

LAW OFFICES  
**McNEIL, LEDDY & SHEAHAN**  
A PROFESSIONAL CORPORATION

JOSEPH C. McNEIL (1919-1978)  
JOSEPH E. McNEIL  
JOHN T. LEDDY  
NANCY GOSS SHEAHAN  
WILLIAM F. ELLIS  
SUSAN GILFILLAN  
JOSEPH A. FARNHAM  
KEVIN J. COYLE\*  
KIMBERLEE J. STURTEVANT  
COLIN K. McNEIL

271 SOUTH UNION STREET  
BURLINGTON, VERMONT 05401

TELEPHONE  
(802) 863-4531

TELECOPIER  
(802) 863-1743

December 30, 2010

(\*ALSO ADMITTED IN N.Y.)

**HAND DELIVERED**

Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street – Drawer 20  
Montpelier, VT 05620-2701

Re: Petition of City of Burlington d/b/a Burlington Telecom to amend Condition No. 17 of its Certificate of Public Good, enlarging the date by which it must complete its system build out  
Docket No. 7044

Dear Sue:

Enclosed for filing with the Board in the above-referenced matter please find an original and three (3) copies of City of Burlington d/b/a Burlington Telecom ("BT")'s second progress report pursuant to Paragraph 10 of the Board's Order of October 8, 2010, along with a Motion for Enlargement of Time.

Thank you for your assistance.

Very truly yours,



William F. Ellis

WFE/

Enclosures

cc: Docket 7044 Service List

**SERVICE LIST**  
**Docket No. 7044**

Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street -- Drawer 20  
Montpelier, VT 05601-2701

Geoffrey Commons, Special Counsel  
Vermont Department of Public Service  
112 State Street, Drawer 20  
Montpelier, VT 05620-2601

Laura Beliveau, Special Counsel  
Vermont Department of Public Service  
112 State Street, Drawer 20  
Montpelier, VT 05620-2601

Robert J. Munnely, Jr., Esq.  
Murtha Cullina LLP  
99 High Street  
Boston, MA 02110-2320

Christina L. DeGraff-Nurphy, Esq.  
Comcast Communications  
43 Comcast Drive  
South Burlington, VT 05403

Douglas R. Marden, Esq.  
Little & Cicchetti, P.C.  
117 St. Paul Street  
P.O. Box 907  
Burlington, VT 05402-0907

Edward A. Miller, Esq.  
Miller & Smith  
38 North Main Street  
Northfield, VT 05663

Amber Thibeault  
Burlington Telecom  
200 Church Street, Suite 101  
Burlington, VT 05401

Norman Williams, Esq.  
Gravel & Shea  
76 St. Paul Street  
P.O. Box 369  
Burlington, VT 05402-0369

LAW OFFICES  
**McNEIL, LEDDY & SHEAHAN**  
A PROFESSIONAL CORPORATION

JOSEPH C. McNEIL (1919-1978)  
JOSEPH E. McNEIL  
JOHN T. LEDDY  
NANCY GOSS SHEAHAN  
WILLIAM F. ELLIS  
SUSAN GILFILLAN  
JOSEPH A. FARNHAM  
KEVIN J. COYLE\*  
KIMBERLEE J. STURTEVANT  
COLIN K. McNEIL

(\*ALSO ADMITTED IN N.Y.)

271 SOUTH UNION STREET  
BURLINGTON, VERMONT 05401

TELEPHONE  
(802) 863-4531

TELECOPIER  
(802) 863-1743

December 30, 2010

**HAND DELIVERED**

Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street – Drawer 20  
Montpelier, VT 05620-2701

Re: Petition of City of Burlington d/b/a Burlington Telecom to amend Condition No. 17 of its Certificate of Public Good, enlarging the date by which it must complete its system build out  
Docket No. 7044

Dear Sue:

Please consider this letter as City of Burlington d/b/a Burlington Telecom ("BT")'s second progress report as required by Paragraph 10 of the Board's Order in the above-referenced matter dated October 8, 2010.

BT's initial progress report dated November 1, 2010, reported that the City's financial consultants, Dorman & Fawcett ("D&F"), had been in direct discussions with CitiCapital Municipal Finance and CitiBank, N.A. ("CitiCapital") concerning restructuring the payments due under the Master State and Municipal Lease/Purchase Agreement dated August 9, 2007 ("Lease Agreement") to reflect the actual value of BT's operation. As the Board is now well aware through our letter of November 23, 2010, and the status conference held on December 8, 2010, CitiCapital rejected the City's proposed restructuring plan, and has demanded full payment notwithstanding the legal constraints prohibiting the use of non-BT revenue to make payments under the Lease Agreement. The City and CitiCapital have acknowledged that the Lease Agreement has terminated pursuant to Section 7 thereof as a result of the City's non-appropriation of funds to make the rental payments that otherwise would have been due during Fiscal Year 2011, and the City has acknowledged its obligation to peaceably deliver the equipment subject to the Lease Agreement at a location or locations designated by CitiCapital.

Earlier this month CitiCapital informed the City that it had retained Great American Group of New York, New York to assist in the inventory, appraisal and return of the equipment subject to the Lease Agreement. CitiCapital advised that the City would be hearing from Great

American shortly to arrange an initial inventory assessment and to provide instructions concerning return of the equipment. The City, through D&F, has designated an individual to coordinate and oversee the logistics of any equipment change out, but to date the City has not been contacted by Great American Group.

