

SPECIAL CITY COUNCIL MEETING  
CONTOIS AUDITORIUM, CITY HALL  
DECEMBER 3, 2009  
6:15 P.M.

PRESENT: Councilors Caldwell, Davis, Mulvaney-Stanak, Bushor, Kaplan, Adrian, Keogh, Shannon, Ellis, Kehoe, Berezniak, Paul, Dober, Decelles and Mayor Kiss

CITY ATTORNEY'S OFFICE: City Attorney Schatz

CLERK/TREASURER'S OFFICE: Jonathan P.A. Leopold, Jr., Ben Pacy and Sue Trainor

PRESIDENT KEOGH PRESIDING

1. AGENDA

Councilor Adrian read the revised agenda into the record.

2. PUBLIC FORUM

Walter Danco of Summit Street in Burlington questioned the competitive process used when selecting Piper Jaffray.

3. BURLINGTON TELECOM FINANCIAL OVERVIEW

The Mayor stated this meeting had been scheduled to discuss the refinancing of the Burlington Telecom debt through Piper Jaffray. He explained that the Council had requested the Administration to find a way to refinance the debt and they had done so by bringing forward this proposal. The Mayor stated the refinancing of BT was the highest priority at this point. It was the intention of the Administration to do this previously; however, the markets collapsed making it impossible at that time. He noted as much information as possible would be provided to the public at this meeting and that confidential matters would continue to be discussed in executive session in order to protect Burlington Telecom's marketing and business plans. He stated that he would not support reckless actions to ruin Burlington Telecom and commented on the benefits of the company being a vital economic tool.

CAO Leopold and Chris Burns, General Manager of Burlington Telecom, addressed the Council. CAO Leopold provided a budget analysis for Burlington Telecom, noting that the analysis being provided at this meeting was done on a budget basis, rather than the typical financial statements provided in an audit. The CAO outlined the difference between the two methods of accounting. Among other things, the financial statements that were provided for the audit are done on a full accrual basis rather than a cash basis. The items provided to the Councilors were on file at the Clerk/Treasurer's Office.

The CAO outlined the financing done through Koch Financial, CitiCapital and Municipal Leasing. He noted that in December of 2007 he reported to both the Board of Finance and the City Council the financial issues facing BT. A transcript of his report to the Council was also available at the Clerk/Treasurer's Office. In December of 2007 the CAO had a consultant review the organization and provide recommendations. The report outlined the viability of the business and offered a business plan for future success.

CAO Leopold continued his presentation by going through the budget that was presented to the Council in December of 2007 outlining the shortfall in revenue. That month, due to an accident, he was unable to come to the Council with budget amendments to remedy the situation. In early 2008 the Board of Finance authorized hiring Municipal Leasing to begin the process of refinancing, which ultimately led to the Piper Jaffray financing proposal. He noted that at that point the City was financing \$8 million out of pooled cash and it was reported in the audit report quite clearly in narrative format. Comcast was well aware of the information and had made use of it. He then outlined the amounts paid in Fiscal Year 2009 which increased the cumulative deficit.

He continued by stating that the only year that General Manager Burns was fully responsible for the budget, targets were met – 98% of the revenue target was met and \$4 million less was spent on expenses: this reflected that the company was on track. Further, he began outlining that in FY 2006 the budget/actual for FY 06 had a net cash deficit generation projection of a million dollars.

At this point Councilor Adrian interrupted the presentation, calling for a point of personal privilege, asking that the Council be allowed to ask questions. Councilor Adrian then made a motion to challenge Council President Keogh's ruling to ask questions following the presentation. Councilor Kaplan seconded the motion. Councilor Decelles asked the CAO how much longer the presentation would continue. With the response being ten minutes, Councilor Adrian withdrew his motion. Councilor Bushor noted her concern that the Council asked for information and then questioned the length of time the presenter took to present it fully and wondered who was at fault.

CAO Leopold continued, highlighting the budget versus actuals of both the revenue and expenses of the organization over the next four fiscal years, driving accumulating deficits. He pointed out that it was Mr. Burns' management team that began to implement the consultant's recommendations and saw a 50% increase in revenues in Fiscal Year 2008. He summarized that it was not a secret as to what the \$17 million had been spent on. This information had been reported to the previous Board of Finances and the City Council, as well as the current Board of Finance and Council, and had been in all budget documents submitted to the Council with periodic updates.

