

Date Sent: Wednesday, May 06, 2009 2:29 PM
From: wellis@mcneilvt.com ("William F. Ellis")
To: "Thibeault, Amber" <athibeault@burlingtontelecom.com>,
cburns <cburns@burlingtontelecom.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>,
mflora <mflora@burlingtontelecom.com>
Subject: Proposed Settlement with DPS and BT

Attachment(s) : MOU Revised 5-6-09.doc

Dear All,

Attached please find a proposed settlement agreement with the DPS. This was arrived at after reviewing the DPS's settlement proposal from January and discussions with BT staff. I would like to share this with the DPS before I leave for vacation (10:00 tomorrow morning) so if you can let me know whether or not you are comfortable with the proposal before then, that would be great.
I look forward to hearing from you.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7044

Petition of City of Burlington d/b/a Burlington Telecom,)
for a certificate of public good to operate a cable)
television system in the City of Burlington, Vermont)
(In Re: Petition to amend Condition No. 17 of its CPG)
by enlarging the date by which Burlington Telecom must)
complete its system build out))

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU"), dated as of May __, 2009, is between the Vermont Department of Public Service (the "DPS" or "Department") and the City of Burlington, Vermont d/b/a Burlington Telecom ("BT" or "Burlington Telecom").

PRELIMINARY STATEMENT

Burlington Telecom owns and operates a cable-television system serving the City of Burlington, Vermont. Under its Certificate of Public Good ("CPG") issued in Docket No. 7044, specifically Condition No. 17, BT was required to "build its network to serve every residence, building and institution in the City of Burlington within thirty six (36) months of the date of [the] CPG" that was issued on September 13, 2005. Recognizing that it would not complete the build out of its system to serve every residence, building and institution by September 13, 2008, BT filed the subject petition on September 10, 2008.

BT proposes to complete an audit of the yet to be served residences, buildings and institutions in its service territory and, based upon the results of that audit, develop engineering plans and cost estimates for serving those potential customers and completing the build out of its system. BT and the DPS enter into this MOU to stipulate to the time line for completion of the audit, development of engineering plans and cost estimates and construction of the remainder of

BT's system so that it can serve every residence, building and institution in the City of Burlington. The parties also stipulate to the appropriate penalty for BT's failure to complete the build out of its system within 36 months as required by Condition No. 17 of the CPG.

NOW, THEREFORE, the parties hereto agree as follows:

1. Burlington Telecom shall complete an audit of every residence, building and institution presently not served by BT's system, including a description of whether the location can be served by public right-of-way or whether a private right-of-way is necessary, by June 30, 2009. The audit will be based upon 911 and internal data of BT.
2. Burlington Telecom shall complete engineering plans and cost estimates for serving those residences, buildings and institutions identified in the audit required by paragraph 1 above by July 31, 2009. The engineering plans required by this paragraph shall identify the least cost plan for serving each location.
3. Burlington Telecom shall provide the Department with monthly updates on the progress of its audit and engineering plans and cost estimates until completion. BT shall be entitled to seek confidential treatment of any filings made pursuant to this MOU.
4. By June 1, 2009, Burlington Telecom shall provide to the DPS an unaudited list of all streets and other areas of the City not constructed as of the close of the 2008 construction season, which will include an explanation of the reasons why they were not constructed in previous seasons.
5. Before August 31, 2009, the Department and Burlington Telecom shall meet to review the results of the audit and engineering plans and cost estimates. By that same date, BT shall propose to the Board a date by which BT will complete construction of its system.

6. Burlington Telecom shall file a line extension policy consistent with the requirements of Board Rule 8.000 on or before June 1, 2009.

7. Until such time that BT has satisfied its obligations under Condition No. 17 of its CPG as modified by this MOU, BT shall continue to file the line extension reports with the DPS by April 15 of each year as specified in Condition No. 17.

8. As a penalty for failing to complete the build out of its system as required by Condition No. 17, BT shall use its best efforts to obtain full RUS funding for the build out of its system to unserved areas of the State of Vermont as identified by the DPS and Office of Economic Stimulus and Recovery.

9. The parties hereto agree that the Board may issue the final order in this docket attached to this MOU as Attachment 1.

10. [boiler plate language regarding ability to back out if the Board does not approve the settlement substantially in the form of the proposed final order]

Dated at Burlington, Vermont this ___ day of May 2009.

CITY OF BURLINGTON D/B/A BURLINGTON
TELECOM

By: McNeil, Leddy & Sheahan, P.C., Its Attorneys

By: _____
William F. Ellis, Esq.

