TESTIMONY OF JONATHAN P.A. LEOPOLD, JR.

Q1. Please state your name and position.

A1. My name is Jonathan P.A. Leopold, Jr. and I have served as the Chief Administrative Officer ("CAO") for the City of Burlington (the "City") since April 2006. I have approximately 35 years experience in a variety of financial and administrative management positions in both the public and private sector. I previously served as City Treasurer for the City of Burlington from 1982 to 1990.

Q2. What are your responsibilities as the CAO of the City of Burlington?

A2. As CAO, I am the Department Head of the Clerk/Treasurer's Office of the City. Burlington Telecom is a project of the City organizationally located in this office. The General Manager of Burlington Telecom reports to me in my capacity as CAO.

Q3. What is the purpose of your testimony?

A3. The purpose of my testimony is to describe the finances and financial concerns of Burlington Telecom. In particular, I will describe the history of BT's finances to date and the considerations and constraints relative to the business plan for Burlington Telecom for the completion of the build out pursuant to Condition 17 and the future expansion of BT. I also address the City's concerns relative to Condition 60 of the Certificate of Public Good ("CPG") and the need for temporary relief from that Condition.

Q4. Please provide some background on the City's efforts to provide competitive telecommunications services to the citizens of Burlington.

A4. In March 1996 and again in November 2000, voters authorized the City to provide an alternate telecommunication network and related services within the City. To that end, the City secured a capital lease in the amount of $2,600,000 in 2003 with Koch Financial of

Scottsdale, Arizona to establish a fiber optic network to provide services for communications between all City and School Buildings. This network, known as Phase I, was originally constructed to serve as the backbone for further expansion of Burlington Telecom. Phase II of the project was planned to expand the project to provide for businesses and non-profit organizations along the route of Phase I to connect to the municipal network. Phase III of the project was designed to provide a fiber optic infrastructure to pass every home and business within the City to provide state of the art telecommunications technology. Eventually Phase II and III were merged into a single project based upon a newer technology than the Phase I network.

In May, 2004, the City Council authorized then CAO Brendan Keleher to solicit financing for the Phase III expansion of the project to include delivery of voice, data, and cable television services throughout the City. As just noted, the technology for this third phase changed since Phase I was constructed and required a different design. In the fall of 2004, the City received six proposals for financing and, in November 2004, additional financing of $10,000,000 was again secured from Koch Financial. The original $2,600,000 was also refinanced at a lower interest rate at this time.

Phase III service was initiated in a defined area in the south end of the City in February 2006. Construction and expansion of the system continued through FY 2006 and FY 2007. During this time period, the City received a CPG to operate a cable television system within the City. Burlington Telecom previously received a CPG in June 2003 to act as a provider of telecommunication services in Vermont. In January 2006, an additional $10,000,000 in financing was secured to cover construction and hookup costs to expand Phase III of the system. Subsequently, in the spring of 2007, additional funding required for the project led to authorization by the City Council for a refinancing of the Koch financing and an additional lease/purchase financing for a total of $33.5 million with CitiCapital. This refinancing was completed in August 2007.

Q5. What attempts have the City made to secure additional financings for BT?

A5. When the City completed the $33.5 million financing with CitiCapital in August 2007, the City advised CitiCapital that it would require additional financing with a projected timeline of July or August 2008. The City did not move to secure additional financing in August 2007 for three primary reasons. First, the amount of the required additional financing was not determined and would vary depending on the cost of completing the build-out and the number of customers to be connected. Second, the interest rate and terms of the $33.5 million financing would likely be less favorable in financing any additional capital requirements. Third, the City was reluctant to significantly increase the financing above the $33.5 million competitively bid earlier in the year to ensure the integrity of the competitive bidding process.

In mid-January 2008 I met with a representative of Municipal Leasing Consultants of Grand Isle, Vermont, the City's financial advisor on the CitiCapital financing and numerous other lease/purchase financings. I indicated that the City required an additional round of financing which I then estimated to be $8 million for the continued build-out of the network and customer hookup by June 30, 2008. Over the next seven months we discussed various strategies for financing BT's capital requirements. These discussions continued through August 2008. With the collapse of the credit markets in August and early September 2008, efforts to secure additional financing were suspended pending a recovery of the financial markets.

Q6. Please describe the constraints the City faced in attempting to secure additional financing for BT.

A6. The primary constraints for a financing in the fall of 2008 included the lack of long term financing, high interest rates for lower quality credit and the significant constriction of the lease/ purchase financing market in particular. In 2008, CitiCapital announced that it was no longer in the municipal lease/purchase market, thereby precluding the possibility of refinancing or procuring additional funding from the City's primary lender for BT. This reality and Condition 60 of the CPG in conjunction with Charter restrictions, severely limited the financing options of the City. As a start-up project BT lacked the revenues and revenue history to utilize other forms of financing such as revenue bonds. Therefore, the City was constrained to wait for the recovery of the capital markets and particularly the lease/purchase market to secure the additional financing for the project.