Councilor Adrian questioned when the transcript from December 17, 2007 was transcribed for this meeting. CAO Leopold replied that it had been done earlier and he had used it when providing information at a previous meeting of the Council. Councilor Adrian then asked a number of clarifying questions as to when the CAO knew about the violation of Condition 60, about the business and financial models used by General Manager Nulty, and the viability of Burlington Telecom. Councilor Adrian debated with the CAO on when pooled cash was used and whether taxpayer dollars were used when using pooled cash. CAO Leopold noted testimony of the previous CAO as to the fact that pooled cash came from a variety of sources, some of which came from taxpayer dollars.

Councilor Shannon said that she still had questions about where the money went. She believed that the Council had voted to limit capital expenditures over the years and wanted to know if BT was laying fiber without authorization. CAO Leopold stated there was no fiber being laid. The costs were associated with revenue generation (customer hookups) and capital improvements. Following continued questioning, General Manager Burns provided other items that were purchased through capital improvements that involved hooking customers to service.

Councilor Dober asked for clarification on the \$4 million that was not expended in the BT budget, stating that either the budget was inflated or projects were not completed. CAO Leopold explained less hookups were required, reassessments and projections of the capital build-out were done on the homes passed, and adjustments were made following these reviews.

Councilor Ellis explained that he believed the Council's work was to decide whether to approve moving forward with Piper Jaffray for twenty years. He asked where within the documentation the CAO provided did it support the ability to pay this debt and what benchmarks would be used to confirm whether the business is succeeding. He also asked if it was necessary to repay CitiCorp at this time. CAO Leopold stated that the agreement with CitiCapital required Burlington Telecom be security on the lease and that the lease must be paid prior to additional financing. Further, the CAO explained that given the restrictions of state law, the City Charter and the CPG, the only way to finance was through a lease/purchase financing option. The preferable approach would be to do a revenue-supported general obligation bond, similar to the one that was used with Burlington Electric Department, which would reduce the annual debt service significantly. The CAO believed that the City could, in fact, repay the debt and that BT was viable.

Councilor Kaplan asked if Burlington Telecom was charging the City the market rate for the service provided. CAO Leopold stated the rates have started to increase and that the Board of Finance recently agreed to increase the reimbursement rate to 50% of the lowest market alternative. Councilor Kaplan asked if that brought about the benefits that Mr. Burns achieved. CAO Leopold outlined the detail in the financial documents and General Manager Burns outlined revenue streams.

Councilor Caldwell asked Attorney Bill Ellis and City Attorney Schatz whether the legal requirements of Burlington Telecom were the responsibility of the legal counsel or the CAO. City Attorney Schatz stated it was the responsibility of the City, as they were the holder of the CPG. Councilor Caldwell asked if the City relied on legal counsel regarding the legal requirements of matters such as a CPG. Attorney Bill Ellis agreed and stated he wrote a letter in 2005 outlining the requirements of the CPG.

Councilor Paul noted that Piper Jaffray had not done any due diligence on the City and yet provided it an A rating. She then outlined her analysis showing that Telecom would meet the operating expenses with their revenue, however, wondered where the money would come from in 2013 to pay the debt service. Councilor Paul then asked the Mayor if the Councilors would be given full access to documents and allowed to remove them from the room at the end of the meeting. CAO Leopold explained that any rating for any Certificate of Participation was based on the underlying credit, not on an analysis of the value of the assets or revenue stream associated with it. All COPS financing is based on a reimbursement of costs, not an estimate of fair market value. He noted that during the executive session it would be outlined how BT anticipated growing into the debt service requirement.

The Mayor responded to Councilor Paul's question, noting that some of the information shared in executive session would be able to be taken out of the meeting but would remain confidential, not to be shared beyond the Council. Councilor Adrian asked for a point of information, stating that was not Councilor Paul's question. Following a response from the Mayor in which he restated his prior comments, Councilor Adrian asked for a point of clarification. Councilor Adrian stated that his understanding was the Administration would provide only what the Administration felt the Council needed. The Mayor replied that material would be provided in executive session. Councilor Paul asked if the information that was requested be provided to them and would the Councilors be able to take it with them. Councilor Caldwell then called a point of order which was not well taken by the Council President. The Mayor addressed Councilor Paul and stated a package was being provided at this meeting and that additional information would be provided.

