

## **BLUE RIBBON COMMITTEE ON BURLINGTON TELECOM**

**DECEMBER 21, 2009  
7:00 P.M.**

Committee Members Present: Councilors Shannon, Paul, Davis; David Provost, William Shuttleworth, Patrick Robins, David Parker

Others Present: Joe McNeil, CAO Leopold, Chris Burns, General Manager of BT

Council President Keogh introduced the members of the Committee selected by both he and the Mayor, thanked them for their service and passed the meeting on to previously selected Chair, David Provost.

Provost noted he was both taxpayer and user of BT. He explained a product was due by the 15<sup>th</sup> of January which is a very tight schedule with January 25<sup>th</sup> seemingly more appropriate. An RFP has been issued for the financing options available for BT and those responses are due 1/13/10. He noted that Executive Sessions would be required and that Non-Disclosure and Confidentiality Agreements must be signed by the members who are not councilors. Attorney McNeil outlined the requirements of confidentiality. Mr. Robins expressed concern about signing the document which Attorney McNeil then spent time discussing.

Provost outlined the responsibilities of the Committee:

Serve as consultants on the viability, finance structure and options for BT and to serve as a liaison to the Council on litigation pending before PSB.

The following documents will help to form the basis for the Committee's recommendation (per CAO Leopold):

2004 Business Plan – Prepared by Tim Nulty for the CPG and financing for Koch

Shanahan Report – Business Plan prepared by Rob Shanahan in November 2007 following concerns of viability of 2004 Business Plan. This report is confidential and a redacted copy was given to the City Council.

2009 Business Form and Pro Formas – A comprehensive statement of what the business model should be moving forward and expands the business model for new opportunity.

Also available: Interrogatories from the Public Service Department – 124 questions and exhibits/documentation.

The Piper Jaffrey Financing Information was requested. CAO Leopold said it would be provided with the caveat that it is a working model rather than a specific plan. Details still need to be worked on, such as refinancing the structure and size of the financing (amortization and deferral of debt service).

Mr. Provost asked who the City has worked with already on the financial aspects of BT. CAO Leopold noted the following:

Financial Advisors: PFM, has done the City's public debt issuance since 1983. PFM deals with competitive bond issues. Tom Maloney, Bond Counsel. Oleet & Co. just this year.

Business Advisors (Telecom): Rob Shanahan. Owned and built successful telecom companies. He is currently running his own business so he can't help. There was a consultant from Rochester, NY as well that responded to the request for assistance when Shanahan was selected. Two fiber to the home companies

have mentored and followed BT's progress: Hiawatha Broadcasting from Minnesota and BVA, Bristol Virginia.

Following a question, Councilor Shannon stated that the Council members on the Committee would have the authority to authorize the hiring of a consultant to help in the decision making process. It was further clarified that it was concurrent with a decision from the Mayor.

Mr. Robins stated he would like to have on the list of consultants someone who was not advocating for the current model.

As part of the charge to assess viability of Burlington Telecom and its current debt load, Chair Provost noted they would need financial information, which it was explained could be found in the 2009 Business Plan and Pro Formas.

Attorney McNeil was concerned that there was a need for a definition of viability – one person's viable may be another person's moribund state. What margin of viability would be satisfactory? Coverage beyond meeting a year's worth of debt obligation? Profitability? Being able to pay the bills? Framing of the question often suggests the framing of the answer. It might be best to decide this before moving too far down the road.

David Provost believed there should be industry data that would help to define and understand what a viable telecom company is. What does it need to look like 5 years from now to be able to deal with \$60 million debt?

Bill Shuttleworth stated that much information is not available. Many small telecom companies are combined with the electric utility and the fiber to home product is very different and unique from other telecom products. Solid financial data is going to be very difficult to come by. Benchmarking against industry is going to be problematic at best.

David Provost remarked that in the absence of that, what we know and what others know about viability in business is necessary. Industries have ratios to maintain.

