

SUPPLEMENTAL TESTIMONY OF CHRISTOPHER W. BURNS

Q1. Please state your name and position.

A1. My name is Christopher W. Burns, and I am employed by the City of Burlington (the “City”) as the General Manager of the City’s telecommunications project, known as Burlington Telecom, or BT.

Q2. Did you previously file testimony in this proceeding?

A2. Yes, I filed prefiled testimony in this matter on March 6, 2009.

Q3. What is the purpose of your supplemental testimony?

A3. My supplemental testimony will describe the process and the results of an audit conducted by BT to determine the extent of its non-compliance with Condition 17 of its Certificate of Public Good (“CPG”), as well as the cost estimates developed to bring BT into compliance with that CPG condition. I will also discuss Burlington Telecom’s proposed next steps for completing the build out of the City of Burlington. Finally, I will address several conditions of BT’s CPG that Comcast has sought to interject into this proceeding.

Q4. Before discussing the audit, please describe the number of homes presently passed by BT’s system and current number of customers.

A4. In just four years, BT has constructed a state-of-the-art telecommunications system capable of providing service to approximately 13,500 homes in the City of Burlington. Presently, BT has just over 4,500 customers connected to its system.

Q5. Is BT’s system capable of providing service to the remaining areas of the City?

1 A5. There is more than adequate capacity in the system to service the entire City of
2 Burlington and beyond. BT built out the City of Burlington thus far utilizing the
3 philosophy of speed of construction and number of homes passed, i.e. pass as
4 many homes as possible, as quickly as possible. BT's non-compliance with
5 Condition 17 is the result of challenging installation conditions in locations of the
6 City which contain ledge and rock, which are more time consuming than other
7 areas of the City and cost more to build than expected at the time the CPG was
8 issued.

9 **Q6. Please describe the audit that Burlington Telecom conducted.**

10 A6. BT focused its auditing efforts on those areas of the City where we knew its fiber
11 network had yet to be constructed. BT obtained address information from several
12 sources including: the City of Burlington's AMANDA database, which is a
13 database of names, addresses and property values, developed by the Assessor's
14 office; 911 database; and Mapcom, Burlington Telecom's internal database,
15 which is comprised of meter data supplied by Burlington Electric Department
16 ("BED"). Once BT obtained a list of unserved addresses in the City of Burlington,
17 a substantial amount of field work was conducted to verify the addresses.

18 **Q7. What is the total number of service addresses presently unable to receive**
19 **BT's services according to the audit?**

20 A7. The audit revealed there presently are 3180 service addresses unable to take
21 service from BT. Burlington Telecom counted service addresses and did not
22 distinguish between residential and commercial properties as the commitment to
23 serve included all residences, businesses and institutions in the City of Burlington.

1 A listing of the streets and the corresponding number of service addresses is
2 attached as Exhibit BT-2.

3 **Q8. Are all of these 3,180 service addresses “unserved” as you understand the**
4 **requirement found in Condition 17 of the CPG?**

5 A8. I do not believe so. Condition 17 states that “BT shall build its network to serve
6 every residence, building and institution in the City of Burlington.” In a
7 procedural order issued in this proceeding on April 16, 2009, the Hearing Officer
8 observed that the point of Condition 17 was to have BT’s service “available” to
9 every business and residence, and so long as BT’s plant comes within the length
10 of a standard, no-charge service drop and BT is ready, willing and able to provide
11 service from that plant, BT appears to be in compliance with Condition 17. Of
12 the remaining service addresses yet to be “served,” approximately 50% are
13 located on private rights-of way, which are within 300 feet of BT’s plant. BT is
14 ready, willing and able to provide service to these residences provided they are
15 willing to pay the cost differential between BT’s standard, no-charge service drop
16 and the actual costs of construction, and appropriate easements can be obtained.
17 Therefore, BT believes it is in compliance with Condition 17 with respect to these
18 service addresses on private rights-of-way.

19 **Q9. How does BT propose to deal with these service addresses on private rights-**
20 **of-way?**

21 A9. BT proposes to establish a line extension policy consistent with the Board’s Rules
22 pursuant to which appropriate cost allocation agreements can be reached.

23 **Q10. Please describe the cost estimates that Burlington Telecom developed?**

1 A10. Exhibit BT-2 attached hereto is a list that details the cost estimates associated
2 with each street remaining to be served in the City of Burlington. The cost
3 estimates are a combination of fiber pass and engineering.

