparation and filing of all federal and state tax returns and reports.

(b) Notwithstanding the provisions of Section 16(a) and subject to the provisions of Section 16(c), the Manager shall have no power or authority on behalf of the Company to take any of the following actions without the consent of a Required Interest (as defined in Section 10 above):

(i) Issuing any Units (or obligations of the Company convertible into such Units);

(ii) authorizing or approving any transactions or payments between the Company and any Manager;

- (iii) authorizing the incurrence of any financial indebtedness by the Company in any amount exceeding \$250,000 in one transaction or series of related transactions;
- (iv) filing of a voluntary petition for bankruptcy;
- (v) effecting the redemption, acquisition or other retirement of any Units then outstanding for a price in excess of \$100,000;
- (vi) authorizing a guaranty by the Company of any indebtedness or performance of any obligation of any person other than the Company in amount exceeding \$250,000;
- (vii) authorizing the sale, lease, exchange or other disposition of all or substantially all of the assets, properties or business of the Company;
- (viii) authorizing or effecting any amendment to this Agreement;
- (ix) effecting the voluntary liquidation, dissolution or winding up of the Company; or
- (x) effecting the merger or consolidation of the Company with or into any other entity.

If any Member has not delivered in writing to the Company his non-consent to a request for consent under this Section 16(b) within 10 days after a written request for a consent is delivered to such Member, such Member shall be deemed to have consented to the proposed action.

(c) The Company shall organize and maintain an Executive Committee comprised of no less than three members. One member shall be the Manager then serving and the remaining members shall be Members (but not executives of the Company) appointed by the vote or consent of Members (other than the Manager) holding more than 50% of the outstanding Units (excluding Units owned by the Manager or his Affiliates). The initial Executive Committee shall be comprised of the Manager, Thomas G. Martino, Robert S. Unger and George Caulkins. Members of the Executive Committee shall serve for terms of one year or until death, resignation or removal by vote of the Members (voting as provided above regarding appointment of members of the Executive Committee). The Executive Committee shall serve primarily in an advisory capacity except that it shall have authority to approve any proposed increase in compensation, bonuses and benefits payable to the Manager, above the current levels. The Executive Committee shall meet quarterly with senior management of the Company at such time and place as approved by a majority of the members of the Executive Committee. In its advisory capacity, the Executive Committee shall review and advise with respect to the follow matters:

- (i) the operating results of the Company
- (ii) the strategic plans of the Company;
- (iii) any proposed distribution of cash to Members, and
- (iv) such other matters as determined appropriate.

The Executive Committee (excluding the Manager) shall be paid 2,000 Membership Units upon reelection at each annual Member's Meeting, and \$500 per formal Executive Committee meeting attended. Informal communications between Committee Members in the ordinary course are covered by the Unit allocation. Members of the Executive Committee who fail to attend 75% of the Meetings in any year shall be subject to cancellation of units issued hereunder.

(d) No Member shall have the power to act for or bind the Company as all such power is vested exclusively in the Manager. Except as otherwise provided herein, to the extent the duties of the Manager require expenditures of funds to be paid to third parties, the Manager shall not have any obligations hereunder except to the extent that Company funds are reasonably available to them for the performance of such duties, and nothing herein contained shall be deemed to require the Manager, in their capacity as such, to expend individual funds for payment to third parties or to undertake any individual liability or obligation on behalf of the Company.

(e) Any action that otherwise may be taken by the Manager may be taken by an officer of the Company to the extent authority for such action has been delegated to such officer by the Manager (either specifically or under a general delegation of authority).

(f) The Manager shall keep at the office of the Company's registered agent the books and records of the Company, including:

(i) a current list of the full name and last known business, residence or mailing address of Members and the Manager, both past and present;

(ii) a copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed;

(iii) copies of all tax information relating to federal and state income tax, if applicable, for the three most recent accounting years;

(iv) copies of this Agreement and any amendments thereto;

(v) the accounting books and records, and copies of the financial statement of the Company, for the three most recent accounting years;

(vi) minutes of every annual, special and court-ordered meeting of the Manager, Executive Committee and Members;

(vii) any written consents obtained from Members for actions taken by Members without a meeting;

(viii) all documents and records pertaining to the Company, its assets and other aspects of the Company business; and

(ix) all other records required to be maintained under the Act.

