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From: wellis@mcneilvt.com ("William F. Ellis")

To: "Thibeault, Amber" <athibeault@burlingtontelecom.com>

Cc: "Leopold, Jonathan" <jleopold@ci.burlington.vt.us>, "Schatz, Ken" <kschatz@ci.burlington.vt.us>

Subject: Proposed Settlement with DPS Re: CPG Condition 17

Attachment(s): MOU 12-15-08.DOC,
Proposed Order 12-15-08.DOC

Amber,

Attached please find a proposed Memorandum of Understanding for settling the Condition 17 issue with the DPS along with a proposed order. Please circulate to the BT team.

I have proposed dates for completing an audit, detailed engineering and construction of the remaining areas of the City. These dates may or may not be realistic. Please review with an eye toward being reasonable, but at the same time building in a little cushion as I suspect we will get push back by the DPS no matter what dates we choose. Also, I have tried to build in a "carve out" for private property owners that refuse access or demand a higher cost alternative. If there are other potential carve out areas, let's discuss their possible inclusion.

I further propose a potential penalty--underwriting local content. During and immediately after the meeting with the DPS, BT had some potential ideas for alternative "penalties." I will leave it to the team to propose an alternative.

Finally, Susan Martin raised the issue about whether the refinance of the Koch lease with Citibank required PSB approval. I do not believe so and will make the same argument I made to Leslie Cadwell a few years ago (to which she agreed and I received no push back on) to Sarah Hofmann. But the City's loan to BT is, at a minimum, a violation of Condition 60. My thought is we deal with this issue head on and take whatever additional penalty the DPS may want to foist upon us now as opposed to down the road. The size of the penalty and how we otherwise deal with this issue depends, of course, on whether we have rectified the situation or whether the violation is on-going. Jonathan, any input on this matter would be appreciated.

The deadline for reporting to the Board on potential settlement is next Monday the 22nd, so I would like to get the proposed MOU to the DPS as early as possible this week. I look forward to hearing from you all.

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