Best Structure for UC2B

What is the best structure for UC2B? Following looks at the pros and cons of various structures that are used elsewhere in operating fiber networks.

An ideal structure for UC2B would have the following characteristics

- Would allow the two cities and the university to each have a formal share of governance in operating the network.
- Would provide a proportionate share of profits or allocate a proportionate share of losses to each of the three owners.
- Would have a governing board that is autonomous enough so that it would not report directly to any one of the entities.
- Would ideally be able to hold governance meetings that are not 'public' meetings.
- It may matter to the three parties where the assets of the network are booked. Somebody has to own it.

There are several possible structures that can be considered:

1. Operate in an existing department of one of the members.
2. Operate as an enterprise fund under one of the members
3. Operate as a standalone utility under one of the cities
4. Operate as a joint powers arrangement
5. Create a non-profit corporation

<u>Operate in an existing department of one of the members.</u>

One option would be to put the network into an existing department of one of the cities or the university. This would require no new structure at all but would fall under the existing structure of an existing department, such as the IT department of Urbana.

Pros: Requires no new entity to be created
Does not require public meetings since this is a staff function

Cons: Would report to and be ultimately under control of the entity that held the department.
While things could be operated on a democratic basis, the owner city could call the shots if they chose to do so.
Contracts would need to be in place to define 'voting' and the distribution of profits and losses. This might not be easy to do within a department.

<u>Operate as an enterprise fund under one of the members</u>

One of the cities could create a new enterprise fund to house the new network and the business. Cities generally form enterprise funds to create entities that have their own revenue source such as a golf course, stadium, water company, liquor store or other government owned 'business'.

Pros: Probably does not require public meetings since this is a staff function.
An enterprise fund might be able to have a Board.

Cons: Would report to and be ultimately under control of the city that held the enterprise fund.
While things could be operated on a democratic basis, the owner city could call the shots if they chose to do so.
Contracts would need to be in place to define 'voting' and the distribution of profits and losses.

<u>Operate as a standalone utility</u>

Another option is to form a standalone utility under one of the cities. Every state is different in the rules that define a utility, but generally a utility has stricter and better defined rules than an enterprise funds. Some examples of utilities are electric companies, water companies, communications companies. Utility boards almost always have their own Board which is usually somewhat autonomous from the city council. Utilities generally only have to come to a city council to get permission to raise money and a few other things (different in each state).

Pros: While it would be formed under one of the cities, the utility could have a Board made up of the three entities and be mostly autonomous from the city council that formed the utility. However, the utility would still need to get permission of that city council to raise new money or whatever else is defined under Illinois law.
Can have a Board comprised of the three members. However, some states might also require that a member of the public or the mayor of the City that formed the utility to be on the Board.

Cons: Would still report to the city that formed it for a few items like raising funds, but would otherwise be autonomous.
In some states utility Board meetings are public meetings.
Contracts would need to be in place to define the distribution of profits and losses.

<u>Operate as a joint powers arrangement</u>

In a joint powers arrangement government entities come together to form a new entity that is standalone and that is not part of any one of the governments that formed it. In this case, the joint powers company would own the network and have it on the books of the joint powers agency. A joint powers agency is autonomous from direct control of any of the entities that comprise it. Control is done by a Board. Voting for issues can be defined by the Board and various issues can be defined to require different voting majorities. There would be a joint powers agreement that would define voting and the distribution of profits or losses.

The main issue for UC2B is if the University can be a member of a joint powers arrangement.

Pros: Is totally autonomous and is in effect a standalone company.

In most states this does not require public meetings (but there are some that do)
The joint powers company would own the network.
The joint powers agreement would define voting, the distribution of profits and losses and whatever else is needed to make the company function.

Cons: In most states a joint powers company is not allowed to raise its own debt and would need to have the owners finance any growth.
A member is forced to go along with a majority vote of the Board.

<u>Create a non-profit corporation</u>

In some states government entities are allowed to participate as owners of corporations. If that can be done in Illinois, then created a non-profit corporation might be preferable to the joint powers arrangement. Assuming that the cities and the university are allowed to own a corporation, the issues are almost identical as with a joint powers board except that a standalone corporation is allowed to raise funds on its own.

The main issue if the entities are allowed to own part of a normal corporation in Illinois.

Pros: Is totally autonomous and is a standalone company.
Does not require public meetings.
The corporation would own the network.
The Board and operating agreement would define voting, the distribution of profits and losses and whatever else is needed to make the company function.

Cons: The corporation can raise its own debt.
A member is forced to go along with a majority vote of the Board.

Ranking the Alternatives.

Assuming that the entities are allowed to form any of these entities, then I would rank the alternatives as follows, from best to worst:

Non-Profit Corporation
Joint Powers Agency
Utility formed by one entity
Enterprise Fund formed by one entity
Within an existing Department of one entity