17. Officers. Officers of the Company may be appointed from time to time by the Manager. No officer need be a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to

particular officers and, unless the Manager decides otherwise, if the title is one commonly used for officers of a Colorado corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Manager and subject to all standards of care and restrictions applicable to the officers of a Colorado corporation under applicable law. Each officer shall hold office until his successor is duly designated and qualified or until his death or until he resigns or is removed by the Manager with or without cause. Any number of offices may be held by the same person. The Manager shall determine the salary or other compensation paid to each officer (other than the Manager if serving as an officer).

18. Expenses. Upon proper written substantiation and verification, the Manager (or any Member) shall be entitled to receive, out of Company funds available therefor, reimbursement of all amounts reasonably expended by it out of its own funds in payment of properly incurred Company obligations. Reimbursements pursuant to this Section 18 shall not be duplicative of payments under any other provision of this Agreement or any other agreement.

19. Company Meetings.

(a) An annual meeting of the Members shall be held in the month of April each year. The date of the annual meeting shall be selected by the Manager. Special meetings of the Members may be called from time to time by the Manager or any Member(s) owning ten percent (10%) or more of the Units, to be held at the principal place of business of the Company. A notice with respect to each such meeting containing the place and date thereof and a proposed agenda therefor shall be given to each Member no earlier than 30 days and no later than 5 days prior to the scheduled date of such meeting (although each Member shall be entitled to waive such notice and raise issues at such meeting relating to the business and operations of the Company, even if such issues are not set forth in the agenda). The presence of a Member at a meeting shall constitute waiver of any notice required to have been given unless such Member objects at the beginning of the meeting to the failure to give proper notice. Members may participate in a meeting of the Company by means of a conference telephone or similar communications equipment permitting all persons participating in such meeting to hear each other at the same time. Participation in a meeting by such means shall constitute presence in person at such meeting.

(b) The Members holding a majority of the outstanding Units entitled to vote present in person or by proxy shall constitute a quorum for the transaction of business at all meetings of the Members. At any meeting of the Members at which a quorum is present, a majority of votes properly cast by the Members (or their duly authorized proxies) upon any question shall decide the question, except in any case where the consent of a Required Interest is required pursuant to the terms of Section 16(b) hereof.

(c) Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of not less than the minimum Units that would be necessary to take such action at a meeting at which the holders of all Units entitled to vote on the action were present and voted. Every written consent shall bear the date of signature of each Member who signs the consent. A photographic, photostatic, facsimile, or similar reproduction of a writing actually signed and delivered by a Member shall be regarded as signed by the Member for purposes of this Section 19. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given by the Company to those Members who did not

consent in writing to the action; provided, however, that the Company shall not be prohibited from taking the action so approved pending or following the delivery of such notice.

20. Other Business. The Manager (so long as not a material distraction to the Manager's responsibilities hereunder) and Members and any Affiliate thereof may engage in or possess an interest in other business ventures not directly competitive to the business of the Company of every kind and description, independently or with others. None of the Company or the other Members shall have any rights in or to such noncompetitive ventures or the income or profits therefrom by virtue of this Agreement. For purposes of this Agreement, the term "Affiliate" means (i) in the case of an individual, such individual's spouse and lineal descendants (whether natural or adopted) and any trust formed and maintained solely for the benefit of such individual, such individual's spouse and/or such individual's lineal descendants, and (ii) in the case of an entity, any other Person directly or indirectly controlling, controlled by or under common control with such entity, whether by ownership of voting securities, by contract or otherwise. The Manager and any officers of the Company shall each be deemed an Affiliate of the Company. For purposes of this Agreement, a "Person" means an individual or an entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust or business association.

21. Standards of Care; Limitation of Liability. In performing his duties hereunder, the Manager shall discharge his duties in good faith, with the care an ordinarily prudent person would exercise under similar circumstances and in a manner he reasonably believes to be in the best interests of the Company. A Manager shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless he has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

- (a) one or more employees or other agents of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented; and
- (b) any attorney, public accountant or other person as to matters which the Manager reasonably believes to be within such person's professional or expert competence.

22. Exculpation and Indemnification. No Member, Manager or officer shall be liable to the Company, any other Members or any other person or entity who has an interest in the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Member, Manager or officer in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Member, Manager or officer by this Agreement, except that a Member, Manager or officer shall be liable for any such loss, damage or claim incurred by reason of such person's gross negligence or willful misconduct. To the full extent permitted by applicable law, a Member, Manager or officer shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Member, Manager or officer in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such person by this Agreement, except that no Member, Manager or officer shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Member, Manager or officer by reason of gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 22 shall be provided out of and to the extent of Company assets only, and no Member shall have personal liability on account thereof.