Dated at Montpelier, Vermont this ___ day of May 2009.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____
Laura Beliveau, Special Counsel

Date Sent: Wednesday, May 06, 2009 3:00 PM
From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
To: "William F. Ellis" <wellis@mcneilvt.com>,
"Burns, Christopher" <cburns@burlingtontelecom.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>,
"Flora, Mike" <mflora@burlingtontelecom.com>
Subject: RE: Proposed Settlement with DPS and BT

Attachment(s): MOU Revised 5-6-09 ALT rev.doc

Bill,

BT will not be providing engineering plans but rather just cost estimates to the state, thus the MOU was revised accordingly.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist
Burlington Telecom
200 Church Street, Suite 101
Burlington, VT 05401
Office: (802) 846-5031
Mobile: (802) 233-5386
Fax: (802) 652-4220

-----Original Message-----

From: William F. Ellis [mailto:wellis@mcneilvt.com] Sent: Wednesday, May 06, 2009 2:29 PM
To: Thibeault, Amber; Burns, Christopher; Leopold, Jonathan; Schatz, Ken; Flora, Mike
Subject: Proposed Settlement with DPS and BT

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Dated at Burlington, Vermont this ___ day of May 2009.

CITY OF BURLINGTON D/B/A BURLINGTON
TELECOM
By: McNeil, Leddy & Sheahan, P.C., Its Attorneys

By: _____
William F. Ellis, Esq.

Dated at Montpelier, Vermont this ___ day of May 2009.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____
Laura Beliveau, Special Counsel

Date Sent: Wednesday, May 06, 2009 3:58 PM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: Amber Thibeault <athibeault@burlingtontelecom.com>,
Chris Burns <cburns@burlingtontelecom.com>,
Mike Flora <mflora@burlingtontelecom.com>,
Ken Schatz <KSchatz@ci.Burlington.vt.us>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Proposed Settlement with DPS and BT

I think it is fine w/ Amber's changes

>>> "William F. Ellis" <wellis@mcneilvt.com> 5/6/2009 2:29 PM >>>
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I look forward to hearing from you.

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Date Sent: Wednesday, May 06, 2009 4:34 PM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: "William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Proposed Settlement with DPS and BT

do not copy anyone, tell DPS not to discuss anything confidential or provide any of our confidential info & see if you can find out who it was

>>> "William F. Ellis" <wellis@mcneilvt.com> 5/6/2009 4:28 PM >>>
Will do. By the way, should I be copying in any City Councilors on our

filings in this matter as I understand from Laura Beliveau at the DPS that one or more Councilors have been meeting with and/or asking questions of the DPS regarding BT?

===== Original Message from "Jonathan P.A. Leopold, Jr."
<JLeopold@ci.Burlington.vt.us> at 5/6/2009 4:11 pm
>enjoy your vacation
>

>>>> "William F. Ellis" <wellis@mcneilvt.com> 5/6/2009 4:00 PM >>>>
>Thanks.
>

>===== Original Message from "Jonathan P.A. Leopold, Jr."
><JLeopold@ci.Burlington.vt.us> at 5/6/2009 3:58 pm
>>I think it is fine w/ Amber's changes
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>>>>> "William F. Ellis" <wellis@mcneilvt.com> 5/6/2009 2:29 PM >>>>>
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>> I look forward to hearing from you.
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>>Burlington, VT 05401
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Date Sent: Tuesday, May 12, 2009 3:03 PM
From: "Hofmann, Sarah" <Sarah.Hofmann@state.vt.us>
To: kschatz <kschatz@ci.burlington.vt.us>
Cc: "Beliveau, Laura" <Laura.Beliveau@state.vt.us>,
William Ellis <wellis@mcneilvt.com>
Subject: PSB Docket 7044

Hi Ken, Hope all is well with you. I am writing to let you know about a possible odd situation brewing. The City Council may be inviting us to attend a Council meeting next week. This strikes me as potentially being overkill as normally the lawyer acting on behalf of the city would communicate with his/her client instead of the DPS appearing and letting the City Council know directly what was going on from our perspective. It is not out of the question, but it is feeling somewhat strange and possibly unnecessary. I think there may be some background concerns swirling around as to whether Bill Ellis is representing the city or Burlington Telecom. I figure that is for you and Bill to sort out, and I am hoping this email will be a heads-up that this is perhaps becoming an issue. As I said, it is not out of the question that the DPS would appear at a Burlington City Council but I would like you to take a look at this first, and, of course, we wouldn't appear until Bill Ellis is back from his vacation and we have a better sense what the Council was interested in hearing about from us.