4 **Q11. What are BT's proposed next steps for completing the build out of the City?**

5 A11. BT has diligently pursued the build out and presently serves a vast majority of the
6 service addresses in the City. BT's ability to complete the build out of the
7 remaining areas of the City is dependent upon the City's ability to obtain
8 additional financing. I refer you to the Prefiled Testimony of Jonathan P. A.
9 Leopold, Jr. for a discussion of this issue.

10 **Q12. Are there other factors, aside from financing and private right of**
11 **way/easements, that might hamper BT's ability to build out the remainder of**
12 **the City of Burlington?**

13 A12. Yes, contractual arrangements between property owners and Comcast. BT
14 approached a multiple dwelling unit ("MDU") owner in the City based on a
15 request for service. BT was denied access to the building by the property owner
16 because Comcast had an exclusive arrangement, and until the expiration of the
17 contract BT would be unable to provide service in any of the property owner's
18 four MDU's. BT is "ready, willing and able" to serve these residences, but is
19 unable to do so because of the contractual agreement between the property owner
20 and Comcast.

21 **Q13. Are there other conditions of the CPG that you wish to address in your**
22 **testimony?**

1 A13. Yes. At the outset I should note that immediately after issuance of BT's CPG,
2 Comcast's predecessor in interest, Adelphia, raised concerns over BT's
3 compliance with several conditions of its CPG with the Department of Public
4 Service ("Department" or "DPS"). BT provided information directly to the
5 Department in response to these concerns, and as far as I am aware the
6 Department was satisfied with BT's responses. Adelphia and Comcast
7 subsequently have made several public records requests seeking information
8 concerning BT's compliance with certain CPG conditions, to which the City
9 responded. Comcast has persisted through discovery in this proceeding to again
10 seek this same information, to which BT had originally objected as being outside
11 the scope of this proceeding. Rather than continuing to litigate with Comcast over
12 these matters, BT will now address these issues with the hope that they will
13 finally be put to bed.

14 **Q14. Condition 57 of BT's CPG requires BT to pay pole attachment fees as any**
15 **other attaching entity. Is BT in compliance with this Condition?**

16 A14. Yes. BT pays BED and Fairpoint Communications pole attachment fees at the
17 same rate as any other telecommunications company, which is based upon two (2)
18 feet per attachment. The Hearing Officer may recall that during the original CPG
19 proceedings it was discovered BED was mistakenly charging BT at the one foot
20 rate. This mistake was corrected by BED back-billing BT at the two foot rate,
21 and BT has paid at that rate ever since. It is my understanding that Comcast has
22 taken the position that its phone service is not a telecommunications service, and
23 has refused to pay BED at the two foot rate. To the extent Comcast persists in

1 only paying BED at the one foot rate, it is BT that is put at a competitive
2 disadvantage.

3 **Q15. Condition 58 requires Burlington Telecom to have a separate Chart of**
4 **Accounts and separate accounting books and records to establish itself as a**
5 **separate enterprise fund. Is BT in compliance with this Condition?**

6 A15. Yes. The chart of accounts was established in 2006. The accounting system set up
7 by the City is capable of tracking Burlington Telecom's costs in a transparent and
8 auditable manner. Attached hereto Exhibit BT-3 is a copy of the chart of
9 accounts.

10 **Q16. Does Burlington Telecom have a Cost Allocation Manual ("CAM") as**
11 **required by Condition 59 of its CPG?**

12 A16. The City's CAM has been in place for a number of years. It was amended in 2006
13 to include Burlington Telecom. Attached as Exhibit BT-4 are copies of the CAM
14 utilized by Burlington Telecom and other City departments for fiscal years 2005 –
15 2009.

16 **Q17. Does Burlington Telecom make payments in lieu of local and state taxes**
17 **("PILOT") payments to the City of Burlington as required by Condition 61?**

18 A17. Yes. Attached as Exhibit BT-5 is a copy of the Memorandum of Understanding
19 ("MOU") between Burlington Telecom and the office of the Chief Administrative
20 Officer regarding the calculation of the payments in lieu of local and state taxes or
21 PILOT payments. In addition, Exhibit BT-6 contains Burlington Telecom's
22 official notifications regarding the PILOT payments for 2005- 2006, 2006-2007,
23 2007-2008, 2008-2009 and 2009-2010.