Councilor Kehoe stated that the Shanahan Report basically noted that BT needed to raise their rates and find more customers. General Manager Burns replied that the strategies within the report were very detailed. Councilor Adrian called a point of order stating that information from the Shanahan Report was considered confidential. Council President Keogh did not consider the point well taken. The CAO concurred that was a take-away from the report, but that it was much more complex and detailed and better discussed in executive session. Councilor Kehoe then discussed her concern about the annual appropriation lease clause in the Piper Jaffray financing. Further, she asked if the debt would be on the books and would impede the

City's ability to finance in the future, to which the CAO replied that a lease/purchase financing was not considered part of the City's legal debt. It would increase the lease/purchase financing obligation of Burlington Telecom.

Councilor Bushor noted that she was on the Board of Finance with Councilor Andy Montroll and Councilor Kurt Wright when the subject of Burlington Telecom's overrun took place. A lot of time was spent on the Shanahan Report and they were informed that attention needed to be paid to the financial affairs of BT. She stated that this Council needed to look forward and to help BT become financially viable by also requesting that the Public Service Board allow BT to go outside of Burlington limits.

Councilor Berezniak asked about the City's liability if Burlington were sued by the investors of the COP. CAO Leopold stated again this was a lease and at the end of the lease if the annual appropriations were paid the assets would belong to the City. However, if the Council chose to not make an appropriation, there would be no recourse. The CAO outlined this was why the lease/purchase financing was being used. City Attorney Schatz followed up by saying there was recourse if lease payments were not paid. However, the recourse was not against the City taxpayers.

Councilor Kaplan asked the CAO how an asset could be worth \$33 million one day and then worth \$60 million the next day. CAO Leopold responded that the lease/purchasing financing was based on what was been spent and not what something is worth.

Councilor Adrian asked if there had been an exploration of selling equity rather than debt to those who say they support Burlington Telecom, with the City retaining a 51% interest. The CAO stated he would prefer to address that in executive session; however, the idea of raising capital through private means was definitely a future consideration. This was not an immediate solution though, as the solution needed to be determined quickly.

Councilor Adrian then asked a question about an e-mail between CAO Leopold and Attorney Ellis. Councilor Davis called a point of order stating that the relevance of the question at this point was unclear considering that the Council President had just asked people to stick to the agenda. The point of order was considered "well taken" by the Council President. Councilor Adrian then questioned the Council President stating his line of questioning was required, which the Council President denied. Councilor Adrian then asked that the Council vote to challenge the Council President's decision. CAO Leopold, however, asked to respond. Councilor Dober seconded the motion. Councilor Adrian then stated that in order to know what the Administration had access to, it was important to ask these types of questions. The Council President's ruling prevailed by a vote of 8 to 6 with Councilors Caldwell, Kaplan, Adrian, Berezniak, Dober and Decelles voting against.

Councilor Adrian then stated that those who purchased the COP's could, in fact, sue the City and the Councilors if it was determined that due diligence was not performed. He then asked Mr. Melloni, Bond Counsel, to comment on it. Mr. Melloni stated if the issuance of the securities was intentional fraud, it would be possible. He did not believe there would be, nor would he participate in, a fraudulent transaction nor did he believe that the City's Administration, attorney's or outside advisors would participate in such a thing. Mr. Melloni also noted that it was clearly stated that the payments were based on annual appropriations and the COP holders accept that as part of their purchase. Councilor Adrian then asked Mr. Melloni if he would agree that not making payments on the lease would have a significant negative impact on the City's bond rating. Mr. Melloni explained there was a difference between a default, where a payment was not made, versus a determination to not make the annual appropriation. If the City made the decision to not appropriate funds, there would be a stigma and future lease/purchase financing would not be available to the City.

At this time, Councilor Berezniak clarified for the record that he did not intend to imply that fraud was involved. Councilor Shannon then spoke about capital expense outlays and the money that was spent between December of 2007 and May of 2009. She explained that the Council had clearly stated capital expenses should be limited. CAO Leopold reported that updated reports could be provided outlining the projections. He also explained the circumstances with the e-mail correspondence that Councilor Adrian had referred to earlier. Councilor Bushor then read into the minutes the communication from 12/17/07 where Mr. Burns outlined the construction that was currently being done. She believed that the Council voted on stopping the expenditures after this point which would have been halfway through projects being done by BT.