23. Transfer of Units.

(a) A holder of Units may not Transfer, or permit to be Transferred, its Units or any part thereof, except in compliance with the conditions set forth in Section 23(b). For purposes of this Agreement, "Transfer" shall mean the sale, assignment, transfer, exchange, distribution, devise, gift, granting of a lien, encumbrance or other disposition of such Unit, in whole or in part, in either case whether pursuant to a sale, merger, combination, consolidation, reclassification or otherwise, and whether voluntarily or by operation of law.

(b) No holder of Units may Transfer all or any portion of its Units unless each of the conditions set forth below are satisfied:

(i) the holder desiring to consummate such Transfer and the prospective transferee each execute and deliver to the Manager such instruments of transfer and assignment with respect to such Transfer and such other instruments, including an agreement to be bound by the provisions of this Agreement, as are reasonably satisfactory to the Manager; and

(ii) such Transfer shall not cause:

(A) a violation of the Securities Act of 1933, as amended, or any other applicable Federal or state securities laws;

(B) a breach or violation of or an event of default under, or give rise to a right to accelerate any obligation of the Company;

(C) the Company, directly or indirectly to be classified as a Person other than a partnership for purposes of the Code or to be treated as a "publicly traded partnership" within the meaning of Section 7704 of the Code; or

(D) the application of the rules of Sections 168(g)(1)(B) and 168(h) of the Code or similar rules to apply to the Company; and

(iii) There shall have been delivered to the Company (at the transferring holder's cost and expense) an opinion of reputable counsel, satisfactory to the Manager, as to the matters set forth in Section 23(b)(iii)(A), unless this requirement is waived in writing by the Manager.

(c) Any transferee of Units shall be admitted to the Company as a substitute Member only upon the consent of the Manager; provided, however, that the consent of the Manager shall not be required for a transferee to be admitted as a substitute Member (and such transferee shall be admitted as a substitute Member) if all of the conditions in Section 23(b) have been satisfied. Any transferee who is not admitted as a substitute Member shall only have the rights of an unadmitted assignee under the Act as to this Units then held. A holder of Units who is not admitted as a Member shall be entitled only to allocation and distributions in accordance with this Agreement with respect to the Units held by such holder, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books and records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

24. Third Party Transfers/Right of First Refusal. If at any time any Member receives a Purchase Offer from a prospective purchaser for all or any part of his Units, which Purchase Offer such Member desires to accept, no attempted acceptance shall be valid or effective unless such Member complies

with the provisions of this Section 24. For purposes of this Section 24, "Purchase Offer" shall mean an offer to purchase all or a specific number of Units which is in writing, proposes to pay the purchase price all in cash and is not conditional on or coupled with any other transaction between the prospective purchaser and such Member.

(a) Upon receipt of a Purchase Offer, such Member shall give written notice to the Company, setting out the price and terms of the Purchase Offer and the name of the prospective purchaser (including the beneficial ownership of any corporation or entity) and shall provide a copy of the signed Purchase Offer. For a period of 10 days after receipt of such written notice, the Company shall have the right (but not the obligation) to agree to purchase all (but not less than all) of the Units covered by the Purchase Offer on the same price and terms as set forth in the Purchase Offer. After the Company gives notice of its intention to purchase such units, the Company shall have 30 days to complete such purchase, or this right of first refusal will lapse.

(b) If the Company declines to agree to purchase such units within 10 days, or provides earlier written notice that it declines to purchase such units, or fails to complete such purchase as provided for in (a) above, the Member may sell such Units within 90 days to the proposed purchaser for the price and terms specified, provided that a sale at a later date, or to a different purchaser, or for a different price, or on different terms shall not be made and, if attempted, shall be void unless an offer to sell is again first made to the Company as provided herein, and all the provisions of this Section 24 are complied with.

25. Resignation. A Member may not resign or retire as a Member of the Company without the written consent of a Required Interest. A Member which resigns or retires in contravention of this Agreement shall be liable to the Company for any damages occasioned by such resignation or retirement and, in addition to any remedies the Company may have at law or in equity, the Company may offset against any amounts it may owe to such resigning or retiring Member (in connection with a distribution or otherwise) any such damages occasioned by such resignation or retirement.