Bill Shuttleworth replied that specifically in fiber to home models it will be difficult. It is also a dramatically different model than what a municipality is doing. Comcast deals with volume and can dictate price when they go to the market, whereas the City can't do that. Economies of scale/learning curves on complex systems.

David Provost asked the Councilors if they are looking for information on debt financing. Are they looking at refinancing the current debt only or is additional financing required to comply with CPG. Is there a number between the \$51 million and \$61 million?

David Parker asked about the requirements of the CPG re: debt. Attorney McNeil outlined Condition 17 and Condition 60. CAO Leopold stated that the requirements of the Condition 17 were never clearly defined, noting that connections to some areas were extremely expensive and involved digging through rock, while other areas were more easily accessible. The cost involved or assumptions in this effort were never outlined in the CPG. This is what the City is currently working on with the Public Service Board. The CAO also explained there is a proceeding already before the Board regarding a change in the general policy so that an overbuild (as BT is) is not required to provide 100% coverage. This would help the City if this were to be determined by the PSB.

Both Mr. Parker and Ms. Shannon asked what the cost assumption would be if Condition 17 needed to be fully complied with. CAO Leopold stated year 3, 4 or 5 would begin to address the build out. As of this past August, it was determined what properties weren't being served and the cost to build out fully would be \$8 to \$10 million.

David Provost suggests asking a consultant: what is the debt capacity of BT?

Attorney McNeil explained the history of the Legislature's stance on the creation of Burlington Telecom and the fact that the Legislature took into consideration Comcast's concerns about the advantages for a municipality to run a cable company. Therefore, the Legislature put into place restrictions and requirements that "leveled the playing field", providing no advantage to BT. He noted that the issue with this is that the financing options available to the City are seriously diminished by this requirement. The City currently has 3 other enterprises (the Airport, Water/Wastewater and BED) that do not have these restrictions and experience the benefit of better financing options and interest rates. Attorney McNeil opposed this financing restriction at the time of the petition to the Legislature.

David Provost asked if Burlington Telecom fails, what that means for the City of Burlington and the taxpayer.

David Provost accepts responsibility for developing a response to the financial piece of the report.

Industry Trends: Bill Shuttleworth explained the technology of the fiber to the home product is fairly straightforward. The issue is the content/media. He will take on this piece of the report. What is the capability of the fiber network? There is a significant value for transport, providing private line services, etc. There is significant revenue potential that can be tapped.

Following a request about additional resources, CAO Leopold noted the Fiber to the Home Council would provide a great deal of information and material and reference points.

David Provost asked if it's not fiber, what it is. What can replace fiber? Do we have to imagine a world post-fiber?

Bill Shuttleworth replied he really don't think so. The capacity of the fiber that BT has is infinite. There was a discussion of wireless/content and band width. With fiber to the home, the band width is not an issue for BT, while it is for the other cable providers. He does not see satellite as a competitor to wireless or fiber/cable. It can't deliver what BT does. Satellite has a role in rural Vermont, but not in Burlington.

Councilor Davis leaves at 8:30 p.m.

David Parker is concerned about ten years from now. He would like a consultant to report on that, particularly on wireless issues. How reasonably certain are you about fiber, satellite, wireless 10 years from now (to Shuttleworth)?

CAO Leopold replied that in 1985 when the City was looking at cable, the Administration was warned by Councilors that satellite would make cable obsolete by 1990. It's important not to look at the current applications because things could be on the horizon. Copper is limited – fiber is unlimited to carry data. Bandwidths are doubling every 2 years. Infrastructure will be in place for years with unlimited capability.

Pat Robins stated that we assume people will purchase the service. This is not a solid assumption. Is it reasonable for a municipality to take the risk of running a telecom agency? David Provost asked if the second question was relevant to the charge of their committee.