Councilor Adrian then called a point of information in order to inform Councilor Bushor that she was supposed to speak to the Council President rather than speak directly to another Councilor. Councilor Bushor noted she was referencing Councilor Shannon. Councilor Bushor then asked for information relative to the build out and the capital costs. CAO Leopold referred to minutes from the Board of Finance from 2/20/2007 which was followed up by a month later with an executive session to the Council. The Finance Board in February and the Council in March reviewed, determined and adopted the build-out scenarios which Mr. Burns executed.

Council President Keogh then called a five minute recess at 9:00 p.m.

#### 4. BURLINGTON TELECOM STRATEGIC OVERVIEW

Mr. Chris Burns, General Manager of Burlington Telecom, introduced the management team to the City Council. John Van Vught, Manager of Business Services, highlighted the areas he was focused on as being collections and analyzing the best pricing for products they offer. Councilor Dober asked about the billing system which Mr. Van Vught provided history on.

Michael Flora, Planning and Operating Construction Engineer, spoke of his responsibilities relative to the building of the fiber pass network, inventory costs and refurbishing techniques, and initiatives implemented in FY 2009. He also noted his five years with Burlington Telecom and the pride he took in the work the team had accomplished. Councilor Shannon asked for the cost of fiber pass and hook ups in 2008 and 2009. She then noted her concern that fiber would become obsolete due to wireless popularity. Mr. Flora and Mr. Burns addressed her concern noting that wireless still required transmission which Burlington Telecom could provide.

Councilor Mulvaney-Stanak asked about the contract employees/installers and was pleased these positions were being reviewed to become full-time BT employees. She then asked how BT was working with landlords to get into apartment buildings. Mr. Flora explained BT's strategy on both issues.

Councilor Adrian asked about the breakout of the City/business/residential clientele. He then noted approximately 2/3<sup>rd</sup> of the BT business was from residences and about 1/8<sup>th</sup> from businesses. He wondered if the City was gambling on fiber and whether the majority of the customers actually needed the ability to import and export large quantities of information. He then reported on a Vermont town that purchased Wi-Max which runs on radio frequencies. Mr. Burns explained that the G3 and G4 systems have been developing over a 15-year period and that Wi-Max is being purchased by cable systems to augment, not replace the service.

Councilor Caldwell asked for information about aerial service. Mr. Flora responded that 70% of the service was provided through buried fiber and 30% was serviced by aerial fiber. Councilor Dober asked whether individual homes could have access to more routers/accessibility. Mr. Burns responded that it came at an additional price.

Amber Thibeault of Regulatory and Contract Affairs was introduced. She outlined the channels that were added over the past year on the lower tier of access, the timeliness in filing that prevented the issuance of fines by the FCC, and negotiating contracts. Ms. Thibeault outlined the contract negotiations she did with the 200+ stations and the work being done on the CPG filing with the State. Councilor Paul asked Ms. Thibeault about the deficiencies noted in the Management Letter of the audit relative to the requirements of the CPG. Ms. Thibeault noted she was only aware of the Management Letter several months ago. She then developed a procedure for a quarterly audit of the CPG. Councilor Dober asked Ms. Thibeault if she was ever asked if the use of the pooled cash was a violation and whether she was aware that the pooled cash was being used. Ms. Thibeault answered no to both questions.

Robert Valentine, the Commercial Sales Manager, then spoke to the Council of his role in the company. BT saw a 146% increase in revenue from commercial sales over FY 2008 revenues and projected 173% growth at the end of 2010. He then outlined his goals, targets and methods of achieving both. He noted there had to be a level of trust in BT's service and viability for commercial organizations to commit to moving their organization to Burlington Telecom and there was still a tremendous amount of growth available in Burlington. He noted the key ingredients to continued success being, among other things, positive publicity in the press, visible support from City officials and tactical support from other City departments. Councilor Kaplan noted, from personal experience, the business end of BT far outweighs the competitors. Councilor Paul stated she did not see that the management team donated their time to any organizations in the community and that was important to further the name of Burlington Telecom in the area.