Laura Beliveau is the attorney of record so she and Bill Ellis will talk when he is back in the office. In the meantime, though, please respond to her as well as me if you do a return email. It was just odd enough that I stepped in.

Thanks for considering this situation.

Sarah Hofmann
Director for Public Advocacy
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601
Phone: 802-828-3088
Fax: 802-828-2342
<http://publicservice.vermont.gov/>

From: Bill Keogh [mailto:bkeoghsr@yahoo.com]
Sent: Tuesday, May 12, 2009 2:10 PM
To: Martin, Susan
Cc: Joe McNeil
Subject: City Council....

Good afternoon, Susan....I am considering having an Executive Session of the Burlington City Council on Monday, May 18 at City Hall about 8:45 p.m. on the matter of Burlington Telecom. This would be an opportunity for the full Council (all 14 of us) to inquire of the PSD of issues regarding Burlington Telecom. We are also would like to have Atty Bill Ellis be on hand, as well. Corey Chase is invited as well....This is kind of a heads-up for now....Is this the proper procedure to get PSD involvement?....I appreciate meeting with you and Corey the other day.....Regards, Bill K

Date Sent: Tuesday, May 12, 2009 4:49 PM
From: "Ken Schatz" <KSchatz@ci.Burlington.vt.us>
To: Sarah Hofmann <Sarah.Hofmann@state.vt.us>
Cc: <jmcneil@mcneilvt.com>,
William Ellis <wellis@mcneilvt.com>,
Laura Beliveau <Laura.Beliveau@state.vt.us>
Subject: RE: PSB Docket 7044

Attachment(s): HTML

Hi Sarah,

Thanks for the heads up. I will check with people in the City to get a better understanding of the situation and then get back to you and Laura Beliveau.

Ken

Kenneth A. Schatz
City Attorney City Hall, 149 Church St.
Burlington, VT 05401

(802) 865-7121 (phone)
(802) 865-7123 (fax)
kschatz@ci.burlington.vt.us

>>> "Hofmann, Sarah" <Sarah.Hofmann@state.vt.us> 5/12/2009 3:03 PM >>>

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From: "Hofmann, Sarah" <Sarah.Hofmann@state.vt.us>
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Cc: "Beliveau, Laura" <Laura.Beliveau@state.vt.us>, William Ellis <wellis@mcneilvt.com>
Subject: FWD: City Council....

Hi Ken, this invitation to the City Council may have been nipped in the bud for now by one of our financial analysts here. So there is nothing you have to do immediately but be aware that there is a bit of a strange dynamic.

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From: Bill Keogh [<mailto:bkeoghsr@yahoo.com>]
Sent: Tuesday, May 12, 2009 8:59 PM
To: Martin, Susan
Subject: Re: City Council....

OK, Susan, I will defer to your suggestion. I did not obtain copies of the BT filings in the docket. I figured Bill Ellis has them and will share them with us on Monday night, if this plan gets developed. I will stay in touch. Thank you for your prompt response....Bill K

From: "Martin, Susan" <Susan.Martin@state.vt.us>
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Cc: "Beliveau, Laura" <Laura.Beliveau@state.vt.us>; "Chase, Corey" <Corey.Chase@state.vt.us>
Sent: Tuesday, May 12, 2009 3:05:29 PM
Subject: RE: City Council....
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I'm hopeful that you were able to get copies last week from the Board concerning matters of interest in this Docket.

Sincerely,
Susan

Susan S. Martin
Utilities Financial Analyst
Department of Public Service
112 State Street
Montpelier, Vermont 05620-2601

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William Ellis <wellis@mcneilvt.com>,
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Subject: RE: FWD: City Council....

Attachment(s) : HTML

Thanks Sarah. The nature of politics in Burlington certainly can include a strange dynamic. Ken

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Sent: Tuesday, May 12, 2009 3:05:29 PM

Subject: RE: City Council.... Bill, Thanks for the heads-up, but I consider this process of meeting with the City Council a little extreme. I would prefer that we wait until Bill Ellis returns and have him work with us and our attorney concerning inquiries the Council may have regarding Burlington Telecom. That process would be the logical if not the proper procedure of getting the Department involved beyond its current involvement with Burlington Telecom. I'm hopeful that you were able to get copies last week from the Board concerning matters of interest in this Docket. Sincerely, Susan Susan S. Martin Utilities Financial Analyst Department of Public Service 112 State Street Montpelier, Vermont 05620-2601 802-828-4075 (fax 802-828-2342) publicservice.vermont.gov

From: Bill Keogh [<mailto:bkeoghsr@yahoo.com>] Sent: Tuesday, May 12, 2009 2:10 PM
To: Martin, Susan
Cc: Joe McNeil
Subject: City Council....

