

## **My Turn CAO Leopold Responds To Free Press November 3, 2009**

The half truths and sensational innuendo in recent Free Press coverage and editorials about Burlington Telecom create the appearance of scandal. This misperception has been heightened by Burlington's lively partisan environment. While your coverage may sell newspapers, it does not relieve you from an obligation to report the facts.

It is important to set the record straight. Below are answers to questions that have been raised by the BT discussion that too often are not explained appropriately.

### **Did City officials illegally borrow taxpayer money to support BT?**

Absolutely not!

Burlington pools the cash reserves of City departments. It is a customary and accepted municipal financial practice to draw from this cash pool for short term financing of city departments. This draw is later repaid to the pool with interest.

### **What is "pooled cash"?**

"Pooled cash" is the primary checking account for all City Departments except BED and Schools. City funds are deposited into this account and this cash is then used to pay the bills for City Departments. This "pooled cash" system has been used by the City for 26 years over the tenure of four Mayors. It is a modern banking system used by the State of Vermont, many other cities and large businesses.

The City calculates each month whether a Department has a surplus or debit of cash. If the Department has a surplus, it is credited with interest. If it has a debit, it is charged interest. It minimizes the borrowing expense for the City and maximizes investment returns. In FY 2009, the City General Fund earned over \$500,000 in interest income from the pooled cash system.

### **Is BT the only City Department to have used "pooled cash"?**

No. At some point each year, most departments draw on pooled cash.

Burlington Electric used \$15 million from the cash pool for pollution controls on the McNeil Plant and to invest in VELCO transmission facilities before the pool was repaid -- at 3% interest. BED's draw was comparable to that of Burlington Telecom. The use of pooled cash last year saved BED more than \$150,000 and earned the General Fund an equal amount.

Why is there no claim of “scandal” about that?

As a start-up enterprise with ongoing capital needs, BT also drew from the cash pool. The Vermont Public Service Board specifically authorized this practice in “condition 60” of BTs Certificate of Public Good (CPG).

**What is the authorization for the use of pooled cash?**

The use of pooled cash has been a customary and accepted City financial practice for the past 26 years. The City Budget “appropriations” not only authorize revenues and expenditures for City Departments which contemplate the use of pooled cash to pay authorized expenditures, it budgets the interest paid on the pooled cash draw as a source of General Fund revenues.

**Was the use of pooled cash for BT secret or hidden?**

No. Pooled cash has funded BT’s cash flow from inception and has been documented in our annual audits. Its use is specifically authorized by the Vermont Public Service Board. The City Budget for FY 2009 showed an \$11 million gap between revenues and authorized expenses to be financed either through outside financing or the pooled cash. This issue was specifically discussed with the Board of Finance in May 2008.

**Was the use of pooled cash a violation of the City Charter or state law?**

Both the City Charter and state statute prohibit making taxpayers liable for municipal telecommunications systems if they should ultimately fail. But this does not forbid the use of pooled cash. As mentioned, the Vermont Public Service Board specifically authorized this practice in “condition #60” of BTs Certificate of Public Good (CPG). The problem and controversy has arisen because BT could not repay its draw within two months as required by the PSB’s “condition #60.”

**Why wasn’t BT’s draw repaid on time?**

The 2008 global financial crisis froze up the capital markets. Major financial institutions like Lehman Bros., Merrill Lynch and AIG were collapsing. The U.S. Treasury spent \$1 trillion in TARP money to bail out the banks. BT could not convert its cash pool draw to long term financing. The crisis afflicted other agencies as well, such as BED and the Vermont Student Assistance Corporation, which could not get long term financing to cover its student loans. Consequently BT’s compliance with the repayment requirement became impossible.

**What were the City’s choices?**

The dilemma we faced was to either shut down BT’s operations – which itself would have been a violation of the CPG and cost the City a multi million dollar

investment -- or to stay the course, follow BT's approved business plan and budget, and to continue the draw from the cash pool. We chose to save the City's investment. By the Fiscal Year ending June 30, 2009, BT's cash pool draw grew to over \$15 million – about the same size as the draw by Burlington Electric.

**Was the violation of the 60 day limit in the CPG hidden to influence the Mayoral election?**

In November 2008, the City was in litigation and negotiations with the Public Service Department (PSD) about the noncompliance with the requirement to complete the BT build out in Burlington. BT's financial situation caused by the meltdown in the financial markets was presented in detail to the DPS staff in these negotiations. City officials were focused on the resolution of this issue which was a major financial and operational issue for BT. At the time the 60 day restriction on pooled cash was considered to be an issue which would be resolved when financial markets recovered and the requirements for the build out were known.

In April of 2009, DPS staff advised Burlington to suspend the litigation proceedings until September to finish the engineering study of the costs of completing BT's build out as required by another CPG condition #17 and to then seek an amendment of the borrowing restrictions posed by "condition #60." In September the City did just that and filed for an amendment with the PSB.

This litigation strategy was the product of advice from a legal team of City Attorney Kenneth Schatz and Joseph McNeil and William Ellis of McNeil, Leddy & Sheehan to address the condition #60 issue as soon as possible, and the recognition that its solution was inextricably linked to also solving the build out requirement of condition #17. They each stated for the record in a formal statement published October 26<sup>th</sup> that political considerations played no role in their legal advice and that "the City team decided to take the time to seek a solution that would remedy the violation...Our discussions and approach were solely to address the non-compliance with the conditions of the CPG in a reasonable, strategic manner."

**Did I ignore legal advice in November 2008 regarding Condition #60?**

No. Had I done so, the City's attorneys would have been obligated to so advise the Council and Mayor. The City staff, CAO and attorneys agreed it made sense to attempt to forge a solution to the entire litigation (condition #17 and #60) simultaneously and as quickly as possible. This approach is consistent with State law which requires that non-compliance with a condition of a CPG is to be cured within a reasonable time

**Where did the \$17 m go and was the money misused?**

The claim that I am guilty of a "misappropriation" of city funds is a reckless and unfounded allegation. BT's draw was spent in accordance with its approved business plan and approved budgets.

The \$17 m pooled cash draw was used for capital expenses to build the network and hookup customers as well as funding operating deficits for BT as a startup. In fact, \$8.6 was incurred in FY 2008 and was already audited by the City's independent auditors. The audit for FY 2009 is already underway.

**Are taxpayer funds at risk?**

No, with the recovery of the financial markets BT can be refinanced. The primary impediment today is to determine how much to refinance since the issue of the build out requirement has not been resolved.