Lisa Geisweit, Customer Service and Marketing Manager, then addressed the Council. Noting she was only two months in the position, she outlined the areas that she had been working on within the sales, marketing and service areas. Sales goals were now being instituted and tracked, quality controls were being put in place and new marketing strategies were being implemented. Councilor Kehoe asked that the call holding/message center decision be changed. Councilor Mulvaney-Stanak suggested segmenting the population which may require new thinking on the marketing of BT depending on the demographics.

Councilor Bushor asked Mr. Burns who was responsible for Amber Thibeault's duties prior to her hiring. Mr. Burns stated it was the prior General Manager, Tim Nulty, and he may have also relied on outside resources. She then asked if Mr. Burns was ever privy to prior audits. Mr. Burns stated he was not, that Mr. Nulty kept audit and planning information to himself. At the time Mr. Burns was part of the project development staff which was segmented from Mr. Nulty's role.

CAO Leopold explained that from 2001 to 2004 BT expenses were included as capital expenditures in the audit. Through 2004 it was a capital project, in fiscal year 2005 the City began to account for BT as an enterprise fund and in Fiscal Year 2009 the budget formatting was changed and tracked as an operational entity. Further, he noted that with Management Letter findings, the practice was to provide the information to the Department Head/General Manager. When the Fiscal Year 2007 audit was received, he discussed the report with GM Nulty and the issue of compliance with the CPG. At the time Mr. Nulty explained that Amber Thibeault was responsible for the audit findings.

Councilor Paul then asked Mr. Burns how long his contract was and followed up asking about the deficiencies in the Management Letter. Mr. Burns noted that he was the last person at Burlington Telecom to be on contract and it would expire March 31, 2010. Mr. Burns stated that while the Management Letters were available, he had not seen one until several months ago. He believed BT was much more in tune with the contracts of the cable companies and the providers. The State and Federal requirements would now be added to the matrix and the process would be improved.

Councilor Decelles then made a motion to suspend the rules and continue the meeting past 10:30 p.m. The motion was seconded by Councilor Shannon. The motion passed by a vote of 12 to 2, with Councilors Kaplan and Kehoe voting against.

#### 5. OUTLINE OF NEXT STEPS FOR THE REFINANCING PROCESS

CAO Leopold explained this form of financing was used for two previous financings of Burlington Telecom and, further, this was currently the only form of financing legally available to BT. CAO Leopold explained the definition of “subject to appropriation” within the language of the lease/purchase financing.

##### a. PiperJaffray Proposal And Process

CAO Leopold explained that the next major piece of work that needed to be done was to work with Piper Jaffray to develop an optimum financing. The dollar amounts used in the proposal were only a representation that the City could begin to work with and were not finalized. Complex computations would be done with Piper Jaffray to determine what was best and it would be tied with the business plan which would be discussed in executive session. Piper Jaffrey had agreed to a Letter of Agreement with the City, at minimal financial risk to the City, up until the point that a financing was requested with a maximum out of pocket expense of \$2,500. City Attorney Schatz also explained that it was clear that we have no real commitment prior to January 15<sup>th</sup> except for the capped \$2,500 in fees and either party could terminate at any time with written notice.

##### b. Use of External Consultant(s)

CAO Leopold further explained that the Mayor proposed asking the Council President to designate a team of Councilors to develop a final business plan format and proposed financing. Additionally, the Mayor proposed retaining independent advisors to work with the group and, while Mr. Burns had recommended particular consultants, the CAO extended the invitation to the Council to recommend their own advisors. CAO Leopold proposed that the Council authorize moving forward with Piper Jaffray on a limited basis, appoint a team of Councilors to review and recommend options, and to retain an independent consultant.

Councilor Kehoe stated she believed that this financing was very different than the prior financings because this one involved COP's and were based on future City appropriations. She was concerned about the stigma involved if a future Council decided not to make an appropriation. In response to a question from Councilor Ellis, CAO Leopold stated that “annual appropriations” were also a part of the previous financing, contrary to Councilor Kehoe's statement. Further, any recourse for non-payment would be from Burlington Telecom's assets and not the taxpayer. If the Council voted not to make a payment, the City would have to take affirmative alternative steps. Not paying would be a stain against the City's ability to do future lease/purchase financing which was different than if a general obligation bond were not repaid.