Good afternoon, Susan.... I am considering having an Executive Session of the Burlington City Council on Monday, May 18 at City Hall about 8:45 p.m. on the matter of Burlington Telecom. This would be an opportunity for the full Council (all 14 of us) to inquire of the PSD of issues regarding Burlington Telecom. We are also would like to have Atty Bill Ellis be on hand, as well. Corey Chase is invited as well.... This is kind of a heads-up for now.... Is this the proper procedure to get PSD involvement?..... I appreciate meeting with you and Corey the other day..... Regards, Bill K

Date Sent: Wednesday, May 13, 2009 1:30 PM
From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
To: "Joseph A. Farnham" <jfarnham@mcneilvt.com>,
"Burns, Christopher" <cburns@burlingtontelecom.com>
Subject: RE: CONFIDENTIAL ; Comcast Opposition

Joe,

I am curious as to how long Bentley will allow the two sides to duke it out in motions back and forth before he decides to weigh in. I expected this type of response from Comcast and I have several arguments for rebuttal but at this point the most logical solution would be for Bentley to rule on the outstanding motions.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist
Burlington Telecom
200 Church Street, Suite 101
Burlington, VT 05401
Office: (802) 846-5031
Mobile: (802) 233-5386
Fax: (802) 652-4220

-----Original Message-----

From: Joseph A. Farnham [mailto:jfarnham@mcneilvt.com] Sent: Wednesday, May 13, 2009 10:34 AM
To: Thibeault, Amber; Burns, Christopher
Cc: Farnham, Joseph A.
Subject: CONFIDENTIAL ; Comcast Opposition

Amber/Chris: Did you get this Comcast filing yesterday? thx, jaf

===== Original Message from Barbara Haggard <Barbara@mcneilvt.com> at 5/13/2009 10:11 am
>Barbara J. Haggard
>McNeil Leddy & Sheahan
>271 South Union Street
>Burlington, VT 05401
>e-mail: barbara@mcneilvt.com
>phone: (802) 863-4531
>fax: (802) 863-1743
>

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5/14/09
TLC L. Beliveau:
her: "I will
file some sort
of "support" re:
recusid.
today..."

Joseph A. Farnham, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401
(802) 863-4531 (phone)
(802) 863-1743 (fax)
jfarnham@mcneilvt.com

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Date Sent: Thursday, May 14, 2009 9:46 AM
From: "Burns, Christopher" <cburns@burlingtontelecom.com>
To: "Joseph A. Farnham" <jfarnham@mcneilvt.com>,
"Thibeault, Amber" <athibeault@burlingtontelecom.com>
Cc: "William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: CONFIDENTIAL ; Comcast Opposition

Joe,

I don't think you need to bother Bill on vacation. He left it with Mr. Bentley while Bill was gone. We need to here from him. Chris

Christopher Burns, GM
Burlington Telecom
200 Church St., Suite 101
Burlington, VT 05401

www.burlingtontelecom.com
802-540-0007

FTTH Council logo

-----Original Message-----

From: Joseph A. Farnham [<mailto:jfarnham@mcneilvt.com>] Sent: Wednesday, May 13, 2009 11:46 AM
To: Burns, Christopher; Thibeault, Amber
Cc: Farnham, Joseph A.
Subject: RE: CONFIDENTIAL ; Comcast Opposition

I'll probably have a little chat with Bill. thx, jaf

===== Original Message from "Thibeault, Amber"
<athibeault@burlingtontelecom.com> at 5/13/2009 11:19 am
>No we did not. Thank you for passing it along.

>
>Amber Thibeault
>
>Contract and Governmental Affairs Specialist
>Burlington Telecom
>200 Church Street, Suite 101
>Burlington, VT 05401
>Office: (802) 846-5031
>Mobile:(802) 233-5386
>Fax: (802) 652-4220
>

>-----Original Message-----

>>From: Joseph A. Farnham [<mailto:jfarnham@mcneilvt.com>]
>>Sent: Wednesday, May 13, 2009 10:34 AM
>>To: Thibeault, Amber; Burns, Christopher
>>Cc: Farnham, Joseph A.
>>Subject: CONFIDENTIAL ; Comcast Opposition
>

>>Amber/Chris: Did you get this Comcast filing yesterday? thx, jaf
>

>===== Original Message from Barbara Haggard <Barbara@mcneilvt.com> at
>5/13/2009 10:11 am
>>Barbara J. Haggard
>>McNeil Leddy & Sheahan

>>271 South Union Street
>>Burlington, VT 05401
>>e-mail: barbara@mcneilvt.com
>>phone: (802) 863-4531
>>fax: (802) 863-1743

>>

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>number or email address. Thank you.