1 **Q18. Condition 62 of the CPG requires BT to pay all lawful, applicable municipal**
2 **and street excavation fees. Is BT in compliance with this condition?**

3 A18. Yes. With respect to excavation fees, Burlington Telecom's contractors pull
4 street opening permits for buried work. Burlington Telecom then reimburses the
5 contractors for these permits. In addition, BT pays 5% of its gross revenues to the
6 city pursuant to the City's street franchise fee ordinance. I should note that
7 Comcast's predecessor, Adelphia, had an agreement with the City whereby
8 Adelphia made an annual payment to the City in lieu of having to pay excavation
9 fees or the City's street franchise fee. It is my understanding that Comcast made
10 the payment to the City for FY 2007, but since then has reneged on this agreement
11 and no longer makes any payments to the City. This is another area where
12 Comcast's actions have put BT at a competitive disadvantage.

13 **Q19. Condition 63 required BT to obtain an independent appraisal of the property**
14 **that is used for its head-end. Did BT comply with this requirement?**

15 A19. Yes. Burlington Telecom engaged Steve Allen of Allen Realty to assess a fair
16 market rent for the site at 287 Shelburne Road. Mr. Allen's report concluded that
17 fair market rent would be \$3300 per annum. The report was completed in October
18 of 2005. Please see the report attached hereto as Exhibit BT-7.

19 **Q20. Does Burlington Telecom pay a fair rental to the City for the rental of this**
20 **space?**

21 A20. Yes, I believe it has to date. Burlington Telecom installed an electric gate for the
22 School Department at the 287 Shelburne Street location at a cost of approximately
23 \$15,000 to BT. This is the equivalent of five (5) years rental.

1 **Q21. Does Burlington Telecom lease space from the City of Burlington at other**
2 **locations besides 287 Shelburne Road?**

3 A21. Yes. Burlington Telecom built several fiber aggregation points (“FAPs”) around
4 the City of Burlington. A 22’ x 32’ building at 1264 North Avenue, Hunt School;
5 a 22’ x 32’ building at 1645 North Avenue, Flynn School; and an 18’ x 28’
6 building at 123 North Street, Barnes School. Burlington Telecom also leases 572
7 square feet of floor space in the basement at the Taft School.

8 **Q22. Does the City have a formal arrangement for the lease of space at these**
9 **properties?**

10 A22. Yes, the City of Burlington and Burlington Telecom have executed two (2)
11 separate Memoranda of Understanding that address the properties at these
12 locations. Copies of both MOU’s are attached to this testimony as Exhibit BT-8.

13 **Q23. Did Burlington Telecom provide the City of Burlington with a fair market**
14 **value for the use of the space at Hunt, Flynn, Barnes and Taft School?**

15 A23. At Flynn School, Burlington Telecom provided the school with a 9’ x 12’ athletic
16 storage room, which is separate and distinct from Burlington Telecom’s space in
17 the building. At Barnes School, Burlington Telecom constructed a T-ball field,
18 backstop and installed bicycle racks. At Taft School, Burlington Telecom pays
19 \$6.00 per square foot with annual adjustments based on the consumer price index
20 for all items/all urban consumers (CPI-U).

21 **Q24. Aside from the few items noted above, are there other areas where you**
22 **believe Comcast has a competitive advantage over BT?**

1 A24. Absolutely. Comcast's programming costs are the first thing that comes to mind.
2
3 Due to its size and relationship with content providers, Comcast is able to
4 negotiate more favorable programming rates than a small, municipal overbuilder
5 is able to obtain. To have "competitive neutrality" as Comcast seems to want, BT
6 should be afforded programming at the same rates as Comcast. In addition,
7 Comcast's predecessor was able to avoid the majority of the costs of building
8 some of the high cost areas that remain to be built in the City. For instance, on
9 North Street and Riverside Avenue, Comcast was able to avoid 50% of the costs
10 because these projects were federally funded. In addition, some of the areas of
11 underground construction were paid for by the developers, or at least Comcast
12 was able to share the cost of undergrounding with other utilities. These
13 competitive advantages are not available to BT.

13 **Q25. Does BT have any plans to expand outside of Burlington?**

14 A25. After four years of operation, BT has created the technical infrastructure and has
15 the operating experience to consider expansion. In order to stay competitive and
16 complete its obligation to serve the City, BT is in the process of developing a plan
17 to expand outside of Burlington. The ledge and rocky locations in the City that do
18 not have service at present are more costly than typical locations, and expanding
19 BT's customer base outside Burlington will provide a revenue stream to support
20 the completion of the build-out in Burlington, as described in the Prefiled
21 Testimony of Jonathan P.A. Leopold, Jr.

22 **Q26. Does this conclude your testimony?**

23 A26. Yes it does.