Councilor Shannon noted her appreciation to the Mayor for making the proposal. She believed there were two issues to determine moving forward: the viability of BT and whether it made sense to finance in this way. Therefore, while appreciating the offer to hire an outside consultant, she also wanted to add a review of strategic alternatives for financing. CAO Leopold reminded the Council that a previous resolution had required that the CAO provide options on November 16<sup>th</sup>. His intention was to make a presentation to the Council of the options, which he and Mr. Burns had been working on for three months. During that time, the opportunity to lease/purchase finance through Piper Jaffray became a very real option. Therefore, rather than give a lengthy presentation on the options, they decided to work on the Piper Jaffrey plan. Further, the CAO explained that work had been done with Municipal Leasing to refinance since February of 2008. It was only in the last 60 days that rates changed significantly, making this kind of financing feasible for

Burlington Telecom. Councilor Shannon stated she understood that was the CAO's position but it did not satisfy her desire to hear from others.

The Mayor stated his memo asked for a decision from the Council by December 7<sup>th</sup> but no later than December 14<sup>th</sup> in order to move forward with this refinancing. Even if the Council wanted to seek further information, it was important that the City be able to continue to move forward with Piper Jaffray as all of this would take time.

Councilor Kaplan stated that she and her constituents did not agree with the idea that the Administration state they looked at all the options and determined which one was the best. The kind of options she needed to see were how to sell BT if needed and were there public/private financing options available. She did not see refinancing as the only option. Further, she wanted to hear what the Public Service Department had to say about the options.

Councilor Berezniak asked the CAO if CitiCapital was amenable to retaining the portions of BT that were not affected by the CPG. He also stated he needed clarification on what the problem was right now.

CAO Leopold responded by addressing Councilor Kaplan's statement. CAO Leopold noted that he did not suggest that he would not provide other options. He reminded the Council there were limited resources to do this work and the amount of work put in to produce the information on the refinancing took a great deal of time. Working on a refinancing, making a presentation to the Council on other options, as well as doing the other work required of his position was time consuming and was limiting his ability to do other important work, such as working on the retirement fund problem. Decisions needed to be made with the limited amount of time that was available and this opportunity to refinance was a good one. Again, he reminded the Council that the City refinanced BT in the same manner the two previous times after trying a joint venture with private equity that failed.

Further, CAO Leopold explained that if the Council wanted to look at financing this through a private equity venture or selling BT, they would be in a much better position to do so if they stabilized the finances of Burlington Telecom through the refinancing and reduced the uncertainty of what the Council was doing. He noted that the City had received calls from a number of companies who were looking for a bargain sale. This method had been used by the cable industry throughout the country to ruin public ventures such as Burlington Telecom. In response to Councilor Berezniak's question, the CAO stated that CitiCapital was not interested in negotiating with the City. The best the City could do was request they waive the pre-payment penalty.

Councilor Adrian asked for clarification on Mr. Melloni's comment about a stigma on the City's credit rating. CAO Leopold explained the difference between the Council not appropriating funds in a given year as opposed to the Council appropriating funds but deciding not to pay them. He then explained again the distinction between a general obligation bond and a lease/purchase financing as far as the recourse available to the lenders.

Councilor Adrian then requested that the Administration clarify whether they were going to ask for the Council to vote on December 7<sup>th</sup> or December 14<sup>th</sup>. The Council President noted that was the Council's choice whether to vote on it or not. The Mayor stated that his memo requested action be taken on December 7<sup>th</sup>, but no later than December 14<sup>th</sup>.

Councilor Paul, referring to comments made at the Public Forum, asked if the CAO had spoken with any of the top tier firms such as Goldman Sachs, what their response had been and if a competitive process was used. CAO Leopold explained the history, since September of 2008, of the authorization given by the Board of Finance on the refinancing of Burlington Telecom through lease/purchase financing and the use of



Municipal Leasing. Part of the reason CAO Leopold wanted to move forward now with Piper Jaffray was because the rates were good presently and they could change with any market change. He disagreed with Mr. Danco's comments about Piper Jaffray and provided information on the company's standing in the country. He also explained that he did not make these decisions by himself. The City had an independent financial advisor that had worked with the City for 30 years. This firm agreed that the City should move forward with Piper Jaffray. In response to Councilor Paul's follow up question, the CAO stated that he personally did not approach other firms, that Municipal Leasing had done that by going to national industry meetings and making presentations.