>

>Joseph A. Farnham, Esq.

>McNeil, Leddy & Sheahan

>271 South Union Street

>Burlington, VT 05401

>(802) 863-4531 (phone)

>(802) 863-1743 (fax)

>jfarnham@mcneilvt.com

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>number or email address. Thank you.

Joseph A. Farnham, Esq.

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jfarnham@mcneilvt.com

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Date Sent: Thursday, May 14, 2009 10:23 AM
From: Bill Keogh <bkeoghsr@yahoo.com>
To: Bill Ellis-Esq <wellis@mcneilvt.com>
Cc: Joe McNeil <jmcneil@mcneilvt.com>
Subject: FWD: B T concerns...

Corrected address....Bill K

----- Forwarded Message -----

From: Bill Keogh <bkeoghsr@yahoo.com>
To: wellis@mcneilvt.com
Sent: Thursday, May 14, 2009 10:17:03 AM
Subject: B T concerns...

are high on the priority list of many City Councilors. Like knowing if B T is in compliance with the CPG, what B T build-out plans are and other issues. We have a proposed Resolution on this matter on Monday night's agenda with the expectation that, if passed, B T information will be provided the Council. The Council would also like to know the extent of proprietary information. All this would be in Executive Session.....We would like you, Chris Burns, Jonathan, the Mayor and others pertinent people to be present during this Executive Session.....It has been a long while since the Council has been updated on B T information and financing....Are you available for Monday night?...Bill K

Date Sent: Thursday, May 14, 2009 10:33 AM
From: Bill Keogh <bkeoghsr@yahoo.com>
To: Bill Ellis-Esq <wellis@mcneilvt.com>
Subject: 598-0912

...is my cell phone.....Bill K

Date Sent: Thursday, May 14, 2009 10:52 AM

From: Bill Keogh <bkeoghsr@yahoo.com>

To: Mayor Bob Kiss <bkiss@ci.burlington.vt.us>,
Jonathan Leopold <jleopold@ci.burlington.vt.us>,
Joe Reinert <jreinert@ci.burlington.vt.us>,
Atty Ken Schatz <kschatz@ci.burlington.vt.us>

Cc: Joe McNeil <jmcneil@mcneilvt.com>,
Bill Ellis-Esq <wellis@mcneilvt.com>,
Lori Olberg-City <LOlberg@ci.burlington.vt.us>

Subject: I've asked for.....

....an Executive Session Monday night for a briefing of the City Council on the Burlington Telecom situation. Such a brief would include a report on its financial status, build-out status and a response to any questions from members of the Council.....If you have any questions in this regard, feel free to contact me.....Bill K

Date Sent: Thursday, May 14, 2009 10:57 AM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: Joe Reinert <JReinert@ci.Burlington.vt.us>,
Ken Schatz <KSchatz@ci.Burlington.vt.us>,
Mayor Bob Kiss <bkiss@cit.burlington.vt.us>,
Bill Keogh <bkeoghsr@yahoo.com>
Cc: Chris Burns <CBurns@ci.Burlington.vt.us>,
Lori Olberg <LOlberg@ci.Burlington.vt.us>,
Joe McNeil <jmcneil@mcneilvt.com>,
Bill Ellis-Esq <wellis@mcneilvt.com>
Subject: RE: I've asked for.....

let me talk with BT, not sure we can pull everything together but we
could definitely address some issues

>>> Bill Keogh <bkeoghsr@yahoo.com> 5/14/2009 10:52 AM >>>
....an Executive Session Monday night for a briefing of the City
Council on the Burlington Telecom situation. Such a brief would include
a report on its financial status, build-out status and a response to
any questions from members of the Council.....If you have any questions
in this regard, feel free to contact me.....Bill K

Date Sent: Thursday, May 14, 2009 10:21 PM
From: Bill Keogh <bkeoghsr@yahoo.com>
To: "William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: FWD: B T concerns...

Gotcha....will be in touch.....Bill K

From: William F. Ellis <wellis@mcneilvt.com>
To: Bill Keogh <bkeoghsr@yahoo.com>
Sent: Thursday, May 14, 2009 5:49:59 PM
Subject: RE: FWD: B T concerns...

