

Burlington Telecom.txt
From: Jonathan P.A. Leopold, Jr.
Sent: Wednesday, July 07, 2010 12:09 AM
To: conor.McEachern@Moody's.com
Cc: mattej@pfm.com; cameronj@pfm.com; Ken Schatz; Joe McNeil
Subject: Burlington Telecom
Attachments: Mayor Citi memo 7-2-10[1][2].pdf; BT Memo to Conor McEachern
Moody's 7.6.10[2].DOC

Hi Conor

Please see the attached memos regarding BT. I am waiting for the legal opinion and will forward to you as soon as I receive it.

Jonathan Leopold

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the Mayor
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MEMORANDUM

To: Burlington City Council

From: Bob Kiss, Mayor

Re: Burlington Telecom/Negotiations with CitiCapital

Date: July 2, 2010

Greetings.

We have reached an agreement with CitiCapital, whereby the City is not obligated to make rental payments under the Lease Agreement until September 30, 2010. CitiCapital has the right to access the remainder of the escrow account during this forbearance period while we continue negotiations on restructuring the lease.

This agreement is important. It defers the City's obligation to make a determination of appropriation for funding in the FY11 budget for payments on the lease and it resolves the August payment due to CitiCapital. Moreover, it is an indication that CitiCapital is taking the time to carefully consider this matter and the restructuring parameters introduced by Dorman & Fawcett. Please remember that these restructuring parameters remain confidential as part of ongoing negotiations with CitiCapital.



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To: Conor McEachern, Moody's
From: Jonathan P.A. Leopold, CAO
Date: July 6, 2010
Subject: Burlington Telecom

I am writing to follow up on our conversation last week relative to the future for Burlington Telecom (BT) and the potential impact on City finances. Please consider the information provided below as confidential. You are free to share this information with the rating committee but we request that any information that is not already public should remain confidential as it pertains to contract negotiations and pending litigation.

In November 2009, the City Council voted to require BT to repay any debits from pooled cash made after October 1, 2009 within 60 days. Pursuant to the resolution of the Council, the debit to pooled cash was "frozen" at the level of \$16.9 million on October 2, 2009. The City established a separate account for BT. This separate account is operated in conformance with "condition 60" of the Certificate of Public Good (CPG). Any advances to BT from the City are limited to the extent of receivables outstanding. Such advances must be repaid within 60 days. Thus, the City's exposure is limited to the \$16.9 million outstanding debit.

As we discussed, BT's finances and cashflow have continued to improve despite the negative publicity of the past 8 months. The budget adopted for BT for FY 2011 shows projected positive cashflow of \$160,000. It is important to note that the operational plan and budget assumptions for BT also provide for adjustments to the budget to ensure positive cashflow in the event that the acquisition of subscribers and increased revenues is not as robust as projected.

The FY 2011 budget currently does not provide an appropriation for the lease payments for CitiCapital. Finally, the budget is based on continuing the current business in Burlington and does not include potential revenue or capital from strategic partners

As you may know, the City received a proposal from Piper Jaffray in November 2009 to act as an agent to refinance the CitiCapital lease, the debit to pooled cash and to capitalize 2 years to 3 years of debt service. This would have enabled BT to continue expansion with internally generated cashflow and would have eliminated the debit to pooled cash.

The City Council decided to defer consideration of the Piper Jaffray proposal, to solicit other financing offers and to appoint a Blue Ribbon Committee (BRC) comprised

of 3 City councilors and 4 private citizens with considerable business experience and expertise. The BRC reviewed BT's business plan, the proposed refinancing and engaged three consultants to assist the Committee.

In early February 2010, the BRC provided both a public and a confidential report to the City Council. These reports were accepted by the Council and have formed the plan for moving forward to resolve the status of BT.

The reports recommended a two phased strategy. The first phase was to retain a firm to work with the City to restructure the current lease obligation with CitiCapital. The City solicited proposals from two nationally recognized underwriters specializing in telecom debt restructuring, mergers and acquisitions. In addition the City solicited a proposal from Dorman & Fawcett (D & F), a firm that specializes in debt restructuring and business turn around situations. The City engaged D & F based on their expertise and experience.