Q7. How did the City fund BT's operations in light of these constraints?

A7. Pending the recovery of the credit market the City relied on its pooled cash management system to continue funding the cashflow requirements of BT. It is important to note that the use of pooled cash for cash flow for BT and all other departments of the City is not a subsidy from the City General Fund or the taxpayer. The pooled cash program of the City is a typical cash flow management function of a Treasurer's Office. Any department/fund with surplus monies in the pooled cash account is credited with interest and conversely any department/fund with a debit to the pooled cash is charged interest. The interest credited and charged to each department/fund is consistent and uniform.

Initially Burlington Telecom was classified in the City audits as a capital project fund. As such, all costs directly and indirectly attributable to the project, including cash flow expense, were charged to the capital project account. Consistent with Condition 58 of BT's CPG, the FY 2006 audit changed Burlington Telecom from a capital project fund to an "enterprise fund." This transition not only complied with the CPG, but reflected the evolving nature of Burlington Telecom from primarily a capital construction project to an operating business entity. As an enterprise fund all costs and revenues associated with Burlington Telecom are allocated to BT and identified in the enterprise fund accounting for BT. There is neither a direct nor indirect subsidy of BT by the General Fund or any other fund of the City.

Q8. What particular financial burdens or constraints are imposed upon the City by Condition 60 and the City Charter?

A8. The constraints imposed by Condition 60 and the City Charter limit available financing to forms secured solely by the revenue and assets of Burlington Telecom. Effectively this limits financing to those forms which are based on loan to value of assets or demonstrated revenues. As a start up venture, by definition BT lacks the revenue history to secure revenue based financing. Thus, the only financing available will be asset based. Additionally asset based financing requires a favorable loan to value ratio. Typically, such value is defined by a valuation based on cash flow or reasonably projected cash flow. As a start up venture this valuation mechanism is not useful to BT. Hence, the primary vehicle of financing available to municipalities that reflect a 100% ratio of loan to value, absent a cash flow based valuation, is lease/purchase financing. This form of financing has been used for municipal projects and capital expense for nearly thirty years. The security for the financing is a pledge of revenues and the assets of the capital project as collateral. Typically, the financing is contingent upon annual appropriation. The lease/purchase agreement usually provides for a good faith recommendation for appropriation.

The primary constraint on lease/purchase financing is cost and cash flow. Typically, lease/purchase financing costs between one-half percent and one percent higher than a general obligation security. In addition, the term of lease/purchase financing is typically considerably shorter than the length of term available under other forms of municipal financing such as a general obligation bond. Thus, for example, the CitiCapital financing was for a 17-year term at an interest rate of 4.7%. In contrast, the City recently issued revenue supported general obligation bonds on behalf of Burlington Electric Department ("BED") in August 2009 for a 20-year term at a rate of 3.7%. The cost of the higher interest rate represents a significant financial burden to BT. Equally important, the shorter term of the lease/purchase financing creates a significantly higher cash flow requirement which also creates a significant financial burden.

The financial burden of lease/purchase financing has increased significantly over the past year with the significant deterioration of credit markets. In general, high quality credits (such as the City's Aa3 rated General Obligation Bonds) receive extremely favorable interest rates and terms in the current market. In contrast, lower rated credit financing such as a lease/purchase financing are even more expensive and limited in term than previously. In sum, the current financial markets significantly limit the opportunity for BT to refinance the current lease/purchase financing with CitiCapital and limit the opportunities for BT to refinance the current obligations of BT for the financing required for the completion of the build-out in Burlington.

In the context of the above discussion, it is ironic that Condition 60 arguably exposes the taxpayer and ratepayer to a greater degree of risk by unduly burdening the operating finances of BT and restricting BT's capacity to complete the build-out or expand. The financial burden placed on BT by Condition 60 significantly restricts the likelihood of success of BT. If the City was able to utilize revenue backed general obligation bonds similar to those recently issued for BED, the City would be able to utilize its financial strength and resources to provide for the most cost effective financing for BT.

In sum, the current conditions of financial markets render it difficult for the City to secure additional financing for BT at this time to complete the build-out. In the event that the City is able to secure the requisite financing, the terms of such financing would constitute an excessive burden on BT's operating expenses and cash flow. Under the current circumstances and the limitations in Condition 60, it is not financially feasible or prudent for the City to comply with Condition 17 as it is presently written. Moreover, the additional debt and cash flow burden created by such a financing is not feasible without an expansion of BT beyond the City limits.

Q9. What relief is the City seeking from the Board with respect to Condition 60?