Bill,

Just received your message. I understand you spoke with Joe McNeil earlier today, and he let you know I am available to meet with the Council on Monday evening. Unfortunately, my cell phone is under the weather so I am unable to speak with you directly before Monday morning. Please feel free to call me or drop by the office Monday morning if you would like to speak in advance of the meeting.

Regards,

Bill

==== Original Message from Bill Keogh <bkeoghsr@yahoo.com> at 5/14/2009 10:23 am
>Corrected address....Bill K

----- Forwarded Message -----

From: Bill Keogh <bkeoghsr@yahoo.com>
To: wellis@mcneilvt.com
Sent: Thursday, May 14, 2009 10:17:03 AM
Subject: B T concerns...

are hi
gh on the priority list of many City Councilors. Like knowing if B T is in compliance with the CPG, what B T build-out plans are and other issues. We have a proposed Resolution on this matter on Monday night's agenda with the expectation that, if passed, B T information will be provided to the Council. The Council would also like to know the extent of proprietary information. All this would be in Executive Session.....We would like you, Chris Burns, Jonathan, the Mayor and others pertinent people to be present during this Executive Session.....It has been a long while since the

Council has been updated on B T information and financing.....Are you available for Monday night?...Bill K

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, May 14, 2009 10:52 PM
From: Bill Keogh <bkeoghsr@yahoo.com>
To: Jonathan Leopold <jleopold@ci.burlington.vt.us>
Cc: Bill Ellis-Esq <wellis@mcneilvt.com>
Subject: Suggested B T topics for Monday

To follow up our brief conversation tonight, I'd offer some of the following issues to be discussed during the B T Executive Session Monday night. There may be others, but these come to mind>

1. What is our financial situation? Have we borrowed to the maximum? If we have, what other funds can we draw upon to continue operating, if we have any? Are we making money or losing money with this operation? What is our financial outlook (revenue forecast)? Looks like the B T has lost \$4-mil in 2007 and \$5 -mil in 2008, according to reports sent to the Public Service Dept. by Chris Burns.....What progress, if any, are we making to extend our services to our municipal neighbors?
2. Is the City in compliance with our Certificate of Public Good? If not, why not? What do we have to do to get into compliance and what is the time line? Has the Public Service Dept. been willing to work with us to make B T a go?
3. How about our build-out? We have avoided such rock-ledge based areas like Red Rocks condominiums (and downtown Burlington) because of the expense of undergrounding those lines. How long do we wait to accomplish that? Can we go within 300' of Red Rocks and come up with a policy (% of payment) to extend service to those condos? How does Comcast service those units?
4. What are the elements of "proprietary information" that we ought to consider in our deliberations?
5. Tell us about Comcast? Will it challenge our every turn in the road? Do we have pending issues with Comcast, like underground permits?

That's all I can think of at this late hour.....Bill K

Date Sent: Friday, May 15, 2009 9:44 AM

From: "Burns, Christopher" <cburns@burlingtontelecom.com>

To: "William F. Ellis" <wellis@mcneilvt.com>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>

Cc: "Thibeault, Amber" <athibeault@burlingtontelecom.com>,
"Flora, Mike" <mflora@burlingtontelecom.com>

Subject: Burlington Franchise Rules

Attachment(s): image001.jpg

Bill and Ken,

Burlington Telecom is getting several question regarding our taxes and fees. The City of Burlington franchise comes up often in this conversation. BT would like to know the franchise arrangements between all the utilities and cable operators

Common Utilities

Vermont Gas

FairPoint Communication

Comcast

BED

Verizon

UnCommon Carriers using ROW's

Level3

Teljet ECI Constructions

VELCO

Champlain College

UVM

VTel

BT

Christopher Burns, GM

Burlington Telecom

200 Church St., Suite 101

Burlington, VT 05401

www.burlingtontelecom.com

802-540-0007

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Date Sent: Monday, May 18, 2009 12:14 AM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: Ken Schatz <KSchatz@ci.Burlington.vt.us>,
JOE <jmcneil@mcneilvt.com>,
Bill Ellis <wellis@mcneilvt.com>
Cc: Bob Kiss <BKiss@ci.Burlington.vt.us>
Subject: FWD: Suggested B T topics for Monday

Hi Joe, Bill & Ken

FYI

>>> Bill Keogh <bkeoghsr@yahoo.com> 5/14/2009 10:52 PM >>>

To follow up our brief conversation tonight, I'd offer some of the following issues to be discussed during the B T Executive Session Monday night. There may be others, but these come to mind>