As far as determining financials, Bill Shuttleworth noted that you could always look at the Take vs. Average Revenue per Unit. Pat Robins asked about content costs? Bill Shuttleworth replied that content costs are problematic given we don't have market control. 1) cost 2) programming that you get. If you don't get NASCAR channels, your take rate changes dramatically. What are the Vermont consumers interested in?

David Parker asked what other communities are now starting up fiber to the home. They may have consultants they've used who can provide updated info on content costs.

Following discussion about availability of consultants on short notice, it was determined that CAO Leopold and Chris Burns will work with Bill Shuttleworth and David Parker to come up with a list of consultants to contact. Karen Paul asked if the cable companies that were noted were under any type of regulatory requirements. Chris Burns stated the FCC at least regulated them. Joan Shannon asked about a contact Attorney McNeil had in Washington, DC. Chris Burns noted the Fiber to the Home Network had a lot of municipal members we could contact. Chris will develop a list this week for the Committee to review.

Following questions about the urgency of refinancing, CAO Leopold stated that the quarterly payment on the loan is due from BT in February. The credit rating of the City is the single most significant issue – completing the FY 09 audit, the auditor needs to be persuaded this enterprise is viable or they will conclude it is a liability against the General Fund. The auditor is concerned that the Council has not authorized the refinancing with Piper Jaffray. The auditors will have questions about whether BT is viable, is it able to be financed and does the City have the intention of doing the financing? Following a comment from the Chair, CAO Leopold explained that the auditor is not concerned about if the money was spent. They are more concerned with where you account for the expense and how do you finance it?

It was decided that one list of potential consultants, vetted by David Parker and Bill Shuttleworth, will be returned to the Councilors.

The second responsibility of the Committee, stated David Provost was the review the financing options including Piper Jaffray. RFP has been sent out (at the request of the Council) for debt financing based on the current debt plan of BT and is due back on January 13<sup>th</sup>. He believed the Committee should wait to see what comes back.

The CAO noted there were two parts to the RFP: a Request for Qualifications from underwriters. The RFP also asks that they propose other alternative financing structures and mechanisms. Also have spoken with Citicapital to see if the current lease can stay in place. He then reviewed the financing history with Citicapital.

The Committee agrees they will not spend a lot of time discussing the refinancing until the responses come back from the RFP's.

The CAO then spoke about executing some form of refinancing and then do a detailed exploration of options, providing some breathing room. Some of the exploration has been done already. There are advantages of being in a joint venture including economies of scale and leveraging the assets. We can't continue to be in violation of the CPG at the same time.

Pat Robins agrees to take on the joint equity venture portion of the Committee's charge. Joe McNeil and the City Attorney's Office can help with this.

David Provost asked if anyone has ever been hired to do a valuation.

CAO Leopold replies, no, just an informal one was done by Rob Shanahan. Bill Shuttleworth explained again that this is a unique venture and would be difficult to do a valuation on and that many of them are combined with other utilities (electric). He noted the companies that he had reviewed in the past were not actually operating businesses. BT is successfully running their operation at this time.

There are currently 42 municipalities in the US with fiber to the home. Couldn't information from them be helpful to the Committee in setting benchmarks? Chairperson Provost noted his frustration with the fact that it's difficult to come up with benchmarks to determine the debt service capacity and the reasonable cost of this venture. Bill Shuttleworth noted you can value the company, but it may not be able to be benchmarked.

Next meetings:

Tuesday, December 29<sup>th</sup> from 8:00 to noon

Tuesday, January 5<sup>th</sup> at 4:00 p.m. to 5:30 p.m.

All press inquiries will be referred to the Committee Chair.

Burlington Telecom and the Clerk/Treasurer's Office will prepare the current debt load and additional financing information necessary to comply with CPG.

Bill Shuttleworth and David Parker will review technology trends.

Pat Robins will review the concept of "or else".

Karen Paul made a motion, seconded by Joan Shannon to adjourn the meeting. The motion passed unanimously and the meeting adjourned at 9:50 p.m.