M E M O R A N D U M

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RE: Burlington Telecom - Financing

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This memorandum summarizes, in general terms, the role of “Bond Counsel” and the legal structure of certificates of participation in connection with the term sheet presented by Piper Jaffray for a proposed lease financing for the Burlington Telecom project.

Role of Bond Counsel: The role of Bond Counsel originated in the 19th century when debt instruments of states and municipalities were purchased based upon the state or municipality’s representations and warranties. Purchasers and investors were concerned about the defects particular to municipal finance and the practice became common for underwriters and purchasers of bonds to require an opinion from qualified counsel with respect to the validity of the bond. The use of bond counsel opinions became well established by 1900 and is a standard practice of bond issuance today.

A bond counsel opinion is an objective judgment based upon an analysis of the underlying facts and application of current law. The opinion is not a partisan position of an advocate. Bond counsel typically provides services of supervising the bond proceedings, preparation of documents necessary or appropriate to the authorization of issuance and sale of any obligation, assisting in the review of any official statement used in connection with the issuance of the bond or obligation, assisting in presenting information to bond rating agencies, and assisting the issuer in obtaining, as and when necessary, any authorizations or approvals required for the issuance of the obligations.

The issuer is the client, for purposes of the engagement; however, investors and underwriters rely on bond counsel and the approving opinion in connection with their purchase of the underlying obligation.

Certificates of Participation: Certificates of participation, or COP’s, are a fairly common method of providing lease-purchase financing. They have been used by states and cities across the United States. The underlying structure consists of a tax-exempt lease of a capital asset or public improvement. In a lease financing, the capital assets are either sold or leased to a bank, acting as a trustee, and then leased back by the municipality or state. Upon a final and full payment of all lease obligations, the issuer obtains full title to the capital project financed. The lease payments are structured to have a component of principal and interest so that the interest component would be exempt from income taxes, which provides for a lower cost financing to the issuer.

Certificates of participation represent an investor's direct and undivided proportional interest in rental payments being made pursuant to a lease agreement. The lease payments are not a debt of the issuer within any constitutional or statutory limitation. Neither the full faith and credit nor the taxing power of the municipality (or state) is pledged to make the payments. The payments are subject to annual appropriations with the result that if a payment is not appropriated and made, the issuer would lose the right to possession and use of the underlying property. Unlike a general obligation bonds, the holder of the COPS can not force the issuer to make a payment that is not appropriated.

Certificates of participation are often used when the municipality does not want to pledge its taxing power or create a debt. Because the taxing power is not pledged, and the lease obligations are subject to annual appropriation, the interest rate is higher than if the financing was a general obligation of the issuer. In the lease, there will typically be a provision that allows the issuer to terminate the lease if an annual appropriation for the lease payments is not approved.

The City of Burlington has used lease financing and certificates of participation for a variety of financings, including the police facility, the public works maintenance facility, parking facilities, and the public fishing pier.

In sum, payments in a lease financing are subject to annual appropriation by the legislative body of the issuer with payments to be made with only legally available funds. The holders of the COPs can not force the issuer to appropriate the full payment but only to make payment IF appropriated. Certificates of participation usually bear a higher interest rate than general obligation bonds because of the increased risk of non-appropriation of payments.