1. What is our financial situation? Have we borrowed to the maximum? If we have, what other funds can we draw upon to continue operating, if we have any? Are we making money or losing money with this operation? What is our financial outlook (revenue forecast)? Looks like the B T has lost \$4-mil in 2007 and \$5-mil in 2008, according to reports sent to the Public Service Dept. by Chris Burns.....What progress, if any, are we making to extend our services to our municipal neighbors?
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4. What are the elements of "proprietary information" that we ought to consider in our deliberations?
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That's all I can think of at this late hour.....Bill K

Date Sent: Monday, May 18, 2009 12:38 AM

From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>

To: Amber Thibeault <athibeault@burlingtontelecom.com>,
Chris Burns <CBurns@ci.Burlington.vt.us>,
Ken Schatz <KSchatz@ci.Burlington.vt.us>,
JOE <jmcneil@mcneilvt.com>,
Bill Ellis <wellis@mcneilvt.com>

Cc: Bob Kiss <BKiss@ci.Burlington.vt.us>,
Joe Reinert <JReinert@ci.Burlington.vt.us>

Subject: BT Presentation

Attachment(s): BT Outline.doc

Hi

See the attached proposed outline for our presentation w/ the council
Monday evening. Feel free to amend as you see fit

Please let Jessica know your availability to meet to discuss this

Outline

History

1980's cable initiative w/ BED	JPAL
1990's initiative w/ BED	JEM
Independent phase	
CPG	Bill Ellis
Financing	JPAL

Buildout

Phase I	Chris
Phase II & III	Chris

Operational Phase & Extension of Timeline

Buildout strategy	Chris
Delay in Cable startup	Chris
Refinancing	JPAL
Revised Strategy for Buildout	JPAL
Actual Buildout Commitments	Chris

Post Refinancing

Continued buildout & Cost	Chris
Inability to meet targets	JPAL

Revision to the business concept

Consultant Study & Recommendations	JPAL & Chris
------------------------------------	--------------

Confidentiality & Proprietary Information

Legal Basis	Ken
Business Considerations	Chris
Technical	
Buildout	
Operations	
Finances	Chris
Buildout	
Operations	
Pricing	

Revision to CPG

Bill

Current Status

Buildout & penetration etc	Chris
Operating Finances	Chris
Financing	JPAL

Date Sent: Monday, May 18, 2009 3:10 PM

From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>

To: Bill Ellis <wellis@mcneilvt.com>

Subject: FWD: RE: BT Presentation

>>> Bob Kiss 5/18/2009 10:35 AM >>>

Jonathan. It's hard to tell from the outline...do we explain to counselors sometime that BT is not a monopoly, unlike BED and Water/Wastewater, and what the implications of this are?

Does Ken somewhere explain the implications of information becoming public via a city counselor? What kind of censure is possible in this regard? We never addressed the compromised position that Andy assumed as legal counsel for Valley Net. We should have Bill Ellis discuss his analysis and what he's prepared to do regarding conflict of interest should Andy propose to represent Valley Net before the PSB.

Bob Kiss, Mayor
Room 34, City Hall
Burlington, VT 05401
(802) 865-7272

>>> Jonathan P.A. Leopold, Jr. 05/18/09 12:38 AM >>>

Hi

See the attached proposed outline for our presentation w/ the council Monday evening. Feel free to amend as you see fit

Please let Jessica know your availability to meet to discuss this

Outline

History

1980's cable initiative w/ BED	JPAL
1990's initiative w/ BED	JEM
Independent phase	
CPG	Bill Ellis
Financing	JPAL

Buildout

Phase I	Chris
Phase II & III	Chris
Map	

Operational Phase & Extension of Timeline

Buildout strategy	Chris
Compartmentalization	
Fastest route, most homes	
Delays in customer acquisition	Chris
2007 Citigroup Refinancing	JPAL
Council Adopted Buildout Strategy	JPAL
Actual Buildout Commitments	Chris

Executive Session

Post Refinancing

Continued buildout & Cost	JPAL
Inability to meet targets	JPAL

Revision to the business concept

Consultant Study & Recommendations	JPAL & Chris
Staffing Recommendations	
Sales: residential & Commercial	
Pricing Strategy, Bundles & Margins	
Reduce buildout to Connections	
Viable & FMV	
Led to confidentiality issues	

Confidentiality & Proprietary Information

Competitive Nature of Business	
Not a monopoly	
Industry intent	

Legal Basis

Ken

Business Considerations	Chris
Technical	
Buildout	
Operations	
Proprietary Financial Info	Chris
Buildout costs	
Operations costs	
Pricing costs & strategy	
Issue with Valley Net & Andy Montroll	Bill & Chris
Revision to CPG	Bill & Chris
When & how & cost	
Current Status	
Buildout & penetration etc	Chris
Operating Finances	Chris
Financing	JPAL

Date Sent: Tuesday, May 26, 2009 8:04 PM

From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>

To: "William F. Ellis" <wellis@mcneilvt.com>

Subject: RE: Reply Memo

I thought it was/is fine

>>> "William F. Ellis" <wellis@mcneilvt.com> 5/26/2009 11:40 AM >>>

Attached is a draft reply memo that needs to be filed today. Please let me know your thoughts at your earliest. Thanks.