A9. Based on the considerations articulated above, the City requires temporary relief from the limitations of Condition 60 so it may utilize the full panoply of City financial resources to complete the build-out in Burlington and become financially successful. Clearly the City should have approached the Public Service Board last year to secure approval from the Board when the financial markets deteriorated and a further round of lease/purchase financing was not possible. I also appreciate the Board's goal to ensure that taxpayers do not subsidize Burlington Telecom. Proper enterprise fund accounting for the Burlington Telecom operations fully allocates BT's expenses to BT and BT's customers. Currently as a start-up venture yet to achieve full operating maturity, BT has incurred substantial start-up and operating costs beyond the capital improvements which are reflected in BT's financial statements as a deficit. To the extent that BT remains in operation, the City can cover the cash flow needs of BT through the pooled cash as it progresses to becoming cash flow positive

Q10. Will the City's taxpayers and electric ratepayers be put at risk if the Board were to grant the City relief from Condition 60?

A10. Ironically, the risk to Burlington taxpayers of an involuntary subsidy to BT is increased by the financial restrictions on BT's financing and the limitation of Condition 60. To the extent that the restrictions on financing result in higher debt service due to higher interest rates and shorter term amortization, the more difficult it will be for BT to achieve self-sufficiency. The risk to taxpayers of a subsidy to BT only occurs in the event that BT ceases operations. Thus, utilizing the full financial resources of the City (including the pooled cash) to secure favorable financing for BT enhances the probability of success and reduces the risk to taxpayers.

The need for relief from Condition 60 is best demonstrated by the City's use of pooled cash to finance BED pending the authorization for revenue supported general obligation when the previously authorized revenue bonds became problematic. Even with a recovery of the revenue bond market, a BED revenue bond would have resulted in substantially higher interest and debt service thereby increasing BED's costs. By utilizing the credit strength of the City, the revenue supported general obligation bonds effectively provided more favorable financing for BED thereby reducing the cost to ratepayers. (I should note that in the interim, pending voter approval of the proposed revenue backed general obligation bond, the City provided cash flow funding for BED through its pooled cash management system.) Similarly, the cost to BT customers, the capacity to finance completion of the build-out and expand beyond Burlington would be greatly enhanced by similarly using the credit strength and full resources of the City. Ironically, this is not unlike the capacity of Comcast or FairPoint to finance activities and capital expenses in a defined geographic area by utilizing financial resources from the broader market. Finally, it is important to note that the ultimate security for taxpayers is the value of the BT system. In December 2007 I obtained an informal valuation of the market value of the BT system.

I was specifically concerned to not exceed that valuation in BT's financing for then anticipated pooled cash debits. Based on this appraisal, I was confident the City could proceed with financing the continued build-out of BT to the current extent.

Q11. What are Burlington Telecom's business plans going forward?

A11. Burlington Telecom has succeeded in creating a modern state of the art FTTH system and transitioned into successful operations in just four years. It is an extraordinary achievement considering this was accomplished starting anew. During the start-up process, BT has accumulated significant expertise in both the development and operation of this state of the art system. In addition, BT has developed a hub capable of serving up to 100,000 customers with minimal capital scale-up. The expenses associated with the development of the hub capacity and start-up creates significant assets but the associated debt constitutes an overhead of an estimated $18 to $20 million. This overhead cost represents a very significant financial burden if it is allocated to just the current market. It is essential for BT to allocate this overhead over a substantially larger market to enhance the financial viability of BT and enable BT to complete the build-out in Burlington.

Burlington Telecom has a CPG for telephone service for the entire state. The CPG for video is currently limited to Burlington. Thus, the City could expand and provide telephone and internet services anywhere in the State of Vermont. However, absent an expansion of the CPG for video, BT would not be able to provide video service from the hub. From a marketing and business perspective the ability to offer the so-called "triple play" of video, telephone and internet is essential. If Burlington Telecom proceeds with an expansion beyond Burlington without an expansion of the video CPG, BT would be placed in the bizarre circumstance of providing internet and telephone over a FTTH network while marketing dish and satellite video to provide a "triple play" for customers. Clearly it would be absurd to market satellite video with a FTTH network capable of providing better video capability to customers.

The City of Burlington is committed to completing the build-out of BT and providing services throughout the City of Burlington. The challenge for BT is to secure financing for the build-out while continuing to strengthen and improve BT's financial viability. A significant increase in BT's market enables BT to allocate the overhead of the start-up and the hub and thereby reduce per customer capital costs and better secure BT's financial success.

BT is currently exploring a variety of opportunities and mechanisms for such an expansion. These options include both public partnerships with other communities and public/private partnerships with other telecommunication entities. In order to reduce the overhead per customer associated with start-up and the hub capability it is essential to expand the City's CPG for video service. I believe that this expansion is not only essential to BT but is very important to enable the State of Vermont to fulfill the Governor's and Legislature's goals and commitments to provide universal broadband throughout Vermont.

Q12. Does this conclude your testimony?

A12. Yes.