

DRAFT

March 9, 2016

Members: David Provost, Clem Nilan, Jane Knodell, Joan Shannon, Karen Paul, Theresa Alberghini DiPalma

Member's Absent: Tim Halvorson

Others Present: Stephen Barraclough, Abbie Tykocki, Dawn Monahan, Nicholas Martin, and Terry Dorman (via phone)

Public Members: Solveig Overby, Steve Goodkind, Jennifer Ely, Don Schramm, Heather Reimer, Alan Matson (via phone)

Meeting commenced at 5:33 p.m.

1. Agenda

Provost adds Public Forum to Agenda as #2 and shifts all subsequent item numbers.

2. Public Forum

Public Forum opened

Jennifer Ely – Wishes to see a Right of First Refusal and an adequate period to respond allowing the City time to explain the details to residents in preparation for a potential City vote. Both stipulations should be permanently attached to subsequent sales of BT. This would be an effective safety net to prevent an undesirable buyer.

Alan Matson (via phone) – Keep BT Local Board Member – Wishes to clarify who Keep BT Local is to clear up any possible confusion. Keep BT Local is a co-op formed with express purpose of purchasing BT from the city or at least making an acquisition attempt. If successful, all subscribers would become member owners, a Board of Directors (elected by member owners) would govern the telecom, but BT would be operated by a team of telecom professionals much as it is today. General Manager of the telecom team would report to the Board of Directors. While many community members have come forward to speak in support of the Keep BT Local initiative, only the Chair of the Keep BT Local Board or an appointed designee such as Matson will speak in an official capacity on behalf of Keep BT Local on their potential acquisition of the telecom.

Solveig Overby – Submits a written statement requesting additional criteria that any new purchaser must demonstrate a commitment to a profit-sharing ownership structure which insures that Burlington residents will be able to recoup their investment (\$16.9 million) through future BT revenues.

Steve Goodkind – Submits a written statement requesting more detail on how the City will recoup the \$16.9M and for full disclosure of the “reserve” requirement contained in the Bluewater agreement prior to putting BT up for sale. Requests that the BTAB consider adding criteria that includes the shared interest percentage that is expected.

Don Schramm – Asks for clarification as to whether Citibank would get an ongoing share if the City received an annual patronage fund as a member of the co-op and holds an interest in the new company. *Dorman*: I’d like to research that further, but I don’t believe an annual patronage fund would be subject to sharing with Citibank. However, if there is a profit sharing agreement that is an essential component of the transaction of sale, I believe Citibank may put forward the argument that the profit sharing agreement would drive the transaction price down causing Citibank to indirectly pay for a transaction that includes profit sharing and is entitled to a portion of the City’s share. If profit sharing is not part of the bid package but is implemented down the road, I don’t believe there would be an issue. It is my belief that the community is best served by putting all excess profits into supporting the ongoing requirements for technical infrastructure, rather than profit sharing. Unlike other cooperative, using that cash for customer rebates is not in the best interest of the customer. *Schramm*: I would think the co-op board would be cognizant of that and not return the profits for the first number of years, but it does show that the co-op model is a strong way to recoup the \$16.9M.

Heather Reimer – Supports the opportunity for City to retain a carried interest. Supports looking at non-transactional ways for citizens to benefit from the telecom. Supports affordable services. Requests Right of First Refusal for the City and further distinction to favor local ownership rather than local presence. Requests information as to how the criteria is weighted. Supports a non-profit structure that requires profit to be reinvested into the system.

Public Forum is closed.

3. Approval of Minutes from February 18, 2016 BTAB meeting

MOTION to approve the minutes from the February 18, 2016 Burlington Telecom Advisory Board (“BTAB”) meeting, made by *Knodell*, seconded by *Alberghini*. *Unanimous*.

4. BT Management Update

Barraclough: Subscriber numbers for the last month were a net add of 28 new subscribers for February versus 11 in February of 2015. The net add of the trailing twelve months is 878, bringing BT to 5,912 active subscribers. Historically, February, March and April are the quietest months and are expected to be the same in 2016.

April 13th is the next regular BTAB meeting. Requests a strategic meeting. We are coming up to next year budgets, although we are in the middle of a three-year plan, we’ve been spending a lot of time on key operational priorities and would like BTAB feedback on them in an Executive Session at the next meeting.