26. Dissolution. The Company shall dissolve and its affairs shall be wound up upon the earliest to occur of the following:

- (a) the written consent of a Required Interest;
- (b) the sale of all or substantially all of the assets of the Company; or
- (c) the entry of a decree of judicial dissolution of the Company under Section 7-80-802 of the Act.

27. Liquidation and Dissolution.

(a) Upon the dissolution of the Company, sole and plenary authority to effectuate the liquidation of the assets of the Company shall be vested in the Manager and, in the event of the resignation, dissolution, liquidation or bankruptcy of the Manager, in a liquidator to be appointed upon the written consent of the Members holding a majority of the Units (the "Liquidator"). The Liquidator shall have full power and authority to sell, assign and encumber any and all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner.

(b) The Liquidator shall determine, in its sole discretion, the fair market value of all assets of the Company as at the date of distribution of such assets and the profits and losses resulting from such distribution shall be allocated in accordance with Section 13.

(c) The proceeds of liquidation of the assets of the Company distributable upon a dissolution and winding up of the Company shall be applied in the following order of priority:

(i) First, to the creditors of the Company, including creditors who are Members, in the order of priority provided by law, in satisfaction of all liabilities and obligations of the Company (of any nature whatsoever, including, without limitation, fixed or contingent, matured or unmatured, legal or equitable, secured or unsecured), whether by payment or the making of reasonable provision for payment thereof;

(ii) Then, to the Members in proportion to their Units.

28. Tax Matters.

(a) The Manager shall, on behalf of the Company, arrange, supervise and oversee the preparation and timely filing, and prior review by independent certified public accountants, of all returns of Company income, gain, deductions, losses, credits and other items necessary for federal, state, local and foreign income tax purposes and shall use all reasonable efforts to furnish to the Members, within 90 days after the close of the taxable year, the tax information reasonably required for federal, state, local and foreign income tax reporting purposes. The taxable year of the Company shall be the calendar year unless another year is required by the Code (the "Company Year").

(b) The Manager shall make all tax elections on behalf of the Company; provided, however, that if a distribution of Company property as described in Section 734 of the Code occurs or if a transfer of Units or an interest in the Company as described in Section 743 occurs, on the written request of any Member, the Company shall make an election pursuant to Section 754 of the Code to adjust the basis of Company properties.

(c) Nigel Alexander shall be the "Tax Matters Partner," as such term is defined in Section 6231(a)(7) of the Code. In the event of an income tax audit of any tax return of the Company, the filing of any amended return or claim for refund in connection with any item of income, gain, loss, deduction or credit reflected on any tax return of the Company, or any administrative or judicial proceedings arising out of or in connection with any such audit, amended return, claim for refund or denial of such claim, (i) the Tax Matters Partner shall be authorized to act for, and its decision shall be final and binding upon, the Company and all the Members, (ii) all expenses incurred by the Tax Matters Partner in connection therewith (including, without limitation, attorneys', accountants' and other experts' fees and disbursements) shall be expenses of the Company and (iii) no other Member shall have the right to (A) participate in the audit of any Company tax return, (B) file any amended return or claim for refund in connection with any item of income, gain, loss, deduction or credit reflected on any tax return of the Company, (C) participate in any administrative or judicial proceedings arising out of or in connection with any such audit, amended return, claim for refund or denial of such claim, or (D) appeal, challenge or otherwise protest any adverse findings in any such audit or with respect to any such amended return or claim for refund or in any such administrative or judicial proceedings. Each Member agrees to indemnify and hold harmless the Company and all other Members from and against any and all liabilities, obligations, damages, deficiencies and expenses resulting from (y) any tax liability incurred by the Company attributable to such Member, including, without limitation, any liability incurred by the

Company for failure to withhold taxes on distributions to such Member or (z) any breach or violation by such Members of the provisions of this Section 27(c), and from all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, including reasonable attorneys' fees and disbursements, incident to any such liability, breach or violation.

29. Miscellaneous.

(a) Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

(b) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement.

(c) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements between the parties.

(d) This Agreement and all rights and remedies hereunder shall be governed by, and construed under, the laws of the State of Colorado, without regard to the conflicts of law principles thereof.

(e) This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement approved by a Required Interest.

(f) Each Member shall be entitled to receive telecommunication services from the Company to their home without charge up to a retail value of \$100 per month.