Beginning in early April D & F has simultaneously worked with BT management to strengthen the business and continue the improvement in BT finances while also engaging in negotiations with CitiCapital regarding the restructuring of the lease obligation. D & F is making progress in both endeavors as reflected in the FY 2011 budget and the announcement on Friday, July 2d of a 90 day forbearance agreement with CitiCapital regarding the lease. A copy of a public statement regarding this agreement is attached.

As I indicated on the telephone last week, the following information is confidential. The negotiations with CitiCapital have been very productive. The 90 day forbearance agreement is intended to provide both parties sufficient time to finalize the terms of a restructuring and reflects the current progress of negotiations. The City has proposed a restructuring that would resize the debt to a level in the range of [REDACTED] million. CitiCapital has recognized at this stage, the mutual interest to sustain BT's operations and further that cashflow is currently insufficient to service the debt.

While there is considerable detail to negotiate, the 90 day forbearance agreement is a very positive reflection on negotiations and provides considerable optimism that we will successfully restructure the debt to a reasonable level that BT can support in fiscal year 2012. With the successful conclusion of this first phase, the City will move forward with the continued assistance of D & F to implement the second phase of the recommendations of the BRC.

The second phase of the BRC recommendations involves two complementary initiatives. The first is to secure one or more strategic partnerships that will increase revenues and/or provide additional capital for BT to expand and secure new subscribers. In the fall of 2009 the City was engaged in discussions along these lines with several interested telecom parties.

These discussions were suspended by the City pending resolution of the financing issues with CitiCapital. It is planned that subsequent to the restructuring of the lease

obligation to CitiCapital, that the City with the assistance of D & F will initiate a structured process to solicit and develop one or more partnerships or joint ventures to enhance revenues and/or secure additional capital.

The second initiative was discussed only briefly in the public BRC report and was addressed more fully in the confidential report. This initiative would involve the restructuring of BT to secure repayment of the debit to pooled cash within a reasonable period of time.

As we discussed last week, the debit to pooled cash will become a liability of the General Fund if BT ceases to be a City venture or the debt is not likely to be repaid. This could occur if after restructuring the CitiCapital lease and soliciting partners any portion of the debit to pooled cash remains outstanding without a plan for repayment. If this occurs, the final recourse for the City could be the termination of the business or the spin off or sale of BT so that it is no longer a business venture of the City. (The termination or transfer of the Certificate of Public Good to provide video services would require approval of the Vermont Public Service Board.) In either above event, the City will then have the authority to issue general obligation bonds to convert this debit to long term debt.

As discussed in the attached opinion of legal counsel, by a simple majority vote of the Council, the City has the authority to issue G.O bonds to achieve this refinancing. The City has utilized this authority on three previous occasions in the past 40 years.

The financing of the current \$16.9 m debit to pooled cash with a 20 year amortization schedule would result in annual debt service of approximately \$1.2 million which would require a tax rate increase of less than \$3.4 cents on the tax rate or an increase in non-school taxes of 4.7%. Considering that the tax rate for FY 2011 increased a modest 1.1%, a subsequent 4.7% increase, if it becomes necessary, represents a reasonable and not overly burdensome tax rate.

In conclusion, the City is engaged in a carefully developed strategy to resolve the current situation with BT and to mitigate any adverse impact of the debit to pooled cash. This strategy involves the following steps:

1. Continue to develop the business and strengthen finances and cashflow;
2. Restructure the lease obligation with CitiCapital;
3. Secure one or more strategic partners to enhance revenues and/or provide new capital;
4. Restructure BT, if necessary, to mitigate any adverse impact on the General Fund. and
5. If all else fails and a debit to pooled cash remains outstanding and is not likely to be repaid, the City's final recourse could be appropriate steps such that BT is no longer a business venture of the City. At that point the City will have the authority to issue long term debt to the extent required.

The City is successfully engaged in the first two steps and is awaiting finalization of the restructuring with CitiCapital to implement the third and fourth steps. I believe that the above strategy ensures that BT's debit will not adversely impact the General Fund or City overall regardless of whether BT succeeds operationally and financially.