CAO Leopold then outlined the big names in financing who were bankrupt or on the verge: Merrill Lynch Bear Stearns and Bank of America. The top tier firms had not fared very well. He stated that Piper Jaffray was a first rate company and the financial advisors feel this was a good firm to do business with.

Councilor Caldwell stated she had received calls from her constituents as well as constituents from other wards who supported the concept of keeping Burlington Telecom as a public asset and she had no interest in abandoning or selling Burlington Telecom. Councilor Bushor asked whether the Administration could provide information on the options Mr. Burns and the CAO reviewed by the next meeting as well as information on the consultant the CAO was working with. CAO Leopold stated they would do the best they could to provide the pros and cons and the limited options available. Councilor Bushor then urged that the Council approve the \$2,500 to allow Piper Jaffray and the City to move forward.

Councilor Davis informed the Council that Piper Jaffray had provided significant amounts of financing for Vermont Housing Finance Agency and was clearly a very legitimate financing company. Further, he expressed concern that the Deputy Commissioner of the Public Service Department was still waiting to speak. Finally, he stated his desire that the Council work with the Public Service Department to ensure the success of Burlington Telecom.

Councilor Kehoe then stated that unless she was convinced that Burlington Telecom could make its first Piper Jaffray payment, she would not support the proposal to move forward with financing with Piper Jaffray.

c. Action by Council Proposed for December 7

## 6. COMMENTS BY PUBLIC SERVICE DEPT

Deputy Commissioner Steve Wark, Special Counsel Geoff Commons

See attached document for transcript of comments.

Following this presentation, Councilor Kaplan moved to adjourn the meeting, seconded by Councilor Berezniak. Councilor Bushor stated she would agree to adjourn but would like to have an executive session the following Monday prior to the City Council meeting. Councilor Decelles agreed with the motion but asked if the confidential material being presented in executive session could be brought home with them, otherwise the Councilors would not have the time to review the information and vote on December 7<sup>th</sup>. Councilor Decelles then asked the maker and seconder of the motion to withdraw the motion, which they did.

Councilor Adrian then made a motion asking the Administration to provide all information that would be available in executive session, with the intent being that the Councilors would have the weekend to review the information. The motion was seconded by Councilor Kaplan. Councilor Decelles asked the Mayor if he was amenable to the request. CAO Leopold noted there were two pro formas, one of which could be

distributed. The second one needed explanation which could be done at a work session on Monday. The one pro forma they could provide the Council would give ample material to review. Councilor Decelles continued stating that all material needed to be provided to Councilors if a vote was to be done on Monday. Councilor Decelles then asked City Attorney Schatz if the Council understood the material was sealed and confidential was there a reason the council members could not have it. City Attorney Schatz stated the Mayor did not say the Council could not have it, the Mayor had stated he wished to provide explanation for one of the documents, and that he felt the Mayor was responsive to Councilor Decelles request in that it was understood the Council may not vote on the 7<sup>th</sup> of December.

Councilor Davis stated that the Council had received a lot of information in executive session that very quickly was seen in the Burlington Free Press. Considering the sensitivity of this subject, he preferred meeting early on Monday to have a cogent conversation. At that point if the Council was not ready to make a decision, the vote could be on December 14<sup>th</sup>. He hoped that all members of the Council would keep the information confidential.

At 12:08 a.m. Councilor Shannon asked for a 5 minute recess which was granted by the Council President. The Council meeting resumed at 12:13 a.m.

CAO Leopold explained that the concern was that without explanation the second document could be misinterpreted or misunderstood. The Administration offered to allow both documents to be taken and a written communication would be sent to explain more fully what the two documents are.

Councilor Mulvaney-Stanak agreed with Councilor Davis' concern about confidentiality and the lack of trust in the information remaining confidential. She reminded Council members that part of their service as Councilors was to keep this information confidential.

Councilor Adrian expressed his frustration that he, Councilor Paul and Councilor Shannon had requested a great deal of information and it appeared that only four pages of documentation were being provided to them. At this time, Councilor Dober made a motion to adjourn, Councilor Shannon called a point of order, and Councilor Adrian and Kaplan withdrew their motion to distribute information due to the fact that the documents had already been distributed.