There is a personnel issue regarding modifications to job descriptions going to the Board of Finance on Monday that needs to be discussed in an Executive Session at the end of the current meeting, due to the fact that the issue has not yet been made known to the Burlington Telecom staff.

5. Criteria for sale of BT for recommendation to City Council/Process & timeline going forward

Provost notes that the BTAB has received an updated draft of the recommendation based on work and feedback received in previous sessions. Provost takes the group through the changes that have been made and opens the floor to comment.

Knodel raises the issue of whether the option of the City investing additional monies to increase its carried interest share of BT is only on the table for a bid that is below the threshold. *Dorman* – No. The City very specifically negotiated the ability to convert its cash proceeds into a carried interest. If the City decides that it would like to have a carried interest beyond the conversion of those cash proceeds, it is possible but would run into potential resistance and increased scrutiny if it is viewed as a below-market transaction. As long as the transaction is a market level third-party transaction, the City should be able to acquire additional interest share without gaining control.

Nilsen requests clarification as to how Dorman and Fawcett determines equity value of the new company. *Dorman* – Enterprise value would be the gross price paid, however, the proceeds would be distributed as outlined in the agreement and criteria, bearing in mind that there will be retained earnings included. There are currently retained earnings in the revenue account. Retained earnings together with the Enterprise Value, less the Bluewater debt, less accounts payable and less transaction costs - the rest is excess proceeds available for distribution.

Shannon raises the issue of whether a commitment to the completed build out should be on the list of criteria. *Dorman* – the issue is in regards to areas where it is not economically viable to build. The buyer would be asked burden the enterprise with the existing cash flow having to be diverted to subsidize a build out where there is no hope of pay back.

Shannon expresses that it is clear to the entire BTAB that local ownership is the desired outcome of the transaction, all things being equal. Requests clarification from Dorman as to whether a Right of First Refusal could be added during the negotiation process. *Dorman* – It would be very difficult, but not impossible. A potential buyer would be unlikely to accept a Right of First Refusal because if and when that buyer decides to sell, all the work they put into a transaction could be voided by City of Burlington exercising that right.

Alberghini raises the issue of adding criteria to require a strategy to reinvest profits into capital infrastructure.

Provost proposes language of an additional criteria bullet point to say “A strategy to reinvest and/or invest into the business.”

Knodel raises the issue of using consistent language in the word “meaningful” to describe the City’s carried interest.

Provost proposes an edit to the carried interest criteria so that it reads “Allowing the City of Burlington the opportunity to retain a meaningful carried equity interest in Burlington Telecom.”

Knodell raises the question of whether Dorman & Fawcett anticipates the carried interest bullet point to be a differentiating factor for various buyers? *Dorman* – It would be a strike against any potential buyer who was hesitant to permit that.

Alberghini proposes the additional of the word “the” on page 6. “Though the city”.

MOTION to approve the Burlington Telecom Advisory Board Report on Development of Criteria for Sale of Burlington Telecom as proposed and amended this evening, made by *Alberghini*, seconded by *Nilan*.

Knodell moves to amend the motion to include the document being forwarded to the City Council, seconded by *Nilan*. *Unanimous*.

Provost thanks everyone for their hard work and effort in this process. This document will go to the City Council for discussion. Once finalized, we need a process about how the negotiation process going to work and what is the BTAB’s role. Some of this will have to be discussed in Executive Session so that we are not revealing to potential buyer tips on how to negotiate.

Shannon states that it would be helpful to the committee to hear from the City Council before setting the process.

Knodell agrees that the committee is not yet ready to discuss the process and timeline for the sale. A meeting with the Mayor, Councilor Knodell and Provost determined that there will be a work session on March 21st for the City Council to receive the document. Following that an Executive Session will be necessary to determine next steps and what information will be made public.

Knodell moves that full disclosure of personnel matters potentially exposes the City to risk, seconded by *Shannon*. *Unanimous*.

Knodell moves that based on the aforementioned finding that this board go in to Executive Session to include the Burlington Telecom General Manager and Management Team. Seconded by *Alberghini*. *Unanimous*.

MOTION to move, based on the aforementioned findings, into Executive Session that includes the committee, BT’s General Manager and Management Team made by *Knodell*, seconded by *Alberghini*. *Unanimous*.

6. Executive Session

MOTION to exit Executive Session and adjourn made by *Paul*, seconded by *Knodell* at 7:01 p.m. *Unanimous*.