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, May 28, 2009 10:52 AM
From: wellis@mcneilvt.com ("William F. Ellis")
To: athibeault <athibeault@burlingtontelecom.com>,
cburns <cburns@burlingtontelecom.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>
Subject: Motion for Stay

Attachment(s): Joint Motion for Stay 5-28-09.doc

Dear All,

Attached please find a draft Joint Motion for Stay of Proceedings until August 31, 2009. As you may be aware, the DPS balked at the MOU we prepared earlier this month, and suggested that we stay the proceeding so that BT can complete the audit and cost estimating. The DPS may not sign of on the joint motion, but will definitely support it.

I received a call from Laura Beliveau at the DPS yesterday and wanted to know where we were at on the concept of a stay. She indicated that the Commissioner was interested in knowing this, so this proceeding, for good or for bad, is definitely on the radar screen down in Montpelier.

Needless to say, I would like to get this to Laura Beliveau as soon as possible so your prompt review and feedback would be greatly appreciated.

Bill

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, May 28, 2009 11:23 AM
From: "Thibeault, Amber" <athibeault@burlingtontelecom.com>
To: "William F. Ellis" <wellis@mcneilvt.com>,
"Burns, Christopher" <cburns@burlingtontelecom.com>,
"Leopold, Jonathan" <jleopold@ci.burlington.vt.us>,
"Schatz, Ken" <kschatz@ci.burlington.vt.us>
Subject: RE: Motion for Stay

Bill,

I have no changes to be made to the document.

Thanks,

Amber Thibeault

Contract and Governmental Affairs Specialist
Burlington Telecom
200 Church Street, Suite 101
Burlington, VT 05401
Office: (802) 846-5031
Mobile: (802) 233-5386
Fax: (802) 652-4220

-----Original Message-----

From: William F. Ellis [<mailto:wellis@mcneilvt.com>] Sent: Thursday, May 28, 2009 10:53 AM
To: Thibeault, Amber; Burns, Christopher; Leopold, Jonathan; Schatz, Ken
Subject: Motion for Stay

Dear All,

Attached please find a draft Joint Motion for Stay of Proceedings until August 31, 2009. As you may be aware, the DPS balked at the MOU we prepared earlier this month, and suggested that we stay the proceeding so that BT can complete the audit and cost estimating. The DPS may not sign off on the joint motion, but will definitely support it.

I received a call from Laura Beliveau at the DPS yesterday and wanted to know where we were at on the concept of a stay. She indicated that the Commissioner was interested in knowing this, so this proceeding, for good or for bad, is definitely on the radar screen down in Montpelier.

Needless to say, I would like to get this to Laura Beliveau as soon as possible so your prompt review and feedback would be greatly appreciated.

Bill

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401

Telephone: (802) 863-4531
Fax: (802) 863-1743
E-mail: wellis@mcneilvt.com

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Date Sent: Thursday, May 28, 2009 11:30 AM
From: "Ken Schatz" <KSchatz@ci.Burlington.vt.us>
To: <athibeault@burlingtontelecom.com>,
Chris Burns <cburns@burlingtontelecom.com>,
"Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Motion for Stay

Attachment(s): HTML

The Motion looks fine to me. thanks.

Ken

>>> "William F. Ellis" <wellis@mcneilvt.com> 5/28/2009 10:52 AM >>>

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Date Sent: Friday, May 29, 2009 9:51 AM
From: "Jonathan P.A. Leopold, Jr." <JLeopold@ci.Burlington.vt.us>
To: <athibeault@burlingtontelecom.com>,
Chris Burns <cburns@burlingtontelecom.com>,
Ken Schatz <KSchatz@ci.Burlington.vt.us>,
"William F. Ellis" <wellis@mcneilvt.com>
Subject: RE: Motion for Stay

looks fine to me, would it be helpful to include language to say why it is important to conduct/complete the audit?

>>> "William F. Ellis" <wellis@mcneilvt.com> 5/28/2009 10:52 AM >>>
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