Councilor Davis again asked City Attorney Schatz to refresh the Council on the duty of the members regarding confidential information and what recourse was available if information were shared. The City Attorney explained the City Council rules on materials provided in executive session. The rules also addressed sanctions if confidentiality was breached. As Councilor Paul began to speak, Councilor Ellis made a motion to adjourn, seconded by Councilor Kaplan. Councilor Caldwell stated her disagreement with a motion being made to adjourn out of the queue, to which the Council President stated it could be done. City Attorney Schatz noted that the Council rules required that a Councilor must be acknowledged first before someone had the floor. Council President Keogh stated that Councilor Ellis was recognized. Councilor Caldwell countered by stating that Councilor Paul had the floor. Councilor Davis then noted that he still had the floor and had been in the process of asking his questions to the City Attorney.

Following numerous interruptions, a vote was taken to adjourn. The vote failed by a vote of 7 to 7.

Councilor Paul then asked if every council member agreed with the premise of having the information and keeping it confidential. She asked if everyone would raise their hand which they all did. Councilor Adrian then stated that the Democratic Caucus attorney provided different information than the City Attorney and the he thus disagreed with the City Attorney's position. Councilor Adrian wanted to provide the information to his agent. He believed that if there were people that needed to be consulted, it was within his purview to share it. Councilor Adrian added that the City Attorney offers advice and the Council members

can choose to rely on the advice or not. He stated for the record that he did not plan to disseminate the information but he did plan to share it with people he consults with. The City Attorney suggested that everyone read Rule 13 which was very clear.

Councilor Caldwell disagreed with an individual's right to take away her right to confidentiality as a City Councilor with fiduciary responsibility to an entity and stated this item needed to be agreed to before the information left the room. Councilor Paul stated she believed everyone raised their hands and agreed to keep the information confidential. Councilor Adrian stated he did not raise his hand. Councilor Paul then stated that the information needed to be returned to the Administration.

Councilor Shannon then made a motion that until there was agreement by the Council on sharing the information with any third party that the information be kept confidential and not shared with a third party, seconded by Councilor Caldwell.

Councilor Kehoe asked under what provision in Title 1 these documents fell under. City Attorney Schatz stated that these documents were appropriate to discuss in executive session or remain confidential. They involved contract negotiations, related to pending litigation, related to policy decisions, and disclosure of these documents would put the City at a competitive disadvantage with trade secrets. Councilor Kehoe stated it thwarted the democratic process to withhold documents and requested a follow up memo from the City Attorney.

Councilor Bushor stated she had never been in this situation in all of her years of service on the Council. She had no confidence, regardless of the vote, in this information being kept confidential. She also had heard the Council saying they had no faith in their City Attorney or the Administration and they only believed themselves and whoever they hired. She was very disturbed and disappointed by this.

Councilor Berezniak reminded everyone they took an oath to do what was best for the City. A promise beyond that was pointless. He was not concerned about people taking the information home. Councilor Davis noted they had just finished a 45 minute debate about this, which could have been used receiving the information in executive session and reiterated he would like to know beyond a doubt that the documents would not be shared beyond the 14 members of the Council.

Councilor Adrian then asked who in the Administration had already seen the documents. CAO Leopold replied Mr. Burns, the Mayor, and the CAO saw the documents. Councilor Adrian wanted to know who created them. When asked, Mr. Burns stated that Mr. Van Vught made copies of the document to which Councilor Adrian replied it was very important to know who had access to these documents. When it was explained that Mr. Van Vught was the Business Manager of Burlington Telecom, Councilor Adrian began stressing the importance of knowing the agents that were involved in producing the information.

Councilor Mulvaney-Stanak then made a motion to call the question, seconded by Councilor Dober. Councilor Paul called a point of order stating her belief the vote needed to be unanimous. The vote to call the question on the motion offered by Councilor Shannon passed by 12 to 2, with Councilors Adrian and Caldwell voting against. A roll call was then called with all Councilors voting in the affirmative.

7. EXPECTED EXECUTIVE SESSION – this did not occur

- a) Confidential BT Business Plan Discussion
- b) Confidential BT Marketing Plan Discussion
- c) PiperJaffray Refinancing Negotiation

8. ADJOURNMENT

Councilor Shannon made a motion, seconded by Councilor Kaplan, to approve. The motion passed unanimously and the meeting adjourned at 12:40 a.m.

Attest:

Sue Trainor, Assistant to the CAO