(g) Any notice, request, instruction, waiver or other communication to be given hereunder by any party shall be in writing and shall be considered duly delivered when received if personally delivered, facsimile (with machine generated proof of transmission), mailed by certified mail (return receipt requested) with postage prepaid, sent by reputable overnight courier service which confirms delivery (such as Federal Express) or delivered by electronic mail to the addresses, facsimile or electronic mail addresses of the parties as set forth in the books and records of the Company.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date and year first above written.

**THE COMPANY:**

Liberty-Bell, LLC

/signed  
By: \_\_\_\_\_  
Nigel Alexander, Manager

**MEMBERS:**

\_\_\_\_\_  
/signed  
Thomas G. Martino

\_\_\_\_\_  
/signed  
Robert S. Unger

\_\_\_\_\_  
/signed  
George Caulkins

\_\_\_\_\_  
/signed  
Nigel Alexander

\_\_\_\_\_  
/signed  
Jay Weber

\_\_\_\_\_  
/signed  
Christina M. Neher

\_\_\_\_\_  
/signed  
Shawn Stickle

Exhibit A

**LIBERTY-BELL, LLC**

**OPERATING AGREEMENT JOINDER AGREEMENT**

By his, her or its signature below, the undersigned hereby consents to and agrees to be bound by the terms and provisions of that certain Third Amended and Restated Operating Agreement, effective as of September 15, 2009 among Liberty-Bell, LLC, a Colorado limited liability company (the "Company"), and its Members (as amended from time to time, the "Operating Agreement"), a current copy of which has been obtained by the undersigned from the Company. The undersigned hereby acknowledges that the undersigned has received and reviewed the Operating Agreement. The undersigned hereby further acknowledges and agrees that the undersigned shall have all of the rights and obligations under the Operating Agreement as a "Member" as defined and used therein. The undersigned's execution of this Operating Agreement Joinder Agreement constitutes the undersigned's execution of the Operating Agreement, and this Operating Agreement Joinder Agreement shall constitute an executed counterpart to the Operating Agreement.

IN WITNESS WHEREOF, this Operating Agreement Joinder Agreement has been executed by the undersigned as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**EXHIBIT ONLY – NOT FOR EXECUTION**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

Accepted:  
Liberty-Bell, LLC

**EXHIBIT ONLY – NOT FOR EXECUTION**

By: \_\_\_\_\_  
Manager

**LIBERTY-BELL, LLC**

**OPERATING AGREEMENT JOINDER AGREEMENT**

By his, her or its signature below, the undersigned hereby consents to and agrees to be bound by the terms and provisions of that certain Third Amended and Restated Operating Agreement, effective as of September 8th, 2009 among Liberty-Bell, LLC, a Colorado limited liability company (the "Company"), and its Members (as amended from time to time, the "Operating Agreement"), a current copy of which has been obtained by the undersigned from the Company. The undersigned hereby acknowledges that the undersigned has received and reviewed the Operating Agreement. The undersigned hereby further acknowledges and agrees that the undersigned shall have all of the rights and obligations under the Operating Agreement as a "Member" as defined and used therein. The undersigned's execution of this Operating Agreement Joinder Agreement constitutes the undersigned's execution of the Operating Agreement, and this Operating Agreement Joinder Agreement shall constitute an executed counterpart to the Operating Agreement.

IN WITNESS WHEREOF, this Operating Agreement Joinder Agreement has been executed by the undersigned as of the 30th day of September, 2009.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Accepted:

Liberty-Bell, LLC



By: \_\_\_\_\_  
Nigel Alexander, Manager

**THIS PAGE FOR EXECUTION BY NEW MEMBERS AND THE COMPANY**



2460, West 26<sup>th</sup> Avenue, Suite 380-C, Denver, CO 80211

Tel: 303 831 1977

Fax: 303 831 1988

[www.libertybelltelecom.com](http://www.libertybelltelecom.com)

**EXHIBIT E**

**CONFIDENTIAL FINANCIAL STATEMENTS**  
(Attached)

Pursuant to IDAPA Rules 31.01.067, 31.01.01.233, and 31.02.01.005.05, *Idaho Code* Sections 9-340C and -340D, and Idaho Code Section 48-801 *et seq.* Applicant maintains that the enclosed financial statements are, and contain, confidential, proprietary, and trade secret information, and/or are otherwise exempt from disclosure under Idaho law. Applicant respectfully requests that the documents be protected from inspection, examination or copying by any person other than the Commissioners and Commission Staff. Applicant's financial statements are submitted on yellow paper under seal, accordingly.