

Information Sheet on Burlington Telecom for Public Input on Criteria for Sale

Background

Effective December 31, 2014, the City conveyed the assets of the Burlington Telecom System to Blue Water Holdings, LLC, and then leased those assets back from Blue Water so that the City could continue to operate BT. Blue Water paid the City \$6 million for those assets, which was used as the nut to enable the City to settle litigation by Citibank against the City, which had sought damages in excess of \$33 million.

Settlement with Citibank

The Settlement Agreement with Citibank “is predicated on the assumption that the Financing [with Blue Water] is intended as a bridge to the eventual arm’s-length sale of the System to a private entity.” The Agreement goes on to provide that if the terms of the Financing do not provide a “liquidity event resulting in Net Proceeds being payable to Burlington or Citibank from the assets of the System, then the consent of Citibank shall be required, such consent not to be unreasonably withheld or delayed.” Thus, the assumption is that BT will be sold, but Citibank’s consent may not be unreasonably withheld for another type of transaction.

Agreement with Blue Water

The agreement with Blue Water (Burlington Telecom Management and Sales Agreement) provides that the City has until Dec. 31, 2018 to find a Qualified Purchaser to purchase the BT System and direct a sale to that purchaser. After that time, Blue Water has the right to direct a sale to a purchaser of its choice. Further, after Dec. 31, 2017, the City’s percentage of the proceeds of the sale drops from 50% to 35%. So, the optimum timeline for the City is to have a purchaser locked in by the end of 2017.

The agreement defines a Qualified Purchaser as:

“Qualified Purchaser” means [an individual, company, partnership, etc.] that has the capability of operating a telecommunications company of size and service similar to Burlington Telecom and reasonably expected to satisfy any statutory criteria in order to obtain a certificate of public good from the PSB. Such [individual, company, partnership, etc.] may be a first-time operator if [Blue Water Holdings, LLC] reasonably determines such first-time operator to be able to timely obtain a certificate of public good from the PSB.

Statutory Criteria

The statutory criteria referred to in the definition of Qualified Purchaser are in 30 V.S.A. §504, and they include:

- (1) designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use;

- (2) adequate and technically sound facilities and equipment, and signal quality;
- (3) a reasonably broad range of public, educational and governmental programming;
- (4) the prohibition of discrimination among customers of basic service;
- (5) basic service in a competitive market, and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with section 218 of this title;
- (6) a reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest, and cost;
- (7) construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code;
- (8) a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and Department of Public Service complaints and problems;
- (9) unless waived by the Public Service Board, an office that shall be open during usual business hours, and have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received; and
- (10) reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices.

Public Service Board Criteria

In addition, the Public Service Board requires any entity seeking a certificate of public good to provide cable TV services to meet standards known as the EMCO criteria, and they include:

- (1) financial soundness and stability, both of the applicant generally and the particular proposal (this should include an eleven (11) year pro-forma Balance Sheet and Income Statement);
- (2) the present proposed service offerings to customers, including the number of channels and the ability and capacity of the system to offer additional varied services in the future, and the ability to provide public access;
- (3) the commitment to a construction and in-service schedule;
- (4) the experience and ability of the applicant to run and manage a cable television system;
- (5) the rates proposed to be charged to customers;
- (6) consumer policies, particularly re: complaints and problems;
- (7) availability of service to maximum number of residences;
- (8) the quality of the engineering and materials used in the system; and
- (9) logical fit with neighboring systems.

City Charter Provision

Section 438(c)(2) of the City Charter also requires that:

Any certificate of public good issued shall contain terms or conditions that are consistent with both the statutory requirements of Chapter 13 of Title 30 and the establishment of competitive neutrality between incumbents and new entrants, after the evaluation of factors that include, but are not limited to, the payment of pole attachment rental fees, and the provision of public access channels, equipment, and facilities.

Other Questions

Why not expand BT to all of Vermont? **Currently, Burlington's CPG limits the service area for cable services to Burlington.**

What is the effect of the Council's write-down of the \$16.9M on the City's books? **The City's auditors recommended the write-down because the definition of a payable is an amount owed that the City expects to be repaid within a year. The City does not expect repayment of the \$16.9M within a year, so it had to be removed from the books. This does not mean the debt is not owed or cannot be collected.**

Why can't BT be a monopoly like BED? **Because unlike BED, BT was formed when a competitive market already existed, and the State Public Service Board governed the conditions under which it was established.**