Given CitiCapital's position over the past 6 weeks, the City has shifted its focus from a restructuring of the Lease Agreement to the procurement of replacement equipment as part of a proposal to cure the violations of its Certificate of Public Good ("CPG"). As part of this effort, BT has developed a thorough, detailed plan for procuring replacement equipment, which is estimated to cost \$6-8 Million. The City has had preliminary discussions with attorneys for CitiCapital about the prospect of a like kind exchange of certain equipment in satisfaction of its obligations under the Lease Agreement where return of the original equipment is not practical or cost effective for either party. To date, CitiCapital has not taken a position on this issue. The City is considering what action it will take to satisfy its obligations concerning the equipment in the event CitiCapital is uncooperative.

The City also has been in discussions with various parties about potential financial and strategic partnerships concerning the procurement of replacement equipment and the operation and management of BT. An essential element of all these discussions is the City retaining the potential for recovery of the \$16.9 Million in taxpayer funds expended on BT. At this time there are three private investors and three strategic partners in discussions with the City, and the City fully expects to receive one or more term sheets in January 2011. At that time all proposals will be reviewed internally and presented to the Burlington City Council. In the event the City Council votes to pursue the recommended proposal, the term sheet will be reduced to a commitment letter following a short period of further due diligence. Any commitment letter will likely be contingent upon, among other things, the ability to obtain amendments to the CPG, including the build out requirement in Condition 17, as well as receipt of any additional certificates of public good if required.

Paragraph 9 of the Board's Order of October 8, 2010, requires BT to "file with the Board by December 31, 2010, or such later date as the Hearing Officer shall determine, specific language for the proposed amendment of Condition 17 and a more detailed statement as to the specific relief it seeks from the financing limitations of Condition 60." Docket 7044, *Order on Motions and Cross-Motion for Partial Summary Judgment*, 10/8/10 at 33. Given the recent shift in focus from a restructuring of the Lease Agreement to the procurement of replacement equipment through a financial and/or strategic partnership, BT presently is not in a position to provide the specific language required by Paragraph 9. Concurrent with the filing of this progress report, BT is filing a Motion for Enlargement of Time to extend the date by which BT must file the specific language required by Paragraph 9 until February 28, 2011. This extension will allow BT to conclude discussions with potential partners, develop a term sheet for presentation to the City Council, and assuming City Council approval, prepare a commitment letter. As noted in the preceding paragraph, the commitment letter likely will inform the specific proposal BT is required to make pursuant to paragraph 9.

Susan M. Hudson, Clerk

December 30, 2010

Page 3

Thank you for your continued assistance, and please let me know if the Board needs anything further in this regard at this time.

Very truly yours,

A handwritten signature in cursive script, appearing to read "William F. Ellis".

William F. Ellis

WFE/

cc: Docket 7044 Service List

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7044

Petition of City of Burlington d/b/a Burlington Telecom )  
to amend Condition No. 17 of its Certificate of Public )  
Good, enlarging the date by which it must complete )  
all line extensions )

**MOTION FOR ENLARGEMENT OF TIME**

NOW COMES City of Burlington d/b/a Burlington Telecom ("BT"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Rule 6 of the Vermont Rules of Civil Procedure, made applicable to this proceeding by Board Rule of Practice 2.207, hereby moves the Vermont Public Service Board ("Board") for an enlargement of the time within which it must file the specific language and more detailed statement required by Paragraph 9 of the Board's Order in the above-captioned docket dated October 8, 2010. In support of this motion, BT states:

1. Rule 6 of the Vermont Rules of Civil Procedure provides in part that "[w]hen by . . . order of [the Board] an act is required or allowed to be done at or within a specified time, the [Board] for cause shown may at any time in its discretion . . . order the period enlarged if request thereof is made before the expiration of the period originally prescribed . . . . V.R.C.P. 6 (b).

2. Paragraph 9 of the Board's Order of October 8, 2010, requires BT to "file with the Board by December 31, 2010, or such later date as the Hearing Officer shall determine, specific language for the proposed amendment of Condition 17 and a more detailed statement as to the specific relief it seeks from the financing limitations of Condition 60." Docket 7044, *Order on Motions and Cross-Motion for Partial Summary Judgment*, 10/8/10 at 33.

3. As set forth in BT's progress report dated December 30, 2010, which is being filed concurrently herewith and incorporated herein by reference, BT is presently in discussions with several potential financial and strategic partners concerning the procurement of replacement equipment and the operation and management of BT.


4. The City anticipates receiving one or more term sheets in January 2011 from these potential partners, at which time the proposals will need to be vetted internally and presented to the Burlington City Council for approval. Assuming City Council approval, the term sheet will need to be reduced to a commitment letter, which will likely be contingent upon, among other things, the ability to obtain amendments to BT's Certificate of Public Good, including the build out requirement in Condition 17.

5. BT requires additional time to conclude discussions with potential partners, develop a term sheet for presentation to the City Council, and assuming City Council approval, prepare a commitment letter, which likely will inform the specific proposal BT is required to make pursuant to paragraph 9.

WHEREFORE, for cause shown, BT respectfully requests that the Board enlarge the time within which it is required to file the specific language and more detailed statement required by Paragraph 9 until February 28, 2010.

Dated at Burlington, Vermont this 30<sup>th</sup> day of December 2010.

CITY OF BURLINGTON

BY:   
William F. Ellis, Esq.  
McNeil, Leddy & Sheahan, P.C.  
271 South Union Street  
Burlington, VT 05401  
Attorneys for Petitioner

cc: Docket 7044 Service List